

SUPREME COURT, NASSAU COUNTY

CRIM. TERM: PART 43

HON. TERESA K. CORRIGAN  
ACTING SUPREME COURT JUSTICE

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THE PEOPLE OF THE STATE OF NEW YORK, X

IND # 01818N-2008

- against -

JALAL ABODALO  
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Defendant, X

Defendant's motion, pursuant to CPL §440.10, dated June 3, 2014, to vacate the August 24, 2009 judgment after a jury trial convicting him of Course of Sexual Conduct Against a Child in the First Degree (PL§ 130.75), two counts of Aggravated Sexual Abuse in the Second Degree (PL§ 130.67), two counts of Sexual Abuse in the First Degree (PL §130.65), two counts of Sodomy in the First Degree (PL §130.50 [now Criminal Sexual Act]) and two counts of Incest in the Third Degree (PL §255.25) (McCormack, J. at trial and sentence), upon a hearing conducted over thirty-nine (39) days between April 14, 2015 and May 2, 2016, is granted in part and denied in part.

Defendant claimed in both his motion papers and at the close of the hearing that (1) he is actually innocent of the charges against him and (2) that his trial counsel was ineffective in several aspects of his representation of the defendant. The Court finds that the defendant is actually innocent of counts two (2) and three (3) in the underlying Indictment, as charged by the prosecution, but failed to meet his burden on the remaining counts. The Court also finds that the defendant received meaningful representation from his attorney. Below is the Court's decision.

The defendant, who bears the burden of proof, called nineteen (19) witnesses and the prosecution called three (3) witnesses in rebuttal. The Court received into evidence one hundred and eight (108) defense exhibits, seventy-two (72) prosecution exhibits<sup>1</sup> and has reviewed defense motion papers and all exhibits attached thereto in addition to having reviewed the trial

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<sup>1</sup>A list of all exhibits received into evidence is attached to this decision. A list of Court Exhibits is also attached.

transcript from the underlying convictions.<sup>2</sup> Mr. Dennis Lemke was the attorney who represented the defendant during his 2009 trial for allegations centered around the sexual abuse by the defendant of his nephew between December 1994 and Spring 2001.

## CASE BACKGROUND

The Honorable James P. McCormack presided over the defendant's trial from August 12, 2009 to August 24, 2009. Eleven (11) individuals testified at the trial.<sup>3</sup> It was alleged that the defendant, on specified dates between December 1994 and Spring 2001, sexually abused the child victim, his nephew, at the defendant's home in Baldwin, New York. In November 2000, approximately eighteen (18) months after the last allegation of anal sexual abuse but before the 2001 allegations of anal sexual abuse, the child victim was examined by both his pediatrician and a gastroenterologist for complaints of intermittent rectal bleeding since the summer of that year. At that time, the doctors performed an anal exam on the child and did not report any unusual findings related to a scar. The gastroenterologist reported seeing hemorrhoids and diagnosed the child with functional constipation and a need for increased fiber. Subsequent to this exam, the last occurrence of sexual abuse occurred in the Spring of 2001 and the child victim did not disclose the abuse to law enforcement until June 2008. In November/December 2008, subsequent to the defendant's arrest and arraignment on the underlying Indictment, the child victim, then nineteen (19) years old, submitted to an anal exam at the request of the prosecution. Such exam, and its corresponding reports and colposcopic slides, was conducted by Dr. Silecchia. At trial, Dr. Silecchia testified to finding a "well organized scar that's been there for a long while." (TT pg. 113). The People argued such medical findings were proof of sexual abuse. Defense challenged the reason behind the findings putting forth several medical reasons for such findings, in addition to challenging the dates of incident by showing that, on particular dates, the defendant was not in the United States. The jury convicted the defendant on all counts. He was sentenced to an aggregate minimum sentence of fourteen (14) years incarceration and a maximum sentence of fifteen (15) years incarceration. The defendant filed an appeal to the Appellate Division, Second Department who held that the defendant's claims should first be determined via a CPL 440 motion. People v. Abodalo, 100 AD3d 648 (2<sup>nd</sup> Dept. 2012). The defendant filed such motion on June 3, 2014.

### THE CPL 440 HEARING:

#### INEFFECTIVE ASSISTANCE OF COUNSEL

The defendant, through his counsel, Amy Marion, argued that Mr. Lemke was ineffective

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<sup>2</sup>Any reference to the trial transcript will be documented as TT.

<sup>3</sup>Eight witnesses testified for the prosecution and three testified for the defense.

in that he (1) failed to conduct pretrial discovery or to adequately investigate and prepare for trial; (2) failed to present alibi witnesses and supporting documentary and testimonial evidence; (3) failed to challenge the medical evidence and the testimony related to same; (4) failed to challenge the testimony of the prosecution's psychological expert and (5) failed to move to preclude and/or object to impermissible outcry and bolstering testimony. Counsel for defendant called numerous witnesses in support of his position; specifically, defense called witnesses who testified that the defendant was not in the United States on certain dates as charged by the prosecution. Counsel called two doctors who challenged the medical findings put forth at trial and she called an expert to explain the psychology behind child sex abuse victims. The prosecution called Mr. Lemke who testified on direct and cross examination about his trial strategy and the actions he took in representing the defendant. The Court finds Mr. Lemke's testimony to be credible and credits it in its entirety.

#### Findings of Fact:

Mr. Lemke recounted the steps he took in representing the defendant between 2008 and 2010. Specifically, he noted the information he obtained from the defendant's wife and boss in an effort to have the defendant released on bail. The defendant posted bail within four to five days of his arraignment in October 2008. Mr. Lemke met with the defendant and his wife on a regular bi-monthly basis and spoke with them over the telephone two to three times a week. These meetings and communications increased as the case proceeded towards trial. Mr. Lemke further testified about the Voluntary Disclosure Form and related documents he received and additional discovery that was conducted in the case. He recounted receipt of the medical records of complainant's pediatrician and gastroenterologist (P's Exhibits 37 & 38) and other documents received from Assistant District Attorney (hereinafter, "ADA") Robert Cavallo who was assigned to the prosecution. He testified to the receipt of medical records and colposcopic slides generated by Dr. Silecchia who examined the complainant at the request of the ADA.

Upon receipt of same, Mr. Lemke contacted a medical consulting group named PJ West and Associates to assist in the analysis of the medical records and slides. Mr. Lemke had previously utilized this company and one of its employees, Ms. McClung, a registered nurse, in the successful defense of another client.<sup>4</sup> Mr. Lemke testified that he obtained the name of PJ West and Associates from Mr. Steven Epstein, a well-respected criminal defense attorney in Nassau County<sup>5</sup> (P's Exhibits 63 & 54). Mr. Lemke did not independently vet the company at the time of the Abodalo trial in that he had previously reviewed the curriculum vitae and

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<sup>4</sup>That case ended with a plea of guilty to an A misdemeanor while the jury was deliberating.

<sup>5</sup>Mr. Epstein is a named partner in the same firm as Ms. Marion. All parties were given an opportunity to explore any potential conflicts raised by this information. Ms. Marion and her client advised the Court that they did not believe any conflict existed and testimony continued.

provided brochures, spoken to Mr. Epstein about the Association<sup>6</sup> and relied on the prior testimony and assistance provided by PJ West and Associates in a previous case and that jury's reaction to Ms. McClung in that matter. Mr. Lemke had several communications with PJ West and Ms. McClung related to the medical evidence in this case and Ms. McClung testified at the defendant's trial related to same. Mr. Lemke testified that he had no reason to believe that either PJ West or Ms. McClung were not qualified to read and interpret the medical records or the colposcopic slides provided to them or to testify related to same. Mr. Lemke advised the defendant and his wife about retaining PJ West and Associates as part of the defense strategy and they both agreed with that decision. Thereafter, Mr. Lemke received a list of questions from PJ West and Associates on behalf of Ms. McClung (P's Exhibit 11 & 12). Those questions were answered and additional information/records were sent to PJ West and Associates as received by Mr. Lemke or requested by them. As a result of this interaction with PJ West and Associates, a trial strategy was developed related to the medical evidence in the case.

It was determined by PJ West and Associates that the medical evidence of a scar and tags could not be contradicted; however, it was decided that such medical evidence was likely the result of medical issues and not sexual abuse. Such a determination was supported by the records of the child complainant's pediatrician and gastroenterologist in that at the time they examined the complainant, closer in time after the sexual abuse had temporarily ceased, they did not see any scar or tags. Mr. Lemke made a determination not to call these doctors at trial because their medical records provided sufficient evidence to argue medical reasons for the subsequent findings of Dr. Silecchia.

Mr. Lemke also discussed potential cross examination of witnesses with Ms. McClung (P's Exhibit 44). She was provided with the trial testimony of Dr. Silecchia before she testified and was prepped in person by Mr. Lemke on the day she arrived in New York for 2 ½ hours and again on the morning of the trial for an additional 90 minutes to 2 hours.<sup>7</sup> Mr. Lemke did not cross examine Dr. Silecchia's findings of a scar and tags as his experts, upon whom he relied, advised that a scar and tags did in fact exist within the colposcopic slides. As such, Mr. Lemke determined there was no strategic advantage to cross examine Dr. Silecchia regarding a prior court's decision questioning her ability to make medical findings.<sup>8</sup> In the prior case, a question

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<sup>6</sup>Mr. Epstein testified that at the time he provided the name of PJ West and Associates to Mr. Lemke, he had not used them at trial.

<sup>7</sup>Ms. McClung's hearing testimony revealed her current difficulty recalling what information she received from Mr. Lemke pre-trial because of the side effects of her cancer treatment between 2010 and 2012.

<sup>8</sup>See, Gersten v. Senkowski, 426 F.3d 588 (2<sup>nd</sup> Cir. 2005).

was raised regarding Dr. Silecchia's findings of a scar as a result of an anal fissure.<sup>9</sup> The findings in the Abodalo trial were different and independently verified by Mr. Lemke's experts.

Mr. Lemke determined that any testimony by the prosecution that discussed a significant physical injury to the complainant's anus found in 2008, that was not discovered in 2000 during the time frame of alleged sexual abuse, played into the defense strategy that the injury was not caused by repeated sexual abuse. Mr. Lemke testified that the defendant was completely involved in all decisions related to his defense. He was made aware of the medical evidence and agreed with Mr. Lemke's strategy for handling same.

Mr. Lemke told the Court that the defendant took an even greater role in preparing his defense as related to alibi; however, he was reluctant to provide Mr. Lemke the names and contact information of individuals who could provide alibi information as the defendant did not want anyone outside his immediate family to know of the charges against him.<sup>10</sup> Although advised by Mr. Lemke that the decision was "foolish," Mr. Lemke abided by his client's wishes. One potential witness who was discussed was Yousef Al Haddad. Mr. Lemke learned through the defendant that although Mr. Al Haddad could say that the defendant was in Saudi Arabia taking care of Mr. Al Haddad's children between December 1994 and April 1995, he could not say that the defendant remained outside the United States for that entire time frame as Mr. Al Haddad was in Germany with his sick child (P's Exhibit 49). As such, a decision was made that the witness' value was limited and it was strategically more beneficial to rely on documentary evidence in the form of passports and border crossing documents that showed the defendant to be out of the Country at that time (Trial Exhibit's K, L, M, N and 19). At the request of Mr. Lemke, both a Word document (P's Exhibit 48) and a time line (P's Exhibit 22) were created using these documents to show the defendant's whereabouts at the time of the allegations. Mr. Lemke discussed travel documents with an individual from United States (hereinafter referred to as "U.S.") Customs but was advised that prior to September 11, 2001, record keeping was sub-par and thus it would not be beneficial to the defense to have a witness cast doubt on the travel information already received by the defense. This strategy of not calling anyone from U.S. Customs was discussed with the defendant and his wife and agreed upon.

The allegations for abuse in the summer of 1996 were originally detailed by the ADA as having occurred in the summer of 1995. There was significant documentation that the defendant was abroad in the summer of 1995 (P's Exhibit 56 & 57). Such information was confirmed by

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<sup>9</sup>An *anal fissure* was defined at the Hearing. The Court notes this formal definition: a small tear in the thin, moist tissue (mucosa) that lines the *anus*. An *anal fissure* may occur when you pass hard or large stools during a bowel movement. *Anal fissures* typically cause pain and bleeding with bowel movements. [www.mayoclinic.org/diseases-conditions/anal-fissure](http://www.mayoclinic.org/diseases-conditions/anal-fissure)

<sup>10</sup>Numerous witnesses testified at this hearing that they were not made aware of the charges against the defendant until after he was convicted and only in relation to this current motion before the Court.

U.S. Customs and Border Protection (P's Exhibit 51).<sup>11</sup> When the date was changed to the summer of 1996, at the request of the prosecution before the start of the trial, the documentation for the defendant's wife, Reem Abodalo and their infant son Danny's location outside the Country was well detailed (Trial Exhibit K). The same could not be said for the defendant; however, the allegation included Reem and Danny being present on the day of the abuse. As such, the documentary evidence obtained by the defense was utilized to contradict the testimony of the complainant and his parents. No alibi witnesses were contacted related to this time frame as the defendant did not provide any names to Mr. Lemke, again reiterating that he did not want anyone outside the family to know of the allegations.

A similar situation existed for the allegations in September 1998. Documentary proof existed of defendant's presence outside the United States and was presented via passports, time lines and the testimony of defendant and his wife. Moreover, witnesses existed that could corroborate the defendant's presence overseas. But the defendant objected to Mr. Lemke contacting or calling any witnesses to corroborate this time frame.

Other potential defense witnesses were discussed; however, the defendant continued to insist that no-one be called as the defendant did not want the allegations shared with others. The defendant's sister was also discussed as a potential alibi witness but she refused to testify. She advised the defendant that she did not want to "pitt" her brothers against each other. Although Mr. Lemke did not agree with the decision, he respected his client's wishes. Mr. Lemke discussed calling Fadel Abodalo, the defendant's father and grandfather of the child complainant, as a witness for the defense. However, Fadel presented as angry over the allegations having been shared outside the family - a position that was not advantageous to the defendant.

Additionally, a decision was made to limit the introduction of certain photographs as it could be prejudicial to the defense to fail to produce photographs for dates where one might believe photos should exist.

Lastly, a strategy was formulated related to Ms. Burkhard, the Child Sex Abuse Accommodation Syndrome expert witness, to show that the complainant's behaviors were not consistent with the "syndrome evidence" in that the complainant maintained good grades, played on sports teams, was successful on the debate team, pursued acting and behaved in a way inconsistent with an abused child. Mr. Lemke testified that he did research as needed on each area of his defense so that he could conduct effective cross examinations (P's Exhibits 45 & 70).

Mr. Lemke's overall strategy was to put forth a motive related to family embarrassment over the defendant paying off a debt for the complainant's father. Paying off the debt of another is considered a significant slight in the defendant's culture. Mr. Lemke would argue that in

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<sup>11</sup>The Court is aware of the People's position that this document should not be credited as evidence of travel; however, the trial testimony indicated that the entries are "accurate" despite it potentially being incomplete (TT pgs. 1123-1124).

retaliation for this slight, the complainant, in support of his family, reported false allegations of sexual abuse carried out by the defendant. Mr. Lemke would support this position with travel documents that showed the defendant was not in the United States on certain dates listed within the Indictment thus putting forth an alibi while simultaneously casting doubt on the credibility of the complainant. Moreover, Mr. Lemke would provide alternate medical reasons for the findings of Dr. Silecchia that would show that the physical injuries suffered by the complainant were not the result of sexual abuse. It was hoped that this combination of strategies would place reasonable doubt in the minds of the jury.

Mr. Lemke was cross examined about why he allowed certain questions to be asked at the defendant's trial without raising objections and why he allowed the ADA to introduce certain exhibits. Mr. Lemke stated that he could not now remember why he did or did not object to each question placed before him other than to say it was either not objectionable or not a question whose answer would hurt his theory of defense and that he wanted to avoid appearing obstructionist before the jury with constant objections. He additionally stated that it did not concern him whether the prosecution or the defense placed items into evidence before the jury if he wanted the jury to see the item. It was just as much a trial strategy to show lack of fear of the ADA's evidence as it was to introduce the items himself.

Regarding his cross examination of the complainant in the case, Mr. Lemke testified that he did not question the witness about engaging in homosexual acts as he had no reason to believe he had and would not alienate the jury by raising an issue that had little support in evidence. He did not object to the testimony that the exam of the complainant conducted by Dr. Silecchia was intimidating, as he was "picking his battles" in front of the jury and believed most people would find such an exam intimidating and embarrassing.

When asked about his investigation into Manda Perles, the complainant's girlfriend at the time of disclosure, Mr. Lemke testified that he spoke to her and learned that the complainant told her he was abused by his uncle, the defendant, and that she would not be a good witness for the defense (Court Exhibit XVI).<sup>12</sup> He did not inquire further of her potential knowledge of the allegations and did not seek a missing witness charge when the ADA did not call her as he believed there was no legal grounds to seek same.<sup>13</sup> When asked about his cross examination of Det. Trujillo, Mr. Lemke did not recall questioning him on the length of time the detective spent with the complainant; did not cross or research on created memories nor on the issue of interrogation techniques in speaking with child complainants as the complainant was eighteen (18) at the time he disclosed the abuse.

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<sup>12</sup>This exhibit was sought by the defense while Mr. Lemke was testifying. The People produced same and provided a copy to the defense. As with other exhibits shared during the pendency of the hearing, this document was subsequently marked as a court exhibit.

<sup>13</sup>The Court notes that neither side chose to call Manda Perles to testify at this hearing.

## Conclusions of Law:

The right to effective assistance of counsel is guaranteed by both the Federal and State Constitutions. Under Federal law, such a right, codified in the Sixth Amendment, has been explained in Strickland v. Washington, 466 U.S. 668 (1984). A defendant is entitled to representation that meets an objective standard of reasonableness. “A convicted defendant making a claim of ineffective assistance must identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment. The court must then determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance.” Id. at 690. Under State law, an attorney must provide meaningful representation. That is, the attorney’s performance, viewed in totality, must have been meaningful. The State Constitution does not codify and guarantee a perfect trial, but rather a fair one. See, People v. Benevento, 91 NY2d 708 (1998); People v. Baldi, 54 NY2d 137 (1981). Single errors will not likely result in a finding of ineffective assistance of counsel unless the error was “so egregious and prejudicial” as to deprive defendant of a fair trial. People v. Turner, 5 NY3d 476, 480 (2005).

In delineating areas of concern under New York law for ineffective assistance of counsel, the courts have found, under circumstances particular to each case, that the following actions of counsel could be deemed ineffective: failure to investigate and consult with an expert, Eze v. Senkoswski, 321 F3d 110 (2d Cir. 2003); failure to obtain client’s psychiatric records when defense centered on client’s inability to understand Miranda based on mental illness, People v. Oliveras, 21 NY3d 339 (2013); failure to investigate the possibility of witnesses favorable to defense, People v. Fogle, 307 AD2d 299, 301 (2<sup>nd</sup> Dept 2003) and failure to investigate medical findings and consult with medical experts prior to trial. Gersten v. Senkowski, 426 F.3d 588 (2<sup>nd</sup> Cir 2005).<sup>14</sup>

This Court does not find Mr. Lemke’s performance in the underlying trial to have been ineffective. First, Mr. Lemke successfully argued for and obtained bail conditions that allowed the defendant to be at liberty prior to trial. Mr. Lemke consistently met with the defendant and his wife to discuss the facts of the case. Mr. Lemke obtained discovery from ADA Cavallo and conducted investigations based on that information. Upon receipt of medical records and other medical evidence, Mr. Lemke reached out to a medical consulting firm that he previously utilized to obtain an understanding of that evidence. When used previously, Mr. Lemke obtained a successful outcome for that client. Mr. Lemke had numerous contacts with this medical consulting firm. He had no reason to believe that they were ill equipped to answer the questions Mr. Lemke had regarding this case. In fact, they were suggested to him by a well respected defense attorney in Nassau County. Moreover, Mr. Lemke reviewed the information provided to him regarding the abilities of the medical consulting firm and obtained curriculum vitae for the individuals with whom he interacted. No information existed that called into question the abilities and services they advertised. Relying on the information relayed to Mr. Lemke by these

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<sup>14</sup>Mr. Lemke was the defense attorney in that case.



experts, he developed part of his defense strategy related to the medical evidence.

Counsel for defendant argues that Mr. Lemke was ineffective in that he did not obtain a second opinion regarding the conclusions drawn by the medical consulting firm he retained in this matter. She argues that had Mr. Lemke retained or consulted with the medical experts who testified at this CPL 440 hearing, they would have advised Mr. Lemke that the medical findings did not reveal a “scar formed by a deep tear through the skin into the mucosa of the rectum” and that they would have testified to same before the jury. Yet, the Court spent days looking at the colposcopic slides that depicted some sort of physical marking in the anal area of the complainant. Both defense experts called at this hearing said “it could be a scar” but they couldn’t tell solely from the slides because a finding of a scar can not be made without “touching” the area or conducting a biopsy. Both agreed there were unique findings depicted in the slides. Dr. Palusci testified that the medical findings alone do not equate with child sexual abuse. He stated that had he received a history of sexual abuse, he may have found sexual trauma as a plausible cause for the medical findings. Both defense experts agreed that the findings, whatever they were, are most likely not the result of physical, sexual abuse as the acute injury was never observed and medical science reveals most sexual abuse leaves no physical markings.

Mr. Lemke’s defense embraced that position. He consistently argued that the medical findings were NOT the result of sexual abuse by the defendant. There is nothing in the record that shows that Mr. Lemke would have been more successful at trial by calling a medical doctor to contradict the findings of Dr. Silecchia. There is nothing in the record that shows that this decision was so egregious and prejudicial as to deny the defendant a fair trial. In fact, at the CPL 440 hearing, both defense experts conceded that the medical finding could be a scar but they would have sought a biopsy or an ability to touch the impacted area. If it was in fact determined to be a scar, they would have said it was unlikely to be caused by sexual abuse although both defense experts gave scenarios where the physical findings could be the result of penetrating trauma from sexual abuse. Such equivocal testimony at this hearing does not equate with a finding of ineffectiveness in the manner in which Mr. Lemke handled the situation. Moreover, this Court is not aware of any legal, ethical or strategic requirement that an attorney seek a second opinion after consulting with an expert whom that attorney has no reason to suspect is not qualified in the matter for which they were hired. Rather, this Court is guided by People v. Pavone, 26 NY3d 629 at 647 wherein the Court of Appeals held, based on the record before it, that “without more to suggest defense counsel’s decision is irreconcilable with the medical testimony as he understood it at the time of the trial, we cannot say that defense counsel’s strategy renders his representation ineffective.” The same is true for Mr. Lemke.

The defendant next claims that Mr. Lemke was ineffective for failing to put forth alibi witnesses. It is well documented that criminal defendants often suffer prejudice when their attorneys fail to adequately explore an alibi defense. Harrison v. Cunningham, 512 Fed. Appx. 40, (2<sup>nd</sup> Cir. 2013). The issue of whether to call a defense witness, other than the defendant, is a strategic decision relegated to the authority of the defense attorney. Such decision, moreover,

should be made after a full, fair and appropriate investigation of the legal and factual matters developed in the case with significant opportunity to develop a strategy as a result of the investigation. See Olivareras, 21 NY3d 339.

Mr. Lemke had numerous conversations with the defendant, prior to trial, about calling alibi witnesses. Potential witnesses were identified by the defendant. Mr. Lemke spoke directly with some of those witnesses, spoke to at least one using the defendant as an interpreter and relied on the defendant for information related to another. A careful evaluation of what each witness would provide as testimony revealed evidence that would both help and hurt the defendant. That is, Fadel Abodalo was more upset that the allegations regarding sexual abuse by his son were aired outside the family; not that a false allegation was made. The defendant's sister had limited information pertaining to one date of incident but refused to "pitt" her brothers against each other and Mr. Al Haddad, according to the defendant, said he could not verify all travel engaged in by the defendant between December 1994 and March 1995. The defendant refused to provide his attorney with other potential alibi witnesses out of claimed embarrassment. Additionally, many of the witnesses lived overseas and said in their electronic testimony at this CPL 440 hearing that they were not financially able to come to the United States at the time of the trial.<sup>15</sup> That the defendant has now been convicted, and his incarceration is well known by all family and friends who upon learning of the conviction are willing to testify and did so at this hearing, is not evidence of ineffective assistance of counsel. Mr. Lemke neither ignored nor abandoned an alibi defense. He was hamstrung by his client who would not share names and contact information with him. As most of the alibi witnesses were overseas, spoke a foreign language and were unknown to Mr. Lemke, he could not simply send an investigator to find witnesses.<sup>16</sup> Mr. Lemke sought an opportunity to call alibi witnesses; the defendant hampered Mr. Lemke's ability to do so and was told by Mr. Lemke that such actions were "foolish." That Mr. Lemke's words proved true does not now mean the defendant can say he was ineffective. Baldi, 54 NY2d 137.

Defense also questioned Mr. Lemke's decisions related to his handling of Barbara Burkhard, the witness who testified as an expert about child sex abuse accommodation syndrome. She also provided limited testimony about memory vis a vis a child who has been sexually abused over a period of time. Regarding the patterns of behavior related to child sex abuse victims, Mr. Lemke elicited sufficient evidence to sum up on how the complainant in this case did not fit into any of the categories provided by the witness (TT pgs. 1179-1180).

Counsel for defense argued that had Mr. Lemke done research related to memory in child

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<sup>15</sup>Those witnesses included Jumana Abodalo, Yousef Al Haddad and Guity Dormishian who likewise advised the Court that her son Mohammed was also unable to travel to the United States at the time of the trial.

<sup>16</sup>The Court notes that the overseas alibi witnesses called by defense at the CPL 440 hearing were initially contacted by the defendant's wife at the request of Ms. Marion.

sex abuse cases, he would have learned of a man named Dr. John Yuille. This doctor testified at the CPL 440 hearing, on behalf of the defendant, from British Columbia. He advised the Court about interviewing guidelines for sexual assault victims and also about memory as related to sexual assault. The crux of his testimony centered around sexual assault victims having “script” memory, which is a blending of factual details for repeated events. He advised that research shows that very few sexual assault victims remember any one specific event unless that event included an experience unique and different from the pattern of abuse. Therefore, the date of the event is not significant for a memory. He likewise provided information about best practices for interviewing sexual assault victims so as not to suggest memories. These guidelines are set up to minimize the impact of the investigation upon the victim; maximize the obtaining of information without contamination and maintain the integrity of the investigation while meeting both the mandates of law enforcement and the mandates of protecting the child victim. It was Dr. Yuille’s opinion that the detective assigned to interview the complainant in this matter did not engage in best practices related to same. Counsel argued that Mr. Lemke’s failure to place all of this information before the jury, negatively impacted the outcome of the trial and equated with less than meaningful representation.

Although Mr. Lemke neither cross examined Ms. Burkhard regarding same, nor called his own witness to explain the “best practices” of interviewing child sex abuse victims to the trial jury, the Court notes that the child complainant in this case, when interviewed for the first time about these allegations, was eighteen (18) years old and thus a young man, not a child. Moreover, there is nothing in the testimony of the detective assigned to the case that suggested he contaminated any of the memories of the complainant. In fact, testimony at trial revealed that the complainant provided information in conjunction with his approximate age and testified to same in the Grand Jury. For example, the complainant testified at trial that the first allegation of abuse occurred in December 1994 but thereafter stated it was before his uncle was married (TT pg. 203).<sup>17</sup> On cross examination he admitted to having previously stated to the detective that the first year of abuse was 1993 (TT pg. 389-90). Moreover, the complainant testified he was sexually abused in the summer of 1995 and advised the detective of same (TT pg. 392-93) but subsequently changed that year to 1996 (TT pg. 213). Mr. Lemke cross examined the complainant as follows:

- Q: The charges, the indictment that you testified to the grand jury under oath, there is defenses to those charges. You know that, correct?
- A: Yes.
- Q: Your explanation now is, well, I was mistaken regarding the dates. I was mistaken. And the question is, well, when did you become aware that you were mistaken whether these things happened or not. Isn’t it when the district attorney provided you proof that my client wasn’t here and couldn’t have committed these crimes?
- A: Yes. And upon further reflection... (TT pg. 398).

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<sup>17</sup>The defendant was married on 7/7/1994.

Mr. Lemke clearly placed the credibility of the complainant in issue by this examination and in his summation. However, the ADA, on his summation, advised the jury that any change in year of the alleged sexual abuse was a result of the ADA's decision making and should not be held against the complainant (TT pg. 1210) thereby negating the issue of credibility as it related to the complainant. As such, the Court is not persuaded that: (1) Mr. Lemke, to meet an "objective standard of reasonableness," was legally, ethically or strategically required to locate, hire and place before the jury an expert on child memory for sex abuse victims and that (2) the testimony of John Yuille, if called at trial, would have impacted the outcome of the case, provided "more meaningful" representation or was needed to meet the "objective standard of reasonableness. As such, Mr. Lemke's representation was not ineffective.

After conviction, many attorneys, with the benefit of hindsight, can locate alibi witnesses, can scrutinize medical evidence and can develop an argument, without the pressure of moving a case to trial, that may appear more likely to be successful. That is not the standard, however, for determining whether a trial attorney was ineffective. As detailed above, the totality of the representation provided by Mr. Lemke was both objectively reasonable and meaningful. No single action or group of actions undertaken by Mr. Lemke was so egregious as to deny the defendant a fair trial. As such, Mr. Lemke's representation of the defendant was not ineffective.

#### ACTUAL INNOCENCE

Irrespective of the Court's finding regarding Mr. Lemke's representation, the Court does find clear and convincing evidence that shows the defendant is actually innocent of certain charges against him as he was not in the United States on the dates as outlined by the prosecution. Realizing that the defendant is now fighting to overturn his conviction, it is not surprising that he has provided his current attorney with the identity and contact information for numerous witnesses who could testify to his whereabouts on certain dates for which he was convicted of sexually abusing his nephew – the very information sought by Mr. Lemke but refused by the defendant at the time of his original trial.<sup>18</sup>

Below is a summary of the charges of which the defendant was convicted and the dates associated with each charge. Those dates that are **bolded** correspond to the dates in which this Court finds the defendant was not in the United States and thus actually innocent of the respective charge.

Count 1: Course of Sexual Conduct Against a Child in the First Degree; 9/27-28/97;  
7/4/98; August 1998; **week/weekend before 9/23/98**; late winter/early spring

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<sup>18</sup>This Court did not reach any conclusions regarding whether it is legally appropriate for a defendant to hold back information known to him related to his innocence only to then use that very same information to assert a violation of his constitutional rights as put forth in CPL § 440.10(1)(h) as this hearing was consented to by all parties.

- weekend in 1999; 2/14/99; June 1999
- Count 2: Aggravated Sexual Abuse in the Second Degree; 12/31/94
- Count 3: Sexual Abuse in the First Degree; 12/31/94
- Count 4: Aggravated Sexual Abuse in the Second Degree; summer 1996
- Count 5: Sexual Abuse in the First Degree; summer 1996
- Count 6: Sodomy in the First Degree; summer 1996
- Count 7: Sodomy in the First Degree: spring 2001
- Count 8: Incest; summer 1996
- Count 9: Incest; spring 2001

#### Findings of Fact:

In December 1994, the defendant had been married to his wife Reem for five (5) months. They were living in Dammam, Saudi Arabia. His friend and co-worker, Yousef Al Haddad was also married and living with his wife, Guity Dormishian, in Jubail, Industrial City, Saudi Arabia. Mr. Al Haddad had learned that his youngest child was very ill and needed medical treatment in Germany. Mr. Al Haddad asked the defendant and his wife to take care of his two older children so he and his wife, Guity Dormishian, could travel to Germany with the youngest child. Mr. Al Haddad had learned of the need to visit Germany on December 18, 1994 after speaking to the doctors at King Fahad University Hospital. The defendant was with him at that time. Thereafter, plans were put into place for Mr. Al Haddad, his wife and sick child to travel to Germany. They obtained visas/ passports for travel and made arrangements for the Abodalos to watch the other children at the home of Mr. Al Haddad. Arrangements for the children included Reem Abodalo visiting the young girl's school for purposes of drop off and pick up and the defendant visiting the boy's school for that same purpose. The school visits occurred on or about December 27, 1994.<sup>19</sup> Mr. Al Haddad and his wife left for Germany on December 31, 1994. They remained thereat, with their sick child, through March 1995 at which time Mr. Al Haddad brought his two other children to join him and his wife. Prior to being together, Mr. Al Haddad and his wife often spoke to their children via telephone and alternated visiting with their children at their home in Saudi Arabia. Guity Dormishian spoke with Reem Abodalo via telephone by calling the Al Haddad home. Her husband often spoke to the defendant by calling the office number in Dammam, Saudi Arabia.

Extensive documentation was introduced to support the issue of a sick child and the travels of Mr. Al Haddad and his wife to and from Germany. The Court specifically notes exhibits DD, EE, FF, GG and HH which document the child's medical condition and hospital treatment related to same. The Court likewise relied on exhibits RR, SS, AAA, UUU, VVV, AAAA, BBBB, CCCC, DDDD, 22, 48 and 56, amongst other evidence, for proof of the defendant's absence from the United States based on his extensive travel throughout the Middle East during this time frame which is represented by the second and third counts of the

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<sup>19</sup>Women are not allowed to transport young boys to and from their schools in Saudi Arabia and men can not transport young girls.

## Indictment.

In the summer of 1996, Reem Abodalo and her infant son Danny were in Syria where they celebrated Danny's first birthday. The defendant was not present with them at that time. However, the defendant was present overseas in June and July of 1996 as he was on vacation with his family and friends. Defendant's passport shows his exiting Syria on August 13, 1996. Reem Abodalo's passport has her remaining abroad and entering the United States on October 1, 1996. Regarding the summer of 1995 (the original date of the allegations), defendant was likewise overseas but returned to the United States on August 17, 1995 as indicated by his passport. Trial testimony of the complainant reveals that the complainant alleged that his Aunt Reem and his cousin Danny were present for the summer 1996 allegations as he was in Nassau County celebrating Danny's 1<sup>st</sup> birthday. (TT pg. 213). Documentary evidence reveals the inaccuracy of that testimony (D's Exhibits NNN, OOO & YYY).

In September 1997, Jumana Abodalo came to visit her brothers and stayed at the house of the defendant. She arrived in the summer of 1997. "Sondra" was the downstairs tenant. Jumana Abodalo left for Doha, Qatar with her son on September 25, 1997. She testified that the complainant and her brother Jamal stayed at a hotel during visits to Nassau County because there was no room at the house for them to sleep. Her passport corroborates her travel.

The defendant was convicted of the first count of the Indictment, namely Course of Sexual Conduct against a Child in the First Degree. One of the many dates corresponding to that charge was the weekend of July 4, 1998. The defense called Said (Dave) Tarzami and Sima Tarzami, siblings, as alibi witnesses for this date. Both testified that they were with the defendant, his wife Reem and their son Danny for the 4<sup>th</sup> of July in 1998 and had gone to Long Beach to watch the fireworks.<sup>20</sup> The year was memorable to Sima Tarzami because it fell between 1997, her first 4<sup>th</sup> of July in the Bronx, and 1999, the year Sarah Abodalo was born prematurely in June. As such, there was no 4<sup>th</sup> of July celebration in 1999. To rebut this testimony, the prosecution called Police Commissioner Michael Tagney as a witness. He advised the Court that Long Beach did not have a fireworks display on the 4<sup>th</sup> of July in 1998. Documentary evidence corroborating same was introduced (P's Exhibits 72 & 73). Additionally, Commissioner Tagney stated that as a life long resident of Long Beach, one can not see the Jones Beach fireworks from Long Beach. Other evidence confirmed that Jones Beach did have a fireworks display on July 4, 1998.

Another date included in the Course of Sexual Conduct against a Child in the First Degree under count 1 of the Indictment was September 1998. In September 1998, the defendant was in Syria celebrating the wedding of Hania Basaiso to Abdulsalam Al Akel. The wedding occurred on September 4, 1998 in Amman, Jordan. After the wedding, the family went back to

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<sup>20</sup>There was no testimony pinpointing from where in Long Beach these people watched the fireworks or whether they believed they were watching Long Beach fireworks or Jones Beach fireworks.

Damascus, Syria and stayed at the home of Muhajreen el Mahjar (Reem's father). The newlyweds returned to Syria after their honeymoon and spent time with the defendant and Reem on September 18, 1998 before the newlyweds left for Abu Dhabi, United Arab Emirates.

Extensive documentation was introduced to support this time frame. The wedding invitation (D's Exhibit QQ), photographs of the family together (D's Exhibits LL & MM), the passports and border crossing documents of the defendant and his wife (D's Exhibits RR, SS, TT, UUU, VVV, YYY, AAA, & CCC) amongst other documentary and testimonial evidence are all proof of defendant's absence from the United States during this time frame.

The defense did not produce any witness to counter the allegations for August 1998. but elicited testimony from the Tarzami siblings regarding June 1999. They advised the court that they were called to watch Danny when Reem went into labor. They visited Reem at the hospital the weekend of her release. Once Sarah came home from the hospital, the Tarzamis helped Reem and the defendant on the weekends. Both witnesses advised that they did not see the complainant at the Baldwin home, after Sarah came home from the hospital, when they were present. However, they had seen the complainant there on weekends prior to Sarah's birth. Jumana Abodalo also visited in June 1999 and September 1999 after the birth of Sarah. She stated that her brother Jamal and his son, the complainant, did not come to the Baldwin house during the time she was there because of a rift between the brothers over the payment of monies owed overseas.

Gaetana Lorusso testified that she was the care taker for Afaf Abodalo, the defendant's mother and grandmother of the child complainant, from October 1999 through February 12, 2002. At the time she started her employment, Afaf was already unable to take care of herself. She initially worked Monday through Friday from 7am to 5pm and eventually worked seven days a week towards the end of her employment. She only met the defendant's brother four times but recalled seeing the Tarzami siblings at the house. She recalled seeing the complainant at the Baldwin home on one occasion.

Four additional defense witnesses testified to provide general information during relevant time frames. Lisandra (Sondra) Ann Estrada testified that she was the downstairs tenant at 1010 Van Buren Street from March 1996 through February 1998. She advised that her bathroom contained a stand alone sink; her stove was electric; that she rarely left her apartment unoccupied on the weekends; that she never used the interior door of her apartment that led to the upstairs but often left paper inside her exterior door to ensure that no one entered her apartment without permission. She recalled celebrating Danny's second birthday in August 1997 but did not recall a shed or storage structure in the backyard. She recalls Afaf being sickly but able to walk on her own while she was a tenant. She believed Afaf suffered from alzheimers and was not aware that she did not speak English.

Mr. and Mrs. Shaath also testified for the defense. These two individuals care immensely for the defendant and his family. The crux of their testimony lent credence to the facts

surrounding Afaf's failing health and inability to recognize them when she visited Canada in 1998. They were aware of the downstairs tenant and were present and spoke to Mr. Lemke at the time of the 2009 trial of the defendant.

#### Conclusions of Law:

The defendant has claimed he is actually innocent of the charges against him. To prevail on such a claim, the defendant must prove, by clear and convincing evidence, that his claim is "highly probable." People v. Hamilton, 115 AD3d 12, (2<sup>nd</sup> Dept. 2014); People v. Irizarry, 48 Misc 3d 171, 188 (Westchester Cty. Ct. 2014), quoting Home Ins. C. Of Ind. V Karantonis, 156 AD2d 844 (3d Dept. 1989). That is, actual innocence equates with factual innocence. "Mere doubt as to the defendant's guilt, is insufficient, since a convicted defendant no longer enjoys the presumption of innocence and in fact is presumed to be guilty." Hamilton at 27 citing Schlup v. Delo, 513 US 298, 326 n. 42. Moreover, the claim of actual innocence must be based upon reliable evidence which was not presented at defendant's trial. Id. at 23 citing Schlup at 324.

The defendant has met his burden and has proved his actual innocence for the convictions related to December 31, 1994 and September 1998. First, the testimony of the two alibi witnesses, Guity Dormishian and Yousef Al Haddad, who were not called at trial, reveal that the defendant was out of the Country in December 1994. Although Mr. Lemke was aware of a possible alibi witness related to this event, he was not called at the trial as discussed above. Additionally, both witnesses testified at this CPL 440 hearing that they were having financial difficulties in 2009 and would not have been able to come to the United States. Moreover, travel visas would have been required and were not guaranteed to be issued by the United States. Their electronic testimony at this hearing, in conjunction with the documentary evidence corroborating their statements is clear and convincing evidence that the date of December 31, 1994 as charged by the prosecution was a date when the defendant was not in the United States and could not have committed the charged crime.<sup>21</sup> Passports supporting this position were introduced at the trial. The additional evidence presented at this hearing, in conjunction with the passports and border crossing documents is further corroboration of defendant's actual innocence for the crimes for which he was convicted on this date as listed by the prosecution.

The People's position that the passports and border crossing documents are not credible evidence because the United States does not give them full faith and credit fails. Evidence at the CPL 440 hearing revealed that the United States Government certifies the identity of the individual who is certifying the underlying document but not the contents thereof. It defies logic that the United States would certify an individual who they believe is incapable of doing their job in certifying documents. Although the Court understands that the United States Government is not attesting to the accuracy of the information provided to the initial certifier of the documents,

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<sup>21</sup>Whether this crime occurred in December 1993 as suggested by the complainant in that he initially said it was before the defendant was married does not change the fact that the date presented by the prosecution has been proven to be incorrect.



there is nothing in the record that reveals that the person whom the government has certified has produced questionable work or that the documents the initial person was certifying were in anyway forged or altered. Trial testimony that cast doubt on the authenticity of certain travel stamps based on their level of brightness (TT pgs. 1133, 1134) is nothing more than mere speculation and logically unreasonable. It is well known that the darkness of any stamp on any surface is a direct cause of when the stamp is re-inked and the amount of pressure applied to the surface on which it is placed. There is no evidentiary value to the darkness of a travel stamp. Any argument related to same produces an “unreasonable doubt” and not evidence of guilt. The Court appreciates the People’s argument that travel to the United States “could have occurred” without a passport being stamped; however, the totality of the evidence placing the defendant overseas is clear and convincing evidence of his innocence and far outweighs the speculative possibility that the defendant was in the United States.

The credible testimony of Hania Bsaiso and Abdulsalam al Akel regarding September 1998 likewise reveals that the defendant was out of the Country. Their identities were not known to Mr. Lemke as the defendant refused to identify alibi witnesses at the time of his original trial. The Court notes again that any travel to the United States in 2009 was not guaranteed as travel visas would have been needed and the parties had no control over whether the United States would have issued same. The electronic testimony of both witnesses at the CPL 440 hearing, in conjunction with the wedding invitation, photographs of the wedding, other photos and the defendant’s passport showing his presence overseas as late as September 22, 1998, are all clear and convincing evidence of the defendant’s innocence on the dates as charged by the prosecution.<sup>22</sup>

The Court notes that much of the testimony received at the CPL 440 hearing casts some doubt on the defendant’s guilt on those counts for which the Court has not found him actually innocent. However, such doubt, or even a preponderance of conflicting evidence as to the defendant’s guilt, is insufficient for the Court to make a finding of actual innocence. Hamilton at 27. In fact, this Court does not believe that the defendant is completely innocent of the charges against him. The child complainant, who was a teenager at the time he revealed the abuse, initially discussed the many instances of sexual abuse based on his best recollection, the events surrounding the abuse and his general age. After meeting with the District Attorney’s office, specific dates were connected to specific acts of abuse. It is clear from the evidence at this hearing that certain of those dates correspond to a time when the defendant was not in the United States. The Court does not find that this issue is one of credibility as it relates to the complainant. In fact, a finding of actual innocence is rarely based on a credibility determination already engaged in by a trial jury, especially when the witness whose credibility is at issue is not

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<sup>22</sup>The complainant testified at trial that this incident occurred the weekend before his ninth birthday (TT pg. 256). He was born on 9/23/1989 (TT pg. 174). The weekend before was 9/19/1998.

presented at a CPL 440 hearing.<sup>23</sup> See People v. Lane, 7 NY3d 888 (2006); see also People v. Bleakley, 69 NY2d 490 (1987). Rather, the Court finds that on those specific dates as charged by the People, the defendant was not in the United States and thus unable to have performed the sexual assault for which he was convicted.

Based on all of the above, the Court finds that the defendant is actually innocent of counts 2 & 3 in the Indictment. Additionally, the Court finds that the defendant is actually innocent of one of the many instances of sexual abuse that comprise count 1 of the Indictment. Because count 1 covers numerous acts of abuse on numerous dates for which there is not clear and convincing evidence of actual innocence, the conviction associated with count 1 remains. Counts 2 and 3 in the Indictment are dismissed. All other guilty verdicts stand. This case is to be set down for re-sentencing in conjunction with this Court's decision.

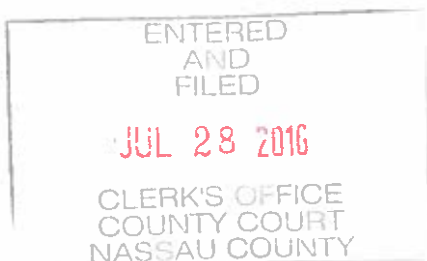
Dated: July 28, 2015

  
HON. TERESA K. CORRIGAN  
ACTING SUPREME COURT JUSTICE

To:

Madeline Singas  
District Attorney  
Nassau County  
Mineola, NY

By: Barbara Kornblau



Defense Counsel:  
Amy Marion, Esq.  
666 Old Country Road, Suite 700  
Garden City, NY 11530

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<sup>23</sup>By way of example, this Court ponders whether the August 1996 incident upon which the defendant was convicted actually occurred in August 1995 as originally detailed in the indictment or whether it may have happened in August 1997 as testified to by Ms. Estrada. Legally it is of no moment to this Court as the complainant testified at trial about this incident, he was cross-examined regarding same and the jury delivered a verdict. The testimony at the CPL 440 hearing did not produce clear and convincing evidence that this event did not occur on the date as charged. There was likewise insufficient evidence that the incident never occurred. As such the Court did not disturb the guilty verdict.

## DEFENSE EXHIBIT LIST

ID	Exhibits Description
A	Lisandra Estrada Affidavit
B	Rent receipts #007801-7824 covering 3/2/1996-2/2/1998 NOTE: #007806 is missing
C	David (Said) Tarzami Affidavit
D	1/7/1997 letter accepting Sima Tarzami into lab of Dr. Burk
E	1/22/1997 letter to Sima Tarzami re: acceptance into lab of Dr. Burk
F	Dec '95 ASA Application
G	Employment Authorization Card from US DOJ
H	NYS DMV Retail Certificate of Sale
I	4/30/1998 letter detailing increase stipend
J	Dept of Pathology; HIV results
K	DOJ/ICE issuance of card 8/18/1998
L	Employment Health Card
M	6/10/1999 letter from atty re: green card application approval
N	DOJ/ICE permanent resident card 4/6/2000
O	Photographs/pictures (7 pages) of family at events
P	Sima Tarzami Affidavit
Q	Folder of slides: Q 1-9; 11-16; 18-19; 23-24
R	Dr. Silecchia medical records 11/7/2008 (6 pages)
S	Dr. Silecchia medical records 11/7/08-12/18/2008 (13 pages) NOTE: pages 3 & 4 removed by D/se based on Dr. Brown's testimony
T	Dr. Silecchia medical records

U Wyomissing Pediatric Assoc (2 pages)

V Children's Hosp of Philadelphia (14 pages) + 2 pages of lab work from Redding Hospital

W Handwritten notes (3 pages)

X Emails between ADA Cavallo & Dr. Silecchia

Y Facebook photos (bottom half of pg 2 only subject to connection) pages 1-3

Z Facebook photo(s/t/c handled by Mrs. Shaath)

AA Colposcope slides provided by Mr. Lemke (envelope marked)

BB CB of Dr. Palusci

CC Affidavit of Dr. Palusci

DD Medical Report of Dr. Al Awamy re: Maram Haddad 12/18/1994

EE Dr. Havers report Jan '95 (2 pages)

FF Dr. Havers report Jan '95 (1 page)

GG Letter of Dr. Havers 1/11/1995

HH Letter of Dr. Havers 1/16/1995

II Medical Report 5/22/1995 (2 pages)

JJ Affidavit of Guity Dormishian

KK 9 photographs of engagement party from 9/1/1996-9/2/1996; family in Syria

LL Photographs of wedding in Sept '98

MM 2 photographs of family in restaurant in Syria Sept 1998

NN Photograph @ house in Amon, Jordan (engagement party)

OO Photograph depicting signing contract of marriage @ Amon, Jordan

PP Affidavit of Hania Bsaiso & Photo

QQ Wedding Invitation

RR Border Crossing Documents from Syria w/State Dept seal

SS Border Crossing Documents from Jordan w/State Dept seal

TT Certificate of Accuracy

UU Letter of 10/12/1994

WW Envelope (s/t/c handled by Boutros)

XX Plant visitor's permit 3/20/1995

AAA 1994 tax return showing foreign earned income

BBB Certificate of Disposition

CCC Judge McCormick's Order on GJ minutes

DDD Notice of Alibi from Lemke

EEE Letter from ADA Schwartz to Amy Marion 5/19/2011

FFF Order amending indictment

GGG Letter from ADA Cavallo to Lemke 5/8/2009

HHH People Response to Discovery Demand

III Supplemental Bill of Particulars

JJJ VDF

KKK CV of Dr. Brown

LLL Affidavit of Dr. Brown

MMM Photo of Jalel, Danny and Abdusalem's mother

NNN Photo of Reem & Danny from 8/26/1996

OOO Photo of Abdusalem & Danny from 8/26/1996

PPP CV of Farid Boutros (translator)

QQQ Reference of Farid Boutros

RRR D's driver license & translation; Saudi Arabia (2 pages)

SSS Jumana Abodalo statement

TTT Translation of statement

UUU D's multiple transit pass from Saudi Arabia

VVV Mr. Boutros' edits of translation of multiple transit pass

WWW Mr. Boutros' edits of documents (RR) Syrian border crossing

XXX Mr. Boutros' edits of documents (SS) Jordanian border crossing

YYY Reem's Passport 6/19/1996 (Trial Exhibit K)

ZZZ Mr. Boutros' translation of same

AAAA D's Passport issued 12/6/1991 (Trial Exhibit L)

BBBB Mr. Boutros' translation of same

CCCC D's passport issued 11/20/1993 (Trial Exhibit M)

DDDD Mr. Boutros' translation of same

EEEE Mr. Boutros' notes/edits on multiple transit pass

GGGG Joumana Abudalou's passport from Nov 1990

HHHH Joumana Abudalou's passport from Dec 1995

IIII Joumana Abudalou's passport w/visa issued 6/16/1999

JJJJ Letterhead of Al Haddad's company - Gulf Contracting

KKKK Multiple transit pass translation from original translator that Boutros worked off of

LLLL Prior translator's final version of Passport

NNNN Page from address book of Mrs. Shaath showing 1010 Van Buren & phone number

QQQQ "Response Child Sexual Abuse, A Medical View" Book

RRRR "Healing Patterns in Anogenital Injury" Article  
SSSS Adams Guidelines  
TTTT Dr. Yuille CV  
UUUU Reem's Mercy Hospital Records - Birth of Sarah  
VVVV Sarah's Hospital Records - Mercy Hospital  
WWWW Certificate Section 4/16/2015 - 3 pages  
XXXX Town of Hempstead Building Search 8/21/2003 Plot Plan - 10 pages  
YYYY Refinance Documents for Baldwin Home - 15 pages  
ZZZZ LILCO - 3 pages  
BBBBB Jamal's 1992 Tax Return  
CCCCC Jamal's 1993 Tax Return  
DDDDD Jamal's 1994 Tax Return  
EEEEE Jamal's 1995 Tax Return  
GGGGG Letter from Dennis Lemke to the UAE 6/2/2009  
HHHHH Letter to Judge Austin - Reem's Affidavit 1/14/2010  
IIIII Reem's Affidavit  
KKKKK Letter from R. Cavallo 7/10/2009  
LLLLL NCPD Arson Squad Docs re 7/4/1998 Jones Beach Fireworks Show  
MMMMM Cooperative Agreement between NYS and Grucci

## PEOPLE'S EXHIBIT LIST

<b>ID</b>	<b>Exhibits Description</b>
1	Photo, tenant's side entrance-1010 Van Buren (Trial Exh. 12)
2	Photo, corner view of house (Van Buren & Milburn)
3	Photos (x2) of 1010 Van Buren
4	Photo of front of house (Trial Exh. 8)
5	Blow up of overhead photo from Google Maps
6	Photo of entrance- leading upstairs
7	Photo of entrance- leading downstairs (Trial Exh. 11)
8	Chris McClung- CV
10	Email 3-19-2009 (Tricia West to Lemke)
11	Email 4-15-2009 (Mariana Robles to Lemke)
12	Email 4-15-2009 (Tricia West to Lemke)
13	Affidavit of Chris McClung- 1-17-2013
14	Affidavit of Chris McClung- 6-20-2014
15	Original Slides (24 slides in plastic sleeves)
16	Affidavit of Geatana Lorusso
17	CD of Slides
18	5 photos of slides introduced at trial
19	Document detailing complaints of bleeding (by A. Marion)
20	Document listing dates of incident (by A. Marion)
22	Defendant's Travel Chart (Trial Exh. O)
23	Letter from DC re: authentication of valid notary stamps



- 24 Email from US Dept. Of State- re: authentication
- 25 Affidavit of Yousef Al Haddad
- 26 3 pages of Yousef Al Haddad's Passport
- 27 Affidavit of Abdulsalam Alakel 3-23-2013
- 28 Affidavit of Abdulsalam Alakel 4-22-2014
- 30 Blow up of Defendant's Exh. R, pg. 5- "Anogenital Exam"
- 32 Frederick Memorial Hospital Certification
- 32a Frederick Operative Procedure Report 10-1-2008
- 32b Frederick Lab Services Report
- 32c Frederick Diagnostic Imaging Report 11-10-2009
- 34 Guide to Male Urogenital Exam
- 35 Astrid Heger Book
- 36 Trial Transcript (4 bound volumes)
- 37 Letter from Cavallo to Lemke dated 10-30-2008 with VDF attached
- 38 Letter from Cavallo to Lemke dated 5-13-2009 with Kelly's medical records
- 39 Phone message from Cavallo dated 3-4-2009
- 40 Letter and slide envelope from NUMC to Lemke dated 2-25-2009
- 41 PJ West Engagement Agreement and Lemke's Retainer Check dated 4-7-2009
- 42 PJ West Invoice dated 8-10-2009
- 43 PJ West Invoice dated 10-10-2009
- 44 Fax 8-12-2009 (from PJ West to Dennis Lemke)
- 45 Letter from Lemke to Cavallo dated 5-8-2009
- 46 People's Response to Discovery Demand & Bill of Particulars

- 47 People's Supplemental Bill of Particulars
- 48 4 pages given to Lemke by defendant
- 49 Lemke memo to file- re: Al Haddad
- 50 Lemke's Requests and Contacts with Customs & Border Control
- 51 Letter and Attachments to Lemke from Customs dated 1-22-2009
- 52 Letter and Attached Notes and Business Card to Lemke from Customs dated 1-23-2009
- 53 Fax dated 2-2-2009
- 54 Syrian Border Crossing Records & Translation dated 6-28-2009
- 55 Jordanian Border Crossing Records & Translation dated 7-21-2009
- 56 Chart and Attachments prepared by defendant
- 57 Documents provided to Lemke by defendant
- 58 J. Donnino's Order dated 8-10-2009
- 59 Alibi Notice dated 6-1-2009
- 60 Photographs and Misc. Documents
- 61 Photograph- Justin in Kindergarten
- 62 Photograph- Justin in Kindergarten
- 63 Fax dated 5-17-2006- Epstein to Lemke (Celentano)
- 64 Contract dated 4-20-2006- Epstein and PJ West (Celentano)
- 65 Letter dated 12-8-2006- Lemke to PJ West (Celentano)
- 66 Email dated 12-18-2006- PJ West to Lemke (Celentano)
- 67 CV Chris McClung
- 68 Testimony of Dr. Silecchia (People v. Gersten)
- 70 Lemke's Folder on CSAAS

- 71 McClung's Testimony (People v. Celentano)
- 72 Certified Copy of LB Resolution 145/98
- 73 Long Beach Directory of Recreation and Cultural Events- 1998
- 74 LBPD Overtime Pay Report for 7-4-98
- 75 LBPD Overtime Pay Report fro 8-16-98
- 76 NCPD Bomb Squad Case Report for 8-16-98
- 77 Certification from State Department
- 79 Adams Guidelines 2007

## COURT EXHIBITS

- I. Trial minutes
- II. Motion to Vacate Judgment
- III. Memorandum of interview of Lisandra Estrada
- IV. Defense requested documents (Sima Tarzami)
- V. Defense extra pictures
- VI. Handwritten notes/Detective Investigator Borday
- VII. Letter/DA's office to defense counsel 8-18-10
- VIII. Letter/Defense counsel to DA's office 9-20-10
- IX. Defense offer of proof re: Yuille
- X. People's response to Yuille offer of proof
- XI. CD of overseas testimony
- XII. Frederick Memorial Hospital records (reviewed in camera)
- XIII. Pages from Frederick Memorial Hospital released to Attorneys (5 pages)
- XIV. Post hearing Memorandum of Law in support of defendant's Motion to Vacate Judgement
- XV. DA's Memorandum of Law in opposition to Motion to Vacate Judgment
- XVI. Folder/ notes on Manda Perles