

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2017-CA-002045-MR

CHARLES MORRIS

APPELLANT

v.

APPEAL FROM CHRISTIAN CIRCUIT COURT  
HONORABLE ANDREW C. SELF, JUDGE  
INDICTMENT NO. 11-CR-00321

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: DIXON, KRAMER, AND LAMBERT, JUDGES.

LAMBERT, JUDGE: Charles Morris was convicted of wanton murder for the death of his three-year-old daughter, A.A.<sup>1</sup> After his conviction was affirmed on direct appeal, Morris sought postconviction relief via Kentucky Rules of Criminal Procedure (RCr) 11.42 alleging ineffective assistance of counsel. He has now

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<sup>1</sup> We shall use initials to protect the victim's identity.

appealed from the December 7, 2017, order of the Christian Circuit Court denying his motion following an evidentiary hearing. We affirm.

For the factual background in this case, we shall use the Kentucky Supreme Court's recitation as set forth in its opinion affirming Morris's direct appeal:

On the morning of July 2, 2011, emergency dispatchers in Oak Grove, Kentucky, received a call from Charles Morris stating that his daughter, [A.A.], had lost consciousness and was unresponsive after falling and hitting her head in the bathtub. [A.A.] was first taken to Blanchfield Army Community Hospital before being flown by helicopter to the Children's Hospital at Vanderbilt University Medical Center. She died the following morning from diffuse injuries resulting from severe brain trauma.

Dr. Deborah Lowen, a board-certified child-abuse pediatrics physician and the head of Vanderbilt's Child Abuse Response and Evaluation (CARE) Team, evaluated [A.A.] before and after her death. Dr. Lowen determined that the brain injury in conjunction with severe retinal hemorrhages and multiple bruises of varying ages and locations on the body was "very suggestive of child abuse." Child services and police were notified and investigation ensued.

On July 29, 2011, a grand jury indictment charged Morris with murder. Following a four-day jury trial, Morris was found guilty of wanton murder for which the jury recommended a prison sentence of thirty years. The trial court sentenced him in accordance with the jury's recommendation, and he now appeals to this Court as a matter of right. *See* Ky. Const. § 110(2)(b).

*Morris v. Commonwealth*, 2013-SC-000766-MR, 2015 WL 4967138, \*1 (Ky. Aug. 20, 2015). On direct appeal, Morris claimed four errors:

(1) that he was entitled to a mistrial when the Commonwealth displayed an autopsy photo of the victim's brain; (2) that the trial court abused its discretion in refusing to strike a juror for cause; (3) that the trial court erred in allowing a defense witness to be cross-examined about her relationship with another man who had been convicted of a homicide offense; and (4) that the trial court erred in admitting medical records of the victim's prior injuries as [Kentucky Rules of Evidence (KRE)] 404(b) evidence of alleged prior acts of physical abuse by Morris.

*Id.* The Supreme Court rejected each argument, thereby affirming the conviction and sentence. That opinion became final on September 10, 2015.

On October 28, 2016, Morris filed a motion to vacate and set aside his conviction pursuant to RCr 11.42, alleging ineffective assistance of his trial counsel. In addition, he requested an evidentiary hearing. In his motion and memorandum, Morris alleged deficiency in his counsel's 1) failure to preserve an error in the jury selection process; 2) failure to request a mistrial related to displaying a photograph of A.A.'s brain to the jury; 3) request to admit medical records showing previous injuries to A.A. on May 25, 2010; 4) failure to object to the admission of records dated May 17, 2010, showing a left elbow injury to A.A.; 5) failure to spend more than twenty minutes with Morris to prepare him for trial; 6) failure to subpoena critical witnesses, including A.A.'s mother, two individuals

Morris had lived with, and a caseworker from the Department of Children's Services; 7) failure to introduce records from the Department of Children's Services; 8) failure to confront or impeach his former wife, Brittany Morris; 9) failure to introduce the first responders' dash cam video; and 10) failure to object to the Commonwealth's improper closing argument that shifted the burden of proof to him. Morris described the Commonwealth's case as "largely circumstantial," and the evidence against him consisted of A.A.'s history of injuries, Morris's emotionless demeanor, his anger issues, and his harsh disciplining of A.A. These deficiencies and his trial counsel's failure to follow the DPA Trial Notebook, Morris argued, prejudiced him. The Commonwealth objected to the motion. By order entered March 13, 2017, the circuit court scheduled an evidentiary hearing.

The court held the evidentiary hearing on July 17, 2017. Stacey Baker was the first witness to testify. She was A.A.'s mother. A.A. was born in February 2008, and Morris began visiting with her in August 2009. Morris arranged to live off-base with Donald and Trena Strange so that he could have overnight visitation with A.A., as he was not permitted to have visitation in his on-base quarters. Baker observed a very good relationship between Morris and A.A., and she never saw any signs of abuse, adding that A.A. always wanted to be with her father. Baker had seen injuries on A.A., but they were never attributed to Morris. One was an injury to A.A.'s arm that had been caused by a fall. Baker

testified that A.A. was very clumsy and fell over everything. She thought something might be wrong with her balance or ears. Regarding Morris's anger issues that were testified to at the trial, she had not observed any abnormal anger issues around her or anyone else around her. She did know that Morris had post-traumatic stress disorder and bipolar disorder. She told police officers who called her from the hospital after A.A.'s death, as well as prosecutors, that she had never seen any signs of abuse and that Morris had never been abusive to her. No investigators from the defense had ever contacted her.

When Baker learned Morris had been indicted for A.A.'s death, she tried to contact his attorneys several times without success. She never received answers from her voicemails. She eventually spoke to someone for about five minutes, but the person never followed up with her. Baker told Morris's defense attorney that she wanted to testify and would have done so if she had been subpoenaed, despite her pregnancy.

Vivian Campbell testified that she had been a family friend of Morris since Easter 2010 and that she had tried to help Morris with his case by communicating information to the defense. She claimed nothing was done to follow up on the information she provided. Campbell delivered documents or statements from Baker about Morris's relationship with A.A. and from Michael Lambert about abuse to A.A. perpetrated by Jennifer and Christopher Lambert.

Campbell testified as to her observations of how Morris would discipline A.A., which consisted of him sitting her in a chair and talking to her. Campbell did not have any first-hand knowledge of injuries A.A. had sustained.

Donald Strange testified next. He knew Morris from their unit at Fort Campbell. Morris moved in with Donald and his wife off-base so that he could have visitation with A.A. Donald said that Morris lived with them for about a year until August 2010, and Morris had visitation with A.A. three or four times a month. He would see Morris and A.A. during these visits. Donald never saw Morris be abusive toward A.A. or any harsh discipline, but he did watch them play together. No one from the defense team contacted Donald or his wife about Morris. He described Morris as a teddy bear, and said Morris was teased about his size. Despite this teasing, Morris never displayed any anger. Donald would have testified to this had he been called to testify at the trial. Donald described A.A. as clumsy and that she would trip over her own feet. He thought A.A. had an inner ear infection, and Morris took her to the doctor's office to have this checked. Donald also testified to past injuries to A.A., including a black eye and arm injuries. After Morris moved out of their home, the Stranges visited Morris at his new home, and telephonic contact continued after the Stranges moved to Colorado in October 2010. Donald did not have any personal knowledge of what led to A.A.'s death.

Trena Strange testified next. She observed A.A. and Morris together for about a year, but she had never been contacted by the defense or the prosecution about the case. Had she been called to testify, she would have described A.A. beginning from the time she first saw her. Trena described A.A. as becoming a vibrant little girl. She had never seen Morris raise his voice to anyone or get angry. Regarding A.A.'s clumsiness, she stated A.A. would fall all the time and walk into things. She thought A.A. might have an inner ear infection, and Morris took her to an off-post doctor. She never saw Morris harshly discipline A.A., and he would only put her in time-out for two minutes. He played and read with A.A., took her to the pond to feed the fish, and was very interactive with her. A.A. was always happy to see him, and she would crawl on his lap to watch television. On cross-examination, Trena said Morris lived with them from 2009 to 2010 for about a year and that he spent some time looking for his own place to live. She and her husband moved away at the end of December 2010. She kept in contact by telephone with Morris after that. She did not have any personal knowledge after she moved about what injuries A.A. had sustained or what caused her death.

Donna Curry, the next witness to testify, was a former social worker and investigator for the Cabinet for Health and Family Services, Department of Community Based Services. She had been assigned to investigate a claim that

Morris had abused A.A. prior to her death. This involved an injury to her arm on a Slip 'N Slide. She concluded that Morris had not abused his daughter and appeared to be a good father and that A.A. was clumsy. She had not closed the file at the time A.A. had passed away. The results of Curry's investigation were called into question after A.A.'s death. Curry resigned from her position, and she was indicted for tampering with physical evidence in relation to her investigation in 2012. Curry had never been contacted by the defense team about her findings or to ask her to testify. After her indictment, the defense team would have had to speak to her attorney. Curry thought her supervisor or someone from the regional office could have testified in her place, but she did not know if anyone else had been contacted. Curry believed she had conducted a thorough investigation and stood by her conclusion that Morris had not abused A.A. After A.A. went to the hospital, Curry went to see Morris to set up a safety plan. She observed a good relationship between Morris and A.A. when she was conducting her investigation.

Brandi Jones was the last witness to testify. She served as Morris's trial counsel through the Department of Public Advocacy, where she had worked since 2006. She had originally been brought in to assist lead attorney Jack Faust, who passed away some time before the trial took place. Jones stated that the DPA's evidence manual and trial notebook were good standards to measure the performance of a trial lawyer. She admitted that she did not have an explanation



for Morris's claims relating to jury selection, failing to request a mistrial, or for failing to object to the Commonwealth's burden-shifting argument. However, Jones testified that she had met with Morris multiple times prior to the trial, disputing his allegation that they had only met one time, and she testified that Morris wanted the May 25, 2010, medical records to be admitted. Jones said she had interviewed Stacey Baker the week before the trial and determined that she had very minimal contact seeing Morris and A.A. interact. She and Morris discussed whether Baker should be subpoenaed due to her complicated pregnancy. Jones advised him that she would subpoena her. But if something happened with the pregnancy, it would be on him. Jones knew what Baker would say about Morris's relationship with A.A., and she also knew about the KRE 404(b) evidence that the Commonwealth intended to introduce that Morris had abused A.A. and had anger management issues. Jones said that she had put several witnesses on the stand who had more one-on-one experience seeing Morris with A.A. Jones was concerned that if she put Baker on the stand, she could be seen as another person who let A.A. down. It could have been a landmine that the Commonwealth would have exploited.

Jones was familiar with Campbell, who had dropped off documents at her office. Jones said she had seen these documents, which she described as having some odd details. Jones had discussed Michael Lambert with Morris, and

Morris had told her some unfavorable information about him, including that he was drunk every day. She did not interview Michael, but she thought Ms. Campbell would be a better witness and called her instead. Jones did not believe someone who was drunk every day would be a good witness to call.

Jones was also familiar with Curry's investigation into the abuse allegations against Morris. Her understanding was that Curry had found the allegations of prior abuse related to the Slip 'N Slide incident to be unsubstantiated. She was also under indictment. Jones spoke with Curry's attorney, and what she took from the conversation was that her attorney did not want Jones to speak to his client. When asked about whether her supervisor could have testified about Curry's findings of unsubstantiated abuse, Jones said that could have happened. However, the fact that Curry was under indictment for tampering with the records of her investigation would make those records less than trustworthy.

Jones testified that she had notes about the Stranges in the defense file. Morris had given her their contact information, but she could not explain why she had not contacted them. Morris told her he had lived with the Stranges from October 2009 through January 2010, when he moved into his own place. She did not know if the Stranges could have provided any information to counter the KRE 404(b) evidence because she had never spoken with them herself or sent an

investigator to talk with them. Jones stated that while the information could have countered the KRE 404(b) evidence, it would not have countered the medical evidence.

Jones believed the medical proof was the primary hurdle she had to overcome. In that vein, she retained an expert and did research on the Commonwealth's expert on abuse. She thought the expert she retained was of similar stature, but he did not give Jones a favorable report. Jones asked the expert what had happened to A.A., and his response was that "someone beat the shit out of her." The expert indicated that A.A.'s injuries could not have been sustained more than a short period of time before she was taken to the hospital. Morris was adamant that he was the only person around her during the timeframe and that it was an accident.

After the evidentiary hearing, the parties filed memoranda in support of their respective positions. Morris claimed that the Commonwealth had "painted him to be a serial abuser of his daughter, an emotionless man with anger issues who frequently hurt his child. The tactic was to demonstrate this, and to argue that Morris acted in conformity therewith, and that he intentionally murdered his child – which is exactly what the Commonwealth did." His trial counsel had "ample evidence at [her] disposal to refute this[,]" Morris argued, including potential testimony from A.A.'s mother, Donald and Trena Strange, and caseworker Donna

Curry. In its responsive memorandum, on the other hand, the Commonwealth pointed to

overwhelming medical evidence confirming that A.A.'s death was not accidental, combined with the fact that [Morris] was the only person who had been with the child victim during the time frame that the fatal injuries were inflicted. None of the witnesses who [Morris] now argues should have been called could provide testimony or evidence to controvert the medical evidence and expert testimony of Dr. Deborah Lowen.

In his reply, Morris argued that the claimed errors made the outcome of the trial unreliable and that there was a reasonable probability that the outcome would have been different. The witnesses that should have been called, he asserted, "would have provided the jury with an alternative picture of Morris" and would also have testified as to A.A.'s clumsiness.

The circuit court denied the motion for RCr 11.42 relief by order entered December 7, 2017, specifically concluding on the prejudice prong that "[i]n light of Morris' admission that he was the only one with A.A. in the hours leading up to her being taken to the hospital, there is only one inescapable conclusion regarding the cause of her death." This appeal now follows.<sup>2</sup>

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<sup>2</sup> The certified record on appeal does not contain any record of the trial, and the only exhibits included were sealed ones; none of the unsealed exhibits from either the trial or the evidentiary hearing were included.

On appeal, Morris has limited the issues to whether his trial counsel was ineffective in failing to call Baker, the Stranges, or Curry to testify or to use the information provided by Campbell. He also argued that his trial counsel was systematically deficient during the trial during the jury selection process, for failing to request a mistrial, for failing to object during the Commonwealth's closing argument, and due to missing evidence.

The applicable standard of review in RCr 11.42 postconviction actions is well-settled in the Commonwealth. Generally, in order to establish a claim for ineffective assistance of counsel, a movant must meet the requirements of a two-prong test by proving that: 1) counsel's performance was deficient, and 2) the deficient performance prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); accord *Gall v. Commonwealth*, 702 S.W.2d 37 (Ky. 1985), *cert. denied*, 478 U.S. 1010, 106 S.Ct. 3311, 92 L.Ed.2d 724 (1986). Pursuant to *Strickland*, the standard for attorney performance is reasonable, effective assistance. The movant must show that his counsel's representation fell below an objective standard of reasonableness and bears the burden of proof. In doing so, the movant must overcome a strong presumption that counsel's performance was adequate. *Jordan v. Commonwealth*, 445 S.W.2d 878, 879 (Ky. 1969); *McKinney v. Commonwealth*, 445 S.W.2d 874, 878 (Ky. 1969). Furthermore, "a court must indulge a strong presumption that counsel's conduct

falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action ‘might be considered sound trial strategy.’” *Strickland*, 466 U.S. at 689, 104 S.Ct. at 2065. If an evidentiary hearing is held, the reviewing court must determine whether the lower court acted erroneously in finding that the defendant below received effective assistance of counsel. *Ivey v. Commonwealth*, 655 S.W.2d 506, 509 (Ky. App. 1983).

In *Haight v. Commonwealth*, 41 S.W.3d 436 (Ky. 2001), *overruled on other grounds by Leonard v. Commonwealth*, 279 S.W.3d 151 (Ky. 2009), the Supreme Court later observed:

In considering ineffective assistance, the reviewing court must focus on the totality of evidence before the judge or jury and assess the overall performance of counsel throughout the case in order to determine whether the identified acts or omissions overcome the presumption that counsel rendered reasonable professional assistance. *See* [*United States v. Morrow*, 977 F.2d 222 (6th Cir. 1992)]; *Kimmelman v. Morrison*, 477 U.S. 365, 106 S.Ct. 2574, 91 L.Ed.2d 305 (1986).

A defendant is not guaranteed errorless counsel, or counsel judged ineffective by hindsight, but counsel likely to render and rendering reasonably effective assistance. *McQueen v. Commonwealth*, Ky., 949 S.W.2d 70 (1997). *Strickland* notes that a court must indulge a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance. The right to effective assistance of counsel is recognized because of the effect it has on the ability of the accused to receive a fair trial.

In a RCr 11.42 proceeding, the movant has the burden to establish convincingly that he was deprived of some substantial right which would justify the extraordinary relief afforded by the post-conviction proceeding. *Dorton v. Commonwealth*, Ky., 433 S.W.2d 117, 118 (1968). Even when the trial judge does conduct an evidentiary hearing, a reviewing court must defer to the determination of the facts and witness credibility made by the trial judge. [*Sanborn v. Commonwealth*, 975 S.W.2d 905 (Ky. 1998)]; *McQueen v. Commonwealth*, Ky., 721 S.W.2d 694 (1986); *McQueen v. Scroggy*, 99 F.3d 1302 (6th Cir. 1996).

*Haight*, 41 S.W.3d at 441-42. With this standard in mind, we shall review the order on appeal.

Morris first argues that his trial counsel, Jones, erred in failing to call several potential witnesses to testify at his trial. These witnesses include Stacey Baker (A.A.'s mother), the Stranges, and social worker Donna Curry (or her supervisor). These witnesses, Morris asserts, would have countered the Commonwealth's allegations that he was abusive and had anger management issues, and they would have established A.A.'s clumsiness. We must agree with the Commonwealth that the trial court did not commit any error in finding that Jones was not ineffective in regard to this claim.

Baker would have testified that she never saw any abusive behavior and that A.A. loved Morris. However, she was rarely present when Morris was with A.A., and Jones and Morris made the tactical decision not to subpoena her to

testify at the trial because she was in the late stages of her pregnancy. Jones also testified that she called several other witnesses at trial who had more experience seeing Morris and A.A. together. She expressed concern that if she had called Baker to testify, the jury would see Baker as another person who had let A.A. down.

As for the Stranges, Jones had notes about them in her file and admittedly did not know if the Stranges could have provided any information to counter the KRE 404(b) evidence because she had never spoken with them herself or sent an investigator to do so. But Jones also recognized that the information from the Stranges could only have countered the KRE 404(b) evidence, not the medical evidence. The Stranges would have testified about their observations of Morris's interactions with A.A. as well as her clumsiness and other injuries she had received. They would have testified that he did not have any anger issues that they observed. But as the Commonwealth points out, their testimonies were inconsistent with each other's and Morris's in some respects, and they had moved to Colorado in December 2010. Therefore, they had not seen Morris and A.A. together for several months before her death.

Finally, Donna Curry had been under indictment for tampering with evidence related to her investigation of abuse allegations against Morris shortly before A.A.'s death. Although she had concluded that the abuse allegations were



unsubstantiated and that Morris had been a good father, her testimony and records would certainly have been attacked by the Commonwealth as untrustworthy.

We recognize that “a trial counsel’s choice of whether to call witnesses is generally accorded a presumption of deliberate trial strategy and cannot be subject to second-guessing in a claim of ineffective assistance of counsel.” *Saylor v. Commonwealth*, 357 S.W.3d 567, 571 (Ky. App. 2012). Here, we agree with the Commonwealth that Jones’s decision not to call Baker or Curry (or her supervisor) was certainly a deliberate trial strategy, and while Jones admitted to failing to contact the Stranges, their testimonies would have done little, if anything, to support Morris’s defense. And none of the potential four witnesses was an eyewitness to the circumstances of A.A.’s death. Rather, they were all collateral character witnesses who could only have provided a counter, at best, for the Commonwealth’s KRE 404(b) evidence of Morris’s anger issues and past abuse of A.A. Therefore, we hold that Morris has failed to establish any ineffectiveness related to Jones’s failure to call these witnesses at trial.

Next, Morris contends that Jones was ineffective in her failure to use the information supplied by Vivian Campbell. This included statements from Baker, whose potential testimony and ability to testify we have already addressed above, as well as from Michael Lambert regarding the actions of Christopher and Jennifer Lambert. Campbell actually testified at the trial, and Morris related

information to Jones that would have called Michael Lambert's ability to be an effective and suitable witness into question, including his alcohol problems. We find no ineffectiveness in regard to the information provided by Campbell.

Next, Morris argues that Jones was systematically deficient throughout the trial based upon multiple errors he alleged had occurred. Jones acknowledged that she failed to preserve the jury selection issue by identifying any additional jurors she would have struck via a peremptory challenge if the court had granted the motion to strike Juror 23 for cause. Jones also acknowledged that she had failed to request a mistrial based upon the showing of the bloody brain photo to the jury<sup>3</sup> or to object to the Commonwealth's apparent shifting of the burden of proof in the closing argument. The only testimony concerning the first responders' dash cam video from Jones was that she believed there was a video in the defense file but did not know what was on it, although she thought she had watched it. The video was not introduced at trial and was not in the defense file. Morris argued that it provided exculpatory evidence that would have contradicted testimony from

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<sup>3</sup> The Supreme Court ruled on direct appeal that Morris would not have been entitled to a mistrial on this issue, holding, "[t]his Court cannot discern a possibility of a different result had the photograph of the brain not been shown to the jury, nor did it threaten Morris's right to due process. While gory, the doctor testified to facts the photo showed, facts the jury was entitled to consider in reaching its verdict. Morris was able to cross-examine the witness. Such evidence may be excluded because of its tendency to lead a jury to render an increased penalty due to its inflammatory nature, but given the photo depicted the true state of the child's brain, such evidence cannot give rise to a fundamentally unfair trial which requires a finding of palpable error, and Morris is not entitled to a mistrial." *Morris*, 2015 WL 4967138, at \*2.

an officer and one of the first responders. However, Morris did not explain what this exculpatory evidence might have been.

Assuming that Jones's representation was ineffective, which the trial court declined to conclude despite her admissions of failure, we must hold that Morris failed to establish that her deficient performance resulted in any prejudice. In *Martin v. Commonwealth*, 207 S.W.3d 1 (Ky. 2006), the Supreme Court of Kentucky addressed the prejudice prong set forth in *Strickland, supra*, explaining:

The *Strickland* test requires a showing that without the error:

The factfinder would have had a reasonable doubt respecting guilt . . . . In making this determination, a court hearing an ineffectiveness claim must consider the totality of the evidence before the judge or jury . . . . Taking the unaffected findings as a given, and taking due accord of the effect of the errors on the remaining findings, a court making a prejudice inquiry must ask if the defendant has met the burden of showing that the decision reached would reasonably likely have been different absent the errors.

On the other hand, the Court noted:

The result of a proceeding can be rendered unreliable, and hence the proceeding itself unfair, even if the errors of counsel cannot be shown by a preponderance of the evidence to have determined the outcome.

Thus, *Strickland* articulated a requirement of reasonable likelihood of a different result but stopped short of outcome determination.

*Martin*, 207 S.W.3d at 4 (citations in footnotes omitted).

Both the trial court in its order denying RCr 11.42 relief and the Supreme Court on direct appeal detailed the overwhelming evidence of Morris's guilt. The Supreme Court observed:

[A.A.'s] cause of death was the severe, diffuse brain trauma sustained while in her father's sole care. . . . [T]he medical evidence of the extent of the victim's physical injuries at the time of her death, coupled with the credible expert testimony of Dr. Lowen—most notably, her unequivocal rejection of Morris's explanation that his daughter had slipped and hit the back of her head while taking a shower—offered a sufficient explanation whereby the jury could reject Campbell's testimony in its entirety as it related to the head injury. Even without the expert's opinions, the objective medical evidence alone was devastating to Morris's accident defense. . . .

In sum, the weight of the Commonwealth's case lay in the unrefuted timeline, overwhelming medical evidence, and convincing expert testimony. The ancillary evidence of the alleged prior abuse by Morris offered through Lawrence did not explain the injury that caused the child's death, and thus improper questions affecting the credibility of the witness that rebutted that proof was too collateral to have substantially affected the verdict.

*Morris*, 2015 WL 4967138, at \*4 (footnote omitted).

The trial court, in turn, concluded:

Ultimately, all of these allegations of deficient performance by defense counsel pale in comparison to the overwhelming evidence of guilt against Morris. In a footnote in its opinion, the Supreme Court gave a brief description of A.A.'s injuries as follows:

At the time of her death, (A.A.'s) injuries included severe swelling throughout the brain; bleeding on top of her brain, below the skull; swelling of the scalp in the high right front area (but not in the back of the head, where Morris reported she hit her head in the bathtub); internal swelling of her bowel; diffuse retinal hemorrhaging (bleeding in the back of the sphere) in both eyes; and extensive bruising under her jaw line and beneath her chin, on the front of her neck, on her left and right cheeks, on and around her right ear, across her back, on the right side of her chest, on her right arm near the shoulder and around the elbow, in the lower left quadrant of her abdomen, and on her legs and hips.

In spite of Morris' defense that A.A. had injured herself when she slipped in the bathtub, it was the undisputed testimony of Dr. Deborah Lowen, a board-certified child-abuse pediatric physician and the head of Vanderbilt's Child Abuse Response and Evaluation (CARE) Team, that A.A.'s injuries – the brain injury in conjunction with severe retinal hemorrhages and multiple bruises of varying ages and locations on the body – were “very suggestive of child abuse.” It was also undisputed, and specifically acknowledged by Morris, that no one else was with A.A. in the hours leading up to the time of her injuries and the reporting of her injuries to emergency medical responders.

We agree that in light of the proof of his guilt based on the medical evidence, the expert testimony, and his own testimony, Morris has not established *Strickland*'s prejudice prong even were we to hold that trial counsel's performance was systematically deficient during the trial. The circuit court did not commit any error or abuse of discretion in denying the motion for relief.

For the foregoing reasons, the order of the Christian Circuit Court denying Morris's RCr 11.42 motion for postconviction relief is affirmed.

ALL CONCUR.

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