Unlock the Truth
INNOCENCE PROJECT OF FLORIDA

Innocence Project of Florida
1100 East Park Ave
Tallahassee, FL 32301
Phone: (850) 561 - 6767
www.floridainnocence.org

July 20, 2020

The Office of Executive Clemency
Florida Commission on Offender Review
4070 Esplanade Way
Tallahassee, FL 32399-2450

Re: Amanda Brumfield, Application for Commutation of Sentence

Dear Clemency Board Member:

On October 3, 2008, Amanda Brumfield baby-sat her goddaughter Olivia Garcia, a one-year-old child that she loved. She had plans to take Olivia and her own children to a theme park the next day. This normal evening turned into a nightmare when what appeared to be a minor injury from a fall from Olivia's playpen led to Olivia's hospitalization and death the next day. Doctors and prosecutors took a death from an accidental fall and elevated it to a criminal act. This course of events follows a pattern when women—babysitters, day care workers, and even mothers—have a child die in their care. Despite contrary evidence, they assume abuse and pin that abuse on the woman who is always the last person to have been with the child before his or her demise. Child abuse convictions stemming from diagnoses of Shaken Baby Syndrome or Abusive Head Trauma are the leading cause of wrongful convictions of women. Here, prosecutors used misleading, incorrect testimony to obtain Amanda's conviction. But more importantly, there is medical and scientific evidence that stands as clear evidence of innocence that, in this clemency proceeding, serves as a valid justification for commuting Amanda's sentence for this tragedy that had no criminal genesis.

Amanda herself was a mother with a career as a certified financial advisor, with no history of abusing children, and a history of love and support for Olivia and her family. Yet, she was charged with Olivia's murder, aggravated child abuse, and aggravated manslaughter. This stemmed from an accident wherein Olivia sustained injuries of a skull fracture, subdural hematoma, brain swelling, and retinal hemorrhages. The theory of prosecution was that these injuries could have only been caused by an unspecified method of abuse, even though this theory was not supported by consensus medical evidence at the time, and even though Olivia's injuries were entirely consistent with Amanda's contemporaneous version of events—the child fell out of her playpen, hitting her head on the carpeted concrete floor.

Consensus medical and scientific evidence not presented to the jury demonstrates that (1) this child's brain injuries had objective signs of healing, proving their existence prior to the night in question and likely aggravated by Olivia's accidental fall, and (2) that Olivia could have

obtained her brain and skull injuries from such a fall, despite testimony to the contrary by the State's experts.

While this child's death was certainly a tragedy, it was unrelated to any sort of abuse, and Ms. Brumfield's continued incarceration for a death of child she loved caused by an unfortunate accidental fall further compounds this tragedy.

Pursuant to Rule 8(A) of the Rules of Executive Clemency, applicants are eligible for commutation only after completing one-third of their sentence, or one-half of their sentence if there is a minimum mandatory sentence. Ms. Brumfield has served eight years of a twenty-year sentence for aggravated manslaughter of a child she received in Ninth Judicial Circuit Case No. 2009-CF-007913. As such, she is eligible under Rule 8(A). Further, as this case is of exceptional merit, we request expedited review pursuant to Rule 17.

This letter serves to provide a brief background and history of the case, as well as the evidence in support of Ms. Brumfield's innocence. It also includes a detailed transition plan to ensure a positive and successful reintegration back into free society (attached at Tab D). It is our hope that after your review, you will find her case worthy of clemency.

CASE FACTS

Amanda Brumfield and Heather Murphy were close friends. Murphy selected Brumfield to serve as Godmother to Olivia Garcia, Murphy's one-year-old daughter who died in this case.

I. *The Night Olivia Garcia Died*

On October 3, 2008, around 8:00 p.m., Ms. Murphy and Amanda treated their children to Chick-fil-A and ice cream, and all five children, including Olivia, went to Amanda's home to spend the night. Prior to this evening, Amanda had not seen Ms. Murphy's children for about two weeks. (T. 150). At Amanda's home, Ms. Murphy set up Olivia's portable playpen and Amanda placed Olivia inside the playpen to sleep. At about 11:00 p.m., Ms. Murphy left.

Amanda would later testify that, at around 11:40 p.m., upon returning from the bathroom, Amanda found Olivia straddling the edge of her playpen.[1] (T. 602). Surprised, Amanda called out "Olivia," and Olivia fell out of the playpen and onto the floor. (T. 604). Amanda lifted Olivia from the floor and dabbed the cut on her tongue with paper towels to soak up the blood. (T. 605). Olivia cried for about a minute. (T. 605). Amanda held Olivia for 15-20 minutes until Olivia wanted to get down. (T. 606). At 11:44 p.m., Amanda sent a text message to Ms. Murphy, writing, "[s]o, funny little side note with a sad end! Olivia can climb out of her playpen but has learned she has [sic] perfected the landing." (T. 647). Olivia played around the house, ate fruit snacks and a banana, and Amanda painted Olivia's fingernails. (T. 607-09). After her nails dried, Amanda laid beside Olivia on the loveseat while Amanda watched television. (T. 609-10). Amanda sent another text to Ms. Murphy, requesting permission to host the children for another night. Amanda texted that she missed caring for the children. (T. 151).

[1] This was not Olivia's first attempt to escape the playpen; in the past, Olivia had tried to escape the playpen by putting her hand on the playpen rail, pressing her feet against the mesh, and trying to pull herself over. (T. 606).

Around 2:00 a.m., during a phone conversation with her husband, Amanda picked up Olivia to move her into her playpen and noticed that Olivia did not make any movements. (T. 612-15). Mr. Brumfield assured Amanda he would be home soon to figure things out. (T. 276, 615). Amanda tried to get a response from Olivia, but the child did not respond. (T. 617). When her husband entered the home, Amanda screamed, "Call 911." (T. 617).

At 2:19 a.m., Mr. Brumfield called 911 and dispatch coached Amanda through CPR. (T. 93, 98-100). Five minutes later,[2] the police arrived and took over CPR. (T. 62, 64). Sergeant Nylander testified that Olivia felt warm and made gurgling sounds, indicating an obstruction in her airway. (T. 73-74). He also observed vomit both in Olivia's mouth and on the carpet beside her body. (T. 65). At 2:30 a.m., the paramedics arrived, took over CPR and moved Olivia into the ambulance to intubate her. (T. 83-86). At 2:48 a.m., doctors pronounced Olivia Garcia dead.

II. *The Investigation & Autopsy*

At 4:00 a.m., Detective Jeffrey Iannuzzi and the medical-examiner investigator entered Amanda's home. Inside the house, both investigators asked Amanda to reenact the night's events using a doll that did not represent Olivia's size or weight. (T. 18-19, 227-28).

Dr. Garavaglia, the chief Medical Examiner of Orange and Osceola counties, performed Olivia's autopsy. She found injuries, including a skull fracture, a small subdural hemorrhage, bilateral retinal hemorrhaging, scalp contusions, and brain contusions. (T. 372-75). Garavaglia concluded these injuries were inflicted and the manner of death was homicide. (T. 329). Dr. Garavaglia did not preserve any parts of the skull for defense inspection. (T. 360).

Dr. Gary Pearl, a neuropathologist, provided a report finding that Olivia had acute, organizing (subacute) and old subdural hematomas; a contusion (bruise) on the left temporal lobe of the brain; a focal subarachnoid hemorrhage; cerebral edema (brain swelling); and acute bilateral retinal hemorrhages. He found no evidence of diffuse traumatic axonal injury. Dr. Pearl concluded that these findings "are consistent with a significant impact injury. Of note, subdural hematomas of different ages are present." Report of Dr. Gary S. Pearl, Olivia Garcia, ME 2008-1246, Neuropathology Report (Nov. 6, 2008).

Based on these medical findings, police officers arrested Amanda for the alleged abuse-related death of Olivia.

III. *The State's Theory*

At trial, the State told the jury that Amanda killed Olivia. The State argued that Amanda's version of events leading to Olivia's death was completely implausible for three reasons: (1) Olivia could not have climbed out of the playpen; (2) a fall from the playpen could not have resulted in fatal trauma, and thus an intentionally inflicted blunt force trauma must have occurred; and (3) that given her injuries, Olivia would have instantly collapsed and died soon after, suggesting that Amanda's report of the events leading up to Olivia's death was false. The State argued Amanda

[2] Ocoee Police Department Narrative/Supplemental Report, Oct. 4, 2008, pg. 3.

must have killed the child by abusing her in some unspecified way; Amanda snapped because she had a big day planned and was frustrated that the child would not go to sleep; Amanda's texts about the child's fall and related matters were odd and actually constituted admissions; and Amanda had a difficult relationship with her stepson, which somehow suggested she was more likely to have abused Olivia.

To support these claims, the State elicited the testimony of four doctors. All four testified that Olivia could not have died from the fall described by Amanda, both because the injuries could not have been caused by such a fall and because it was physically impossible for a child of Olivia's age to climb out of a playpen. The four all concluded that, based on the constellation of Olivia's injuries, Olivia died from intentionally inflicted blunt force trauma and there could be no other cause of death.

a. Retinal Hemorrhages

The autopsy found that Olivia had retinal hemorrhages, or bleeding behind her eyes. Two of the State's experts—Dr. Mary Case and Dr. Jan Garavaglia—categorically stated that "***there's no*** accidental mechanism that causes the retinal hemorrhages we see of this type in young children," (T. 694-95), and the retinal hemorrhages were "completely inconsistent with the defendant's version of events." (T. 432).

b. The Skull Fracture

Dr. Garavaglia and Dr. Case both testified that the location and severity of the skull fracture was inconsistent with an accidental fall and could only be caused by a car accident or being slammed against a wall, proving Olivia was abused. (T. 313, 385, 691).

c. Hemorrhages and Contusions

The State's experts testified that Olivia had brain injuries that "could not have been caused by a fall" and, therefore, were exclusive of abuse. (T. 392). These experts also provided testimony that that these injuries were fresh to suggest to the jury that the alleged abuse must have occurred at a time while Olivia was in Amanda's care. (T. 161, 347-49, 80-82). This evidence was elicited to undermine the logical conclusion from the undisputed presence of older brain injuries in Olivia—that the fall that Amanda reported exacerbated the earlier head injuries identified in the neuropathology report and sustained well before Olivia was in Amanda's care.

d. Diffuse Axonal Injury

In opening statements, without telling the jury the actual testing for diffuse axonal injury was negative, the prosecution told the jury that the "symptoms of the baby being lethargic, stopping breathing . . . axonal injury that was going on, the baby wouldn't have lasted more than 15 minutes." (T. 34-35). All but one of the State's experts conceded that they could not say with certainty that diffuse traumatic axonal injury was present. Nonetheless, they speculated that, given more time, it might have shown up. (T. 171, 378). In contrast, Dr. Case stated definitively, despite

the negative test, that Olivia's brain showed signs of diffuse axonal injury, and that she had a special, though unspecified, skill at detecting it. (T. 700-01, 735-36).

The State offered this testimony to suggest that Olivia must have been abused and that the alleged abuse must have occurred while Olivia was in Amanda's care.

e. Cut on the tongue

Dr. Garavaglia found two lacerations on Olivia's tongue at autopsy, which she and Dr. Case testified would have made Olivia unable to eat immediately after receiving the injury. (T. 304, 706). Yet, at autopsy, Olivia was found to have undigested fruit snacks and banana in her stomach, confirming Amanda's account. (T. 325, 380-81).

f. Escape from the Playpen

The final point the prosecution hammered home was that Olivia would have been physically unable to climb out of her playpen. Dr. Kesler, a Child Protection Team pediatrician, testified that, "based on [his] knowledge of developmental milestones, her height and her weight . . . that ***it would be impossible***" for Olivia to have climbed out of her playpen. (T. 409, 411, 412, 416, 425-26) (emphasis added). Dr. Case agreed. (T. 711-12).

IV. *The Defense's Case at Trial*

The Defense presented three witnesses at trial: Dr. Ronald Uscinski, Dr. John Plunkett, and Amanda Brumfield. Amanda described the same events that she had described over the previous two and a half years and continues to describe to this day. (T. 576-653).

Dr. Uscinski, a neurosurgeon, testified he believed Olivia died from a head injury caused by falling from the rail of the crib, complicated by lack of oxygen from brain swelling and vomit in her airway, which are well-known dangers after a person suffers a head injury and can lead to death. (T. 444-48). He testified that Olivia's brain swelling was consistent with hypoxia, or lack of oxygen. (T. 439, 452).

Dr. Plunkett, a forensic pathologist, testified that Olivia's injuries were consistent with the fall Amanda described. He told the jury that he authored a 2001 article in a pathology journal chronicling a number of "short fall" fatalities in children and one was a child of similar characteristics to Olivia who fell from approximately two feet (off a play structure), onto carpet-covered concrete. After a brief period of lucidity, the child collapsed and died. This fall from the study was videotaped (T. 484, 525), but the trial court inexplicably did not allow it to be shown to the jury. (T. 498). In the video, a 23-month old girl was filmed by her grandmother while playing on a play structure. The video shows the girl accidently falling a short distance off the structure, striking her head on carpet which overlays concrete. She eventually died as a result of this accidental short fall.

Dr. Plunkett also performed an analysis of slides prepared by the Medical Examiner's Office. (T. 513). Since Dr. Garavaglia had not taken samples of the skull fracture, the only way to

date the fracture was to date the findings above and below the fracture, specifically, the subgaleal hemorrhages (hemorrhages on the interior side of the scalp, above the fracture) and the subdural hemorrhage (hemorrhage below the skull and hence below the fracture). Dr. Plunkett found iron in two of the three samples, with significant iron in one sample, which demonstrated signs of healing, indicating that this scalp injury occurred well before Olivia's stay at Amanda's home, possibly in the 3-4 day range or even more.[3] (T. 513). Dr. Plunkett was not allowed to show the jury the results of this iron test (T. 502), which were slides that showed in bright blue the presence of iron, which established that the State's experts were wrong and that the scalp findings preceded the fall at Amanda's home.

Dr. Plunkett testified that a fall of the type Amanda described could have caused Olivia's fatal injuries on its own, as demonstrated in the videotape that he was not permitted to show. He further testified that Olivia's preexisting injuries, as confirmed by the iron stained slides that he was not permitted to show, likely contributed to the tragic outcome. (T. 544).

Given the reasonable doubt about guilt, the jury acquitted Amanda Brumfield of Murder and Aggravated Child Abuse, but still convicted her of Aggravated Manslaughter of a Child on May 27th, 2011. She was later sentenced to twenty years in prison for what appears to be a tragic death as a result of an accidental fall.

VI. Subsequent reviews

In late 2012, Sixty Minutes considered running a special on this case and asked for independent evaluations on the age of the subgaleal and subdural hemorrhages. To help resolve the timing on the subgaleal hemorrhage, prior counsel sent the photomicrographs of the slides to two independent pathology experts who both saw distinct signs of healing. These slides confirmed that at least some portion of the subgaleal hemorrhage preceded the period that Amanda cared for Olivia, suggesting that the fracture, which lay between these hemorrhages, may also have been pre-existing. A biomechanical expert, Dr. Chris Van Ee, similarly confirmed that the forces from a short fall of the type described by Amanda are sufficient to cause death in some instances even in the absence of pre-existing injuries.

These consultations confirmed the medical and biomechanical evidence supporting Amanda's innocence and are proof that Olivia died from an accidental fall rather than from any intentionally inflicted abuse.

PROCEDURAL HISTORY

On June 24, 2009, Amanda was charged with Felony Murder, Aggravated Child Abuse and Aggravated Manslaughter of a Child. Amanda pled not guilty to all counts. After a jury trial

[3] The age of the subdural hemorrhage was not in dispute since Dr. Pearl confirmed in his neuropathology report that the subdural hemorrhage was of three ages: chronic (weeks or more), subacute (days old) and acute (fresh). *See* Pearl Report, *supra* p. 8. Dr. Garavaglia similarly described one hematoma as "very old," one as "subacute, meaning . . . at least a couple of days to a couple of weeks earlier," and one as acute, meaning within 24 hours. (T. 367). As Dr. Garavaglia acknowledged, this evidence confirmed that Olivia had head injuries preceding her overnight stay at Amanda's home.

on May 24-27, 2011, the jury returned a guilty verdict on Count III, while acquitting on Counts I and II. (T. 846). On October 6, 2011, the circuit court sentenced Amanda to twenty years in prison. On November 5, 2013, the Fifth District Court of Appeal *per curiam affirmed* Amanda's judgment and sentence. *See Brumfield v. State*, 126 So. 3d 1069 (Fla. 5th DCA 2013). The district court also denied Amanda's Motion for Rehearing and Rehearing En Banc on December 13, 2013 and issued mandate on January 2, 2014.

On December 10, 2014, Amanda retained undersigned counsel from the Innocence Project of Florida, as well as Wisconsin attorney Katherine Judson (admitted *pro hac vice*). Amanda filed an initial Motion for Postconviction Relief on December 19, 2014 alleging multiple instances of the State presenting false expert testimony and multiple instances of ineffective assistance of counsel. The circuit court struck the Motion due to its length and provided Amanda leave to file a shorter amended motion no more than 60 pages in length, which she did on January 12, 2015. The court ordered the State to respond to the Amended Motion on March 22, 2016 and the State filed that Response on May 24, 2016. Amanda filed a Reply on June 23, 2016.

During the pendency of the Amended Motion, the circuit court issued an order on December 14, 2016 allowing the defense to perpetuate the testimony of Dr. John Plunkett by deposition due to his terminal illness at that time. That deposition occurred on May 25, 2017; Dr. Plunkett has since passed away.

On April 17, 2018, the circuit court issued an order summarily denying Amanda's Amended Motion for Postconviction Relief. That order found that because Amanda's claims purportedly applied to intentional crimes and she was acquitted of two counts requiring intent, the claims had no merit.

On November 30, 2018, the Fifth District Court of Appeal affirmed without comment most of the circuit court's denial, but reversed the summary denial of certain portions of Claim Two, which dealt with ineffective assistance of counsel for failure to investigate and present certain experts. *See Brumfield v. State*, 259 So. 2d 986 (Fla. 5th DCA 2018). Specifically, the district court found that Amanda's sub-claims that counsel was ineffective for failing to call biomechanical engineer Dr. Chris Van Ee and forensic pathologist and associate medical examiner Dr. Mark Shuman were facially sufficient and the order and attached record portions did not conclusively refute the claim. *Id.* at 986. The Fifth District remanded for an evidentiary hearing on these sub-claims. *Id.* at 986-87. Additionally, the Fifth District reversed the denial of two additional sub-claims related to trial counsel's failure to call two additional unnamed pathologists who performed a preliminary review of the autopsy slides. Although it found these claims were facially insufficient for failure to identify the names of the experts, the circuit judge had improperly denied the claims without first giving Amanda an opportunity to amend the insufficiency. The Fifth District remanded for this Court to provide that opportunity. *Id.*

On January 23, 2019, the circuit court issued an Order in compliance with the Fifth District's opinion striking Amanda's Amended Motion and providing her 60 days to file an amended motion to cure the insufficiency identified in the Fifth District's opinion. On March 22, 2019, Amanda filed her Second Amended Motion for Postconviction Relief pursuant to that order. On April 22, 2019, the circuit court ordered an evidentiary hearing on the remaining postconviction

claims. Despite the court scheduling this hearing twice, it has been cancelled twice, the second time pursuant to restrictions on in-person hearings due to the coronavirus pandemic. This evidentiary hearing is currently scheduled for September 2020.

EVIDENCE OF INNOCENCE

While the legal basis for Amanda's amended motions for postconviction relief relied on false statements by expert witnesses for the State and failures by her trial counsel, the nature of those claims were that key evidence indicating that Olivia's injuries were the result of an accidental fall were obscured or excluded from the jury altogether by misstatements of the State's witnesses and failures by counsel. While a court may or may not agree that the prosecution committed due process violations or that Amanda's trial counsel was constitutionally ineffective under the burdensome standard for such a claim, the available medical and scientific evidence was objective proof that the death of the child in this case was the result of an accidental fall that was not caused by Amanda Brumfield.

This medical and scientific evidence likely would have led to an acquittal in a case where the jury already had doubts about guilt based on its acquittal on the two most serious charges. But more importantly, this evidence stands as clear evidence of innocence that, in this clemency proceeding, serves as a valid justification for commuting Amanda's sentence for this tragedy that had no criminal genesis.

The evidence of innocence is as follows:

- **A Child Like Olivia Would Have Been Able to Climb Out of Her Playpen:** Dr. Kesler, a pediatrician, testified repeatedly that, "based on [his] knowledge of developmental milestones, her height and her weight . . . that ***it would be impossible***" for Olivia to have climbed out of her playpen. (T. 409, 411, 412, 416, 425-26) (emphasis added). He further stated that this would have required "muscle strength that you don't see in a one-year-old." (T. 411). Dr. Case agreed on rebuttal. (T. 711-12). These statements of categorical impossibility are simply false. This testimony was at odds with the literature available to the prosecution and its experts. In 2011, the journal *Pediatrics* published a large, nationwide, peer-reviewed study of injuries associated with cribs, playpens, and bassinets.[4] Of the 200,000 patients between the ages of 0 and 23 months who sustained injuries, 120,319 were injured after falling from a crib, playpen or bassinet. 37,883 of these patients suffered closed head injuries; 21,573 suffered some type of fracture. Nearly two-thirds of the crib-related injuries resulted from falls. The study reported 2,140 total crib, playpen or bassinet-related deaths, which is likely an underestimate.[5] This shows that children ***Olivia's age and younger*** fall from their cribs and playpens, and most of them do it on their own; only 1.4% of fall-related injury events involve another person.[6] The US average annual rate of crib-related fall injury is 8.1 per 10,000 children younger than two years of age, and

[4] Yeh et al., *Injuries Associated with Cribs, Playpens, and Bassinets Among Young Children in the US*, 127 PEDIATRICS 479 (2011), *available at* http://pediatrics.aappublications.org/content/127/3/479.full (last visited Dec. 9, 2014).

[5] *Id.* at 482-83, 485.

[6] *Id.*

the most commonly injured body region is the head and/or neck, in part, because young children have a high center of gravity, which causes them to fall headfirst.[7] This study was the first to examine crib-related injuries on a national level, but it is not the first to look at the serious injuries occurring when young children fall and raise the concern that parents and caregivers might not recognize the danger of a short fall.[8] These studies are precisely why parenting books and websites acknowledge the risk of toddlers, even as young as Olivia, climbing out of their cribs and playpens and caution parents accordingly.[9] A simple internet search for children climbing out of cribs yields many videos of escapes from cribs and playpens in exactly the way Amanda described and which Dr. Kesler wrongly called "impossible."

- **Olivia Could Have Sustained Her Injuries from the Fall from the Playpen:** Experts for the prosecution testified that a fall from the playpen could not possibly have caused Olivia's injuries. Yet, scientific literature demonstrates that falls, such as from a playpen, can and do cause serious injury and death, including the injuries like Olivia's.[10] This phenomenon is well-recognized in medical literature, child safety literature, and the popular press. The Consumer Products Safety Commission has issued alerts about the potential danger or even lethality of short-distance falls from shopping carts,[11] child seats[12] and high chairs,[13] to name only a few. In 2001, Dr. Case, an expert for the State in this case, attempted to have the National Association of Medical Examiners (NAME) publish her paper in which she argued that injuries like those sustained by Olivia were exclusively caused by abuse, but this paper **did not pass editorial peer review** at the time of its publication, and was officially withdrawn in 2006, never to reappear. Similarly, in 2009, the American Academy of Pediatrics revised its official position statement, which said its members should presume abuse when a child younger than one year has intracranial

---

7 *Id.*

8 *See, e.g.*, Richard A. Greenberg et al., *Infant Carrier-Related Falls: An Unrecognized Danger*, 25 PEDIATRIC EMERGENCY CARE 66 (2009) (examined 62 infant carrier falls, resulting in 22 hospitalizations, including 6 intensive care unit admissions; 13 of the hospitalized patients had intracranial injuries, including 8 patients with subdural hematoma, 1 with cerebral contusion, and 1 with subarachnoid hematoma, and 11 with concurrent skull fracture).

9 *See, e.g.*, The Transition from Crib to Bed, *at* http://www.parents.com/toddlers-preschoolers/sleep/101/transitioning-toddlers-from-crib-to-bed/?page=1 ("Most toddlers have the ability to hop over the crib rail when they are about 35 inches tall and between 18 and 24 months of age. *Of course, some babies are particularly agile and will attempt to climb out sooner* (at which point they should be moved to a bed).") (emphasis added).

10 *See, e.g.*, Hall et. al., *Mortality of Childhood Falls*, 29 J. Trauma 1273 (1989); Plunkett J, *Fatal Pediatric Head Injuries Caused by Short-Distance Falls*, 22 Am. J. Forensic Med. and Pathol. 1 (2001); Lantz & Couture, *Fatal Acute Intracranial Injury, Subdural Hematoma, and Retinal Hemorrhages Caused by Stairway Fall*, J. Forensic Sci. (2011); Denton & Mileusnic, *Delayed Sudden Death in an Infant Following an Accidental Fall*, 24 AM. J. FORENSIC MED. PATHOL. 371 (December 2003).

11 U.S. Consumer Product Safety Comm'n Alert, Falls from Shopping Carts Cause Serious Head Injuries to Children, *at* http://www.cpsc.gov/pagefiles/122338/5075.pdf (last visited Dec. 9, 2014).

12 Press Release, U.S. Consumer Product Safety Comm'n, Baby Seats Recalled for Repair by Bumbo International Due to Fall Hazard (Aug. 15, 2012), *at* http://www.cpsc.gov/en/Recalls/2012/Baby-Seats-Recalled-for-Repair-by-Bumbo-International-Due-to-Fall-Hazard/ (last visited Dec. 9, 2014); Michael Finney, Bumbo Baby Seats Recalled Over Safety Danger, ABC News, Aug. 16, 2012, *at* http://abc7news.com/archive/8774353/ (last visited Dec. 9, 2014); Laurent Belsie, Bumbo baby seats: unsafe at any height, Christian Sci. Monitor, Aug. 15, 2012, *at* http://www.csmonitor.com/Business/2012/0815/Bumbo-baby-seats-unsafe-at-any-height (last visited Dec. 9, 2014).

13 Press Release, U.S. Consumer Product Safety Comm'n, Fisher-Price Recalls 3-in-1 High Chairs Due to Fall Hazard (Mar. 24, 2009), *at* http://www.cpsc.gov/en/Recalls/2009/Fisher-Price-Recalls-3-in-1-High-Chairs-Due-to-Fall-Hazard/ (last visited Dec. 9, 2014).

injuries because those injuries cannot be caused by short falls,[14] to remove the language regarding both the impossibility of such injuries resulting from a short fall and the presumption of abuse in such cases.[15] Recently, a court in New York rejected claims, similar to those made by the prosecution's experts in this case, finding that "even falls of just a few feet generate levels of force and velocity that exceed known thresholds for brain injury" and claims to the contrary, like those in this case have "been proven to be false."[16]

- **Olivia's Injuries Were Not Exclusive to Abuse:** Experts for the prosecution and the defense agreed that Olivia's injuries could have been caused by impact against a hard, flat surface. And Amanda described precisely that, a fall on a hard, flat, carpeted concrete floor. In addition, microscopic slides confirmed the presence of pre-existing head injuries. No one disputes that an abuser *could* slam a child against a hard, flat surface, and injuries or death *could* be caused in that way. But there is no evidence that actually occurred in this case, nor that the doctors who testified for the prosecution have a reliable, scientific method to distinguish abusive from accidental injuries, or that the scientific or medical literature supports such an endeavor.

    - **Skull Fracture**: At trial, Dr. Garavaglia testified that Olivia's skull fracture was the ". . . type of injury I would see where somebody is . . . taken and just slammed against something hard." (T. 313, 385). Dr. Case agreed, testifying that the location of the fracture was indicative of abuse. (T. 691). There is no evidence in the medical literature that supports the assertion that abusive injuries only happen to one part of head while accidents only happen to another. Verified accidental falls have resulted in skull fractures with intracranial injury to the back of the head that progressed to death. One such example is the 2003 article by Denton and Mileusnic, where an infant fell backward off a bed, sustained a skull fracture and intracranial injuries, experienced a lucid interval and later collapsed and progressed to death. The location of a skull fracture cannot determine whether an injury was the result of abuse or accident. Studies consistently show that skull fractures are most often the result of accidents. In 2010, Dr. John Leventhal and colleagues published a study showing that the presence of fractures, whether alone or in conjunction with intracranial injury (ICI) **do not necessarily indicate abuse**.[17] Other studies have shown that skull fractures are not significantly correlated with abuse,[18] that linear

[14] *See* American Academy of Pediatrics, Committee on Child Abuse and Neglect, *Shaken Baby Syndrome: Rotational Cranial Injuries-Technical Report*, 108 Pediatrics 206 (2001).

[15] Cindy Christian et al, *Abusive Head Trauma in Infants and Children*, 123 Pediatrics 1409 (2009) (emphasis added).

[16] *People v. Bailey*, Case No. 2001-0490 (Monroe County Ct., N.Y., Dec. 16, 2014). In *Bailey*, a toddler fell from an 18" chair and died. At trial, the prosecution relied on shaken baby/shaken impact theory to claim that the described short fall would not account for the findings which, as in this case, included brain swelling (edema), a brain contusion and extensive retinal hemorrhages.

[17] Leventhal et al., *Fractures and Traumatic Brain Injuries: Abuse Versus Accidents in a US Database of Hospitalized Children*, 126 Pediatrics e104 (2010) (emphasis added). In this study, accidental falls were the most common cause of the injuries. Of all the hospitalized children in the study, abuse represented the cause of injuries in only 14.4% of cases.

[18] Maguire et al., *What Clinical Features Distinguish Inflicted from Non-Inflicted Injury? A Systematic Review*, 94 ARCH. DIS. CHILD. 860, 865 (2009).

fractures like Olivia's have "low specificity" for abuse,[19] were more associated with non-abuse than abuse,[20] and have a variety of mechanisms that include falls. Studies in hospital settings do show serious injuries resulting from low-velocity falls, including skull fractures, cerebral contusions, and encephalopathy.[21] Other studies show skull fractures and closed head injuries from verified falls. Despite the testimony at trial, falls from short distances are well recognized to cause serious injury and death.[22] The testimony that Olivia's skull fracture could only have been caused by abuse was false.

- **Retinal Hemorrhages**: All four of the State's experts testified to some variation of the same categorical statement: Olivia's retinal hemorrhages were not the result of an accident. However, the only conclusion to be drawn from a review of the literature is that retinal hemorrhages appear frequently in severe head injury, **whatever its cause**.[23] The myth that only abuse including rapid acceleration/deceleration forces can cause such eye injuries has been debunked.[24] Studies have shown that retinal hemorrhages are seen in natural, accidental, and homicidal deaths and are not diagnostic of abuse,[25] that eye evaluations are of "limited value" in child death investigations,[26] and retinal hemorrhages do not assist in distinguishing between accidental and abusive head injuries.[27] The *Bailey* court

---

[19] Emalee Flaherty et al., *Evaluating Children with Fractures for Child Physical Abuse*, 133 PEDIATRICS e477, e479 (2014) (noting that "linear skull fractures . . . have low specificity for child abuse").

[20] Maguire et al., *Estimating the Probability of AHT: A Pooled Analysis*, 128 PEDIATRICS e550 (2011) (the authors argued, however, that the association with non-abuse was not statistically significant).

[21] *See, e.g.*, C. Ruddick et al., *Head Trauma Outcomes of Verifiable Falls in Newborn Babies*, 95 ARCH. DIS. CHILD. (Fetal and Neonatal Ed.) 144 (2010).

[22] *See, e.g.*, American Academy of Pediatrics Committee on Injury Violence and Poison Prevention, *Shopping Cart-Related Injuries to Children*, 118 PEDIATRICS 825 (2006) ("Shopping cart–related injuries to children are common and can result in severe injury or even death. Most injuries result from falls from carts or cart tip-overs, and injuries to the head and neck represent three fourths of cases.").

[23] *See, e.g.*, Watts, P. & Obi, E., *Retinal folds and retinoschisis in accidental and non-accidental head injury*, Eye Advance [online publication], July 18, 2008 (comparing two case studies, one accidental and one non-accidental, with very similar ophthalmic findings); Bechtel, K. et al., *Characteristics That Distinguish Accidental From Abusive Injury in Hospitalized Young Children with Head Trauma*, 114 PEDIATRICS 165, 165-68 (2004); Levin, A, *Retinal Hemorrhage in Abusive Head Trauma*, 126 PEDIATRICS 961, 961-70 (2010); Longmuir, S.Q. et al., *Retinal hemorrhages in intubated pediatric intensive care patients*, 18 J. OF AAPOS 129, 129-33 (2014) (of the 85 eye examination conducted of intubated children in hospital, 7% were positive for retinal hemorrhages); Binenbaum, G. et al., *An Animal Study to Retinal Hemorrhages in Nonimpact Brain Injury*, 11 J. OF AAPOS 84, 84-85 (2007); Leuder, G.T. et al., *Perimacular Retinal Folds Simulating Nonaccidental Injury in an Infant,* 124 ARCHIVES OPHTHALMOLOGY 1782 (2006).

[24] Leuder, G.T. et al., *Perimacular Retinal Folds Simulating Nonaccidental Injury in an Infant,* 124 ARCHIVES OPHTHALMOLOGY 1782 (2006); Watts, P. & Obi, E., *Retinal folds and retinoschisis in accidental and non-accidental head injury*, Eye Advance [online publication], July 18, 2008 (comparing two case studies, one accidental and one non-accidental, with very similar ophthalmic findings).

[25] Matshes, E., *Retinal and Optic Nerve Sheath Hemorrhages Are Not Pathognomonic of Abusive Head Injury*, 16 PROC. OF THE AM. ACADEMY FORENSIC SCI. 272 (2010).

[26] *Id.*

[27] *See e.g.,* Uscinski, R., *Shaken Baby Syndrome: Fundamental Questions*, 16 BRITISH J. OF NEUROSURGERY 217 (2002) (suggesting that impact from a short distance fall can damage the brain stem respiratory center, causing hypoxia, swelling and an abrupt rise in intracranial pressure, leading to retinal hemorrhage; Plunkett, J., *Fatal Pediatric Head Injuries Caused by Short-Distance Falls*, 22 AM. J. OF FORENSIC MED. & PATHOLOGY 1 (2001) (out of the six children who died from short distance falls, four of the six who had a postmortem eye examination – a full

in New York, in vacating a similar conviction, found that similar testimony is no longer supported by the scientific literature, and acceleration-deceleration forces are no longer thought to be the only cause of retinal hemorrhaging. *See Bailey*, at 18, 23-24. A Federal District Judge recently came to the same conclusion in *Del Prete v. Hulett*, 10 F. Supp. 3d 907 (N.D. Ill. Jan. 27, 2014), after considering testimony by experts that retinal hemorrhages have causes other than abuse and cannot time an injury with specificity. *Id.* at 930-31, 932 n. 8. The testimony of the prosecution experts that they could distinguish between accidental and abusive head injury based on the presence or pattern of retinal hemorrhages was false.

- **Head and Brain Injuries**: The prosecution contended that Olivia's head and brain injuries were both too numerous and too severe to be of accidental origin and, therefore, could only be from abuse. Dr.Garavaglia implied that contusions only could have been caused by some unspecified assault by Amanda that somehow left no external signs. She then insisted Amanda caused the injuries, even though her own neuropathologist confirmed that Olivia had head injuries of varying ages. Contrary to the State's experts' claims, a scientific study supports the notion that a fall like Olivia's **could have** produced her injuries. Based on his 2001 study that included a videotaped fatal fall, Dr. Plunkett testified at trial that Olivia's injuries are entirely consistent with other children of similar size who have fallen from a similar height onto a similar surface.[28] An additional study by biomechanical engineer Dr. Chris Van Ee performed a biomechanical recreation of the child who fell in Dr. Plunkett's study, and confirmed that the force attendant to the recorded fall was sufficient to have caused injuries like Olivia's.[29] The State's experts erroneously suggested that because Olivia had a "coup/contrecoup" injury doctors could conclude she was subjected to some sort of extreme force. (T. 164-65, 387). No literature demonstrates a correlation between force and the presence of coup/contrecoup injury. Rather, the presence of such an injury is indicative of a moving head striking a hard, stationary surface and corroborates Amanda's report of Olivia's fall. Studies show that the presence or purported severity of brain injuries cannot serve to indicate the type or degree of force that created them.[30]

- **It is Undisputed that Olivia Sustained Previous Brain Injuries That Were Healing and Occurred Before She Was in Amanda's Care, That Could Have Been Exacerbated by the Described Fall**: Olivia sustained a brain injury that predated her death by at least four days. (T. 513). Olivia had not been in Amanda's care during this time. The existence of multiple, healing older brain injuries were confirmed by postconviction

66% had bilateral retinal hemorrhage, including the toddler whose fall was similar to Olivia's); Aoki, N. & Masuzawa, H., *Infantile acute subdural hematoma: Clinical analysis of 26 cases*, 61 J. OF NEUROSURGERY 273 (1984) (short distance accidental falls from sitting or standing positions associated with acute subdural hemorrhage and retinal hemorrhage in 26 infants).

[28] Plunkett, J., *Fatal Pediatric Head Injuries Caused by Short-Distance Falls*, 22 Am. J. of Forensic Med. & Pathology 1 (2001).

[29] *See* Chris Van Ee et al., *Child ATD Reconstruction of a Fatal Pediatric Fall*, Proc. ASME (2009).

[30] *See, e.g.*, P. Steinbok et al., *Early hypodensity on computed tomographic scan of the brain in an accidental pediatric head injury*, 60 Neurosurgery 689 (2007).

experts' review of slides of Olivia's brain. The State's experts agreed that such older injuries existed. Dr. Plunkett opined that the reported fall from the playpen could have been a second impact, in relation to this previous brain injury, that caused her death. (T. 544). Second Impact Syndrome is the theory that a subsequent impact can exacerbate previous brain trauma and lead to collapse and death. Second impacts resulting in death or permanent impairment have been recognized after two weeks or more,[31] contrary to testimony offered by State's experts (T. 181). Second Impact Syndrome has been reported in both human[32] and animal studies.[33] Children can and do suffer serious or fatal injuries following what may initially appear to be a trivial impact or fall.[34]

- **Medical Literature Does Not Support Immediate Collapse and Death from Olivia's Injury, and it Does Support the Possibility of a Lucid Interval**: To impeach Amanda's consistent version of events and undermine her character as a caregiver, the prosecution offered expert testimony that (1) Olivia would have been immediately symptomatic after being injured instead of lucid for the period Amanda described; and (2) Olivia sustained cuts on her tongue that would have prevented her from eating anything after her injury, implying that Amanda must have been lying about feeding Olivia after her fall.

    - **Medical and scientific literature, however, overwhelmingly supports the existence of what is often called a "lucid interval":** A lucid interval is a widely varying time between injury and collapse. This phenomenon is well-documented, and although symptoms vary between individuals,[35] it is wrong to categorically state that children are always immediately comatose after a closed head injury. Lucid intervals indisputably exist and can be short or lengthy. Some studies show intervals of 72 hours or more between injury and symptoms in cases that were serious enough to result in death.[36] Often, symptoms of a head injury are subtle, and may be invisible or appear benign to a caregiver who is not a medical professional. Caregivers, even medical professionals, [37] who are closely watching

---

[31] *See, e.g.*, Robert Cantu & Alisa Dean, *Second-Impact Syndrome and a Small Subdural Hematoma: An Uncommon Catastrophic Result of Repetitive Head Injury with a Characteristic Imaging Appearance*, 27 J. NEUROTRAUMA 1557 (2010).

[32] *See, e.g. id.*; Potts et. al., *Exceptional Neurologic Recovery in a Teenage Football Player After Second Impact Syndrome With a Thin Subdural Hematoma*, 4 PHYS. MED. & REHAB. 530 (2012).

[33] *See, e.g.*, Laurer H., Bareyre F., Lee V., et al., *Mild head injury increasing the brain's vulnerability to a second concussive impact*, 95 J. NEUROSURG 859-70 (2001).

[34] *See, e.g.*, Hall et al., *The Mortality of Childhood Falls*, 29 J. TRAUMA 1273 (1989); Lantz, P.E. et al., *Fatal acute intracranial injury, subdural hematoma, and retinal hemorrhages caused by stairway fall*, 56 J. OF FORENSIC SCI. 1648 (2011), Kim et al., *Analysis of Pediatric Head Injury from Falls*, 8 NEUROSURGERY FOCUS e3 (2000), Plunkett, J., *Fatal Pediatric Head Injuries Caused by Short-Distance Falls*, 22 AM. J. OF FORENS. MED. AND PATH. 1 (2001); Steinbok, P. et al., *Early hypodensity on computed tomographic scan of the brain in an accidental pediatric head injury*, 60 NEUROSURGERY 689 (2007).

[35] Symptoms range in severity and children with head injuries fall on a spectrum; some may appear to have no symptoms at all, others may be immediately comatose, and many more will display a range of symptoms, such as lethargy, nausea, clinginess, fussiness, and so on.

[36] M.G.F Gilliland, *Interval Duration Between Injury and Severe Symptoms in Nonaccidental Head Trauma in Infants and Young Children*, 43 J. Forensic Sci. 723 (1998).

[37] Kristy Arbogast et al., *Initial Neurologic Presentation in Young Children Sustaining Inflicted and Unintentional Fatal Head Injuries*, 116 Pediatrics 180, 184 (2005).

for symptoms of brain injury following a fall may not see them.[38] In one notable case, an injured child was in the hospital for more than 12 hours following her head injury but before her collapse.[39] She was described as "fussy," and "clingy," but was awake and interactive; none of her doctors or nurses recognized her grave head injury.[40] While it may be true that some children, after a serious head injury, are immediately limp and unresponsive, it is simply wrong to claim that because some children experience a rapid onset of serious, obvious symptoms, *all* children *must* be immediately unconscious. The statement is not only inconsistent with existing research, but contradicts best medical practices with respect to childhood head injury.[41]

- **The undisputed physical evidence in this case corroborates the existence of a lucid interval**: Amanda testified that Olivia fell at approximately 11:40 p.m., and Amanda texted Olivia's mother four minutes later indicating that Olivia fell but without any indication that Olivia was exhibiting immediate, severe symptoms of head trauma. (T. 601, 609). Olivia initially was clingy after her fall, needing to be rocked for 15-20 minutes. (T. 606). She ate a banana and fruit snacks, **which were found in her stomach contents at autopsy**. Olivia played, had her nails painted, became drowsy, and slept. (T. Vol. VI: 608-610). It hardly needs to be mentioned that a caregiver, particularly one who is not a medical expert, might not immediately recognize the subtle difference between a child who is drowsy because of the late hour and one who is drowsy because she has suffered a head injury, especially if the child appeared well for a period of time following her injury.

- **Amanda had No History of Abuse and was a Loving Mother of her Own Children**: Amanda was best friends with Olivia's mother, who chose Amanda to be Olivia's godmother. Amanda, at the time, was raising her own children and was living a normal productive life as a financial professional. Although she had a rocky relationship with her stepson, there is absolutely nothing to suggest she had ever abused a child. What's more, while the evidence shows that Amanda complained about her stepson's behavior in private text messages to friends, the evidence also shows that she cared for him and included him in family life.

- **There was No Evidence as to Why Amanda Would have Abused Olivia**: While the State suggested that Amanda committed some type of unspecified abuse because Olivia was being fussy, there is no evidence of this and Amanda's history belies this invented rationale for the invented abuse.

Ultimately, there is simply not any reliable evidence to even suggest Olivia died as a result of abuse by Amanda. The evidence outlined above, supported by consensus medical and scientific

[38] S. Denton, *Delayed Sudden Death in an Infant Following an Accidental Fall*, 24 Am. J. Forensic Med. Pathol. 371 (2003).
[39] Letter to the Editor, Robert W. Huntington III, *Symptoms Following Head Injury*, 23 Am. J. Forensic Med. Pathol. 105 (2002).
[40] *Id.*
[41] *See* Head Injury Instruction Sheet (advising close observation of a child after a head injury, even if it is asymptomatic, because of the risk of delayed onset of symptoms).

literature, proves Olivia likely sustained the injuries that led to her death as a result of an accidental fall from a playpen—an event Amanda immediately reported to Olivia's mother and consistently told authorities. Thus, not only did a child tragically die from an accidental fall, Amanda was convicted and separated from her own children for a crime that simply did not occur.

RELIEF REQUESTED

We respectfully request you commute Ms. Brumfield's fifteen-year sentence for aggravated manslaughter of a child, and, alternatively, should you believe it is warranted, grant a full pardon.

Respectfully submitted,

Krista Dolan, Staff Attorney
Florida Bar No. 1012147
Innocence Project of Florida
1100 E. Park Ave.
Tallahassee, FL 32301
kdolan@floridainnoce.org
(904) 504-6670

Seth Miller, Executive Director
Florida Bar No. 806471
Innocence Project of Florida
1100 E. Park Ave.
Tallahassee, FL 32301
smiller@floridainnocence.org
(202) 341-2127

Appendix