IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

No. S-1-SC-39283

STATE OF NEW MEXICO,

Plaintiff-Appellant,

Vs.

DEBORAH GREEN,

Defendant-Appellee.

STATE OF NEW MEXICO'S BRIEF-IN-CHIEF

DIRECT APPEAL FROM THE
THIRTEENTH JUDICIAL DISTRICT COURT
CIBOLA COUNTY, NEW MEXICO
THE HONORABLE JAMES SANCHEZ, PRESIDING

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STATEMENT OF COMPLIANCE

The body of this Answer Brief does exceed the 35 page limit set forth in Rule 12-213(F)(2) NMRA; however, the document is proportionally spaced using Georgia, a TrueType font, set at fourteen (14) points, and contains 9,354 words. The word count was determined using Microsoft Office 2016.

INTRODUCTION

After a jury trial in 2018, Defendant-Appellee (Defendant) received a 72-year prison sentence for several convictions of kidnapping, criminal sexual penetration, and child abuse involving M.G., her six-year-old granddaughter. Three weeks later, she pleaded no contest to a charge of child abuse by endangerment resulting in great bodily injuries to E.M., a 12-year-old child living on her property, and two other charges not relevant to this appeal. Pursuant to the plea agreement, the trial court imposed an 18-year prison sentence that ran concurrently with the 72-year one and dismissed four other charges. Five years after resolving the E.M. case, new defense counsel filed motions to set aside her convictions and obtain a new trial on the M.G. charges. Defense counsel also filed a habeas petition to withdraw Defendant's plea to the E.M. charges based on actual innocence.

Defendant did not allege that new evidence has come to light that exonerates her. Instead, her claim was that, in light of *State v. Garcia*, 2021-NMSC-019, 488 P.3d 585, she could not have committed the crime of endangerment as a matter of law because the medical evidence in this case did not meet the standard set forth in *Garcia* for demonstrating proximate causation. The trial court granted the habeas petition and dismissed the E.M. charges with prejudice.

The State appealed and asks this Court to reverse the dismissal and reinstate the conviction. As a threshold matter, this Court must decide whether a habeas

petitioner is allowed to claim actual innocence after a plea, as opposed to a conviction by a jury, when the claim is based on a change in the law. In its order granting habeas relief, the trial court never addressed this preliminary issue.

Additionally, this Court should determine how the *Garcia* standards for medical testimony apply when the charge to which Defendant pled was causing great bodily injury, not death. Because the evidence of proximate cause in this case involves more than just a failure to provide medical care and because the charge is different from the one in *Garcia*, the evidence is sufficient to prove proximate causation, and the trial court erred in dismissing the case with prejudice.

STATEMENT OF FACTS

Defendant was one of two main leaders of an organization named The Aggressive Christianity Missions Training Corp. She and her husband, Jim Green, lived with their followers on a compound in Cibola County. Those followers included Defendant's adult daughter, her young granddaughter, M.G., a woman named Stacy Miller, and her five children. All five had been born at the compound, and the oldest was a boy named E.M. All those living at the compound considered Defendant to be an "oracle of God" and a "prophetess." **[8 RP 1813; 1/20/22 TR 12:1-13:8, 21:2-8, 79:23-80:14; 1/20/22 (sealed) TR 20:4-12, 21:13-22:4, 25:19-**

26:20][1]

Except for Defendant and her husband, the adults worked by baking goods and making home products that they sold during sales trips. None of them were allowed to have their own transportation. Although there were several cars on the property that the adults used on the sales trips, Defendant controlled all the keys. **[7 RP 1687; 8 RP 1813]** She required the adults to turn over all the sales proceeds and told everyone that keeping or spending any proceeds constituted stealing. None of the adults had phones. Defendant controlled the cell phones and assigned them out according to her own wishes. Adult members cut off all contact with their families and lived on the compound in the area where Defendant directed them. They also performed chores as assigned by Defendant. **[7 RP 1695-96; 8 RP 1772-73, 1816-17; 1/20/22 TR 7:9-18, 20:13-22:4, 44:11-46:24, 47:18-48:9, 49:16-50:6, 51:5-11, 49:2-4, 49:13-15, 51:1-4; 1/20/22 (sealed) TR 30:24-33:161, 30:24-33:16]**

As for the children, they did not have birth certificates, were not immunized, did not attend outside school, and did not receive any regular medical or dental care. **[7 RP 1695-96; 8 RP 1772-73, 1816-17; 1/20/22 TR 7:4-18, 20:13-22:4]** If someone at the compound needed medicine, Defendant would provide directions on

[1] The trial court sealed the testimony by Stacy Miller on January 20, 2022, so any citation to the record with the parenthetical "sealed" refers to Ms. Miller's statements.

how to make an herbal poultice. In some cases, she dispensed pain relievers. **[8 RP 1823-24]** But Defendant discouraged her followers from seeking further medical care. **[8 RP 1815]**

In short, Defendant "controlled all facets" of the members' lives and had "the authority" to tell the adults how to raise their children. The members did not "have power over [their] children."[2] **[1/20/2022 TR 45:8-24, 51:12-52:11, 66:8-25; 1/20/2022 (sealed) TR 30:24-33:16]**

Sometime in 2012 or early 2013, Defendant's granddaughter M.G. was removed from the compound by State authorities. **[1/20/2022 (sealed) TR 28:12-22, 29:12-15]** Once in foster care, M.G. reported that both Defendant and her adult son had been physically and sexually abusing her. That investigation uncovered the fact that M.G. was not Defendant's biological granddaughter. Instead, she had been smuggled out of Uganda with false paperwork by Defendant's adult daughter. **[8 RP 1817-18, 1833]**

In late 2013, almost everyone in the compound fell ill with some sort of flu but they all recovered after a few weeks with the exception of E.M. His illness started with an earache. His condition worsened, and he began to miss the communal meals that everyone was required to attend. According to an eyewitness, Defendant

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[2] The evidence conflicted regarding if and how much Defendant controlled the members of the ground, including the children. **[1/18/2022 TR 44:21-91:25, 92:18-120:10, 121:20-133:14]**

viewed his failure to appear at mealtimes as an act of rebellion and ordered that he not be fed for several days. After he was deprived of food, he grew even more ill. His face swelled and one eye was forced shut. He became paralyzed on the right side and was unable to speak, talk, or swallow. A boil appeared on his face and pus leaked out of it, as well as his eye and his nose. He had fever and terrible pain and began to experience seizures. **[7 RP 1688, 1698; 8 RP 1772, 1795, 1820-26; State's Ex. 2, pp. 3-6; 1/20/22 TR (sealed) 7:23-11:22]**

E.M. died from his illness on January 23, 2014. When Ms. Miller realized that her son was gone, she repeated the same sentence to Defendant over and over: "You told me God would heal him." Defendant and Mr. Green ordered that E.M. be buried at the compound and did not contact any authorities to report the death, which thwarted, or at the very least, seriously limited any opportunity for authorities to determine the actual cause of death. Additionally, Defendant instructed those who had witnessed E.M.'s passing never to speak of the matter to anyone and ordered the removal and destruction of all the photographs of the children who had lived at the compound. **[7 RP 1692, 1719; 8 RP 1827-28; State's Ex. 2, p. 9; 1/20/2022 TR 36:17-41:5]**

In the spring of 2015, E.M.'s father, Brian Miller, contacted the Cibola County Sheriff's Office. He explained to the deputies that he had lived on the compound with his family for many years but had left while his wife and children had remained.

He was concerned that he had been unable to speak to his children and asked the deputies to perform a welfare check on them. **[1/20/22 TR 62:1-24]** When the deputies arrived at the compound, Mr. Green showed them a child who was not actually Mr. Miller's child but presented her as if she was. The deputies did not pursue the matter any further at the time. **[7/1/2020 TR 70:13-25]**

On January 15, 2016, two women contacted the Cibola County Sheriff's Office, asking for help in "escap[ing]" the compound. These women informed the responding officer of E.M.'s death. **[7 RP 1682-83]** The deputy then went to the compound to speak with Defendant and Mr. Green, who confirmed E.M.'s death, acknowledged that they knew that they were required to report it to authorities, and admitted that they had not done so. According to them, this was because they had reported the death of an adult a few years prior and had been dismayed at the condition of the body when it was returned to them after the autopsy. **[8 RP 1814]**

Law enforcement obtained a warrant for the exhumation of E.M.'s body, which was examined by a forensic anthropologist and a forensic pathologist. According to these doctors, the "reported history of an infection and facial abscesses" and areas of bone loss (pitting) in the skull were consistent with "an active infection at the time of death." Further, the forensic pathologist found that, "[a]lthough the exact cause of [E.M.]'s infection remains unknown, the investigative information, autopsy, and anthropology findings are all consistent with an

underlying infectious disease process" and that E.M. "died of a probable infectious disease." Little else was discernable due to the "advanced decomposition" of most of the soft tissues of the body. **[7 RP 1704-18]**

After the Greens spoke to law enforcement, they forced Stacy Miller to leave the compound. After her departure, they ordered the destruction of all of the photographic evidence that any children, including E.M., had ever lived there and evacuated most of the members of the group to Montrose, Colorado. That was consistent with Defendant's behavior: the Greens "purposely moved people out of the community on a regular basis" whenever law enforcement tried to make contact. **[7 RP 1685; 8 RP 1814; 1/20/22 TR 7:4-8]**

The State charged Defendant with kidnapping, criminal sexual penetration, and child abuse relating to M.G. The State also charged her with child abuse by endangerment resulting in death, child abuse by endangerment resulting in great bodily injury, and two counts of tampering with evidence relating to E.M. The first tampering charge was for removing all the children from the compound after she spoke with law enforcement; the second was for destroying all the pictures of the children at the compound. **[1 RP 1-5; 4 RP 901]** At Defendant's request, the trial court severed the counts involving E.M., and the parties proceeded to trial on the counts involving M.G. **[3 RP 507-14; 4 RP 948]** The jury convicted Defendant, and the trial court imposed a 72-year prison sentence on September 26, 2018. **[7 RP**

1612; 9/26/2018 TR 23:10-27:13]

Three weeks after the jury trial ended, Defendant entered into an agreement with the State on the E.M. counts in Cibola County District Court Cause Numbers D-1333-CR-2017-00261 and D-1333-CR-2018-00053. She pleaded no contest to one count of child abuse by endangerment resulting in great bodily injury to E.M. and the two tampering counts. **[5 RP 1168; 8 RP 2010; 10/16/2018 TR 1:18-15:17]** In exchange for her plea, she received an 18-year sentence of incarceration. All three counts ran concurrently with each other and concurrently with the 72-year sentence on the M.G. counts. The State also agreed to dismiss four remaining charges. **[5 RP 1168-72]**

Shortly before Defendant entered her plea, the trial court informed her that, if she was dissatisfied with the sentence, she could move to reconsider and request another hearing. She did not do so. Additionally, she did not appeal because, as part of the agreement, she waived her rights to do so. **[5 RP 1179-81; 7 RP 1662-68; 8 RP 1775, 2010; 10/16/2018 TR 10:11-16]**

Three years later, Defendant acquired documents and recordings relating to M.G. that were in the possession of the New Mexico Children, Youth, and Families Department (CYFD). The State had failed to disclose those materials to the defense prior to the trial on the M.G. allegations. Defendant argued that this failure was intentional and flagrant and moved for a new trial on the M.G. counts pursuant to

Brady v. Maryland, 373 U.S. 83 (1963). The State argued that it did not have the duty to disclose those documents because they were impeachment evidence only or, alternatively, that the failure had not been intentional. The trial court granted the motion and was in the process of setting a new trial date when the State dismissed the M.G. charges altogether "due to [the] unavailability of essential witnesses[,]" namely M.G. **[5 RP 1206-16, 1221-30, 1240-45; 6 RP 1308-09; 7 RP 1573-85, 1595, 1770; 7/1/2020 TR 200:20-25]**

Following this dismissal, Defendant filed a habeas petition regarding the E.M. charges to which she had pled. She requested to withdraw her no-contest pleas and moved for the trial court to vacate her convictions and dismiss the charges.[3] She made three allegations that are relevant to this appeal: 1) that she pled no contest only because of the M.G. convictions and, because of the *Brady* violation, her plea on the E.M. charges was neither knowing nor voluntary; 2) that defense counsel was ineffective in advising her about the plea; and 3) that she was actually innocent because the State could not prove the endangerment charges involving E.M because of this Court's decision in *Garcia*, pertaining to the requirements for proving proximate causation in a medical neglect case and issued just a few days prior to the

[3] At the hearing on the habeas petition, Defendant abandoned her request to withdraw her plea on the tampering charge involving the destruction of the pictorial evidence of the children. **[1/20/2022 TR 36:17-41:5]**

filing of the habeas petition. **[7 RP 1612-14; 8 RP 1847-48]**

The trial court rejected the *Brady* violation argument summarily because the M.G. and E.M. cases had been severed at Defendant's request and the M.G. documents that had not been disclosed had nothing to do with E.M. Accordingly, the court found that the *Brady* violation had nothing to do with the plea on the E.M. counts. Defense counsel never requested that the court reconsider that finding and it is not at issue in this appeal. The court then held an evidentiary hearing on the remaining allegations and granted Defendant's habeas petition, vacating her conviction for endangerment and dismissing the charge with prejudice. **[8 RP 1775, 1889-91, 1996; 10/14/2021 TR 15:25-16:4, 17:3-20, 47:21-48:9**]

In its written order granting the habeas petition, the trial court found that Defendant's argument that defense counsel was ineffective was not supported by the record. Defense counsel never requested that the court reconsider that finding either.

Regarding the allegation that Defendant was actually innocent, the trial court found that Defendant "failed to seek medical attention for the child in a timely manner, and this did cause the child's condition to worsen." **[8 RP 1988]** Nevertheless, the court set aside the plea and dismissed the charge because "'[w]orsen[ing] the child's condition[]s' is not great bodily harm justifying a first degree felony charge, as a matter of law." **[*Id.*]** The court also found that the evidence introduced at the habeas hearing did not establish that Defendant's failure

to seek medical care proximately caused E.M.'s great bodily injuries. **[8 RP 1988-89]**

Finally, the trial court also found that the count for tampering with evidence by removing the children from the Cibola County compound and sending them elsewhere to live did not qualify as tampering with physical evidence as a matter of law. **[*Id.*]**

The State now appeals the trial court's decision to allow Defendant to withdraw her plea to the charge for child abuse by endangerment and dismiss the charge based on actual innocence. In the Statement of Issues filed by the District Attorney's Office, special counsel for the State addressed only the dismissal of the child abuse case and did not make any arguments regarding the dismissal of the tampering with evidence case involving the children, so the State does not challenge this dismissal in its appeal. **[8 RP 2008-17]**

The State brings this appeal pursuant to Rule 5-802(N)(1) NMRA and Rule 12-102(A)(3) NMRA on the grounds that the trial court erred in dismissing the case for three separate reasons: 1) under the case law allowing for a freestanding claim of actual innocence, the facts here do not qualify Defendant for habeas relief; 2) the issue was not whether E.M.'s "worsening" physical condition qualified as a "great bodily injury" but, rather, whether the losses of his eyesight, the ability to speak, and the ability to move qualified as great bodily injuries; and 3) the *Garcia*

standard for medical testimony should not apply in the same way in a situation in which the uncontroverted facts established that Defendant's actions were the actual and proximate causes of E.M.'s great bodily injuries, as opposed to his death.

To present these arguments on appeal, the State must have preserved them by "fairly invok[ing] a ruling of the [trial] court on the same grounds argued in the appellate court." *State v. Bregar*, 2017-NMCA-028, ¶ 29, 390 P.3d 212. The State has met that standard by making these three arguments in its response to the habeas petition and in its closing remarks to the trial court after the hearing. **[8 RP 1782-1800; 1/21/2022 TR 125:9-143:11]**

ARGUMENT

I. UNDER NEW MEXICO CASE LAW ALLOWING FOR A FREESTANDING CLAIM OF ACTUAL INNOCENCE, THE FACTS OF THIS CASE DO NOT QUALIFY DEFENDANT FOR HABEAS RELIEF.

Defendant based her habeas claim of actual innocence on the argument that, under the facts presented at the hearing, the State was not able to prove proximate causation as required by *Garcia*. In granting her petition and dismissing the case, the trial court erred because, even if this Court allows a freestanding claim of actual innocence after a plea without any new evidence, Defendant failed to carry her burden to demonstrate her eligibility to qualify for habeas relief under *Montoya v. Ulibarri*, 2007-NMSC-035, 142 N.M. 89.

The standard of review is de novo because the State's appeal is of the trial court's application of the law to the facts. "When reviewing the propriety of a lower court's grant or denial of a writ of habeas corpus, the trial court's findings of fact concerning the habeas petition are reviewed to determine if substantial evidence supports the [trial] court's findings." *Dominguez v. State*, 2015-NMSC-014, ¶ 9, 348 P.3d 183 (alteration in original) (internal quotation marks and citation omitted). However, "[q]uestions of law or questions of mixed fact and law ... are reviewed de novo." *Id.* (omission in original) (internal quotation marks and citation omitted).

A. Generally Speaking, Insufficient Evidence Is Not a Cognizable Ground for Relief in Post-Conviction Proceedings, But Federal Law Has Recognized a Right to Make a Freestanding Claim of Actual Innocence Based on a Subsequent Change in the Law.

Part of what makes this case so complicated is that Defendant's actual innocence claim was not based on new evidence that exonerated her. Instead, her claim was that the original evidence is now legally insufficient in light of *Garcia*, an issue that, ordinarily, would be waived by a plea. "A plea of guilty or nolo contendere . . . waives objections to prior defects in the proceedings and also operates as a waiver of statutory or constitutional rights, including the right to appeal." *State v. Chavarria*, 2009-NMSC-020, ¶ 9, 146 N.M. 251. Unless a defendant pleads conditionally, allowing for an appeal, he or she waives the right to contest anything other than jurisdictional errors. *Id.*

Even if a defendant goes to trial or pleads conditionally, reserving the right to challenge the sufficiency of the evidence, he or she must make that challenge by direct appeal. *See Faulkner v. State*, 1972-NMCA-061, ¶ 6, 83 N.M. 742 ("[i]nsufficiency of the evidence is not a basis for granting post-conviction relief"). This edict is rooted in two general rules. First, a petition for habeas relief is a "collateral attack on a judgment" of conviction. *Trujillo v. Cox*, 1965-NMSC-050, ¶ 7, 75 N.M. 257. Second, "[p]ost-conviction proceedings are not a method of obtaining consideration of questions which might have been raised on [direct] appeal." *State v. Hall*, 1972-NMCA-065, ¶ 5, 83 N.M. 764.

Nonetheless, the State anticipates that this Court may elect to consider the merits of Defendant's insufficiency claim for two reasons. First, *Faulker*, *Trujillo*, and *Hall* involved a different type of post-conviction proceeding (a challenge to a sentence under Rule 5-803 NMRA) than the one at issue here. A Westlaw search for New Mexico cases using the terms "actual innocence" in the same paragraph with "habeas" and "petition" produced nine cases, only three of which directly addressed the right to and the parameters of habeas relief based on actual innocence: *Montoya,* 2007-NMSC-035; *Case v. Hatch*, 2008-NMSC-024, 144 N.M. 20; and *State v. Worley*, 2020-NMSC-021, 467 P.3d 1212. Because all three involved a habeas petition after a jury conviction, the question of whether New Mexico permits the assertion of a freestanding claim of actual innocence in a habeas petition after a

plea appears to be a matter of first impression.

For the most part, the other jurisdictions that have the considered the question have allowed Defendants to make a claim of actual innocence notwithstanding the fact that he or she entered a plea. This is based on equitable principles. "The policy . . . that the punishment of an innocent person violates federal due process[] is the same for an applicant regardless of whether his [or her] case was heard by a judge or jury or whether he [or she] pleaded guilty[.]" *Ex. parte Tuley*, 109 S.W.3d 388, 390-91 (Tex. Crim. App. 2002). *See also Corbett v. Commissioner of Correction*, 34 A.3d 1046, 1049-50 (Conn. Ct. App. 2012) (appellate court would consider habeas Defendant's claim of actual innocence, even though Defendant had entered a no-contest plea).

The second reason that this Court may elect to consider the merits of the actual innocence argument is because there is precedent providing for such a claim after a plea when the claim is based on a sea-change in law. It is difficult, conceptually, to reconcile the general rule that a plea waives any argument to the sufficiency of the evidence, which provides finality, with a rule that a defendant may ask for relief from a plea based on the fact that the law has changed and the evidence is no longer sufficient. Historically, the federal circuits recognized this difficulty. In *Weeks v. Bowersox*, 119 F.3d 1342, 1351 (8th Cr. 1997), the Eighth Circuit held that a "[habeas d]efendant's allegations . . . must be supported with new reliable evidence

that was not presented at trial." However, a year after *Weeks*, the Supreme Court decided *Bousley v. United States*, 523 U.S. 614, 623 (1998), effectively omitting the new-evidence requirement in the context of an actual innocence claim after a plea when the claim is based on a subsequent, substantive change in the law.

B. *Montoya* Does Contain Language Suggesting That This Court May Consider Evidence That Does Not Fit Within the Definition of "New Evidence," But Even Under This Relaxed Standard, Defendant Failed to Demonstrate Her Eligibility for Habeas Relief.

Assuming without conceding that this Court should adopt a procedural rule that a habeas defendant may make a freestanding claim of actual innocence notwithstanding a plea when the claim is based on a change in the law, the trial court still committed error. This conclusion need not even reach Defendant's argument that the medical evidence did not satisfy the *Garcia* standard. The court committed error because Defendant did not establish that she was entitled to relief under the standard set forth in *Montoya*.

In *Montoya*, this Court held that "a defendant asserting a freestanding claim of innocence must convince the court by clear and convincing evidence that no reasonable juror would have convicted him in light of [] new evidence." *Montoya*, 2007-NMSC-035, ¶ 30. When defining the phrase "newly discovered evidence," this Court referred to the definition of that term in the context of a motion for new trial: Evidence sufficient to support the granting of a new trial qualifies as "newly

discovered" when it would "probably change the result" if a new trial was granted, was discovered since the trial, could not have been discovered before the trial by the exercise of due diligence, and is "material[,] not "merely cumulative[,]" and not "merely impeaching or contradictory[.]" *Montoya*, 2007-NMSC-035, ¶ 31. However, this Court concluded that, "[w]hen examining a freestanding claim of actual innocence, [it] will not be constrained by the requirements applicable to motions for a new trial. Instead, [it] examine[s] the evidence presented and evaluate[s] any reliable evidence." *Id.* ¶ 32. Under *Montoya*, all the reliable evidence before the habeas court indicated that the dismissal was unwarranted for three reasons.

First, trial defense counsel Robert Lobeck effectively represented Defendant in the E.M. case. The evidence at the habeas hearing was that he had prepared extensively; met with his client more than he did with any other client at the time; conducted pretrial interviews, including multiple interviews with the key witness; conveyed all the relevant information about the strengths and weaknesses of the State's case, including the evidence of proximate causation; and advised her of the consequences of taking a plea rather than going to trial. **[1/18/2022 TR 138:7-25, 144:8-20, 146:19-147:6, 148:18-149:22, 155:11-156:8, 158:2-160:1, 161:8-21, 164:19-165:6]** The testimony was uncontroverted; no one testified that Lobeck did not do his job properly in the E.M. case. **[1/18/2022 TR 44:21-160:5; 1/19/2022**

TR 7:21-56:5; 1/20/2022 TR 4:24-26:5] Accordingly, the trial court found that Lobeck was effective, and Defendant never moved the court to reconsider that finding. Thus, it is final and supported by substantial evidence, so this Court defers to it under the standard of review expressed in *Dominguez*.

Second, Defendant entered her plea knowingly and voluntarily. Lobeck's testimony established that, although Defendant was physically frail, she was still "sharp" throughout the proceedings. He "never saw any evidence of any kind of [mental] decline." She was adamant that she did not want a trial on the E.M. allegations, but she was concerned that a guilty plea might expose her to liability in any civil lawsuit that might be filed by Brian Miller, so she bargained to enter a plea of nolo contendere instead. She knew the risks involved with going to trial, despite having discussed with Lobeck the weaknesses in the State's case, and she also knew the risks of entering a plea and how it precluded her right to appeal. **[1/18/2022 TR 138:7-25, 141:22-142:2, 143:3-6, 144:8-20, 146:19-147:6, 145:18-146:6, 148:5-17, 146:19-147:6, 149:7-22, 155:11-156:8, 158:2-160:1, 161:8-21, 164:19-165:6]** Again, the testimony was uncontroverted. No one testified that Defendant's plea was unknowing or involuntary. **[1/18/2022 TR 44:21-160:5; 1/19/2022 TR 7:21-56:5; 1/20/2022 TR 4:24-26:5]**

Third, Defendant introduced no new evidentiary facts during the hearing. The Court may decide this case under the *Montoya* standard by holding that it is not

limited to just an inquiry into whether Defendant introduced new evidence, but even *Montoya* affirms that whether the evidence was new still carries weight in a habeas equation: this Court held that the factors which determine whether evidence would qualify as "newly discovered" under the motion for new trial standard "remain relevant" in assessing overall reliability. *Montoya*, 2007-NMSC-035, ¶ 32.

And two years after *Montoya*, this Court again stressed the importance attached to the "new evidence" factor in dicta from *State v. Gallegos*, 2009-NMSC-017, 146 N.M. 88. In that case, a direct appeal by a defendant based on an actual innocence claim, this Court stated: "[B]ecause a claim of actual innocence is predicated on new evidence, and would therefore ask an appellate court to look beyond the trial record, such claims may not be appropriate on direct appeal." *Gallegos*, 2009-NMSC-017, ¶ 39.[4]

Lobeck testified at the habeas hearing. He explained that he had gotten the M.G. charges severed from the E.M. charges but had prepared for the trials simultaneously because they were going to be set "back-to-back." **[1/18/2022 TR 136:7-14]** Because of his preparation on the E.M. charges, including his pretrial

[4] This Court's consideration of whether Defendant introduced any new evidence does not conflict with *Bousley*. That case said that new evidence is not required to make an actual innocence claim after a plea when the ground for relief is based on a subsequent change in law. It did not say that whether a defendant's evidence is new is irrelevant.

interviews of the State's medical experts, he thought that the evidence was "weak on causation[.]" **[1/18/2022 TR 159:7-17, 169:1-5]** According to him, the anthropologist's pretrial opinion was that the pitting in E.M.'s skull "could have been caused by some kind of infection, but she also stated that she could not testify about whether or not that infection resulted in [E.M.]'s death and she also . . . could not opine about whether or not[,] if [E.M.] had sought medical treatment, whether or not it would have mattered[,]" *i.e.*, whether he would have lived. **[*Id.*]** Lobeck conveyed these issues to Defendant, but she elected to take a plea offer anyway because she wanted to "get it done. [She didn't] want to have a second trial." **[1/18/2022 TR 135:2-21, 136:7-14, 138:7-25; 146:12-14, 149:7-22, 158:5-159:17, 166:18-21, 169:3-5]**

In the habeas hearing, Defendant called two medical experts. One was the original pathologist, Dr. Lauren Dvorscak, who had been involved in the case from the beginning. She testified that the pitting in the E.M.'s facial bones, also called "woven bone," was consistent with E.M. having had an active infection at the time of death and that "the cause of death was probable infectious disease." But she could not "confirm the exact cause of the infection," whether viral or bacterial, because, upon exhumation, there was hardly anything of the body left to test. **[1/19/2022 TR 34:10-35:16, 37:17-19, 42:8-16, 45:15-46:20, 47:3-9, 48:9-16, 51:11-52:1]**

The second medical expert was Dr. Ronald Liss, who was not part of the

original case. When asked whether he disputed any of the findings or conclusions of the autopsy report or the forensic anthropology report, he replied that he did not: "I have no way of disputing those claims, nor does there appear to be any reason to even question any of those findings." **[1/19/2022 TR 12:6-10, 13:14-15:5]** Further, he testified to the following: that E.M. "definitely had some sort of infection going on in his face"; that, due to some underlying disease like the flu, E.M. was "more susceptible to getting [a] 'super-infection'"; and that there was no way to identify the precise source of the infection. **[*Id.*]** Although he testified that other things besides the infection could have caused the draining wounds in E.M.'s face and the resultant pitting in his skull, his main point was that no way existed, after the fact, to say precisely what caused his death or whether he would have lived with medical treatment. **[1/19/2022 TR 16:6-17:7, 19:1-10]**

In summary, the trial court granted habeas relief despite the uncontroverted facts that Defendant received effective assistance of counsel, entered a knowing and voluntary plea, and introduced no new evidence at the habeas hearing. *Montoya* was very clear that "[w]hile the burden on [a habeas defendant] should not be so insurmountable that is practically impossible for a defendant to prove his [or her] innocence, it should be more rigorous than the standard imposed on defendants who [make] a motion for a new trial based on newly discovered evidence." *Montoya*, 2007-NMSC-035, ¶ 29. For all practical purposes, the court here granted habeas

relief on less evidence than Defendant would have been required to produce to obtain a new trial. *See generally State v. Roybal*, 2002-NMSC-027, ¶¶ 18, 25-28, 132 N.M. 657 (defendant not entitled to a new trial when he failed to establish that defense counsel was ineffective); *State v. Bryant*, 2022-NMCA-___, ¶ 40, ___ P.3d ___ (defendant not entitled to a new trial because the shell casings and witness upon which he based his motion were known to him prior to the first trial); *State v. Muzio*, 1987-NMCA-006, ¶ 20, 105 N.M. 352 (defendant not entitled to a new trial because the "new" evidence he proffered came from a witness he knew about prior to trial). Defendant failed to demonstrate that she was eligible for habeas relief under *Montoya*, and the trial court's dismissal of the endangerment case was error.

II. THE ISSUE WAS NOT WHETHER E.M.'S "WORSENING" PHYSICAL CONDITION QUALIFIED AS A "GREAT BODILY INJURY" BUT, RATHER, WHETHER THE LOSSES OF HIS EYESIGHT, ABILITY TO SPEAK, AND ABILITY TO MOVE QUALIFIED AS "GREAT BODILY INJURIES."

The trial court made the factual finding that Defendant's actions caused E.M.'s medical condition to worsen but decided that "'[w]orsen[ing] the child's condition' [was] not great bodily harm justifying a first[-]degree felony charge, as a matter of law." **[8 RP 1988]** The court's order was silent as to why it focused on this issue but, presumably, this was because the State spoke during its closing argument of E.M.'s medical condition as "worsening' and *Garcia* contains the same language in its discussion of proximate cause. *Garcia*, 2021-NMSC-21 ¶ 44.

[1/21/2022 TR 129:14-22, 130:1-5, 136:20-24] The court's conclusion was in error because Defendant pleaded to a charge of endangerment causing great bodily injuries, not the worsening of his condition.

Because the issue of whether a particular injury meets the statutory definition of "great bodily injury" is a legal question, this Court reviews de novo. *See New Mexico Right to Choose/NARAL v. Johnson*, 1999-NMSC-028, ¶ 7, 127 N.M. 654 (when a trial court's decision is based on a "misapprehension of law," this Court employs a de novo review).

Defendant entered a no-contest plea to a charge of permitting child endangerment in the first degree because her actions resulted in great bodily injury under NMSA 1978, § 30-6-1(E) (2009). **[7 RP 1679]** The statutory definition of the term "great bodily injury," comes from NMSA 1978, § 30-1-12(A) (1963): great bodily injuries include any injury that results "in permanent or protracted loss or impairment of the function of any member or organ of the body" or that causes "serious disfigurement." The uniform jury instruction for the definition tracks that language. Great bodily injuries are those that "result in permanent or prolonged impairment of the use of any member or organ of the body" or "serious disfigurement." UJI 14-131 NMRA. Although Defendant relied on *Garcia* to support its habeas petition, nothing in that case changed the definition of "great bodily injury." Thus, the trial court's focus on whether the worsening of E.M.'s

medical condition qualified as a "great bodily injury" was incorrect.

The trial court should have focused, instead, on E.M.'s actual physical infirmities. During closing argument, the State identified those as the losses of his eyesight, his ability to speak, and his ability to move on his right side due to paralysis. There was also evidence of the loss of the ability to swallow and evidence of a hole in E.M.'s face from which pus drained. The period of time in which he had those injuries was approximately two weeks. **[State's Ex. 2, pp. 3-6; 1/20/22 TR (sealed) 7:23-11:22; 1/21/2021 TR 44:16-25, 51:12-17, 54:9-12; 1/21/2022 TR 132:5-11]** The proper question for the court was whether those conditions constituted great bodily injuries under § 30-1-12(A).

They did for two reasons. First, *State v. Cordova*, 2016-NMCA-019, ¶ 19, 366 P.3d 270, held that a victim's severe debilitating pain, which prevented her from moving for two weeks, fit within the statutory definition of that term. In the same way, E.M. suffered severe pain and was unable to see his with right eye, speak, walk, or swallow for the two weeks during which he suffered from his illness. Second, the evidence was also that the infection was so severe that it broke through the skin of E.M.'s face and drained corrosive pus *for days*, which constitutes serious disfigurement. **[State's Ex. 2, pp. 3-6]**

Thus, the trial court's grant of habeas relief based on the ground that a "worsening" medical condition did not constitute a great bodily injury was in error.

III. THE UNCONTROVERTED FACTS ESTABLISHED THAT DEFENDANT'S ACTIONS WERE THE ACTUAL AND THE PROXIMATE CAUSE OF E.M.'S GREAT BODILY INJURIES.

The trial court found that Defendant "failed to seek medical attention for [E.M.] in a timely manner, and this did cause [his] condition to worsen." **[8 RP 1988]** But it also found that "[t]he State did not present sufficient expert testimony on causation to support a first-degree felony charge for Child Abuse Resulting in Great Bodily Harm." **[*Id.*]** Taken together in light of the context of the entire hearing, these two findings indicate that the court found that the lack of medical attention was *a* cause of his worsening condition, but not *the proximate* cause under the standards established by *Garcia*. The court committed error in two respects: it misconstrued the scope of the evidence that it was entitled to consider, and the evidence, taken as a whole, proved beyond a reasonable doubt that Defendant's various failures, including but not limited to the failure to obtain medical care, proximately caused E.M.'s condition to worsen and caused his great bodily injuries.

A. The Trial Court Erred When It Limited the Scope of the Evidence That It Could Consider in Determining Proximate Causation.

During the hearing, the State presented evidence of multiple actions by Defendant that contributed to E.M.'s great bodily injuries, including depriving him of food, as well as medical care. The food evidence came from a written statement made by an eyewitness named Jamie Bridgewater (the statement was admitted into

evidence). According to her, Defendant told "Stacy [Miller, E.M.'s mother,] that [E.M.] would get no food" as punishment for his "rebellious[ness]" in refusing to come downstairs from his apartment for communal meals. **[State's Ex. 2, pp. 3-6]** Other than part of one bowl of chicken noodle soup that Miller had to spoon feed him, he did not eat for approximately two weeks during the time that he was growing sicker. Part of that time was due to Defendant's order and part was due to the fact that, because of his deteriorating medical condition, he began to have difficulty swallowing. **[*Id.*]**

Unfortunately, the trial court's order did not mention specifically whether it considered the food evidence, so this Court looks to the hearing for context. *See Rivera-Platte v. First Colony Life Ins. Co.*, 2007-NMCA-158, ¶ 45, 143 N.M. 158 ("[i]n the absence of findings, we look to the record for explanation of the [trial] court's rationale and evidence to support its decision").

At the hearing, defense counsel focused his closing remarks on the State's theory that Defendant failed to obtain medical care for E.M. At one point, the trial court asked why defense counsel kept "calling it a medical evidence case," given that the State had introduced the food evidence. **[1/21/2022 TR 108:17-22]** The attorney replied that the court could not consider such evidence because the State, in the years leading up to the hearing, had relied only on a medical neglect theory: "If the State stands up and says that this is anything other than a medical neglect case,

then that is the first time in seven years that they have taken that position." Thus, he argued that the State was estopped from changing theories mid-stream. **[8 RP 1955-60; 1/21/2022 TR 110:10-14; 111:18-112:6]**

This issue was important to the trial court because, after the State's expert testimony, it felt that the State had failed to prove proximate causation through the medical testimony under *Garcia*: "[I]f, in fact, I limit my decision to medical neglect, not one doctor says it would have, in fact, made a difference, right? So you win[.]" **[1/21/2022 TR 110:24-111:2, 113:7-8]** Considering the court's remarks, it did not consider the food evidence when it granted the habeas petition and dismissed the charges, believing that it was limited by the State's failure to raise the food issue until the 11th hour. This was error because the defense had the information about the food deprivation prior to the plea and the State never limited its child abuse charge to just medical neglect.

Bridgewater's written statement about the food is dated "April 13, 2016" and was tendered to the defense in advance of the trial on the M.G.'s charges. The documents that were withheld from the defense related only to M.G. The defense never alleged that the State had failed to tender any of the E.M. evidence. And Lobeck testified that he interviewed Bridgewater twice, with each session lasting two to three hours. Contrary to Defendant's claim, the food evidence was available to the defense all along. **[1/18/2022 TR 154:24-156:7]**

Moreover, the charge levied against Defendant was for "intentionally or recklessly caus[ing] or permit[ing] E.M. . . . to be placed in a situation that [could have] endanger[ed] his life or health[,]" in contravention of NMSA 1978, § 30-6-1(D) (2009). **[7 RP 1679]** Defendant never asked the State to file a bill of particulars. During the plea proceedings, the parties talked in terms of endangerment. **[10/16/2018 TR 11:10-22, 13:11-15]** It was the Defendant, not the State, who first characterized this case during the habeas hearing as one of medical neglect only. Given these two facts, the trial court committed error in not considering all of the evidence before it, including the food deprivation and the medical neglect, as well as the failure to administer basic over-the-counter medication during the initial stages of E.M.'s illness, discussed below.

B. This Court Must Decide If the *Garcia* Requirements for Establishing Proximate Cause by Medical Evidence Apply Equally in Cases in Which the Child Does Not Die.

Garcia set out the sufficiency requirements for expert testimony in a medical neglect case involving the death of a child. The State must prove that a defendant's failure to seek medical care proximately caused the death by establishing that the "child would not have died when and how the child died absent the defendant's failure to obtain necessarily medical care." *Garcia*, 2021-NMSC-019, ¶¶ 31, 40. In other words, *Garcia* requires the State to demonstrate that, but for the lack of medical care, the child would have lived or, at least, would have lived longer. *Id.*

Habeas defense counsel argued that E.M.'s great bodily injury was his death and that the trial court must measure the evidence according to the *Garcia* standard. He devoted his entire cross-examination of the State's medical expert, Dr. Karen Campbell, to asking whether she could say that E.M. would have lived with proper medical care. She could not. **[1/21/2022 TR 55:25-83:17, 86:24-88:22, 132:5-11]** However, the fact that the evidence was insufficient in this regard is irrelevant because *Garcia* distinguished between a situation in which the failure to obtain medical care resulted in a death and one in which the failure resulted in a child's initial medical condition growing worse, ultimately inflicting great bodily injury.

In *Garcia*, this Court explained that the medical evidence in that case established that the defendant's failure to obtain medical care "worsened" his initial neurological injuries. The opinion specifically referred to the statute and uniform jury instruction at issue here, § 30-6-1(E) (endangerment resulting in great bodily injury) and UJI 14-131 (defining the term "great bodily injury"), implying that a case in which the failure to obtain medical care worsened a child's original condition and ultimately resulted in great bodily injuries is qualitatively different from the fact pattern in *Garcia*. This Court declined to decide whether the medical testimony standard in *Garcia* applies with equal force when the child does not die because "the State did not pursue this theory of prosecution, either in its charging decisions or in its questioning of the expert witnesses." *Id.* ¶ 44 (internal citation omitted).

This is the question now before this Court. Does the *Garcia* standard for medical testimony, which requires proof beyond a reasonable doubt that the child would have lived had he or she received proper medical treatment, apply in the same way in this situation, one in which the facts demonstrated and the trial court found that Defendant's various failures caused E.M.'s medical deterioration and, ultimately, his physical infirmities but not his death? To be clear, the State does not ask this Court to overrule *Garcia* or in any way relax the standard of proof necessary to establish proximate cause. Instead, it asks this Court to answer the question that it did not answer in that case and specifically define the type of evidence necessary to demonstrate beyond a reasonable doubt that a defendant's actions proximately caused a child's worsening condition and great bodily injuries.

This Court should not require proof that a child would have lived in this sort of case for practical reasons. First, in her habeas petition Defendant relied on four medical neglect opinions in which the main issue was the sufficiency of the proximate causation evidence. **[1/21/2022 TR 117:11-14]** In each case, the defendant stood trial for causing a death. *See Garcia*, 2021-NMSC-021, ¶¶ 14, 36 (child's cause of death was global-hypoxic ischemic brain injury); *State v. Nichols*, 2016-NMSC-001, ¶¶ 20, 43, 363 P.3d 1187 (child's cause of death was severe liver laceration); *State v. Villalobos*, No. A-1-CA-36318, Mem. Op. ¶¶ 7, 16 (N.M. Ct. App. June 15, 2019) (non-precedential) (adult victim's cause of death was blunt

force trauma); and *State v. Causas*, No. A-1-CA-35349, Mem. Op. ¶¶ 6, 28 (N.M. Ct. App. November 21, 2018) (non-precedential) (child's cause of death was injury to abdomen with 25 percent of his blood pooling into his abdominal cavity).

The point of all these cases was that, when the charge is for failure to obtain life-saving treatment, the State has to prove that there was a point in time when medical treatment might have saved the child. The evidence was insufficient because each of the deceased victims sustained such catastrophic injuries that he or she might have died anyway, even with immediate medical care. But the proof in great bodily injury cases will not always be that the child also died, as it was in this case, and in cases without a death the question as to whether the child would have died anyway, even with proper medical care, has no meaning.

Second, § 30-1-12(A) specifically allows for temporary injuries, provided they are protracted, to qualify as great bodily injuries. Under the rules of statutory construction "that are appropriate in the interpretation of any statute[,]" this Court "will not depart from the plain wording of a statute, unless it is necessary to resolve an ambiguity[.]" *Regents of University of New Mexico v. New Mexico Federation of Teachers*, 1998-NMSC-020, ¶ 28, 125 N.M. 401. Moreover, the Court of Appeals has held that "prolonged" and "protracted" are not "technical terms." *Cordova*, 2016-NMCA-019, ¶ 19.

With these principles in mind, the term "great bodily harm," given its plain

and unambiguous meaning, necessarily includes temporary injuries from which a victim might recover eventually. Therefore, in a great bodily injury case, the question of whether, but for a defendant's failure to act, the child would not have died has no meaning because the statutory definition contemplates that a child may get better, with or without medical care. Instead, the question should be whether, but for the defendant's failure to provide medical care, food, and medicine, the child's medical condition would not have gotten worse and he would not have developed great bodily injuries.

Again, the State does not ask this Court to relax the proximate cause standard. Instead, the State asks this Court to define proximate cause exactly as it was defined in *Garcia* but geared toward proof that the conduct proximately caused a great bodily injury rather than a death. In *Garcia*, the defendant was charged with medical neglect causing a death and the relevant question was whether the proof established beyond a reasonable doubt that, but for the medical neglect, the child would not have died. Here, where the charge is that defendant's conduct in permitting E.M. to be put in a situation that endangered him and that endangerment caused him great bodily injuries, the relevant question should be whether the proof, both medical and non-medical, established beyond a reasonable doubt that, but for the conduct, E.M.'s condition would not have worsened and he would not have developed great bodily injuries.

C. All of the Evidence, Considered Together, Proved That Defendant's Multiple Failures Proximately Caused E.M.'s Great Bodily Injuries Under a Modified *Garcia* Standard.

Under a *Garcia* standard tailored to fit the evidence that a child sustained injuries, rather than died, the evidence here was sufficient and the trial court erred in granting the habeas petition. First, the relevant conduct is that Defendant did much more than fail to seek medical care; she failed to provide the basic home treatment that any parent or custodian would provide. Her lay witnesses concurred that everyone in the compound contracted the same flu, with many suffering from multiple bouts, and they all recovered without any outside medical care. Defendant introduced evidence that there were boxes and boxes of cold medicine at the compound, with the logical inference being that the group members all recovered with over-the-counter medicines. **[Def. Ex. D]** The expert testimony from both sides was that such home treatment was appropriate for the flu and that antibiotics and/or hospitalization were unnecessary in the beginning. **[State's Ex. 2, pp. 3-6; 1/20/22 TR 7:4-18, 20:13-22:4, 63:20-64:22, 104:7-105:9, 108:22-109:14, 126:17-127:17; 1/19/2022 TR 20:9-20:9; 1/20/2022 TR 51:12-52:11, 66:8-25; 1/21/2022 TR 48:19-50:5]**

But Defendant controlled all the medicine in the compound, and the testimony was that, instead of giving E.M. the available cold/flu medicine, she "prescribed" painkillers and a "poultice" for a leaking boil on E.M.'s face and said that God would

heal him. This evidence established that she deprived him of the type of medicine that would have helped him to recover at home. As stated, she deprived him of food. And, finally, she deprived him of medical care. **[State's Ex. 2, pp. 3-6; 1/20/22 TR 7:4-18, 20:13-22:4, 63:20-64:22, 104:7-105:9, 108:22-109:14, 126:17-127:17; 1/19/2022 TR 20:9-20:9; 1/20/2022 TR 51:12-52:11, 66:8-25; 1/21/2022 TR 48:19-50:5]**

This conduct caused his original medical condition to worsen. The medical experts for both sides and the autopsy report indicated that E.M. had an active infection at the time of his death. Dr. Campbell was the last witness and testified about what typically happens when someone with the flu does not recover. Over time, the flu symptoms can result in sinusitis, or an infection in the sinuses. There are several types of sinus cavities in the brain, and the "ethmoid sinuses are back inside [the head and] . . . deep in the nose . . . directly below the frontal part of the brain." The pus produced by that infection is "corrosive" and the doctor's interpretation of the evidence was that it actually eroded some of E.M.'s facial bones and the wall between the ethmoid sinus and the brain, causing the infection to spread. In addition to the "corrosiveness of the pus[,]" there is a "buildup" that causes "increased pressure" in the sinuses and the brain. Because those two areas are part of a "closed system[,]" the increased pressure causes significant pain and discomfort. **[State's Ex. 2, pp. 3-6; State's Ex. 3; Def. Ex. A, p. 1; 1/19/2022 TR 12:6-10,**

13:14-15:5; 1/21/2022 TR 45:4-11, 46:3-25, 48:13-15, 49:20-50:4, 76:5-78:4]

If this Court applies the *Garcia* standard tailored to these facts, then the proof, both medical and non-medical, establishes beyond a reasonable doubt that, but for the totality of Defendant's conduct, E.M.'s condition would not have worsened and he would not have developed great bodily injuries. Circumstantially, the fact that everybody else in the compound recovered but E.M. did not demonstrates that the failure to give him the basic cold medicine available in the compound worsened his illness.

With regard to the food evidence, the trial court asked Dr. Campbell whether "nutrition play[s] a role in helping a child deal with an infection[,]" to which she replied that it could because it could "decrease [a child's] ability to mount an immune response." **[1/21/2022 TR 54:7-55:12]** She explained that "dehydration could obviously lead to problems as well as abnormalities, like, in [the child's] electrolytes[.]" **[*Id.*]** In those situations, "other body organ[s] would not be functioning correctly." **[*Id.*]** She was definitively able to say that, because "the child didn't eat and knowing that he had an active infection . . . there [was] a reasonable probability that his condition would worsen if he wasn't fed." **[1/21/2022 TR 88:24-89:4]**

Finally, Dr. Campbell spoke about the medical neglect itself. She said that, "given [her] experience with sinus infections or sinusitis . . . the lack of medical care

caused [E.M.'s] condition to get worse." **[1/21/2022 TR 54:9-12]** The trial court also asked her pointedly: "Can you say that with a certain degree of medical certainty that earlier medical intervention would have made a difference in this case in terms of [E.M.]'s life?" **[1/21/2022 TR 54:7-55:12]** Dr. Campbell said that she could say that, based on the fact that she had cared for another child with the same condition that E.M. had. She stated that her former patient "had a brain abscess from . . . a sinusitis gone bad and, basically, he needed surgical intervention and antibiotic treatment and all this, but he did survive." **[*Id.*]**

Eventually, the pressure and swelling caused E.M.'s head to become misshapen and forced his eye shut. Additionally, he lost his ability to swallow, speak, talk, or walk. **[State's Ex. 2, pp. 3-6; 1/20/22 TR (sealed) 7:23-11:22; 1/21/2021 TR 44:16-25, 51:12-17, 54:7-55:12]**

Because defense counsel concentrated solely on demonstrating that Dr. Campbell could not testify that E.M. would have lived if he had had medical treatment, the attorney did not recall Dr. Liss in rebuttal to contest any of the evidence as to how E.M.'s medical condition could have progressed from the flu to an infection to neurologic injuries. That unchallenged evidence from Dr. Campbell was that Defendant's various failures—to provide basic medicine, food, and medical care—proximately caused E.M.'s original medical condition to deteriorate and eventually caused his injuries. The fact that Dr. Campbell could not testify as to the

origin or the exact type of infection that afflicted E.M. or whether he would have lived with proper medical care is irrelevant. Therefore, the trial court committed error when it granted habeas relief and dismissed the charges.

CONCLUSION

For all these reasons, the State asks this Court to reverse the trial court's grant of habeas relief and reinstate Defendant's conviction for child abuse by endangerment that resulted in great bodily injury.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 6, 2023 the undersigned filed the foregoing electronically through the Odyssey/E-File & Serve System, causing service on Nicholas Hart and Carter Harrison, IV, on January 6, 2023 at the following email addresses: nick@harrisonhartlaw.com and carter@harrisonhartlaw.com.

/s/ *Laurie Blevins*
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