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ELKO CO DISTRICT COURT

CLERK _____ DEPUTY VA

1 CASE NO.: CR-FP-95-6248

2 DEPT. NO.: 1

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4
5 **IN THE FOURTH JUDICIAL DISTRICT COURT**
6 **OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO**
7

8 **THE STATE OF NEVADA,**
9 **Plaintiff,**

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16 vs.

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25 **PATRICK CODY McCORMICK,**
26 **Defendant.**

THE STATE OF NEVADA'S:

1. PROFFER OF A NO CONTEST PLEA AGREEMENT IN THIS MATTER; AND

A. DECLARATION BY THE STATE WITH RESPECT TO THE CIRCUMSTANCES WHICH ENGENDER THIS COMPROMISE

2. REQUEST FOR THE CONDUCT OF AN EVIDENTIARY HEARING WITH RESPECT THERETO, INCLUDING:

A. THE CONDUCT OF EITHER A SETTING HEARING OR CONFERENCE WITH THE COURT TO INSURE THE AVAILABILITY OF EXPERT WITNESSES WHOM THE STATE INTENDS TO CALL IN CONNECTION WITH THIS PROFFER;

4. JOINT REQUEST BY THE PARTIES FOR THE ENTRY OF AN ORDER VACATING THE CURRENT TRIAL DATE PENDING THE CONDUCT OF THE EVIDENTIARY HEARING REQUESTED HEREIN; AND

5. CERTIFICATE OF SERVICE

1 **COMES NOW THE STATE OF NEVADA**, the Plaintiff in the above-
2
3 entitled cause, by and through its Counsel Of Record the Elko County District
4 Attorney's Office, and by this Pleading would proffer to the above-entitled Court for its
5 review and consideration the No-Contest Plea Agreement attached hereto as Exhibit
6 1 which, as the Court can discern, has been executed by the Parties.
7

8 **Declaration Of The State Concerning The**
9 **Circumstances Which Have Engendered This Compromise**

10 Jacob Jones (hereinafter simply "Jacob) the decedent child identified in
11 the Criminal Information pending this matter died on the 9th day of June, 1995.

12 1. On the 13th day of June, 1995, an autopsy was performed on Jacob at the
13 Washoe County Coroner's Office by a Hospital Pathologist, one Frederick A.
14 Laubscher, who never testified in the matter, who concluded that the ultimate
15 cause of Jacob's death was:
16

17 Multiple traumatic injuries with bilateral subdural hematoas

18
19 2. A Complaint was filed on the 22nd day of June, 1995 charging Mr. McCormick
20 with First Degree Murder; a preliminary hearing was conducted on the 18th day
21 of August 1995; and he was bound over for trial;
22

23 3. On the 28th of August, 1995, a Criminal Information was filed;

24 4. A trial was conducted between the 26th of February 1996, and 1st of March,
25 1996 and Mr. McCormick was convicted of First Degree Murder;
26

27 5. A Judgment Of Conviction was entered on the 23rd day of April, 1996, and Mr.
28 McCormick was sentenced to life in prison with the possibility of parole;

1 6. After the denial of a direct appeal a Post-Conviction Petition For Writ Of Habeas
2 Corpus (hereinafter the "Petition") was litigated; denied at the District Court
3 level; and then appealed by the Defendant to the Nevada Supreme Court.
4

5 a. The primary thrust of the Petition was that Mr. McCormick's trial defense
6 counsel was ineffective for failing to hire an expert to explore the possibility that
7 Jacob died from anaphylaxis as a result of a anaphylactic reaction to the
8 administration of penicillin to him on the morning of the 9th of June, 1995, under
9 circumstances wherein he had been diagnosed on the 1st of January, 1995, to
10 have had an acute allergic reaction to penicillin, in the form of the drug
11 Amoxicilin, which had been prescribed for him on the 29th day of December,
12 1994.
13
14

15 It was adduced at the Trial of this matter that:
16

17 7. On the morning of the 9th of June, 1995, Jacob Jones' mother, Ms. Jennifer
18 Jones, because Jacob had had a cold for several days, at, she maintains,
19 Mr. McCormick's suggestion, quartered a penicillin pill that had been previously
20 prescribed for her, crushed at least some part of it up, and administered it to
21 Jacob.
22

23 a. Ms. Jones was aware of the fact that Jacob had been diagnosed in
24 January of 1995 to have previously had an allergic reaction to amoxicillin
25 a form of penicillin.
26

27 See T.T., Vol. II, P. 13, L, to P. 16, L. 16)
28

1 8. Thereafter:

- 2 a. Ms. Jones then put Jacob Jones down for a nap, and proceeded to Ms.
3 Jennifer Jones' Grandmother, Joyce Lingafelter's residence who at the
4 time was residing at a Residence situated at # 5, Yorkshire Villa in
5 Carlin Nevada Lingafelter's Residence to retrieve Chucky Jacob's sibling
6 – leaving the Defendant in the Hamilton Street Residence alone with
7 Jacob.
8
9
10 b. Ms. Jones was gone for approximately fifteen minutes;
11
12 c. Upon her return the Defendant told Ms. Jones that Jacob did not look well,
13 and that something was wrong with him;
14
15 d. Ms. Jones then proceeded into the bedroom where she had laid Jacob
16 down and found that he was not breathing – or at least that there was
17 something seriously wrong with him.
18
19 e. She reported at the time, and during her testimony in the preliminary
20 hearing in this matter and at trial that she picked Jacob up and shook him
21 and lightly slapped his face in an effort to revive him – unsuccessfully.
22
23 f. Being unsuccessful in her efforts she ultimately ran out into the front
24 room; Mr. McCormick's brother Tom McCormick, who was an EMT, was
25 summoned from his residence on Bush Street in Carlin who arrived and
26 started performing CPR and the like on Jacob;
27
28 g. An ambulance was summoned, and Jacob was transported to the then

1 Elko General Hospital (hereinafter the "Hospital") where he arrived at
2 approximately 12:20 p.m. and extraordinary life-saving efforts were
3 undertaken by the Emergency Room Physician Dr. Robert Stefanko and
4 Staff.
5

6 h. Eventually efforts to revive Jacob proved unsuccessful and Dr. Emmalina
7 G. Cortez, the Pediatrician who attended Jacob on the 9th day of June,
8 1995, at the Hospital pronounced Jacob as deceased at 8:20 p.m. on
9 Friday the 9th of June, 1995, and life support was terminated.
10

11 9. Dr. Robert J. Stefanko who was the emergency room physician who treated
12 Jacob upon his arrival at the Elko General Hospital on the June 9th, 1995 recited
13 in his Discharge Summary the following:
14

15 a. On Page 3 under the Heading "Medical Decision Making" Dr. Stefanko
16 observed that:
17

18 The patient sustained an acute cardiopulmonary arrest, probably
19 secondary to an acute respiratory arrest and acute allergic
20 etiology from penicillin would be suspected...

21 b. On Page 4 of the Summary under the Heading "Diagnosis" Dr. Stefanko
22 recited:

- 23 1. Acute respiratory and cardiopulmonary arrest with successful
24 resuscitation, however, cannot rule out permanent central
25 nervous system/cerebral sequela.
- 26 2. Rule out acute allergic reaction to penicillin
27 causing number one.
- 28 3. Rule out child abuse.

1 **Moreover, appellant has demonstrated a reasonable**
2 **probability of a different outcome had counsel presented expert**
3 **testimony regarding a penicillin allergy.**

- 4 11. Mr. McCormick, having been incarcerated for some 17.25 years, was
5 returned to the Elko County Jail from the Nevada State Prison; on the 4th
6 day of February, 2013, the Court again set bail at \$100,000.00 which was
7 posted and the matter was set for trial for the 28th day of January, 2014.
8
- 9 12. Subsequent to the reversal of this matter by the Nevada Supreme
10 Court the State engaged the service of one Bennet I. Omalu, a
11 preeminent Clinical, Anatomic, and Forensic Pathologist, who is also
12 a Neuropathologist, and Epidemiologist to review this case. Dr.
13 Omalu after thoroughly reviewing the case, including slides which
14 were preserved from Jacob's autopsy on the 15th day of July, 1995,
15 issued a comprehensive twenty-nine (29) page summary of his
16 findings. Dr. Omalu's observations and conclusions included the
17 following:
18
19 following:

20
21 a. First:

22 Review of the submitted hospital and medical records confirms
23 that **NO** definitive clinical laboratory test was performed on
24 Jacob Jones. Anaphylaxis was neither confirmed nor excluded;
25 however anaphylaxis remained a potent differential diagnosis
26 especially given the temporal relationship and association
27 between the exposure and administration of Penicillin, and
28 onset of the symptoms of acute cardiopulmonary arrest,
pulmonary edema and loss of consciousness. The following
clinical laboratory tests are typically performed on blood
samples [plasma] to confirm the diagnosis of anaphylaxis, viz:

1. Total Immunoglobulin E [IgE]
2. Allergen specific IgE [in this instance penicillin specific IgE]
3. Histamine
4. Tryptase
5. Chymase
6. Carboxypeptidase A3

None of these tests was performed before Jacob Jones died. Although they were not performed pre-mortem, these tests should have also been performed post-mortem either on a hospital admission blood sample or an autopsy blood sample, yet none of these tests was performed after the autopsy. These tests should have been performed in light of the prevailing forensic scenario with Penicillin Anaphylaxis as a potent and highly plausible underlying cause of death or contributory factor to death.

b. Second:

... In summary therefore, a fatal anaphylactic reaction to Penicillin remains a likely underlying cause of death of Jacob Jones, especially in light of the negative tissue immunohistochemistry for APP, which will be described below ...

... Review of the autopsy pictures did not reveal any extensive and/or confluent subcutaneous and/or subgaleal hemorrhages of the scalp. There were no skull fractures. The next medico-legal question that arises, therefore, would be: What is the forensic significance of the intracranial hemorrhages described on Jacob Jones in relation to causation of death? The prevailing technological tool we may adopt to address this question would be Amyloid Precursor Protein [APP] tissue immunohistochemistry to determine the degree of diffuse traumatic axonal injury, if present. APP is a large transmembrane protein that exists in the neurons and axons [nerve fibers] in the brain and spinal cord. In a brain without injury, APP immunohistochemistry is negative. In a brain with traumatic axonal injury APP immunohistochemistry becomes progressively positive as the post-injury time increases. APP immunohistochemistry becomes positive after about one to three hours following injury sustenance and is a marker of severe

1 traumatic brain injury.

2 The APP immunopositive pattern for traumatic brain injury
3 comprises multifocal APP-immunopositive axonal bulbs, axonal
4 spheroids and swollen, distorted axonal forms. This specified
5 pattern was absent in the archival histologic sections of Jacob
6 Jones' brain and spinal cord except only in the nerve fiber layer of
7 the neuroretina in the right and left eyeballs, adjacent to the optic
8 papilla, and accentuated in the right eyeball. APP
9 immunohistochemistry was therefore negative in the brain, spinal
10 cord and optic nerves in this case. This additional finding further
11 suggests that severe traumatic brain injury may not be the
12 underlying cause or mechanism of death. The focal
13 immunopositive pattern observed in the nerve fiber layer of the
14 neuroretina, adjacent to the optic papilla, would be consistent with
15 secondary focal axonal injury of the neuroretina due to congestive
16 brain swelling and raised intracranial pressure, which can follow
17 any type of brain injury including hypoxic-ischemic cerebral injury
18 of any etiology.

14 In my practice I have encountered cases whereby APP
15 immunohistochemistry was negative in the brain of infants in spite
16 of traumatic brain injury given the cellular immaturity of the
17 infantile brain. However within the context of the prevailing
18 forensic scenario in this case, negative APP
19 immunohistochemistry is yet another feature that may further
20 undermine the validity of the cause of death as has been
21 determined by the coroner.

20 APP immunohistochemistry was performed on the tissue
21 histology slides of the brain, which were taken and archived by
22 Dr. Laubscher, the pathologist, who performed the autopsy.
23 Unfortunately, the brain sections, which were taken are not the
24 standard sections, which are recommended for the evaluation
25 of the human brain for traumatic brain injury. These sections were
26 grossly inadequate and did not include vital topographically
27 targeted regions of the brain that are selectively vulnerable to
28 traumatic axonal injury. The absence of these topographically
selective regions of the brain for APP immunohistochemistry even
further undermines the validity of the autopsy brain analysis and
evaluation for the presence or absence of traumatic brain injury,
and the assessment of the severity of the traumatic brain injury.

1 There is a mismatch between the CT scan of the head upon
2 hospital admission and the autopsy findings after death. The CT
3 scan of the head was negative and did not show any intracranial
4 hemorrhages. Autopsy showed bilateral subdural hemorrhages.
5 Could the intracranial hemorrhages have occurred between the
6 hospital admission and death, and/or autopsy? Could all or some of
7 the intracranial hemorrhages have been artifactual aberrations of
8 medical/surgical therapy or an artifactual aberration of the autopsy
9 prosection? Furthermore the histomorphologic and topographic
10 pattern of selective cerebral neuronal excitotoxic injury in this
11 case, is inconsistent with severe traumatic brain injury, severe
12 traumatic axonal or vascular injury. Rather it is consistent with
13 cerebral hypoxic-ischemic neuronal injury, which is seen in acute
14 cardiopulmonary arrest, which Jacob Jones was diagnosed with.
15 His acute cardiopulmonary arrest was thought to be caused by acute
16 anaphylactic reaction to penicillin.

17 Hypothetically, if the suspected perpetrator in this case instigated
18 the terminal chain of events by inflicting adult-induced non-
19 accidental trauma on Jacob Jones on or before June 9, 1995,
20 there are prevailing repeated breaches of the contiguity of this
21 alleged chain of events by novel factors, which would have
22 successfully impeached or nullified such an alleged child-abusive
23 event as the underlying cause of death. These novel factors,
24 which may have successfully breached the contiguity of the
25 alleged child abusive chain of events include sepsis, DIC,
26 penicillin anaphylaxis and shaking by the mother. These novel
27 factors synergistically initiated novel and terminal chains of
28 events, which precipitated death. **The clinical management,
death investigation and autopsy in this case did not
successfully identify, recognize, inculcate or exculpate
these novel factors as probable underlying causes of, and
contributory factors to death within a reasonable degree of
medical certainty.**

13. On the 28th of August, 2013, Dr. Ellen Clark who testified as the State's
Pathologist at the Defendant's Trial was interviewed via-a-vis Dr. Omalu's
findings.
- a. Dr. Ellen Clark, maintains that it is her opinion that the autopsy
photographs created in connection with the autopsy disclose that


1 Jacob suffered from significant blunt force trauma to his head and brain
2 that that was ultimately the cause of his death.
3

4 b. However Dr. Clark acknowledges that Dr. Omalu is correct in observing
5 that:
6

- 7 1. There were forensic tests that could have been performed on
8 Jacob's bodily fluids that would have identified the presence of
9 anaphylaxis, if it was present, or excluded it;
10
- 11 2. That such tests were not performed; and
- 12 3. That such tests cannot now be performed because the bodily
13 fluids necessary to do so were not preserved.
14

15 Given these circumstances the State has concluded that in the face of
16 the Defendant's willingness to resolve this matter as contemplated by the Plea
17 Agreement attached hereto as Exhibit 1 that the matter should not be re-tried as a
18 First Degree Murder case, and has compromised this matter as described in that
19 Agreement for those reasons.
20

21 Dated this 13th day of Dec., 2013.
22

23
24 
25 **MARK TORVINEN**
26 State Bar Number: 551
27 Elko County District Attorney
28 Counsel For The Plaintiff

///

1 **Request For The Conduct Of An Evidentiary Hearing**
2 **With Respect To The Proposed Compromise Of This Matter**

3 **COMES NOW THE STATE OF NEVADA**, the Plaintiff in the above-
4 entitled cause, by and through its Counsel Of Record the Elko County District
5 Attorney's Office, and moves that the Court conduct an evidentiary hearing with
6 respect to the issue of the compromise of this matter at which the State can present
7 the testimony of Dr. Omalu, and Dr. Clark (the latter in all likelihood by telephone or if
8 it can be arranged audio/visual presentation via skype).
9
10

11 **Estimate Of Time Needed For Hearing**

12 The State would estimate that such an Hearing would take no more than
13 two (2) hours and would ask that the Court set two (2) hours aside for such a hearing.
14


15 **Request For A Setting Hearing Or Conference To**
16 **Insure The Availability Of These Experts**

17 Further the State requests that the Court:

- 18 1. If it grants the request of Counsel to vacate the current trial date (see below)
19 that it set an evidentiary hearing to be conducted during the week of the 27th Of
20 January, 2014, to the 1st of February, 2014, or the week February 4th, 2014 to
21 the 7th of February, 2014, when the Trial was originally set to commence, and
22 Dr. Omalu, and Dr. Clark are already scheduled to appear; or
23
24
25 2. That the Court, if it is disinclined to set such a hearing during the week of the
26 27th Of January, 2014, to the 1st of February, 2014, or the week February 4th,
27 2014 to the 7th of February, 2014, that it either conduct a setting hearing to set
28

1 such an evidentiary hearing, or a telephone conference with Counsel for the
2 Parties so that the State can insure the availability of Dr. Omalu and Dr. Clark
3 for the conduct of such a hearing.
4

5 Dated this 13th day of, Dec. 2013.

6
7
8 
9 **MARK TORVINEN**
10 State Bar Number: 551
11 Elko County District Attorney
12 Elko County District Attorney's Office
13 Counsel For The Plaintiff


14 **Joint Request By Counsel For The Parties**
15 **For An Order Vacating The Current Trial Date**

16 **COMES NOW THE STATE OF NEVADA**, the Plaintiff in the above-
17 entitled cause, by and through its Counsel Of Record the Elko County District
18 Attorney's Office, and Patrick Cody McCormick, by and through his Counsel Of
19 Record Mr. David Lockie of the Law Firm of Lockie & Macfarlan, who by their
20 respective signatures hereunder do hereby jointly request that the Court enter an
21 Order vacating the current Jury Trial currently scheduled to commence on January
22 28th, 2014, and:

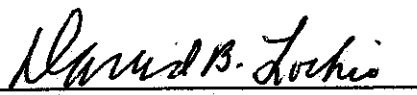
- 23
- 24 1. Either set an Evidentiary Hearing with respect to the compromise contemplated
25 in this matter to be conducted during the week of the 27th Of January, 2014, to
26 the 1st of February, 2014, when the Trial was originally set to commence; or
27
 - 28 2. That the Court by a formal setting hearing or telephone conference(s) with

1 Counsel for the Parties set such a hearing so that the State can insure the
2 availability of, and arrange for the presence of Dr. Omalu and Dr. Clark at said
3 Hearing.
4

5 Dated this 13th day of, Dec. 2013.

6
7 
8 **MARK TORVINEN**
9 State Bar Number: 551
10 Elko County District Attorney
11 Elko County District Attorney's Office
12 Counsel For The Plaintiff

13 Dated this 13th day of, December 2013.

14 
15 **DAVID B. LOCKIE**
16 State Bar Number: 2384
17 Counsel For The Defendant

18 **Submission Of Proposed Order Vacating Trial Date**

19 **COMES NOW THE STATE OF NEVADA**, the Plaintiff in the above-
20 entitled cause, by and through its Counsel Of Record the Elko County District
21 Attorney's Office, and in connection with the:
22

23 **PROFFER OF A NO CONTEST PLEA AGREEMENT IN THIS MATTER;**
24 set forth above, would submit to the Court for its consideration an:
25

26 **ORDER:**


27 **VACATING TRIAL DATE PURSUANT TO A JOINT REQUEST OF THE**
28 **PARTIES IN CONNECTION WITH THE:**

1 PROFFER OF A NO CONTEST PLEA AGREEMENT IN THIS
2 MATTER;

3 FILED HEREIN BY THE STATE;

4 a proposed version of which is attached hereto as Exhibit 2, and an original of which
5 has been delivered to the Clerk Of Court for transmittal to the Court for its
6 consideration.
7

8 Dated this 13th day of, Dec. 20 13.

9
10
11 
12 **MARK TORVINEN**
13 State Bar Number: 551
14 Elko County District Attorney
15 Elko County District Attorney's Office
16 Counsel For The Plaintiff

17 **Certificate Of Service**

18 I KURRI DARBY, hereby certify that I am an
19 (Printed Name)

20 employee of the Elko County District Attorney's Office, and that on the 13th day of
21 December 2013, a true and correct copy (or true and correct copies in the
22 case of multiple addressees) of the foregoing;

23 THE STATE OF NEVADA'S:

24 1. PROFFER OF A NO CONTEST PLEA AGREEMENT IN THIS
25 MATTER; AND

26 A. DECLARATION BY THE STATE WITH RESPECT TO THE
27 CIRCUMSTANCES WHICH ENGENDER THIS COMPROMISE

28 2. REQUEST FOR THE CONDUCT OF AN EVIDENTIARY HEARING
WITH RESPECT THERETO, INCLUDING:

1 A. THE CONDUCT OF EITHER A SETTING HEARING OR
2 CONFERENCE WITH THE COURT TO INSURE THE AVAILABILITY
3 OF EXPERT WITNESSES WHOM THE STATE INTENDS TO CALL
4 IN CONNECTION WITH THIS PROFFER;

5 4. JOINT REQUEST BY THE PARTIES FOR THE ENTRY OF AN
6 ORDER VACATING THE CURRENT TRIAL DATE PENDING THE
7 CONDUCT OF THE EVIDENTIARY HEARING REQUESTED HEREIN;
8 AND

9 5. CERTIFICATE OF SERVICE

10 was/were served upon the addressee(s) identified hereafter in the following manner:

11 That a copy was delivered to the Chambers of the above-entitled Court at
12 the following address:

13 The Honorable Nancy Porter
14 District Court – Dept. 1
15 Elko County Court House
16 Elko, Nevada. 89801

17 That a second copy was either delivered to Lockie & Macfarlan via the
18 front desk of the Elko County District Attorney's Office, or mailed by first class mail,
19 postage pre-paid to the following address:

20 Lockie & Macfarlan
21 1919 Idaho Street
22 Elko, Nevada 89801

23 
24 _____
25 Signature Of Person
26 Executing Certificate Of Service
27
28

**EXHIBIT 1 TO THE PROFFER OF A PLEA AGREEMENT IN
STATE VS. PATRICK CODY McCORMICK
DISTRICT COURT CASE NUMBER: CR-FP-95-6248**

1 CASE NO.: CR-FP-95-6248

2 DEPT. NO.: I

3
4
5 **IN THE FOURTH JUDICIAL DISTRICT COURT**
6 **OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO**
7

8 **THE STATE OF NEVADA,**

9 Plaintiff,

1. **STATUTORY NO CONTEST PLEA
AGREEMENT**

10
11 vs.

AND

12 2. **WRITTEN OFFER OF PROOF IN**
13 **SUPPORT OF THE DEFENDANT'S**
14 **CONTEMPLATED PLEA OF NO**
15 **CONTEST**

PATRICK CODY McCORMICK,

16 Defendant.

17 **The Statutory No Contest Agreement**

18 **COMES NOW THE STATE OF NEVADA,** the Plaintiff in the above-
19 entitled cause, by and through its Counsel of Record, the Elko County District
20 Attorney's Office, and the Defendant above-named, *in proper person*, and by and
21 through his Counsel Of Record, the Elko Nevada Law Firm of Lockie & Macfarlan
22 appearing in the personality of David B. Lockie, who by their respective signatures
23 hereunder, do hereby declare to the above-entitled Court that the Parties have settled
24 upon a negotiated disposition of the Criminal Prosecution pending against the
25 Defendant in the above-entitled cause, which compromise is comprised of the
26
27
28

1 following terms:

2 **Recitation Of The Parties' Intent**

3
4 It is the intent of the Parties in executing this Agreement to provide for the
5 complete resolution of the prosecution pending against the Defendant in the above-
6 entitled cause wherein the Defendant is charged, in a Criminal Information filed in the
7 above-entitled cause on the 28th day of August, 1995 with:
8

9 Count 1: Open Murder (Including First Degree Murder And All Lesser
10 Included Offenses), A Felony As Defined By NRS 200.010, NRS
11 200.020, NRS 200.030, And NRS 200.033

12 I Patrick Cody McCormick first declare, by my signature hereunder that
13 this Agreement represents the entire agreement between me and the State of Nevada,
14 and no other promises, other than those set forth and memorialized in this Agreement
15 have been made to me in connection with the compromise of the charges pending
16 against me in the above-entitled cause, as described in the Criminal Information filed
17 herein.
18

19 With the above declaration in mind:

20
21 **THE DEFENDANT'S SPECIFIC OBLIGATIONS**
22 **UNDER THIS NO CONTEST PLEA AGREEMENT**

- 23 1. The Defendant will enter a plea of no contest to Amended Criminal Information
24 filed in District Court pursuant to the terms of this Plea Agreement charging the
25 Defendant with:

26 **Involuntary Manslaughter, A Category D Felony As**
27 **Defined By NRS 200.070, And NRS 200.090;**

28 hereinafter referred to in the remainder of this Agreement simply as Involuntary
Manslaughter.

1 The Defendant by his signature on this Agreement acknowledges that he has
2 been advised that a plea of "no contest" will be treated by the sentencing Court,
3 for the purposes of the resolution of this criminal prosecution, as the functional
4 equivalent of a plea of guilty – that is the Court, if it concludes to accept the
5 plea(s) of no contest contemplated by this Agreement will use that/those plea(s)
6 to:

- 7 a. Convict the Defendant of the offense(s) to which a plea or pleas of no
8 contest are entered; and
- 9 b. To enter judgment in the case based upon that/those plea(s) of no
10 contest.

11 Further, the Parties, by their signatures upon this Agreement do hereby waive
12 the attachment of a copy of said Criminal Information to this Agreement.

- 13 2. Further, the Defendant agrees that by his signature on this Agreement he is
14 waving any right he may have otherwise had to make application for diversion
15 under the provisions of NRS 453.3363, or Chapter 458 of the Nevada Revised
16 Statutes, or to apply for participation in Drug Court.

17 **THE STATE'S OBLIGATIONS**
18 **UNDER THE AGREEMENT**

- 19 1. The State agrees that:

- 20 a. The proffer by the Defendant of the plea(s) of no contest
21 contemplated by this Agreement to Involuntary Manslaughter;
- 22 b. The District Court's acceptance of that/those Plea(s); and
- 23 c. The entry of Judgment convicting the Defendant of Involuntary
24 Manslaughter;

25 shall be deemed a complete resolution of any and all criminal liability which the
26 Defendant may have had arising out of the events which gave rise to the
27 prosecution now pending against the Defendant in the above-entitled matter,
28 and shall constitute a bar to prosecution with respect to any other theory of
criminal liability which may have been pleaded against the Defendant in
connection the events resulting in this prosecution.

- a. In that regard, it is agreed by and between the Parties that the bar to

1 prosecution created by this Agreement shall extend only to the events
2 which gave rise to the instant prosecution, and it is not intended to extend
3 to, nor does it encompass any other criminal liability which the Defendant
4 may have, if any, based on events unconnected to the specific offenses
5 at issue in this prosecution and the events and facts upon which it is
6 premised.

- 7 2. Finally the State agrees that the Defendant's faithful performance of the
8 terms of this Agreement shall constitute a bar to its right, if any it had, to
9 pursue an allegation of habitual criminality in connection with this criminal
10 prosecution.

11 **TERMS OF THE AGREEMENT RELATIVE TO SENTENCING**

12 It is agreed that at the time of sentencing the Parties will jointly
13 recommend that the Court impose the following sentence:

- 14 1. That the Defendant be sentenced to a period of nineteen (19) to forty-
15 eight months in the Nevada State Prison;
- 16 2. That the Defendant be given credit against said sentence for the time
17 previous served under that certain Judgment Of Conviction entered and
18 filed in the above-entitled matter on the 23rd day of April, 1996, until the
19 his release from the Elko County Jail on Bond on the 4th day of February,
20 2013, after reversal of his aforementioned Judgment Of Conviction by the
21 Nevada Supreme Court on the 14th day of November, 2012 – a period of
22 some two-hundred and seven (207) months – that is approximately 17.25
23 years;
- 24 3. That no fine be imposed;
- 25 4. That Judgment be entered against the Defendant upon his plea of no
26 contest to Involuntary Manslaughter; and
- 27 5. That the Defendant be discharged from any obligation to further appear
28 in this matter.
6. The parties would by their respective signatures on this Agreement that
in so far as they are aware there is no outstanding issue of restitution in
this matter.

1. **CONSEQUENCES OF THE PLEA**

2. I Patrick Cody McCormick, declare that I understand that at the time I
3. enter my aforementioned plea(s) of no contest that in order for the above-entitled
4. Court to accept the plea(s) of no contest contemplated by this Agreement,
5. acknowledge my understanding of the elements of the offense(s) I have agreed to
6. plead no contest to. The elements of the offense of Involuntary Manslaughter are as
7. follows:
8.

- 9.
10. 1. That the Defendant committed an unlawful act or acts;
 11. 2. Which resulted in the killing of a human being without any intent
 12. on the part of the Defendant to do so.
- 13.

14. **Recitation Of The Maximum Permissible Penalty**

15. I understand and have been advised that as a consequence of the plea(s)
16. of no contest contemplated by this Agreement that:

- 17.
18. 1. I may be imprisoned in the Nevada State Prison for a period of up to forty-eight
 19. (48) months (that is four [4] years); and
 20. 2. Further that a fine of up to five-thousand dollars (\$5,000.00) may be imposed
 21. upon me.
- 22.

23. I have been further advised that the law requires the imposition of an
24. administrative assessment fee in connection with the entry of judgment in a felony or
25. gross misdemeanor case.

26.

27. I understand that I will be eligible for probation upon conviction of the
28. offense(s) I intend to plead no contest to. I understand that except as otherwise

1 provided by Statute, the question of whether or not I am placed upon probation will be
2 entirely up to the discretion of the above-entitled Court.

3 4 **Restitution**

5 I understand that if applicable in the case, and deemed appropriate by the
6 Court I may be ordered to make restitution to the victim of the offense to which I
7 propose to plead no contest, and to the victim of any related offenses which is/are
8 being dismissed or with respect to which prosecution has been declined pursuant to
9 the terms of this Agreement.
10

11 **Additional Terms Of The Agreement**

12 I understand that I will also be ordered to reimburse the State of Nevada
13 for any expenses incurred, if any there be, in connection with my extradition to the
14 State of Nevada in connection with this prosecution.
15

16 I have been advised and understand that if more than one sentence of
17 imprisonment is imposed and I am eligible to serve the sentence concurrently with any
18 other sentence imposed or which I am already serving, that it will be up to the
19 Sentencing Judge to determine, in the Court's discretion, whether such sentences are
20 to be served consecutively, that is one after the other, or concurrently, that is at the
21 same time.
22

23 I have not been promised or guaranteed any particular sentence by
24 anyone. I know that my sentence is to be determined by the Court within the limits
25 prescribed by the statute(s) under which I propose to plead no contest. I understand
26
27
28

1 that at the time sentence is imposed that if the State of Nevada or my Lawyer
2 recommend any specific sentence to the Court, the Court is not obliged to accept
3 that/those recommendation(s).
4

5 I understand that with respect to the offense(s) I intend to plead no
6 contest to the Division of Parole And Probation of the Department Public Safety will
7 prepare a Pre-Sentence Report for the above-entitled Court. This report will include
8 matters relevant to the issue of sentencing, including my criminal history. I understand
9 that this Report may contain hearsay information regarding my background and
10 criminal history. My Lawyer and I will each have the opportunity to comment on the
11 information contained in the Report at the time sentence is imposed.
12
13
14

15 **THE DEFENDANT'S WAIVER OF HIS/HER CONSTITUTIONAL**
16 **RIGHTS IN CONNECTION WITH THE PLEA OF NO**
17 **CONTEST CONTEMPLATED BY THIS AGREEMENT**

18 I Patrick Cody McCormick declare that I have been advised and
19 understand that in order for the above-entitled Court to accept the plea(s) of no contest
20 I propose to enter in this matter that I will have to waive my constitutional rights in this
21 matter, and I declare by my signature on this Agreement that I am willing to give up the
22 following constitutional rights and privileges in order that the Court could accept my
23 plea(s) of no contest:
24

25 1. The constitutional privilege against self-incrimination, including the right to
26 decline to testify at trial, in which event the State would not be allowed to comment to
27 the jury about my decision not to testify. I understand that my plea(s) of no contest will
28

1 require my waiver of this right to the following extent: the Court in connection with my
2 plea(s) of no contest may require me, in order to accept my plea(s), to personally
3 verbally enter my plea(s) of no contest, and may require me to either;
4

- 5 a. Provide a factual basis for my plea – that is a brief description of the
6 events which gave rise to the prosecution against me and my
7 participation in them which has given rise to my contemplated plea(s) of
8 no contest; or
9
- 10 b. To acknowledge the factual accuracy, relative to potential evidence
11 arrayed against me, of the Offer Of Proof set forth hereafter, and that
12 after reviewing the same I have concluded that I may be convicted, again,
13 of the greater offense or offenses I am charged with or could be charged
14 with, and have entered the my plea of no contest, in the light of the
15 evidence potentially arrayed against me, as described in the Offer of
16 Proof set forth hereafter, me to avoid that result; and
17
- 18 c. Further that I believe entering the plea of no contest contemplated by this
19 Agreement is in my best interests, and that standing upon my right to
20 stand trial with respect to the greater offense or offenses I am, or could
21 be charged with is not in my best interests¹.
22
23
24

25 I further understand that other than the requirement that I personally
26 verbally enter my plea(s) of no contest, and that, upon the Court's request, I provide a
27

28 ¹ See North Carolina vs. Alford, 400 U.S. 25, 1970 U.S. Lexis 3 (1970), and its progeny including State vs. Gomes, 112 Nev. 1473 (1996)

1 factual basis for my plea(s), or acknowledge, as more fully described above, the
2 factual accuracy of the Offer Of Proof set forth hereafter, and acknowledge the
3 implications thereof as described above, that my right not to incriminate myself will still
4 pertain in these matters, and that I may not otherwise be required to speak or provide
5 any other information wherein to do so might further incriminate me.
6

7
8 2. The constitutional right to a speedy and public trial by an impartial jury with
9 respect to the charges originally pending against me, free of excessive pre-trial
10 publicity prejudicial to my ability to present a defense, at which trial I would be entitled
11 to the assistance of a Lawyer, hired by me, or appointed for me if I was unable to hire
12 an Attorney. At trial the State would bear the burden of proving beyond a reasonable
13 doubt each and every element of all of the offenses I was originally charged with, and
14 the elements of that/those offense(s) to which I am proposing by the terms of this
15 Agreement to plead no contest.
16
17

18 3. The constitutional right to confront and cross-examine any witnesses who have
19 testified against me at trial.
20

21 4. The constitutional right to subpoena witnesses to testify on my behalf.

22 5. The constitutional right to testify in my own defense, or, if it be my decision after
23 consultation with my Lawyer, to decline to testify at trial.
24

25 6. The right to appeal any conviction I suffered at trial, with the assistance of a
26 Lawyer, again either hired by me, or appointed to represent me in the event I was
27 unable to hire my own Lawyer, unless the appeal is based upon reasonable
28

1 constitutional, jurisdictional, or other grounds which challenge the legality of the
2 proceedings, and except as otherwise provided by NRS 174.035.

3
4 I Patrick Cody McCormick by my signature on this Agreement, and
5 subject to the above-entitled Court's acceptance of my contemplated plea(s) of no
6 contest, do hereby waive the above-described constitutional rights.

7
8 **VOLUNTARINESS OF THE PLEA**

9 I further acknowledge I have discussed the elements of all of the original
10 charges which were pending against me, and the elements of the offense(s) I
11 proposed to plead no contest to with my Lawyer, and I understand the nature of the
12 charge(s) originally pleaded against me, and the charge(s) I propose to plead no
13 contest to.
14

15 I understand that the State, should I have exercised my right to have a
16 trial with respect to the original charge(s) pleaded against me, would have been
17 required to prove each element of each charge(s) pending against me beyond a
18 reasonable doubt. Likewise, the State, but for my contemplated plea(s) would have
19 been required to prove each and every element of the offense(s) I propose to plead no
20 contest to beyond a reasonable doubt.
21

22 I have discussed with my Lawyer the possible defenses which might have
23 been available to me at trial in connection with this matter, and the circumstances
24 which might reflect in my favor.
25

26 I did before deciding to sign this Agreement, discuss to my satisfaction
27
28

1 with my Lawyer all of the foregoing elements and the nature of the charges; the
2 consequences of my proposed plea(s) of no contest; the constitutional rights I would
3 have been able to exercise if I had had a trial; and the waiver of rights which would be
4 required in order for the above-entitled Court to accept my contemplated plea(s) of
5 no contest. Additionally, I was afforded an opportunity to ask my Lawyer any questions
6 I had concerning these matters and my questions, if any I had, were answered to my
7 satisfaction.
8

9
10 I believe after considering the matter, and consulting with my Lawyer with
11 respect to this matter, that entering into, and carrying out this Agreement by entering
12 the plea(s) of no contest called for by it is, and remains in my best interests, and that
13 exercising my right to have a trial would have been, and remains contrary to my best
14 interests.
15

16
17 I am signing this Agreement voluntarily, after consultation with
18 my Lawyer, and I am not acting under duress or coercion, or by any promise of
19 leniency other than those which are set forth and described in this written Agreement.
20


21 I am not now under the influence of intoxicating liquor, a controlled
22 substance, or any other drug which would in any manner impair my ability to
23 comprehend or understand this.
24

25 My Lawyer prior to my execution of this Agreement had answered
26 all of my questions concerning my contemplated plea(s) of no contest, and has
27 answered all of my questions, if any I had, regarding this Agreement and its
28

1 consequences to my satisfaction and I am satisfied with the services of my Lawyer,
2 and the advice he has rendered to me in connection with this matter.


3
4 **THE DEFENDANT'S SIGNATURE BLOCK**

5 Dated this 11th day of December 2013

6
7 
8 **PATRICK CODY McCORMICK**
9 Defendant
10 *In Proper Person*

11 **THE STATE'S SIGNATURE BLOCK**

12
13 Dated this 13th day of Dec., 20 13.

14
15
16 
17 **MARK TORVINEN**
18 Deputy District Attorney
19 State Bar Number 551
20 Elko County District
Attorney's Office

21 **CERTIFICATE OF COUNSEL FOR THE DEFENDANT**

22 I, the undersigned, as Counsel Of Record for the Defendant above-
23 named, and as an Officer of the Court, by my signature hereunder, certify to the
24 above-entitled Court as follows:

- 25
26 1. That before the Defendant executed this Agreement, I had fully explained to the
27 Defendant the elements of the offense(s) with which he/she was originally charged,
28

1 and the elements of the offense(s) to which he/she proposes to plead no contest.

2 2. I advised the Defendant of the potential penalties for each of the offense(s) with
3 which he/she was originally charged, and the potential penalties for the offense(s) to
4 which he/she proposes to plead no contest. Further I advised the Defendant with
5 respect to, and concerning the restitution, if any there be, that the Defendant may be
6 ordered to pay in connection with the imposition of sentence in this matter.
7

8
9 3. The plea(s) of no contest which the Defendant proposes to enter in this matter
10 pursuant to the terms of this Agreement are consistent with all of the facts known to
11 me concerning this case, and will be entered in accordance my advice to the
12 Defendant. Further I believe that the compromise reflected in this Agreement, is in the
13 Defendant's best interests.
14

15 4. To the best of my knowledge and belief, at the time the Defendant
16 executed this Agreement he/she:
17

18 a. Was competent, and understood the elements of the offense
19 to which he/she proposes to plead no contest, and the consequences,
20 including the potential penalties which could be imposed upon the
21 Defendant, in connection with said plea(s) of no contest;
22

23 b. That he/she executed this Agreement voluntarily; and


24 c. Was not under the influence of intoxicating liquor, a controlled substance,
25

26 / / /

27 / / /

1 or other drug at the time of his/her execution of this Agreement.

2 Dated this 13th day of December 20 13.

3
4 

5 DAVID B. LOCKIE
6 Lockie & Macfarlan

7 Counsel For The Defendant

8
9 **Offer Of Proof In Support Of The No**
10 **Contest Plea Contemplated By This Agreement**

11 **COMES NOW THE STATE OF NEVADA** by and through its Counsel
12 of Record the Elko County District Attorney's Office, and by this pleading would make
13 the following Offer of Proof with respect to the prospective evidence in this matter
14 which the State believes and therefore avers it would have been in a position to
15 adduce should the Defendant have elected to go to trial upon the original charges
16
17
18 pleaded against him/her in this matter:

- 19 1. As of the 9th day of June, 1995, the Defendant and one Jennifer Jones, and
20 Ms. Jones two minor children, Jacob Jones (DOB: April 13th, 1994) – hereafter
21 simply “Jacob”, and a older half sibling Charles (Chucky) Rankin (hereinafter
22 “Chucky”) resided at a residence in Carlin, Nevada located 420 Hamilton Street
23 in Carlin, Nevada;
24
25 2. On the morning of Friday June 9th, 1995, the Defendant, Ms. Jones and Jacob
26 were at the Carlin Hamilton Street Residence.
27
28 a. Chucky was at the home of Ms. Jennifer Jones' Grandmother, Joyce

1 Lingafelter who at the time was residing at a Residence situated at # 5,
2 Yorkshire Villa in Carlin Nevada – which was within walking distance of the
3 Defendant’s and Ms. Jone’s Hamilton Street Residence in Carlin.
4

5 2. In the late morning – some time around 11:00 o’clock a.m. on the morning of
6 Friday June 9th, 1995, Jacob had been sick for approximately three days.
7

8 a. Ms. Jones, who knew that Jacob had been diagnosed with an allergic
9 reaction to penicillin (in the form of Amoxicillin) in January of 1995,
10 crushed one-quarter of a 250 milligram Veetids pill – an adult form of
11 penicillin which had been prescribed for Ms. Jones by a Dr. Pemberton
12 who was then practicing in Spring Creek, Nevada and administered it
13 to Jacob by crushing it up and spooning it into Jacob’s mouth with a
14 spoon and water.
15

16
17 b. Ms. Jones then put Jacob Jones down for a nap, and proceeded to Ms.
18 Lingafelter’s Residence to retrieve Chucky – leaving the Defendant in the
19 Hamilton Street Residence alone with Jacob.
20

21 3. Ms. Jones was gone for approximately fifteen minutes;

22 4. Upon her return the Defendant told Ms. Jones that Jacob did not look well, and
23 that something was wrong with him;
24

25 5. Ms. Jones then proceeded into the bedroom where she had laid Jacob down
26 and found that he was not breathing.

27 a. She reported at the time, and during her testimony in the preliminary
28 hearing in this matter and at trial that she picked Jacob up and shook him

1 and lightly slapped his face in an effort to revive him – unsuccessfully.

2 6. Being unsuccessful in her efforts she ultimately ran out into the front room; Mr.
3 McCormick's brother Tom McCormick, who was an EMT, was summoned from
4 his residence on Bush Street who arrived and started performing CPR and the
5 like on Jacob;
6

7 7. An ambulance was summoned, and Jacob was transported to the then Elko
8 General Hospital (hereinafter the "Hospital") where he arrived at approximately
9 12:20 p.m. and extraordinary life-saving efforts were undertaken by the
10 Emergency Room Physician Dr. Robert Stefanko and Staff.
11

12 a. Eventually efforts to revive Jacob proved unsuccessful and Dr. Emmalina
13 G. Cortez pronounced Jacob as deceased at 8:20 p.m. on Friday the
14 9th of June, 1995, and life support was terminated.
15
16

17 8. Dr. Stefanko's June 9th, 1995 Discharge Summary contained the following
18 recitations:
19

20 a. On Page 3 under the Heading "Medical Decision Making" Dr. Stefanko
21 observed that:

22 The patient sustained an acute cardiopulmonary arrest,
23 probably secondary to an acute respiratory arrest and
24 acute allergic etiology from penicillin would be
suspected...

25 b. On Page 4 of the Summary under the Heading "Diagnosis" Dr. Stefanko
26 recited:
27

28 1. Acute respiratory and cardiopulmonary arrest with successful

1 resuscitation, however, cannot rule out permanent central
2 nervous system/cerebral sequela.

3 2. Rule out acute allergic reaction to penicillin
4 causing number one.

5 3. Rule out child abuse.

6 4. Multiple contusions to the face and right forearm.

7 9. At the time Jacob's presentation to the Hospital on June 9th, 1995, a CT Scan
8 (which can no longer be located – i.e. the scan itself) of Jacob was conducted
9 which did not according to the Radiologist who performed it, Murad Haid, M.D.
10 disclose any evidence of intracranial hemorrhage and was interpreted as "normal"
11 by Dr. Cortez.
12

13
14 10. Both Jennifer Jones and Patrick McCormick were interviewed at the Hospital on
15 the afternoon or in the early evening of June 9th, 1995, by then Detective Connie
16 Bauer of the Elko Police Department.
17

18 a. Ms. Jones related to her that:

19 1. On June 9th, 1995, Jacob had been sick for several days; they did
20 not have insurance, and her ex-husband complained when she
21 took the children to the hospital or a physician.
22

23 2. She had some adult penicillin pills which had been prescribed for her
24 and she quartered one of them; crushed one quarter of one of the
25 pills and administered it to Jacob in a teaspoon of water.
26

27 3. She laid Jacob down in a bedroom and left to retrieve her other son
28

1 and was only gone for a few minutes. Mr. McCormick was in the
2 Residence when she left.

3
4 4. Upon her return Mr. McCormick advised her that Jacob did not look
5 very well, and there was something wrong with him.

6 5. She walked into the bedroom and discovered that Jacob was not
7 breathing – she grabbed him and shook him in an effort to revive
8 him, unsuccessfully, and then went to the front room and summoned
9 Mr. McCormick's brother who is was a EMT who came to the
10 residence and commenced performing CPR on Jacob and then she
11 called an ambulance.
12

13
14 6. During her conversation with Det. Bauer Ms. Jones related that she
15 was aware of the fact that Jacob was allergic to penicillin; had, while
16 awaiting arrival of the ambulance, observed a red rash on his chest;
17 and had interpreted his distress as an allergic reaction to penicillin.

18
19 a. In an interview of Ms. Jones conducted on the 14th of June,
20 1995, by P.K. O'Neill of the Nevada Division of Investigation
21 Ms. Jones asserted that the idea of administering penicillin to
22 Jacob on the morning of June 9th, 1995, had originated with
23 Mr. McComick. Specifically she asserted that:
24
25

26 O'Neill: So you sat him down *you* went and did your
27 couple of items, Mr. McCormick was up at this
28 time?

1 Jones: Yeah, he was still awake, he was doing bills, he
2 had that day (skip)

3 Jones: He asked if I still had the penicillin pills, I said
4 yes and he (skip) we should try to give him
5 some. (skip) a large dosage and I didn't think
6 nothing of it. Ok, that was the one thing, I didn't
7 think anything of it. Ok, you know, maybe it
8 won't hurt him, maybe it will help him (skip) not
9 even the whole pill (skip) we- cut it up so that it
10 was in so it was a half of a pill and then another
11 half and then we took a part of of that half and
12 we smashed it up and Cody put water in it and I
13 gave it to Jacob. I didn't force it down him

14 O'Neill: In a cup or ..

15 Jones: No, on a spoon, on a spoon, and I held his, I
16 opened his mouth because he wouldn't take his
17 medicine, he had a hard time with that ...

18 ... O'Neill: That's before you left for your mothers.

19 Jones: That - was before I left to go get Chuckie

20 b. Mr. McCormick related the following to Det. Bauer at the Hospital on
21 the 9th of June, 1995, as recited in her June 11th, 1995, Report:

22 I asked Cody what had happened today, and he related the
23 following: he works for Coke Selve Products, on the graveyard shift.
24 He arrived home from work on this day about 0730 hrs. He sat
25 down at the kitchen table and was working on bills. Jennifer told
26 him the baby was sick. (Cody said the baby had been sick for 2
27 to 3 days) She told Cody that she was going to give the baby some
28 of her penicillin pills. Cody emphasized that he did not do this, he
just saw Jennifer do it. She took one of her penicillin pills and broke
it up in some water. She placed this in a spoon and gave it to
Jacob. She then laid Jacob in the bedroom, and left to get Chucky
(the 2 yr. old boy) Cody said this was about 1130 hrs. He was still
sitting at the kitchen table, working on bills. He heard Jacob was still
crying, so he went into the bedroom. Jacob was "away from his
blanket and his bottle". Cody said Jacob was attached to his blanket,
and he thought this was one reason for the baby crying. He gave

1 Jacob his blanket, and walked into the kitchen and filled the bottle
2 with water. When he walked back into the bedroom, Jacob had
3 quit crying. He noticed that Jacob "did not look good". When I
4 asked him to explain this, Cody said his eyes were open and they
5 "looked white", "like his (Jacob's) eyes had rolled back in his head".
6 He had also stopped breathing.

7 This was when Jennifer came home. He told Jennifer that
8 Jacob might have something wrong with him. Jennifer went
9 into the bedroom. Jacob "gaspd, then blew out". He then
10 quit breathing. Jennifer was now holding the baby. Cody put
11 his hand over the baby's mouth, and there was "no breath".
12 Jennifer grabbed Jacob and ran into the livingroom. She
13 was trying to do CPR on Jacob. Cody said he told Jennifer
14 to call his brother, which she did, and as his brother just lives
15 across the street, the brother was at their house before
16 Jennifer could hang up the phone. As his brother started
17 CPR, he told Jennifer to call for the ambulance, which she did,
18 and Jacob was transported to Elko.

19 When I asked Cody how Jacob was crying, Cody said, "you
20 know, he was fussing a little when Jennifer left. He quit
21 fussing, then started again". Cody said this was when he
22 went into the baby's room.

- 23 10. An autopsy was performed on Jacob's remains on the 13th day of June, 1995, by
24 one Frederick A. Laubscher, M.D. a Hospital Pathologist who listed his Diagnoses
25 as follows:

- 26 1. Subdural hemorrhage, bilateral, recent
- 27 2. Scalp hemorrhages, recent, involving frontal, parietal and occipital
28 areas
3. Outer periosteal skull hemorrhages, small, recent
4. Leptomeningeal brain hemorrhages, multiple, focal, recent
5. Cauda equina area hemorrhage, recent

- 1 6. Optic nerve sheath hemorrhages, bilateral, recent
- 2 7. Dural hemorrhage adjacent to thoracic spinal cord, focal,
- 3 recent
- 4 8. Soft tissue hemorrhage adjacent to spinal cord, lumbar
- 5 region
- 6 9. Splenic hemorrhages, multiple, recent
- 7
- 8 10. Superficial laceration, right infra-orbital area, recent
- 9 11. Healing abrasions, right frontal and left frontal areas, small
- 10 12. Subcutaneous hemorrhages, recent, focal, lower thoracic
- 11 and lumbar areas of back (three)
- 12 13. Subcutaneous hemorrhage, posterior knee area, left, recent
- 13 14. Cutaneous rash, head, neck and thoracic areas
- 14 15. Alleged Penicillin allergy (clinical diagnosis)
- 15 16. Respiratory infection, recent (clinical diagnosis)
- 16
- 17 a. Dr. Laubscher characterized the cause of death as follows:
- 18 1. Multiple traumatic injuries with bilateral subdural
- 19 hematomas.
- 20
- 21 b. Dr. Laubscher never testified in any of the proceedings
- 22 undertaken with respect to the original trial proceedings in this
- 23 matter.
- 24
- 25 11. It was Dr. Ellen Clark, a forensic pathologist, who testified in this
- 26 matter both at the preliminary and at trial.
- 27 a. At preliminary hearing, conducted on the 18th of August, 1995,
- 28

1 Dr. Clark opined that after reviewing Dr. Laubscher's Report
2 and reviewing the autopsy photographs, and slides she had
3 come to the conclusion that Jacob:
4

- 5 1. "... [D]ied of multiple brain injuries due to blunt force
6 trauma..." (P.H.T., P. 33, L's 21 to 22);
7
- 8 2. That there may have been as many as 15 to 20 separate
9 impact injuries (P.H.T., P. 49, L' s13 to 16); and
10
- 11 3. Finally that Jacob has sustained a majority of these
12 injuries within 6 to 12 hours of his presentation at the
13 Hospital on the 9th of June, 1995. (P.H.T., P. 59, L's 21 to
14 22)

- 15 b. Between the time of the conduct of the Preliminary Hearing and
16 Trial, particularly as of the 28th day of February, 1996, Dr.
17 Clark changed her opinion about the lapse of time between the
18 infliction of injury on Jacob, and the on-set of extremis.
19 Specifically on the 28th day of February, 1996, Dr. Clark
20 disclosed it was her opinion that Jacob had suffered "...
21 shearing or rotational whiplash injury to the brain..." and would
22 have been in extremis and in the process of expiring within
23 minutes of the infliction of the traumatic injury to Jacob's brain
24 she testified the autopsy revealed. (Trial Transcript, Vol. III, P.
25
26
27
28

1 71, L. 23; and P. 167, L. 24 to P. 168, L. 18)
2 to P. 73, L. 4.
3

4 12. Subsequent to the reversal of this matter by the Nevada Supreme
5 Court the State engaged the service of one Bennet I. Omalu, a
6 preeminent Clinical, Anatomic, and Forensic Pathologist, who is also
7 a Neuropathologist, and Epidemiologist to review this case. Dr.
8 Omalu after thoroughly reviewing the case, including slides which
9 were preserved from Jacob's autopsy on the 15th day of July, 2013,
10 issued a comprehensive twenty-nine (29) page summary of his
11 findings. Dr. Omalu's observations and conclusions included the
12 following. Dr. Omalu's observations and conclusions included the
13 following:
14

15 a. First:
16

17 Review of the submitted hospital and medical records confirms
18 that **NO** definitive clinical laboratory test was performed on
19 Jacob Jones. Anaphylaxis was neither confirmed nor excluded;
20 however anaphylaxis remained a potent differential diagnosis
21 especially given the temporal relationship and association
22 between the exposure and administration of Penicillin, and
23 onset of the symptoms of acute cardiopulmonary arrest,
24 pulmonary edema and loss of consciousness. The following
25 clinical laboratory tests are typically performed on blood
26 samples [plasma] to confirm the diagnosis of anaphylaxis, viz:

- 27 1. Total Immunoglobulin E [IgE]
- 28 2. Allergen specific IgE [in this instance penicillin specific IgE]
3. Histamine

- 1 4. Tryptase
- 2 5. Chymase
- 3 6. Carboxypeptidase A3

4 None of these tests was performed before Jacob Jones died. Although
5 they were not performed pre-mortem, these tests should have also been
6 performed post-mortem either on a hospital admission blood sample or
7 an autopsy blood sample, yet none of these tests was performed after
8 the autopsy. These tests should have been performed in light of the
9 prevailing forensic scenario with Penicillin Anaphylaxis as a potent and
10 highly plausible underlying cause of death or contributory factor to death.

11 b. Second:

12 ... In summary therefore, a fatal anaphylactic reaction to Penicillin
13 remains a likely underlying cause of death of Jacob Jones,
14 especially in light of the negative tissue immunohistochemistry for
15 APP, which will be described below ...

16 ... Review of the autopsy pictures did not reveal any extensive
17 and/or confluent subcutaneous and/or subgaleal hemorrhages of
18 the scalp. There were no skull fractures. The next medico-legal
19 question that arises, therefore, would be: What is the forensic
20 significance of the intracranial hemorrhages described on Jacob
21 Jones in relation to causation of death? The prevailing
22 technological tool we may adopt to address this question would
23 be Amyloid Precursor Protein [APP] tissue
24 immunohistochemistry to determine the degree of diffuse traumatic
25 axonal injury, if present. APP is a large transmembrane protein that
26 exists in the neurons and axons [nerve fibers] in the brain and
27 spinal cord. In a brain without injury, APP
28 immunohistochemistry is negative. In a brain with traumatic
axonal injury APP immunohistochemistry becomes progressively
positive as the post-injury time increases. APP
immunohistochemistry becomes positive after about one to three
hours following injury sustenance and is a marker of severe
traumatic brain injury.

The APP immunopositive pattern for traumatic brain injury
comprises multifocal APP-immunopositive axonal bulbs, axonal
spheroids and swollen, distorted axonal forms. This specified
pattern was absent in the archival histologic sections of Jacob

1 Jones' brain and spinal cord except only in the nerve fiber layer of
2 the neuroretina in the right and left eyeballs, adjacent to the optic
3 papilla, and accentuated in the right eyeball. APP
4 immunohistochemistry was therefore negative in the brain, spinal
5 cord and optic nerves in this case. This additional finding further
6 suggests that severe traumatic brain injury may not be the
7 underlying cause or mechanism of death. The focal
8 immunopositive pattern observed in the nerve fiber layer of the
9 neuroretina, adjacent to the optic papilla, would be consistent with
10 secondary focal axonal injury of the neuroretina due to congestive
11 brain swelling and raised intracranial pressure, which can follow
12 any type of brain injury including hypoxic-ischemic cerebral injury
13 of any etiology.

14 In my practice I have encountered cases whereby APP
15 immunohistochemistry was negative in the brain of infants in spite
16 of traumatic brain injury given the cellular immaturity of the
17 infantile brain. However within the context of the prevailing
18 forensic scenario in this case, negative APP
19 immunohistochemistry is yet another feature that may further
20 undermine the validity of the cause of death as has been
21 determined by the coroner.

22 APP immunohistochemistry was performed on the tissue
23 histology slides of the brain, which were taken and archived by
24 Dr Laubscher, the pathologist, who performed the autopsy.
25 Unfortunately, the brain sections, which were taken are not the
26 standard sections, which are recommended for the evaluation
27 of the human brain for traumatic brain injury. These sections were
28 grossly inadequate and did not include vital topographically
targeted regions of the brain that are selectively vulnerable to
traumatic axonal injury. The absence of these topographically
selective regions of the brain for APP immunohistochemistry even
further undermines the validity of the autopsy brain analysis and
evaluation for the presence or absence of traumatic brain injury,
and the assessment of the severity of the traumatic brain injury.

There is a mismatch between the CT scan of the head upon
hospital admission and the autopsy findings after death. The CT
scan of the head was negative and did not show any intracranial
hemorrhages. Autopsy showed bilateral subdural hemorrhages.
Could the intracranial hemorrhages have occurred between the
hospital admission and death, and/or autopsy? Could all or some of

1 the intracranial hemorrhages have been artifactual aberrations of
2 medical/surgical therapy or an artifactual aberration of the autopsy
3 prosection? Furthermore the histomorphologic and topographic
4 pattern of selective cerebral neuronal excitotoxic injury in this
5 case, is inconsistent with severe traumatic brain injury, severe
6 traumatic axonal or vascular injury. Rather it is consistent with
7 cerebral hypoxic-ischemic neuronal injury, which is seen in acute
8 cardiopulmonary arrest, which Jacob Jones was diagnosed with.
9 His acute cardiopulmonary arrest was thought to be caused by acute
10 anaphylactic reaction to penicillin.

11 Hypothetically, if the suspected perpetrator in this case instigated
12 the terminal chain of events by inflicting adult-induced non-
13 accidental trauma on Jacob Jones on or before June 9, 1995,
14 there are prevailing repeated breaches of the contiguity of this
15 alleged chain of events by novel factors, which would have
16 successfully impeached or nullified such an alleged child-abusive
17 event as the underlying cause of death. These novel factors,
18 which may have successfully breached the contiguity of the
19 alleged child abusive chain of events include sepsis, DIC,
20 penicillin anaphylaxis and shaking by the mother. These novel
21 factors synergistically initiated novel and terminal chains of
22 events, which precipitated death. The clinical management,
23 death investigation and autopsy in this case did not
24 successfully identify, recognize, inculpate or exculpate these
25 novel factors as probable underlying causes of, and contributory
26 factors to death within a reasonable degree of medical certainty.


27 13. On the 28th of August, 2013, Dr. Ellen Clark was interviewed via-a-vis Dr.
28 Omalu's findings.

a. Dr. Clark, while conceding that there were tests on bodily fluids that
could either have identified or excluded anaphylaxis, which cannot now
be performed because the bodily fluids were not preserved, still
maintains that it is her opinion that the autopsy photographs created in
connection with the autopsy disclose that Jacob suffered from significant

1 blunt force trauma to his head and brain that that was ultimately the
2 cause of his death.

3
4 The above represents a summary of the potential evidence available
5 with respect to this matter at this point in time.

6 Dated this 13th day of Dec., 2013.

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9 _____
10 **MARK TORVINEN**
11 State Bar Number: 551
12 Elko District Attorney
13 Counsel For The Plaintiff
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**EXHIBIT 2 TO THE PROFFER OF A PLEA AGREEMENT IN
STATE VS. PATRICK CODY McCORMICK
DISTRICT COURT CASE NUMBER: CR-FP-95-6248**

1 CASE NO.: CR-FP-95-6248

2 DEPT. NUMBER: I

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5 **IN THE FOURTH JUDICIAL DISTRICT COURT**
6 **OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO**
7

8
9 **THE STATE OF NEVADA,**

Plaintiff,

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12 vs.

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15 **PATRICK CODY McCORMICK,**

Defendant.

PROPOSED

ORDER:

**VACATING TRIAL DATE PURSUANT
TO A JOINT REQUEST OF THE
PARTIES IN CONNECTION WITH
THE:**

**PROFFER OF A NO CONTEST
PLEA AGREEMENT IN THIS
MATTER;**

FILED HEREIN BY THE STATE

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19 **THE COURT HAVING CONSIDERED IN CHAMBERS** that certain;

20 **JOINT REQUEST BY THE PARTIES FOR THE ENTRY OF AN ORDER**
21 **VACATING THE CURRENT TRIAL DATE PENDING THE CONDUCT OF**
22 **THE EVIDENTIARY HEARING REQUESTED HEREIN;**

23 contained within that certain;

24 **PROFFER OF A NO CONTEST PLEA AGREEMENT IN THIS MATTER;**

25 hereinafter the "Proffer" filed by the State of Nevada herein, and good cause
26 appearing therefore:
27
28

1 **IT IS HEREBY ORDERED** that the Jury Trial current set to commence
2 in this matter on Tuesday January 28th, 2014, be and the same is hereby vacated.

3
4 **IT IS FURTHER ORDERED THAT** the Court will conference with
5 Counsel for the Parties to set the Evidentiary Hearing requested in the above-
6 referenced Proffer to be conducted as soon as possible commensurate with insuring
7 the availability of the Expert Witnesses whose testimony the State intends to adduce
8 at said Hearing.

9
10 Dated this _____ day of _____, 20 ____.

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14 _____
NANCY PORTER
District Judge – Dept. I

15
16 **Approval Of Form And Content Of Proposed Order**

17
18 **COMES NOW THE STATE OF NEVADA**, by and through the Elko
19 County District Attorney’s Office, and Patrick Cody McCormick the Defendant above-
20 named, by and through Counsel Of Record, David Lockie, who by their respective
21 signatures hereunder do hereby signify to the above-entitled Court that they have
22 reviewed the proposed Order set forth above, and approve the same for its

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1 submission to the Court for its review and consideration thereof.

2 Dated this _____ day of, _____ 20____.

3
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5 _____
6 **MARK TORVINEN**
7 State Bar Number: 551
8 Elko County District Attorney
9 Elko County District Attorney's Office
10 Counsel For The Plaintiff

11 Dated this _____ day of, _____ 20____.

12 _____
13 **DAVID B. LOCKIE**
14 State Bar Number: 2384
15 Counsel For The Defendant
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