

**IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT  
WILL COUNTY, ILLINOIS**

<b>JENNIFER DEL PRETE,</b>	)	
	)	
<i>Petitioner.</i>	)	<b>CASE No. 2003 CF 199</b>
	)	
	)	<b>Judge Carmen Goodman</b>
<b>PEOPLE OF THE STATE OF ILLINOIS</b>	)	

**PETITIONER'S REPLY IN SUPPORT OF HER  
PETITION FOR A CERTIFICATE OF INNOCENCE**

Petitioner, Jennifer Del Prete, by and through her counsel, LOEVY & LOEVY, and BLEGEN & ASSOCIATES, submits this reply in support of her petition for a certificate of innocence, pursuant to 735 ILCS 5/2-702.

**Introduction**

Ms. Del Prete fights to prove her innocence of a horrible accusation - that she physically harmed a child (I.Z.) in her care. She has been trying to clear her name and reputation for over two decades now. In this final leg of her journey, Ms. Del Prete seeks a declaration, through a certificate of innocence, that will once and for all verify what she has known all along – she did not harm the child. The Illinois General Assembly has enacted into law an important vehicle for individuals like Ms. Del Prete, the wrongfully convicted and imprisoned, to clear their names and provide some financial compensation for the harm done to them.

Because Ms. Del Prete has satisfied each of the statutory requirements, as set forth in her petition, evidentiary record and reply, she respectfully requests that this Court grant her a certificate of innocence.

## **Background**

On June 21, 2024, Ms. Del Prete submitted her petition for a certificate of innocence and supporting evidentiary record. Included in these filings are expert reports and testimony refuting the fundamental basis for the State's original theory of case that Ms. Del Prete must have been responsible for injuring I.Z. Unequivocal medical evidence, of which the coroner was unaware at the time, demonstrates that I.Z. had a chronic subdural hemorrhage weeks prior to December 27, 2002 – the day she collapsed in Ms. Del Prete's care. Having learned of the preexisting subdural hematoma after Ms. Del Prete's conviction, the coroner has retracted his prior conclusions.

In addition to the medical evidence submitted with her petition, Ms. Del Prete submitted critical exculpatory evidence that the investigating officer and the key medical expert on child abuse had secreted from the prosecution and the defense - the now infamous "Kroll Memo," which explained that the medical examiner questioned the Shaken Baby Diagnosis (SBD) at the time of the autopsy. This crucial *Brady* evidence, that only came to light during Ms. Del Prete's post-conviction proceedings, would have undoubtedly led to a different result of the original trial had it been disclosed. Instead, the coroner's doubts were concealed, and the trial proceeded as though the State's medical expert and the coroner were in lock-step agreement.

On August 24, 2024, Will County submitted its response opposing Mr. Del Prete's petition. The State's response merely summarizes (by simply "copy-pasting" entire segments) the federal court's summary of the State's experts' testimony in the evidentiary hearing held by the federal court. The federal court noted that testimony, as of course it should have, but it did not endorse that testimony as establishing Ms. Del Prete's guilt. Quite to the contrary, the outcome of the federal evidentiary hearing was the court concluded that Ms. Del Prete had met her burden of demonstrating her actual innocence. The court ultimately found that Ms. Del Prete had met the

high burden of demonstrating a miscarriage of justice had occurred, finding that “in light of all of the evidence presented at Del Prete’s trial and at the evidentiary hearing before this Court, the Court finds that Del Prete has established that it is more likely that not that no reasonable juror would have found her guilty of murder beyond a reasonable doubt.” *Del Prete v. Thompson*, 10 F. Supp. 3d 907, 957 (N.D. Ill. 2014). In other words, the court that heard the same State’s expert testimony described in the State’s response, rejected that testimony, and concluded that Ms. Del Prete established actual innocence. Nothing in Will County’s response compels or even suggests a different result. If all the State had to do to defeat a request for a certificate of innocence was to cite prior testimony that has already been discredited and rejected, then no one could obtain a certificate. After all, no one gets to this stage without having first been convicted. The State’s response utterly fails to contradict the new compelling evidence demonstrating Ms. Del Prete’s innocence. Based on the petition and entire evidentiary record submitted with it, Ms. Del Prete respectfully requests that the Court grant her certificate of innocence.

### **Argument**

#### **1. The State’s Recital in its Response of the Federal Court’s Description of the State’s Expert Testimony Does Not Rebut Ms. Del Prete’s Evidence of Innocence**

The totality of the substance of State’s response is the portion of the federal court’s opinion which summarizes the testimony of State experts, including Dr. Gary Hedlund (a neuroradiologist), Dr. Nagarajan Rangarajan (a biomechanical engineer), Dr. Brian Forbes (a ophthalmologist), Dr. Carole Jenny (a child abuse pediatric physician), and Dr. Lucy Rorke Adams (a pediatric neuropathologist). Response at 6-29 (quoting *Del Prete*, 10 F. Supp. 3d at 926-50). That testimony does not advance the State’s position. As noted above, the federal court concluded that Ms. Del Prete met her burden of demonstrating no reasonable juror would have convicted her even after having heard that same evidence. *Del Prete*, 10 F. Supp. 2d. 957. That is

because the substance of the State's experts' testimony did not undermine (and in certain instances even largely corroborated) the evidence of Ms. Del Prete's experts.

With respect to Dr. Hedlund, the court found that his testimony was "[c]onsistent with the testimony by Dr. Barnes, Hedlund stated that there were chronic subdural hemorrhages that already existed as of December 27, 2002, and that were at least two weeks and perhaps as much as three weeks old, or older, at that point."<sup>1</sup> *Del Prete*, 10 F. Supp. 3d at 927. In addition, the court found that on cross examination, "Hedlund conceded that the full-body x-rays taken of I.Z. (referred to as skeletal surveys) did not indicate any swelling or injury to I.Z.'s neck and that no clinician who examined I.Z. had found any abnormalities in the neck area. He also agreed that none of the other examining radiologists had found a retroclival epidural hemorrhage as of December 27. *Id.* at 928.

The State's biomechanical engineer's testimony was similarly unconvincing, and actually supports Ms. Del Prete's innocence. That is because Dr. Rangarajan conceded that "there is no reliable, well-accepted injury threshold for head injury to an infant as a result of rotational acceleration (i.e., shaking back and forth)." *Del Prete*, 10 F. Supp. 3d at 930. And, furthermore, Dr. Rangarajan "testified that there similarly was no reliable, well-accepted injury threshold established for neck injury in an infant." *Id.* Most importantly, Dr. Rangarajan actually refuted the State's child abuse expert and key prosecution witness in Ms. Del Prete's original criminal trial, Dr. Emalee Flaherty, in that he opined that Dr. Flaherty "was wrong when she testified that a fall could not produce levels of acceleration as great as shaking alone." *Id.* In short, Dr.

---

<sup>1</sup> The State's response does not seem to grasp the import of this. The reality, as supported by the State's own witness and as confirmed by head growth charts, is that the original brain bleed occurred prior to Ms. Del Prete having begun to care for I.Z. Thus, in the unlikely event that I.Z.'s injuries were the result of abuse by someone, it was unequivocally not Ms. Del Prete.

Rangarajan's testimony not only makes clear that shaken baby syndrome is an unproven hypothesis, but also that false testimony was used to convict Ms. Del Prete in the first instance.

Dr. Forbes, the State's expert in ophthalmology, testified consistent with Ms. Del Prete's expert that Dr. Flaherty "was incorrect when she testified at Del Prete's trial that [retinal] hemorrhages to the ora serrata are caused only by acceleration or deceleration forces. *Id.* at 932. In addition, Dr. Forbes admitted that there was no way to specify the timing of when I.Z.'s retinal hemorrhages occurred or that ophthalmologists can even identify the "mechanism in the body that causes" them and, critically here, that medicine has even established a causal relationship between abusive head traumas and retinal hemorrhages. *Id.* Again, this State witness made clear that false testimony was provided at the original trial, and that the timing of the first brain bleed could have been before Ms. Del Prete met the child.

The State's child abuse specialist, Dr. Jenny, does not change the balance either. Dr. Jenny testified (reluctantly) on cross examination that the chapter she included in a book on child abuse she edited, concedes "that no one has marshalled a coherent argument to support shaking alone as a causal mechanism for abusive head injury, and that the only evidence basis for this proposition consists of perpetrator confessions." *Del Prete*, 10 F. Supp. 3d at 937. And, in connection with her testimony, the federal court found "significant" that one can no longer accurately say that the head trauma must have been caused by the last person to see the baby conscious. *Del Prete*, 10 F. Supp. 3d at 938. The "last-person" theory was critical to Ms. Del Prete's conviction, but even according to the State's own experts it is not true.

With respect to Dr. Rorke-Adams, the court found her testimony on I.Z. having brain lacerations and contusions due to impact (which she alone testified about), to be "completely unbelievable and unreliable." *Del Prete*, 10 F. Supp. 3d. at 946. Similarly, Dr. Rorke-Adams

departed from the experts on both sides in her opinion that I.Z. did not have a chronic subdural hematoma that preexisted December 27, 2002. *Id.* at 945. Dr. Rorke-Adams was looking at photographs upside down; she claimed to see injuries in photographs where the coroner saw none, and she contradicted the State’s own experts. *Id.* Her testimony was outright rejected.

In sum, the evidence that the State has recycled in its response brief was unpersuasive to the court that considered and weighed all of the expert testimony. In fact, the conclusions of the State’s experts provided support that Ms. Del Prete was wrongfully convicted in several respects. The federal court ultimately concluded Ms. Del Prete had met her burden to demonstrate the federal habeas standard of a miscarriage of justice—essentially actual innocence. *See, e.g., Balsewicz v. Kingston*, 425 F.3d 1029, 1033 (7th Cir. 2005) (“In order to demonstrate actual innocence in a collateral proceeding, a petitioner must present ‘new reliable evidence that was not presented at trial’ and ‘show that it is more likely than not that no reasonable juror would have found [him] guilty beyond a reasonable doubt.’” (quoting in part *Schlup v. Delo*, 513 U.S. 298, 299 (1995))).

## **II. Ms. Del Prete Has Met All Requirements for a Certificate of Innocence**

For the reasons set forth in her petition and the attached evidentiary record, Ms. Del Prete has satisfied each of the four statutory requirements to obtain a certificate of innocence. She filed a timely petition within two years of the charges being dismissed and vacated.

In addition, Ms. Del Prete has demonstrated by a preponderance of the evidence that she is innocent of the crime charged. As Ms. Del Prete set forth more fully in her petition, the medical evidence, including testimony from both sides’ experts, concluded that the I.Z. had a chronic subdural hematoma that predated I.Z.’s collapse by weeks. That fact, in and of itself, likely explains what occurred on December 27, 2002, because a rebleed of the chronic subdural

hematoma could have caused I.Z.'s symptoms that day. Having learned of the old brain bleed, the State's own coroner now believes this to be true.

Second, there is no physical evidence to support that Ms. Del Prete shook I.Z. - there was no bruising on I.Z., and no injury to her ribs, neck or skull. Indeed, the State's most recent expert, Dr. Bennett, concluded that without evidence of any neck or lower skull injury to I.Z., there is simply no way for the fact-finder to conclude that I.Z.'s head injury was caused by shaking.<sup>2</sup>

Third, had the original coroner, Dr. Harkey, known at the time of his autopsy that I.Z. had a chronic subdural hematoma, he would have concluded that the cause of death was the result of chronic and acute subdural hematomas. He also would have concluded that the manner of death was undetermined. We know this without question because it is what the coroner has now said in sworn testimony. If the State has found a single case denying an actual innocence certificate where the State's own coroner has reversed his position that the death was even a homicide, it did not cite to it in its response.

Fourth, Ms. Del Prete was undeniably convicted based on false testimony. Dr. Flaherty's testimony regarding retinal hemorrhages being only caused by shaking was false, as both side's experts now agree. Both sides' experts also agree that accidental falls can produce levels of acceleration as great as shaking alone, contrary to Dr. Flaherty's testimony at trial.

Finally, Ms. Del Prete did nothing to cause her wrongful conviction. When faced with I.Z.'s alarming collapse, she called 911, performed CPR and then cooperated with law enforcement. Ms. Del Prete never said that she harmed the child, even in response to

---

<sup>2</sup> Again, even if one wants for some reason to accept the unproven proposition that shaking led to I.Z.'s injuries, dating of the first brain bleed and I.Z.'s head growth charts demonstrate that it occurred prior to Ms. Del Prete beginning to care for the baby.

manipulative interrogation, and she has been steadfast in her innocence, fighting to clear her name for over two decades all the while suffering great loss of her liberty, familial connection and reputation.

### **Conclusion**

For the reasons set forth above, Ms. Jennifer Del Prete respectfully requests that the Court grant her a certificate of innocence and that this Court order the Clerk to send the certificate to the Court of Claims in accordance with 735 ILCS 5/2-702(h) or 730 ILCS 5/5-5-4(c).

Respectfully submitted,

/s/ Heather Lewis Donnell  
Attorney for Petitioner

Heather Lewis Donnell (ARDC No. 6290050)	Patrick Blegen (ARDC No. 6224494)
Elizabeth Wang (ARDC No. 6287634)	BLEGEN & ASSOCIATES
LOEVY & LOEVY	53 W. Jackson Blvd., Suite 1424
311 N. Aberdeen, 3 <sup>rd</sup> FL	Chicago, IL 60604
Chicago, IL 60607	312-957-0100
heather@loevy.com	pblegen@blegengarvey.com
elizabethw@loevy.com	
312-243-5900	