

COPY

IN THE SUPREME COURT OF MISSISSIPPI

JEFFREY HAVARD,

FILED

Petitioner

versus

JUL 26 2011

No. 2011-DR-00539-SCT

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

STATE OF MISSISSIPPI,

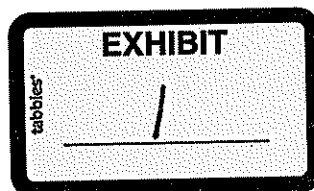
Respondent

RESPONSE TO MOTION TO VACATE OR
FOR LEAVE TO FILE SUCCESSIVE
PETITION FOR POST-CONVICTION RELIEF

COMES NOW the State of Mississippi and files this response to Petitioner Jeffrey Havard's Motion to Vacate or for Leave to File Successive Petition for Post-Conviction Relief. For the reasons stated below, the State would respectfully submit that Havard's is entitled to no relief from this Court.

STATEMENT OF THE CASE

Havard was tried and convicted in Adams County Circuit Court for the sexual assault and murder of six-month old Chloe Britt. Havard was sentenced to death for his crimes. Havard's conviction and sentence were upheld on direct appeal, *Havard v. State*, 928 So.2d 771 (Miss. 2006), *cert. denied*, 549 U.S. 1119 (2007), and on post-conviction, *Havard v. State*, 988 So.2d 322 (Miss. 2008). Havard's case is currently pending before the United States District Court for the Southern District of Mississippi, seeking habeas relief. *Havard v. Epps*, No. 5:08-cv-00275-KS. However, the district court has stayed the habeas proceedings pending the outcome of the instant motion.



ARGUMENT

I. Havard's Claims are Procedurally Barred.

Havard makes the claim that his federal constitutional rights under *Brady v. Maryland*, 373 U.S. 83, 87 (1963), *Strickland v. Washington*, 466 U.S. 668 (1984) and *Napue v. Illinois*, 360 U.S. 264 (1959) were violated based the failure to produce to the defense prior to trial a statement taken from the victim's mother, Rebecca Britt,¹ by the Adams County Sheriff's Office. Havard acknowledges that his claims are subject to being barred as a successive petition under MISS. CODE ANN. § 99-39-27(9) and being time barred under MISS. CODE ANN. § 99-39-5(2). However, he contends that he falls into the exceptions to these bars by asserting that he has newly discovered exculpatory evidence which only came to light in 2010 in the form of a 2002 videotaped interview of Rebecca Britt with law enforcement shortly after the murder of Chloe Britt. Havard claims the videotape was not known to the defense and/or was not made available to the defense until 2010. This accusation is false.

II. Havard's *Brady* Claim is Frivolous and Without Merit.

Havard claims the State withheld crucial exculpatory evidence that tends to prove Havard's innocence. Therefore, he contends that his rights under *Brady* were violated. In *Brady*, the United States Supreme Court held:

suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or

¹Rebecca Britt is the mother of the six-month old baby, Chloe Britt, who was sexually assaulted and murdered by Jeffrey Havard. *Havard v. State*, 928 So.2d 771 (Miss. 2006).

to punishment, irrespective of the good faith or bad faith of the prosecution.

373 U.S. at 87.

Havard claims that the videotaped statement by Rebecca Britt on February 22, 2002, represents a *Brady* violation because: 1) the defense was unaware of its existence; 2) it was exculpatory because it tended to impeach Rebecca Britt's trial testimony. Both of these claims are false. The test to determine whether or not a *Brady* violation has occurred is a four-part test, and every prong must be met in order to successfully demonstrate a *Brady* violation.

As this Court has repeatedly set forth:

In *Brady v. Maryland*, 373 U.S. 83, 87, 83 S.Ct. 1194, 1196-97, 10 L.Ed.2d 215 (1963), the United States Supreme Court established the principle that "suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." In determining whether a *Brady* violation has occurred, and thus a new trial is mandated, this Court applies the four-part *Brady* test adopted in *King v. State*, 656 So.2d 1168, 1174 (Miss.1995), under which the defendant must prove:

- a. that the State possessed evidence favorable to the defendant (including impeachment evidence);
- b. that the defendant does not possess the evidence nor could he obtain it himself with any reasonable diligence;
- c. that the prosecution suppressed the favorable evidence; and
- d. that had the evidence been disclosed to the defense, a reasonable probability exists that the outcome of the proceedings would have been different.

Thorson v. State, 994 So.2d 707, 719 -720 (Miss.2007) (internal citations omitted); *see also*

Carr v. State, 873 So.2d 991, 999 (Miss.2004). Taken element by element, Havard fails to make a prima facie case for a *Brady* violation.

1. The State Did Not Possess Evidence Favorable to the Defendant.

As to the first prong of the test, the State does not possess any evidence that is favorable to Havard. This Court recently stated in *Davis v. State*, 43 So.3d 1116, 1124 (Miss. 2010), that a *Brady* violation cannot be found when the defendant cannot prove the evidence complained of to be actually exculpatory, *i.e.*, favorable to the defendant. In support of his claim, Havard has presented to this Court a less than accurate “transcript” of the videotape of Ms. Britt’s interview.² The State has viewed the DVD and the certified transcript and has found nothing remotely exculpatory. The State would invite the Court’s attention to the DVD and the certified transcript of the DVD in search of anything remotely exculpatory *See* Exhibits A and B, respectively. If anything, the interview casts additional doubts as to Havard’s violent temperament (*see* Exhibit B, p. 29); the interview points out that Havard had only resided with Rebecca and Chloe in that trailer for three weeks prior to Chloe’s death (*see* Exhibit B, p. 5); and Rebecca reiterates that Havard had never bathed Chloe (*see*

²The transcript provided by Havard was prepared by a paralegal, Mary Lynne A. Underwood (See Underwood Affidavit labeled Pet. Ex. F, p. 1), but it does not represent a true and correct version of the DVD. Because of the discrepancies in Ms. Britt’s actual statement on the DVD and the transcript provided by Havard, the State is furnishing a copy of the DVD for the Court as Exhibit A. Also, the State had a true and correct transcript prepared by a professional court reporter transcriptionist, who provided an affidavit certifying it to be a true and correct copy of Rebecca Britt’s statement as found on the DVD. The certified transcript of the interview is attached to this response as Exhibit B.

Exhibit B, p. 30).

Q: How often did Jeff usually bathe the baby?

A: Never.

Q: He's never bathed her?

A: Never.

Q: Would you say that's kind of strange that he took it upon himself to bathe the child while you were gone?

A: Not really. I mean, he's always doing bottles for me or cleaning up while I'm taking care of her.

Q: Did he change diapers?

A: Sometimes.

Q: Sometimes. But he's never bathed her before?

A: No.

Exhibit B, pp. 30-31. These facts are mischaracterized by Havard in his motion. Havard seizes upon Rebecca's statement that she did not find it unusual for Havard to bathe the baby. This is not material.

In his motion, Havard claims that Rebecca and Havard decided he would bathe Chloe and put her to bed while she was at the grocery store. Havard's statement is inconsistent with both Rebecca Britt's statements (*See* Exhibits A and B) and with Jeffrey Havard's own

statements.³ The following is an excerpt of Jeffrey Havard's statements to Adams County Police on February 23, 2002:

Q. Okay. And you were bathing her?

A. Right.

Q. Had you ever bathed her before?

A. No. I have never bathed her before.

Exhibit C, p. 11.

The following excerpt from Havard's motion is contradicted throughout the record: "Petitioner was home alone with Chloe. Chloe's mother, Rebecca Britt, had gone to town to purchase groceries and rent movies. Before she left, she and Petitioner agreed that he would bathe Chloe and put her to bed while Rebecca was gone." Pet. Mot., p. 22. Rebecca's videotaped interview with the Sheriff's department and her testimony show that Havard claimed that Chloe threw up on the bed and on him and so he had to bathe her, and he took a bath himself. The following portion of the videotape transcript contradicts his claims in the motion:

Q. All right. What did Jeff tell you that he had done while you were gone as far as the baby goes?

A. He said that she had gotten fussy, and she had thrown up, spit up and got it on the bed and on him and on her, so he went and gave her a bath and he took a bath, and he put her to bed.

³See Exhibit C, p. 11 attached hereto, from the official transcript of Jeffrey Havard's statement to the Adams County police on February 23, 2002.

Q. Okay. So he gave the baby a bath and he took a bath himself?

A. Yes sir.

Q. Okay. How did – how did the baby spit up on him? Did he say?

A. No sir.

Q. Okay. Did he say where the baby was when – when the baby got sick?

A. No sir.

Q. Was the baby in her bedroom, your bedroom?

A. I assume that she was in my bedroom if she – and he said that she had spit up on the bed, too.

Q. Okay. And he was – was he taking the sheets off when you got there or had he already taken the sheets off?

A. They were piled up on top of the bed.

Q. Piled up on top of the bed?

A. Yes, sir.

Q. All right. In the – when you got there, the baby was – was in her bed; is that correct?

Q. Yes, sir.

Exhibit B, pp. 16-17.⁴

In Havard's own videotaped interview, Havard admitted he had never bathed Chloe

⁴As stated, the State discovered numerous discrepancies in the transcript of Rebecca Britt's statement, which was provided by Havard as an exhibit to his motion. Notably, however, even in the inaccurate transcript submitted by Havard's counsel, nothing is exculpatory to him or represents a material misstatement by Rebecca Britt.

before the murder. See Exhibit C, p. 11. In that official transcript of the videotaped statement of Jeffrey Havard taken at the Adams County Jail on February 23, 2002, Havard stated:

Q. And you put her in the infant tub or the bathtub. Which one did you put her in?

A. Put her in her infant tub in the big bathtub.

Q. Okay. And you were bathing her?

A. Right.

Q. Had you ever bathed her before?

A. *No. I have never bathed her before.*

Q. You've never bathed --

A. I've been in there. I've seen it done. I've seen her bathed by her mother countless time.

Ex. C at 11 (Emphasis added). Havard's own words contradict his claims that he and Rebecca decided he would bathe Chloe and that it was not unusual for Havard to bathe Chloe.

In addition, in a hand-written statement provided by Jeffrey Havard on February 23, 2002, Havard claims that Chloe was almost asleep and then started to cry. He stated that he intended to put her to bed but she spit up, so he decided he would bathe her. See Exhibit D.⁵

The baby (Chloe) had dozed off into sleep for a few minutes, then she had

⁵Hand-written statement by Jeffrey Havard, February 23, 2002, 7:52 p.m.

awakened and started to cry lightly, this went on for about 5 to 10 minutes. I stopped what I was doing, and picked her up to figure out why she was crying, and to put her in the bed. I took her to Becky and my bedroom to see if she needed her diaper changed, she was clean, as soon as I started to put on another diaper, Chloe spit up a little of her dinner and her nose was running, *I then decided to just give her a bath*

Exhibit D (emphasis added). By his own statements, Havard decided on his own to give Chloe a bath, and Havard stated that he had never bathed Chloe before. There is nothing inconsistent in Rebecca Britt's statement to the Sheriff's department or in her trial testimony to impeach her testimony or that was exculpatory to Havard.

Any deviations from Rebecca Britt's testimony were trivial, which further supports the veracity of her testimony. Whether Havard had ever changed a diaper in the three weeks in which he lived in that trailer with Rebecca and Chloe Britt is irrelevant. Whether Rebecca initially thought he had done so, and later thought he had not, is also trivial and irrelevant. Rebecca Britt did not testify falsely; and there is no evidence to support any claim of false testimony.

Havard mischaracterizes any insignificant differences in Rebecca Britt's testimony, characterizing it as evidence "which deviated substantially from what she told law enforcement in the statement." Pet. Mot., p. 5 ¶ (c). This is patently untrue. Everything to which Rebecca Britt testified was materially consistent with the statement she gave the Sheriff's department. See Exhibits A and B. Havard states in the motion on page 11 that Rebecca testified at trial that "Havard had never bathed Chloe or changed her diaper." Pet. Mot. p. 11 (citing *Havard II*, 988 So.2d 322, 325-56 (Miss. 2008)), implying that Havard had

previously bathed and diapered Chloe. In the videotape testimony, Rebecca states emphatically that Havard never bathed Chloe. *See* Exhibit A. This was not “false and contradictory” as Havard claims. Pet. Mot. p. 11.

2. Havard’s Trial Counsel had Viewed the Videotape, Which is Dispositive Proof that Havard Could Have Obtained a Copy of the DVD Had He Desired.

As to the second prong, whether the defendant did not possess the evidence and could not obtain it with any reasonable diligence, petitioner again has misled the Court. Trial counsel was aware of the videotaped statement of Rebecca Britt, had viewed it, and could have obtained a copy of the interview, but chose not to do so. The State has attached the affidavit of defense counsel, Gus Sermos, as Exhibit E. Mr. Sermos stated on oath that he was aware of the videotaped interview of Rebecca Britt taken by the Adams County Sheriff’s department and had viewed the videotape prior to trial. *See* Exhibit E. The State also has attached the affidavit of Tom Rosenblatt, who was the Assistant District Attorney, assigned to the case at the time. *See* Exhibit F. Mr. Rosenblatt’s affidavit states that he and Mr. Sermos viewed the videotape together at the Adams County Sheriff’s Office. The affidavits provided by Gus Sermos and Tom Rosenblatt are incontrovertible. Under Mississippi law, “inherently probable, reasonable, credible and trustworthy testimony uncontradicted by the evidence must be accepted as true.” *James v. Mabus*, 574 So.2d 596, 600 (Miss.1990) (*citing Reeves Royalty Co., Ltd. v. ANB Pump Truck Serv.*, 513 So.2d 595, 599 (Miss.1987); *Hewlett v. Henderson*, 431 So.2d 449, 452 (Miss.1983); *Tombigbee Elec. Power Ass’n v. Gandy*, 216

Miss. 444, 62 So.2d 567 (1953); *Ryals v. Douglas*, 205 Miss. 695, 39 So.2d 311 (1949).

All of the affidavits submitted on behalf of Havard by appellant counsel are irrelevant as to whether Gus Sermos was aware of the statement and viewed the videotape. Whether Havard's appellate attorneys recall seeing the videotape does not address the question posed by *Brady*. Did the State withhold any exculpatory evidence after being requested by the defense to produce it? No. The State did not. Instead, it informed Mr. Sermos and made it available for him to view. Gus Sermos was aware of the evidence, did not find it to be exculpatory or useful to his defense, and did not ask for a copy of the interview. All of the affidavits attached to Havard's motion are simply irrelevant to the issue and should be ignored by the Court.

Mr. Sermos recalled the existence of the videotape interview of Rebecca Britt. Mr. Sermos maintained records that support his recollection, and those records indicated that he watched the videotaped interview of Rebecca Britt at the Adams County Sheriff's Department, along with Assistant District Attorney Tom Rosenblatt and Lt. John Manley⁶ of the Adams County Sheriff's Department. This evidence is corroborated by the affidavit of Tom Rosenblatt, whose recollection is consistent with Mr. Sermos's. See Exhibit F. These facts are dispositive on the issue of whether or not the State withheld the videotapes

⁶Counsel for the State spoke with Lt. Manley regarding the viewing of the videotape. Mr. Manley does not specifically recall showing Mr. Rosenblatt and Mr. Sermos the videotape of Rebecca Britt; however, Mr. Manley pointed out that it was standard procedure to do so.

of the statement from defense counsel. The State withheld nothing. The affidavits stand as incontrovertible evidence and remove any question as to whether or not the videotapes were withheld in violation of *Brady*.⁷ Therefore, the second prong of *Brady* has not been demonstrated by petitioner, and the motion should be dismissed as a matter of law as frivolous and wholly without merit. Failure on the second prong totally defeats petitioner's claim of newly discovered evidence that he is attempting to use to overcome the procedural bars to the consideration of this successive application for post-conviction relief. Since this is not newly discovered evidence, petitioner cannot shoehorn himself into any exception to the time bar or the successive petition bar.

3. The State Did Not Suppress Favorable Evidence.

As to the third prong of the test, the prosecution did not suppress any favorable evidence. In fact, the prosecution did not suppress any evidence because the Rebecca Britt interview was known to the defense, as shown by the affidavits of Gus Sermos and Tom Rosenblatt. The State has shown that the prosecution did not suppress the videotape interview of Rebecca Britt that Havard claims is favorable evidence. Further, this fact was known to petitioner's current counsel, Mark Jicka, prior to the filing of this application for leave to file a successive petition. Mr. Jicka telephoned Mr. Sermos and asked him if he had been aware of the videotape prior to trial. *See* Exhibit E. Mr. Jicka requested that Mr.

⁷Even if the videotapes had not been viewed (which is not the case), no *Brady* violation would have occurred because the evidence was in no way exculpatory and further was in no way inconsistent with Rebecca Britt's trial testimony.

Sermos provide an affidavit stating that he did not know about the Rebecca Britt interview.

Id. Mr. Sermos told Mr. Jicka that he was aware of the interview during that telephone call.

Id. Mr. Sermos flatly refused to provide such an affidavit and told Mr. Jicka he would check his records and contact him with more complete information. *Id.*

Mr. Sermos then checked his records, which indicated that he had indeed watched the interview of Rebecca Britt at the Sheriff's office along with the Assistant District Attorney and Lt. John Manley, the lead investigator on the case from the Adams County Sheriff's Department. After reviewing his records, Mr. Sermos left a voicemail on Mr. Jicka's office phone that his records supported his memory that he had, in fact, viewed the videotape of Rebecca Britt's statement. *Id.* Mr. Jicka did not return Sermos's telephone call. Mr. Sermos's recollection of viewing the videotape was corroborated by Mr. Rosenblatt. *See* Exhibit F.

Gus Sermos personally told Mr. Jicka that he was aware of the videotape prior to trial and would not provide an affidavit saying otherwise. Havard's current counsel was made aware that the State had never "affirmatively misled the trial court and Petitioner's counsel about its compliance with discovery obligations." Pet. Mot. p. 5, ¶(b). This submission and argument that the state withheld favorable evidence, after being told by Mr. Sermos that the defense was aware of the videotaped interview prior to trial, borders perilously close to both a bad faith submission to the Court and an ethical violation. Havard has failed to make a showing to the third prong of the *Brady* test as the prosecution did not suppress any evidence,

much less exculpatory evidence. Petitioner has failed to demonstrate an exception to the time bar or the successive petition bar.

4. The Videotape Had Been Disclosed and Viewed by the Defense And No Reasonable Probability Exists that the Outcome Would Have Been Different.

As to the fourth prong of the test, whether there was a reasonable probability that the outcome would have been different had the evidence not been suppressed, also fails. Because the Britt statement was not suppressed, there is no reasonable probability of a different outcome “had the evidence been disclosed to the defense.” *Thorson*, 944 So.2d at 719-20. Further, as discussed below in response to Havard’s alternate theory, it is not probable that use of the interview would have altered the outcome of the proceedings.

Havard’s claim fails every prong of the *Brady* test because the videotaped statement of Rebecca Britt was furnished to defense counsel prior to trial, and counsel actually viewed the videotape. The claim that there has been a *Brady* violation is specious because there is no “newly discovered evidence” to exempt petitioner from the time bar and the successive petition bar to allow consideration of a successive application for post-conviction relief. See *Wiley v. State*, 842 So.2d 1280 (Miss. 2003) (the Court held that post-conviction relief was procedurally barred and failed on the merits because no new evidence was presented). Based on this alone, the motion to vacate or for leave to file a successive petition for post-conviction relief should be denied.

III. Trial Counsel’s Failure to Attempt to Impeach Rebecca Britt’s Testimony with Her Interview Cannot Support an Ineffective Assistance of Counsel

Claim.

Alternatively, although inconsistent with Havard's claim that the State had withheld exculpatory evidence, Havard claims that if trial counsel knew of the statement, trial counsel was ineffective for failing to use the statement to impeach Rebecca Britt, a key witness against him. Petitioner, in a three-paragraph argument, contends that trial counsel was ineffective in failing to inform him of the statement's existence, not using the statement to support his defense to the charge of capital murder and underlying felony of sexual battery, and failing to use the statement to cross-examine or impeach Britt with the statement. *See* Pet. Mot. at 18. Thus petitioner appears to be attempting to use Britt's statement to contend that it is newly discovered evidence in support of a claim of ineffective assistance of counsel, which it is not. This argument lacks merit.

As pointed out above, there was no material variance between Britt's statement and her trial testimony. As to informing petitioner of the existence of the statement, all we have in support of this allegation is Havard's self-serving affidavit stating that he was not informed of the statement. Counsel was clearly informed of the statement and viewed it. Petitioner has failed to cite any case law that requires counsel to inform a client of every piece of evidence no matter how immaterial. Further, during the trial of this case, Sheriff Tommy Ferrell, testified that he interrogated Rebecca Britt and that other statements were taken from Britt at a later time. Tr. 311. Thus, it was brought out at trial that a statement was obtained from Britt. Petitioner and counsel were present, and no question was raised by

either relating to the statement. State post-conviction counsel was therefore on notice that there was a statement, and with due diligence, counsel could have obtained the statement at that time.⁸ This issue of ineffective assistance of counsel by way of a successive writ is time barred under MISS. CODE ANN. § 99-39-5 (2) and successive petition barred under MISS. CODE ANN. § 99-39-27(9). Petitioner attempt to use the ineffective assistance of counsel claim to overcome the bars to the consideration of this successive, time-barred petition is without merit. The claim is barred.

The claim that counsel failed to use the statement to support his defense to the charge of capital murder and underlying felony of sexual battery is not explained. Petitioner has failed to show how Britt's statement to law enforcement shows how he was not guilty of capital murder committed during the commission of a sexual battery.

The claim that the statement could have been used to cross-examine or impeach Britt's statement is explained only by a stating "as demonstrated above, it did in several key respects." What we glean from petitioner's previous argument with respect to the *Brady* claim appears to be a contention that Britt's statement varied from her trial testimony in three respects.

First, Havard contends that Britt changed her testimony regarding whether petitioner

⁸The fact that federal habeas counsel did not obtain the statement until 2010, does not make it newly discovered, since trial counsel has known about it since before trial. Due diligence – simply reading the transcript in this case – should have been sufficient to cause inquiry by counsel about such a statement.

had ever bathed Chloe. Looking to Britt's trial testimony on this subject, Britt testified that Havard "never" bathed Chloe during their cohabitation. Tr. 343. Britt's videotaped statement reads that Havard "never" bathed Chloe. Exhibit B at 30-31. Both the trial testimony and the statement are supported by Havard's own statement that he "never" bathed Chloe. *See* Exhibit C at 11. No basis for impeachment exists.

Second, Havard contends that Britt changed her testimony regarding whether he had ever changed Chloe's diapers. Britt's trial testimony was that Havard did not change Chloe. Tr. 343. In her videotaped statement, Britt was asked if Havard ever changed Chloe's diapers and she stated "sometimes." Exhibit B at 30-31. Therefore, we have a variance of testimony between the trial testimony and the statement. However, the State would assert that this is not a material variance and is not relevant as to whether petitioner committed sexual battery on Chloe.

Petitioner, in a purely conclusory fashion, asserts that this variance caused him prejudice, with no explanation of how he was prejudiced. Whether Havard had ever changed Chloe's diapers does not go to show that he was innocent of capital murder committed during a sexual battery. The fact that he may have changed the baby's diapers "sometimes" does not show that petitioner was not guilty. Further, this irrelevant variance in the testimony does not create a reasonable probability that the result of the trial would have been different.

Even if it could be said that counsel's performance was deficient for not pointing out this variance, it cannot be said that petitioner was prejudiced. Havard has failed to support

his claim of ineffective assistance of counsel with this assertion. He has not demonstrated *Strickland* ineffective assistance.

Finally, petitioner appears to assert that trial counsel failed to impeach Britt about the relationship between Havard and Chloe at trial. We assume petitioner bases this claim on Britt's testimony at trial when asked:

Q. What was the relationship between Jeffrey and your baby?

A. It was – it was, I guess, your typical relationship. He didn't spend much time with her. I mean, other than her being at the house after day care, he didn't really go out of his way to do things with her or things like that but –

...

Q. Did he ever have any extensive interaction, playing with her, that sort of thing, for the length of time?

A. No, sir.

Tr. 343.

We also assume that petitioner contends that the concluding questions and answers in Britt's videotaped statement are at a variance to her trial testimony. In the videotape statement, Britt stated:

Q. Well, how did he act towards the child when he was around? Did he ever get angry with the child or anything?

A. No. He loved her. Just whenever she would be really fussy, he would just act aggravated I mean, nothing physical or anything. He would just sigh and turn away or walk away.

Exhibit B at 31.

There is no material variance between the statement and the trial testimony. Other than the statement that Havard “loved” Chloe, the trial testimony is actually more favorable to him than that found in the statement. There was no deficient performance in failing to probe further into this area of petitioner’s relationship. Further questioning could have brought out unknown issues about which Britt had not previously testified. Counsel’s performance was not deficient, and Havard has not demonstrated any prejudice resulting from counsel’s actions. Havard has failed to demonstrate *Strickland* ineffectiveness in counsel’s actions.

Most recently the United States Supreme Court reiterated and further explained *that Strickland* is to be strictly applied as set forth in its opinion in *Pinholster v. Cullen*, ___ U.S. ___, 131 S.Ct. 1388 (2011). There the high court held:

There is no dispute that the clearly established federal law here is *Strickland v. Washington*. In *Strickland*, this Court made clear that “the purpose of the effective assistance guarantee of the Sixth Amendment is not to improve the quality of legal representation . . . [but] simply to ensure that criminal defendants receive a fair trial.” 466 U.S., at 689, 104 S.Ct. 2052. Thus, “[t]he benchmark for judging any claim of ineffectiveness must be whether counsel’s conduct *so undermined* the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.” *Id.*, at 686, 104 S.Ct. 2052 (emphasis added). The Court acknowledged that “[t]here are countless ways to provide effective assistance in any given case,” and that “[e]ven the best criminal defense attorneys would not defend a particular client in the same way.” *Id.*, at 689, 104 S.Ct. 2052.

Recognizing the “tempt[ation] for a defendant to second-guess counsel’s assistance after conviction or adverse sentence,” *ibid.*, the Court established that counsel should be “strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment,” *id.*, at 690, 104 S.Ct. 2052. To overcome that presumption, a defendant must show that counsel failed to act “reasonabl[y] considering all the circumstances.” *Id.*, at 688, 104 S.Ct. 2052.

The Court cautioned that “[t]he availability of intrusive post-trial inquiry into attorney performance or of detailed guidelines for its evaluation would encourage the proliferation of ineffectiveness challenges.” *Id.*, at 690, 104 S.Ct. 2052.

The Court also required that defendants prove prejudice. *Id.*, at 691–692, 104 S.Ct. 2052. “The defendant must show that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Id.*, at 694, 104 S.Ct. 2052. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Ibid.* That requires a “substantial,” not just “conceivable,” likelihood of a different result. *Richter*, 562 U.S., at —, 131 S.Ct., at 791.

131 S.Ct. at 1403. [Emphasis the Court’s and emphasis added.]

The Court continued its discussion, finding that the court of appeals had misapplied *Strickland*’s holding in determining that Pinholster’s counsel had rendered deficient performance:

The Court of Appeals misapplied *Strickland* and overlooked “the constitutionally protected independence of counsel and . . . the wide latitude counsel must have in making tactical decisions.” 466 U.S., at 689, 104 S.Ct. 2052. Beyond the general requirement of reasonableness, “specific guidelines are not appropriate.” *Id.*, at 688, 104 S.Ct. 2052. “No particular set of detailed rules for counsel’s conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions . . .” *Id.*, at 688–689, 104 S.Ct. 2052. *Strickland* itself rejected the notion that the same investigation will be required in every case. *Id.*, at 691, 104 S.Ct. 2052 (“[C]ounsel has a duty to make reasonable investigations *or* to make a reasonable decision that makes particular investigations unnecessary” (emphasis added)). It is “[r]are” that constitutionally competent representation will require “any one technique or approach.” *Richter*, 562 U.S., at —, 131 S.Ct., at 779. The Court of Appeals erred in attributing strict rules to this Court’s recent case law.¹⁷

Nor did the Court of Appeals properly apply the strong presumption of competence that *Strickland* mandates. The court dismissed the dissent’s application of the presumption as “fabricat[ing] an excuse that the attorneys

themselves could not conjure up.” 590 F.3d at 673. But *Strickland* specifically commands that a court “must indulge [the] strong presumption” that counsel “made all significant decisions in the exercise of reasonable professional judgment.” 466 U.S., at 689–690, 104 S.Ct. 2052. *The Court of Appeals was required not simply to “give [the] attorneys the benefit of the doubt,” 590 F.3d, at 673, but to affirmatively entertain the range of possible “reasons Pinholster’s counsel may have had for proceeding as they did,” id., at 692 (Kozinski, C.J., dissenting). See also Richter, supra, at 1427, 131 S.Ct., at 791 (“Strickland . . . calls for an inquiry into the objective reasonableness of counsel’s performance, not counsel’s subjective state of mind”).*

131 S.Ct. at 1406 -07. [Emphasis the Court’s and emphasis added.]

The Court continued:

Justice SOTOMAYOR’s approach is flatly inconsistent with *Strickland*’s recognition that “[t]here are countless ways to provide effective assistance in any given case.” 466 U.S., at 689, 104 S.Ct. 2052. There comes a point where a defense attorney will reasonably decide that another strategy is in order, thus “mak[ing] particular investigations unnecessary.” *Id.*, at 691, 104 S.Ct. 2052; *cf.* 590 F.3d, at 692 (Kozinski, C.J., dissenting) (“*The current infatuation with ‘humanizing’ the defendant as the be-all and end-all of mitigation disregards the possibility that this may be the wrong tactic in some cases because experienced lawyers conclude that the jury simply won’t buy it*”). Those decisions are due “a heavy measure of deference.” *Strickland, supra*, at 691, 104 S.Ct. 2052. The California Supreme Court could have reasonably concluded that Pinholster’s counsel made such a reasoned decision in this case.

We have recently reiterated that “‘[s]urmounting *Strickland*’s high bar is never an easy task.’” *Richter, supra*, at —, 131 S.Ct., at 788 (quoting *Padilla v. Kentucky*, 559 U.S. —, —, 130 S.Ct. 1473, 1484, 176 L.Ed.2d 284, (2010)). The *Strickland* standard must be applied with “scrupulous care.” *Richter, supra*, at —, 131 S.Ct., at 788. The Court of Appeals did not do so here.

131 S.Ct. at 1407-08. [Emphasis added.]

Turning to the question of prejudice, the Supreme Court also found that the court of

appeals had erred in its application of *Strickland*. The Court held:

Even if his trial counsel had performed deficiently, Pinholster also has failed to show that the California Supreme Court must have unreasonably concluded that Pinholster was not prejudiced. “[T]he question is whether there is a reasonable probability that, absent the errors, the sentencer . . . would have concluded that the balance of aggravating and mitigating circumstances did not warrant death.” *Strickland, supra*, at 695, 104 S.Ct. 2052. We therefore “reweigh the evidence in aggravation against the totality of available mitigating evidence.” *Wiggins, supra*, at 534, 123 S.Ct. 2527.

131 S.Ct. at 1408.

The Court pointed out that:

To the extent the state habeas record includes new factual allegations or evidence, much of it is of questionable mitigating value. If Pinholster had called Dr. Woods to testify consistently with his psychiatric report, Pinholster would have opened the door to rebuttal by a state expert. *See, e.g., Wong v. Belmontes*, 558 U.S. —, —, 130 S.Ct. 383, 389–90, 175 L.Ed.2d 328 (2009) (per curiam) (taking into account that certain mitigating evidence would have exposed the petitioner to further aggravating evidence). The new evidence relating to Pinholster’s family—their more serious substance abuse, mental illness, and criminal problems, *see post*, at 1424—is also by no means clearly mitigating, as the jury might have concluded that Pinholster was simply beyond rehabilitation. *Cf. Atkins v. Virginia*, 536 U.S. 304, 321, 122 S.Ct. 2242, 153 L.Ed.2d 335 (2002) (recognizing that mitigating evidence can be a “two-edged sword” that juries might find to show future dangerousness).

131 S.Ct. at 1410.

Applying the precedent of *Pinholster* to this case, it cannot be said that counsel’s performance was deficient, as he was aware of the statement and chose his trial strategy with full knowledge of the statement. The Court must not just “‘give [the] attorneys the benefit of the doubt,’ 590 F.3d at 673, but [must] . . . affirmatively entertain the range of possible ‘reasons Pinholster’s counsel may have had for proceeding as they did.’” 131 S.Ct. at 1407.

The evidence, even if it were “newly discovered” is not exculpatory to Havard. It underscores that Havard was alone with Chloe; it does not indicate anyone else could have assaulted and killed Chloe. Whether petitioner had ever bathed Chloe, changed her diapers, or had a loving relationship with the child does not exculpate him from his actions. Nothing in the contents of the statement demonstrate prejudice resulted from counsel’s choice not to utilize Britt’s statement.

The State would assert that petitioner has failed to demonstrate ineffective assistance of counsel related to the handling of the statement. Therefore, on the merits, the claim fails. However, the claim is barred from consideration by the application of the time bar found in MISS. CODE ANN. § 99-39-5 (2) and the successive petition bar found in MISS. CODE ANN. § 99-39-27 (9). Petitioner has failed to demonstrate that he falls into any exception to the procedural bars in this case. Leave to file a successive petition for post-conviction relief should be denied as barred and, alternatively, found to be without merit.

IV. Petitioner’s Newly Discovered Evidence Claim Does Not Support His Claim of Innocence.

Petitioner contends that additional “newly discovered” evidence supports his claim that he is innocent of the underlying felony of sexual battery. In fact, petitioner has divided this claim into two parts: 1) that newly discovered evidence demonstrates that he is innocent of the underlying felony of sexual battery, and is therefore not guilty of capital murder; and 2) that newly discovered evidence demonstrates that petitioner’s trial counsel were grossly ineffective in challenging the underlying felony of sexual battery. This newly discovered

evidence that petitioner is relying on is the deposition of Dr. Steven Hayne, taken during discovery on habeas review. Havard has attached Dr. Hayne's deposition as Petitioner's Exhibit H.

First, this is not newly discovered evidence that will overcome the time bar and the successive petition bar. In order to overcome the time bar and the successive petition bar, the petitioner must have "evidence, not reasonably discoverable at the time of trial, which is of such nature that it would be practically conclusive that had such been introduced at trial it would have caused a different result in the conviction or sentence." *See* § 99-39-5(2) and § 99-39-27(9). Because Dr. Hayne testified at trial and has been available to petitioner ever since the 2002 trial of this case, he cannot satisfy the requirement that this evidence was not reasonably discoverable at the time of trial. Further, the findings and conclusions stated in Dr. Hayne's deposition testimony are no different from his trial testimony. Therefore, the evidence is not such that it would be "practically conclusive" that, had it been introduced at trial, a different result would have been obtained. Both the allegation of Havard's innocence of sexual battery and the claim of ineffective assistance of counsel based on this deposition are specious.

Looking to the testimony of Dr. Hayne during the trial of this case regarding sexual battery of Chloe Britt, we find the following:

Q. Okay, sir. Did you notice anything or did you observe anything concerning the rectum or rectal area?

A. I would include that in the internal examination. On the internal

examination, examination of the lower gastrointestinal tract revealed the presence of a contusion, measuring approximately one inch, and that was located at approximately the nine o'clock area of the rectum extending to approximately the ten o'clock to eleven o'clock area, sir.

Q. You would have done that during your internal examination?

A. Yes, sir.

Tr. 546.

Later the following colloquy took place:

Q. Finally I would hand you what's been marked as State's Exhibit 5 and ask if you'll look at that photograph and tell me whether or not you can identify what's in that photograph.

A. Identify what is in –

Q. Yes, sir.

A. What it depicts, sir?

Q. Yes, sir.

A. It depicts the bruise located to the rectum of the decedent, sir. That photograph was taken by me during the course of the post mortem examination.

Q. Okay, sir. I'll ask you, Dr. Hayne. What would that be indicative of, the injuries that you saw to the rectal area, if you can answer that question.

A. It would be consistent with penetration of the rectum with an object, sir.

Tr. 551.

Petitioner contends that Dr. Hanye's testimony and his deposition vary. It does not. The following excerpt from Dr. Hayne's deposition shows that his testimony remained consistent.

Examination by Jicka:

- Q. And Dr. Hayne, can you say from your autopsy evidence, and from the coroner's inquest, the medical records that you reviewed, the photographs, and the laboratory findings, that this child, Miss Britt, was sexually assaulted?
- A. I could not come to that final conclusion, Counselor. As I remember in trial testimony, I said that the contusion would be consistent with a sexual abuse, but I couldn't say that there was sexual abuse, and, basically, I deferred to the clinical examination conducted at the hospital.

Pet. Ex. H, orig. p. 25.

Examination by McNamara:

- Q. Doctor, let's start off real quickly and just ask you, is your – in your opinion, the testimony that you've given today, is it consistent with the testimony that you gave at trial?
- A. It is, sir.
- Q. Have you had any change of heart? Would you change your testimony?
- A. I've seen no new facts to change my testimony, Counselor.
- Q. Okay. I'll ask – I have here – have you seen the pictures you took at the autopsy –
- A. Not since the trial, sir.

* * *

[discussion about photo exhibits, showing to Dr. Hayne].

Q. Okay. One question I'd ask, as you see those injuries to the child's anus there, do you find that to be consistent with the insertion of a child's rectal thermometer?

A. I did not think that was an insertion injury from a rectal thermometer by medical personnel. I could not exclude it, but I think it was unlikely, Counselor.

Q. Okay. That is an abnormal anus, isn't it?

A. It is, Counselor.

Pet. Ex. H., orig. p. 34.

* * *

Q. Okay. Final question, so – being redundant, but you're saying, your testimony today is it's still consistent with what you testified to at trial, and you wouldn't change it?

A. No, sir. I would only change it if I saw additional information. And I'd like to point out, I did not come to a final conclusion..

Q. Okay. But you would agree with your testimony then that the injuries were consistent with an object being inserted or penetration?

MR. JICKA: Object to the form.

A. Yes, they were consistent with that.

Dep. Pet. Ex. H, orig. pp. 37-38.

Nothing in Dr. Hayne's deposition is materially inconsistent with his trial testimony.

Dr. Hayne made clear that his opinion had not changed. This issue is without merit.

Petitioner claims that the newly discovered evidence proves he is innocent of the charges. Nothing could be further from the truth. Havard claims that Rebecca Britt's

testimony painted a nefarious picture of what transpired the night of Chloe's death. Chloe's horrific condition when she arrived at the emergency room prior to her death, coupled with the fact that Havard was alone with Chloe prior to her severe and ultimately fatal injuries – those are what paint a nefarious picture of Havard. All of the testimony provided by Rebecca Britt was corroborated and consistent with her statement to the sheriff's office. All evidence, including Havard's own statements, points to Havard as having been the only person alone with Chloe prior to her injury, and the only person who could have sexually assaulted and killed Chloe.

Q. And you shook her?

(Defendant nods head affirmatively.)

Q. Okay. How hard did you shake her?

A. I don't think I shook her hard at all.

Q. But you did shake her. You shook her several times; is that correct?

(Defendant nods head affirmatively.)

A. I shook her because I was scared I had hurt her.

Q. Okay.

A. I thought I hurt her bad when I dropped her –

Exhibit D, pp. 13-14.

Q. And you said you had wiped her down in her private area. Okay. Can you tell us how you wiped her down and what you done.

A. I just took a normal wipe, just wiped down between her legs like normal. Inside of her – inside of her buttocks, inside of buttocks to clean her out.

Q. And you said earlier that your finger may have slipped or you may have wiped her a little bit too hard?

A. It's possible. I was still upset and nervous and shaky.

Q. Okay. What do you mean by wiping her too hard?

A. Maybe I was too rough with her. Maybe I shook her too hard. I don't know.

Q. You say you wiped her too hard. What do you mean by that?

A. Maybe I went too far in on her when I was wiping her out, inside of her butt.

Exhibit C, pp. 17-18.

Havard himself admitted that he was the only one with Chloe. Havard himself said he could not explain Chloe's injuries, acknowledging he had been the only one with her. *See* Exhibit C at 25.

Q. I am going to ask you one more time, Jeff. Did you molest the baby in any way other than dropping her and shaking her?

A. No, Sir. I did not. No, sir.

Q. And you were the only person in the house other than the baby?

A. That's correct. Me and the baby. That's it.

Q. How do you explain her being molested?

A. I can't explain it. I don't know how. Honestly and truly, I do not know how.

* * *

Exhibit C, p. 25.

QUESTION BY DEPUTY MANLEY

Q. Jeff, did you ever molest the baby –

A. No, sir. I didn't –

Q. – In any way?

A. No, Sir. I didn't.

Q. Are you're aware that there's allegations of molestation?

A. Yes, sir. I am. I know I was the only one home. Becky was gone, and it was just me and the infant there. Me and Chloe.

BY MR. SMITH:

Q. Well, how do you explain her being damaged in the way she was?

A. I can't – I can't explain it. I don't know how.

Q. Do you think you may have done it?

A. When I dropped her, I panicked. I thought that I done killed her right then when I dropped her. I thought that I hurt her bad. I was upset. I was frantic. I was shaking her. I may have shaken her too hard. I don't know.

Q. How do you explain the damage that was done to her rear end?

A. I can't explain it. I don't – I don't know. I don't know no way to explain it.

Q. Do you think you done it?

A. I – honestly, I don't think I did it, no. I don't recollect doing it. I don't remember doing it, no.

Q. Earlier you had said that you'd go into – you have these fits of anger and you don't really remember things. Do you think you may have had one of those fits of anger?

A. Like I said earlier, whenever I dropped her and I picked her back up and she was just dazed like she wasn't breathing or she wasn't moving. I'm sure she was breathing. I just got like a flashback of my childhood, the story I told you earlier about when I was in the tub and I got beat up.

Exhibit C, pp. 18-19.

Even utilizing Havard's inaccurate transcript of the video, the information reflects that Jeffrey Havard had only recently moved in with Rebecca and Chloe. (Pet. Ex. F, p. 5) Havard had lived with them three weeks. (Pet. Ex. F, p. 5). Rebecca made clear on the tape, although Havard attempts now to state otherwise, that Havard never bathed Chloe before. (Pet. Ex. F, p. 23-24) Whether or not Rebecca found this strange hours after the brutal sexual assault and murder of her baby is irrelevant. That Rebecca might have not initially found it strange, and upon later reflection did so, in no way impeaches her testimony or makes her a questionable witness. Rebecca stated on the videotape that Havard had recently insisted on holding Chloe, which caused an extreme reaction in Chloe. (Pet. Ex. F, p. 23). Chloe would scream, and Havard would insist on holding her. (Pet. Ex. F, p. 23). This is not exculpatory evidence.

Rebecca further stated that Havard had a temper and had been arrested for assault, that Havard had fought with his grandfather in a violent manner. (Pet. Ex. F, p. 23). None of these things point towards Havard's innocence. Additionally, Rebecca mentioned that

Havard slept all day while Rebecca was out looking for a job. (Pet. Ex. F, p. 7-8). This is not exculpatory evidence. The videotaped interview of Rebecca Britt is obviously something many counsel would never want a jury to hear. The picture it paints of Jeffrey Havard is one of a lazy, violent man who had only recently appeared on the scene. Within three weeks of moving in, he had horribly sexually assaulted six-month old Chloe and viciously killed her by shaking her to death.⁹

Evidence of Havard's guilt is overwhelming. The evidence of the brutality of the crime is supported by testimony from every emergency room physician and nurse, of which there were many.¹⁰ Havard's *Brady* claim fails on all counts and should be dismissed. There is no favorable evidence in this case.

⁹According to Dr. Steven Hayne, the immediate cause of death were "Changes consistent with shaken baby syndrome and closed head injuries." Pet. Ex. L, p. 6. Further, the sexual assault that Havard attempts to portray as mentioned only by Dr. Steven Hayne was noted by every single physician (there were three) and nurse in the emergency room during the trial. *E.g.*, Dr. Patterson, *see* Pet. Ex. I, p. 29-30. The horrific assault on Chloe even caused a veteran R.N. (Ms. Angela Godbold), who had decades of emergency room experience, to seek counseling because of what she observed had been done to Chloe. Pet. Ex. I, p.23.

¹⁰Petitioner implies that only Dr. Hayne was qualified to testify as to the allegations of sexual battery, and his evidence is the only such evidence that was before the trial court. However, three physicians testified, *inter alia*, and no contemporaneous objection was made as to their qualifications. Therefore, this issue is not properly before this Court. "Unless timely and specific objection is made to allegedly improper testimony, the objection is deemed waived and may not be raised on appeal." *Hall v. State*, 691 So.2d 415, 418 (Miss.1997) (*citing Singleton v. State*, 518 So.2d 653 (Miss.1988); *Parker v. State*, 367 So.2d 456 (Miss.1979)).

V. Petitioner Is Not Entitled to Relief Under M.R.C.P. 60(b).

Petitioner makes a claim that he is entitled to relief under M.R.C.P. 60(b), a rule which is not applicable here. As this Court has stated “the Mississippi Rules of Civil Procedure ... apply to trial proceedings only, except where therein expressly provided to the contrary.” *City of Jackson v. United Water Services, Inc.*, 47 So.3d 1160, 1162 (Miss.2010) (quoting *Cooper v. City of Picayune*, 511 So.2d 922, 923 (Miss. 1987)). The comments to M.R.C.P. 60(b) state that “motions for relief under MRCP 60(b) are filed in the original action, rather than as independent actions themselves.” M.R.C.P. 60(b) cmt. (2010).

Havard’s motion is an attempt at a successive petition and is not a true 60(b) motion. A Rule 60(b) motion is entirely improper where, as in this case, there was no such motion filed in the trial court. This Court has only been presented with the petitioner’s **application** for successive post-conviction petition, which for the reasons previously stated is barred and alternatively is completely devoid of merit. A Rule 60(b) motion at this juncture is improper. Rule 60(b) is not to be used as an “escape hatch” to litigate new claims, as is the case here. *See Doll v. BSL, Inc.*, 41 So.3d 664, 669 (Miss.2010); *Bruce v. Bruce*, 587 So.2d 898, 904 (1991); *see also M.A.S. v. Miss. Dep’t of Human Servs.*, 842 So.2d 527, 530 (Miss.2003) (quoting *Briney v. U.S. Fid. & Guar. Co.*, 714 So.2d 962, 968 (Miss.1998)); *Pruett*, 767 So.2d at 986 (quoting *State ex rel. Miss. Bureau of Narcotics v. One (1) Chevrolet Nova Auto.*, 573 So.2d 787, 790 (Miss.1990)).

A motion under Rule 60(b) is intended to be submitted to correct errors in the

judgment entered, not to adjudicate new claims. In this case, petitioner's trial counsel was well aware of the videotape and chose not to use it as a matter of trial strategy. Petitioner's claims to the contrary are patently false.

Further, as stated at length, there is nothing even remotely exculpatory in the video. Trial counsel chose not to use the video and "neither ignorance nor carelessness on the part of an attorney will provide grounds for relief" under Rule 60(b). *See Stringfellow v. Stringfellow*, 451 So.2d 219, 221 (1984). This motion is not properly before this Court and should be denied.

Petitioner cites no law in support of his argument that Rule 60(b) applies to him other than conclusory statements. This Court has noted the long-standing rule of law, that "[i]f an appellant fails to support her allegation of error with argument or authority, this Court need not consider the issue." *Jordan v. State*, 995 So.2d 94, 103 (Miss.2008) (*quoting Pierre v. State*, 607 So.2d 43, 48 (Miss.1992) (citations omitted)). Therefore, this Court is not required to even consider this argument. However, even if this Court should entertain petitioner's argument that he is entitled to relief from judgment under Rule 60(b), in any event, the request is untimely, without evidentiary support, and wholly without merit.

CONCLUSION

For all of the reasons set forth above, the State respectfully prays that this Court Deny Petitioner's Motion to Vacate or for Leave to File a Successive Petition as barred and further find all issues to be without merit. The State also requests any and all other relief this Court

should deem appropriate.

Respectfully submitted,

**JIM HOOD, ATTORNEY GENERAL
STATE OF MISSISSIPPI**

**MARVIN L. WHITE, JR.
ASSISTANT ATTORNEY GENERAL**

LISA COLONIAS McGOVERN
SPECIAL ASSISTANT ATTORNEY GENERAL
MSB NO. 102929
Counsel of Record

BY:

A handwritten signature in cursive script, appearing to read "Lisa Colonias McGovern", written over a horizontal line.

OFFICE OF THE ATTORNEY GENERAL
P.O. Box 220
Jackson, MS 39205
TELEPHONE: (601) 359-3680
FAX: (601) 359-3796
lmcgo@ago.state.ms.us

CERTIFICATE OF SERVICE

I, the undersigned, LISA COLONIAS McGOVERN, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day caused to be hand delivered to the Clerk of the Supreme Court an original and nine copies of the foregoing and have caused to be mailed, via United States first-class mail, postage prepaid, a true and correct copy of the foregoing to the following counsel of record:

Graham P. Carner, Esq.
Graham P. Carner, PLLC
772 N. Congress Street
Jackson, MS 39202

Mark D. Jicka, Esq.
Watkins & Eager PLLC
400 E. Capitol Street
Jackson, MS 39201

Glenn S. Swartzfager, Esq.
Office of Capital Post-Conviction Counsel
239 North Lamar Street, Suite 404
Jackson, MS 39201

Respectfully submitted this the 26th day of July, 2011.


Lisa Colonias McGovern

IN THE SUPREME COURT OF MISSISSIPPI

JEFFREY KEITH HAVARD

Petitioner

versus

STATE OF MISSISSIPPI

Respondent

FILED

NO.2011-DR-00539-SCT

JUL 26 2011

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

RESPONSE TO MOTION TO VACATE AND/OR
FOR LEAVE TO FILE SUCCESSIVE
PETITION FOR POST-CONVICTION RELIEF

EXHIBITS

JIM HOOD
ATTORNEY GENERAL
STATE OF MISSISSIPPI

MARVIN L. WHITE, JR.
ASSISTANT ATTORNEY GENERAL
Counsel of Record

LISA LOUISE COLONIAS
SPECIAL ASSISTANT ATTORNEY GENERAL
Lead Counsel

OFFICE OF THE ATTORNEY GENERAL
Post Office Box 220
Jackson, Mississippi 39205
Telephone: (601) 359-3680

LIST OF EXHIBITS

- | | |
|-----------|--|
| Exhibit A | DVD of Rebecca Britt's Statement Taken at the Adams County Sheriff's Office on February 22, 2002 |
| Exhibit B | Certified Transcript of Rebecca Britt's Statement Taken at the Adams County Sheriff's Office |
| Exhibit C | Certified Transcript of Jeffrey Havard's Videotape Statement Taken at The Adams County Jail on February 23, 2002 |
| Exhibit D | Hand-Written Statement by Jeffrey Havard dated February 23, 2002, at 7:52 p.m. |
| Exhibit E | Affidavit of Gus Sermos, Esq. |
| Exhibit F | Affidavit of Tom Rosenblatt, Esq. |

Exhibit A

DVD attached to original

1

2

3

4

5

6

INTERVIEW

7

OF

8

REBECCA JANE BRITT

9

FEBRUARY 22, 2002

10

11

12

13 RE: HAVARD VS. STATE OF MISSISSIPPI

14 2003-DP-00457

15

16

17

18

19

20

21

22

23

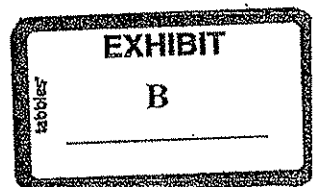
MARY ANN SMITH, TRANSCRIPTIONIST

24

(601) 918-8584

25

MASCOPE@COMCAST.NET



1 I N T E R V I E W

2 MR. MANLEY: February 22nd, 2002. I'm
3 Deputy John Manley. In the room with me is
4 Deputy Carey Jackson. We're at the Adams
5 County Sheriff's Office.

6 In the room with me is Rebecca -- what's
7 your full name?

8 MS. BRITT: Rebecca Jane.

9 MR. MANLEY: Rebecca Jane Britt; is that
10 correct?

11 (Interruption in video.)

12 MR. MANLEY: All right. Today's date is
13 February 22nd, 2002. I'm Deputy John Manley.
14 In the room with me is Deputy Carey Jackson.
15 We're at the Adams County Sheriff's Office.

16 We'll talk -- we're talking to a Rebecca
17 Jane Britt.

18 E X A M I N A T I O N

19 BY MR. MANLEY:

20 Q Is that your correct name?

21 A Yes, sir.

22 Q And most people call you Becky; is that
23 correct?

24 A Yes, sir.

25 Q Okay. Becky, we -- we talked to you last

1 night and you gave us a written statement; is that
2 correct?

3 A Yes, sir.

4 Q And we asked you to come back today so we
5 could get some more details; is that correct?

6 A Yes, sir.

7 Q Okay. When we talked to you last night,
8 did we advise you of your rights?

9 A Yes, sir.

10 Q Okay. And before I get into the advice of
11 rights, where do you live at today?

12 A 33 Montgomery Road.

13 Q That's here in Natchez?

14 A Yes, sir.

15 Q Is there a phone at that residence?

16 A No, sir.

17 Q Okay. All right. And last night, we
18 talked to you about an incident that occurred with
19 your infant child; is that correct?

20 A Yes, sir.

21 Q Okay. And that's what we're going to talk
22 to you about now. Okay?

23 (Inaudible) Adams County Jail.

24 Today's date is February 22nd, 2002. The time is

25 4:03 p.m.

1 All right. Becky, before we ask you
2 any questions, you must understand your rights. You
3 have the right to remain silent. Anything you say
4 can be used against you in a court. You have the
5 right to talk to a lawyer for advice before you
6 answer any questions about any of the events in
7 question.

8 If you cannot afford a lawyer, one
9 will be appointed for you before you're questioned,
10 if you wish. If you decide to answer questions now
11 without a lawyer present, you'll still have the
12 right to stop answering at any time. You also have
13 the right to stop answering at any time until you
14 talk to a lawyer.

15 Do you understand those, Becky?

16 A Yes, sir.

17 Q Is there anything about them that you do
18 not understand?

19 A No.

20 Q Okay. With these rights in mind, Becky,
21 do you want to talk to us about this incident last
22 night?

23 A Yes, sir.

24 Q You'll need to sign right here for me
25 (indicating).

1 A (Ms. Britt complies.)

2 MR. MANLEY: And I will witness it. The
3 time is now 4:05 p.m. And I'll get Deputy
4 Jackson to witness it, also.

5 MR. JACKSON: (Mr. Jackson complies.)

6 BY MR. MANLEY:

7 Q Okay. Becky, you say that you live at [REDACTED]
8 [REDACTED] is that correct?

9 A Yes, sir.

10 Q Who do you live with?

11 A I was living with Jeff Havard.

12 Q Jeff Havard?

13 A Yes, sir.

14 Q Okay. Once again, I need to have you
15 speak up for me. Okay?

16 A Okay.

17 Q How long had you been living with Jeff?

18 A I've been living there about three weeks.

19 Q Three weeks?

20 Okay. How long have you known Jeff?

21 A About two and a half months.

22 Q How did you meet him?

23 A Through a friend.

24 Q Where did y'all meet at?

25 A At my house where I was living at the

1 time.

2 Q Okay. And y'all dated for a while and
3 then you moved in with him?

4 A Yes, sir.

5 Q Okay. You have a six-month-old child; is
6 that correct?

7 A Yes, sir.

8 Q So it was you, Jeff and your daughter that
9 lived in the trailer?

10 A Yes, sir.

11 Q Did anybody else live there with you?

12 A No, sir.

13 Q Do you work anywhere, Becky?

14 A No, sir.

15 Q Does Jeff work anywhere?

16 A No, sir.

17 Q All right. Becky, tell me what occurred
18 yesterday.

19 A Me and Jeff and Chloe were at home
20 yesterday afternoon. About 7:45, he had asked me to
21 go to the grocery store, so I went to the Natchez
22 Market and got some groceries. I came back to the
23 house around 8:20 or 8:30, and he was cleaning up
24 the bed, putting sheets up, and she was in the bed
25 sleeping.

1 I went in and checked on her and she
2 was sleeping, doing fine. She made a funny noise
3 with her throat and I picked her up. I patted her
4 on the back, made sure there wasn't anything in her
5 throat. She was fine, so I put her back down and
6 she went back to sleep.

7 He had told me that she had spit up
8 on herself, so he had given her a bath and he had
9 taken a bath. And he had asked me to go to the
10 video store and I went to the video store. And I
11 came back 20 or 30 minutes later. He was in the
12 bathroom and I went in to check on my baby, and she
13 was blue and her lips were blue.

14 And I screamed for him and I picked
15 her up. And I put her on the floor and CPR and made
16 sure there wasn't anything in her throat, and her
17 throat was swollen shut. And I told him to get in
18 the car and take us to the hospital. And he went
19 and got a t-shirt and got in the car, and we went to
20 the hospital.

21 They took my baby and while we were
22 sitting there, he was insisting on going home and
23 changing clothes. And that's all. They came and
24 told me my baby was dead.

25 Q All right. Becky, before you left and

1 went to the grocery store, where -- what did y'all
2 do earlier that day?

3 A He slept all day and I looked for a job.

4 Q Jeff slept all day?

5 A Yes, sir.

6 Q And you looked for a job?

7 A (Nods head affirmatively.)

8 Q Okay. Where all did you go looking for a
9 job?

10 A The grocery stores. Then I went to Alcorn
11 to try to get started in school.

12 Q What time did you leave that morning?

13 A 10:30.

14 Q At 10:30? And Jeff was asleep at that
15 time?

16 A Yes, sir.

17 Q All right. Where did -- where had you
18 taken the baby while you were out looking for a job?

19 A Took her to the daycare.

20 Q Where is that at?

21 A At Grace United Methodist Church.

22 Q Do you pay for her daycare or is that --
23 your mother pays for that?

24 A No. My mother pays for it.

25 Q Your mother pays for it.

1 Okay. What time did you get back
2 home from looking for a job?

3 A I got back home around 2:00, 2:30.

4 Q Okay. Was Jeff still asleep at that time?

5 A Yes, sir.

6 Q Okay. What did you do between 2:30 and --
7 and 7:45?

8 A I sat at the house. I looked over all my
9 Alcorn stuff. I went to the library and then at
10 5:30, I went and picked her up from daycare.

11 Q Okay. When did you leave your house going
12 to the library?

13 A 3:30 or 4:00.

14 Q Okay. Were you there up until the time
15 that you picked up the baby?

16 A Yes, sir.

17 Q And you picked the baby up at what time?

18 A Five -- well, I think it was 5:15.

19 Q Okay.

20 A They have a record of it.

21 Q All right. You picked the baby up and you
22 came back to the trailer; is that correct?

23 A Yes, sir.

24 Q All right. Did you go anywhere else
25 before you came back home --

1 A No, sir.

2 Q -- with the baby?

3 A (Shakes head negatively.)

4 Q So you left Grace Methodist Church and
5 went straight home; is that right?

6 A Yes, sir.

7 Q All right. When you got home, who was
8 there?

9 A Just Jeff.

10 Q Was he awake at that time or was he still
11 asleep?

12 A He was still asleep, but he had waken up
13 about a few minutes after I got there.

14 Q He woke up a few minutes after you got
15 there?

16 A Yes, sir.

17 Q Okay. So you got home approximately --
18 what does it take for you to drive from there to the
19 trailer? Like maybe 15 minutes?

20 A Yeah. Fifteen minutes.

21 Q So you got home at approximately 5:45; is
22 that fair to say?

23 A Yes, sir.

24 Q Okay. And at that time, Jeff woke up on
25 his own or -- or did you wake him up?

1 A He woke up on his own.

2 Q Okay. All right. What took place between
3 5:45 and the time that you left going to the grocery
4 store?

5 A I played with her. She was fussy, crying,
6 and I played with her to try to make her feel
7 better. I fed her her supper, gave her her medicine
8 and that's it.

9 Q Did you ever leave with the baby again
10 after you got home at 5:45?

11 A No, sir.

12 Q Did you ever take the baby for a ride to
13 try to calm her down?

14 A Not yesterday, no, sir.

15 Q Not yesterday?

16 All right. So when you got home, it
17 was you, Jeff and the baby. Did anybody else come
18 over?

19 A No, sir.

20 Q No one at all?

21 A No, sir.

22 Q Okay. You had mentioned about giving the
23 baby some medicine.

24 A Yes, sir.

25 Q Okay. Had she -- had she been sick?

1 A She's had congestion and an ear infection.

2 Q Okay. And this is medicine that's
3 prescribed by a doctor?

4 A Yes, sir.

5 Q And which doctor would that have been?

6 A Dr. Darr (phonetic).

7 Q Dr. Darr? That's a pediatrician?

8 A Yes, sir.

9 Q That's the baby's doctor?

10 A Yes, sir.

11 Q When did you take her to be examined by
12 Dr. Darr?

13 A She went to the doctor Tuesday.

14 Q Tuesday?

15 A Yes, sir.

16 Q What kind of medication did she prescribe
17 for him (sic)?

18 A She gave her some vitamins and she gave
19 her something for her ear infection. I'm not sure
20 what it was called.

21 Q Is this something that had to be given to
22 her --

23 A Orally.

24 Q -- more than one time a day or just once a
25 day or --

1 A With the ear infection was twice a day.
2 The vitamins were just once.

3 Q Okay. So when you gave her her medicine,
4 which medicine did you give her?

5 A I gave her her vitamins and her ear
6 infection. I put it in her food.

7 Q Okay. Now, for her ear infection, she --
8 she takes that medicine orally?

9 A Yes, sir.

10 Q Okay. So you don't put it into her ear?

11 A No, sir.

12 Q Okay. She takes it by mouth?

13 A Yes, sir.

14 Q Then what did you -- you mixed that
15 medicine up into some food. Is that what I
16 understood?

17 A Yes, sir.

18 Q And what kind of food was that?

19 A A jar of bananas.

20 Q All right. So at approximately 7:45, Jeff
21 gave you some money to go to the grocery store?

22 A Yes, sir.

23 Q How much money did he give you? Do you
24 recall?

25 A \$40.

1 Q And you -- which grocery store did you go
2 to?

3 A Natchez Market.

4 Q Which one?

5 A The one by the bridge.

6 Q Out 61 North?

7 A Yes, sir.

8 Q The Natchez Market 2?

9 A No. The first one. The Natchez Market by
10 the Kmart.

11 Q By Kmart. Okay. The Natchez Market 1.
12 Is that where you normally go grocery shopping at?

13 A Yes, sir.

14 Q Okay. Do the people up there know you?

15 A I don't know. I wouldn't think so.

16 Q Okay.

17 A I'm not sure.

18 Q All right. We're not going into great
19 detail about your groceries, but, you know, just
20 give me a general idea of what it was that you
21 bought.

22 A I bought some drinks, some hamburger meat,
23 some paper towels and toilet paper. Just some stuff
24 for supper.

25 Q Okay. Your -- do you recall the amount of

1 money that you spent?

2 A Thirty-two or \$33, something like that.

3 Q All right. When you left going to the
4 grocery store, did you take the baby with you?

5 A No, sir.

6 Q What -- the baby stayed at home with Jeff;
7 is that correct?

8 A Yes, sir.

9 Q Where was the baby at when you -- when you
10 left? Where -- what area of the trailer was the
11 baby at?

12 A She was in the living room in her swing.

13 Q She was in the swing?

14 A Yes, sir.

15 Q How was she dressed at that time?

16 A She had on a little onesie.

17 Q I'm sorry?

18 A A little onesie. A little shirt that
19 snaps.

20 Q Okay. Was the baby fussy when you left?

21 A No, sir.

22 Q Was she crying?

23 A No, sir.

24 Q Was she asleep?

25 A She was -- she was about to go to sleep.

1 Q Okay. You went to the Natchez Market and
2 you bought groceries. How long do you think you
3 were at the Natchez Market?

4 A I'm not sure how long I was in there. I
5 remember seeing 8:20 on the clock on the way home.

6 Q (Inaudible) you saw the clock?

7 A Yes, sir.

8 Q So you got home in the area of 8:30, 8:45?

9 A About 8:30.

10 Q 8:30?

11 All right. When you got home from
12 the grocery store, where was Jeff and the baby?

13 A The baby was in her bed asleep and Jeff
14 was in the bedroom picking up the sheets off the
15 bed, letting out the bath water.

16 Q All right. What did Jeff tell you that he
17 had done while you were gone as far as the baby
18 goes?

19 A He said that she had gotten fussy and she
20 had thrown up, spit up and got it on the bed and on
21 him and on her. So he went and gave her a bath and
22 he took a bath, and he had put her to bed.

23 Q Okay. So he gave the baby a bath and he
24 took a bath himself?

25 A Yes, sir.

1 Q Okay. How did -- how did the baby spit up
2 on him? Did he say?

3 A No, sir.

4 Q Okay. Did he say where the baby was
5 when -- when the baby got sick?

6 A No, sir.

7 Q Was the baby in her bedroom or your
8 bedroom?

9 A I assume that she was in my bedroom if
10 she -- and he said that she had spit up on the bed,
11 too.

12 Q Okay. And he was -- was he taking the
13 sheets off when you got there or had he already
14 taken the sheets off?

15 A They were piled up on top of the bed.

16 Q Piled up on top of the bed?

17 A Yes, sir.

18 Q All right. In the -- when you got there,
19 the baby was -- was in her bed; is that correct?

20 A Yes, sir.

21 Q In her bedroom?

22 A (Nods head affirmatively.)

23 Q How was the baby dressed then?

24 A She still -- she had on a different
25 onesie. It was the same one almost. And was in her

1 bed laying there.

2 Q Was the baby asleep?

3 A Yes, sir.

4 Q Okay. You say you picked the baby up?

5 A Yes, sir. She had made a funny noise in
6 her throat, like coughing up a hairball or something
7 like that. And I picked her up and patted her on
8 the back and made sure there wasn't anything in her
9 throat, and she was fine. She was breathing fine.
10 Her color was fine. I put her back in the bed.

11 Q Okay. What happened at that point?

12 A I went in the living room and sat down,
13 put up the groceries, and then he asked me to go to
14 the video store to take some movies back and get
15 some more.

16 Q Did he give you some more money?

17 A Yes, sir.

18 Q How much money did he give you?

19 A He gave me a 20.

20 Q He gave you a \$20 bill?

21 A Yes, sir.

22 Q And the baby was asleep when you left?

23 A Yes, sir.

24 Q Okay. Which video store did you go to?

25 A Blockbuster.

1 Q And that's the one that's next to Sonic
2 Drive-In?

3 A Yes, sir.

4 Q Is that the one you're referring to?

5 A (Nods head affirmatively.)

6 Q Is that where you normally go to rent
7 videos?

8 A Yes, sir.

9 Q Do the people there know you?

10 A Some might. I'm not sure. I've been in
11 there a few times.

12 Q Do you know any of them by name?

13 A The one guy that had waited on me, he was
14 there the night before. It was his first day. He
15 was messing up a lot, and I remember his name was
16 Josh.

17 Q Josh?

18 A I think it was Josh.

19 Q So he waited on you last night?

20 A (Nods head affirmatively.)

21 Q Okay. Now -- and you -- you rented some
22 more videos; is that correct?

23 A Yes, sir.

24 Q Do you recall about what time this was
25 that you went to the video store?

1 A A little after 9:00 maybe. 9:00, 9:15.

2 Q Okay. About what time was it that you
3 left your house going to the video store?

4 A It was close to 9:00, I remember, because
5 I looked at the clock. I don't know exactly what
6 time it was, but I told him to hurry up and give me
7 the money so I could go and get back if he wanted me
8 to do that.

9 Q And so you believe it was after 9:00 when
10 you had actually rented the videos and you returned
11 home?

12 A Yes, sir.

13 Q So you had got home in the neighborhood of
14 9:15, 9:30. Would you say that's fair to say?

15 A Yes, sir.

16 Q Okay. When you got home, Becky, was
17 anybody there?

18 A Jeff and the baby.

19 Q Was anybody else there?

20 A No, sir.

21 Q Okay. When you got home, where was Jeff
22 then?

23 A In the bathroom.

24 Q Where was the baby?

25 A In her bed.

1 Q Was she still wearing the same outfit?

2 A Yes, sir.

3 Q Okay. When you got home, Becky, tell me
4 what you did from the point you walked through the
5 door until you --

6 A I came inside. I didn't see Jeff in the
7 living room, so I yelled for him and he said he was
8 in the bathroom. And I went in to check on my baby.

9 And after I found her, I picked her
10 up and I put her on the living room floor. And when
11 I felt how swollen her throat was, we went to the
12 hospital.

13 Q How could you tell her throat was swollen?

14 A Because I put my finger down her throat.

15 Q When you picked her up -- Becky, I
16 understand this is difficult. Okay? But when you
17 picked her up, was she laying on her stomach or on
18 her back?

19 A On her stomach.

20 Q On her stomach.

21 And when you picked her up, was she
22 breathing at that time?

23 A She was blue.

24 Q She was blue. She was not breathing. Is
25 that what I understand you're telling me?

1 A Not breathing. She was just limp.

2 Q I'm sorry. Not breathing? Is that what
3 you said?

4 A Not breathing. She was limp.

5 Q And you checked her -- you checked her
6 throat?

7 A Yes, sir.

8 Q You checked her throat for what reason?

9 A Just to see if there was any obstructions
10 or anything in her throat.

11 Q Becky, I understand this is hard. Okay?
12 But what did you do then?

13 A I gave her CPR.

14 Q On the floor?

15 A (Nods head affirmatively.)

16 Q Okay. Well, do you know how to do CPR on
17 a baby?

18 A Yes, sir.

19 Q Have you been trained in that?

20 A No, sir.

21 Q You have not been trained in it?

22 A No, sir. My momma's a nurse.

23 Q Was she the one who told you how to do it?

24 A Yes, sir.

25 Q Can you describe the procedure for me?

1 A I tilted her head back and I held her nose
2 and I breathed for her. And I did four reps on her
3 chest and I breathed again. She wasn't doing
4 anything. I could just hear my breath coming right
5 back out of her.

6 Q And Jeff was still in the bathroom while
7 you were doing this?

8 A He came in there and sat beside me.

9 Q I'm sorry. I couldn't hear you.

10 A He came in and sat beside me on the floor.

11 Q Did Jeff say anything?

12 A He was just saying what was going on, what
13 was happening, why was she blue.

14 Q What was Jeff's demeanor?

15 A He just seemed really confused.

16 Q I'm sorry. Say it again.

17 A He seemed really confused, like he didn't
18 know -- I don't know.

19 Q So you -- how long did you try to do CPR
20 on her, Becky, before you took her to the hospital?

21 A I tried it five times.

22 Q Five times?

23 A (Nods head affirmatively.) And after
24 that, I put her in the car.

25 Q Becky, did you ever shake the baby?

1 A No.

2 Q Never shook the baby?

3 A No.

4 Q Did you try to maybe dislodge whatever you
5 might have thought was in her throat?

6 A No. After I was giving her CPR, I just
7 held her.

8 Q All right. How was Jeff dressed at this
9 time?

10 A He was just in blue jeans and socks.

11 Q Blue jeans and socks?

12 A (Nods head affirmatively.)

13 Q Did he have a shirt on?

14 A No.

15 Q At any time during that night, did he have
16 a shirt on?

17 A No. He went and got one before we got in
18 the car.

19 Q Whose vehicle did y'all ride in to the
20 hospital?

21 A Mine.

22 Q Okay. Did you call anybody and tell them
23 that you were coming to the hospital?

24 A No.

25 Q All right. Once you got in the hospital,

1 Becky, tell me -- tell me what happened then.

2 A I got out of the car with her and he went
3 and parked the car. I went inside and I saw two
4 nurses walking down the hall, and I yelled that my
5 baby wasn't breathing. And they came and got her
6 and took her back. And they sat me down and they
7 sat Jeff down and told us to wait. And they told us
8 they might be shipping her to Jackson and --

9 Q Might be what?

10 A Shipping her to Jackson. And then he
11 started insisting on going home and changing clothes
12 and arguing on maybe that he shouldn't go, maybe
13 that I should ride with my mom.

14 Q Now, you're talking about Jeff?

15 A Right. And then my family got there. The
16 nurses came out and they asked me if -- who all had
17 been with the baby today -- yesterday, and I told
18 them it was just me and him. And they went back and
19 that was it. And they -- a police officer told me
20 to stand by him for the rest of the time.

21 Q Stand by --

22 A Jeff.

23 Q Who -- who did that?

24 A One of the nurses or the doctors. I'm not
25 sure.

1 Q When you got to the hospital, did you go
2 to the emergency room entrance or did you go to the
3 front entrance?

4 A We went to the ER.

5 Q Okay. Emergency room?

6 A I went to the ER, the emergency room
7 doors.

8 Q All right. Has the baby had any medical
9 problems other than what you had told me about?

10 A No, sir.

11 Q What about diaper rash? Has the baby had
12 a diaper rash?

13 A She's had diaper rash.

14 Q How long has the baby had a diaper rash?

15 A She's always had diaper rash.

16 Q Did you take the baby to Dr. Darr on a
17 regular basis?

18 A Yes, sir. Take her for immunizations.

19 Q I'm sorry?

20 A I'd take her to get her immunizations.

21 Q Let me ask you one more time, Becky. Did
22 anybody come to the trailer at any time yesterday?

23 A No, sir.

24 Q And to your knowledge, Jeff was asleep all
25 day until you got home at approximately 5:45?

1 A Yes, sir.

2 Q And he woke up shortly after you got home?

3 A Yes, sir.

4 Q And, of course, at one time, you came home
5 earlier, and I think you told me around 2:00; is
6 that correct?

7 A Yes, sir.

8 Q Jeff was asleep at that time?

9 A Yes, sir.

10 Q Did anybody come by to see you?

11 A No, sir.

12 Q When is the last time y'all had company at
13 the trailer?

14 A Wednesday.

15 Q Who was that?

16 A His grandfather had come by, and my
17 brother and my cousin had come by.

18 Q Okay. Grandfather and your cousin?

19 A And my brother.

20 Q Your cousin and your brother?

21 A Yes, sir.

22 Q Who is your cousin?

23 A David Merritt (phonetic).

24 Q David Merritt?

25 A Yes, sir.

1 Q Where does he live at?

2 A In Clayton.

3 Q Clayton? And your brother is --

4 A Bill Britt.

5 Q And where does he live?

6 A In Natchez.

7 Q Natchez. Where in -- where in Natchez?

8 A On Roselawn. I don't remember the name of
9 the street. Itasca.

10 Q How old is Bill?

11 A He's 23.

12 Q And how old is your cousin?

13 A He's 21.

14 Q Becky, you know, I asked you last night.

15 Do you know who may have done anything to your
16 daughter?

17 A Jeff is the only one I can think of. He
18 was the only one with her.

19 Q Is that -- is that the only three -- you
20 can only think of Jeff, is -- is that he was the
21 only one that was with her. Is that what you're
22 talking about?

23 A He was -- he was the only one there. I
24 can't think of anybody else that would do that to
25 her.

1 Q Okay. Do you ever suspect that anything
2 may have happened in the past by someone?

3 A No.

4 Q Is there anything else that you can tell
5 me, Becky?

6 A No. The only thing I can tell you is
7 yesterday and the day before, she was irritable
8 whenever he would want to hold her. And yesterday
9 he was just insistent on holding her when she was
10 screaming, and she just screamed even more when he
11 held her.

12 Q Is there anything else that you would like
13 to add that would help us in our investigation?

14 A I don't know.

15 Q I'm sorry?

16 A I know he's got a violent temper. That's
17 all I know.

18 Q You're talking about Jeff?

19 A Yes.

20 Q How do you know he's got a violent temper?

21 A The way he argues with his grandfather,
22 and I know he's had simple assault on his record.

23 Q When's the last time you changed the
24 sheets on the bed in the bedroom?

25 A About a week ago.

1 Q I'm not trying to be too personal, but
2 when -- when's the last time that you had a
3 menstrual period?

4 A I bled for a long time after I had Chloe,
5 so I'm not sure.

6 Q Okay. Have you had a menstrual period
7 recently?

8 A I bled up until a week or two ago.

9 MR. MANLEY: All right. I don't -- Carey,
10 have you got anything?

11 MR. JACKSON: I -- yeah.

12 E X A M I N A T I O N

13 BY MR. JACKSON:

14 Q How often did Jeff usually bathe the baby?

15 A Never.

16 Q He's never bathed her?

17 A Never.

18 Q Would you say that's kind of strange that
19 he took it upon himself to bathe the child while you
20 were gone?

21 A Not really. I mean, he's always doing
22 bottles for me or cleaning up while I'm taking care
23 of her.

24 Q Did he change diapers?

25 A Sometimes.

1 Q Sometimes. But he's never bathed her
2 before?

3 A No.

4 Q Well, how did he act towards the child
5 when he was around? Did he ever get angry with the
6 child or anything?

7 A No. He loved her. Just whenever she
8 would be really fussy, he would just act aggravated.
9 I mean, nothing physical or anything. He would just
10 sigh or turn away or walk away.

11 MR. JACKSON: That's all I have.

12 MR. MANLEY: All right. With that, we'll
13 conclude the statement. And today's date is
14 February 22nd, 2002. The time is currently
15 4:39 p.m.

16 (Statement concluded.)

17

18

19

20

21

22

23

24

25

Cert Page.txt

C E R T I F I C A T E

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I, MARY ANN SMITH, CERTIFY:

The foregoing interview was transcribed by me.
Being a Transcriptionist, the foregoing pages contain a
true and correct transcript transcribed from provided
video.

I am not in the employ of and am not related to
any of the parties or their counsel, and I have no
interest in the matter involved.

I FURTHER CERTIFY that this transcript is the work
product of this transcription agency and any
unauthorized reproduction AND/OR transfer of it will be
in violation.

witness my signature this, the 16th day of
June, 2011.

Mary Ann Smith

Chad King
Notary Public at Large

For the State of Mississippi
My Commission Expires:



09/24/2007 09:24 60144579555

ADAMS CIRCUIT CLERK

PAGE 02

1 IN THE CIRCUIT COURT OF ADAMS COUNTY, MISSISSIPPI

2
3
4 STATE OF MISSISSIPPI

5
6 VERSUS

CAUSE NO. 02-KR-0141

7
8 JEFFERY HAVARD

DEFENDANT

9
10
11
12 * * * * *
13 TRANSCRIPT OF A VIDEO TAPED STATEMENT OF JEFFERY HAVARD
14 TAKEN AT THE ADAMS COUNTY, MISSISSIPPI, JAIL ON THE 23RD
15 DAY OF FEBRUARY, 2002, IN THE ABOVE STYLED AND NUMBERED
16 CAUSE.

17 * * * * *
18
19 Present and taping the statement were Deputy John Manley
20 and Deputy Frank Smith.
21
22
23
24
25

26 * * * * *
27
28 Melanie G. Murray
Official Court Reporter
9 Primrose Lane
Natchez, MS 39120
29

EXHIBIT

C

09/24/2007 09:24 60144579555

ADAMS CIRCUIT CLERK

PAGE 83

2

1 BY DEPUTY MANLEY: The time according to my
2 telephone is 9:06 p.m. I'm Deputy John Manley. In
3 the room with me is Deputy Frank Smith, and we're
4 talking with a Jeffery Havard.

5 BY DEPUTY MANLEY:

6 Q. Jeff, would you give us your full name.

7 A. Jeffery Keith Havard.

8 Q. How old are you, Jeff?

9 A. Twenty-three.

10 Q. Where do you live at?

11 A. I live [REDACTED]

12 Q. Okay. Jeff, myself and Deputy Smith had talked
13 with you earlier; is that correct?

14 A. Yes, sir.

15 Q. When we talked to you, did we advise you of your
16 rights?

17 A. Yes, sir.

18 Q. Okay. I am going to show you this advice of
19 rights form. Is that your signature there?

20 A. Yes, sir. It is.

21 Q. Okay. And you gave us a written statement; is
22 that correct?

23 A. Correct.

24 Q. Okay. I show you a statement. Is that the one
25 that you gave us?

26 A. That's the one I just wrote.

27 Q. The one you just wrote. And that's your
28 signature at the end of it; is that correct?

29 A. Yes, sir.

3

1 Q. All right. Jeff, we advised you that we were
2 going to put this on video tape; is that correct?

3 (Defendant nods head affirmatively.)

4 Q. And you know you're being filmed. You're being
5 on video tape.

6 (Defendant nods head affirmatively.)

7 Q. We're going to talk to you, Jeff, about what we
8 had just got through talking about, and for the purpose of
9 the video tape, I want to re-advise you of your rights.
10 Okay. You're at Adams County jail. Once again, today's
11 date is February the 23, 2002. The time is currently 9:07
12 p.m. All right. Jeff, before we ask you any questions,
13 you must understand your rights. You have the right to
14 remain silent. Anything you say can be used against you
15 in court. You have a right to talk to a lawyer for advice
16 before we ask any questions and have him with you during
17 questioning. If you cannot afford a lawyer, one will be
18 appointed for you before any question if you wish. If you
19 decide to answer questions now without a lawyer present,
20 you still have the right to stop answering at any time.
21 You also have a right to stop answering at any time until
22 you talk to a lawyer. Do you understand those, Jeff?

23 A. Yes, sir.

24 Q. Okay. With these rights in mind, are you
25 willing to talk with us?

26 A. Yes, sir.

27 Q. Okay. I need to have you sign off on that for
28 me.

29 (Defendant signs document.)

09/24/2007 09:24 60144579555

ADAMS CIRCUIT CLERK

PAGE 05

4

1 Q. Okay. I am going to witness the form. The
2 time is currently 9:08 p.m. And I'll get Deputy Smith to
3 witness on it. Okay. Are you being forced to give a
4 statement?

5 A. No. I offered to.

6 Q. You're doing it freely and voluntarily. We're
7 doing this at your request; is that correct?

8 A. Right.

9 Q. And you asked to speak to us; is that correct?

10 A. That's right.

11 Q. All right. Jeff, we talked to you about an
12 incident that occurred this past Thursday night, being
13 February 21st. Okay. An incident involving an infant
14 child; is that correct?

15 (The defendant nods head affirmatively.)

16 Q. What I would like to have you do, Jeff, is just
17 tell us in your own words what occurred that night.

18 A. Starting out, Becky had left and was leaving to
19 go to the store. I give her some money. We were low on
20 groceries, and we wanted some DVD's to watch movies that
21 night. It may have been about 8:05, 8:10 p.m. I am not
22 exactly sure. She wanted me to feed the baby to start off
23 with so she could go on and go, but I kept goofing off and
24 gathering dishes and clothes up to be washed and put it in
25 the laundry. So she went on and fed the baby and put her
26 medicine in, I think, with the banana. I think she ate
27 bananas that night. She gave her -- she fed her and
28 everything in her little infant swing. After she had fed
29 her and everything, she kind of -- she cleaned her up and

09/24/2007 09:24 60144579555

ADAMS CIRCUIT CLERK

PAGE 06

5

1 everything after eating. Told me that she was fixing to
2 go to the store -- fixing to go do what I wanted her to
3 do, go to the store. She left. I still was putting
4 dishes together and everything in the sink -- you know --
5 to get them ready. About five minutes or so or maybe more
6 after she had left, the baby started crying. I didn't
7 know what was wrong with her. I let her cry for a few
8 minutes -- you know -- doing what I was doing. I picked
9 her up, and brought her back in the bedroom, thinking she
10 might need a diaper change or something like that. I took
11 the diaper off and noticed that she hadn't -- you know --
12 she hadn't used the bathroom. She was completely dry and
13 clean. About that time, she kind of spit up and her nose
14 was running. So I decided I might as well just give her a
15 bath and see if she would go on and go to bed. I gave her
16 a bath. Put her in the bathtub. Started splashing around
17 playing, just normal -- what normal infants do. After I
18 -- when I went to pick her up out of the tub to dry her
19 off, she slipped out of my hand, and her leg hit the lid
20 on the toilet bowl, and I think her head hit the tank.
21 She made contact. As soon as she made contact, I grabbed
22 her with my left arm. I caught her with it, and I stood
23 -- when I got her up, I stood up out of the tub and held
24 her against me -- was going to hold her against me when I
25 dropped her but she was slippery. I dropped her, and she
26 just kind of gasped for air like I had scared her, or I
27 don't know what happened. So I took her and I shook her.
28 I didn't shake her hard. I don't think I did. I shook
29 her back and forth from the side like this, sideways, and

09/24/2007 09:24 60144579555

ADAMS CIRCUIT CLERK

PAGE 07

6

1 twisted her like that. (Defendant demonstrates.) Shook
2 her side -- you know -- twisted her like that, shaking
3 her. She started crying again. So I said okay. She's
4 all right. I put her on my shoulder and patted her butt,
5 telling her I was sorry. I am sorry. I didn't mean to --
6 you know -- drop you and all this. I brought her back
7 into the bedroom to change her. She spit up some more. I
8 guess -- right there on the bed linen on her sheet. I
9 don't know how it -- in my room or whatever, but she spit
10 up on it. I cleaned her up a little bit more and put some
11 lavender on -- bed time lotion on her, some lavender.
12 After that, I put a diaper on her. I wiped her down with
13 a wipe and everything, just wiped her like you're supposed
14 to and everything. Went to put a diaper on her and one of
15 the sticky sides come off. So I took that diaper and put
16 it off to the side and went and got another diaper out of
17 her bedroom. I mean, out of the living room because her
18 diaper bag was sitting in the living room on the couch.
19 Got that out of there. Put her another diaper on, and
20 put her back in her bed. She wasn't really crying or
21 anything.

22 Q. Okay. Continue.

23 A. After that, I continued doing what I was doing,
24 and she spit up on the bed. So I got all the bed linens
25 and everything off the bed and clothing, put it all down
26 in the laundry -- down by the laundry, down the little
27 hallway down there. Becky had come back in probably a
28 minute or two after I had laid her down. Just long enough
29 for her music to play out. She's got a little wind-up

09/24/2007 09:24

60144579555

ADAMS CIRCUIT CLERK

PAGE 08

7

1 thing on the bed. Just as soon as that quit playing,
2 Becky come in the door. I told her -- I said I gave her a
3 bath. She's fine. I didn't tell her that I dropped her.
4 I don't know why. I was scared that she would bitch at me
5 or fuss at me or I had hurt her. I didn't know. I didn't
6 say anything about it. She come in. She went in the room
7 and checked on her, and everything was all right. So I
8 thought everything was all right.. And she left to go back
9 -- she left because she didn't get the DVD's like
10 originally planned. So she left again, the second time.
11 She left. She was gone maybe twenty minutes, and this
12 time I was taking the clothes off the bed and putting them
13 in the back, straightening up the kitchen. I was going to
14 put the groceries up, but I never did. The next thing I
15 know, I got something to drink or snack on something real
16 quick, and I went to the bathroom to do number two. While
17 I was in bathroom, right as soon as I was finishing up,
18 Becky come in and to let me know she was back she kind of
19 knocked on the wall and wondering what I was doing, and I
20 told her I am taking a shit. And after that, not five
21 seconds later, she started screaming. Chloe, she's not
22 breathing. She's not breathing. By the time I come out
23 of the bathroom, I didn't know what was going on. I was
24 frantic. Thoughts had come back like, God, I hurt her. I
25 hurt her. Then we got in the car and drove to Community
26 Hospital as fast as we could.

27 Q. So the first time -- when you referred to Becky,
28 who are you referring to?

29 A. My girlfriend. Chloe's mother.

09/24/2007 09:24

60144579555

ADAMS CIRCUIT CLERK

PAGE 89

8

1 Q. How long had she been living with you?

2 A. In the trailer there?

3 Q. Uh-hum.

4 A. Maybe going on three weeks to a month.

5 Q. And y'all had known each other for how long?

6 A. Maybe two and a half, three months.

7 Q. She had just recently moved in with you. Is
8 that what you said?

9 A. I had lived with her first of all. I was
10 working offshore. We were working fourteen and seven; and
11 we kind of met. We kind of met one night whenever I was
12 home over -- you know -- my seven days off. That's how we
13 met, but I went back offshore, and a friend of mine called
14 me on my cell phone to let me know that this girl liked me
15 or whatever, and we planned on meeting each other. When I
16 come in, ever since then, we've been together day after
17 day.

18 Q. Okay. She had only been living in your trailer
19 about three weeks?

20 A. About three weeks. I lived with her over in a
21 guy named Robert's house on Itasca for like a month, about
22 a month and a half. Five, six weeks.

23 Q. All right. So when you say Becky went to the
24 store the first time, that's Becky Britt; is that correct?

25 A. Right.

26 Q. Who all was at the trailer at that time?

27 A. It was Chloe, me, and Becky.

28 Q. It was just the three of you?

29 A. Just the three there that night.

09/24/2007 09:24 60144579555

ADAMS CIRCUIT CLERK

PAGE 10

9

1 Q. Just you, her, and the baby.

2 (The defendant nods head affirmatively.)

3 Q. All right. And you say she left going to the
4 grocery store?

5 A. Right.

6 Q. And the baby was where?

7 A. In the swing.

8 Q. And where was the swing at?

9 A. On the left side of the trailer. You come in
10 through the back -- that's the way we always come in the
11 side door. It's against the couch over on the side,
12 facing the TV. She had turned her around looking at the
13 TV after she had left.

14 Q. So the Swing was in the living room area; is
15 that correct?

16 A. Right, right.

17 Q. Okay. And when she left and the baby was in the
18 swing, was the baby asleep?

19 A. I can't really say for sure she was, but I
20 imagine. She wasn't making any noise or anything. So I
21 imagine that she was asleep or she was content. I didn't
22 really pay close, close attention to it.

23 Q. Y'all had fed her. You went ahead and gave her
24 medicine; is that correct?

25 A. Right.

26 Q. What were y'all giving her medicine for?

27 A. She had been sick. I think she's had like flu-
28 type symptoms. She's had an ear infection. It's just
29 normal flu symptoms, I guess. Just sick.

10

1 Q. Okay. So I believe you said that after she had
2 been gone for about maybe five minutes, the baby started
3 crying; is that correct?

4 A. Yeah. She wasn't like screaming or -- you
5 know -- it didn't sound like a real, real emergency, but I
6 wanted to go ahead and take care of it so I could have her
7 put in the bed and asleep by the time Becky got back
8 thinking that she would have the groceries and DVD. I was
9 going to make Rotel dip and sit down and watch a movie.

10 Q. The baby was crying.
11 (The defendant nods head affirmatively.)

12 Q. You got the baby and you went where once the
13 baby started crying?

14 A. I picked her up. I stopped by her diaper bag
15 which is right there by the -- on the love seat which is
16 on the other side of the living room from where the baby
17 swing is. Looked in her diaper bag, got her a diaper out
18 because I thought that's what was wrong with her. I took
19 her to the back to my bedroom, the master bedroom, Becky
20 and I's bedroom.

21 Q. And at that point, you were going to change her.

22 A. Right.

23 Q. Okay.

24 BY DEPUTY SMITH:

25 Q. Were you upset about any of this? I mean, were
26 you aggravated the baby kept crying?

27 A. No. It didn't aggravate me. I just didn't know
28 why -- what she was crying about.

29 Q. Did it kind of frustrate you, though?

09/24/2007 09:24 60144579555

ADAMS CIRCUIT CLERK

PAGE 12

11

1 A. No. Not really. It didn't frustrate me no more
2 than normal. Just baby crying. It didn't bother me.

3 BY DEPUTY MANLEY:

4 Q. So you got the infant tub -- well, you started
5 to change the diaper. You realized that she did not need
6 a diaper change; is that correct?

7 (The defendant nods head affirmatively.)

8 A. Yes, it is --

9 Q. And you put her in the infant tub or the
10 bathtub. Which one did you put her in?

11 A. Put her in her infant tub in the big bathtub.

12 Q. Okay. And you were bathing her?

13 A. Right.

14 Q. Had you ever bathed her before?

15 A. No. I have never bathed her before.

16 Q. You've never bathed --

17 A. I've been in there. I've seen it done. I've
18 seen her bathed by her mother countless times.

19 Q. Okay. All right. And then you picked her up;
20 is that correct?

21 (The defendant nods head affirmatively.)

22 Q. And when you picked her up, she slipped out of
23 your hands.

24 (The defendant nods head affirmatively.)

25 Q. I believe I understood you to say that she hit
26 the -- her leg hit the toilet lid and her head hit the
27 toilet bowl; is that correct?

28 A. Yes, sir.

29 Q. How high off the ground was she when she slipped

09/24/2007 09:24

60144579555

ADAMS CIRCUIT CLERK

PAGE 13

12

1 out of your hands?

2 A. Where she hit the toilet, she was probably about
3 this high above it. (Defendant demonstrates.) Maybe
4 three feet above it because I had stood up to get her out
5 of it -- out of the tub. When I did, I had her in between
6 the toilet and the tub. Just probably about a foot and a
7 half section. She fell kind of down in between that after
8 I had picked her up.

9 Q. Her head hit the toilet bowl.
10 BY DEPUTY SMITH:

11 Q. What part of her head hit the toilet?

12 A. Her head. Her upper body hit the tank, hit the
13 porcelain tank, and I know her leg for sure hit the bowl,
14 hit the lid. And at the same time that she had hit, the
15 same time she had hit -- I mean as soon as she had hit
16 like this, I had caught her. As soon as she hit, she just
17 gasped for air like it scared her or like it put her into
18 shock or something.

19 BY DEPUTY MANLEY:

20 Q. And you shook her?

21 (The defendant nods head affirmatively.)

22 Q. Okay. How hard did you shake her?

23 A. I don't think I shook her hard at all.

24 Q. But you did shake her. You shook her several
25 times; is that correct?

26 (Defendant nods head affirmatively.)

27 A. I shook her because I was scared I had hurt her.

28 Q. Okay.

29 A. I thought I hurt her bad when I dropped her --

09/24/2007 09:24 60144579555

ADAMS CIRCUIT CLERK

PAGE. 14

13

1 BY DEPUTY SMITH:

2 Q. Can you show us how hard you shook her?

3 A. When I got her, I think I shook her about like
4 that, and I twisted her back and forth like this to get
5 her to look. (Defendant demonstrates.) I had her head
6 supported with my fingers like this, my two middle fingers
7 up under her arms, supporting her head.

8 BY DEPUTY MANLEY:

9 Q. All right. At that point, she began crying. Is
10 that what I understood --

11 A. Right.

12 Q. So you walked out of the bathroom, and you laid
13 her on your bed?

14 A. Right.

15 Q. Okay.

16 A. I panicked when I dropped her.

17 Q. I think you told me earlier that you saw some
18 blood; is that correct?

19 (The defendant nods head affirmatively.)

20 Q. Where did you see the blood at?

21 A. She had like -- it was kind of like coming out
22 of her nose. Like her nose had been running all day, and
23 she had like a little bit on her cheek. I thought maybe
24 it had come out of her nose. Maybe it happened when she
25 hit the toilet or something. I freaked out about it. And
26 she had another little spot right here on her right side.

27 Q. Did you see any blood in her mouth?

28 A. No.

29 Q. Okay. And you laid her on the bed and you did

09/24/2007 09:27

60144579555

ADAMS CIRCUIT CLERK

PAGE 01

14

1 what?

2 A. Laid her on the bed to finish drying her off.
3 I had put her in a towel by then that I had laid out on
4 the bowl, the toilet bowl.

5 Q. What color was that towel by the way; do you
6 remember?

7 A. A burgundy color, kind of like a Crimson Tide
8 color.

9 Q. Okay.

10 A. It wasn't red, and it wasn't really -- I
11 guess you would call it burgundy.

12 Q. All right. You laid her on the bed, and what
13 happened?

14 A. She just sat there just like normal, crying.
15 She spit up some more on the blanket that she had laid out
16 there. She spit up a little bit more, and it was a lot of
17 her food, and I noticed something kind of red in it, and I
18 thought it was her medicine. So I just wiped her and I
19 didn't think nothing of it. I think I got some in her
20 hair. Still some in her hair where she had spit up.

21 Q. At what point did you rub her down with lotion?

22 A. After I cleaned her back up -- after I cleaned
23 her up, I took lavender lotion and rubbed her back down --
24 rubbed her down with lavender lotion.

25 Q. This was after you dropped her is what you're
26 talking about?

27 (The defendant nods head affirmatively.)

28 A. Yes, sir.

29 BY DEPUTY SMITH:

15

1 Q. Tell us what you did when you rubbed her down.

2 How did you rub her down?

3 A. I took -- I took the lavender lotion and I put
4 some in my hand, rubbed it together, started on her head.
5 Wiped it all in her hair and everything and wiped it all
6 down her neck and in behind her ears. Got down to her
7 stomach, got all the way down to her midsection, to her
8 waist, and I took both her legs and pulled both her legs
9 over like you change a diaper. I wiped all down in
10 between her legs and everything to get her clean to make
11 sure she was fully covered by the lotion.

12 BY DEPUTY MANLEY:

13 Q. All right. At that point, you put another
14 diaper on her and you got her dressed?

15 A. I put a diaper on her, and I guess I pulled too
16 hard over -- you know the little sticky thing come off
17 that sticks and binds them together. So I took it off the
18 side and went and got another diaper out of the diaper
19 bag, and put it on her. I didn't pull it as tight this
20 time because I figure I would tear it too.

21 Q. Something I forgot to ask you. While you were
22 giving Chloe a bath, did you take a bath also?

23 A. No. No.

24 Q. You're positive of that?

25 A. Positive.

26 BY DEPUTY SMITH:

27 Q. What were you wearing while you were doing this?

28 A. I had on a pair of Levi's jeans. I had on my
29 boxers, a pair of Levi's jeans, and a pair of socks. That

09/24/2007 09:27 60144579555

ADAMS CIRCUIT CLERK

PAGE 03

16

1 was it.

2 BY DEPUTY MANLEY:

3 Q. All right. So when you put the diaper on her,
4 the first diaper, the strap or the strip broke and you got
5 another diaper; is that correct?

6 A. Yes, sir.

7 Q. You put that diaper on her. Did you -- what
8 kind of clothes did you put on her?

9 A. What kind of clothes?

10 Q. Yes.

11 A. I can't remember. I just -- she just had a
12 diaper on her and like a night shirt. I had a few of them
13 that I had laid out there. She had like a purple one that
14 was laid out there, and like a -- the one that she's got
15 on. The one that she had on was a white one. I think the
16 purple was already dirty or the white one was. I can't
17 remember what color exactly I put on her. I think I put
18 the white one on her. That's when I cleaned all her
19 spit up and stuff with. Wiped her head -- you know -- off
20 the side of her neck and stuff.

21 BY DEPUTY SMITH:

22 Q. If you've never given her a bath before by
23 yourself, why all of sudden did you decide it was
24 necessary to give her a bath when all she did was spit
25 up?

26 A. I figured --

27 Q. One time you cleaned her up, and then the time
28 before that, you decided you wanted to give her a bath.

29 A. I figured that lavender lotion, the bedtime

09/24/2007 09:27 60144579555

ADAMS CIRCUIT CLERK

PAGE 84

17

1 lotion would make her go to sleep.

2 Q. Why not just rub her down? Why go give her a
3 bath?

4 A. I didn't want to put lotion on her after being
5 dirty and everything and putting lotion on her on top --
6 I'd rather clean her and then put the lotion on her.

7 Q. But you decided to give her a bath the first
8 time when you were alone with her by yourself?

9 A. I didn't think nothing of it. I didn't think
10 this would happen.

11 Q. Didn't think what would happen?

12 A. What's happened so far. I didn't plan on
13 dropping her. I've seen it done before. I have given my
14 little brother a bath when he was an infant. I mean, I
15 know how to do it. I've been around kids, babies all my
16 life.

17 Q. Earlier you had said when you were putting the
18 diaper on, okay? The first tab broke on the first one,
19 right?

20 A. Right.

21 Q. And you said you had wiped her down in her
22 private area. Okay. Can you tell us how you wiped her
23 down and what you done.

24 A. I just took a normal wipe, just wiped down
25 between her legs like normal. Inside of her -- inside of
26 her buttocks, inside of buttocks to clean her out.

27 Q. And you said earlier that your finger may have
28 slipped or you may have wiped her a little bit too hard?

29 A. It's possible. I was still upset and nervous

09/24/2007 09:27

60144579555

ADAMS CIRCUIT CLERK

PAGE 05

18

1 and shaky.

2 Q. Okay. What do you mean by wiping her too hard?

3 A. Maybe I was too rough with her. Maybe I shook
4 her too hard. I don't know.

5 Q. You say you wiped her too hard. What do you
6 mean by that?

7 A. Maybe I went too far in on her when I was wiping
8 her out; inside of her butt.

9 Q. Was she crying while you were doing that?

10 A. No. She never did cry. She was just kicking
11 around and moving her arms around.

12 Q. How was she kicking her leg around and stuff
13 when you said you had them held back.

14 A. Just, you know, squirming.

15 Q. Was this aggravating you?

16 A. Unh-unh. No.

17 Q. Didn't frustrate you because she kept spitting
18 up?

19 A. No.

20 BY DEPUTY MANLEY:

21 Q. Jeff, did you ever molest the baby --

22 A. No, sir. I didn't --

23 Q. -- in any way?

24 A. No, sir. I didn't.

25 Q. And you're aware that there's allegations of
26 molestation?

27 A. Yes, sir. I am. I know I was the only one
28 home. Becky was gone, and it was just me and the infant
29 there. Me and Chloe.

19

1 BY MR. SMITH;

2 Q. Well, how do you explain her being damaged in
3 the way she was?

4 A. I can't -- I can't explain it. I don't know
5 how.

6 Q. Do you think you may have done it?

7 A. When I dropped her, I panicked. I thought that
8 I done killed her right then when I dropped her. I
9 thought that I hurt her bad. I was upset. I was frantic.
10 I was shaking her. I may have shaken her too hard. I
11 don't know.

12 Q. How do you explain the damage that was done to
13 her rear end?

14 A. I can't explain it. I don't -- I don't know. I
15 don't know no way to explain it.

16 Q. Do you think you done it?

17 A. I -- honestly, I don't think I did it, no. I
18 don't recollect doing it. I don't remember doing it, no.

19 Q. Earlier you had said that you'd go into -- you
20 have these fits of anger and you don't really remember
21 things. Do you think that you may have had one of those
22 fits of anger?

23 A. Like I said earlier, whenever I dropped her and
24 I picked her back up and she was just dazed like she
25 wasn't breathing or she wasn't moving. I'm sure she was
26 breathing. I just got like a flashback of my childhood,
27 the story I told you earlier about when I was in the tub
28 and I got beat up.

29 BY DEPUTY MANLEY:

20

1 Q. Who did that?

2 A. My stepfather,

3 Q. Your stepfather. And, of course, we have told
4 you about the autopsy and the allegations that have been
5 made at the local hospital like what the doctors observed,
6 and you have no explanation for that?

7 A. No, sir. No, sir. I don't. I admit I may have
8 shaken her too hard, and I'm sorry. I did not mean to
9 shake her that hard. I was just scared. I dropped her.
10 She wasn't paying a -- just like she wasn't even in this
11 world when I dropped her, and I picked her back up, and I
12 shook her, just frantic, scared what would happen if Becky
13 come home and I done hurt her baby.

14 BY DEPUTY MANLEY:

15 Q. When you went to the hospital with Becky and you
16 talked to the doctors and the nurses, you never told them
17 that you dropped the baby or shook the baby; is that
18 correct?

19 A. No, sir.

20 Q. Why not?

21 A. I was scared. I am thinking that maybe I am the
22 reason that she was like she is. Not breathing.

23 Q. And, in fact, I talked with you that night, is
24 that correct?

25 (The defendant nods head affirmatively.)

26 Q. And you did not tell me that that's --

27 (The defendant shakes head negatively.)

28 Q. -- what happened; is that correct?

29 A. No.

09/24/2007 09:27

60144579555

ADAMS CIRCUIT CLERK

PAGE 88

21

1 Q. But today you requested to talk to me?

2 A. Yes, sir.

3 Q. Is that correct?

4 A. Yes, sir.

5 BY MR. SMITH:

6 Q. Were you scared that they were going to find out
7 that she was hurt in other ways?

8 A. No, sir. I had no idea that it was something
9 like that.

10 BY DEPUTY MANLEY: Here you go, Jeff. Jeff.

11 (Deputy Manley hands defendant a paper towel.)

12 A. I was just scared they were going to say she had
13 been shaken or something. I am knowing that I am the one
14 that shook her.

15 BY DEPUTY MANLEY:

16 Q. One other thing, Jeff. After you say you
17 dressed the baby, after you had given her the bath and you
18 saw the blood and you wiped that off of her and you
19 dressed her and put her in her room; is that correct? In
20 her bed.

21 A. Yes, sir.

22 Q. Did you lay her on her back or on her stomach?

23 A. On her stomach.

24 Q. I think you told me earlier that you laid her
25 on her back.

26 A. No, sir. I put her on her stomach.

27 BY DEPUTY SMITH: He said earlier on her back.

28 A. No. I put her on her stomach.

29 Q. So that was a misstatement when you told me

1 that?

2 A. Maybe I said it and didn't mean to. I laid her
3 on her stomach. I never laid her on her back. Becky
4 never wanted -- never wants to lay her in the bed on her
5 back ever. She's scared of the SID -- S-I-D syndrome that
6 babies get.

7 Q. So when you told me on her stomach earlier,
8 that was a misstatement? You didn't mean to say that is
9 what I am saying.

10 A. No. I didn't mean to say lay on her back. I
11 laid her on stomach. That's how I've always placed her in
12 the bed. That's how I've always basically laid her down
13 anywhere she's been besides taking a bath and changing
14 her.

15 BY DEPUTY SMITH:

16 Q. What did you do after you dropped her and
17 finished getting her dressed and everything. You said you
18 put her in the bed and you finished cleaning up. Is that
19 what you were doing?

20 A. After I put her back in her bed, I turned on her
21 little music she keeps -- you know -- that goes on the
22 crib side, the little twist-up thing. Winnie the Pooh
23 thing, I believe. I turned it. Not a minute or two
24 later, I done come out of there. I said, well, damn, the
25 clothes are -- I said, damn. The bed has got mess all
26 over it, and I'm not going to sleep in it -- you know --
27 and Becky is not either. I wanted to wash the clothes
28 while we were watching TV or the DVD's --

29 Q. When you say "mess on the bed," what do you

23

1 mean by mess? What --

2 A. Where she had spit up.

3 Q. So it was spit up. Was there any blood on the
4 bed?

5 A. I didn't see any blood. No. No.

6 Q. And you continued to clean up, right?

7 (The defendant nods head affirmatively.)

8 Q. Okay. Did it ever occur to you to go back and
9 check on her that she may be hurt?

10 A. By the time that I had got the bed linens out
11 and put them in the hallway down by the washer and dryer,
12 Becky had done come in. And by this time, I think I was
13 back in the -- I was back in the chair, watching T -- you
14 know -- flipping through the channels, and I had just
15 gotten through putting the clothes in there, and I heard
16 her drive up. She come up with all the groceries in her
17 hand, and I told her, I said, "Shh. Don't bother her." I
18 said, "She's in there sleeping." She went in there anyway
19 and walked up to her bed, I guess, and she checked on her.
20 She come back out content. I guess that Chloe was fine.
21 So I didn't think nothing about it. I figured, well,
22 there's nothing wrong. I didn't hurt her.

23 BY DEPUTY MANLEY:

24 Q. Did you tell Becky that you dropped her?

25 A. No, I didn't.

26 Q. Why not?

27 A. I guess right then whenever she come in and
28 checked on her and she was all right, I didn't think to
29 tell her. I didn't think it would hurt if I didn't say

24

1 nothing. I was scared to tell her. I didn't want her to
2 get mad at me and leave me and just all the above that
3 could happen.

4 BY DEPUTY SMITH:

5 Q. But when you dropped her, you were scared that
6 she was hurt, right? You had concern for her well being,
7 right?

8 (The defendant nods affirmatively.)

9 Q. And then all of sudden, you went to cleaning
10 the house and then she came back home, right?

11 A. Right.

12 Q. And did you go back and check on her after that?

13 A. Becky -- Becky had left. We sat there talking
14 for a few minutes after she had come in and checked on
15 Chloe, and I remember when I put her down -- when I put
16 her in her bed, her head was to the right, facing the wall
17 where I laid her down. Her arm -- if I can remember, her
18 arm -- this arm was like this, and this arm was like this,
19 laying down. (Defendant demonstrates.) Her right arm was
20 up. Becky had left, and I started doing what I was doing.
21 I kept sitting in the chair and watching TV, and I got up
22 one time and went in there and peeked in on her and looked
23 and her head was back to the left. Looked like she had
24 done moved down. The covers was up over her a little bit
25 more. When I laid her down, I put the covers probably
26 about right here on her back. I didn't cover her neck up
27 or anything. Looked like she had done scooted down
28 because she had been crawling, and that's how she had been
29 crawling backwards. It looked like she had done turned

25

1 her head over, and I figured she's fine.

2 BY MR. SMITH:

3 Q. You just assumed she was okay, right?

4 (The defendant nods head affirmatively.)

5 BY DEPUTY MANLEY:

6 Q. I am going to ask you one more time, Jeff. Did
7 you molest the baby in any way other than dropping her and
8 shaking her?

9 A. No, sir. I did not. No, sir.

10 BY DEPUTY SMITH:

11 Q. And you were the only person in the house other
12 than the baby?

13 A. That's correct. Me and the baby. That's it.

14 Q. How do you explain her being molested?

15 A. I can't explain it. I don't know how. Honestly
16 and truly, I do not know how.

17 BY DEPUTY MANLEY: Okay. You got anything else?

18 BY DEPUTY SMITH: No.

19 BY DEPUTY MANLEY: With that, we'll conclude
20 this statement. Today's date is February the 23rd,
21 2002. The time is currently 9:38 p.m.

22

23

24

25

26

27

28

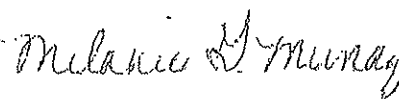
29

COURT REPORTER'S CERTIFICATE

I, Melanie G. Murray, Official Court Reporter in and for the Sixth Circuit Court District of Mississippi, do hereby certify that the within and foregoing twenty-six (26) pages contain a full, true, and correct transcription of the Adams Sheriff's Department video tape to the best of my skill and ability, of the taped interview had and done in the aforesayed and numbered cause heard in the Circuit Court of Adams County, Mississippi.

I do further certify that my certificate annexed hereto applies only to the original and certified transcript. The undersigned assumes no responsibility for the accuracy of any reproduced copies not made under my control or direction.

WITNESS my signature, this the 9th day of December, 2002.



Melanie G. Murray
9 Primrose Lane
Natchez, MS 39120

EXHIBIT

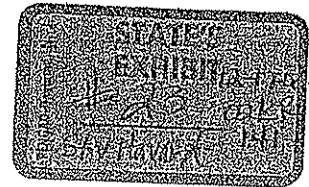
D

X JEFFREY K. HAVARD

X [REDACTED]

X [REDACTED]

X 2-23-02 7:52 P.M.



AROUND 8:15 P.M THURSDAY NIGHT, I GAVE BECKY BRITT MONEY TO GO TO THE STORE TO BUY GROCERIES AND TO RENT DVD'S. ^(SKH) JUST BEFORE ^(SKH) SHE LEFT SHE FED THE BABY (CHLOE) AND PUT HER IN HER BABY SWING, WHILE THIS WAS GOING ON I WAS GATHERING UP CLOTHES TO WASH AND GATHERING DISHES TO BE WASHED. AFTER BECKY BE FED CHLOE, SHE LEFT FOR THE STORE, THE BABY (CHLOE) HAD DOZED OFF INTO SLEEP FOR A FEW MINUTES, THEN SHE HAD AWAKENED AND STARTED TO CRY LIGHTLY, THIS WENT ON FOR ABOUT 5 TO 10 MINUTES. I STOPPED WHAT I WAS DOING, AND PICKED HER UP TO FIGURE OUT WHY SHE WAS CRYING, AND TO PUT HER IN THE BED, ^(CHLOE) I TOOK ^(CHLOE) HER TO BECKY AND MY BEDROOM TO SEE IF SHE NEEDED HER DIAPER CHANGED, ^(CHLOE) SHE WAS CLEAN, AS SOON AS I STARTED TO PUT ON ANOTHER DIAPER, CHLOE SPIT UP A LOT OF HER DINNER AND HER NOSE WAS RUNNING, I THEN DECIDED TO JUST GIVE HER A BATH, THINKING MAYBE IT WILL HELP ^{HER} FALL ASLEEP EASIER, I RAN WATER (LUKEWARM) IN THE TUB, THEN I PLACED HER IN THE TUB (HER INF TUB) ^(CHLOE) I CLEANED HER FROM HEAD TO TOE. AFTER I

HER FEET IN THE WATER FOR A ~~FEW~~ ^(JXH) FEW MINUTES, BUT
 THIS TIME I LAID A TOWEL ACROSS THE TOILET BOW
 LID TO PUT HER ON AND DRY HER OFF. WHEN I PICKED
 HER UP TO GET HER OUT OF THE TUB I ACCIDENTLY
 DROPPED HER, HER LEG HIT THE BOWL AND HER HEAD
 HIT THE TANK, ~~AND~~ ^(JXH) THE SAME TIME SHE HAD COME
 IN CONTACT WITH THE TOILET, I HAD CAUGHT HER,
 WITH HER RIGHT ARM, WITH MY LEFT ARM, CHLOE MADE
 A GASPING SOUND LIKE SHE HAD BEEN SCARED, AND SHE
 WASN'T MOVING, I PICKED HER UP AND PANICED, I SHOO
 HER TO RELIEVE HER, AFTER MAYBE A FEW SECONDS SHE
 STARTED CRYING. I TOOK CHLOE BACK INTO MY AND BECKY
 BEDROOM TO FINISH DRYING AND CLOTHING HER, I WIPE
 HER DOWN WITH ^(CHLOE) HER BEDTIME LOTION AND PUT A NEW
 DIAPER ON HER. WHILE I WAS DRESSING HER SHE HAD
 WHAT ^(JXH) APPEARED TO BE A LITTLE SPOT OF BLOOD ON
 HER ~~ON~~ CHEEK AND ON HER CHEST, I WIPE CHLOE DOWN
 ONCE AGAIN, I SAW NO MORE BLOOD OR WHAT I THOUGHT
 WAS BLOOD. I THEN TOOK HER TO HER ROOM AND LAID HER
 IN THE CRIB AND TURNED HER MUSIC ON THAT SHE
 SLEEPS BY SOMETIMES. MAYBE 1 TO 2 MINUTES, LATER
 BECKY COME'S BACK FROM THE STORE, ^(BECKY) SHE WENT
 TO CHECK ON CHLOE, AFTER THAT BECKY CAME INTO
 THE LIVING ROOM WHERE I WAS FLIPPING THROUGH THE
 CHANNELS, BECKY TOLD ME SHE HADN'T GOTTEN THE
 DVD'S. WE TALKED FOR A FEW MINUTES, THEN BECKY LEFT
 TO GO TO BLOCKBUSTER. I SAT IN THE CHAIR A FEW

MORE MINUTES. THEN I GOT UP TO FINISH WHAT I HAD STARTED EARLIER (CLEANING UP). SINCE CHLOE HAD SPIT UP ON THE BED LINENS, I REMOVED THEM AND PUT THEM BY THE LAUNDRY. ^(SKH) I GOT SOME TO DRINK, THEN WENT TO USE THE BATHROOM, JUST WHEN I WAS ABOUT THROUGH BECKY CAME BACK, SAID HELLO TO LET ME KNOW SHE WAS BACK, I TOLD HER I WAS USING THE BATHROOM. THE NEXT THING I HEARD WAS BECKY SCREAMING CHLOE'S NAME AND SAYING SHE'S NOT BREATHING, ^(SKH) I THEN DROVE BECKY AND CHLOE TO COMMUNITY HOSPITAL AS FAST AS I COULD. I DID NOT SAY ANYTHING ABOUT DROPPING HER AND SHAKING HER! I SHOULD HAVE, I WAS JUST SCARED! I AM DEEPLY SORRY.

Witness: John A. Manly
 Witness: Frank Lee A-11
 Time: 8:47 P.M. 2/23/02

Jeffrey K. Havens

2-23-02

8:47 P.M.

Jun. 8. 2011 12:35PM

No. 1476 P. 1

STATE OF MISSISSIPPI

COUNTY OF PIKEAFFIDAVIT OF GUS SERMOS, ESQ.

I, Gus Sermos, affiant, being over the age of eighteen (18) and an adult citizen of the State of Mississippi, being of sound mind and body, and after being duly sworn, states under oath the following:

1. My name is Gus Sermos. I am, and was at all times relevant to the matters herein, a duly licensed attorney in good standing with the State of Mississippi. I am competent to testify to the facts contained in this Affidavit and do so on my personal knowledge.

2. Pursuant to the apparent homicide of Chloe Britt on February 21, 2002, I was appointed trial counsel for the defendant, Jeffrey Havard, during his capital murder trial.

3. Jeffrey Havard, Rebecca Britt's live-in boyfriend, was indicted, tried, and convicted of the murder and sexual battery of Rebecca's six-month old daughter, Chloe Britt. I was lead counsel for the defense during the capital murder trial of Jeffrey Havard.

4. During discovery, in preparation for trial, my records reflect that I watched a videotape of the interview of Rebecca Britt that was conducted the day after the murder by the Adams County Sheriff's office.

5. Tom Rosenblatt, the Assistant District Attorney who prosecuted the case, and Lt. Manley, were present at that time and watched the videotaped interview of Rebecca Britt with me at the Adams County Sheriff's office.

6. To the best of my knowledge, belief, and memory, there was nothing

Jun. 8. 2011 12:35PM

No. 1476 P. 2

exculpatory regarding Jeffrey Havard in the Rebecca Britt interview.

7. Further, to the best of my knowledge, belief, and memory, Rebecca Britt's trial testimony was consistent with the videotaped interview conducted by the Sheriff's office.

8. I was contacted several months ago by Mark Jicka, one of the attorneys currently representing Jeffrey Havard in his petition for federal habeas relief and his motion for relief from judgment or to leave to file successive petition for post-conviction relief. Mr. Jicka asked me to provide an affidavit that I had never seen nor been provided the videotaped interview of Rebecca Britt.

9. I told Mark Jicka I would not provide such an affidavit without first checking my records, as I recalled having watched an interview with Tom Rosenblatt and Lt. Manley at the Sheriff's department.

10. I checked my records from 2002, which showed that I did indeed watch the Rebecca Britt videotaped interview taken by the Sheriff's department. My records indicated that Assistant District Attorney Tom Rosenblatt and Lt. Manley were also present at the Adams County Sheriff's office when I watched the interview tape.

11. I left a message on Mark Jicka's voicemail stating that I had been aware of the Rebecca Britt interview and that I had personally watched the videotaped interview of Rebecca Britt.

12. Additionally, to the best of my information, memory, and belief, there was nothing exculpatory in the Rebecca Britt videotaped interview regarding the defendant Jeffrey Havard.

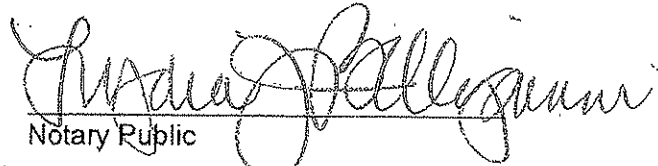
Jun. 8. 2011 12:35PM

* No. 1476 P. 3

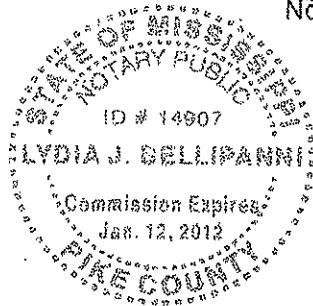
13. Further, affiant sayeth not.


GUS SERMOS, ESQ.

Sworn to and subscribed before me, this the 8th day of June, 2011.


Notary Public

My commission expires:



STATE OF MISSISSIPPI

COUNTY OF ADAMS

AFFIDAVIT OF TOM ROSENBLATT

I, Tom Rosenblatt, affiant, being over the age of eighteen (18) and an adult citizen of the State of Mississippi, being of sound mind and body, and after being duly sworn, states under oath the following:

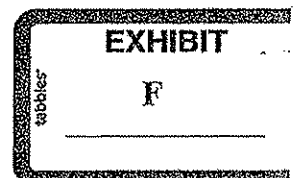
1. My name is Tom Rosenblatt, and I acted as Assistant District Attorney in the capital murder trial of Jeffrey Havard. During all times relevant to the matters herein, I was a duly licensed attorney with the state of Mississippi, and acting as Assistant District Attorney in Adams County, Mississippi. I am competent to testify to the facts contained in this Affidavit and do so on my personal knowledge.

2. Pursuant to the apparent homicide of Chloe Britt on February 21, 2002, the District Attorney, Ronnie Harper, requested that I assist in the preparation and prosecution of the trial in the matter of the capital murder of Chloe Britt.

3. Jeffrey Havard, Rebecca Britt's live-in boyfriend, was indicted, tried, and convicted of the murder and sexual battery of Rebecca's six-month old daughter, Chloe Britt. I was acting prosecutor for the State during the capital murder trial of Jeffrey Havard.

4. During the discovery phase in preparation for trial, I recall that I watched a videotape of the interview of Rebecca Britt that was conducted by the Adams County Sheriff's office.

5. Gus Sermos, the court-appointed attorney for the defense, was present at



that same time. Mr. Sermos watched the videotaped interview of Rebecca Britt with me and Lt. Manley at the Adams County Sheriff's Department.

6. To the best of my knowledge, belief, and memory, there was nothing exculpatory regarding Jeffrey Havard in the Rebecca Britt interview.

7. To the best of my knowledge, belief, and memory, Rebecca Britt's trial testimony was consistent with the videotaped interview conducted by the Sheriff's office.

8. To the best of my knowledge, belief, and memory, no exculpatory evidence was ever withheld from Gus Sermos, attorney for Jeffrey Havard.

9. Further, affiant sayeth not.



TOM ROSENBLATT

Sworn to and subscribed before me, this the 8 day of June 2011,


Notary Public

My commission expires:

10/30/2014

