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IN THE SUPREME COURT OF THE STATE OF NEVADA

JONATHAN QUISANO,)
)
 Appellant,)
)
 v.)
)
 THE STATE OF NEVADA,)
)
 Respondent.)

No. 66816

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Feb 17 2015 09:22 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

APPELLANT'S APPENDIX VOLUME VI PAGES 1250-1499

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1 Court to rule. I understand. And a lot of times people come to Court on these
2 motions and they're like, well, we provided it. Okay. Well that issue's moot. I just
3 want the Court to rule and the reason is this. I just had a case my guy --

4 THE COURT: That's fine. Let's not talk about your reason because that's like
5 an extra ten minutes that we don't need.

6 MS. LEMCKE: Yeah well with me it could be twenty.

7 THE COURT: Okay. If you want me to go through each of these,
8 Defendant's statements, they've been provided. That's granted. Witness
9 statements is granted. It's already been provided. Reports, results --

10 MR. STAUDAHER: With regard to that, they went a step beyond the statute.
11 They said not only the statements that are written recorded as required by the
12 statute but they want anything oral that may have been said to someone. I mean,
13 that's not required.

14 THE COURT: No, those don't have to be memorialized. The only
15 requirement is obviously if they say something that's inconsistent with what's been
16 said already. If it's to the police, they need to make note of that and tell you and
17 then you need to tell them. If it's to you in a pre-trial conference or something like
18 that, you need to immediately inform them in writing either, you know, with an email
19 or something like that.

20 Okay. Reports, results for the things that's been provided. That's
21 granted. Material collected during the investigation. You've provided that. You can
22 do a file review again if you want. Intercepted electronic or oral communication; is
23 there anything?

24 MR. STAUDAHER: No, Your Honor.

25 THE COURT: There's nothing in this case?

1 MR. STAUDAHER: As far as like a T3 or something like that.

2 THE COURT: Right. Of it would be the jail, I guess, jail calls.

3 MR. STAUDAHER: No.

4 THE COURT: I mean, that's not intercepted. No, you're not using any jail
5 calls?

6 MR. STAUDAHER: No.

7 THE COURT: Okay. Then that's moot.

8 MR. STAUDAHER: Well I must say that if something came up down the road
9 after today --

10 THE COURT: Right. Then you would. If you're going to use it you got to give
11 it to them.

12 MR. STAUDAHER: Right. Okay.

13 MS. LEMCKE: Right.

14 THE COURT: There's nothing that's been intercepted. They don't have a
15 wiretap up or anything like that. The only thing conceivably could be the jail calls.
16 They don't have to give you the jail calls unless they're going to use 'em. They're
17 not using the jail calls but if, you know, let's say he gets on the phone today and
18 says, oh, I did it, it was horrible. I felt so bad in Court when they were talking about
19 how my children died. Then clearly you can use that. And he just has to advise you
20 of that and give you a copy of the tape.

21 MS. LEMCKE: So, is that one granted then just with the proviso that, you
22 know, if anything pops up they need to turn it over to?

23 THE COURT: Well it's granted if there anything. That's the problem with
24 these sort of generic ones. They don't pertain in every case and so you're granting
25 things that don't exist and then later, I think, it creates -- my feeling is I know you're

1 trying to create a record -- my feeling is it creates a bad record --

2 MR. STAUDAHER: Agreed.

3 THE COURT: -- if I'm telling them to turn over things that don't exist. So, if it
4 exists turn it over; it doesn't there's only one case where it might and then they have
5 to turn it over. I'm sorry. Not all of this can be granted, denied, granted, denied
6 because some of your requests, a, don't pertain or, you know, b, are overly broad to
7 what's required. And if it's overly broad I'm not going to grant it in its entirety. I
8 know some judges do, but in my view that creates a bad record because, you know,
9 then if there is something that they didn't provide, okay, now you violated the Court's
10 order which it wasn't the Court's intent. So, when you ask me to do these one by
11 one, I'm going to do them one by one.

12 MS. LEMCKE: That's fine.

13 THE COURT: I'm not just, you know, like I said, I know you folks like them
14 just granted in their entirety but some of this is overly broad and I'm not going to
15 grant it.

16 Was there voice monitoring or geographic tracking device. All right. It
17 there was that was granted. There's nothing. Have you provided 9-1-1 and 3-1-1
18 recordings. That's granted. They save it. It's been provided; exculpatory evidence.
19 That's granted if any exists. Identification statements. That was granted. They say
20 none exists. Chain of custody or description of evidence. Obviously as to chain of
21 custody you have something that's granted.

22 MR. STAUDAHER: Actually the chain of custody issue, if there was one, did
23 go over to the vault and they did review --

24 THE COURT: Right; the sign-ins and all that.

25 MR. STAUDAHER: All of the stuff there. Right.

1 THE COURT: Okay.

2 MR. STAUDAHER: To my knowledge they haven't raised any issues.

3 THE COURT: You say destruction of evidence. Nothing was destroyed. If
4 there were, that was granted. Documents used to prepare witness for preliminary
5 hearing non work product. You say you provided that. That's granted. Witness
6 contact information. Granted. If there's a change you must immediately notify the
7 defense. LVMPD investigation notes including related to victim's injuries; you
8 provided all that?

9 MR. STAUDAHER: They've reviewed the actual detective's file.

10 THE COURT: Okay. That's granted then as I normally don't necessarily
11 grant that but since you agreed to that it's granted as unopposed.

12 Information from or regarding informants. There were no informants in
13 this case. Witness compensation. That's granted. Obviously witness fees and any
14 additional compensation.

15 MR. STAUDAHER: I will tell the Court that the only thing that we at this point
16 know of any witnesses that will be compensated in any way is the standard \$25
17 statutory amount that -- and mileage or transportation when they come in.

18 THE COURT: Right. Here's my only other thing. Some of these people who
19 may have been retained -- hired by Metro, that would be an issue, but that's not
20 something that you folks compensated them for; correct? If there's additional
21 compensation for them now having to testify whether you pay it or Metro pays it,
22 you need to find out and tell them. Okay.

23 Witness inconsistent statements. They say there are none but if there
24 were, they have to provide that. Impeachment information. Basically on this -- oh.
25 That's granted if they are aware of anything but they don't have to go out and do

1 investigation. Criminal history. What I require is if they don't have to do
2 investigation, if they become aware of a conviction which could or potentially be
3 used for impeachment purposes they must disclose that to you, the jurisdiction, the
4 date and the offense. Oh, yeah. On this -- these UVs visas, you wouldn't
5 necessarily know this but this is a big issue right now on immigration. If you become
6 aware that anybody has used the fact that they're a witness in this case for
7 immigration purposes, you must disclose that.

8 MR. STAUDAHER: And as I said, victim was three and a half years old.

9 THE COURT: Yeah. Sometimes the family members do because we -- the
10 only reason I know this is sometimes we get forms from immigration that somebody
11 has used the fact that they're a witness to try to change their immigrations status. If
12 you become aware of that, you must disclose that.

13 MR. STAUDAHER: I'm not aware of any UVs at issue with this case.

14 THE COURT: That's fair for cross-examination, clearly.

15 Same as number 20, if you are aware of that, you must disclose that.
16 Same ruling as to 21. Number 22. If you become aware that law enforcement has
17 signed off on one of those forms for immigration you must disclose that. Law
18 enforcement agency and DA's policy regarding visa certification. I don't think you
19 have to get that from Metro. Does your office has a policy?

20 MR. STAUDAHER: Not that I'm aware of.

21 THE COURT: Okay. If there is a policy you have to disclose that. I'm
22 assuming you do it on a case by case basis. Whether anyone requested a certifying
23 agency fill-out form. This is the immigration again; is that correct? If that was
24 requested from your office, that's granted. Whether it was requested -- the same
25 answer as 25. You don't have to do it from Metro or a police agency, but if your

1 office got it it's the same. If they requested it and you approved it you got to tell 'em
2 if you denied it. I'm assuming this is the same form that I've seen. Basically it says
3 that this person is a witness or a victim and they ask you to sign off, that they
4 provided useful testimony or something like that. I think that's the form we were
5 talking about. Is that the form you're talking about?

6 MS. LEMCKE: I'm sorry, Judge. I apologize.

7 THE COURT: I don't know off the top of my head what an I918B form is. I'm
8 assuming is the same thing I've seen which I don't feel is appropriate for the Court to
9 sign. So, my policy is I don't sign them. We will just verify that the person testified
10 and the case that they testified in, but I don't say whether it was helpful or not helpful
11 or anything like that because that's beyond the Court's role, but we have gotten
12 them. I don't know if it's an I918 form. I'm assuming that's the same thing.

13 MS. LEMCKE: I believe that that's what it is, yeah, yeah.

14 THE COURT: I mean, you guys are asking for it so you ought to know what it
15 is.

16 MS. LEMCKE: Yeah, no, absolutely. That's my understanding, Judge, and I
17 would submit it based on the Court's ruling at this point.

18 THE COURT: You know, I think this is -- again, 26, only if your office got it.
19 You don't have to get into what they submitted to immigration. How the heck would
20 you know. Twenty-seven, same thing. Only if it's come to your office. Twenty-
21 eight. You would have no knowledge of that so that's denied. Twenty-nine; again,
22 only as it pertains to your office and actions taken by the District Attorney's office.
23 Thirty, that is denied because -- oh, the certifying agency. Only if you're a certifying
24 agency and that's putting the cart before the horse because we don't know what
25 they've done. Thirty-one. I'm going to -- all this immigration stuff, only what their

1 office has either received or provided. That's it. That's all they have to give. They
2 wouldn't know what other agencies are doing. They don't know what the federal
3 government is doing. So, I'm not going to go through anything else. Significant
4 public benefit parole. If it's a significant public benefit, if it's in connection with this
5 case, I'm not aware of anything else. If you become aware of something in your
6 pre-trial, turn it over. I don't know what this could mean.

7 MR. STAUDAHER: We've not provided any benefit to anyone.

8 THE COURT: Exculpatory evidence. It's granted. It's granted except as to
9 CPS records which must be obtained separately. Social worker notes. They say
10 they've provided it. It's granted an unopposed. Mental health worker notes.

11 MR. STAUDAHER: And when I say -- when we provide the information, I'm
12 not attesting to the --

13 THE COURT: What you get.

14 MR. STAUDAHER: -- to the agency whether that's a complete record.

15 THE COURT: Right. It's what you get --

16 MR. STAUDAHER: It's what I have.

17 THE COURT: -- it's what you get. You don't have to do anything beyond
18 what you get. I'm not sure mental health worker notes. If they were working for the
19 State and they got it, they have to turn it over. They don't have to obtain records
20 from any -- I don't know that there would have been any mental health treatment in
21 this case anyway so that's irrelevant.

22 The medical -- the victim and victim siblings' medical history and notes.
23 You have to turn over what you have turned over, but you don't have to obtain any
24 additional medical records by way of investigation or subpoena.

25 I think that disposes of everything. We'll see you Thursday.

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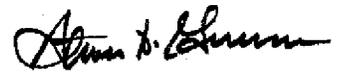
MS. LEMCKE: Thank you, Judge.

MR. STAUDAHER: Thank you, Your Honor.

[Proceedings concluded at 11:02 a.m.]

ATTEST: Pursuant to Rule 3(c)(d) of the Nevada Rules of Appellate Procedure, I acknowledge that this is a rough draft transcript, expeditiously prepared, not proofread, corrected, or certified to be an accurate transcript.

Patricia Slattery
PATRICIA SLATTERY
Court Transcriber



CLERK OF THE COURT

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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

JONATHAN QUISANO,

Defendant.

CASE NO. C-13-294266-1

DEPT. XXI

BEFORE THE HONORABLE VALERIE P. ADAIR, DISTRICT COURT JUDGE
THURSDAY, JUNE 5, 2014
ROUGH DRAFT TRANSCRIPT
RECORDER'S TRANSCRIPT RE:
CALENDAR CALL/STATE'S MOTION IN LIMINE TO STRIKE OR LIMIT THE
TESTIMONY OF DEFENDANT'S EXPERTS JOHN FARLEY AND ROBERT
ROTHFEDER OR IN THE ALTERNATIVE A REQUEST FOR AN EVIDENTIARY
HEARING

APPEARANCES:

For the State:

MICHAEL STAUDAHER, ESQ.
MICHELLE JOBE, ESQ.
Deputy District Attorneys

For the Defendant:

NANCY LEMCKE, ESQ.
NORMAN REED, ESQ.
Deputy Public Defenders

RECORDED BY: JANIE L. OLSEN, COURT RECORDER
ROUGH DRAFT TRANSCRIPT

1 Las Vegas, Nevada, Thursday, June 5, 2014 at 9:42 a.m.

2
3 THE COURT: Quisano. All right. This is on for calendar call and also the
4 State's motion in limine to strike the testimony or limit the testimony of the
5 Defendant's experts Farley and Rothfeder. We didn't get an opposition on this.

6 MS. LEMCKE: That's 'cause they filed it, Judge, just a few days ago and I just
7 haven't had time to file a written opposition. I can do that if you want. I had a big
8 Supreme Court argument yesterday, and then I've been interviewing witnesses
9 which is taking quite some time.

10 So, I would be more than happy to file a written opposition if you want,
11 otherwise –

12 THE COURT: Okay. You – I mean I'm sure you've read it and you –

13 MS. LEMCKE: I have.

14 THE COURT: -- understand what their issues are with some of the
15 mechanics and the videos and all that. Is there any way you could just, you know,
16 kind of give them what you want so that they can prepare their –

17 MR. STAUDAHER: Well, actually – actually we received that.

18 THE COURT: Oh you did?

19 MS. LEMCKE: They do have it.

20 MR. STAUDAHER: I think yesterday –

21 MS. LEMCKE: Yeah.

22 MR. STAUDAHER: -- they provided the videos and stuff – information
23 regarding that to us. We still don't have anything regarding Rothfeder. But as far as
24 the videos are concerned – and again the only information we have about what he
25 was provided is the references in his report, which are some reports from the

ROUGH DRAFT TRANSCRIPT

1 National Highway Safety Transportation, whatever it is, that board that he utilized in
2 his testing, at least some of the results of that analysis, but nothing that he utilized
3 as far as what he actually had in his possession when he actually started engaging
4 in his testing. One of the problems with that is --

5 THE COURT: So what you want is what he actually used, like if he conducted
6 an experiment or something like that or --

7 MR. STAUDAHER: Well we want actually the -- whatever they gave him
8 because there's references in the video. There's a video that's done, various clips
9 that were provided to us, where he is going through -- he has an anthropomorphic
10 test dummy and that he does things to it, like straps bean bags to it and drops the
11 child --

12 THE COURT: For weight and things like that.

13 MR. STAUDAHER: -- but he does so in large portion, almost all of the events
14 with the exception of I think 3 of the 40 or so test that he ran were from positions
15 that had no bearing on what was ever divulged in the case, standing on the back of
16 the couch, sitting on the back of the couch, a different couch that we're talking
17 about. It's a different room, although it is a tile floor. The methodology that he used.
18 There's nothing that he referred to in his reports which indicates that this is
19 acceptable, sort of testing data. There's no peer review articles that have ever been
20 published using a test dummy in this manner.

21 These test dummies are particularly used for high velocity environments
22 where they put them in crashes and then they measure various parameters
23 simultaneously so they can find out what happens to the dummy.

24 He's able to measure apparently a single axis at a time and only in one
25 direction, so when he has a measurement that he collects then, he has to reproduce

ROUGH DRAFT TRANSCRIPT

1 that same event in a different axis, hooking leads a different way which – the
2 methodology is an issue for us. I think if the Court saw what he actually did, saw
3 what is involved in this case, the Court would certainly have concerns and questions
4 as we do.

5 THE COURT: So really it sounds to me like you don't need anything more
6 from the Defense. It sounds to me what you're really saying is that this is – his
7 methodology is not accepted in the scientific community or a suspect, and you're
8 trying to keep him from testifying is that really what you're doing here?

9 MR. STAUDAHER: That is certainly an aspect of it, absolutely.

10 THE COURT: Okay. Let – I mean – cutting to the chase –

11 MR. STAUDAHER: The stuff we don't have is what he based his info – I
12 mean how he even decides to do the testing, what information he has.

13 THE COURT: So like is there a treatise or something out there saying, you
14 know, you strap a bean bag to a test dummy and knock it over to – to –

15 MR. STAUDAHER: That's part of it, but we –

16 THE COURT: -- measure velocity or something like –

17 MR. STAUDAHER: -- we don't even have the information as far as what
18 information he had about this case to actually try to reproduce an example, and we
19 know that – actually defense counsel was there with him, and we can hear that
20 they're talking to him about aspects of it. We know that he actually – when he
21 conducts the test, he doesn't just set the dummy up and like tip it and let it do
22 whatever, he actually has his hands on the thing the entire time, guiding it down to a
23 certain position. There's another person with him that also has hands on this
24 dummy, doing the same way. All of those things to me put –

25 THE COURT: So basically what you want, cutting to the chase, it sounds to

ROUGH DRAFT TRANSCRIPT

1 me like what you want is whatever information was provided by the Defense, police
2 reports, medical records, whatever.

3 MR. STAUDAHER: That's correct, yes.

4 THE COURT: If you don't have that already, and then you want whatever
5 guidelines he used or books or reference materials or whatever to make the
6 determination that this is an appropriate way to test the stuff. Is that essentially what
7 you're asking for?

8 MR. STAUDAHER: That is. That is correct. And if the Court is going to, after
9 we receive that, and it appears as though – let's say there is, you know, peer review
10 work that says; hey look, this is a method that – it's employed in these situation and
11 it's generally accepted in the scientific community and so forth which is safer for
12 argument's sake that that exists, which I don't believe it does.

13 The State believes that before he actually testifies and gives
14 information regarding his – the actual testing he did in this case and the results
15 they're from, that the Court needs to have a short hearing with him beforehand to
16 assess it themselves – the Court itself because we believe based on what we saw
17 on the video and read in the report that there are glaring omissions in the things that
18 would normally have to be recorded and tested if this was going to be valid and
19 there's nothing that shows that what he did was valid other than to just strap a
20 dummy up and toss it and take some measurements.

21 THE COURT: Okay. Going forward. Here's what I'd like the Defense to do.
22 If you can contact your expert and find out, you know, you would know what you
23 gave him, but disclose that if you haven't to the Defense or find out from him what
24 materials he reviewed and what he relied on that hasn't been disclosed already and
25 then what materials he relies on to sort of formulate his analysis or formulate his

ROUGH DRAFT TRANSCRIPT

1 testing protocol or what have you. If there are, you know, basically where did he
2 learn this stuff, you know, to put it in very plain speak. That's what I think Mr.
3 Staudaher wants to know –

4 MR. REED: And Judge –

5 THE COURT: -- so that there's a book out there or something like that, he
6 can check it or have an expert, if they have one, check it to see, you know, hey this
7 is in there, this is not in there or if there's no, you know, material out there at all, then
8 obviously that's something they want to know about to challenge his credibility as an
9 expert and his ability to testify.

10 MR. REED: Sure. And that's fine. So what we can tell the Court, and Mr.
11 Staudaher is aware of this is, the report does specify, does cite to specific
12 information in which he relies on in forming his opinion, but I don't believe it says the
13 basis of physics necessarily as to why he did the testing or the physics of why he
14 picked the dummy and that kind of thing, which certainly we can provide, and again
15 Mr. Staudaher at any point can contact Dr. Farley, and he'll explain it to him directly,
16 but we'll get something specifically in writing.

17 Additionally, Dr. Farley did not receive any discovery, medical reports,
18 or whatever, and I've already informed of this. What we did was, we told Dr. Farley
19 just test as many different ways as you can from falling from a couch, face first,
20 backwards, standing, falling, head first, all the different variations we could think of
21 that he could think of, so there is no other data or information or reports. We just
22 told him try any variation you can.

23 The couch itself is the exact height of the couch that was in the
24 residence at the time of the testing. The testing occurred in the location where the
25 accident actually took place with the symboloid [phonetics] falling onto the tile floor

ROUGH DRAFT TRANSCRIPT

1 in the location that was identified by the Defendant.

2 So, I guess really the only other thing which we can get for Mr.
3 Staudaher is, I could get Dr. Farley to give a synopsis, so to speak of why he did the
4 testing in this manner, the mechanisms of why he picked the dummy and calibrated
5 it and all of that.

6 THE COURT: I mean I think what Mr. Staudaher wants isn't just, you know,
7 I'm educated in the area of physics, and I decided to apply general principles of
8 physics, utilizing a dummy and some bean bags. I think what Mr. Staudaher wants
9 is has this been, you know, recognized before that this is a legitimate means of
10 replicating

11 MR. REED: Sure.

12 THE COURT: -- an accident to measure, you know, velocity or force or
13 whatever it is, or impact or whatever it is he's measuring.

14 MR. REED: Right.

15 THE COURT: So I think -- is that what you want really Mr. Staudaher?

16 MR. STAUDAHER: That is what -- that and --

17 MR. REED: Well and Judge I can do that, but also Mr. Staudaher has had the
18 privilege of cross examining this very witness in another murder case, and
19 interestingly didn't make the same objection when Dr. Farley testified in that case, in
20 which Mr. Staudaher personally cross examined that witness, but we can certainly
21 get the information.

22 THE COURT: Did he testify to the same types of things in the other case?

23 MR. REED: Very similar.

24 MR. STAUDAHER: It was different. He had -- based -- after his testimony was
25 complete, I realized that I should've challenged it, that's why I'm challenging it now.

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1 THE COURT: Okay.

2 MR. STAUDAHER: Because it was something that he just – it's like
3 somebody just straps something together and throws it out there and says; hey look,
4 I took these measurements and then when you go back and look at it – and counsel
5 is claiming that he doesn't have any information about the case itself, but there's
6 actual discussion that's cut off on the videotape that's recording this where they're
7 talking about; well the doctor didn't have the – he goes – I refute something about
8 testimony, so he's read stuff.

9 THE COURT: Okay.

10 MR. STAUDAHER: And he's done some sort of – had some sort of
11 information come to him to even form the basis of some of things because when he
12 does the testing with another person, whom we don't know who that is if that's an
13 investigator for the Public Defender's Office or not, we know that both Mr. Reed and
14 Ms. Lemcke were present during the – and interacted with him during the testing,
15 which calls into question some issues about, you know, whether or not somebody
16 has an unbiased look at whatever they're doing, and he goes through and takes
17 measurements, and because the dummy doesn't match the circumstances of the
18 kid, we're talking about the dummy itself is 50% heavier than the child.

19 THE COURT: Well that may go to the weight of his evidence, not as to
20 whether or not he can testify.

21 Now, here's what I'm ruling. They need to provide the information I've
22 just told them to provide. Then, you know, they can – you can determine, and I'm
23 sure you are gonna determine that he's not – his area of expertise isn't recognized
24 and; therefore, you're gonna challenge his ability to testify. That sounds to me like
25 really what you're doing.

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1 MR. STAUDAHER: Yes.

2 THE COURT: And then they'll argue, well it is. I mean, for example, if I were
3 to throw this gavel, there are general principles of physics that we could use to
4 measure various things, and we don't need to read a treatise on gavel throwing
5 specifically because general physics principles apply. That may be their argument.

6 Now, I'm going to have hear everything and determine it's true that
7 does apply or no this is kind of shoddy made up science and you can't – you know,
8 it's not recognized as a kind of biomechanical area, where somebody can testify. I
9 don't know. I don't know enough about this at this point in time to make a
10 determination one way or the other, so I'm not trying to indicate either way how I'm
11 going to rule because I simply haven't heard enough. So, that's what you're gonna
12 do going forward today.

13 Then, before he testifies, unless it's something you need a preliminary
14 ruling on for your opening statement, we can have a hearing with him to, you know,
15 based on the State's challenge if they choose to go forward with that as to, you
16 know, whether or not he's gonna qualify as an expert or not, and certainly you can,
17 you know, he's qualified before, you can bring that up. I'm just interested where did
18 he – where was he – what department was he qualified in?

19 MS. LEMCKE: He's the head of the Physics Department at UN –

20 THE COURT: No no I meant like, District Court 3, District Court 5 –

21 MS. LEMCKE: Oh I'm sorry. Well, I know, you know, I'm not the sharpest
22 knife in the drawer.

23 MR. REED: It was District Court, Department 3, Your Honor.

24 THE COURT: Okay. And I'm assuming at that point, the State didn't raise the
25 same challenges that their raising now.

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1 MR. STAUDAHER: Correct. We actually got the video literally the day of the
2 trial, and so it was a little difficult for us to bring motions beforehand when he filed –
3 when we did review that, we were already into the trial, and so it was difficult for us
4 to raise that as an issue but when he did testify, I know exactly what he's gonna do,
5 and based on what happened in that event versus what he's – his report says here,
6 it is sham science. There's no – there's nothing that he's relying upon other than
7 getting a dummy, taking some measurements, and he makes dramatic conclusions
8 based on that.

9 THE COURT: Okay. Well again general principles of physics apply, you
10 know, always.

11 MR. STAUDAHER: That's now what we're talking about. We're talking about
12 actual gravitational measurements.

13 THE COURT: And so, you know, we'll see. We'll see if there's anything out
14 there. I'm assuming if this is a legitimate, for lack of a better word, thing; it's been
15 done in other courts, in other parts of the country, and so he may be able to
16 enlighten the Defense about that.

17 MR. REED: I will ask.

18 THE COURT: I'm sorry?

19 MR. REED: I will ask.

20 THE COURT: You know, we'll see if – because this – I'm sure you know, this
21 obviously isn't the first case where there's a dispute as to what happened to a child.
22 Whether the child fell or whether it was a result of, you know, trauma inflicted by the
23 Defendant, and so you know, that would be something I would – I'll just tell you to
24 give you a heads up. That's something I want to know. You know, has this – is this
25 area something that's utilized in other parts of the country. So, you might find that

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1 out. He may know from colleagues and things like that if he himself – if he's testified
2 in other courts in other areas, then obviously that should've been disclosed to the
3 State already.

4 MR. STAUDAHER: I know about the one case, obviously.

5 THE COURT: Right. If it hasn't been disclosed – if he has testified as an
6 expert in other parts of the country, we need to know that, and that should've been
7 disclosed already. If not, he may be aware of other, you know, similar experts
8 colleagues of his who have testified, so I would like to know that. I'm sure the State
9 would be interested in knowing that as well. So, that's what we're gonna do with
10 that going forward. Now, calendar call.

11 MR. STAUDAHER: Oh, Mr. Roth – Dr. Rothfeder, we haven't talked about
12 him. Same issues related to him, except there's no testing, I think. It's a little
13 different in the fact that Dr. Farley came in, and I think he's gonna be offering his
14 main – I don't challenge the fact that he's a physicist –

15 THE COURT: No.

16 MR. STAUDAHER: -- at all, but the testing whether --

17 THE COURT: But you're saying that those – in that particular instance –

18 MR. STAUDAHER: -- right –

19 THE COURT: -- that his, you know, protocol or whatever, isn't generally
20 accepted for the conclusions that he's making –

21 MR. STAUDAHER: -- yes.

22 THE COURT: And it's beyond the ambient of general physics. Is that
23 essentially what you're saying?

24 MR. STAUDAHER: Yes, that's correct.

25 THE COURT: And Dr. Rothfeder, what we have is basically just a CV from
ROUGH DRAFT TRANSCRIPT

1 him indicating that he has a general interest and/or – and he has an interest and has
2 had an interest in head injuries and things like that in adults and children over the
3 past 15 years. That's pretty much it, and we have – we planned to talk to him.
4 Counsel has indicated that if we try to talk to him that he will call back to them to
5 make sure it's okay. We've asked them to get a, you know, an advance call him up
6 and say it's okay so we can just talk to him. With regard to that, we need to – I think
7 before he testifies, I need to have an idea as to what his expertise is related to that.
8 He's testified a number –

9 THE COURT: Don't we – didn't you get a synopsis of what he's gonna testify
10 about, and did he generate a report?

11 MR. REED: No report.

12 MR. STAUDAHER: He did not generate a report.

13 MR. REED: He hasn't done a report, Your Honor.

14 MR. STAUDAHER: And no indication of what was provided to him to
15 generate whatever opinions he has, no indication of what opinions he has.

16 THE COURT: Okay.

17 MR. REED: He's got all the medical records. This is just like Dr. Cetl
18 [phonetics] or Sedel [phonetics] or whatever her name is.

19 THE COURT: Is that in a written format anywhere? Did you disclose in
20 writing to the State that you gave in the medical records and what he – information
21 he had to review?

22 MR. REED: It's not in writing, but we could put it in writing.

23 THE COURT: Okay well that needs to go – that should've been disclosed in
24 writing to the State. This is what we gave, and this is what he would've relied on in
25 formulating his opinions.

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1 MR. REED: Right. So we'll get that same from the State I'm sure; all their
2 doctors will identify what documents –

3 THE COURT: Well, we went over this Mr. Reed. We're not gonna revisit –

4 MS. LEMCKE: We don't have any –

5 THE COURT: -- those are – we went over treating versus retained.

6 MR. REED: We don't have any of that.

7 THE COURT: These are retained experts over which you have some control
8 over what you provide. A treating physician in Hawaii, Mr. Staudaher can't – let's be
9 fair here, he can't send him a bunch of things and say go over this, because that's
10 not their rule.

11 MR. REED: Sure I agree, Your Honor.

12 THE COURT: You know, it's different. They don't rely on anything. Your
13 retained experts rely on things, and you need to tell the State to be fair, what it is
14 that they relied on.

15 MR. REED: No problem. And I assume they'll do the same with their
16 retained experts, 'cause we don't have anything in writing of what documents their
17 retained experts relied on either.

18 MR. STAUDAHER: We don't have retained experts in the case, Your Honor.

19 MR. REED: They do. Dr. Cetl, Dr. Montes.

20 MR. STAUDAHER: They're not retained experts.

21 THE COURT: Those were hired, correct? By the law enforcement agency?

22 MS. LEMCKE: Yes.

23 MR. REED: Correct.

24 THE COURT: A connection with investigating the case.

25 MR. REED: That's correct.

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1 THE COURT: They were not retained for purposes of trial, so they're sort of
2 in a middle ground.

3 MR. STAUDAHER: And as far as that's concerned, Your Honor, actually –

4 THE COURT: But that should already be in their report that they got the
5 autopsy report or whatever it was that they received that they did.

6 MR. REED: No reports.

7 MS. LEMCKE: We don't have reports from them.

8 MR. STAUDAHER: Counsel went over and talked to Dr. Cetti for four hours, in
9 person yesterday.

10 THE COURT: Okay.

11 MR. STAUDAHER: So – I mean I -- it's not – there's no issue about what she
12 knows or doesn't know what she was provided.

13 THE COURT: Here's what we're gonna do. With respect to Dr. Rothfeder,
14 you're gonna talk to Dr. Rothfeder. You can ask him all of these questions that
15 you're interested in.

16 Mr. Reed, you know, we have email now. We have texting, you know,
17 it's pretty easy I think to get a message to somebody. You and – or Ms. Lemcke
18 need to go back to your office and contact Dr. Rothfeder?

19 MR. STAUDAHER: Rothfeder.

20 THE COURT: And inform him that he's going to be contacted by somebody
21 from the District Attorney's Office, and he is to cooperate with them and allow them
22 to speak with, you know, he's allowed to speak with them.

23 MR. REED: We've already told him that. We will remind him again.

24 THE COURT: Okay. I thought there was an issue with that.

25 MS. LEMCKE: No.

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1 THE COURT: Okay. All right. So that's going forward, I think the issues with
2 the experts.

3 Calendar call. Are we ready to go?

4 MS. LEMCKE: I think so.

5 MR. STAUDAHER: I believe so, Your Honor, yes.

6 THE COURT: All right. Here's what I'd like to do. I'd like to have a full day
7 for jury selection. So I'd like to start Monday at 9 for jury selection. We still have the
8 issue of the motion to suppress. We have to have an evidentiary hearing. If that is
9 something that's going to be possible referred to in opening statements, we
10 obviously need a ruling before opening statements. Is that something that you
11 would need to refer to in your opening statement? The reason I'm asking is
12 scheduling. I don't care if you –

13 MR. STAUDAHER: Yes. I understand. I believe we would want to at least
14 have the opportunity to do that in opening statements, so I think it's something we
15 need to do before.

16 THE COURT: Okay. We're gonna pick a jury first. Then we may have the
17 hearing on that. Then we'll go to opening statements.

18 If they are -- be able to use in any way, shape, or form, the issues that
19 occurred in Hawaii, we're gonna have to have some kind of hearing on that, so we'll
20 put that in sometime in the trial somewhere; and possibly the hearing on your
21 expert. So – unless you want to just devote Monday to having all of these
22 evidentiary issues dealt with, and just do that all day Monday.

23 MR. REED: The only reason why that's –

24 THE COURT: And then start Tuesday with jury selection –

25 MR. REED: -- the only reason why I think that's better from our perspective,

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1 Your Honor, sorry Your Honor –

2 THE COURT: No I was – I'm scheduling something –

3 MR. REED: -- the only reason why it's, from our perspective is, these two
4 rulings are crucial to what questions may be asked at voir dire examination too.

5 THE COURT: Okay. All right. Can you get your Hawaii people available by
6 video conference for Monday?

7 MR. STAUDAHER: The Court – we looked at – we were checking into that
8 even as recently as yesterday. We talked to the people that were involved in Florida

9 –

10 MS. JOBE: Hawaii.

11 MR. STAUDAHER: I'm sorry?

12 MS. JOBE: Hawaii.

13 MR. STAUDAHER: Hawaii. I'm sorry. I keep saying Florida, but for some
14 reason I get the wrong State.

15 THE COURT: They're both warm.

16 MR. STAUDAHER: Anyway, the issue is – and we contacted the Court itself
17 to determine what happens. We got the parameters the Court needs. They require
18 two days in advance notice, so they can make the connection, to see if the
19 connections work properly. Now, today is Thursday I don't know if they would
20 consider this –

21 THE COURT: I'll count – we can – can we count today as one day, Thursday
22 and Friday?

23 MR. STAUDAHER: Okay. So we – if that's the case, if they will count that
24 and allow us to do it, then Monday we could probably arrange it.

25 THE COURT: Okay so we'll just plan. Today is the day – so we'll notify

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1 whoever we need to notify in IT that we're gonna do it Monday, and maybe we can
2 do that Monday afternoon. We'll have the local witnesses Monday morning, that'll
3 give the Court more -- IT people or whoever has to set that up more time to --

4 MR. STAUDAHER: Just because its three hours' time difference --

5 THE COURT: Oh.

6 MR. STAUDAHER: -- for Hawaii so.

7 MR. REED: And the suppression hearing I don't expect to take too long
8 either.

9 THE COURT: Right, so it's three hours earlier. So that works better.

10 MR. STAUDAHER: Well, if it's 8 o'clock here, it'll be three hours earlier in
11 Hawaii.

12 THE COURT: Right, 'cause you're going west.

13 MR. STAUDAHER: So in the afternoon would be better for them.

14 THE COURT: Right. Okay. All right. So, let's go ahead then and plan on
15 devoting Monday to all of the evidentiary issues, and your expert is the head of the
16 physics department where?

17 MS. LEMCKE: UNLV.

18 THE COURT: So he can come --

19 MS. LEMCKE: Okay.

20 THE COURT: -- if we need to --

21 MS. LEMCKE: Do you want me to have him here then? Yeah?

22 THE COURT: You know what, unless Mr. Staudaher agrees to withdraw his
23 challenge based on the information you give him today, let's plan on having the
24 hearing --

25 MS. LEMCKE: Okay.

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1 MR. REED: Sure.

2 THE COURT: -- Monday, that way we'll know. Then you can mention him in
3 your opening statement if you want to do that, and that way everything is resolved.

4 MS. LEMCKE: Okay. That's perfect.

5 MR. REED: And it'll give Mr. Staudaher an opportunity to speak with him
6 outside and in the courtroom as well.

7 THE COURT: Okay.

8 MS. LEMCKE: And Judge can I just ask -- make one request, and I apologize
9 I know that you want to move on from our case, but to the extent that the -- they
10 were gonna have the Hawaii witnesses testify, which I believe will include some
11 CPS folks there, is that correct?

12 MR. STAUDAHER: Two CPS.

13 MS. LEMCKE: Two CPS. All right. They have given us records that come
14 from the Department of Family Services in Hawaii. My social worker, because of
15 past experiences that we have had getting records from them, seems to think that
16 they are incomplete. And I don't mean incomplete by they withheld stuff, I mean just
17 incomplete as in, they may not have given us everything that they have, so I would
18 ask them in advance of the hearing just to ask the witnesses who were gonna testify
19 to forward all of the documents that are in their file so we just make sure that we
20 have everything that we need to have before the hearing goes forward, if that would
21 be okay.

22 MR. STAUDAHER: There are two things with that, yes, and I don't disagree
23 with that. First of all, I absolutely agree with counsel that we do not have the entirety
24 of the CPS records in Hawaii. We have what they did provide to us initially. We
25 have asked them to go ahead and essentially copy or get a hold of whatever they

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1 have. I believe they're in the process of doing that. It's a hard copy. We've asked
2 them if there was a way that they could take it down to like a Kinkos or something
3 and scan it so we could get it electronically so that we could have it for the Defense.
4 I think it primarily deals with the actual post events that sort of the process of how
5 they, you know, work with the families and reunify and the classes and so forth that
6 need to be done which took place over about a two-year period. So I would imagine
7 that those records will be more voluminous. But, to the extent that we get them, we
8 will certainly provide them to counsel.

9 MS. LEMCKE: That'd be perfect. I just wanted to make sure that we had
10 those in advance of the hearing.

11 THE COURT: Right. So, we'll have three evidentiary hearings -- I mean
12 evidentiary on three different issues. So, we'll see you back Monday at 9 a.m.

13 MR. STAUDAHER: Do you know the order that the Court wants to do?

14 THE COURT: And in terms of --

15 MR. STAUDAHER: I know that the Hawaii thing is the last in line.

16 THE COURT: -- right. The only thing -- I would say the motion to suppress
17 first, then the expert, the physicist, and then the Hawaii people.

18 MS. LEMCKE: Okay. Got it.

19 MR. STAUDAHER: And one last --

20 THE COURT: All right. The only other thing I might say is we may actually
21 start trial Wednesday. The reason for that is we have a very long criminal calendar
22 Tuesday, and because of, obviously the number of challenges, how long it's gonna
23 take for voir dire, I'd rather have an early start so that we don't make, you know, 50
24 people take two days off of work if they're not gonna be chosen so.

25 MS. LEMCKE: I'd be happy to start on Wednesday, just for the record.

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1 MR. STAUDAHER: And Your Honor, just for the logistics of the Hawaii thing,
2 could we set like a time that we can give the respective video conferencing and the
3 people so that they know, so we can coordinate with that so that if –

4 THE COURT: Well, why don't we just plan on 1:30 to start the video
5 conferencing, and if we're not done with some of the local people, by then we can
6 bring them back. Also, if we don't finish with everything on Monday, that gives us
7 Tuesday to finish with the evidentiary matters, and then Wednesday to start trial.

8 MR. STAUDAHER: Sounds good.

9 MR. REED: Sounds good.

10 MS. LEMCKE: Thank you.

11 MR. STAUDAHER: Thank you, Your Honor.

12 [Proceedings concluded at 10:10 a.m.]

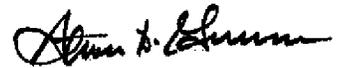
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ATTEST: Pursuant to Ryle 3C (d) of the Nevada Rules of Appellate Procedure, I
acknowledge that this is a rough draft transcript, expeditiously prepared, not
proofread, corrected, or certified to be an accurate transcript.



Yvette G. Sison
Court Recorder/Transcriber

ROUGH DRAFT TRANSCRIPT



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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

JONATHAN QUISANO,

Defendant.

CASE#: C294266

DEPT. XXI

BEFORE THE HONORABLE VALERIE P. ADAIR, DISTRICT COURT JUDGE

MONDAY, JUNE 9, 2014

**RECORDER'S ROUGH DRAFT TRANSCRIPT OF PROCEEDINGS
EVIDENTIARY HEARING**

APPEARANCES:

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Chief Deputy District Attorney
MICHELLE Y. JOBE, ESQ.
Deputy District Attorney

For the Defendant:

NORMAN J. REED, ESQ.
Deputy Public Defender
NANCY L. LEMCKE, ESQ.
Deputy Public Defenders

RECORDED BY: JANIE OLSEN, COURT RECORDER

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[None presented.]

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1 MONDAY, JUNE 9, 2014 AT 9:35 A.M.

2
3 THE COURT: Good morning.

4 MR. REED: Good morning, Your Honor.

5 THE COURT: All right. Is everyone ready to begin? I started listening to the
6 tape that was provided. The holdup was I couldn't get it to play on my computer and
7 then finally my law clerk, who has a little bit better system, got it to play. So, I
8 listened to half of it. I'm to the point where Detective Boucher confronts Mr. Quisano
9 about the fact that his story is inconsistent with the CAT scan and what the doctors
10 are saying and basically tells him, you know, how to account for that. So, roughly
11 midpoint in the tape is as far as I got.

12 MR. STAUDAHER: Okay. I think -- first of all, I believe that the Court --
13 whether it's in here or in chambers or whatever, the Court definitely needs to listen
14 to the entire thing.

15 THE COURT: Right.

16 MR. STAUDAHER: I would also -- I've talked to counsel in advance today
17 and I need to put a few things on the record for the Court --

18 THE COURT: Okay.

19 MR. STAUDAHER: -- so the Court at least knows what's going on with regard
20 to these hearings this morning.

21 THE COURT: Okay.

22 MR. STAUDAHER: There's been some disruption in the first hearing that we
23 were going to -- we were planning to have go forward because of events of
24 yesterday.

25 THE COURT: Okay.

1 MR. STAUDAHER: Because of that shooting --

2 THE COURT: Right. I knew what you were talking about.

3 MR. STAUDAHER: -- literally all homicide units from Metro were called out to
4 the scene and spent the entire night there. They're doing autopsies and things this
5 morning. So, Detective Dolph [sic] who was planning to come in and Detective
6 Boucher who was planning to come in are not going to be able to come in physical
7 today to do this. So, I don't know about tomorrow. I will be in communication with
8 them today to see how things are going, and I believe it should be tomorrow that we
9 can get them in here, hopefully.

10 Now there's one officer that we have out here now. There are two other
11 officers, Clovis and Hardwick, who because of whatever the assignment situation is
12 with Metro and doubling up officers, have at least been told by a supervisor that they
13 cannot leave to come into Court this morning.

14 THE COURT: Okay.

15 MR. STAUDAHER: Obviously that's not an excuse for them not coming to
16 Court to testify if they need to come testify totally. But we would ask the Court's
17 indulgence at least to try and get this worked out until we can get them here. So, as
18 of right now for the suppression hearing, we basically have a tape the Court has
19 been reviewing --

20 THE COURT: Okay.

21 MR. STAUDAHER: -- and one officer who should be relatively short.

22 THE COURT: Okay.

23 MR. STAUDAHER: And was present at the house. And that's pretty much
24 the extent of it that we think for that hearing.

25 Also I think I let your chambers know as well as defense counsel that

1 we've been working out the Hawaii thing. We have the location, we have the
2 people. They know where they're supposed to be, all of those things, and the time
3 that we have set for that is 3:30 this afternoon because the first available time for the
4 video conferencing location was 12:30 Hawaii time which is 3:3 our time.

5 So, both the doctor and the social worker, Iwalani Lum, who we
6 anticipate testifying will be present at that facility to give the testimony --

7 THE COURT: Okay.

8 MR. STAUDAHER: -- at least we believe so. And I still need to actually make
9 sure that we connect up with the -- follow-up with Mr. Slater with the IT Department
10 on this side of things. I talked to him again on Friday. He said that he didn't seem
11 to think it would be a problem for us to do that today especially since this is just the
12 hearing and not the trial. So, that's the plan for that.

13 In between, obviously, we can do the hearing related to the experts.
14 Other than that, that's kind of the status of things as we move forward.

15 THE COURT: Okay. And then I was going to ask the defense, is your expert
16 here this morning?

17 MR. REED: He's right here.

18 THE COURT: All right. Great. So, why don't we do this. We'll hear from the
19 police officer and then we'll hear from the expert and then we'll take our break and
20 we'll come back at 3:30 to hear from the witnesses from Hawaii and then I'll finish
21 listening to the tape in chambers.

22 MS. LEMCKE: That's fine, Your Honor.

23 THE COURT: During break. Does that make sense to everybody?

24 MR. STAUDAHER: Yes.

25 MR. REED: Sure.

1 THE COURT: All right. So, State call your witness.

2 MR. STAUDAHER: We'll call Officer Weiskopf to the stand.

3 THE COURT: And just face that lady right there who will administer the oath
4 to you.

5 THE WITNESS: Thank you.

6 **JAMES WEISKOPF**

7 [having been called as a witness and being first duly sworn, testified as follows:]

8 THE COURT CLERK: Thank you. Please be seated. And please state and
9 spell your name.

10 THE WITNESS: My name is -- first name James, J-A-M-E-S, last name
11 Weiskopf, W-E-I-S-K-O-P-F.

12 THE COURT: All right. Thank you. Mr. Staudaher, is this your witness?

13 MR. STAUDAHER: Yes, it would be.

14 THE COURT: All right.

15 **DIRECT EXAMINATION**

16 BY MR. STAUDAHER:

17 Q Officer, what do you do for a living?

18 A I'm a lieutenant with the Las Vegas Metropolitan Police Department.
19 I'm currently assigned to the Crimes Against Youth and Family Bureau and my
20 section is the abuse and neglect detail. I've been assigned there for approximately
21 two and a half years as a lieutenant.

22 Q Okay. And I'm going to direct your attention back in time a little bit to
23 June of last year, specifically June 6th of last year. Did you have any involvement
24 with a incident that occurred at 4720 Trimwater Court here in Clark County,
25 Nevada?

1 A Yes.

2 Q Will you tell us how -- what your role was in that incident and what you
3 did and the like?

4 A Okay. Patrol responded to that residence and also to UMC Trauma
5 regarding a child that had injuries. The injuries were substantial. When patrol
6 arrived because the child had substantial injury, they notified our abuse and neglect
7 section by the on call person because it was after hours. Our on call person at the
8 time was a Detective Christopher Grivas, G-R-I-V-A-S. He screened the call and
9 based on the information that he received determined that this may meet our
10 protocol for us to come out to just do an investigation on the circumstances of those
11 injuries. So, he contacted Sergeant -- Sergeant Josh Bitsko. Whenever they go on
12 a call out after hours, they have to notify me just to inform me of the call out. So,
13 Sergeant Josh Bitsko notified me of that call.

14 Both Detective Grivas and Sergeant Bitsko responded to UMC along
15 with another detective in abuse and neglect named Heidi Campbell. Because
16 they're going to that scene and the injuries were significant, I decided to respond
17 also. But my goal was to respond to the residence where supposedly the injuries
18 occurred at just to inform the officers why abuse and neglect hadn't responded there
19 yet because sometimes patrol is in the dark of where is the detectives, and I just
20 wanted to let them know that the detectives will have to go to the hospital first and a
21 do a preliminary and get some basic information there first. So, I was just trying to
22 give them information of why nobody from neglect was there, but I was trying to be a
23 representative of abuse and neglect and be at the actual residence itself.

24 From there, my goal was just to allow the abuse and neglect detectives
25 along with the sergeant to ascertain the circumstances of those injuries while I just

1 wanted patiently at the residence with the a patrol officer. When the information that
2 they were getting along with an explanation of those injuries that they had obtained
3 wasn't consistent with those injuries, they immediately notified me about the injuries
4 and then they had concerns that the injuries may -- does not match the explanation
5 provided by the caregiver that was taking care of the child at the time those injuries
6 occurred. That information was relayed to the homicide detail because we were told
7 that the injuries were so severe that the injuries would not be survivable for the child.
8 Based on those circumstances if the child were to pass away and the injuries looked
9 like they were non-accidental, homicide investigations would take over. So, they
10 were notified.

11 I can't recall if I notified them by phone or Sergeant Bitsko, who had
12 more information from the hospital, notified them by phone but the next information I
13 received was that they would respond and conduct the investigation. So, I waited
14 patiently at the residence with the officer, and I believe the father who was the
15 caregiver for that child, was also at the residence along with his other child. We
16 waited patiently and I advised them that detectives were coming out to conduct an
17 investigation or do an interview with him. I didn't disclose that they were homicide
18 detectives. I just said detectives would be coming out to interview with them and
19 then we just waited patiently.

20 Q Let me stop you there --

21 A Yes, sir.

22 Q -- and go back a couple things. First of all, when you arrived at the
23 residence, was the Defendant there at that time?

24 A To the best of my recollection he was already there, yes.

25 Q Okay. So, you weren't present when he was at least arriving at home?

1 A No; I believe he was already there.

2 Q Were you aware if he had been in another location prior to your coming
3 to the residence

4 A The initial information I got was that after he took the child to the
5 hospital and that all parties were going to be at the hospital, from my understanding,
6 the call came out roughly after 6 p.m., just a few minutes after 6 p.m. I wasn't in
7 route to this call from my residence. I wasn't in route to this call until around 7 p.m.
8 and then I arrive roughly around 7:30 p.m. And when I arrived at 7:30 p.m. I was
9 met by a patrol sergeant outside out of the residence named Sergeant Miller. He's
10 the one that gave me the briefing of what they've done and that the parties were at
11 the hospital except from what I can recall, either he told me or the officer that was in
12 front of the residence told me that the father was inside the residence and that's
13 when I introduced myself to the father identifying who I was and why I was there.

14 Q Okay. So, let's stop there. So, when you arrive on scene you are at
15 least aware through the briefing or whatever before or immediately outside the
16 house that the father was at least at some point at the hospital and that he has
17 come back to the residence; correct?

18 A That is correct

19 Q Okay. And so when you arrive at the residence, he's already there at
20 the residence?

21 A Yes. And I arrived roughly around 7:30 p.m.

22 Q Okay.

23 A According to the dispatch notes that they put in CAD.

24 Q Besides the sergeant that you met outside, was there any other officer
25 or officers inside the residence, to the best of your knowledge?

1 A There was one patrol officer that was at the front door of the residence
2 that was inside the residence but near the front doorway of that residence. There
3 was one officer, a patrol officer, there but I don't recall that officer's name.

4 Q Okay. And what was the purpose of that officer being present at the
5 house; do you know?

6 A I believe he was just watching the interior of the residence as far as the
7 explanation provided by the caregiver or the father was that the child fell off the
8 couch, the backside of the couch. So, we was going to request criminalistics to
9 come out and take photographs of the couch and then also process anything, if
10 there was like any type of DNA on the floor and also photograph the type of flooring
11 that the child may have fell on. So, the officer was just standing by waiting for
12 instructions by the detectives.

13 Q So, just to secure that area to make sure nothing happened to the area
14 where things supposedly had taken place?

15 A Yeah. That scene hasn't been altered since the arrival of the officers.

16 Q Okay. So, when you arrive on scene and you said you met with the
17 Defendant, do you see that individual in Court today?

18 A Yes, I do.

19 Q Can you point to him and describe something that he's wearing for the
20 record, please?

21 A He's going to be the gentleman that's sitting behind the computer
22 monitor wearing a black shirt. He looks of Asian descent with black hair and is
23 sitting in between a male in a suit and a female in a suit also.

24 MR. STAUDAHER: Would the record reflect the identity of the Defendant,
25 Your Honor?

1 THE COURT: I think so.

2 BY MR. STAUDAHER:

3 Q With respect to your communication with the Defendant, what -- when
4 you came up and introduced yourself, was he in handcuffs for example?

5 A No, he was not.

6 Q Did he -- was he walking freely with the exception of trying to stay away
7 from the area where the officer was observing of the couch and so forth, that area?
8 Was he freely walking around the residence or able to walk around the residence?

9 A He was able to but he wasn't walking around. When I first met him, I
10 believe he was in -- from the best of my recollection when he entered the front
11 doorway to the left there's like a bedroom with his other son. And when I arrived
12 and was greeted by the officer, he explained to me -- I asked him, I said, where's the
13 father at and he told me he's in this room. And that's where I met him and that's
14 where I first introduced myself to him.

15 Q So, he was a room with his son at the time?

16 A Yes. And that's, a matter of fact, it was just a basic bedroom that I
17 believe had a TV in it.

18 Q Okay. And was the TV on? Were they watching TV?

19 A I believe the TV was on, like a cartoon channel.

20 Q Now when you first introduced yourself to him, I mean, did he come out
21 of the room? Did you ask him to go into the room itself? How did that work?

22 A I introduced myself through the doorway and I stepped into the
23 bedroom and I shook his hand and I just introduced him as I'm Lieutenant Weiskopf
24 with the crimes against youth and family section. I told that this is just standard
25 protocol that whenever there's a child with significant injuries that an investigation

1 will always occur. We're not blaming any fault here. We just -- advising him that
2 this is just a standard protocol investigation, and he seemed to understand that.

3 Q Did you at any time tell him he was under arrest or anything like that?

4 A No, I did not.

5 Q Did you ever arrest him at any time?

6 A No, I did not.

7 Q So, after you introduced yourself and have at least the introduction of
8 what's going to happen or what's going on, did you have further conversation with
9 him?

10 A I believe I explained to him that we're trying to ascertain the current
11 condition of your child. I explained to him I know you have other family members at
12 the hospital and that they're dealing with that now, and that detectives should be
13 arriving shortly to speak with him about what occurred. And then besides that, we
14 just had just a casual conversation, how long he's lived in Las Vegas, how long has
15 he been married, that type of casual conversation. I was not taking any type of
16 notes from that conversation. It was just casual conversation to pass time away.

17 Q Okay. Any kind of interrogation going on at that point from your
18 standpoint?

19 A Absolutely not.

20 Q Did you ask him to explain to you what had happened and demonstrate
21 anything like that?

22 A No. I got a briefing from the patrol sergeant and I believe the officer
23 also gave me a briefing of what they learned.

24 Q But you didn't ask him those questions?

25 A No.

1 Q Okay.

2 A Only because I knew that other detectives were ascertaining what
3 occurred at UMC, and either it was going to be us or homicide that was going to
4 come out. So, I didn't want to ask questions when I didn't have enough information
5 to even ascertain, you know, what occurred or compare to anything. So, I did not
6 ask any questions.

7 Q So, while you're there and he's there and his son's there, are there any
8 other family members in the home that you're aware of?

9 A In the home, no.

10 Q So, during the time that you're on scene before detectives arrive, tell us
11 about what he did? I mean, did he stay in that room? Did he go out and go to the
12 bathroom, get a drink of water; anything like that?

13 A I can't a hundred percent say he went to the bathroom. I know he
14 stepped out of the room. I believe his son was thirsty or wanted to get him a snack,
15 but he stepped out and went to the kitchen area which is this open area to the living
16 room. He went to the kitchen area and got his son, I believe, a drink or a bottle. I
17 can't recall, but he got him something to drink and he came back. And he was just
18 kind of hugging his child, just kind of -- his child was just kind of playing around a
19 little bit in the room and just kind of looking at the TV. The father had like true
20 concern about, you know, the validity of his child that's at the hospital or what's
21 going on and I believe he is trying to reach his wife by cellphone but there was some
22 difficulty where she might not have been answering. But he was allowed to make
23 his phone calls. He didn't ask us for permission nor did we tell him he could or
24 couldn't. He just -- I think he was having difficulty trying to get a hold of her. And I
25 explained to him that's understandable knowing that she's dealing with probably

1 answering questions at the hospital or just dealing with the medical staff there.

2 Q So, at least he felt free enough to just spontaneously use his phone if
3 he needed to or go get a drink for his son or something like that, walk around and do
4 things like that?

5 A Yes.

6 MS. LEMCKE: I would just object to speculation --

7 THE COURT: It felt right. But you observed him do these things?

8 THE WITNESS: I observed him do those things, yes.

9 BY MR. STAUDAHER:

10 Q And he never asked --

11 THE COURT: Did he ask your permission to do these things or did he just,
12 you know, take his son or pick up the phone?

13 THE WITNESS: When he went to go get the drink or the snack from the
14 kitchen, I think he mentioned that I'm going to go to the kitchen. I don't think he's
15 asking for permission. I think he was advising us or advising me what he was going
16 to do. And I just said that's fine.

17 MR. STAUDAHER: I have nothing further, Your Honor.

18 THE COURT: All right. Cross.

19 **CROSS-EXAMINATION**

20 BY MS. LEMCKE.

21 Q So, is it detective?

22 A Lieutenant.

23 Q Lieutenant. Okay. So, Lieutenant, when you were first summoned, you
24 were summoned by patrol officers; is that right?

25 A I was not. My abuse and neglect section was summoned by patrol

1 officers. So, the first person that was summoned was my on call detective,
2 Detective Grivas. When he was notified by phone about what they had out at the
3 scene and at the hospital, that Detective Grivas contacted Sergeant Bitsko and
4 Detective Grivas and Sergeant Bitsko then responded to the hospital. Prior to them
5 responding, Sergeant Bitsko notifies me, which is standard protocol, to just advise
6 me that we're going out on this call regarding a three and half year old with
7 significant injuries.

8 Q Okay. So, if I understand you correctly, the child's taken to the hospital;
9 is that right?

10 A The child's transported to the hospital by paramedics, yes.

11 Q And there was a suspicion that maybe there might be some non-
12 accidental trauma involved; correct?

13 A There is significant injuries so there's a concern about those significant
14 injuries.

15 Q And the concern was is that they may be non-accidental trauma?

16 A Possibly, yes.

17 Q And so Metro is notified?

18 A Metro was notified -- patrol was notified first, yes.

19 Q Okay. And then patrol ends up summoning the appropriate detectives
20 which ultimately gets to you; is that right?

21 A That's correct.

22 Q Okay. So, there's information that is transmitted from what's going on
23 at the hospital ultimately and I know there's like several people in the chain and I
24 don't want to go through every single person in the chain, but suffice it to say there's
25 information about what's happened relative to Kaden's injuries that gets transmitted

1 to you; is that right?

2 A Yes.

3 Q So, what you're aware of by the time you get involved is that there's a
4 traumatic brain injury?

5 A There's head injury. I don't know if there's brain injury. I was told that
6 there's significant head injury.

7 Q Significant head injury sufficient that it may ultimately cause death?

8 A I wasn't told that it was cause death yet. I was just told that there was
9 head injuries that was critical condition, is what I recall initially.

10 Q Okay. So, severe head injury?

11 A Yes.

12 Q That rendered the child in critical condition?

13 A Yes.

14 Q And that there was an explanation given at some point by the person
15 who was the sole caretaker of the child when the injuries were sustained?

16 A Yes.

17 Q And that information was conveyed by my client, Mr. Quisano?

18 A I believe so.

19 Q Well it's your understanding when the information came to you --
20 because I want to find out what you knew; okay?

21 A Yes; absolutely.

22 Q So, when the information come to you, you're given information that
23 there was an explanation for the injury?

24 A Yes.

25 Q But the explanation for the jury came from the caretaker?

1 A Yes.

2 Q But the explanation for the injury came from the caretaker?

3 A Yes.

4 Q The caretaker was the child's father

5 A Yes.

6 Q That's Mr. Quisano?

7 A Yes.

8 Q And that the explanation that he gave was that the child fell off a chair
9 or a sofa and hit his head on a tile floor?

10 A Yes.

11 Q And that according to the treating physicians at UMC the severity of the
12 injury that he exhibited did not match or was inconsistent with that account of the --
13 house the injury occurred?

14 A Yes. And I believe there was other injuries that raised those concerns
15 that was inconsistent.

16 Q So, there may have been other injuries as well?

17 A Yes.

18 Q And that those other injuries in combination what with -- what was the
19 severe head injury that you described appeared to be inconsistent with the
20 explanation given by my client?

21 A Yes.

22 Q And for that reason there was suspicions raised that there may be
23 some non-accidental trauma?

24 A Yes.

25 Q And for that reason ultimately Metro is summoned?

1 A Yes; but even if there wasn't suspicion that it was non-accidental, even
2 if it was accidental, we respond when there's significant injuries but, yes, we were
3 summoned. We were summoned because the explanation didn't match the injuries,
4 yes.

5 Q And so that caused concern that there may be some non-accidental
6 trauma here?

7 A Yes.

8 Q And it was -- law enforcement was able to ascertain that Mr. Quisano
9 was the sole caretaker at the time that the injury occurred?

10 A That's correct.

11 Q There was nobody else around?

12 A What do you mean by the --

13 Q When the injury occurred. By his reporting, he was the only one with
14 access to the child when the injury occurred?

15 A I believe that's what he told the officers, yes.

16 Q So, we've got an injury that's inconsistent with the account given as to
17 how it happened; correct?

18 A Correct.

19 Q And we have Mr. Quisano as the sole caretaker when the injury
20 occurs?

21 A That's correct.

22 Q So, at this point there's suspicion that Mr. Quisano, to the exclusion of
23 anybody else, may have been involved in perpetrating some non-accidental injury to
24 Kaden?

25 A Yes.

1 Q Okay. So, ultimately there are law enforcement personnel that respond
2 to the hospital where Mr. Quisano is?

3 A Yes.

4 Q And at some point somebody from law enforcement directs him to head
5 back to his house?

6 A I don't know that -- if somebody directed him or if he came on his own.
7 I don't know.

8 Q Okay. You don't know whether or not there was law enforcement
9 personnel that told him to go back to his house?

10 A No, I don't.

11 Q Okay. You don't know if he was told to go back to his house to open the
12 door so that law enforcement could enter the house?

13 A No, I don't know that.

14 Q Okay. And it was your understanding that the injury had occurred at his
15 home; correct?

16 A Yes.

17 Q That would be the Trimwater address?

18 A Yes.

19 Q And so for that reason, law enforcement wanted to get access to that
20 home?

21 A Yes.

22 Q Because you wanted to investigate?

23 A Yes.

24 Q You wanted to check out the scene where the injury occurred?

25 A Yes.

1 Q And, again, you were informed that the injury occurred on a sofa
2 recliner chair of some sort?

3 A Yes.

4 Q When you entered the house, you noticed there's really just one
5 common area in the house, a great room; fair to say?

6 A It appeared so, yes.

7 Q And in that great room were a couple of recliners?

8 A I remember at least one recliner. There may have been two.

9 Q And a sofa?

10 A Yes.

11 Q And a love seat?

12 A To the best of my recollection I would say yes.

13 Q Okay. And that was the only like kind of common seating, if you will, in
14 that property?

15 A Right next to -- I remember there is, I believe, a dining room table right
16 next to the sofa which would have seating but that was -- it's all open but the dining
17 room table was further away from everything else and closest to that sofa.

18 Q Right. It's one kind of contiguous great room with a dining room and
19 then the family room seating all in one area kind of, isn't it?

20 A That is correct.

21 Q Okay. And so you have the dining room table; right?

22 A Yes.

23 Q With the chairs around the table?

24 A Yes.

25 Q And then you've got the family room seating which consists of the sofa?

1 A Yes.

2 Q And a couple recliners?

3 A To the best of my recollection, there was two recliners. I remember at
4 least one but -- I'm not disputing if there was two.

5 Q Okay. And maybe a love seat also.

6 A I do not recall a love seat at all but I'm not disputing it.

7 Q Okay. But suffice it to say now that we have the one great room that
8 contains that common area seating; right?

9 A Yes.

10 Q So, to the extent that there was the reporting that Khayden fell from a
11 chair or a couch that's where it occurred?

12 A Yes.

13 Q So that is the primary area of interest when you guys are going to
14 investigate; correct?

15 A Yes.

16 Q Okay. So, now you indicated that you couldn't recall whether or not Mr.
17 Quisano was already at the house when you arrived but you think he was?

18 A To the best of my knowledge he was already there. I don't recall me
19 being there and being told he wasn't there yet.

20 Q And when you actually -- and again I know that it's been a while -- let
21 me ask you this. You didn't prepare a report regarding your involvement in this; did
22 you?

23 A No.

24 Q And you didn't -- I think if I understood you correctly on direct you don't
25 have any notes relatives to your involvement in this?

1 A I did notes when I was there at the scene. What those notes
2 encompassed was me going into the patrol car, writing information I got from CAD,
3 the time of the call, who the officers were involved, which officers went to UMC. I
4 wrote those type of notes on a notepad. And the reason why I wrote those -- and
5 then as I'm getting information from my other detectives that they're telling me this is
6 the name of the child. I would write that down. I think the patrol officers told me the
7 name of the father so I wrote that down. I looked at the person reporting which I
8 believe was his wife had initially called for medical response. I wrote her name
9 down. So, I took those notes at the scene just so that way when homicide would
10 come, I would give them the basic introduction of this is the father, this is the child,
11 this is the time of the call, this is what appears when patrol arrived, that basic
12 information, yes.

13 Q Did you save those?

14 A I can't find them. I looked for them. I cannot find them, but I wrote
15 them like in a six by eight notepad and I have four or five of 'em and I reviewed all
16 four or five of 'em and I can't find those notes.

17 Q Do you have any other notes relatives to this particular incident?

18 A No.

19 Q Okay. All right. So -- okay. So, now let's go back to - digress to the
20 notes. I just wanted to make sure that we had everything.

21 A Absolutely.

22 Q All right. So, now you entered the home and there is, if I understand
23 you correctly, at least one patrol officer that's outside?

24 A I believe he was inside near the doorway, but he was inside the
25 residence.

1 Q There was more than one patrol car there?

2 A Yes; there was a sergeant's patrol car also?

3 Q Okay. So, there was a sergeant present plus at least one patrol officer?

4 A Yes; but I met the sergeant -- the sergeant present was by his patrol car
5 when I first parked my vehicle and that's why I spoke to the sergeant in the cul-de-
6 sac area. The sergeant was not in the house.

7 Q Okay. So, the patrol officer was actually in the house?

8 A Was inside the residence.

9 Q Was there more than one patrol officer or just the one?

10 A Just the one.

11 Q And I believe that you indicated that he was kind of standing in the
12 doorway?

13 A On the interior side of -- by the doorway and, yeah, the door was open.

14 Q And that's because at that point, like we just discussed, we had a
15 potential crime scene?

16 A Yes.

17 Q And to that extent you wanted to make sure that the scene was
18 preserved?

19 A Yes.

20 Q That nobody was allowed to move around in that area particularly
21 where the injury may have occurred?

22 A I believe I recall saying, hey, just make sure -- yes, I told the officer
23 something to the effect of make sure nobody goes near the child, the other child, or
24 the individual goes near that couch, yes.

25 Q Okay. When you say the individual you mean my client?

1 A Yes, your client.

2 Q Okay. You want to limit access to that great room area?

3 A Specifically to that couch area, yes.

4 Q Okay. And that couch area is in the great room?

5 A Yes.

6 Q Great room is between bedrooms and kitchen?

7 A Yes.

8 Q And so -- because, again, you thought you might have a potential crime
9 scene?

10 A Yes.

11 Q You wanted to make sure the evidence was preserved in the condition
12 that it was when you found it?

13 A Yes; and I want to clarify something. The couch wasn't between the
14 great room and the kitchen. It was between the great room and the dining room.
15 So, you still have the ability to walk to the kitchen without disturbing the couch or
16 coming close to the couch.

17 Q Okay. But the couch is still in that great room area?

18 A That's correct.

19 Q And that's the area of primary concern is that great room?

20 A That couch, yes.

21 Q And the area around the couch?

22 A That's correct. The floor around the couch, yes.

23 Q So -- and when you encounter Mr. Quisano he's in the bedroom?

24 A He's in a bedroom. I can't recall -- I don't believe it was the master
25 bedroom but he's in a bedroom. As you enter it's immediately to the left.

1 Q Right. And he was in there with his son?

2 A He's in there with his son, yes.

3 Q They were, you know, he was kind of tending to his son making sure he
4 stayed out of that main area?

5 A Yeah. Just kind of watching his son. I believe there was a TV on but it
6 was -- the volume was low but I believe there was a TV on. To the best of my
7 recollection it was like a Disney channel or a cartoon channel.

8 Q Okay. Do you know whether or not the -- now again the patrol officer
9 that was at the front door was there to make sure that the scene was kind of
10 preserved; that people weren't coming in and out?

11 A Yes.

12 Q You don't know whether or not that patrol officer had instructed my
13 client to stay in the bedroom?

14 A No.

15 Q Okay. He may have, you just don't know?

16 A I don't know what the officer would have instructed your client.

17 Q Because if I understand you correctly, my client other than the trip to
18 the kitchen which he warned you of ahead of time, he wasn't going in and out of that
19 bedroom?

20 A No.

21 Q In fact, he stayed in that bedroom the entire time?

22 A To the best of my recollection, yes.

23 Q Okay. Until such time as he indicated that he wanted to his son a
24 drink?

25 A He indicated -- yeah, I think he said his son was thirsty or something.

1 Q And then you said, okay, you can go on into the kitchen and get him a
2 drink?

3 A I don't think he was asking me permission. He just said my son's thirsty
4 and I just said, oh, okay. And then he started walking to the kitchen and he ended
5 up getting something for his son and then brought it back.

6 Q Okay. But he --

7 A I didn't follow him into the kitchen.

8 Q Okay. But he didn't -- he didn't go into the kitchen without saying
9 something to you first.

10 A That is correct.

11 Q So, it was only after he said something that he walked into the kitchen?

12 A That's correct.

13 Q And then he got a drink of water?

14 A I'm not sure what he got, but he got something for his son and I believe
15 it was something to quench his thirst.

16 Q And then he came right back to the bedroom?

17 A Yes.

18 Q He didn't stop in the dining room?

19 A No.

20 Q He didn't stop and mill around the sofa area?

21 A No.

22 Q And in fact you didn't want him to stop and fiddle around in that area?

23 A No.

24 Q And so he came right back to the bedroom?

25 A That's correct.

1 Q You had instructed him to come back to the bedroom?

2 A No.

3 Q Okay. He just came back on his own?

4 A Yes.

5 Q Okay. But he did come back to the bedroom?

6 A Yes.

7 Q Stayed there then until detectives arrived?

8 A Yes.

9 Q Okay. Now where that's concerned, you indicated that at some point

10 you became aware of the fact that Khayden was probably not going to survive his

11 injuries?

12 A I'm sorry. Could you repeat that?

13 Q At some point you -- just so that you know, the decedent in the case his

14 name is Khayden. I don't know. Did you refer to him by name? Forgive me. But I

15 just want to eliminate any confusion.

16 A Okay.

17 Q When I reference Khayden, he's the child that ultimately passed away?

18 A Yes.

19 Q Okay. When -- at some point you said that you were made aware of

20 the fact that he was probably not going to survive?

21 A Yes.

22 Q And so homicide was notified?

23 A Yes.

24 Q Homicide came out in response to that call?

25 A Yes. I believe they responded about an hour after I was already at the

1 residence.

2 Q And during that hour, with the exception of the trip to the kitchen, Mr.
3 Quisano stayed in that bedroom?

4 A Yes.

5 Q At any time -- at no time during that hour he was told that he was free to
6 leave?

7 A I'm sorry. Could you repeat that one more time?

8 Q At no time during that hour he was told that he was free to leave?

9 A I did not tell him he was free to leave.

10 Q In fact, you told him that detectives were going to come out to the
11 house to investigate?

12 A I told him detectives were going to come out to interview him?

13 Q Okay. And to investigate what happened?

14 A Yes. I may have told him to investigate what happened, yes.

15 Q And that they specifically did want to interview him

16 A Yes.

17 Q And so, again, he remained in the bedroom for the hour, hour and a half
18 until detectives arrived?

19 A I was only there for an hour until the detectives arrived. So, I don't know
20 how long he was in that room prior to me arriving. So, I know I can say he was
21 there for an hour that I was there, yes.

22 Q Okay. Forgive me. So, from the time -- so he was in the bedroom
23 before you arrived; correct?

24 A That's correct.

25 Q And then he stayed in the bedroom while you were there with the

1 exception of the one trip to the kitchen?

2 A Yes.

3 Q And when, again, from the time that you arrived to the time that
4 detectives arrived, it was probably about an hour, hour and a half, if I understand
5 you correctly?

6 A About one hour after I arrived the detectives arrived. I do want to point
7 out I was not monitoring him or watching him the entire hour. I myself was not in
8 that room the entire hour. So, whether he went anywhere else when I left the
9 residence I can't answer if he or didn't go.

10 Q Okay. But there was a patrol officer stationed at the front door?

11 A Yes.

12 Q And, again, the purpose for the patrol officer's presence there was to
13 make sure that scene was not contaminated?

14 A That's correct.

15 Q Okay. And to your knowledge, nobody told me Quisano that he was
16 free to leave the house if he wanted?

17 A I don't know if anybody told him. I did not tell him he was free to leave
18 or he was not free to leave. I didn't tell him anything of that nature.

19 Q Okay. And, again -- so as far as you know -- well let me ask you this.
20 So, you said you actually left the house while Mr. Quisano was in the bedroom?

21 A During the one hour that I was with Mr. Quisano, there's times that I
22 would step out of the house and -- like one time I went to the patrol vehicle and
23 asked to use their computer so I could just get some basic information, like the time
24 of the call, the address, stuff like that. So, I would step out and go to the car and do
25 stuff like that. So, I would come back and when I come back each time, he would be

1 in that bedroom. But I can't say the moments that I left if he went to the bathroom or
2 if he went anywhere else.

3 Q Okay. So, if I understand you correctly then, there were a couple times
4 when you actually left the residence?

5 A Yes.

6 Q To go do some -- make some notations, do some work related stuff?

7 A Yes. And I also recall leaving the residence because some family
8 members showed up and I was informed by the officers, hey, there's some family
9 members outside and so I introduced myself to those family members as well.

10 Q And the officer kept the family members outside?

11 A No; the officer told me that they were outside so I introduced myself to
12 them outside.

13 Q Okay.

14 A The officer said there some family members that are showing up here.
15 They're in the driveway. So, I stepped out of the house and introduced myself to
16 them.

17 Q Okay. So, other than to step outside once or twice to make some
18 notations relative to the offense --

19 A That's correct.

20 Q -- you went outside once because there were family members out
21 there?

22 A Yes.

23 Q Okay. And then you came right back inside?

24 A Yes, to the best of my recollection, yes.

25 Q Okay. In other words, you didn't linger indefinitely outside?

1 A No, no.

2 Q Okay. And the officer was still -- when you went outside there was still
3 the patrol officer stationed at the front door?

4 A Yes.

5 Q And, again, his purpose was to secure that scene?

6 A From the front door I believe you could still have visual of the great
7 bonus room so I think that's kind of where he was at, yes.

8 Q Okay. From the house -- when you walk in the house, just so the Judge
9 is clear, when you walk in the house there's a small hallway; correct?

10 A Yes.

11 Q And that hallway leads right into that great room?

12 A Yes.

13 Q And to the left if you go -- you walk down that hallway, the great room is
14 to your right?

15 A Yes.

16 Q And then the bedrooms are to the left?

17 A Yes.

18 Q So, from that hallway you've got a pretty decent vantage point into the
19 house, the bedrooms, and the great room area?

20 A I believe so, yes.

21 Q Okay. And you've got that patrol officer stationed at that front door?

22 A Yes.

23 Q Which is in the -- at the entryway to that hallway?

24 A Yes.

25 Q And allows you to see parts of the house?

1 A That and also allows him to see who is approaching from the driveway,
2 who is approaching coming up to the front door.

3 Q Okay. So, he's able to keep everything fairly secure?

4 A Yes.

5 Q Okay. When you go --when you leave -- I'm going to talk collectively
6 about the occasions when you leave. I'm going to do them one, two, three. So,
7 when you leave the house on a couple of occasions when you walk outside, Mr.
8 Quisano's in the bedroom?

9 A That's correct.

10 Q He's not told that he's free to leave?

11 A Not that I know of, no.

12 Q Okay. And when you come back and the patrol officer stays at the door
13 the whole time?

14 A Yes.

15 Q And when you come back inside on each occasion, Mr. Quisano is still
16 in the bedroom?

17 A That's correct.

18 Q Okay. He didn't tell you that he left the bedroom?

19 A No.

20 Q Okay. Again, I think you made this clear but let ask it. Forgive me.
21 Just one more time. And you did tell him the investigators were coming?

22 A I told him detectives were coming, yes. I refer to them as detectives
23 and I said detectives were coming, but I didn't classify them as homicide detectives.
24 I just told him that some detectives were coming.

25 Q To investigate?

1 A To interview him.

2 Q And investigate?

3 A To investigate, yes. But --

4 THE COURT: Do you remember --

5 THE WITNESS: I recall specifically saying to interview him.

6 THE COURT: So, do you remember, I mean, do you remember using the
7 word interview?

8 THE WITNESS: Yes, I do remember that.

9 THE COURT: Do you remember whether or not you used the word
10 investigate?

11 THE WITNESS: I remember telling in the introduction that this is standard
12 protocol to investigator or to do an investigation when there's a child with significant
13 injuries. I never implied that it was a crime, it was a --that there's concerns of non-
14 accidental nature. I just told him that whenever there is a child with significant
15 injuries, because that's a true statement we will respond whenever there is a child
16 that has significant injuries regardless if it's accidental or non-accidental we
17 respond. So, I told him that this is a standard protocol investigation and that's why
18 we're present here now.

19 BY MS. LEMCKE:

20 Q And it was your understanding based on the information that you were
21 given that the injury occurred in Mr. Quisano's care?

22 A It is my understanding, yes.

23 Q Okay. And so he was the person that was of primary interest in terms
24 of who was going to be interviewed?

25 A Yes.

1 Q And, again, you knew the area in which the injury occurred; that is, that
2 sofa in that great-room?

3 A Yes.

4 Q And that was the primary focus then of whatever physical investigation
5 would be done?

6 A Yeah; if there's any physical evidence that we might be able to --
7 besides the evidence on the child itself, if there's any physical evidence inside that
8 house, it was that sofa area and the floor area by the sofa.

9 Q Okay. And so if I understand you correctly -- your testimony correctly--
10 you made it clear to Mr. Quisano that the investigators, the detectives --

11 A Yes.

12 Q -- wanted to speak with him?

13 A Yes; I told him detectives were in route and to interview him, yes.

14 Q Okay. Now at some point other officers and other -- well at some point
15 additional law enforcement arrives besides homicide; correct?

16 A Abuse and neglect personnel arrives at some point and additional patrol
17 officers arrive, yes.

18 Q Before homicide gets there?

19 A I recall Sergeant Miller leaving. I don't recall him being there before so
20 he left. A patrol officer, another patrol officer arrives but I couldn't tell you if it was
21 before or after the homicide detectives get there, and I'm not sure if it was to relieve
22 the other officer. But eventually another officer does arrive but I couldn't tell you
23 when that occurs.

24 Q So, you have at least one abuse and neglect detective that comes?

25 A Eventually, yes.

1 Q Okay. There were others that came as well?

2 A But that abuse and neglect detective came after the homicide detective
3 showed up.

4 Q Okay. I'm more concerned about before homicide came?

5 A Okay. Before homicide came -- I believe it was me and one other patrol
6 officer, Sergeant Miller, was there but he leaves prior to homicide getting there.
7 After he briefs me, leaves and then eventually -- another patrol officer shows up but
8 I couldn't tell you if that other patrol officer showed up before or after homicide
9 shows up.

10 Q Okay. And then eventually crime scene analysts arrive?

11 A Yes.

12 MS. LEMCKE: Court's indulgence.

13 BY MS. LEMCKE:

14 Q I mean, you're the one who briefs homicide detectives when they
15 arrive?

16 A Yes; just basic information, time of call, how we got involved as far as
17 patrol responded to the house and UMC, that the doctors had concerns about the
18 injuries not being consistent with the explanation provided by your client and
19 basically that basic information.

20 Q Okay. So, you briefed them on the information that you're given relative
21 to Kaden's injuries?

22 MR. STAUDAHER: Objection; asked and answered, Your Honor.

23 THE COURT: Sustained.

24 BY MS. LEMCKE:

25 Q So, you given them information not just about the fact that there was a

1 child injured but about the accounting that was given and the fact that it was
2 inconsistent with the injuries observed?

3 MR. STAUDAHER: Objection; asked and answered. All of these questions --

4 THE COURT: I think he's answered that; is that correct? I think we're
5 covering one of the same grounds. All right. Go on, Ms. Lemcke.

6 BY MS. LEMCKE:

7 Q Is that a yes?

8 A I'm sorry. Can you repeat the question.

9 Q You're the one that gave them -- you're the one that gave homicide,
10 briefed them as to what had transpired regarding Khayden's injuries?

11 A Yes.

12 Q And the fact that the injuries were severe?

13 A Yes.

14 Q And that they, according to the treating doctors, were not consistent
15 with the accounting given by Mr. Quisano as to how they occurred?

16 A Yes.

17 MS. LEMCKE: Okay. Court's indulgence. Okay. I have nothing further.

18 THE COURT: All right. Any redirect, Mr. Staudaher?

19 MR. STAUDAHER: Just -- I want to be clear on this.

20 **REDIRECT EXAMINATION**

21 BY MR. STAUDAHER:

22 Q Before homicide detectives arrived, there are not police crawling all
23 over the house or anything like that; correct?

24 MS. LEMCKE: Objection to crawling.

25 THE WITNESS: No; there's only one officer that was inside the house.

1 THE COURT: So, there's one patrol officer wearing a uniform inside the
2 house and there's you?

3 THE WITNESS: That's correct.

4 THE COURT: And you're wearing a uniform?

5 THE WITNESS: No; I wear regular clothes usually. I wear a long sleeved
6 shirt with a tie but I normally don't wear a jacket.

7 THE COURT: Okay.

8 THE WITNESS: And then pants of course.

9 THE COURT: All right. Go on, Mr. Staudaher.

10 MR. STAUDAHER: That's all, Your Honor.

11 THE COURT: Anything else based on those wardrobe questions?

12 MS. LEMCKE: No, Your Honor.

13 THE COURT: All right. Detective, thank you for your testimony or I'm sorry
14 Lieutenant, thank you for your testimony.

15 THE WITNESS: That's okay. Thank you.

16 THE COURT: You are excused at this point. Thank you.

17 MR. STAUDAHER: And, Your Honor, based on our conversations earlier,
18 that would stop or at least suspect this particular portion of the hearing until we can
19 get the other officer.

20 THE COURT: Right. Do you want to just take like a really quick break?

21 MR. STAUDAHER: That's fine.

22 THE COURT: Less than five minutes and then we'll move into the portion
23 regarding the expert.

24 [Recess taken at 10:20 a.m.]

25 [Proceedings resumed at 10:24 a.m.]

1 THE COURT: You guys ready?

2 MR. STAUDAHER: Yes, we're ready.

3 Your Honor, just one thing. I just want to make sure for --

4 THE COURT: Are we on the record?

5 THE COURT RECORDER: Yes.

6 MR. STAUDAHER: For this afternoon, I have not talked to Mr. Slater today
7 but I do have the contact information and the IP addresses and stuff that I need to
8 get to make sure we can do whatever needs to be done.

9 THE COURT: Okay.

10 MR. STAUDAHER: So, at some point, maybe after this witness, we can -- I
11 can -- the Court or somebody could let him know that we need to communicate to try
12 and facilitate that. He's already come up and checked this courtroom to make sure
13 it works.

14 THE COURT: Okay.

15 MR. STAUDAHER: This side of things and it does. So, I just have the
16 information.

17 THE COURT: Who needs to facilitate that? I guess Janie will facilitate that.
18 All right. Everybody ready?

19 MR. STAUDAHER: We're ready, Your Honor.

20 THE COURT: All right. We'll move on to the issue of the expert.

21 MR. STAUDAHER: We have Dr. John Farley here. Is Rothfeder coming in?

22 MR. REED: No, I didn't bring Rothfeder. The Court specifically asked, I
23 believe, to have Dr. Farley here. What we have done is we have marked as
24 Defense group Exhibit A for the purposes of this hearing all of the learned treatises
25 that Dr. Farley is relying on as to why ATD which our crash test dummies are used

1 to test accidental falls. And my understanding -- the scope of my questioning is
2 going to be very brief just to cover that -- that is a recognized area in the community.

3 THE COURT: Okay. Did you provide copies of all of those to the State?

4 MR. REED: I did.

5 THE COURT: Okay.

6 MR. REED: I emailed him -- not him -- Mr. Staudaher a copy on Friday.
7 Actually Ms. Lemcke did, I believe, in either case and also let Mr. Staudaher know
8 that Dr. Farley is available after Court if you'd like to talk to him.

9 THE COURT: Okay.

10 MR. REED: He's more than willing to and that's my understanding of the
11 scope of this.

12 THE COURT: All right. Basically just his qualifications to testify about what
13 he wants to testify about and whether or not this is a recognized area and what that
14 is based on and whether or not he's testified in this area before.

15 MR. REED: Okay.

16 THE COURT: All right. And Mr. Staudaher, you received that email with all of
17 the articles or treatises; is that correct?

18 MR. STAUDAHER: Yes, I did, Your Honor.

19 THE COURT: Okay. So, you've had an opportunity at least to hopefully print
20 them out and possibly read over them?

21 MR. STAUDAHER: The one thing that I have not received that I did ask Dr.
22 Farley about was on the CV that was attached he indicated that it did not have all
23 his publications, at least a listing of it. It says at the very end that he has 45 peer
24 reviewed scientific publications. List is available upon request. I asked him for a list
25 so I can at least know what the titles they were so we could tell if they have -- but I

1 can ask him some questions as well.

2 THE COURT: Okay. In other words, you haven't gotten the list?

3 MR. STAUDAHER: Correct. I just want to get that information from him.

4 MR. REED: We'll definitely get him the list. My understanding was -- I must
5 have misunderstood what the problem was. I thought we were trying to print all of
6 them.

7 MR. STAUDAHER: Oh, no.

8 MR. REED: So, we'll definitely will get him a list or he can ask after Court
9 today.

10 THE COURT: Right. Probably a lot of the publications, you know, aren't even
11 germane --

12 MR. STAUDAHER: Right. I wouldn't want --

13 THE COURT: -- to what he -- right.

14 MR. STAUDAHER: -- he did something about science education or whatever.
15 I don't really -- that's not something I would probably be interested in.

16 MR. REED: I'll ask him about it, Your Honor. But I don't think he has
17 published on this specific issue.

18 THE COURT: Okay. Well we can cover that.

19 [Colloquy between the Court and the Court Clerk]

20 MR. REED: It would be easier as a group, Your Honor. We're going to move
21 for its admission for the purpose of this hearing.

22 THE COURT: All right. For right now it's proposed A. I'm sure it will be
23 admitted.

24 MR. REED: Yeah. Some departments like it to be separated whether it's
25 Court or defense just so we don't get confused.

1 THE COURT: For the hearing this is Defense Exhibit A.

2 MR. REED: Okay.

3 THE COURT: All right. Bring him in. Just face that lady right there. She'll
4 administer the oath to you.

5 **JOHN FARLEY**

6 [having been called as a witness and being first duly sworn, testified as follows:]

7 THE COURT CLERK: Thank you. Please be seated. Please state and spell
8 your name.

9 THE WITNESS: John Farley, F-A-R-L-E-Y.

10 THE COURT CLERK: Thank you.

11 THE COURT: J-O-H-N?

12 THE WITNESS: J-O-H-N.

13 THE COURT: All right. Mr. Reed, you may proceed.

14 MR. REED: Thank you, Your Honor.

15 **DIRECT EXAMINATION**

16 BY MR. REED:

17 Q Is it Doctor Farley?

18 A It's Doctor Farley.

19 Q Can you identify for the Court your education?

20 A I was an undergraduate student at Harvard, a graduate student at
21 Columbia, and I was a post-doctoral fellow at the University of Arizona.

22 Q And what are your areas of study?

23 A Physics, especially atomic molecular and laser physics.

24 THE COURT: And what year did you graduate from Harvard?

25 THE WITNESS: 1970.

1 MR. REED: A couple years before Your Honor.

2 THE COURT: Yeah. You're well preserved, I got to tell you.

3 BY MR. REED:

4 Q All right. And how are you employed, Dr. Farley?

5 A I'm a professor at UNLV.

6 Q And how long have you been so employed?

7 A I've been since 1987. So, that's over a quarter of a century.

8 Q And just generally speaking, what kind of things do you teach your
9 students?

10 A I teach typically introductory physics especially mechanics. The
11 students are typically engineers of various type, mechanical engineers, electrical
12 engineers and computer science engineers.

13 Q And have you written any articles or publications?

14 A Yes.

15 Q All right. Anything specific to this area which are you going to
16 proposedly to?

17 A No.

18 Q Okay. Have you testified in the area of physics in previous occasions?

19 A Yes, I have.

20 Q On how many occasions?

21 A One occasion.

22 Q Okay. Was that here in the Eighth Judicial District Court?

23 A Yes.

24 Q Was it in fact I was the defense lawyer?

25 A Yes, you were.

1 Q And Mr. Staudaher was the prosecutor?

2 A Yes.

3 Q Okay. All right. Dr. Farley, what's your understanding of the testing
4 that you conducted in this case? In other words, what were you -- what did you set
5 out to try to prove?

6 A When I set out to do is to measure the acceleration of the head of a
7 dummy and to try to reproduce as best I could the circumstances of the fall in this
8 case, the Quisano case.

9 Q All right. What steps did you take to try to reproduce that?

10 A I rented a dummy, a crash test dummy also called an anthropomorphic
11 test device from a company in Michigan, Humanetics, and they make these crash
12 test dummies for basically the auto industry.

13 Q All right. Go on.

14 A Because it's really the same problem. In a auto accident, the
15 passenger or driver can have their head accelerated by colliding with a dash board
16 and colliding with something. And so that produces injury. And so in the case of a
17 fall, the victim falls and hits their head on the floor, and so -- then is a force exerted
18 by the floor on the head of the person. And so if you do a measurement you can
19 figure out how much acceleration there was.

20 Q And where did this take place?

21 A This took place in the house in Trimwater Court where the accident
22 occurred, where the child died.

23 Q And was the crash test dummy, I guess we'll call it that, was dropped in
24 various ways off the couch?

25 A That's right.

1 Q And were the accelerometers, did you calibrate them?

2 A The accelerometers were calibrated at the company and they gave a
3 calibration sheet. What that does is it says if it gets this much acceleration what will
4 be the output as an electrical signal measured in volts.

5 Q And how many drops did you all total?

6 A Some 40 drops.

7 Q And for each drop was there some identifiable data that you received
8 from that?

9 A Yes.

10 Q And you interpreted that data?

11 A I measured the output of the accelerometer using a device called a --
12 it's a signal conditioner that measures the peak positive signal coming from the
13 accelerometer.

14 Q Now I want to get away from the actual testing that you did for a minute
15 and get to the science of it. Is this manner and method of testing that you just
16 identified for the Court recognized in the scientific community?

17 A Oh, yes.

18 Q Please identify for the Court how you back that up?

19 A Okay. On short notice, I was able to come up with something like eight
20 papers in the period literature which people were either -- people were measuring
21 pediatric falls using a crash test dummy and an accelerometer. So, I supplied those
22 to you and to Mr. Staudaher.

23 Q And you said there was how many of those articles?

24 A I have eight articles and six of them the investigators are using a crash
25 test dummy and accelerometer to measure pediatric falls. The other two are very

1 close related and that the other two are earlier papers by people who later on got a
2 crash test dummy.

3 Q What span of time does these learned treatises -- about what span of
4 time are we talking about?

5 A In the last they go -- up to the recent years where they go back to -- one
6 of them is 1994 which is what, 20 years ago.

7 Q In your professional opinion, Dr. Farley, is there any other way to
8 attempt to reproduce a non-accidental trauma of a child in a home setting?

9 A This the way I know how to do it. It's a physics way. It's about the best
10 way because you're actually measuring the acceleration.

11 MR. REED: I'll pass the witness, Your Honor.

12 THE COURT: All right. I just have a question. This crash test dummy, is this
13 a, you know, a pediatric size or is there just one size?

14 THE WITNESS: There's several sizes.

15 THE COURT: Okay.

16 THE WITNESS: There's one for a six month old, one for a 12 month old, and
17 one for a 18 month old. And I think the one we have is for someone who is about
18 three years old.

19 THE COURT: Okay. Mr. Staudaher.

20 MR. STAUDAHER: Sure.

21 **CROSS-EXAMINATION**

22 BY MR. STAUDAHER:

23 Q Let me start off. First of all, you said that you tried to reproduce the
24 scenario that you were going to test. What scenario was that? Was that something
25 that you believed was what actually occurred in this case based on the Defendant's

1 statement?

2 MR. REED: I'm going to object, Your Honor. It's outside the scope of the
3 purpose of this hearing.

4 THE COURT: Well it's sort of --

5 MR. STAUDAHER: It goes to the testing and why he did his testing, certainly.

6 THE COURT: It was one of the issues that was raised so we'll cover it. Go
7 ahead. You can answer the question. How did you -- you said 40 different types of
8 falls. How did you come up with the way to do the test?

9 THE WITNESS: Oh, okay. Well I don't know what actually -- I don't know the
10 way the fall actually occurred. What I did was I said let's investigate the worse
11 possible case because there's lots of best possible cases that would not result in the
12 tragedy. And so we said -- I was told from the medical stuff that the injury was at the
13 back of the skull. And so we had an accelerometer that was sensitive to a force at
14 the back of the skull. And so we dropped the dummy from say standing on the back
15 of the chair from a seated position on the arm of the chair or from a horizontal
16 position and falls backwards. So, I dropped the dummy. The critical thing is you
17 want to drop the dummy repeatedly.

18 THE COURT: If you need water there's a pitcher right there if that would help
19 you.

20 THE WITNESS: Yes, I will have a glass of water.

21 I wanted to drop the dummy repeatedly under different conditions to
22 see what kinds of results you get and how consistent are they. It -- at the beginning
23 there was some -- there's substantial variation from one drop to the next, maybe 20
24 or 30%. Towards the end of the testing I was dropping it with Mr. Edgar Cervantes
25 who works for the public defender's office. So, he and I were dropping it together

1 and we seemed to have gotten better at dropping it in a reproducible way. So, if you
2 look at the last 20 or so drops, the typical variation from one to the other would be
3 maybe four percent, five percent, ten percent, 12 percent, something like that. So,
4 we got a pretty reducible results.

5 THE COURT: So, in other words you're saying you would do several drops
6 from the same position to make sure that you're getting an accurate result; is that
7 what you're saying?

8 THE WITNESS: Yes.

9 THE COURT: Okay. So, when you first started dropping from what would be
10 maybe a standing position on the back of the couch -- I'm assuming that's the worst
11 case scenario because it's the greatest distance?

12 THE WITNESS: It's the greater height, yes.

13 THE COURT: Okay. So, that maybe was inconsistent the first few times you
14 did it but then the last 20 times the results were consistent or more consistent
15 between similar drops or the same drop?

16 THE WITNESS: Yes.

17 THE COURT: Okay

18 BY MR. STAUDAHER:

19 Q Well we'll get to that in a minute. But let me go back. What information
20 were you provided that went into your analysis, your development of this
21 methodology to actually test the scenarios that you described?

22 A Okay. It's not my methodology. It's the methodology other people have
23 used where you have an accelerometer on a dummy and you drop the dummy and
24 you say what does the accelerometer read. It's pretty simple.

25 THE COURT: Let's make it a simpler question.

1 THE WITNESS: Okay.

2 THE COURT: What information were you provided prior to conducting the
3 tests?

4 THE WITNESS: Okay. I was given a copy of the preliminary hearing.

5 THE COURT: The transcript.

6 THE WITNESS: The transcript.

7 THE COURT: Is that it?

8 THE WITNESS: That's it.

9 THE COURT: Okay. Were you given any information by the defense team
10 whether it's the lawyers or an investigator or someone else on the defense side?

11 THE WITNESS: Only that the impact appeared to be the back of the head of
12 the child and the information was that the -- I was told this is where the -- this is the
13 house where the child died. It's important because the tile floor is absolutely critical.

14 THE COURT: Okay.

15 BY MR. STAUDAHER:

16 Q Okay. So, there is a -- you were given a preliminary hearing transcript;
17 is that right?

18 A Yes.

19 Q Now there are three volumes to that transcript. Were you given all
20 three volumes?

21 A I have three files.

22 Q Did you read all of it?

23 A Well not really. I looked through it but I didn't learn very much. There's
24 very little physics --

25 Q Okay. Tell me what you actually reviewed, what testimony you

1 reviewed prior to conducting your tests?

2 A Well I had those three files that I looked through them.

3 Q Okay. And I ask you again. Which testimony out of the preliminary
4 hearing test transcript did you actually review prior to your tests?

5 A Well I reviewed those three files but I didn't learn very much. There
6 was nothing that really helped me.

7 Q So, you read the entirety of all of the preliminary hearing?

8 A No, I skimmed it.

9 Q You skimmed it?

10 A Yes.

11 Q Okay. We actually received some video clips of this process by which
12 you were conducting a test so we could see what you did; correct?

13 A Yes.

14 Q And you were present during that time; right? And Mr. Reed and Ms.
15 Lemcke were present during the testing?

16 A Yes.

17 Q And you said that Mr. Cervantes from the public defender's office was
18 also present during the testing?

19 A Yes.

20 Q And he actually helped you conduct the tests?

21 A Yes.

22 Q So, the defense attorneys in this case with their investigator actually
23 were present and helped you conduct the tests?

24 MS. LEMCKE: Well, Judge, just for the record, Mr. Cervantes is not an
25 investigator. He's an intern. He's a law or undergraduate student --

1 MR. STAUDAHER: Fair enough.

2 MS. LEMCKE: -- at UNLV. He was just interning in our office.

3 THE COURT: Okay. Well the witness couldn't be expected to know exactly
4 everybody's [indiscernible].

5 MS. LEMCKE: I don't think the witness knows and fully apprehends that. And
6 so I just -- to the extent he's referred to as an investigator is not quite accurate.

7 THE COURT: Okay. That's fine. It's understandable he wouldn't know who
8 the interns were.

9 THE WITNESS: There's somebody else who was running the videotape, I
10 mean, the photography.

11 THE COURT: All right. Go on, Mr. Staudaher.

12 BY MR. STAUDAHER:

13 Q So, Mr. Cervantes actually was hands on with you conducting the tests
14 and you were recording information that came from those tests?

15 A That's right.

16 Q As far as the actual tests themselves, you actually broke this down into
17 sort of groups, this 40 -- you said you had 40 different runs or 40 different tests?

18 A About 40.

19 Q About 40. So, 40 total. How many of those were from a standing
20 position? I mean -- when I say standing position I'm saying standing on the back of
21 the couch or the arm or something like that?

22 A I can look at my report. It's my report.

23 Q Please, please do.

24 A Okay.

25 Q What I'm trying to get to is a sample size as well for these various sizes.

1 A Okay. I did a total of 41 tests. The first two were practice runs where
2 we -- where I said I want to eliminate the possibility that I got the wires crossed. And
3 so I dropped the dummy so it landed on the back of its head and dropped it so it
4 landed face first. And the -- when it's connected the right way it'll give a big signal.
5 When it gives it -- connected the wrong way it'll give a small signal, not zero, but
6 small. It landed face first. The acceleration was 14.4 g's.

7 Q Those were practice runs.

8 A Those two practice runs. And then 39 runs --

9 Q Thirty-nine you actually tested?

10 A Yes.

11 Q How many of those were from the standing position on the back of the
12 couch?

13 A Okay. Let's see.

14 Q Now we're talking about standing on the actual edge of the couch, not
15 down on the cushions but on the back edge of the couch; correct?

16 A They were standing on the arm or the back. Let me see here. I had
17 numbers three through eleven which is -- the first nine runs out of the first and then
18 --

19 Q The first nine were what?

20 A The dummy fell from standing on arm of the couch. And then the next
21 eleven runs let's say number 13 falling from a standing position. So, that was like
22 the others.

23 Q How about the -- telling me how many you had where you had the
24 dummy standing on the back of the couch? I mean, talking about the actual part
25 where you, you know, your back leans against, like the top of this chair? This part

1 right here where it's the very back of the couch where you have it standing up on
2 that? How many runs did you do from that position?

3 A Okay. I have numbers 26 through 28 and number 29 through 31.
4 That's another six.

5 Q So, nine from the arm and six from the back?

6 A Six from standing on the back, yes.

7 Q No more than that standing on the back of the couch?

8 A Yes.

9 Q Because I saw many, many different iterations on the corner.

10 A The others weren't -- I have fall backwards from a prone position on the
11 couch.

12 Q That's not what I'm talking about yet.

13 A You're asking about -- that is the highest height.

14 MR. STAUDAHER: A prone position.

15 THE COURT: Standing on the back would be the highest.

16 THE WITNESS: Yes, that's right.

17 THE COURT: So, you'd assume the greatest impact?

18 THE WITNESS: Yes.

19 BY MR. STAUDAHER:

20 Q Okay. So, we're talking about standing on the back of the couch,
21 standing on the arm of the couch. Now you said sitting on the back of the couch.
22 We're talking about -- when I said back of the couch --

23 A Yes.

24 Q -- just so we're clear on this. The couch has a seating portion and a
25 back; correct?

1 A Yes.

2 Q And the very top of the back which, I think, in one of the measurements
3 that you did you actually had a tape measure that was [indiscernible] which was
4 roughly 32 inches; correct?

5 A Yes.

6 Q So, the back of the couch at 32 inches is when I say back of the couch
7 that's what I mean?

8 A Okay.

9 Q Okay. So, you're talking about a sitting position where the child or the
10 dummy was in a seated position with its back towards the back of the couch sitting
11 on the very top of that back portion; is that right

12 A That's right.

13 Q Okay. And then so how many runs from a seated position on the back
14 edge of the couch?

15 A Okay. Let's see. I have numbers 36 through 38 and number 32
16 through 35. My notes say fall backwards from couch. I think it was not standing; I
17 think that was sitting. So, that's another four to seven. And 26 through 28 is
18 another three so that's a total of ten.

19 Q So, ten from a seated position. So, right now I've got nine from the
20 arm, standing on the arm, six standing on the very back, and ten seated on the very
21 back; is that correct?

22 A I believe so.

23 Q Okay. So, at this point we're talking about a total of 25 out of your 39
24 runs?

25 A Mm-mmm.

1 Q The other remaining runs, break us down as to what the numbers were
2 for what positions you tested?

3 A Well the numbers three -- numbers 12 through 22 my notes start prone,
4 start prone, and number 20 I did not regard that as really good data because it fell
5 backwards but hit -- no that's right it said hit the back of the head. So, number 18 I
6 had -- my notes said hit the top of the head.

7 Q Sir, I'm not talking about what strikes are. I'm talking about essentially
8 the launch position where you either drop or the kids rolls or whatever -- not the kid
9 but the dummy.

10 A Okay.

11 Q How many, break us down, the remaining sort of runs as to what those
12 were so we know what we're talking about here.

13 A Okay. We have --

14 Q We've already covering the standing on the arm, standing on the back
15 of the couch, sitting on the back of the couch.

16 A Okay. There's some that is falling backwards from a prone position on
17 the couch.

18 Q And what is that? When you say prone position on the couch, how is
19 the dummy oriented?

20 A The dummy is oriented so that it's -- the scenario was that the child
21 leaned backwards, backwards, backwards and then fell starting the body pretty
22 much horizontal.

23 Q So, if I -- and the way you just demonstrated --

24 A Yes.

25 Q -- that so we can have it for the record is that the child was against the

1 back -- his back was against the back front of the couch; correct?

2 A No; it was sitting initially on the top of the couch but lean backwards
3 while being at rest and then tumbled backwards.

4 THE COURT: So, instead of sitting on the part of the couch where people
5 normally sit the dummy is sitting on the top part of the couch but facing the same
6 way that somebody who was sitting normally on the couch would sit?

7 THE WITNESS: Yes.

8 THE COURT: And just as if the child had leaned back and then lost his
9 balance --

10 THE WITNESS: That's right.

11 THE COURT: -- because now he's leaned back too far.

12 THE WITNESS: That's right.

13 THE COURT: Okay.

14 BY MR. STAUDAHER:

15 Q Okay. So, how many of those type of runs did you do?

16 A Okay. So, for prone I'll say I've got --

17 Q So, prone to -- just so I'm clear on this. Prone to you means basically
18 leaning off backward off the top of the couch?

19 A Yes. It's a lower height just because you assume that the starting
20 position is leaning backwards with the body almost horizontal. Otherwise the earlier
21 ones we had it sitting and then if you fall backwards starting from a sitting position
22 the head is already moving by the time it gets to the horizontal position.

23 THE COURT: Right. Because he has control of his head until the point he
24 loses balance and falls.

25 THE WITNESS: That's right.

1 BY MR. STAUDAHER:

2 Q So, how many of the runs were from with the back down essentially as
3 you described as prone type position back down?

4 A The prone position.

5 Q Back down, just so you know where I'm going with this.

6 A Right. Okay. This number 18 says drop with head at height of couch.

7 Hit top of head.

8 Q Well why don't you just count them --

9 A Okay.

10 Q -- and give me the number.

11 A Okay. Number 18 -- so there's 18, 19, 20, 21 and 22. That's five.

12 Q I think that's four; 18, 19, 21 and 22.

13 A 21 and 22. There's 18, 19, 20, 21 and 22. That's five. And then 23
14 through 25 is another three. That's eight. And then fall backwards from couch, 32
15 through 35, that's another four. That's 12. There should be 12.

16 Q Okay. So, we have one standing on the arm, nine standing on the
17 back, ten from a seated position on the very back edge of the couch, 12 from -- with
18 back down leaning off from the top of the couch falling; is that correct?

19 A I think those are correct. I gave you the numbers and you're writing
20 them down.

21 Q Right.

22 A What does that add up to?

23 Q So, if you add up, nine and six is 15 plus 10 is 25 plus 12 is 37; correct?

24 A Okay.

25 Q So, there are two remaining tests; what were those?

1 A I'm not sure. I haven't actually gone through this and added them up by
2 -- you know, initial starting position.

3 Q Well, I mean, to make -- let's talk about that for a moment because you
4 develop this actual testing scenario for this particular case; correct?

5 A Yes.

6 Q Okay. So, when you determined what you were going to do, did you
7 not have at least a plan as far as repetition, numbers of times, that kind of thing,
8 controls, anything like that?

9 A The plan was basically to just to try a large number of falls from a large
10 number of positions and see what the numbers are.

11 Q Okay. So, you got these numbers and I think even in your report --

12 A It's in the report.

13 Q -- you indicate that sometimes the numbers were quite varied and
14 sometimes they were not; is that right?

15 A Well when I say quite varied they could be off by -- in 20, 30%.

16 Q Either way; correct?

17 A Well --

18 Q Did you do any kind of statistical analysis of any of your results?

19 A Yes, I did. For example, I calculated the average.

20 Q Well no. I'm not talking about calculating average. I'm talking about
21 running actual statistics to see if -- like a P value. Did you calculate P value for any
22 of these runs that you did?

23 A No; because I think the fundamental limit is not just limited by statistics;
24 it's limited by the inability to make the drop in a [indiscernible] way first, and the
25 second point is that we don't really know what happened. And so we're trying, you

1 know, anything plausible to see --

2 THE COURT: Is the reason it's not reproducible or you have that variation of
3 20 to 30% because the force that you're using is varied just like the force if threw a
4 baseball over and over again? It would be varied; is that why?

5 THE WITNESS: It's the force of -- it's not the force. It's the

6 THE COURT: And by force I mean when you're pushing the dummy off the
7 couch you're not using the same amount of strength every time. Is that what you're
8 attributing it to or what are you attribute this difference?

9 THE WITNESS: It's hard to drop it in the same way every time. I think we got
10 better at it. And if you look at the last -- let's say from 23 through 41 you find the
11 variations -- the conditions that we try to make the same were four percent, five
12 percent, ten percent, eleven percent, twelve percent, numbers like that. So, that's
13 relative good. And that's the -- that number is the percentage difference between
14 the fastest and the largest acceleration and the smallest acceleration in the same
15 group. I typically do three of them.

16 BY MR. STAUDAHER:

17 Q You never ran statistics on any of your numbers; fair?

18 A No; I did run -- I didn't put them in the report but I did statistics.

19 Q Okay. I want to know what you used as far as your analytical method
20 for your statistics; what did you do?

21 A Well I calculated for -- if I did three runs under the same conditions. For
22 example, the final value of the acceleration being -- measured in g's is 161.7, 155
23 and 155.4. I calculated the [indiscernible] and put it in here -- in the report. Earlier
24 on I calculated the standard deviation but I didn't put that in the report. I think it's not
25 important.

1 Q Did you ever use an ANOVA test on any of this data?

2 A No.

3 Q Did you ever use a post hoc Tukey test on any of this data?

4 A No.

5 Q Did you ever use any kind of a standardized statistical analysis,
6 whatever it was, on any of this data?

7 A Yes, I did. I calculated the mean and standard deviation for drops
8 under the same conditions or as same as I can make them.

9 Q So, when you say you calculated the mean, you're just taking the
10 numbers -- let's say for three runs of a standing position --

11 A That's right.

12 Q You took the results of your peak acceleration that you measured and
13 you just divide it by three and average that; correct?

14 A That's right.

15 Q That's not statistics; is it not?

16 A Well then for each run you calculate the difference between that run
17 and the mean and then you square them, you average them, you take the square
18 root. That's the standard deviation.

19 Q I don't see the standard deviations in any of your reports?

20 A I didn't put it in the report.

21 Q Okay. Now that is -- that's also not the developing of P number for your
22 statistics for your numbers; correct?

23 A I don't think that you're limited by statistics. You're limited by the
24 inability to drop it the same from every run to every run.

25 Q In the eight papers that you provided -- and one of those was basically

1 a compilation of prior literature review; correct?

2 A A number of them --

3 Q Was that -- just if you could. I'm going to just ask you if you just try and
4 answer my questions as we go. Okay. If we need to let you expound on something
5 I'll ask you to do that. Okay.

6 MS. LEMCKE: Judge, I would just ask if he's going to refer to an article which
7 one so that the expert can --

8 MR. STAUDAHER: Sure. I'll do that.

9 BY MR. STAUDAHER:

10 Q The one entitled *Literature review of head injury biomechanics*.

11 A That's by Hardy.

12 Q It's by Hardy.

13 A Yes.

14 Q And let me just be clear on this. These papers that were provided,
15 when did you actually obtain them? When did you look at them, when did you
16 obtain them?

17 MR. REED: That's a compound question, Your Honor.

18 THE COURT: That is. That's true.

19 MR. STAUDAHER: Okay. Fine. I'll break it down.

20 BY MR. STAUDAHER:

21 Q When did you obtain those reports?

22 A Most recently I've obtained them in the last few days when I was told
23 about this hearing.

24 Q So, prior to this hearing or prior to the last few days -- and I think your
25 actual testing was done back in April of this year; correct?

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A Right.
Q So, in April you hadn't reviewed any of these papers; correct?
A I was familiar with the general --
Q Had you reviewed these papers in April when you did the testing?
A I reviewed all of the, but I was familiar with some of them.
Q Which ones did you review prior to April --
A I was familiar with the field.

THE COURT: I mean, everybody's talking over each other. I think, you know, which papers of the six or seven that you provided were you familiar with prior to the time you did the testing?

THE WITNESS: Let me see. I remember being familiar with the field. I don't remember whether I was -- I looked at these particular --

MR. STAUDAHER: Well let me ask it again.

THE COURT: Let him finish.

MR. STAUDAHER: Okay. I'm sorry.

THE COURT: So, you don't remember whether it was that particular article that you were familiar with -- that were articles out there; is that what you're saying?

THE WITNESS: I know there were articles out here and I wrote the report using the head injury criterion.

MR. STAUDAHER: We'll get to that in a minute.

THE WITNESS: Well what I was going to say is that I knew about the head injury criterion years ago, and do I remember exactly which article I read that told me the head injury criterion? I don't really remember.

BY MR. STAUDAHER:

Q When you say years ago, what are we talking about?

1 A I was -- I testified in another case in this building.

2 Q Okay. Then my question is when did you -- when you say years ago,
3 you learned about the head injury criterion --

4 A Yes.

5 Q -- when did you do that?

6 A Well let's see. There were two cases. There was the *Fakoya* case
7 where -- in preparing for the *Fakoya* case at least -- which was -- when was that,
8 several years ago.

9 Q You tell me. You're the one that did the work and studied it.

10 A Right. I have to check my notes to see when. It might have been 2011.

11 THE COURT: Let me ask you this.

12 THE WITNESS: Yes.

13 THE COURT: How did you become involved in doing this kind of testing in
14 the first place? I mean, was this was something you read about in the literature and
15 thought, oh, I'm going to put myself out there as an expert or did somebody contact
16 you and say, hey, you're a physicist. Can you do this study or this testing? What
17 happened that got you involved in doing this --

18 THE WITNESS: Okay.

19 THE COURT: -- in the first, you know.

20 THE WITNESS: I first got involved a long time ago when I was called by an
21 attorney working for the Golden Nugget and the case was that a person had been in
22 an elevator in the Golden Nugget and a piece of the ceiling in the elevator fell down
23 and hit him on the head and he claimed he was seriously injured. And so I thought
24 about that. So, there's an attorney calling me up asking me to deal with it. And so I
25 said well, you know, really what -- how do you measure a head injury. And so I

1 came up with the idea by reading the literature. And this was so many years ago. I
2 had forgotten exactly.

3 BY MR. STAUDAHER:

4 Q Okay. Well let me get back to the actual information that you had --

5 THE COURT: Well wait a minute. I'm interested.

6 MR. STAUDAHER: Okay.

7 THE COURT: So, we'll go where I want to go on this. So, in that case, did
8 you provide a report to the attorney for the Golden Nugget?

9 THE WITNESS: Yes.

10 THE COURT: Okay. And then do you recall whether or not you ever had to
11 give a deposition or provide any testimony as an expert witness for that civil case?

12 THE WITNESS: For that case, I did not testify.

13 THE COURT: Okay. So, you gave them the report and that was pretty much
14 it?

15 THE WITNESS: There were some weird things that happened.

16 THE COURT: And I don't want to get too far afield. I'm just trying to evaluate,
17 you know, if this has been recognized before. And then so you did the Golden
18 Nugget case and then what else have you done in relation to this kind of testing?

19 THE WITNESS: There's a case for -- I was hired by an attorney named Jim
20 McBride whose father was a regent at UNLV, I believe, a while ago. He was an
21 attorney for the Excalibur. A tourist from California had been watching one of the
22 shows. They have these like Punch and Judy shows for the kids. And they had a
23 sign that was propped up to look like -- it was like a sign on a sidewalk where you
24 have cars going down and then a sign saying next show at 10:30 or whenever. And
25 an employee of the Excalibur had pushed it over onto to the tourist who claimed that

1 she was seriously injured and was, you know, very, very badly injured. And so I
2 looked at it and it said this is the -

3 THE COURT: Okay. I'm not going to get into what your opinion was --

4 THE WITNESS: Okay. I'm sorry.

5 THE COURT: -- because that's not, you know, if Mr. Staudaher wants to ask
6 you about your opinion or the other side they can do that. I'm at this point --

7 THE WITNESS: That was quite a while ago. It may have been 20 years ago.

8 THE COURT: Okay. And then, again, did you just provide a report to the
9 defense or did you ever give a deposition or testify at trial or anything like that?

10 THE WITNESS: I did testify at trial on that case, yes.

11 THE COURT: Okay. Was that here in the Eighth Judicial District?

12 THE WITNESS: Gosh, I don't remember.

13 THE COURT: The state Court.

14 THE WITNESS: I don't remember what Court it was in.

15 THE COURT: You don't remember. Okay. And then have you -- I know
16 sometimes experts are located by attorneys because they put themselves out as
17 experts on a webpage or something like that. Do you do that or is it more because
18 you're a physicist on a university facility, lawyers are calling you or how has that
19 worked for you?

20 THE WITNESS: Lawyers call me. I never advertise.

21 THE COURT: Okay. All right. Have you provided any kind of report or done
22 this in connection with any other cases other than the two or the three we've talked
23 about already, in a criminal one that Mr. Staudaher prosecuted and the two civil
24 cases involving injuries at hotel casinos here in town?

25 THE WITNESS: I think that's it.

1 THE COURT: Okay. All right. Thank you. Mr. Staudaher.

2 BY MR. STAUDAHER:

3 Q So, getting back to the papers that you provided. You just within the
4 last few days obtained these papers; correct?

5 A I downloaded from them from the internet, yes.

6 Q Okay. So, before you test -- and I'm not talking about your general
7 knowledge in the field. I'm talking about before you actually did the testing at the
8 end of April of this year, which of these -- did you consult any literature to design
9 your experiment that you were going to do in this case?

10 A Yes. I have a photocopied article that I've had for a long time. It's part
11 of a book, a chapter written by Werner Goldsmith who is a professor of mechanical
12 engineering, quite a distinguished one, at Berkeley. So, I consulted that. And there
13 was a book on biomechanics by Fung, F-U-N-G, Y.C. Fung. So, I consulted a wide
14 variety of things years ago.

15 Q No, no, sir. You're -- I don't want to be confusing here. When you were
16 contacted -- first of all, when were you contact -- first of all, when were you
17 contacted by the defense in this case?

18 A I think it was in early March.

19 Q Okay. So, in early March you're contacted by the defense. What
20 information are you given at that time about the case?

21 A Not much.

22 MR. REED: Asked and answered, Your Honor.

23 BY MR. STAUDAHER:

24 Q I don't believe so. In early March, what were you given -- what
25 information were you given by the defense about this case?

1 A Just that this was a case where a child died and fell off a sofa and hit
2 the floor. That's the only real information I was given.

3 Q Didn't they ask you to, what, design an experiment to test that?

4 A Well I had already done tests for the public defender's office on two
5 occasions, the *Fakoya* case and the *Geddings* case.

6 Q But you were going to be having to do some experimentation specific to
7 the facts in this case; were you not?

8 A That's right.

9 Q Okay. So, when you were given the facts, whatever they were in
10 whatever form you got them, you then had to then take that information and design
11 an experiment which you hope would replicate as close as possible the conditions
12 that were present at the time of the injury; correct?

13 A That's correct.

14 Q Okay. So, when you're given the information in order to design your
15 experiment so that it has any kind of relevance to this proceeding, what information
16 did you use to design your experiment? What literature did you look back on? I'm
17 not talking about 20 years ago. I'm saying did you go out and look to see how this
18 type of work had been done, if crash test dummies had been used, that kind of
19 thing. What papers or review of literature, if any, did you do before you actually
20 conducted your experiment?

21 A Well all I can say is that the basic laws of physics have been known
22 since for -- over one and a half centuries.

23 Q So, you did not -- so the answer to that is you didn't review any
24 literature specific to this type of work prior to doing the testing? I'm talking about
25 reviewing it after the defense contacted you.

1 A I'd already done --

2 Q Is that a yes or a no?

3 A All right. Let me --

4 Q Is that a yes or a no?

5 A Let me ask you to rephrase it.

6 Q Let me finish.

7 A Okay.

8 Q Is it true based on what you've testified here today that after the
9 defense contacted you in March and up to the point where you actually do the
10 testing and at the end of April that between those two times, between those two
11 dates, that you did not review any literature or consult anything to help design the
12 experiment in this case? Yes or no.

13 A I relied on my --

14 Q Yes or no. Please.

15 A You're saying in addition to my knowledge that I already had before
16 they called me.

17 Q That's correct.

18 A I felt I knew enough already.

19 Q Is the answer to that question no, you did not review any additional
20 information?

21 A Additional information on top of the information I already had.

22 Q So, the information that you had or that was with you since you didn't
23 consult anything, and I'm talking about information related to the actual design of an
24 experiment to try and reproduce results that you would then come and testify in
25 Court about; are you with you? Are you with me? Do you understand that?

1 A Okay. You understand I was an expert witness years ago.

2 Q Sir, this isn't the way this works. Okay. I'm going to ask you questions.

3 A Okay.

4 Q I'm going to ask you respectfully to answer them as best you can. If I

5 ask you a question that's confusing or that you don't understand, just ask me to

6 rephrase it and I'll try to do my best on that front.

7 A Okay.

8 Q But once I ask you a question, if you would at all possibly be able to do

9 it, I'd like you to answer it. Okay.

10 A Okay.

11 Q Okay. So, we've established that between the time they contacted you

12 in this case -- I'm talking about the defense -- and the time you actually conducted

13 your testing that you did not consult any current literature, any past literature, any

14 literature at all to design your own experiment in this case? Yes or no.

15 A I have to say yes.

16 Q You did?

17 A Yes, I did.

18 Q Tell me what you consulted or you reviewed --

19 THE COURT: Okay. Maybe I can short circuit this. What Mr. Staudaher, I

20 think, is asking you is after you were retained by the public defender's office in this

21 case, did you then refresh your memory or read any new literature or take out a

22 book and re-read anything, look at any literature?

23 THE WITNESS: No.

24 THE COURT: Okay. And so what you're saying is you had it in your head

25 based on previous reviews of literature?

1 THE WITNESS: Yes.

2 THE COURT: Okay. Is that what you were asking, Mr. Staudaher?

3 MR. STAUDAHER: Yes; thank you, Your Honor.

4 BY MR. STAUDAHER:

5 Q So, now I'm going to go from the point where they contacted you in
6 March backward in time. Tell me when it was the last time you ever read or
7 reviewed an article on this particular subject?

8 A Okay. I think in the *Geddings* case I had to --

9 Q You think?

10 A Yes. The *Geddings* case was the previous one before this case.

11 Q Okay. Did you actually do a literature search and review at that time?

12 A Probably. That was a while ago.

13 Q Probably. I mean, you were brought in as an expert witness in that
14 particular case; correct?

15 A Yes, yes.

16 Q And you conducted not similar, they were different experiments, but
17 they were also using a crash test dummy or something in that case?

18 A Yes.

19 Q And in that case you didn't actually drop the dummy on anything. You
20 actually dropped something onto the dummy?

21 A That's correct.

22 Q So, totally different situation?

23 A No, it's not totally different. It's related.

24 Q Okay. I'll let you go with that. Prior to that incident, what did you
25 consult in designing that experiment or was this -- your general information again

1 that you had?

2 A I would not call it designing an experiment because it's so simple. You
3 can say the Defendant said that an object fell and struck an infant. And so
4 designing the experiment says let's put a dummy there and drop the object on the
5 dummy. So, calling it designing an experiment makes it sound like it's hard.

6 Q So, you can't point to anything that you had in your review before this
7 case or before the *Geddings* case that helped you design an experiment. You just
8 think it's empirically obvious, essentially, as to what to do; is that right?

9 A Well yes. I'm trying to reproduce it as best I can.

10 Q So, when you say reproduce it as best you can, would that not mean
11 that in order to reproduce it you would have to know what scenario you're actually
12 supposed to be testing; is that correct?

13 A Well scenario or scenarios.

14 Q Is that right, sir?

15 A We tried a variety of scenarios. So, we dropped it from different
16 positions.

17 Q Would it be important for you to know the actual scenario that is
18 supposed to have occurred in this case according to the Defendant himself?

19 A Well --

20 Q Yes or no?

21 A If the Defendant --

22 Q Yes or no, sir.

23 THE COURT: Well can you answer that yes or no?

24 THE WITNESS: It would be important if I knew. But often, you know, in a lot
25 of cases you don't really know.

1 BY MR. STAUDAHER:

2 Q Sir, I'm not asking you to speculate.

3 A Okay.

4 Q I mean, clearly if you're going to be brought in to do an experiment, that
5 you're going to come into Court and testify before a jury to give them information as
6 to whether or not something happened or didn't happen in a particular scenario,
7 then you need to know what the scenario is; correct?

8 A Yes or you try a variety of scenarios.

9 MR. REED: Is Mr. Staudaher testifying or is he asking the witness questions?

10 THE COURT: Well he did say correct so it was question. I mean he's
11 allowed to ask leading questions, obviously.

12 MR. REED: Yeah, but he's not allowed to testify though.

13 THE COURT: All right. He's not testifying. He's setting forth a premise and
14 he's asking the witness is that true or not true, essentially. So, after all this, do you
15 remember what Mr. Staudaher said, what he asked you?

16 THE WITNESS: He said would it be valuable to know the exact
17 circumstances under which the fall occurred. Yes, it would be.

18 MR. STAUDAHER: No; I'm not talking about the exact circumstances
19 because as you've described we're not -- we don't know what that is.

20 THE WITNESS: That's right.

21 MR. STAUDAHER: Ultimately other than if we believe what the Defendant
22 says actually happened. So, if we know what the Defendant actually says
23 happened.

24 THE COURT: Now you're speechifying. Now you're editorializing.

25 ///

1 BY MR. STAUDAHER:

2 Q Okay. If we know what the Defendant said happened, the scenario, if
3 that information is given to you, could you test it?

4 A Yes.

5 Q Okay. Was that scenario given to you in this case?

6 A Well I --

7 Q Just was it -- these are -- I'm trying to ask simply questions here.

8 A I don't think so.

9 Q Was the scenario that the Defendant said happened given to you in this
10 case to test?

11 A My memory of this is --

12 Q Yes or no, sir.

13 THE COURT: Okay. Do you remember -- I think we kind of covered this --
14 but you didn't get the test -- the transcript or a tape or what the Defendant said
15 happened

16 THE WITNESS: I certainly didn't get the tape.

17 THE COURT: Okay.

18 THE WITNESS: I looked through the preliminary hearing but the Defendant
19 said the child was playing on the couch and fell over the couch or something like
20 that.

21 MR. STAUDAHER: Is that what he --

22 THE COURT: And you know --

23 MR. STAUDAHER: Go ahead. I'm sorry.

24 THE COURT: -- from what the lawyers told you or what the investigator told
25 you?

1 THE WITNESS: I didn't speak to an investigator.

2 THE COURT: So, you know that from the lawyers?

3 THE WITNESS: Yeah. I tried to get something from the transcript but the
4 transcript was not really very informative.

5 THE COURT: Okay. And beyond that, you didn't have a separate transcript
6 of an interview with the Defendant or anything like that?

7 THE WITNESS: No.

8 THE COURT: Okay.

9 MS. LEMCKE: Can I just -- because the Court's not clear on this. At the
10 preliminary hearing --

11 THE COURT: Well I read the preliminary hearing transcript, Ms. Lemcke. I
12 read it per your habeas petition and I remember what it said because I read the
13 entire thing so I know. What I'm establishing is the tape that I'm now listening to in
14 chambers he didn't listen to that and he didn't have that transcript. That's what I'm
15 talking about. Okay. So, I did read the transcript and I know what's in it and I
16 certainly can review it again. So, there may have been mention of that. But what
17 I'm talking about is he didn't hear it from the Defendant's own words in listening to
18 the tape or having a transcript of that interview prepared. That's what I'm referring
19 to. Not the second hand testimony of somebody who interviewed him. That's what I
20 mean.

21 So, if it wasn't clear in my questioning I'm well aware of what was in the
22 transcript at the preliminary hearing. So, to I guess alleviate any confusion in the
23 record, that's what I'm talking about that he didn't hear it from the Defendant's own
24 words. I tried to short circuit this but now with all the explanations it's actually taken
25 more time.

1 So, I don't know if that's where Mr. Staudaher was going with his
2 questions, but I'm trying to clear that up in case that's where he was going. I
3 thought maybe we could get to that point. So, go on, Mr. Staudaher.

4 MR. STAUDAHER: Thank you, Your Honor.

5 BY MR. STAUDAHER:

6 Q So, I'm going to give you the scenario, okay, and you tell me if you
7 tested that because I was a little confused on the prone thing because you said that
8 the prone positions that you tested in this particular case were his back down;
9 correct?

10 A Yes.

11 Q Okay. The scenario is that Defendant's child in this case was
12 essentially -- and I'm just going to show you so we have an idea. The chair here
13 that the Defendant's child was -- and you know how tall the Defendant's child was;
14 correct?

15 A Yes.

16 Q And so the Defendant's child was against this back of this chair and is
17 over the back of the chair and slides off of it, not jumping, not standing on the back
18 up here, not standing on the arm but face down, head over the chair and slides off to
19 the floor; did you test that at all?

20 A So, the child is facing which way?

21 Q The child is facing away from the couch --

22 A Okay

23 Q -- toward the back, bent over the couch sliding off --

24 A Um-hm.

25 Q -- did you test that?

1 A Not exactly that way.

2 Q Okay. So, the scenario that the Defendant actually says happened in
3 this case, you didn't test; is that right?

4 A I tested something that's similar and the reason is that what matter is
5 the original height of the head of the child when it begins to fall. That's the number
6 that matters.

7 Q All I'm trying to find out is did you test the scenario that the Defendant
8 said happened in this case?

9 MR. REED: Again, Judge, I think here's where the confusion is, is that Mr.
10 Staudaher is aware of -- I think there's a matter of semantics about the fall.

11 THE COURT: I don't know that anyone's confused, Mr. Reed. I mean,
12 basically -- and let's let the witness correct me if I'm wrong.

13 MR. REED: Okay.

14 THE COURT: You tested from less than a upright sitting position on a
15 backwards falls as if the child had been leaning backwards and then lost his balance
16 and fell?

17 THE WITNESS: Yes.

18 THE COURT: So, obviously the drop position or fall position of the head is
19 less than the top of the couch, the top of the back of the couch; correct?

20 THE WITNESS: It's about at the top, yes.

21 THE COURT: Okay. And Mr. Staudaher is asking you about a forward fall
22 with a child leaning over the couch and dropping from someplace less than the top
23 of the back of the couch; is that what you're asking about?

24 MR. STAUDAHER: Yeah, that's correct.

25 THE COURT: And you did not test that; correct?

1 THE WITNESS: I didn't test that particular scenario.

2 THE COURT: Okay. So, you didn't test a forward fall from the back of the
3 couch; you tested a backward fall from the back of the couch?

4 THE WITNESS: Yes; but it's -- we tested a variety of things.

5 THE COURT: Okay. But not the exact scenario of what Mr. Staudaher said?

6 THE WITNESS: Not the exact same scenario.

7 THE COURT: But similar scenario did you test to what Mr. Staudaher is
8 suggesting?

9 THE WITNESS: What matters is the height of the fall and crucially important
10 is the nature of the flooring.

11 THE COURT: Okay. But doesn't the position of the head matter, meaning
12 was the impact to the fact or the front of the head or to the side of the head or to the
13 back of the head? Is that relevant in your analysis?

14 THE WITNESS: It was -- it mattered and I was -- I had the impression that
15 from the medical testing that the child fell and hit the back of his head.

16 THE COURT: Okay. But if in fact the child fell and hit the front of his head or
17 facial area, would that be relevant? Is that where you're going, Mr. Staudaher?

18 MR. STAUDAHER: Well no because there's -- well I just want to know --

19 THE COURT: What that be -- well I want to know.

20 MR. STAUDAHER: -- if the position was important.

21 THE COURT: Is that relevant to your testing?

22 THE WITNESS: Well we would have used a different -- used the same
23 access but the opposite polarity.

24 THE COURT: Okay.

25 THE WITNESS: But it would have, you know, I think we would have gotten

1 numbers similar to the numbers we have here.

2 THE COURT: Go on, Mr. Staudaher.

3 BY MR. STAUDAHER:

4 Q Okay. So, I just want to clear before we're done with this and I'm going
5 to move to another area. But the scenario that the Defendant actually says
6 happened you did not test; correct?

7 A Not that detailed, no.

8 Q Okay. So, let's move to a different area. Let's just talk about the
9 dummy itself. What was the actually -- what was the type of dummy did you actually
10 use?

11 A It's the dummy that's made by the Humanetics Company.

12 Q Is that a Hybrid II, a Hybrid II, a CRABI; what is that?

13 A It's a Hybrid III.

14 Q Hybrid III. So, the Hybrid III dummy is the one that you used in this
15 particular case?

16 A Yes.

17 Q And when you got that dummy, you did not do any independent
18 calibration -- when I say calibration I'm talking about doing whatever scenario you're
19 doing before this scenario you do that you test the actual dummy to see if the
20 readings that you're getting off of your device actually match up with a known
21 standard; did you do that?

22 A The accelerometers were calibrated by the company and they sent a
23 calibration sheet.

24 Q Did you do any independent -- your own sort of control, meaning I know
25 that if I do this much force and known force into this head that I should get a ...

1 registered acceleration of this amount. Did you do any kind of work like that?

2 A I did not calibrate the accelerometers.

3 Q Okay. Now in all of those papers, in all of those papers that you
4 provided or that you referenced after the testing period, did you look and see if in
5 fact they did statistical analysis of their results; did you?

6 A I looked at them.

7 Q Did they?

8 A Someone did.

9 Q Some of them?

10 A Yes.

11 Q Oh, with the exception of the literature review, can you point to an
12 article --one of the articles that you provided where they did not do a statistical
13 analysis of their results to determine validity. Tell me which paper it was that they
14 didn't do that?

15 A Can I see the papers? I don't have the copies of the papers anymore.

16 THE COURT: You can use the exhibit.

17 MR. REED: They're right up here, Judge. That exhibit is right here.

18 THE COURT: Mr. Staudaher, we've handed Defense Exhibit A to the
19 witness.

20 MR. STAUDAHER: Oh, I don't have any problem. This can be admitted.

21 THE COURT: If you want him to look at it then he can look at hit if you prefer.
22 If he doesn't look at it, then we won't look at it.

23 MR. STAUDAHER: No, I want him to look at 'em. Those are fine.

24 THE COURT: Okay. All right. That's fine.

25 ///

1 BY MR. STAUDAHER:

2 Q Tell me which one they didn't do statistics on, with the exception of the
3 literature review because there was no experimentation done in that paper; correct?

4 A The literature review refers to -- I mean, in the literature review the
5 people who write this are not doing their own research but they're reviewing other
6 people's research. And so the other people researching includes --

7 Q Fair enough.

8 A -- includes tests with anthropogenic -- anthropomorphic -- that is crash
9 test dummies.

10 Q Well okay. Before you go on the, let me ask you about -- stay with that
11 paper for a minute --

12 A Okay.

13 Q -- the literature review. When was that literature review published?

14 A It was published in 1994.

15 Q And when we look at 1994 the literature that it was reviewing for that,
16 what were the majority of the papers, what years were the majority of the papers
17 coming from?

18 A Oh, I don't know. I haven't --

19 Q Sixties, 70s, 80s, predominantly; correct? Go through them. Look for
20 the bibliography if you wish.

21 THE COURT: Well let him look.

22 THE WITNESS: That's probably a realistic -- I have not gone through the
23 references to look at what years they were published but some of them go back to --

24 MR. STAUDAHER: The 40s.

25 THE WITNESS: The earliest ones would be the 40s.

1 BY MR. STAUDAHER:

2 Q And there's a few in the 90s but most are in the 60s, 70s, and some in
3 the 80s; correct?

4 A You've gone through the statistics on the -- when the references were
5 published and so -- what you say sounds reasonable.

6 Q I actually didn't do any statistics, but I'm just looking at the bibliography.

7 A Okay.

8 Q But in that sense, we've got a literature review of papers that were
9 published at least 30 plus years ago; correct? That's what that literature review is
10 about?

11 A Yes.

12 Q Right. So, in the last 30 years testing -- I mean, prior to that time they
13 weren't using anthropomorphic test dummies for actual -- none of this kind of work
14 we're talking about all; correct? I mean, can you cite to a single paper in that
15 literature review where they used an anthropomorphic test dummy to actually
16 simulate a fall in the way that you're talking about today?

17 MR. REED: And I'm going to object to compound.

18 THE COURT: Prior to what? Prior to 1940?

19 MR. STAUDAHER: In that literature review. That literature deals with
20 biomechanics.

21 THE COURT: Can you rephrase your question, Mr. Staudaher?

22 MR. STAUDAHER: Fair enough.

23 BY MR. STAUDAHER:

24 Q In the literature review, we're talking about events that took place 30
25 plus years ago; correct?

1 A Literature review was published 20 years ago.

2 Q It's published 20 years ago but it refers to literature that was published
3 ten or more years before that; correct?

4 A Some of them may have been. I don't know. I'll tell you what. Let me
5 look through this here since you asked that question. I see a article published --
6 reference five is from 1989. So, that's 24 years ago, 25 years ago. And reference 9
7 is article by Werner Goldsmith, biomechanics and head injury in --

8 Q 1968.

9 A It's a chapter in biomechanics objectives edited by Y.C. Fung in 1968.

10 Q Okay. So, again, we're talking about literature that's at least 30 plus
11 years old predominantly; correct? That's what this review is about.

12 A Well I'm not saying that it's all that old.

13 Q Okay. '78, '79, '85, '85, '78, '72, '75, '75, '75, 84, '87, '60, '63. We go
14 on and on. It's similar. All those papers are in that range; correct?

15 A Reference 124 is 1991.

16 Q Okay. We've got one in the 90s.

17 A So, that came out three years before this was published. In fact, this
18 was -- this literature review was received in 1993. So, something that was published
19 in 1991 was only two years earlier.

20 Q So, in this particular literature review, did they actually review any
21 papers where they had used crash test dummies in simulated falls?

22 A They discuss -- Goldsmith who proposed a head model consisting of an
23 elastic spherical shell filled with a compressible fluid and subjected to a point load.

24 Q That's not a crash test dummy.

25 A It wasn't a crash test dummy but it was an effort to model the human

1 head.

2 Q That wasn't my question. My question was crash test dummies. Did
3 any of the literature in this literature review that you cited, did any of the papers deal
4 with the use of a crash test dummy in a simulated fall?

5 A You mean in the article in 1994 that Warren Hardy --

6 Q Yeah, the literature review.

7 A Not to my knowledge.

8 Q Okay. So, going back to the issue of the paper of the remaining ones
9 that you provided I asked you the question, did any of those -- well were there any
10 that didn't do statistics at all?

11 A Let me take a look here.

12 Q Do you just want to go through them? We'll take a -- let's do the
13 assessment of injury potential on pediatric bed fall experiments; do you see that
14 one?

15 A By Thompson.

16 Q Yes.

17 A Yes. Published last year.

18 Q Let's cut to the chase on this. If you go to page -- I believe it is 18,
19 Section 2.2.4, they do a statistical analysis; correct? They use both the ANOVA test
20 and the post hoc Tukey test; do you see that?

21 A That's right.

22 Q Okay. They come up with a P number, a relevance number, a
23 reproducibility number, essentially, for their results; correct?

24 A That's right.

25 Q Okay. So, let's go to the potential limitations of utilizing head impact

1 injury models to assess likelihood of significant head injury in infants after a fall; do
2 you see that one?

3 A Which section is that?

4 Q That one was potential limitation utilized -- do you see that particular
5 paper?

6 A Oh wait. Potential limitations. Who is the author?

7 Q The author on that one was -- Corey [phonetic]
8 is the first author.

9 A Right. Corey, I had two articles by Corey. You're referring to one
10 published in Forensic Science International in 2001. And in that article by Corey
11 they did not have a crash test dummy.

12 Q Oh, okay. So, that doesn't even have a crash test dummy. Let's pass
13 that one by.

14 A But then in 2006 some of the same authors published another article.

15 Q Which one?

16 A Development of the simulation system for performing in situ surface
17 test to assess the potential severity of head impacts from alleged childhood short
18 falls. It's the same -- first authored CZ Corey. And in 2006 he had a crash test
19 dummy. So, in 2001 he published an article saying that did not involve one; in 2006
20 he had one.

21 Q Okay. All right. So, he had one later on; right?

22 A That's right. So, the reason we have -- that I included both of them is
23 show that for somebody who didn't have one as of 2001 in this article did have one
24 five years later.

25 Q Okay. And in that one, is this one where they did or did not do any kind

1 of statistical analysis?

2 A Well let me see. Well if you turn to page 108, it says under the --
3 there's a chapter -- there's a paragraph headed repeatability and it's 3.4.2 and it
4 says eight drop tests were conducted at the required drop height. The mean for
5 these eight tests gives a peak value of such and such and a standard deviation of
6 7.4g so to calculate a mean and a standard deviation. In my report I issued the -- I
7 calculated the mean and I had calculated a standard deviation but did not put it in
8 the report. I could easily have done that. If you want me to do so I'll do that. It's
9 not, you know, calculating a standard deviation is not a big deal.

10 Q Well in that very paper, since you're on it, they're also talking about this
11 not being utilized -- this data not being utilized to give suitability ranges for head
12 injury criterion in child development; isn't that correct? They're saying that there are
13 limitations. There's a whole limitations section; is there not?

14 A There are always limitations.

15 Q But what the limitations in this particular paper then?

16 A Okay. On page 110 there's a paragraph that says limitations of the
17 study, and the first paragraph says the simulation system only considers the effect
18 of linear head acceleration and no consideration is given to the affected angular
19 acceleration of the head. And although this is starting to get into more of a medical
20 field and get away from physics, I'll say that the angular acceleration means if
21 something is rotating at constant rate, the angular acceleration is zero. If something
22 is rotating at a rate that changes with time then that is angular acceleration. The
23 most famous one most best known is probably whiplash. If you're in a car and
24 you're hit from behind, your head snaps back and then it snaps forward, and so that
25 can cause problems. And so in fact there are some belief in the literature that

1 angular acceleration is even more damaging than linear acceleration.

2 Now what I measured was linear acceleration because it's the simplest
3 thing to do. But if you have enough accelerometers you can measure angular
4 acceleration and angular acceleration is supposed to be even more damaging than
5 linear acceleration. So, in that sense the conclusions I reached in the report may, if
6 anything, have understated the potential for damage because it doesn't deal with
7 angular acceleration.

8 Q So, I want to get through the other papers. Let's look at the
9 anthropomorphic simulations and falls and shapes, that one. Do they go through
10 any kind of statistical analysis in that particular paper?

11 A Hold on a just a minute. Oh, praying. Anthropomorphic simulations of
12 falls, shakes and inflicted impacts in infants.

13 Q And they even have a section that says statistical analysis using the
14 ANOVA test and the like so they did it in this particular paper; correct?

15 A That's right.

16 Q Okay. So, let's go on to the next one which is influence of wet surfaces.
17 That one by Deemer.

18 A Yes.

19 Q Did they do any kind of analysis in that particular one? I can see that
20 they're referencing P numbers for all of their results. So, that indicates they've done
21 a statistical analysis; correct? Every single one of these has a P number associated
22 with it; is that not right?

23 A Yes; but you can look at the graphs on page 36 and tell whether -- you
24 don't really need P numbers for that.

25 Q I'm just saying --

1 A The graph's on the right hand side of page 36.

2 Q They did it in this particular paper; correct? That's what those numbers

3 mean; do they not?

4 A Well those are standard deviations.

5 Q The P number is a standard deviation?

6 A No, the --

7 Q Okay. A P number is based on a statistical analysis; correct?

8 A It's the probability of the [indiscernible] hypothesis.

9 Q Which is statistics; is it not?

10 A It's statistics.

11 Q Okay. So they used it -- did it in that case. What about the last paper

12 that we have here which is the influence of fall height on impact surface, that one.

13 A Not Deemer. So, who's the first author?

14 Q The first author is Bertocci.

15 A Oh, Bertocci.

16 Q The same thing. If you get to the actual results numbers, they list P

17 numbers for all of their result numbers; correct? You can go to pages 420, 421 and

18 422.

19 A Oh, here it is; yes, it's the bottom. Sorry.

20 Q So, they did it in this paper as well?

21 A Well they did. I have some -- I have my own assessment of the --

22 Q And you didn't in your case but all these papers with exception of the

23 literature review did some sort of statistical analysis; correct?

24 A No. One of the articles that we were discussing just a second ago --

25 Q Oh, didn't have the crash test dummy associated with it. I'm sorry. I

1 didn't mean to --

2 A Let me see. Just a minute ago we were disputing one paper when I
3 said look, they took a mean and a standard deviation. I calculated the mean, I
4 calculated the standard deviation. I didn't put the standard deviation in the report. If
5 you want me to, I can put it in the report. And so in that sense I would be -- if I put
6 that in the report it would be -- have the same status as a -- you wanted to have
7 statistics. Well you have a mean and standard deviation and that's calculating
8 statistics.

9 Q So, let's leave that for a moment. Let's talk about the actual testing you
10 did in this case. We talked about the 40 runs and so forth.

11 A Yes.

12 Q You didn't test the scenario that we actually have as what the
13 Defendant said occurred?

14 A I didn't test that exact scenario.

15 Q Okay.

16 A I tested things very similar.

17 Q Right. As far as the actual testing itself is concerned, in every one of
18 these papers, in every one of the papers that you cited where they did some testing
19 with the crash test dummy, did they have any of those where the actual tester was
20 the one who moved the dummy or participated -- they had hands on the dummy
21 during the time of both the testing and the measurement thereof?

22 A That's a detail that I haven't -- I don't know.

23 Q I can tell you. None of them. Would you surprise you that none of them
24 did that? None of them allowed their testers to actually put hands on with the
25 dummy in measuring the results; meaning, move the dummy and then measure a

1 result; would that surprise you?

2 A Not really. It wouldn't surprise me.

3 Q Okay. As a matter of fact, in all of those papers they go out of their way
4 to talk about how that was dealt with in their -- when I say that I'm talking about
5 trying to make each test that they did as reproducible as possible, meaning that they
6 don't have any influences that they can't control. They try to minimize those things;
7 fair enough

8 A Of course you try to minimize it, yes.

9 Q So, in those -- they use pneumatic actuators, they used drops from
10 specified custom made devices so that there would be no influence of outside
11 source, mean a hand that would accelerate or maybe retard the actual movement
12 that the accelerometer was measuring. Every one of those papers did that, but your
13 testing didn't do that; right? You didn't have a situation where you had the child
14 hooked or laying there and had some sort of device. You used a fixed amount of
15 force to move the child from a position and then measure the strike wherever that
16 was; is that fair? You didn't do that.

17 A I didn't do that. I have to say I don't think it would make a big difference
18 if I did.

19 Q Okay. So, in the actual results --

20 A I can explain why if you really want to know.

21 Q No, I don't want to right now. We'll get to that a minute.

22 A Okay.

23 THE COURT: Your lawyers will have --

24 THE WITNESS: Okay.

25 ///

1 BY MR. STAUDAHER:

2 Q In the results that we actually saw, the filmed results --

3 THE COURT: Why am I even here?

4 MR. STAUDAHER: I'm sorry.

5 THE COURT: Let's all be mindful, lawyers, of who is going to be deciding this
6 issue.

7 MR. STAUDAHER: I didn't know you were saying anything, Your Honor. I'm
8 sorry.

9 THE COURT: Okay. I was just telling the witness that -- they're not your
10 lawyers -- but the lawyers who retained you, Ms. Lemcke and Mr. Reed, one of them
11 will be -- it will be Ms. Lemcke -- will have an opportunity to go over your testimony
12 on redirect examination should they want you to clarify something --

13 THE WITNESS: Okay.

14 THE COURT: -- or expound on something that they feel needs to be clarified.
15 All right.

16 MR. STAUDAHER: And I apologize, Your Honor. I'm sorry I didn't hear you
17 say anything.

18 THE COURT: Go on.

19 BY MR. STAUDAHER:

20 Q When you did the testing in this case, you actually had your hands --
21 you and another person had your hands on the dummy --

22 A Yes.

23 Q -- during each of the tests; right?

24 A We released the dummy, yes.

25 Q Okay. When you released the dummy -- and I've watched the video

1 clips -- when you released the dummy especially for the motions that you describe
2 as going at least over the couch in some form -- you actually keep your hands on
3 the dummy during the entirety of that process all the way to the ground; right?

4 A Yes; and I'll tell you why.

5 Q And you did that so that you can direct the dummy so that it would
6 strike on the back of the head?

7 A I wanted the dummy to strike with the back of his head otherwise you
8 don't -- there's where the accelerometer was. It was measuring an impact on the
9 back of the head.

10 Q So, you actually altered the course of the fall of the dummy so it would
11 strike in the area you wanted to measure; fair?

12 A I wanted to make sure that the -- for example, the arm didn't get out and
13 then breaks the fall.

14 Q Okay. So, you didn't test anything about breaking, of arms breaking the
15 fall?

16 A No; that would be give smaller numbers. What I was doing was
17 calculating the -- doing the experiment to measure it. What's the worst possible
18 case.

19 Q Okay. My point is that you altered -- you used your hands, your force, to
20 alter the course of the fall of the dummy in your experiments; fair?

21 A That's unfair. And the reason is that small changes in the initial velocity
22 make a very small -- hardly any changes in the final velocity. If the initial velocity -- if
23 the velocity with which it leaves the couch and the final velocity is the velocity which
24 it hits his head, it makes very little difference. And this is the mathematics that I'll go
25 through.

1 Q No; I don't want you to go through the math right now. I'm just wanting
2 to ask --

3 THE COURT: Okay. Well wait a minute. Again, you know, if the defense
4 attorneys think that you need to explain it, then they'll have the opportunity to ask
5 you. The way it works is, you know, each side gets to ask you the questions they
6 want to ask you --

7 THE WITNESS: Okay.

8 THE COURT: -- and if I feel like I'm confused about something then I'll
9 interrupt and ask you a question. But unfortunately I think it's the lunch hour and it
10 looks like Mr. Staudaher's going to have many more questions. I'm sure there's
11 going to be some redirect asking you to clarify some of these things that Mr.
12 Staudaher has covered that you wanted to clarify but he's asked you not to expound
13 upon.

14 THE WITNESS: Okay.

15 THE COURT: So, we're going to go ahead and take our lunch break. We'll
16 be in recess for the lunch break until 1:15. So, during the lunch break, leave your
17 stuff spread out if you want to because the courtroom will obviously be secure. All
18 right.

19 MR. STAUDAHER: And, Your Honor, could you instruct him not to discuss
20 his testimony or anything.

21 THE COURT: Because we're in the middle of the testimony you can't discuss
22 it now with the defense attorney.

23 THE WITNESS: Okay.

24 THE COURT: All right.

25 [Recess taken at 11:45 a.m.]

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[Proceedings resumed at 1:21 p.m.]

THE COURT: All right. We're back in session. And, Mr. Staudaher, you may resume your cross-examination.

MR. STAUDAHER: Thank you, Your Honor.

JOHN FARLEY

[resumed the stand and testified further on cross-examination as follows:]

BY MR. STAUDAHER:

Q Dr. Farley, when we left off we were talking about when you were actually conducting the experiments, the ones that were, I think, all focused primarily on the prone position. But is it fair to say that in all of the experiments that you did that you had the assistance of another person who worked for the District -- or worked for the Public Defender's Office actually aid you in conducting the experiment.

A All -- not quite all, but a lot of them. Particularly -- most of them, but not all of them.

Q The ones that are in -- the video that we're provided we essentially saw virtually all of them; correct?

A Virtually all of them.

Q Okay.

A Not all of them.

Q So -- and when I say that I mean that when you did it with this person, not only are your hands on the crash test dummy, but the other person's hands are on the dummy too. You're either holding the dummy in a position --

A Yes.

Q -- or you're starting the movement to push the dummy off and then you

1 guide it down so that it strikes on the back of the head in most cases; correct?

2 A That's correct.

3 Q And, in fact, when you didn't guide it as much it tended to strike around
4 the top of the head; is that right?

5 A I won't say it tended to do that, but it happened once or twice.

6 Q And I'm talking about the prone ones. I know from the standing position
7 most of those hit on the side of the head or so; is that correct?

8 A The side of the head, no. They --

9 Q Well, back -- back of the head.

10 A -- they hit the back of the head.

11 Q And in all of those cases, again, you were guiding the position of fall
12 with your hands?

13 A Of the standing ones?

14 Q Standing ones also.

15 A No. I think at the beginning we let it fall. And so -- let me look at my
16 report. Here it is. Well, run number 12, for example, might -- in the -- page 8 of my
17 report says fall from sitting position on back of couch. Hit on top of head. So, you
18 know, at some point we realized we -- we wanted valid readings. We wanted it to hit
19 the back of the head.

20 Q Okay. So in order to accomplish that, just so we're clear, both you and
21 the assistant actually had your hands on and guided -- after you initiated the
22 movement you continued to hold on and guide the dummy down so that it --

23 A Yes.

24 Q -- potentially struck on the back of the head?

25 A Yes.

1 Q Okay. So I assume you have some feel for how much force you used,
2 or lack thereof, in guiding the dummy down or initiating the initial movement to start
3 off with; is that fair?

4 A Yes.

5 Q Do you know how much force you used or didn't --

6 A Well, as little as possible.

7 Q Okay. Is there any way that you could record or measure that?

8 A It wasn't recorded, but it turns out -- it will turn out that the velocity of
9 the head of the dummy just before it strikes the ground is not very sensitive to the
10 velocity with which it's released. Especially if --

11 Q But you would agree with me --

12 A -- that velocity is small.

13 Q -- would you not, that if you had your hand on the dummy itself and you
14 pushed it down toward the ground that it would increase the force that the head
15 would strike the ground?

16 A We tried not to.

17 Q I'm just saying that if you did that it would increase the force; correct?

18 A Correct. And if we were accidentally pulling up a little bit it would
19 decrease the force.

20 Q Fair enough. But -- so we don't know. There's a variation.

21 A Oh, but it turns out not to be an important question.

22 Q Well -- we'll decide here whether it's important or not. But you actually
23 are holding the dummy either retarding, pushing the dummy in some way as it goes
24 over before it strikes the ground because you're altering the course of fall so that it
25 strikes in the back of the head; is that fair?

1 A We're altering it in minor ways, yes, but we wanted to strike the back of
2 the head.

3 Q You had to apply some force to the dummy to get it to strike the head
4 where you wanted it to; fair?

5 A Some small force, yes.

6 Q Okay. And now the person that's on the opposite side that's holding the
7 dummy by the legs and so forth and doing a similar thing to what you're doing,
8 there's no way you can tell as to how much or how little force that person is applying
9 to do the same thing; fair?

10 A Well, I think you're overlooking something. If --

11 Q Can you determine how much force the other person is applying or not
12 applying to the dummy when their hands are in contact with it during one of your
13 measurements?

14 A We want the dummy to fall back and hit the back of its head on the
15 ground. And if he exerts a force that's different from mine on one side and I'm on
16 the other then if the forces we exert -- small forces don't match the dummy will tend
17 to twist sideways, so we should be ideally doing the same thing.

18 Q Okay. But you got two -- you obviously -- in scientific experiments you
19 try to limit the variables; correct?

20 A Yes.

21 Q And in the papers that you cited -- and you've already acknowledged
22 you didn't read these papers before then, correct, before you did the experiments?

23 A Not these papers.

24 Q Okay. And these papers have you read them since?

25 A Well, I've read them enough to say these are the ones that you want

1 because you were -- at one point you wanted to say is this a scientifically valid area
2 of research.

3 Q Yes. Did you read the papers?

4 A Yes.

5 Q Completely --

6 A No.

7 Q -- all of them?

8 A No.

9 Q So the papers you cited as being the basis for support of your
10 experimentation you didn't even read them?

11 A No, these -- these papers are background in the field. For example, the
12 paper by Bertozzi [phonetic] -- or excuse me, Bertocci, that is for feet-first free falls --
13 children falling feet first.

14 Q Okay.

15 A And so there's going to be a big difference between that and somebody
16 -- a child landing on his head.

17 Q In any of the papers that you provided, or in any of the literature related
18 to using crash test dummies and simulated falls that you've ever looked at, has
19 there ever been a recording in the sense of the way you did it in this particular case;
20 meaning, hands on the dummy, all the way down to the floor. Any paper that did
21 that?

22 A I don't know. Not that I'm aware of, but --

23 Q And certainly not in the ones you provided; correct?

24 A That's correct.

25 Q I mean, to the extent that you know what they say; right?

1 A Well, since you raised the question, I'll say that I'm aware of the fact
2 that the critical factor giving us slightly different results at different times is how it's
3 released -- how to duplicate the fall. And it's difficult to duplicate the fall exactly.
4 And we did our best to duplicate the fall from one drop to the next.

5 Q So in the cases where they've actually tested -- used the crash test
6 dummy to try and simulate falls, okay.

7 A Yes.

8 Q Not your experiment that you did.

9 A Others experiments, right.

10 Q Others experiments of those that you either know about or have
11 reviewed. In those instances did any of them employ the use of a hand on the --
12 hand on the crash test dummy from the inception of motion till the point of impact?

13 A I don't know.

14 Q I'll tell you from the ones you provided. No, is the answer to that.
15 Would you quibble with that based on what you've provided?

16 A I wouldn't quibble with it, but I would say that -- you talked about the
17 Bertocci article.

18 Q I'm talking about all of them.

19 A Well, let me mention --

20 Q Every one of the papers that you provided.

21 A -- the Bertocci article. The -- she says -- she's explaining there's a
22 large variation in the results here. And such variation in HIC values, the head injury
23 criterion, are --

24 Q Excuse me. Let me get to the Bertocci paper --

25 A Okay.

1 Q -- if you would, please. Okay. So where you at?

2 A It's on page 422.

3 Q Okay.

4 A The chapter -- the paragraph labeled discussion. It says such variation
5 in head injury criteria and values are likely due to variations in impact kinematics
6 and landing positions associated with falls from greater heights. And then she says
7 additional experimental tests should be conducted to further investigate these
8 variations and so on. In other words, she also has the same issue that it's difficult to
9 duplicate the fall from one fall to the next.

10 Q Right. But even in the paper that you just -- just described. When they
11 conducted these falls they actually had it released by some other mechanism, not a
12 hand --

13 A Yes.

14 Q -- by you -- or not by you, but by them. And certainly their hands
15 weren't on the object altering or changing its direction of fall in any way; correct?

16 A Their hands weren't on the object, but I'm saying they still have the
17 same issue of -- it's hard to duplicate a fall from one fall to the next.

18 Q Correct. Now in the other papers where they basically conduct
19 experiments, all of those either used a pneumatic push device so that they could
20 reproduce the exact initial movement velocity of the actuator, that it contacted the
21 supposed dummy to move it --

22 A Mm-hmm.

23 Q -- and could reproduce that exact force in the exact same direction
24 every single time when they did their experiments; fair?

25 A They certainly tried to do that, yes, as best they can.

1 Q Okay. And the ones where the dummy was suspended, it was
2 suspended and they basically just released it and let it fall; correct?

3 A I'll take your word for it. I'm willing to believe it.

4 Q Because you didn't read the papers; right?

5 A I haven't read it -- that little detail because --

6 Q In the one -- in the experiments that you are -- at least the papers that
7 you didn't provide that you are aware of, at least the literature, are you aware of any
8 instance where they didn't do something like I just described; hook it up so that they
9 could release it the same way every time, drop it the same way every time using
10 maybe a custom built apparatus so that they can remove the variables of the actual
11 examiner?

12 A They can try to remove variations from one run to the next, but they --
13 they can reduce it I'm sure, but they can't eliminate it, I don't believe.

14 Q I'm not saying eliminate. I'm just saying to try to reduce they took
15 steps.

16 A Yes.

17 Q And some of those steps were to have something that would just
18 release the -- sort of the dummy --

19 A Mm-hmm.

20 Q -- any particular configuration so that it would drop and they could
21 record a result; correct?

22 A Correct.

23 Q And in your case, in the film that I believe we'll see, you actually -- not
24 only do you not release it like that in any of these papers, but you actually have
25 hands on during the entire sort of traverse of the dummy and you alter its course by

1 your own admission; correct?

2 A Alter it in -- well, I hope in minor ways. I tried very hard --

3 Q What you hope --

4 A -- to make it minor.

5 Q -- is minor ways.

6 A Yeah, that's right.

7 Q But you haven't measured those in any way; correct?

8 A That's correct.

9 Q You can't, in fact, the way you did it measure how much force, or how
10 little force and in what direction you actually provided that force to know if it's
11 additive, subtractive or it's just doesn't make any difference?

12 A Well -- okay. Let me address the question of additive. The effect of the
13 initial velocity is surprisingly small on the final velocity.

14 Q And how do you know that?

15 A Okay. It's from the law of physics. Would you like me to --

16 Q Well, I'm talking -- I'm not talking about general laws of physics. I'm
17 talking about in experiments that use these kind of dummies in simulated falls. How
18 do you know that the initial velocity imparted on the body -- on the crash test
19 dummy --

20 A Mm-hm.

21 Q -- has negligible impact or effect on the results that you've obtained?

22 A It's as small as we could make it. And one proof of that is towards the
23 last -- let's see. Okay. If I look at my report here, the last set of runs from let's say
24 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36 through 38, 39 through 41,
25 those are 20 -- there's 38 runs. No, excuse me, 18 runs. Wait a minute. Last 18

1 runs. For those runs we found the variation in the acceleration that we got from one
2 run to the next. They varied by no more than say 10 or 12 percent.

3 Q Now --

4 A And sometimes it was in four or five percent.

5 Q So I'm a little confused about that. First of all --

6 A So the point is that if we were imparting some significant velocity, you
7 would think that it would vary from one run to the next because you can't, you know,
8 control your hand that well. On the other hand, what is constant in this problem?
9 What is constant is the height. We dropped it from the same height. So the -- what
10 this illustrates is that I think we have it under pretty good control.

11 Q Did you not give us a breakdown of the different runs that you did
12 earlier?

13 A Yes.

14 Q Okay. And you just said the last 18 runs. Well, that's a mixture of
15 different positioning for the body in different heights; correct?

16 A This was when we -- we had 23, 24 and 25 as dropping -- falling
17 backwards from a prone position. Twenty-six, seven, eight are a fall from a sitting
18 position on the back of the couch. So there's --

19 Q Okay. So different -- but were different --

20 A -- three or four under the same conditions that we can -- that under
21 conditions that are as close to identical as we can make them.

22 Q Hold on. You're telling me that you consider sitting on the back of a
23 couch falling off versus a prone position on the back of the couch falling off as being
24 basically the same type of test?

25 A No, no, no. What happens is if we do 25 -- 23, 24, 25, all of them were

1 falling backwards from the prone position on the couch, so those three all have the
2 same experimental conditions.

3 Q With your hands on them the whole time?

4 A Yes.

5 Q Okay. So --

6 A And then 26, 27, 28 -- there were three with the same -- same
7 conditions. And then 29, 30 and 31 were three from the same conditions. And 32
8 through 35 were the same conditions.

9 Q Within each group; correct?

10 A Within in each group. Absolutely.

11 Q Okay.

12 A And so we --

13 Q So --

14 A -- we would do three or four that were identical -- as identical as we
15 could make them. And the head injury criteria numbers came back, you know,
16 within -- reasonably close. For example, 29, 30 and 31 range from a high of 199 to
17 a low of 193, so that difference is about six percent -- no, about three percent from
18 the highest to the lowest.

19 Q Okay. So you're getting the same reading. That doesn't necessarily
20 mean that you're not putting the same force each time you do it if your hands are on
21 the object; correct?

22 A Well, it's hard to -- if the major factor is your hand is on the object, then
23 you would get variation depending on how hard your hand pushes from time to time.
24 It is really hard to push something with the same amount of pressure every time.
25 For -- I'll give you an example. In basketball, if you have got the basketball -- you're

1 trying to shoot a foul shot from the foul line. If you got the angle exactly right, you
2 have to get the velocity right within about one percent or you'll miss the hoop. So,
3 you know, the top athletes in the world can get it within one percent a significant
4 amount of time, but the average person, you know -- you know, it's difficult to get
5 that precision.

6 Q So let's talk about that -- your experiments again.

7 A Okay.

8 Q Okay. Now clearly you didn't base them on any of the literature that
9 you provided because you didn't have that until just a few days ago, and you hadn't
10 reviewed it before you did the experiments; correct?

11 A That's right.

12 Q Okay. So you -- you developed this methodology based on your
13 general knowledge of physics principles; correct?

14 A Yes. I think it's rather --

15 Q And so when you are actually doing these experiments with this crash
16 test dummy --

17 A Mm-hmm.

18 Q -- other than this previous time, that's the only other time you used a
19 crashed test dummy; correct? And I'm talking about the *Geddings* case.

20 A I've used the crash test dummies on three occasions.

21 Q Okay. Three occasions. So you --

22 A This is the third.

23 Q -- done it three times.

24 A This is the third. The *Geddings* case was one and *Fakoya* case was
25 another.

1 THE COURT: I'm going to go back to what -- to makes sure I understand
2 what Mr. Staudaher was saying about you holding the dummy all the way down.

3 THE WITNESS: Yeah.

4 THE COURT: I think maybe where he's going with this isn't that the change
5 of force of you holding the dummy down. But just intuitively --

6 THE WITNESS: Mm-hmm.

7 THE COURT: -- it seems to me that if you hold an object you're going to have
8 less force than if you just knock it down like that. Is that where you -- and so to
9 me --

10 MR. STAUDAHER: In part or if you put --

11 THE COURT: -- intuitively it seems like you wouldn't be able to replicate the
12 force from a child just free -- you know, falling -- free falling, meaning falling without
13 anyone it as opposed to holding an object. So am I misapprehending --
14 misunderstanding what it is you did?

15 THE WITNESS: Well, what -- we were just guiding it, but we weren't
16 attempting to push it down.

17 THE COURT: Right. But do you see what I'm saying? I seems just the very
18 act of guiding it, unless you're using force -- well, by just intuitively, or in light of
19 experience, tells me that you're unable to have the same kind of an impact than if
20 it's just a fall. And if that's not correct, then why would that be incorrect?

21 THE WITNESS: I'm sorry. Can you say that again?

22 THE COURT: Well -- okay. Let's use this bottle.

23 THE WITNESS: Okay.

24 THE COURT: If I'm just pushing it over using --

25 THE WITNESS: Mm-hmm.

1 THE COURT: -- but guiding it.

2 THE WITNESS: Mm-hmm.

3 THE COURT: It's less force than if I do that. I apologize. Luckily it's empty
4 so you weren't -- do you see what I mean?

5 THE WITNESS: Well --

6 THE COURT: So why -- why wouldn't that be a factor in your testing?

7 THE WITNESS: Okay.

8 THE COURT: That's what I'm asking.

9 THE WITNESS: Okay. The forces that we exerted were small and primarily
10 designed to prevent it from rotating because we didn't want the dummy to hit any
11 place other than back of the head, so we weren't exerting big forces on it.

12 THE COURT: All right. I'm sorry. Go on, Mr. Staudaher.

13 BY MR. STAUDAHER:

14 Q So in that sense, from at least the positioning that you had with this
15 child -- and let's stick with the prone positions because that's closer to the actual
16 scenario that we have --

17 A Mm-hmm.

18 Q -- before us in this case. In those instances you had -- it was -- was it
19 difficult then -- I mean, if you had just nudged the child off, even with your hands, not
20 using a pneumatic actuator or anything like that, but just nudged the child off, would
21 you have been able to reproduce it hitting the back of the head?

22 A Some runs, yes; sometimes no I'm sure, but --

23 Q So in order to get the runs that you did -- and we're talking about three
24 runs or so on each particular --

25 A Three under each conditions.

1 Q -- particular scenario; right?

2 A Right.

3 Q So that's our number set is around three to four per -- per sort of run?

4 A That's right.

5 Q Okay. So we do the repetition. In those instances, you push it -- you
6 don't push it off, but you're guiding it so that it hits where you want it to hit, so you're
7 adding force or doing something to manipulate the fall?

8 A But you're trying to prevent it from rotating in mid-air to hit the --
9 something other than the back of the head.

10 Q You're manipulating --

11 A We weren't -- we weren't --

12 Q -- the fall though; correct?

13 A -- we weren't forcing it down.

14 Q Well, you don't think you were. You don't know what the other person
15 was doing; right?

16 A Well, if I was forcing it down and he wasn't that would cause it to rotate
17 this way along the body axis.

18 Q Fair enough, but maybe both of you were retarding or pushing --

19 A Well --

20 Q -- as you went. Do you know what you were doing?

21 A I know what I was doing and he was doing the same thing.

22 Q Were you watching what he was doing?

23 A I was watching the dummy.

24 Q Okay. So you weren't watching what the other person was doing who
25 also had their hands --

1 A Well --

2 Q -- on the doll at the same time -- and not -- I say doll -- dummy; right?
3 You were watching the dummy you said.

4 A I was watching the dummy and watching what he was doing to the
5 dummy too, so --

6 Q Okay. Now the dummy that you used was significantly less -- or more
7 weighty than the actual child itself; correct?

8 A That is correct.

9 Q Okay. As a matter of fact I think you indicated in the results that the
10 child -- or in your -- in your work that you did that the dummy that you had was 36
11 pounds and the child was 23 pounds.

12 A That is correct.

13 Q The height approximated correctly but not the weight of the child?

14 A That's right.

15 Q So you employed a method of trying to do something to make your
16 results -- at least test whether or not your results were valid based on additional
17 weighting of the test dummy that you had?

18 A That's correct.

19 Q So, just so we're clear on this, the way you did that was to take a bag of
20 beans and tape that to the abdomen, the torso of the dummy.

21 A That's correct.

22 Q And then you conducted the same experiment -- the same run of
23 experiments with a weighted dummy versus an unweighted dummy?

24 A That's correct.

25 Q And when you -- you did the -- so you did like three with weight, three

1 with not weight for a particular position?

2 A That's right.

3 Q The ones that you did with the weight, all of that weight was centered
4 around the torso, was it not?

5 A That's correct.

6 Q It was not evenly distributed or even in a manner that is -- well, you
7 used the word biofidelity in your paper, that would show that the normal child of that
8 sort of age, weight, how the weight would be distributed amongst the actual crash
9 test dummy. You just -- was right around the torso?

10 A It's in the torso, yes.

11 Q And your accelerometer that you were using to measure was actually in
12 the head, was it not?

13 A That's correct.

14 Q So you didn't weight the head additionally at all. You just weighted the
15 torso?

16 A I did not weight the head for a good reason. The proportions -- the
17 body proportions. When you have a newborn baby the head is much bigger
18 compared to the rest of the body compared to an adult.

19 Q This is not a newborn baby?

20 A No, but it's a three year old. But newborns, as you know, can't do this.
21 Their arms are too short and their head is too big.

22 Q Okay. I don't want to get confused with newborns because we're
23 talking about a child that's over three years old; correct?

24 A That's correct.

25 Q So they -- they're different in development than a newborn; fair

1 enough?

2 A I think that the weight in the body compared to the weight in the head is
3 larger for an adult, smaller for an infant and a three year old would be, you know, in
4 between.

5 Q Do you know what it is?

6 A I don't know the numbers.

7 Q So you didn't take that into account when you weighted this doll -- or
8 this dummy to try and do your experiments?

9 A I put the weight in the torso because that was better -- I thought that
10 was much more justified that weighting it in the head.

11 Q Did you -- did you base that on any prior literature, experiment that had
12 ever been done doing the same thing that you were doing?

13 A No.

14 Q Okay. Actually, is there any paper, any research, any experiment that
15 you can cite where they did what you did as far as weighting the dummy in the
16 manner that you did?

17 A Exactly the manner, I'm not sure. But they -- I'm sure they -- I'm sure
18 somebody has done an experiment with different weights.

19 Q I'm not asking about I'm sure. I'm asking what your knowledge base is,
20 sir. Do you know of anything that you can refer to that shows what you did -- the
21 method that you did employ in this case is valid in some way or has been
22 scientifically valid -- validated?

23 A Well, the whole field is scientifically valid and that's why I gave you
24 those reprints from the scientific literature.

25 Q Okay. I'm going to just --

1 A There's a lot of people --

2 Q -- quote -- based on what you just said I'm just going to quote out of the
3 one that's entitled Influences of Wet Surfaces on Fall Height Pediatric Risk Injure
4 [sic] a Risk in Feet-First Free Falls. Do you see that one?

5 A Yes, by Bertocci, et al.

6 Q At the back of that -- and this is page 38 of that -- and that whole study,
7 by the way, found that there was low risk of injury from short falls as well from the 47
8 inch range. It says essentially this, that the test dummies that you used were
9 developed for examinations of biomechanics and injury risk in high energy events,
10 such as car accidents. Their biofidelity for lower energy falls has not been
11 validated. And their ability to represent complex biological systems of a human is
12 limited. And it also goes on to say additional studies aimed at improving biofidelity
13 of the three year old -- and they were talking about lower extremities and other
14 fractures related to what they were studying, but they said it's necessary before
15 being able to assess fracture risk with confidence. Does that sound like this is
16 something that's generally accepted as something useful and utilized by the
17 scientific community?

18 A Well, she's saying --

19 MR. REED: I'm going to object. It's argumentative, Your Honor.

20 THE COURT: Well, he can --

21 MR. STAUDAHER: It was his response, Your Honor.

22 THE COURT: -- he can answer.

23 THE WITNESS: She was saying that there are limitations. Of course there's
24 limitations and she pleads for more research. Everybody wants more research.

25 ///

1 BY MR. STAUDAHER:

2 Q She's saying that -- or this person is saying that you can't -- you can't
3 basically rely on that information.

4 A Well, she's

5 Q It's not validated; correct?

6 A This article is about free fall -- feet-first free fall. And in feet-first free
7 fall, you know, the child puts -- you know, lands feet first, not head first.

8 Q Okay. Let's go --

9 A And so --

10 Q -- let's go to a different paper.

11 A -- and furthermore -- well, let's see. She's talking about falls from 27
12 inches. That's barely two feet. That's a little over two feet. That's not very much.
13 Those are short falls. So --

14 Q So a fall from two feet you don't think is very much?

15 A Well, I think -- especially depending on -- I mean, we consider things
16 that are higher.

17 Q I know you did. That's not my question. You just said that you don't
18 think that a fall from two feet --

19 A Well --

20 Q -- is very much; is that right?

21 A A conclusion based on very short falls, maybe -- you know, they hardly
22 ever happen.

23 Q Well, let's say we had a fall in the 24 inch range in this case.

24 A Mm-hmm.

25 Q Would you consider that significant?

1 A Could be, but --

2 Q Okay. Now you're saying could be significant.

3 A I'm just saying that the study by Bertocci is studying -- has got some
4 significant differences from what I'm doing. She was studying --

5 Q Okay. I want to --

6 A -- she was studying --

7 Q -- I'd like to refer you then to a different --

8 A -- she was studying feet-first falls.

9 A -- paper if that's the case.

10 THE COURT: Well, let him finish and then --

11 THE WITNESS: She was studying feet-first falls. And -- well, that's one
12 thing. And let's see -- she studies landing on things like playground foam, carpet,
13 linoleum, wood -- wood subfloor rather, and so those are different surfaces.

14 BY MR. STAUDAHER:

15 Q Linoleum over concrete was one that they tested; correct? I guess you
16 didn't read it. I'll tell you, they did test that scenario.

17 A It's in there.

18 Q Okay.

19 A Linoleum under concrete. But linoleum under concrete is a softer, more
20 forgiving surface than hard ceramic tile.

21 Q Fair enough.

22 A And so, you know, that is absolutely critical.

23 Q Okay. Let's go on to a different paper. Assessment of Injury Potential
24 and Pediatric Bed Fall Experiments Using an Anthropomorphic Test Dummy. That
25 one, do you have that?

1 A Let's see.

2 Q And that's by Thompson.

3 A Thompson. Okay, wait a minute. Thompson -- assessment.

4 Thompson had two articles. This is the one --

5 Q Let me ask my question if you could.

6 A -- from 2011.

7 Q I'm talking about the one I just mentioned. It's entitled Assessment of
8 Injury Potential --

9 A Okay. That one.

10 Q -- in Pediatric Bed Fall Experiments. That one.

11 A That's the 2013 article, yes, by Thompson.

12 Q So that's the most recent one. And in that most recent one they
13 actually compared a number of studies that had been done, including the use of
14 anthropomorphic test dummies in the past; correct?

15 A That's correct.

16 Q Okay. And in -- and they say in this report -- or this paper that in
17 comparing this study, the one that they did, with other studies the results varied
18 greatly. They speculate that the differences are due to different skull and neck
19 positions of the anthropomorphic test dummies, as well as differences in initial
20 positions. That's what their speculation is. And under their error rate section, page
21 23, they say in that paper more accurate pediatric injury criteria are needed to
22 improve assessment of injury potential and falls. And that any significant deviation
23 from the simulate scenario would require further investigation to more accurately
24 assess the injury potential. Do you see that?

25 A Where's that on page 13?

1 Q Twenty-three.

2 A Twenty-three.

3 Q It goes on after page 23. So in this one, I don't see anything in here --
4 in this paper, or actually in any of the papers, and I've read them. I know you
5 haven't, but I've read them and I don't see anything where they say this is an
6 accepted method of testing and determining injury fall or injury risk in the pediatric
7 population. There's not a single reference to that. As a matter of fact all of them
8 limit what their findings are to the very scenario they did and the very circumstances
9 that they did and did not go on to indicate that you could expound or extrapolate that
10 to any other situation. Does that surprise you?

11 MR. REED: Is that his opinion, Your Honor? That's not a question.

12 MR. STAUDAHER: Well, I know it's hard to ask him the questions about the
13 papers he provided because he hasn't read them.

14 THE COURT: All right. Well --

15 THE WITNESS: I've read some of them. I haven't read them all --

16 THE COURT: Okay.

17 THE WITNESS: -- every word and --

18 BY MR. STAUDAHER:

19 Q Would it surprise you to learn that?

20 THE COURT: Okay. Basically, Mr. Staudaher, the problem with your
21 question is your forming a conclusion based on your reading of it and assuming that
22 that's correct, which may or may not be correct. So if you're going to ask him
23 something about the paper you either need to quote directly from the paper or you
24 need to ask a preliminary question like not would it surprise you, assuming that
25 that's the correct conclusion. You can say, well --

1 MR. STAUDAHER: Fair enough.

2 THE COURT: -- do you agree with the conclusion that this is limited only
3 blah, blah, blah. And then if he doesn't agree with it then you can point out where
4 you're getting that from in the paper. Okay?

5 MR. STAUDAHER: Fair enough.

6 THE WITNESS: Can I --

7 MR. STAUDAHER: Let me -- let me ask the question then.

8 THE COURT: He's going to ask it a different way.

9 BY MR. STAUDAHER:

10 Q Assuming -- assuming that there's not a single paper here that you've
11 provided that indicates that you can take this and utilize it to determine risk potential
12 falls in the pediatric population with fidelity, meaning that you can take it to different
13 situations and use this information to determine risk potential. Assuming that that's
14 the case --

15 A Which I don't assume.

16 Q Assuming that it's the case, does that alter your statement earlier that
17 the field is well established that you can do this -- this type of experimentation and
18 determine these types of risks based on that type of experimentation?

19 A Well, I don't make that --

20 MR. REED: I again object to the form of the question, Your Honor. This is
21 assuming a predicate fact that he doesn't agree with. That's like, you know --

22 THE COURT: Well, here's the deal. He's already said he -- I mean, he can
23 ask him if that were true. And then at some point it's looking like I'm going to have
24 to read the articles because I think there's a difference of an opinion as to what
25 those articles say. And like I said, I can't accept Mr. Staudaher's conclusion that

1 that's what the articles mean. So you can ask him the question and understanding
2 it's hypothetical and that has to be established that that's --

3 THE WITNESS: Can I -- can I --

4 THE COURT: -- a correct reading. So go --

5 THE WITNESS: Yes.

6 THE COURT: Do you remember the question?

7 THE WITNESS: Well -- yes. He's saying assuming that there's not a single --
8 there's no support for this.

9 THE COURT: Right.

10 THE WITNESS: I don't assume that.

11 THE COURT: Okay.

12 THE WITNESS: In fact, you --

13 BY MR. STAUDAHER:

14 Q Okay. Well, tell me where then you're relying upon then.

15 A Okay. In the same article by --

16 Q Which one?

17 A Thompson, Bertocci and Pierce in 2013.

18 Q And what page are you on, just so I know?

19 A Page 23 --

20 Q Okay.

21 A -- that says the biofidelity of the CRABI head impact response has been
22 investigated. And they cite two references. One of them is an article by Prange in
23 2004. One study compared the head impact response of a CRABI six month old
24 ATD to that of a pediatric cadaveric specimen, a cadaver, age 1 to 11 days, in drop
25 tests and found the results to be comparable in vertex, occiput and forehead

1 impacts, meaning they got agreement -- they got agreement between the crash test
2 dummy and a cadaver head. The cadaver heads were what people used before
3 they had crash test dummies, among other things.

4 Q In that same page -- on that same page, next column over, last to the
5 second paragraph there, does it not discuss the fact -- talking about the limitations of
6 crash test dummies and their assessment of risk that it says a more accurate
7 pediatric injury criteria are needed to improve assessment of injury potential and
8 falls. It says that.

9 A It's not -- in any scientific article, towards the end of it you say this is --
10 this is what we've done, this is the limitations of what we've done and here's what
11 we need to do in the future. So calling for more accurate pediatric injury criteria to
12 improve the assessment of injury potential and falls is naturally something they're
13 going to call for for improvements in the pediatric injury criteria. That doesn't mean
14 everything -- they didn't say everything in this field is worthless. They said to
15 improve. Who could be against improving things?

16 Q I'm not saying everything worthless, sir. I'm just saying you made a
17 blanket statement that there is literature --

18 A Yes.

19 Q -- there's support in the field --

20 A And there is.

21 Q -- that shows that this testing is validated -- or has been validated. Did
22 you not say that?

23 A Yes.

24 Q Okay. And I'm asking you to point to me somewhere in any of the stuff
25 you provided that says that this has been -- this particular type of work, meaning

1 you're using a crash test dummy, to simulate falls and injury risk has been validated
2 in the pediatric population, in like a three year old, for example, what we're using
3 here.

4 A Well -- okay. I gave you six articles in the literature.

5 Q That you didn't read.

6 A That -- I read them enough to say that they involve -- did they involve
7 crash test dummies? Yes. Did they involve accelerometers? Did they involve falls?
8 Yes. Had to satisfy those three.

9 Q Did you not also say that the actual history was probably not as
10 important to you in making your determinations? The history being the scenario that
11 was supposedly -- that had supposedly occurred.

12 A Oh. In real life falls of children they don't fall in a physics labs. You
13 may have accurate information about exactly how the fall occurred. And so my
14 approach was to just do a number of tests and try to say, you know, do the numbers
15 tells us anything. And what we found was the numbers were quite large.

16 Q Actually the paper that we've just been talking about discusses very
17 poignant the fact that history is vitally important in determining risk fall; correct -- or
18 risk of -- risk of injury from fall; is that fair?

19 A The history of the accident?

20 Q Yeah, history -- what was actually said is vitally important --

21 A But it's --

22 Q -- to determine that.

23 A But often you don't. In real life cases you often don't know that.

24 Q You had it here; right?

25 A What?

1 Q You had the -- you had the information about what took place.

2 A Well --

3 Q Yes or no you had it. I -- kind of. I guess, it was a preliminary hearing
4 transcript; right?

5 A I had the preliminary hearing transcript.

6 Q You never -- you never were provided with or reviewed what the
7 Defendant himself actually said took place and you certainly didn't test it; right?

8 MS. LEMCKE: Objection.

9 THE COURT: Yeah, I think also -- I don't know what your objection -- it's a
10 compound question. Also I think we've covered this. I already asked him that he
11 didn't a listen to the actual tape. He didn't have the transcript. He's relying on the
12 preliminary hearing. I think we've cover this --

13 MR. STAUDAHER: Okay. I'll go to --

14 THE COURT: All of us --

15 MR. VILLANI: -- a different place.

16 THE COURT: -- have covered this.

17 BY MR. STAUDAHER:

18 Q I'll just read the very last paragraph in their conclusion on that paper --
19 same paper, page 23, where it says our findings are the first step toward aiding
20 clinicians in distinguishing between abusive and accidental injuries when the stated
21 cause of the injuries is a short distance household fall. Further highlighting the
22 importance of obtaining a detailed history when assessing compatibility between
23 injury state cause. That's the very last part of their conclusion, which is one
24 paragraph in length. I mean, it was something they thought was important --

25 A Yes.

1 Q -- in this paper.

2 MR. REED: Your Honor, I'm going to object to what Mr. Staudaher thinks that
3 someone who else -- who wrote something is important.

4 MR. STAUDAHER: That's what they put in their conclusion.

5 THE COURT: Well, don't -- again, don't put your spin on it. Just -- you know,
6 directly this is what they concluded.

7 BY MR. STAUDAHER:

8 Q Okay. Let's get back for a moment to the issue of the beanbag thing
9 that you did.

10 A Yes.

11 Q Okay. So you took the beanbag and you did the experiments with the
12 beanbag on the torso. We've already discussed that it's not the distribution that
13 would be normally in a child of that age; correct -- the weight distribution --

14 A Well, I don't know whether it is --

15 Q -- because you put it all in one place.

16 A -- or isn't. We just -- we just put it on the torso.

17 Q You're telling me that if we have a child that is 23 pounds of the same
18 height and a child that's 36 pounds at the same height that the entirety of that
19 additional weight would be around the torso and not in the extremities or the head or
20 anything else?

21 A I think most of the increased weight would be in the torso, not in the
22 head, not in the extremities.

23 Q So you did not take into consideration the fact that there would be any
24 additional weight to the head where the accelerometers are; correct?

25 A Uh --

1 Q Correct?

2 A I thought about it, but if -- let's see if I could put this right. If all of the
3 additional weight were in the head, or if the -- if the thing to be tested were just a
4 head, okay, then -- then you can -- you can demonstrate pretty easily by the laws of
5 physics that the acceleration would be independent of the mass.

6 Q Are you saying that you don't believe that there's any -- there would be
7 any difference in your findings at all if you had put some additional weight in the
8 head when measuring that?

9 A If I had put additional weight in the head instead of the torso I would be
10 biasing it towards the answer that there's no effect of the weight. That is the -- if you
11 drop something it has an acceleration on the way down of 9.8 meters per second
12 squared. If it hits -- hits the ground, then there'll be a force exerted by the ground on
13 the object causing the object to accelerate when it hits the ground as a result of the
14 force exerted by the ground.

15 Q If you have a --

16 A That -- that --

17 Q -- if you have the child coming off -- off the couch face down over the
18 top of the couch ending up with his head -- back of his head on the couch -- or on
19 the floor, that means his body had to rotate in the air; correct?

20 A Yes.

21 Q Okay. So his body rotates in the air, sounds like it would be maybe
22 important to know how the weight is distributed along the person's body to have an
23 experiment to have any validity.

24 A I don't agree with that statement. In a perfect world, yes, you'd want to
25 know everything. In the real world you don't know everything.

1 Q So it's not important to try and distribute the weight evenly --

2 A I think it would --

3 Q -- or to -- let's not even say evenly. The way a three year old would
4 normally have his weight distributed?

5 A I think what I did was a reasonable approximation.

6 Q Do you think it matters at all?

7 A I don't think it matters significantly. At all, yes, in the [indiscernible]
8 place.

9 Q Have you ever tested it in different scenarios or just this one time with
10 the beanbag on the abdomen?

11 A Well, it's funny you ask that because over lunch I thought about things.
12 And if you have -- if the scenario is the child goes -- is leaning over the couch like
13 this.

14 THE COURT: Don't hurt yourself.

15 THE WITNESS: Okay. And goes over head first.

16 MR. STAUDAHER: Mm-hmm.

17 THE WITNESS: That seems to me would be a way that would tend to make it
18 more natural for the infant to fall on the back of the head because they over like this
19 -- whoops -- over like this and could -- could rotate with heels going over like this.

20 BY MR. STAUDAHER:

21 Q Do you recall ever doing any experiments like you just described up
22 there?

23 A Well, there --

24 Q Sir, this is a simple question. Do you recall doing any experiments like
25 you just described with your body up there?

1 A Not exactly like that. We -- I did 40 different tests and I'm sure we got --
2 some of them at least were close to that. But what I was --

3 Q Do you recall what you tested? I mean, this is not that long ago; right?

4 A Right.

5 Q And it's 40 different scenarios and you put them in your report.

6 A A lot of them were -- a lot of them were the same. We did standing and
7 sitting and going over prone.

8 Q Clearly what you described here is not standing or sitting; right?

9 A It's going over prone.

10 Q Okay. So going over prone, is it your testimony that you don't recall if
11 you ever tested that way?

12 A We tested it having the dummy's head here and then the body we just
13 dropped it from a level --

14 Q You mean that you bring the child's head out and just drop it onto the
15 floor?

16 A We drop it on the floor, yes.

17 Q Okay. So that's not what we said -- the way you described.

18 A That's right.

19 Q Do you ever recall testing that scenario?

20 A Not exactly that scenario, but let me --

21 Q If I told you that it looks --

22 A -- let me tell you something.

23 Q -- like you did --

24 THE COURT: Well --

25 Q -- in your films that I got --

1 A Okay. Well, that's great.

2 Q -- would that refresh your memory at all?

3 A That's great because one of the factors that can influence a fall is does
4 the child put out a hand to block the fall. And this scenario of the child going over
5 the edge with his arms like this would make it, in my opinion, more likely the child
6 would not put his hands out to break his fall.

7 Q So if the child is sliding over -- over the edge of the couch you don't
8 think the child would bring -- reflexively bring his hands up to break his fall?

9 A Well, I don't know, but it's -- it's quite possible that --

10 Q Okay. That what? That he would?

11 A He would hit without putting his hands out if his hands were, you know,
12 on the sofa.

13 THE COURT: But that's not -- you don't factor that in whether they put their
14 hands out or didn't put their hands out; right?

15 THE WITNESS: No, you can't factor that in because --

16 MR. STAUDAHER: Okay.

17 THE WITNESS: -- because that's the great unknown.

18 BY MR. STAUDAHER:

19 Q So when you --

20 A I mean, there are lots of --

21 Q -- so I'll tell you that when --

22 A -- there are lots and lots of --

23 THE COURT: And I don't think this witness is a physicist who'd be qualified
24 to opine as to whether somebody's going to put their arm out or --

25 MR. STAUDAHER: Sure.

1 THE COURT: I mean, I think that's beyond --

2 THE WITNESS: In real life cases we don't know that.

3 THE COURT: -- beyond what he's here to testify about anyway.

4 BY MR. STAUDAHER:

5 Q So in the weighted situation, let's get back to that.

6 A Yes.

7 Q Let's -- let's move away from it. You don't think there's any significant
8 issue with -- with the way you did it by just strapping a beanbag to the abdomen;
9 right?

10 A That's right.

11 Q Okay. So in the situation now we got doll -- or a crash test dummy
12 that's not 36 pounds, but is what? How much weight did you put on?

13 A We put eight pounds it, so that would make it 44 pounds.

14 Q So 44. So it's - so we're getting -- going the other direction and the kid
15 is actually 23 pounds; right?

16 A That's right.

17 Q So you did your experiments by running the same set of three runs with
18 the weighted dummy versus the unweighted dummy?

19 A That's right. We did the weighted and unweighted dummy and said is
20 there a difference.

21 Q There was a difference though, was there not?

22 A Well, let me tell you. For the weighted dummy in runs 23 through 25,
23 the mean acceleration was 103.7 and the unweighted dummy was 95.7, so the
24 difference there was --

25 Q About seven percent --

1 A Yeah, that sounds --

2 Q -- something like that?

3 A -- about right.

4 Q Okay.

5 A It's under ten percent.

6 Q So that was -- that was at least going the forward direction. Is that --
7 did you only have one set of data points, meaning you did three runs at the same
8 weight. You didn't go to another weight and do the same thing?

9 A We don't -- we only had -- we had the weighted and unweighted
10 dummies. We didn't have a series of weights.

11 Q Okay. So you don't know what your slope of your line would be from
12 that?

13 A Well, actually -- if you'll let me finish here. That we did -- there are --
14 then we compared runs 26 through 28 with 36 through 38. And in that case the --
15 the unweighted dummy had higher acceleration -- higher acceleration; 163.0
16 compared to 157.4 for the weighted dummy. So there's a contradiction between the
17 first -- the first run -- series of runs and the second series of runs, where in one case
18 the unweighted dummy was at lower numbers and the second case it had higher
19 numbers, but in either case they were pretty close.

20 Q So you -- so just so I'm clear on this. You don't think that has anything
21 to do with you having your hands on the dummy at all during the process of taking
22 these readings?

23 A No.

24 Q Even though we got --

25 A At all -- I'm going to say in [indiscernible] ways. We tried as best we

1 could not to speed it up or slow it down.

2 Q So when you --

3 A We just tried to make sure it rotated --

4 Q Sorry.

5 A -- and hit the head on the back.

6 Q So how did you decide to pick eight pounds?

7 A I happened to have a -- an eight pound weight of a -- bag of beans that
8 I got in the supermarket.

9 Q So the difference between the child and the dummy itself was actually
10 greater than that, was it not?

11 A Yes.

12 Q Okay. How much was the difference in weight between the two of
13 those?

14 A Let's see. Thirty-six pounds minus 23 pounds is 13 pound weight.

15 Q Okay. So 13 pounds additional onto a 23 pound child --

16 A Mm-hmm.

17 Q -- is what the dummy weighed; right?

18 A That's right.

19 Q Okay. And then you picked eight pounds arbitrarily because you just
20 happened to have it.

21 A That's right.

22 Q You didn't pick an equal distance or an equal weight like 50 because --
23 because the difference between the child and the dummy was about 50 percent
24 weight; right? It was 23 pounds. The difference being 13 pounds it's over --

25 A That's --

1 50 percent.

2 A That's not -- no, that's not 50 percent. It's not -- it's not over -- the
3 difference is 13 pounds out of 36 pounds, which is more like closer to one-third. It's
4 certainly not over 50 percent.

5 Q Well, 13 pounds compare -- is what percentage of 23?

6 A That's over half, but --

7 Q Uh-huh.

8 A -- but compared to 36 --

9 Q That's what -- what I said.

10 A We're testing the dummy. The dummy's 36.

11 Q The dummy's 36; the child was 23.

12 A Right.

13 Q The difference between the two of those is 13 pounds.

14 A Yes.

15 Q Which means that the weight of the dummy is over 50 percent larger
16 than that of the child; correct?

17 A That's right.

18 Q So when we go forward, when you added eight pounds you didn't go 50
19 percent more than the weight of the actual dummy; right?

20 A That's right.

21 Q So 50 percent of the weight of the actual dummy would've been 18
22 pounds; right?

23 A What I'm doing is incrementing the weight a little bit.

24 Q I'm just saying is that correct?

25 A That's correct.

1 Q So that would've been another ten pounds to get you to the same
2 general distribution if we were looking before and after; correct?

3 A That's not the same general distribution. What we're doing is we're
4 seeing does -- does the weight make a difference.

5 Q Well, you just threw some weight on there and decided arbitrarily to put
6 eight pounds on the child -- on the dummy; right?

7 A Yes.

8 Q Okay. So now you then have to extrapolate backwards to somehow
9 determine if the differences that you saw in weighting the dummy, the amount you
10 did, were similar or the same to increasing the original child's weight with the
11 dummy by 50 percent -- over 50 percent?

12 A All right. Would you -- is there -- what's your question in this?

13 Q Let me -- poor question. I'll ask it again.

14 A Okay.

15 Q You were trying to figure out if there was a -- if the kid, in this case 23
16 pounds, if there would be a difference between what the kid supposedly -- if you had
17 a dummy that was the kid's weight --

18 A Mm-hmm.

19 Q -- if your numbers would've been different; fair? If you had a dummy
20 that was --

21 A That's right.

22 Q -- the kids weight. So in -- you couldn't unweight the dummy --

23 A I Could not unweight the dummy --

24 Q -- so you had -- you threw --

25 A -- but I could add weights to it.

1 Q -- some additional weight on to see if in fact --

2 A Yes.

3 Q -- it made a difference; right?

4 A That's correct.

5 Q And then you extrapolated back; you said, hey, look, we put some
6 additional weight on even though it wasn't 50 percent of the weight of the dummy
7 like the child was. The dummy is 50 percent more than the weight of the child;
8 correct? You just put the eight pounds on it; right?

9 A I put the eight pounds on it.

10 Q Okay. And now you're basing -- you're saying that we can then say --
11 that we could go backward and say high how -- or how much force would've been
12 exerted on the child, weight 23 pounds, same height.

13 A I would have done that if the results of our tests had revealed a
14 significant difference between the --

15 Q You would've done what?

16 A I would've extrapolated back to the weight of the child. I'd say here's
17 how much it takes if you put eight pounds on the crash test dummy. And if that
18 shifts the -- the acceleration measured in g's then -- then you -- then you have that
19 co-efficient and you can then extrapolate back from the original 36 pounds of the
20 dummy to the actual weight of the child. That was my plan to do that, but we did
21 three comparisons from three different positions. And the first two had contradictory
22 results; okay.

23 Q And you're holding onto the child during the entire time; right?

24 A Yes, but --

25 Q Okay.

1 A -- but -- okay. In the -- in looking at runs 23 through 25, compare those
2 with 33 through 35, we found that the unweighted dummy, is the lighter dummy, had
3 slightly smaller numbers; 95.7 g's compared to 103.7 for the weighted dummy. So
4 in that case the unweighted dummy, the light -- that is the dummy without the
5 weights, had smaller numbers. The next test though where the unweighted dummy
6 had bigger numbers; 163 compared to 157.4, so the difference is 5 g's. Then the
7 third one was -- the unweighted dummy had a acceleration of 210.9 g's. The
8 weighted dummy had 194 g's. So what that indicated -- that was closer to being
9 significant. The first two were not significant within standard deviation. I calculated
10 the standard deviation even though I didn't put it in the report. And so those -- the
11 first two don't -- don't -- they don't agree with each other. I mean, they have trends
12 in opposition direction and neither trend is significant statistically. But that's the
13 third --

14 Q So weight -- weight doesn't matter is what you're saying?

15 A -- the third one -- weight doesn't matter is the take home lesson.

16 Q Okay. So --

17 A If you think it does matter than you look at the third -- the third one.

18 There you have the unweighted dummy has 210.9; the weighted dummy is 194.3,
19 so that is -- what is it -- 16 g's.

20 Q So in the --

21 A And so -- and that -- that --

22 Q -- in the instance where we're just looking at --

23 A Can I finish this?

24 Q Go ahead.

25 A That indicates that the lighter dummy, that is the dummy without the

1 bag of beans, actually has higher numbers. So if you extrap --

2 Q Does that make any sense?

3 A So if you extrapolate that up to the weight of the child it would've gotten
4 higher numbers, which is not what you want, but that's -- that's what the numbers
5 would say.

6 Q Actually I want the truth, but --

7 A Okay.

8 Q In regards to the -- does that make any logical sense? Can you think of
9 a physics principle that would be consistent with adding weight and getting a lesser
10 acceleration number than a less weighted item? We're talking about a difference in
11 -- mass is moving in the same way. Let's say you reproduced it exactly. I know you
12 didn't, but let's say you did. So you got the mass moving, accelerating. I mean, still
13 -- gravity's pretty much constant at that house; right?

14 A Mm-hmm.

15 Q So you got the mas moving and you're tell -- I'm trying to figure out a
16 physics principle, if you could give it to me, that would show that if you increase the
17 mass you would expect to have less acceleration because that's what your numbers
18 showed; right?

19 A Well --

20 Q You said it was worse for the unweighted?

21 A It was higher numbers for the unweighted.

22 Q Okay. So what's --

23 A The physics principle --

24 Q -- the physics principle?

25 A -- that I understand is that -- I went into it skeptical that the mass made

1 a difference, but I said, well, let's try it out, because I thought that mass would not
2 make a difference and that's -- that is overall what happened where we had two -- in
3 two cases where we compared the weighted and unweighted they got the same
4 numbers -- the same acceleration from contact with the floor.

5 Q What physics principle would make that work --

6 A Oh, okay.

7 Q -- that's what I'm trying to say.

8 A All right. If you drop something the force on it, due to gravity, is the
9 mass times g . That's the force on it.

10 Q Okay.

11 A And if you say what acceleration results from that, the acceleration is,
12 according to Newton's second law of motion, is the force divided by the mass, so
13 you then get an acceleration of g . And so --

14 Q Okay.

15 A -- this is always surprising to, you know, people without a science
16 background. But if drop a quarter and a dime --

17 Q They fall at the same rate.

18 A They fall --

19 Q I get that.

20 A -- with the same acceleration. So if you have a heavy dummy or a light
21 dummy, both dropped under the same conditions, when they -- when they -- they
22 will fall at the same rate and have the same acceleration when they hit the floor.
23 When they hit they'll experience forces from the floor pushing on them that depends
24 on the velocity on the way down.

25 Q Got it. But my question for you is what would you then -- why would

1 you expect -- or in your results, why does that show that you have more weight
2 causing essentially less acceleration?

3 A Well, if you look at the numbers here --

4 Q Or mass rather.

5 A -- the question you should be asking is was this statistically significant.

6 And it was statistically significant at the one standard deviation level but not at the
7 two standard deviation level.

8 Q Well, for the prone measurements that you did there was at least -- at
9 least -- per the runs you did -- we're talking about three -- and I'm talking about runs
10 23, 24, 25 --

11 A Yes.

12 Q -- and 32, 33, 34, 35, those, where you came up with a mean of
13 weighted of 103.7 and a mean unweighted of 95.7.

14 A Right.

15 Q And there's a difference between the two of those. And that's in the
16 position closest to what the events -- or the situation was in this particular case;
17 correct? Well --

18 A Yes.

19 Q -- I'm telling you that right now.

20 A Yes. Okay.

21 Q So it's about a seven percent difference, is it not?

22 A That's right.

23 Q So when we're talking about numbers in the hundred, to 90s, to 80s
24 range, seven percent is that significant or not?

25 A No.

1 Q No. Okay.

2 A Because I --

3 Q Have you shown -- let me ask this a different way. In any of this
4 literature that you've ever reviewed related to use of crash test dummies in
5 simulated falls, have you ever seen anybody do what you did in this case, weight
6 dummies, extrapolate --

7 A I'm sure they used things of different weights.

8 Q I'm not saying if you're sure they have. I'm saying have you ever seen
9 anybody do what you did. Have you ever seen any literature that showed, hey, I did
10 -- this has been done before and it's been validated in any way?

11 A Well, I'll track that down for you.

12 Q No. I'm asking you right now, sir --

13 A Okay.

14 Q -- are you aware of it in any study you've ever reviewed because that
15 was what you had in your head --

16 A Mm-hmm.

17 Q -- when you did your experiments and you actually filed your report;
18 correct?

19 A I filed the report -- yes, I said does the weight make a difference. And
20 so I did an experiment to see if the weight would make a difference.

21 Q Are you aware of any literature cited anywhere where what you did has
22 been accepted or validated in the scientific community?

23 A What I did was drop --

24 Q Yes or no?

25 A -- a crash test dummy.

1 Q That's a simple question. Is it yes or no?

2 A What I did was drop a crash test dummy.

3 Q Yes or no? Have you -- is there any literature that supports your
4 methodology here and your results from that methodology? And I'm talking about
5 the weighted situation versus unweighted right now.

6 A Well, I don't know.

7 Q So the answer is no. You're not aware of any literature that would
8 support what you did?

9 A What I did in large --

10 Q Yes or no, sir, at this point.

11 A What I did was --

12 Q Sir --

13 A Yes.

14 Q -- please. I've asked you a question that just requires a yes or no.
15 Please give it to me.

16 A Lots of people have done the same kinds of thing I've done. You're
17 asking about a detail.

18 Q I asked you in --

19 A You're asking about a detail.

20 Q -- you -- I'm asking you in the subset of what you're here to talk about,
21 which is the use of a crash test dummy --

22 A Yes.

23 Q -- in simulated falls.

24 A Yes.

25 Q Have you ever seen any literature, read any report where they have

1 done what you just described with weighting and unweighting and doing the
2 measurements in that regard to the crash test dummy? Yes or no?

3 A I don't know.

4 Q So that's a no; is that correct?

5 A Well, you're --

6 Q I don't know.

7 A I think the main thing -- the main idea --

8 Q Sir, that's not -- I'm not asking you to opine at this point --

9 A Okay.

10 Q -- just to answer a simple question.

11 A I would have to go back and look at the literature that I just cited.

12 Q You're talking about these eight papers that you've provided?

13 A For example, yes.

14 Q If I told you that that was not in any of those eight papers would that
15 surprise you? There's not even a discussion about such a thing in any of those
16 papers and I've read them.

17 A Mm-hmm.

18 Q I'm sure Mr. Reed has read them.

19 MR. REED: Judge, we're back to the same thing --

20 THE COURT: Yeah, that's the same --

21 MR. REED: -- about his interpretation of the papers.

22 THE COURT: -- kind of a question.

23 MR. REED: I object.

24 THE COURT: Assuming that the papers don't contain a discussion of that,
25 would that be surprising to you?

1 THE WITNESS: Well, I think most people who write these articles would
2 expect, which is the same thing I expect, namely they expect the mass not to make
3 a difference. And so based on that they may never have bothered to do the -- to do
4 a test by changing the mass of it and see if that makes a difference in the results.

5 THE COURT: So in other words, if I dropped a bowling ball and a pen --

6 THE WITNESS: Yes.

7 THE COURT: -- you wouldn't expect the mass of the bowling ball to make a
8 difference?

9 THE WITNESS: It would not make a difference in the acceleration.

10 THE COURT: Right.

11 THE WITNESS: And if you're underneath it --

12 THE COURT: Which is what you were looking --

13 THE WITNESS: -- it would make a difference in the force --

14 THE COURT: Well -- right.

15 THE WITNESS: -- but not in the acceleration.

16 THE COURT: Okay.

17 THE WITNESS: That's right.

18 BY MR. STAUDAHER:

19 Q Well -- I mean, the acceleration is what you're measuring
20 instantaneously; correct?

21 A There is two accelerations. There's acceleration on the way down and
22 then there's the acceleration due to the force of the floor on the head.

23 Q What is your accelerometer measure?

24 A Measures the acceleration of -- measures the peak acceleration
25 exerted by the floor on the head of the dummy.

1 Q Did you measure the time interval of the peak acceleration?

2 A I didn't measure the time interval. I measure the -- I measured the peak
3 acceleration.

4 Q Okay. In the head injury criterion --

5 A Yes.

6 Q -- that you adopt, you adopt --

7 A Yes.

8 Q -- I think it's 15 milliseconds as the time interval --

9 A Yes.

10 Q -- because that's the recommended time interval --

11 A That's right.

12 Q -- in the actual National Highway Safety Transportation Administration
13 reports; correct?

14 A That's right.

15 Q And the reports that they've done have all been in these high velocity,
16 high energy environments of crash -- crashes in cars, not with the kind of stuff we're
17 talking about here; right?

18 A Right.

19 Q Okay. So in those situations they actually measure two things in the
20 original report; 30 milliseconds and 15 milliseconds; correct? They had two different
21 measurements.

22 A I think they had two different standards. One is for 15 millimeters; one
23 for 30 millimeters -- no, excuse me.

24 Q Milliseconds.

25 A Milliseconds.

1 Q I knew what you meant.

2 A Right.

3 Q So with regard to that, they actually measure it, do they not? They
4 measure the time interval so that they know how much off that peak they're getting
5 so when they do the integration they know how much is under the curve; correct?

6 A I think it's to --

7 Q I'm not asking what you think; I'm asking you what you know.

8 A The 15 milliseconds and 30 milliseconds are a convention because they
9 want to get people who are working with different devices to agree. And so they say
10 -- and in real life you often don't measure the time; instead, you measure the peak
11 acceleration. That's what -- that's what the primary thing going into the -- the head
12 injury criterion.

13 Q But -- actually in these reports that you provided --

14 A Mm-hmm.

15 Q -- or that you cited to, they measure time. They measure that interval
16 time because it's in the head injury criterion formula, correct, t_1 minus t_2 in a couple
17 different locations in that formula. It's important to know. It's not just a convention.
18 You have to know what the two time periods are so you can figure out what the
19 interval is; right?

20 A Well, I think you're misunderstanding it. You can --

21 Q First of all, do they measure it? Do they measure the time interval?

22 A I'm sure some do.

23 Q Well, I'm talk -- let's talk about the National Highway Safety
24 Transportation Administration. Do they measure the time interval of the impact or
25 the peak acceleration?

1 A They measure the peak acceleration. The time interval of the collision
2 is going to vary from one collision to the next.

3 Q I'm not talking about the time interval of the collision. I'm talking about
4 the time interval of the data coming off of the accelerometer where the peak --
5 where you got the peak sort of measurement and then off of the peak there's a --
6 there's a time window that they use to try and get rid of the ends of the bell curve, so
7 to speak; right?

8 A Yes.

9 Q And that is fifth -- they've decided now that that's 15 milliseconds?

10 A That is a convention. Everybody agrees and said let's use --

11 Q Right.

12 A -- 15 milliseconds.

13 Q But when they measure it, they actually measure it. A 15 millisecond
14 duration around that to get what their peak number is and the information related to
15 that time interval so that they then can put it into the head injury criterion formula to
16 get their number; right? I mean, I know they do that because I saw the formula that
17 you put in there --

18 A Yeah.

19 Q -- and I looked it up and I saw it. So tell me if that's not accurate.

20 A Well, if you can measure the time interval that's great.

21 Q Okay. In these papers do they ever measure time interval?

22 A Uh --

23 Q Oh, that's right. You didn't read them.

24 A Well --

25 THE COURT: Mr. Staudaher, don't --

1 MR. STAUDAHER: I'm sorry.

2 BY MR. STAUDAHER:

3 Q In the papers that you have ever seen do they measure time intervals?

4 A Some people do.

5 Q Can you cite any -- any work where they didn't measure time interval
6 and they equated that with a head injury criterion number that the formula to
7 determine that requires a measurement of time.

8 A Well, for example, in the --

9 Q I'm just asking you if you know of any right now.

10 A Well, let's see. Here's Angela Thompson's article --

11 Q Sir --

12 A -- in 2011.

13 Q -- is that going to answer this question?

14 A Well, let's see. They have --

15 Q Have you -- Angela Thompson's, have you read that one?

16 A Well, I - I don't see any measurement of the time involved in this.

17 Q Have you read this -- have you read this paper?

18 A They measure peak acceleration.

19 Q Did you read this paper?

20 A Yeah, I looked at it. Yeah.

21 Q I looked at it. Are they determining head injury criterion in this paper
22 because I didn't see that, so I'm just asking? If so, if you could point me to it so I
23 could see it. And actually if you go -- I'll help you a little bit. If you go to page 19
24 and you go to the second column --

25 A Page 19.

1 Q -- about midway down where it says --

2 THE COURT: Let him find it.

3 Q -- head impact durations. Oh, I'm sorry.

4 THE COURT: Let him find --

5 THE WITNESS: Angela Thompson, Pediatric Short Distance Household
6 Falls. That's page 143 to 150.

7 BY MR. STAUDAHER:

8 Q No, no, no. I thought you were on assessment of injury potential.
9 You're on a different one.

10 A Pediatric Short Distance Household Falls. That's the 2011 paper by
11 Angela Thompson, Gina Bertocci, Wayne Rice and Mary Pierce.

12 Q Hold -- by Thompson, Bertocci and Pierce; right? That one?

13 A Thompson, Bertocci, Rice and Pierce.

14 Q Rice and Pierce. Let's see. So I must not have the same paper here,
15 Doctor. So again -- what is the name of it again?

16 A Pediatric Short Distance Household Falls by Angela K. Thompson.

17 Q That was not provided to us.

18 A Oh, yes it was.

19 MR. REED: Maybe Mr. Staudaher ought to take a peek and see what Dr.
20 Farley's looking at.

21 THE COURT: That's a good idea.

22 THE WITNESS: Sure.

23 MR. STAUDAHER: Okay. I've got --

24 THE COURT: No, you stay there.

25 THE WITNESS: Okay.

1 MR. STAUDAHER: I've got -- oh, you mean up there? I'll come.
2 THE COURT: The bailiff can go get it or Mr. Staudaher can walk up --
3 MR. STAUDAHER: May I come up?
4 THE COURT: -- and look at it over his shoulders or --
5 MR. STAUDAHER: Okay. I may not have that one with me, but go ahead.
6 THE WITNESS: Well, it was supplied to you.
7 MR. STAUDAHER: I'll rely on you.
8 THE WITNESS: Okay. I'm just looking through it --
9 MR. REED: And, Judge, just to make sure we're clear that was provided --
10 MR. STAUDAHER: I'm not saying --
11 MR. REED: -- in the stack of papers.
12 MR. STAUDAHER: -- counsel didn't provide it. I may not have picked it up
13 when I brought it over here, so --
14 THE COURT: Okay. So --
15 BY MR. STAUDAHER:
16 Q So go ahead.
17 A So their -- I'm looking through this to see -- they dropped --
18 Q Oh, I do have it. It's stapled to the back of the one I do have, so I'm
19 sorry about that.
20 A Okay.
21 Q So what page are you on?
22 A Well, I'm just looking at this. They got a number of cases and they look
23 at things as a function of height -- the height of the fall. They have the injury of the
24 subject according to some -- the AIS some -- which is some scale of injury. And
25 they have -- plot the number of falls from beds, sofas, countertops, table and so on.

1 And the discussion -- they appear not to have measured the time of contact.

2 Q But my question related to that was, that would be used in calculating
3 head injury criterion; correct? The time interval.

4 A Yes.

5 Q And that's what you actually did in this case. And you just cited to this
6 paper and I'm asking you where they were --

7 A The Angela --

8 Q -- calculating head injury criterion.

9 A -- the case by Ang -- this is -- we're looking at the same article by --

10 Q Yes. Show me where they calculated the head injury criterion because
11 that would require them to measure the time interval.

12 A You're saying these people measured the time interval. They do not.

13 Q Well, same -- same author. This is the one that I was talking about.

14 Angela Thompson, Bertocci and Pierce Assessment of Injury Potential in Pediatric
15 Bed Fall Experiments Using an Anthropomorphic Test Dummy. Got that paper?

16 A I'm getting that paper. Yes, they may -- let see.

17 Q Okay. So let's --

18 A Looks like they did measure -- did they measure time, let me see.

19 Q Go -- I'll help you. Go to page 19, second column midway down, head
20 impact durations ranged from 2.7 to 19.1 milliseconds with a mean for the falls on
21 linoleum be over concrete and other surfaces significantly shorter. And it's talking
22 about -- and they did statistics on it and so forth.

23 A That's right. They do have --

24 Q Do you see that?

25 A So in that paper they do measure the time. In the earlier paper they did

1 not.

2 Q Okay. And as a matter of fact they even got a graph with all -- they
3 measure time for every one of their scenarios, did they not? Same page, figure 4.

4 Time in milliseconds and then --

5 A Representative.

6 Q -- resulting head acceleration; do you see that?

7 A Yes.

8 Q Okay. So same authors. So when you said these people don't
9 measure, they do measure.

10 A Yeah.

11 Q It depends on what they're looking at; correct?

12 A The earlier paper they -- well, in the earlier paper they didn't have a test
13 dummy.

14 Q And they didn't head injury criterion in that -- in that other paper; right?

15 A Right.

16 Q Okay. So if you measure head injury criterion, that's what I'm trying to
17 get at, you need to -- you're required -- you need to have the time interval, right,
18 which you did not measure in this case.

19 A We didn't measure it, no.

20 Q Okay. So in determining head injury criterion, using the formulas you
21 basically just used the acceleration and then took the acceleration and went to the
22 National Highway Safety Tra -- whatever that acronym is --

23 A Right.

24 Q -- and you took the number and you put it into the chart and you saw if
25 you had something that indicated that the head injury criterion would be for that

1 acceleration a certain amount -- a certain percentage of when you could get head
2 injuries; right?

3 A That's right.

4 Q That's what you did.

5 A That's right.

6 Q Okay.

7 A Because it's --

8 Q But you didn't actually calculate --

9 A No --

10 Q -- the head injury criterion in your experiments because you didn't
11 measure the time interval; right?

12 A A lot of people use --

13 Q Sir --

14 A -- 15 milliseconds.

15 Q -- sir --

16 A I didn't measure, but --

17 Q You didn't, so --

18 A I did not measure it.

19 Q So you did not actually measure the head injury criterion in your
20 experiments --

21 A I didn't measure the --

22 Q -- yet that's what in your report.

23 A I didn't measure the time. But the reason that the 15 milliseconds is a
24 convention is that people say well what -- if the time of contact is 15 milliseconds
25 what would the head injury criterion be.

1 Q Is the time interval different for different surfaces?

2 A That's a good question.

3 Q I can tell you based on what you provided me, but I won't do it. But I
4 will say that it's significant. And I -- and I just pointed to the very paper that we
5 talked about with the authors -- you know, this assessment of injury potential. They
6 actually measure that because they're determining head injury criterion; right?

7 MR. REED: Judge, he's testifying again.

8 THE COURT: Is there a question here?

9 MR. REED: Yes.

10 THE COURT: You said you weren't going to tell him --

11 MR. STAUDAHER: Well --

12 THE COURT: -- and then what do you do. You can't --

13 MR. STAUDAHER: They --

14 THE COURT: -- help yourself; you proceed to tell him.

15 MR. STAUDAHER: I'm sorry, Your Honor.

16 BY MR. STAUDAHER:

17 Q They don't -- do they measure -- well, they -- it's hard to -- hard to ask
18 that question, but when we see a measurement of time interval and a calculation of
19 head injury criterion, that time interval goes into the measurement; right?

20 A It does.

21 Q I mean, into the calculation; fair?

22 A Yes.

23 Q Okay. And that's what they're putting into their papers -- their scientific
24 papers. When they're measuring head injury criterion they're not just using
25 acceleration, they're using acceleration and the time interval because they measure

1 it in those instances, at least in the papers you provided; fair?

2 A It's better to measure it, but -- but there's a reason people assumed a
3 convention of 15 milliseconds. It's because in many cases it's not easy to --

4 Q That very paper -- let's just go over that. Same page, page 19, if you
5 would. And I'm talking about the one that's the Assessment of Injury Potential in
6 Pediatric Bed Fall Experiments. That one.

7 A Yes.

8 Q Okay. When we get to Figure 4, do you see that they're talking about
9 different surfaces, linoleum, carpet -- or playground foam, carpet, wood, concrete.
10 Concrete actually is there. Do you see that?

11 A Yes.

12 Q And do you see that the duration of time in milliseconds varies
13 dramatically depending on the surface?

14 A Yes.

15 Q Concrete certainly being the shortest; right?

16 A Yes.

17 Q Okay. But it's measured. It's even -- you can even look at it on that
18 sort of chart and see what it is, can you not?

19 A It's around 5 millisec -- well, maybe 4 millisec --

20 Q Well, between.

21 A -- 4 milliseconds. Do you notice the vertical coordinate there?

22 Q Uh-huh. I do.

23 A Result in linear head acceleration.

24 Q Right.

25 A It's over 250 g's.

1 Q Okay. That's not what we're talking about here.

2 A Well, but --

3 Q I'm just talking about time interval.

4 A -- but -- I'm saying that it means if you fall on --

5 Q Concrete it's worse --

6 A -- head injury on concrete is --

7 Q -- than calling --

8 A -- is quite bad.

9 Q I have no quibble with you there that if you fall on a foam bed it's
10 probably going to be less injurious than if you fall --

11 A It definitely will be.

12 Q -- on a concrete surface.

13 A Yes.

14 Q But my point is, that if you're going to measure head injury criterion and
15 if you're going to come in here and testify about head injury criterion then you need
16 to have measured the time interval.

17 MR. REED: That's an argument, Your Honor.

18 MR. STAUDAHER: Fair?

19 THE COURT: Well, now it's a question.

20 MR. REED: He's already asked and answered this question.

21 THE COURT: Well, then you object --

22 MR. REED: He said no.

23 THE COURT: Okay. So then -- I think he's -- can you -- okay. Can you
24 explain for -- let me see if I got this straight. Concrete is five, correct, according to
25 that article?

1 THE WITNESS: More like -- yeah, 4 or 5 milliseconds.

2 THE COURT: Okay. And is it true that sort of softer the surface the greater
3 the milliseconds?

4 THE WITNESS: Yes.

5 THE COURT: Okay. So if you were going to fall in a pillow it would be much
6 higher than five. Is that a fair assumption?

7 THE WITNESS: The time interval would be much --

8 THE COURT: That's what I mean.

9 THE WITNESS: Would be more, yes.

10 THE COURT: Okay. So in this particular case you're measuring a tile floor;
11 correct?

12 THE WITNESS: Yes.

13 THE COURT: It's a ceramic -- I haven't seen the tile, but --

14 THE WITNESS: Yes.

15 THE COURT: -- the ceramic type tile?

16 THE WITNESS: Yes.

17 THE COURT: Okay. Now in the testing and the studies that you've looked at
18 is there a measurement of a similar type of hard -- you know, surface in terms of the
19 milliseconds?

20 THE WITNESS: Um --

21 THE COURT: In terms of the time interval.

22 THE WITNESS: Okay. The -- here's what happens. One -- one law that's --
23 we discuss in a physics class is that it's easy to find the force time the time --
24 multiplied by the time interval. It's the force times the time. And so that can be
25 accomplished by having a long force -- a large force acting for a brief period of time

1 or a small force acting for a longer period of time. And you are in much greater
2 danger of injury if you have a large force acting for a brief period of time. I explain to
3 my students this is why seatbelts work. If you don't have your seatbelt you'll be --
4 you'll travel forward and smash into the steering wheel or the windshield. And you
5 got a large force acting for a brief period of time that's very dangerous. The seatbelt
6 turns it into a small force acting for a longer period of time. So the shorter the time
7 interval the more dangerous it is. Now the -- the head injury criterion involves the
8 acceleration raised to the five halves power times the -- the duration of the time
9 interval.

10 MR. STAUDAHER: Exactly.

11 THE WITNESS: And so --

12 MR. STAUDAHER: Time interval.

13 THE WITNESS: -- a short time interval shortens the T, but also a short time
14 interval increases the acceleration. And since the acceleration is raised to a five
15 halves power, that is the overwhelmingly dominant factor.

16 THE COURT: Now the standard of 15 --

17 THE WITNESS: Milliseconds, right.

18 THE COURT: Right. Is there a surface that that would comport with? Do you
19 see what I'm saying?

20 THE WITNESS: Yeah. I --

21 THE COURT: Like is that wood. Is that -- does that question make any
22 sense?

23 THE WITNESS: Right.

24 THE COURT: So we know that concrete's five.

25 THE WITNESS: Fifteen milliseconds was taken from -- was adopted by the

1 government as a standard because a lot of people were coming in with, you know,
2 here's my time interval, here's my acceleration, here's this time interval. So they
3 said let's standardize and let's assume that it's 15 milliseconds. And so you can get
4 the head injury criterion assuming a time interval of 15 milliseconds. And it's not a
5 number that I made up. It's the number that the government adopted in order to
6 mess a number of studies that, you know, did not agree for a variety of reasons.

7 THE COURT: Let me ask you this. Would it have been possible for you to
8 have measured the time interval --

9 THE WITNESS: Um --

10 THE COURT: -- for this surface, I guess?

11 THE WITNESS: Not with the apparatus I took to the store -- to the house.

12 THE COURT: But I'm assuming with a different type --

13 THE WITNESS: With enough [indiscernible] I could have done that, yes.

14 THE COURT: Okay. And why did you not do that? Why did you elect not to
15 do that?

16 THE WITNESS: Um --

17 THE COURT: Not to consider to do that, I guess.

18 THE WITNESS: Well -- you know, I don't know. I thought it was a -- I was not
19 certain what the result was going to be and -- so it seemed like a reasonable thing
20 because when you get the accelerations that alone is something that tells you
21 something, the peak acceleration.

22 THE COURT: Okay.

23 MR. STAUDAHER: Could I follow up, Your Honor, on that?

24 THE WITNESS: In class -- you can classify the --

25 ///

1 BY MR. STAUDAHER:

2 Q Let's talk about concrete.

3 A Yeah.

4 Q So we just saw a paper where they were doing some drops with a crash
5 test dummy.

6 A Mm-hmm.

7 Q Lots more sensors than yours; correct?

8 A Yes.

9 Q Okay. And they're finding that at least the impact millisecond duration
10 on concrete is about 5 milliseconds I think you said; right?

11 A I think so. Yes, for a concrete.

12 Q Okay. And you are measuring certain accelerations based on your --
13 just your straight measurement --

14 A Yes.

15 Q -- that you get; correct?

16 A Yes.

17 Q Now if that straight measurement is over a five second duration that
18 number -- at least the acceleration that you're getting is more substantial over a
19 shorter period of time in measuring the head injury criterion, is it not?

20 A Well, I think your question's confusing a little bit.

21 Q Okay. I'll try to --

22 A Could you --

23 Q -- I'll try to --

24 A -- could you restate it?

25 Q -- I'll try to re-ask it.

1 THE COURT: Did you mean 5 milliseconds?

2 MR. STAUDAHER: Five milliseconds. Did I say --

3 THE COURT: You said five seconds.

4 MR. STAUDAHER: -- five seconds. Oh. Yeah, it's 5 milliseconds.

5 BY MR. STAUDAHER:

6 Q So the shorter the time of impact the more significant in the head injury
7 criterion; correct?

8 A Yes and no. The head injury criterion includes the acceleration raised
9 to the five halves power and the time -- the duration -- time -- the duration of the
10 contact force.

11 Q Okay. Duration of contact force, that's the time interval; correct?

12 A Right. But the acceleration is raised to the five halves power. So if you
13 have -- you know, the topic that's discussed in my freshman physics class on page
14 -- in Chapter 9, I think it is, is about collisions. And what you can say is the -- an
15 object dropped from one meter or two meters hits the ground with a velocity of
16 around 10 to 13 miles per hour. Something in that range about 10 to about 13 miles
17 per hour. That's the initial velocity. The final velocity is zero because it hits and to a
18 good approximation it doesn't balance.

19 THE COURT: It stops.

20 THE WITNESS: And so that tells you the product of the force and the time
21 interval. It's -- so that's easy to find, the product of the force times the time interval.
22 What you don't know often is the time interval. And so if you shorten the time
23 interval that increases the force and therefore the acceleration and that gets raised
24 to the five halves power. So the -- so that's -- for that part of the head injury criterion
25 a shorter time interval is associated with a larger acceleration.

1 THE COURT: But you knew what --

2 THE WITNESS: And that gets --

3 THE COURT: -- the acceleration was; correct? In your tests here.

4 THE WITNESS: Yes, because I measured that.

5 THE COURT: Yeah.

6 THE WITNESS: Yes.

7 THE COURT: Now wouldn't it be -- I mean, I'm just -- you know, I'm not
8 applying any laws of physics.

9 THE WITNESS: Mm-hmm.

10 THE COURT: I'm just -- general common experience. Wouldn't a tile floor be
11 similar to concrete?

12 THE WITNESS: Yes.

13 THE COURT: Okay. So if -- if the time interval was shorter -- more -- closer
14 to what you would have with concrete --

15 THE WITNESS: Mm-hmm.

16 THE COURT: -- and you already know the acceleration level and you had
17 used a lower value closer -- let's just say closer to five because --

18 THE WITNESS: Yes.

19 THE COURT: --it's similar to concrete you'd get a lower number.

20 THE WITNESS: Yes.

21 THE COURT: Is that fair?

22 THE WITNESS: Right.

23 THE COURT: Okay.

24 THE WITNESS: So the time interval enters twice. First --

25 MR. STAUDAHER: Right.

1 THE WITNESS: First, in calculating the acceleration under the force, and
2 second, to get the head injury criterion you need to know the duration of the time.

3 MR. STAUDAHER: I mean, the reason that -- reason --

4 THE WITNESS: So it shows up twice. And once increase the -- the time
5 where it -- the place where it shows up in the formula is the -- in the first case it
6 affects the acceleration. And a short time interval is associated with a larger
7 acceleration. The second time is multiplying that by the time. So there a short time
8 interval decreases things.

9 THE COURT: Right. I think that's where Mr. Staudaher's going. Is this
10 where you're going?

11 THE WITNESS: Yes.

12 THE COURT: Because we know the acceleration, so we know what that is.

13 THE WITNESS: Right.

14 THE COURT: But if you have a lower time interval then the number you
15 come out with at the end is going to be less.

16 THE WITNESS: That would be true.

17 THE COURT: Okay. So -- and we haven't figured out if the number was
18 actually closer to five --

19 THE WITNESS: Mm-hmm.

20 THE COURT: -- what your number would have been as opposed -- because
21 the first number's going to be the same either way.

22 THE WITNESS: Because we measured it.

23 THE COURT: Right. That number's going to be the same when you take it to
24 the -- what did you say, the five halves power?

25 THE WITNESS: Raise it to the five halves power. Yes, that's --

1 THE COURT: Okay. So that number we know --

2 THE WITNESS: -- a huge factor.

3 THE COURT: -- according to your test. But the number we maybe don't
4 know for sure is what your time interval was.

5 THE WITNESS: Yes.

6 THE COURT: So if you accept that a tile floor would be closer to concrete
7 maybe that number should be less, which means your final number would be lower.

8 THE WITNESS: For the head injury criterion, yes.

9 THE COURT: Okay.

10 BY MR. STAUDAHER:

11 Q And the head injury criterion was again not based on these crash
12 dummies hitting any surface. They were inside cars and high velocity events such
13 as car crashes; correct? Is that right?

14 A Well -- I'm sorry. Say that again.

15 Q The crash test dummies were designed for high velocity events such as
16 car crashes; correct?

17 A They are used in car crashes for sure.

18 Q That's where they were designed to be used; correct? There's not
19 been any -- none of those dummies that we're talking about, the Hybrid III dummy,
20 the Hybrid II dummy, the CRABI dummy, none of those dummies were designed for
21 this type of experimentation; correct?

22 A I don't agree with that because --

23 Q You think they were. Can you cite to me some source that will support
24 that?

25 A I'm sure that the market was -- you know, the original motivation was

1 motor vehicle accidents because that's hugely important the -- but they certainly can
2 be used --

3 Q I didn't say couldn't be used. I said --

4 A Can be used.

5 Q -- that that's how they were designed. They were designed for those
6 types of situations; correct?

7 A I don't know that for a fact. You seem to be confident that you're right,
8 but --

9 Q Well, sir, you are the expert that utilized that item in the
10 experimentation; correct?

11 THE COURT: I think he's already said he's not sure, but that might be a
12 reasonable assumption based on market forces. So I don't know that we need to go
13 on with this.

14 THE WITNESS: And I would not be surprised if -- that there's a lot of interest
15 these days in head injuries due to collisions of football players because it's a big
16 issue.

17 BY MR. STAUDAHER:

18 Q Okay. So let me just summarize, if I can, your findings as I understand
19 them today. And please correct me if I'm wrong. First of all, you didn't measure
20 time interval and you agree that that is at least used twice in the actual calculation of
21 the head injury criterion that the National Highway Safety Transportation
22 Administration uses in their charts that you utilized in this case; true?

23 A I didn't measure -- I did not measure the time.

24 Q Okay. I'll break it down a little bit. I'm trying to make it as simple as
25 possible. You said -- you acknowledge you didn't measure the time; correct?

1 A That's right.

2 Q Okay. Do you acknowledge that the time interval is integral. It's part of
3 the formula by which the head injury criterion is determined?

4 A Yes.

5 Q Okay. And that is -- that formula is used by the Highway Safety
6 Transportation Administration to determine the charts showing what the head injury
7 criterion is for a particular acceleration?

8 A It's used by the them, but not only by them.

9 Q Okay. I just asked about them. I didn't ask about everybody in the
10 world.

11 A Right.

12 Q Okay. You -- so the -- at least when you're going to the chart for the
13 number, the number that you're seeing in the chart and equating in your paper will
14 not match because you didn't determine the number -- the interval number; correct?
15 The time interval; right?

16 A I didn't measure the number, but --

17 Q Okay.

18 A -- that's right.

19 Q So that's one part. Secondly, the testing you did in this case
20 predominantly out of those 40 runs or maybe three -- I'm talking about weighted,
21 unweighted, but three sets -- three to four different scenar -- attempts where it closer
22 matched the scenario that you described with the child hanging over -- as you did up
23 at the witness table hanging over the couch face down; correct?

24 A What exactly -- is there a question there?

25 Q I'll try to do it -- when you demonstrated the hanging over the couch --

1 A Yes.

2 Q -- you actually prior to today didn't remember even testing that scenario;

3 correct?

4 A I tested a number of scenarios.

5 Q Did you remember testing that scenario prior to sitting down today?

6 A Not specifically, no.

7 Q Okay. When I told you that in your testing that I at least observed you

8 doing that in a few instances you didn't disagree with that; right?

9 A I'm sorry. Say that again.

10 Q In the instances -- I'll ask a different question. In the instances where

11 that took place you acknowledge that both your hands and the other party -- another

12 person's hands were on the doll during the entirety of the experiment; correct?

13 A Most of the experiment, yes. Maybe all the experiment.

14 Q Okay.

15 A We were guiding it. We were not -- we're not forcing it.

16 Q You used your hands to start the motion and you used your hands --

17 well, let me start there -- break it down. You used your hands -- both of you used

18 your hands to start the rotational motion over the couch; correct?

19 A We started it from -- pretty much from rest.

20 Q You used your hands to do that; correct?

21 A Yes.

22 Q You kept your hands on the doll -- or on the dummy during the

23 experiment; correct?

24 A Yes.

25 Q And then you guided the dummy into a position where it would strike

1 the back of its head; correct?

2 A That's correct because that's where the injury occurred, at the back of
3 the head.

4 Q So your hands were on the dummy during this process and another
5 person's hands were on the dummy during that process?

6 A Yes.

7 Q Okay. And you acknowledge that none of the literature that you
8 provided to the extent that you reviewed it and anything else that you're aware of
9 has ever had a similar sort of experiment done where somebody's hands are on the
10 crash test dummy during the actual recording of any data; fair?

11 A I think that's a defensible statement.

12 Q Sir, this is not --

13 THE COURT: I think he agreed with you.

14 MR. STAUDAHER: What did -- okay.

15 THE COURT: You said that's defensible --

16 THE WITNESS: Yes.

17 THE COURT: -- meaning that may --

18 THE WITNESS: Right.

19 THE COURT: -- be a valid statement?

20 THE WITNESS: Yeah.

21 THE COURT: Okay. He agreed with you.

22 MR. STAUDAHER: Okay.

23 BY MR. STAUDAHER:

24 Q In this particular situation the only information that you reviewed was
25 some of the preliminary hearing transcript; correct?

1 A That's correct.

2 Q And you don't recall what in that you reviewed. You skimmed it, I think
3 you said.

4 A That's right.

5 Q It's my understanding that you tested these various scenarios to have
6 worse case scenarios?

7 A Definitely.

8 Q Okay. So the standing on the back of the couch, the standing on the
9 arm, the sitting on the back of the couch, all those things, would it surprise you to
10 learn that the Defendant has never once said that any of those scenarios ever
11 occurred in this particular case?

12 A I don't know what the Defendant --

13 MR. REED: Your Honor, I'm going to object as to what the Defendant said. I
14 think there's several different versions and --

15 THE COURT: Right. And --

16 MR. REED: -- I don't think that --

17 THE COURT: -- I don't know that that's --

18 MR. REED: -- that mischaracterizes the testimony.

19 THE COURT: -- really relevant to what he did. That's more argument, Mr.
20 Staudaher.

21 MR. STAUDAHER: Okay.

22 BY MR. STAUDAHER:

23 Q So if -- well -- if the Defendant had not said any of those other things,
24 those other methods of testing, then you would have tested -- the vast majority of
25 your testing would have been in -- under scenarios that didn't match up with what

1 the Defendant said happened?

2 MR. REED: I'm going to object, Your Honor.

3 THE COURT: I think it's --

4 MR. REED: It calls for an assumption.

5 THE COURT: -- I think it's more of argument anyway. I mean, I think your
6 point is made. It's kind of treading over the same material.

7 MR. STAUDAHER: I'll pass the witness, Your Honor.

8 THE COURT: All right. Do we have redirect?

9 MR. REED: Yeah, Your Honor. First, may I approach clerk?

10 THE COURT: Sure.

11 MR. REED: Your Honor, I have --

12 THE COURT: It's been so long. Wasn't it Ms. Lemcke? No, it was you?

13 MR. REED: It was actually -- I did the direct on this.

14 THE COURT: Oh, okay.

15 MR. REED: It was so short --

16 THE COURT: All right. I'm sorry.

17 MR. REED: -- you forgot.

18 THE COURT: I know it was -- now it's all coming back to me.

19 MR. REED: What I have marked, Your Honor, is defense proposed Exhibit B,
20 which is the actual falls that have been provided --

21 THE COURT: Okay.

22 MR. REED: -- to defense counsel. Do we have any objection to introducing
23 this?

24 MR. STAUDAHER: No. No.

25 MR. REED: I have defense exhibit C. Is the actual report --

1 THE COURT: Okay.

2 MR. REED: -- that Dr. Farley authored. Any objection to this?

3 MR. STAUDAHER: No.

4 MR. REED: I don't know if the Court --

5 THE COURT: Yeah, I did.

6 MR. STAUDAHER: Not for the purposes of this, no.

7 MR. REED: And then finally, just to make sure we're clear, because I think
8 that there was an issue about exactly what Dr. Farley had available, so we marked,
9 even though it's pretty voluminous, the preliminary hearing transcript, which are
10 Exhibits D, E and F.

11 THE COURT: Okay.

12 MR. REED: There's three volumes.

13 THE COURT: All right. That's already part of the record, but what you need
14 to do is get him to verify that that's what he had.

15 MR. REED: That'll be -- that's where I'll start, Your Honor.

16 THE COURT: Okay.

17 MR. STAUDAHER: Okay.

18 THE COURT: All right. And then just a housekeeping before we do that.
19 Three-thirty is when --

20 MR. STAUDAHER: Three-thirty; right.

21 THE COURT: -- we're doing the thing in Hawaii, so if we don't finish with this
22 witness because they're in Hawaii and that's all been set up we're going to have to
23 interrupt your testimony if we're not -- maybe we'll be lucky and you'll be done.

24 THE WITNESS: Okay.

25 THE COURT: If not, then we're going to have to interrupt your testimony to

1 do the people in Hawaii.

2 MR. REED: I'm going to try to see if I can do it as quickly as possible, Your
3 Honor. So to start with then let's -- if I approach the witness?

4 THE COURT: That's fine.

5 **REDIRECT EXAMINATION**

6 BY MR. REED:

7 Q This is proposed D, E and F, Dr. Farley. Please look at that and see if
8 those are the documents that you reviewed that you received from our office in
9 preparation for your testimony.

10 A Yeah, I believe I did receive these. Yes.

11 Q Okay. Check all three to make sure that that's the right stuff.

12 A I believe so.

13 Q Okay.

14 MR. REED: We move for the admission of D, E and F.

15 MR. STAUDAHER: No objection, Your Honor.

16 THE COURT: All right. Those are all admitted.

17 **[DEFENSE EXHIBITS D, E, F ADMITTED]**

18 MR. REED: Your Honor, this is going to be hopefully a time saver. I did have
19 it set up to actually view some of the falls. I don't know if the Court wants to go
20 through all that. It's going to take a little bit of time. But the -- there was a little bit of
21 an issue what he --

22 THE COURT: Okay. Here's what I would suggest because time is limited
23 and if we can say the doctor another trip here I'm sure he'd appreciate it. So let's --
24 if there are parts of the tape that you want the witness to comment about then let's
25 just focus on those parts of the tape and then at another time we can altogether or

1 the Court can watch it -- the tape in its entirety. So why don't we just get to what
2 you need him to comment on. All right?

3 MR. REED: That'd be great, Your Honor.

4 THE COURT: Okay.

5 MR. REED: So then what I'll do is I'm going to pull up one of the falls --

6 THE COURT: Okay.

7 MR. REED: -- that hopefully -- as an example because I think it would be
8 beneficial, Your Honor, to see --

9 THE COURT: Okay. And then also then --

10 MR. REED: -- you know, what we've been talking about.

11 THE COURT: -- just so it's clear on the record if you just state, you know,
12 what part of the tape or what it is we're looking at.

13 MR. REED: Yes, Your Honor.

14 MR. STAUDAHER: Could you let us know what run number that is so I can --

15 MR. REED: Yes.

16 MR. STAUDAHER: Okay. Great.

17 MR. REED: Let me get it all up and running.

18 MR. STAUDAHER: Sure. Sure. No problem.

19 MR. REED: Okay. Just so -- with the Court's edification, what we have
20 created -- as the Court knows there was a videotape that Dr. Farley testified to that
21 was taken by our investigator Roger Hosford. We have taken the actual -- each
22 drop --

23 THE COURT: Okay.

24 MR. REED: -- and we provided -- that is in defense B and that is the same
25 copy that's been provided to the State. The numbers don't match up to the actual

1 runs because there's a couple of introductory comments by Dr. Farley where he
2 talks about what he's doing and calibrates the crash test dummy, so the numbers
3 are not exact. But if I can make it work I'm going to find number 28 out of the list of
4 the different video segments. And if this actually works this will be the first time I've
5 ever done this without anybody helping me, so --

6 MR. STAUDAHER: Do they have it switched over? Is that on?

7 MR. REED: I do.

8 MS. LEMCKE: I'm seeing it here.

9 MR. REED: I think we have it switched over.

10 THE COURT: I'm seeing it on my monitor.

11 THE MARSHAL: Is your monitor not on?

12 MR. STAUDAHER: Our monitor isn't on here.

13 THE COURT: Is your monitor on?

14 MR. REED: I'll hold on then, Your Honor, as second.

15 MR. STAUDAHER: Oh, I don't know.

16 MR. REED: Okay. And for Dr. Farley's benefit I assume -- your monitor's on,
17 doctor?

18 THE COURT: Your monitor's on?

19 THE WITNESS: It's working, yes.

20 MR. REED: Okay. Counsel and Dr. Farley, what I'm looking at -- what the
21 Court's looking at is actually video clips that are -- that go through -- from 1 to 44.
22 And I'm going to pick out number 28 as a for example and see if we can get it run. I
23 don't believe -- oh, I have the audio off too, but -- hold on one second, Your Honor.
24 I'm going to repeat that as you can see it's pretty quick.

25 THE COURT: No, that's fine.

1 MR. REED: Did everybody get a chance to see that? I'm going to run it one
2 more time because it's very short.

3 BY MR. REED:

4 Q and then, Dr. Farley, after I run it this next time can you describe for the
5 Court what you were doing there?

6 A Well, what we were doing was we had the crash test dummy leaning
7 over the back of the couch and then grabbed it by the heels and got it to tip over and
8 hit the back of its head on the ground -- rather on the tile floor.

9 Q Then -- and in the actual video example you see yourself?

10 A Yes.

11 Q Okay.

12 A I'm on the right and --

13 Q And is that -- Edgar Cervantes [phonetic] is the young man --

14 A Yes.

15 Q -- that's on the other side?

16 A Yes.

17 Q All right. And then after the dummy falls you walk over and do what?

18 A Okay. At that point I go over and look at the instrument -- the Sensotec
19 instrument that measures the acceleration measured in g's.

20 Q Now that was -- there was some question about whether or not you did
21 head first falls testing over the couch.

22 A Right. I had --

23 Q Does that refresh your recollection whether you did head first --

24 A That's right.

25 Q -- testing falls.

1 A Yes. Yes.

2 Q Okay.

3 THE COURT: Can we see -- it was so fast can we see it again?

4 MR. REED: Sure. Of course.

5 THE WITNESS: This is run number 28.

6 MR. REED: This is -- well, it's not -- this doesn't match exactly your --

7 THE COURT: Your numbers.

8 MR. REED: -- numbers.

9 THE WITNESS: It's representative.

10 THE COURT: Okay.

11 THE WITNESS: It's a typical run.

12 BY MR. REED:

13 Q So when you walked over to the -- you're looking at the measurements
14 of the accelerometer when you walked over?

15 A Yes.

16 Q Okay.

17 A And I measured what the accelerometer reads before the test and
18 measure it after the test and then I take the difference because these
19 accelerometers have offsets.

20 Q Does it now refresh your recollection --

21 A Yes.

22 Q -- of whether or not there was head first falls tested.

23 A That was heads first, yep.

24 MR. REED: And just for the record, Your Honor, I actually reviewed this
25 unless counsel wants to dispute of the actual Exhibit B, 28 through 33 and 41

1 through 44 are head first falls -- videos of head first falls. I don't want to play them
2 all, but I hope that counsel will take that representation as being correct.

3 THE WITNESS: A lot of them look the same. I mean --

4 MR. STAUDAHER: Yeah. I have --

5 THE WITNESS: -- they're slightly different, but --

6 MR. STAUDAHER: -- 20, 21, 22 and then weighted 23, 24, 25 and then
7 unweighted 33 -- or 32 through 35.

8 MR. REED: That sounds right.

9 BY MR. REED:

10 Q Now what Mr. Staudaher's reading from the report, which is Exhibit C,
11 and -- but B, the numbers, those are the correct numbers for the record. So by my
12 calculations that's ten head first fall --

13 A Something like that, yes.

14 Q -- tests? Okay. All right.

15 MR. REED: Would the Court like me to play that again or are we -- can we --
16 should I continue on at something else?

17 THE COURT: Could you give me a moment?

18 MR. REED: Of course.

19 THE COURT: Okay. All right. Janie had a message from the -- from Wayne.
20 So it may take him 20 minutes to get this set up --

21 MR. STAUDAHER: Oh.

22 THE COURT: -- for the Hawaii thing --

23 MR. STAUDAHER: Okay.

24 THE COURT: -- so let's just go about another ten minutes and then we're
25 going to have to let him in here to get everything set up.

1 MR. REED: Okay. All right.

2 BY MR. REED:

3 Q We'll go back to kind of some of the concerns that Mr. Staudaher said.
4 I'm going to start off with, Dr. Farley, there was some question about sample size.
5 Do you feel that there was inadequate sample size?

6 A Okay. For a given condition I ran it three times -- three or four times. Is
7 that enough? Well, it's barely enough. But I've had course -- I had a course in
8 statistics when I was an undergraduate and one thing I remember is if you want the
9 -- if you want the signal to get the thing to be more reliable, it gets more reliable as
10 you increase the sample size, but it goes very slowly, and it goes as the square root
11 of the number of runs. So if you assume everything is just limited by the statistics,
12 then if you want to go from the amount of precision we have now and you want to
13 increase that by a factor of ten you have to do a hundred more runs. So instead of
14 doing -- you can't just do ten more runs, you have to do a hundred more runs. So
15 instead of three runs we do 300 runs. So three is actually reasonable.

16 And a matter of fact, if I can elaborate on that, the people who really,
17 really worry about this are the people who study -- who do precision measurement
18 experiments and measure the fundamental constants -- you know, the ratio of the
19 mass of the -- electron to the mass of the proton. Those guys are worried about
20 uncertainties that are very small. Now what typically will happen is people will get a
21 precision measurement and then they'll take lots and lots and lots of runs -- a
22 hundred of runs or thousands of runs then they'll calculate an uncertainty for the
23 average that is unrealistically small because they -- they're assuming there's no
24 systematic errors. And so I have read a paper by Barry Taylor, who is Mr.
25 Fundamental Constants. He was the guy in charge of Fundamental Constants at

1 the National Bureau of Standards, which is now the National Institute of Standards
2 and Technology.

3 I was a member of the working group in precision measurement and
4 fundamental constants of the American Physical Society, so I remember the advice
5 from Barry Taylor, which he's put in writing, who says unless you -- unless you're
6 really lucky you're fooling yourself if you do more runs than about three. So do three
7 runs and average it and that's about right because if you try to do more runs you're
8 convincing yourself that the average is more reliable, but you're -- you're being
9 unrealistic. So three is -- three's actually a defensible reason -- defensible number
10 of runs.

11 Q And in some, when you talk about the number of runs, it's more than
12 three?

13 A Right, but three under -- under one condition.

14 Q Under one condition. So --

15 A And then three with another --

16 THE COURT: So you think three is kind of the minimum --

17 THE WITNESS: It's about the minimum.

18 THE COURT: -- acceptable number, but it's your position that to increase it
19 by ten would give you such a small increase it's not even worth doing it.

20 THE WITNESS: That's right.

21 THE COURT: That you'd have to increase it by a hundred or 300 or what
22 have you to make --

23 THE WITNESS: That's right.

24 THE COURT: -- any kind of statistical difference.

25 THE WITNESS: That's right. So the uncertainty -- I mean, the amount of

1 agreement between one run and the next is, you know, two, three, four, five, ten
2 percent, something like that, which is -- I think that's reasonably good under the
3 circumstances.

4 BY MR. REED:

5 Q When you say you think it's reasonably good is that acceptable within
6 the scientific community --

7 A I think so. Yes.

8 Q -- as far as the number of runs?

9 A Yes.

10 Q Okay. All right. There was some questions about statistical analysis.

11 And I'm not talking about standard deviations --

12 A Right.

13 Q -- and stuff I don't know much about at all. There was some questions
14 from Mr. Staudaher about statistical analysis. Those particular items I don't believe
15 you got a chance to explain to the Court. Why did you not do that type of statistical
16 analysis?

17 A Oh, because I -- what I was preparing was not a scientific paper for the,
18 you know, journal literature, but just a expert witness report for a court case. And so
19 I -- you know, I didn't -- I had two references. I didn't have a whole bunch of
20 references. There's a whole bunch of stuff I could've put in if I were trying to publish
21 it in the Journal of, you know --

22 Q Do you feel that by not doing that type of statistical analysis it affected
23 the reliability of the testing that you did?

24 A I don't think so.

25 Q You don't think so?

1 A No.

2 Q Okay. All right. Now the issue about the literature -- rather what you
3 looked at, what you didn't look at. What was your understanding of the literature
4 that's been moved into Exhibit A. What was your understanding why you were
5 supposed to look at that?

6 A Oh, because the -- the DA was taking the position that there's no -- you
7 know, no literature out there of using crash test dummies and accelerometers to
8 study pediatric falls.

9 Q And is there?

10 A Well, I just found, you know, six articles and -- in which they do that and
11 two more articles by the same authors that -- you know, there are two groups of
12 people who had measured something with pediatric falls with accelerometers and
13 crash test dummies, so I found another article by the same group. And so people
14 who -- in their earlier publication they didn't have a crash test dummy and the later
15 one they did which shows they were -- you know, they thought it was a step forward.

16 Q And is there a difference between in the report that you're doing and the
17 scholarly articles?

18 A Yes. I mean, I -- you know, we don't -- you know, in the scholarly --
19 some of the scholarly articles they look at children who come into hospitals and they
20 analyze them according to their -- you know, the -- their injury scale, but they have
21 no real data about the -- you know, what they -- what the -- what the child was
22 subjected to. And so in this case we're just saying what could have happened.

23 Q And in just -- and in general let's talk for a moment about the testing
24 itself. There was some question about using some kind of pneumatic device or
25 something -- a machine basically to drop the dummy.

1 A You could do that. I think it would make it a little bit more reliable --

2 Q Okay.

3 A -- but it wouldn't make a huge difference.

4 THE COURT: Can I interrupt you, Mr. Reed?

5 MR. REED: Sure.

6 THE COURT: Okay. Let's take a really quick break. We'll see if Wayne can
7 work and we can still try to get something done. If not, then we'll just have to be at
8 ease while he gets everything set up.

9 [Recess taken at 3:08 p.m.]

10 [Proceedings resumed at 3:41 p.m.]

11 THE COURT: Can you hear me?

12 UNIDENTIFIED SPEAKER: Yes.

13 THE COURT: Okay. Good.

14 All right then. I guess we're ready to start.

15 MR. STAUDAHER: If he could move over to where -- in front of the video
16 though.

17 THE COURT: So we need you to move in front of the camera so we can see
18 you.

19 UNIDENTIFIED SPEAKER: Okay. And who do you need to be on first?

20 THE COURT: Mr. Staudaher, who's on --

21 MR. STAUDAHER: The doctor, Dr. Ninomiya

22 UNIDENTIFIED SPEAKER: And do you need everybody else to leave the
23 room or they can stay in the room?

24 THE COURT: I think they should leave the room.

25 MR. STAUDAHER: That's fine. Leave the room if you can -- if they can.

1 UNIDENTIFIED SPEAKER: Okay. Hold on.

2 THE COURT: I mean, unless they have to stand outside or something.

3 [Colloquy regarding video conference equipment]

4 THE COURT: All right.

5 MR. STAUDAHER: May I begin --

6 THE COURT: Sure.

7 MR. STAUDAHER: -- or he needs to be sworn, I guess.

8 THE COURT: Sir, I need you to stand up and raise your right hand.

9 THE WITNESS: Okay.

10 THE COURT: All right. Our court clerk is now going to administer the oath to
11 you.

12 THE WITNESS: Okay.

13 **JASON NINOMIYA**

14 [having been called as a witness and being first duly sworn, testified via video
15 conference as follows:]

16 THE COURT CLERK: Please be seated. And would you please state and
17 spell your name.

18 THE WITNESS: It's Jason Ninomiya, J-A-S N-I-N-O-M-I-Y-A.

19 MR. STAUDAHER: May I begin, Your Honor?

20 THE COURT: You may proceed.

21 **DIRECT EXAMINATION**

22 **BY MR. STAUDAHER:**

23 Q Doctor, can you hear me?

24 A Yeah.

25 Q Okay. Doctor, can you tell us a little bit about your background and

1 training?

2 A Well, I'm a --

3 Q Your education.

4 A -- general pediatrician and I have a private practice where I see general
5 pediatric patients.

6 Q Okay. Can you tell us where you went to school and medical school
7 included?

8 A Well, I went to medical school here in Hawaii at the John A. Burns
9 School of Medicine and then I did my residency training in Illinois at Loyola
10 University Medical Center.

11 Q What was your residency in?

12 A General pediatrics.

13 Q Okay. And is that what you practice in currently today?

14 A Can you repeat that?

15 Q Is that what you practice in currently today?

16 A Yes.

17 Q And specifically I'm going to try to talk as loudly as I can so you can
18 hear me; okay?

19 A Okay.

20 Q And if you don't understand what I say if you just tell me to repeat it I
21 will.

22 A Okay.

23 Q I'm going to take you back in time a little bit to 2010, maybe even early
24 than that, the latter part of 2009. Are you -- were you working as pediatric in Hawaii
25 at that time?

1 A Yes.

2 Q And did you ever have a patient by the name of Khayden Quisano?

3 A Yes.

4 Q What -- at what stage in his life did you come to be his pediatric doctor;
5 how old was he?

6 A The first visit was October 6, 2009. I believe he was 18 days old at that
7 visit.

8 Q Okay. So during the time that you took care of him, I mean, did he
9 come in for regular baby visits. I mean, the standard -- the standard sort of
10 well-baby visits that take place normally?

11 A Yes.

12 Q And did you ever see him for sicknesses or illnesses during that time?

13 A Yes.

14 Q Now up to -- and I do want -- although the focus of this is related to a
15 prior involvement with the same family, but were you involved at all with a prior
16 death of a child by the name of Jayden [phonetic]

17 A Yes.

18 Q -- newborn. And can you tell us about that as much as you can,
19 please?

20 A Let's see. So Jayden was the older sibling for Khayden. And he came
21 to our -- my office from birth. I saw him four times. And the last time was for his one
22 month well-child check when everything was going well. And he passed away a few
23 weeks later with pneumonia.

24 Q Now at the time that he passed away had you -- had the parents
25 brought him in for any sicknesses or illnesses, anything like that?

1 A No.

2 Q And after he died did you ask her -- did you try to find out if Jayden had
3 any illnesses or sicknesses prior to his death?

4 A Yeah. So he -- I got a call from the emergency room and they said that
5 Jayden passed away, but there were no signs or symptoms of any illness. He was
6 sleeping on his stomach by report. And I guess mom found him and he was blue
7 and they rushed him to the ER where they pronounced him dead. But there was no
8 signs of any kind of illness or any symptoms that were reported.

9 Q Okay. Now was an autopsy performed on him?

10 A Yes.

11 Q So initially prior to the autopsy, based on the history that you had, what
12 did you believe the manner -- you know, cause of death was in this child?

13 A Well -- I mean, based on the history there wasn't much to go on, so the
14 ER doctor thought that it was SIDS because he was on his stomach and there was
15 no history of any illnesses or symptoms and it was out blue, so we initially started
16 with probably SIDS.

17 Q Okay. So subsequent to that, you said an autopsy was performed. Did
18 you get the results of that autopsy at some point?

19 A I didn't get written results, but I got a call on the phone that said that it
20 was pneumonia.

21 Q Okay. So did that surprise you?

22 A Yeah, it was surprising.

23 Q And why was that?

24 A Well -- I mean, there was no signs or symptoms of any kind of illness.

25 Q And did you have a discussion with the parents, Jonathan and

1 Christina, about this?

2 A I spoke with the mother.

3 Q Okay. And when you talked to the mother did you ask about the
4 absence of symptoms or confirm that in fact Jayden didn't have any symptoms prior
5 to his death?

6 A Yes. I -- she said he was perfectly fine. There was no signs or
7 anything that they were worried about and it was out of the blue.

8 Q Would that be unusual for a child or anyone to have pneumonia and not
9 exhibit any signs or symptoms?

10 A Well, I can't really comment on that because I didn't get the reports, so I
11 don't know if it was a mild pneumonia, if it was really bad. You know, I think a
12 infectious disease doctor would probably give you a better answer to that question.

13 Q But that was your understanding as to the actual cause of death;
14 correct?

15 A The pneumonia?

16 Q Yes.

17 A Yeah, that's what the autopsy said.

18 Q Okay. So let's move forward a little bit. So based on that information,
19 did that cause you to talk to or treat the parents as far as their care of Khayden any
20 differently?

21 A Yes.

22 Q Can you describe that for us?

23 A So they initially came in on that October 6, 2009 visit. He was 18 years
24 old. He did --

25 Q Hold it. Eighteen years?

1 A -- see a pediatrician prior to seeing me right after the nursery, but this
2 was the first visit with me. And, you know, of course knowing that Jayden passed
3 away from pneumonia without any signs, you know, that first visit we all talked about
4 being vigilant and really watching for anything that came up with Khayden and to
5 jump on it because -- you know, because of the brother's passing.

6 Q Now, doctor, I think you said 18 years old. Did you mean 18 months
7 old?

8 A Oh, sorry. Yes, 18 days old. Sorry.

9 Q Eighteen days old?

10 THE COURT: Oh, 18 days.

11 MR. STAUDAHER: Eighteen days old?

12 THE WITNESS: Yes.

13 MR. STAUDAHER: Okay. So at least we have it correct.

14 BY MR. STAUDAHER:

15 Q So this is very early on in Khayden's life; correct?

16 A Yes.

17 Q And you said you had a discussion with both parents about the fact of
18 being diligent and anything that came up with this child at all to come in?

19 A Yes.

20 Q Now did those -- did that discussion happen in the future as well when
21 you saw Khayden come back into the office that they should bring him in if there
22 was any issues at all?

23 A Yes.

24 Q Okay. So let's go forward in time. As you're seeing him are there any
25 problems with Khayden during the time that you were taking care of him?

1 A So the next visit was October 24, 2009. And that was the last time I
2 saw dad, so after that it was just mom bringing Khayden in. But he had some reflux
3 issues, spitting up, and mom said he did have a little congestion and a slight cough.

4 Q At that time when both of them were there did you reiterate that they
5 should bring him in if there was any worsening of symptoms or anything like that?

6 A Well, that took place the first visit. And then after that it was just mom
7 at the --

8 Q Right.

9 A -- subsequent visits.

10 Q So on that first visit was Khayden having any trouble at that point?

11 A Not at a first visit, no.

12 Q Okay. But you -- but is it clear that Jon -- that you at least made this
13 information clear to Jonathan that if anything comes up with Khayden that he should
14 bring in the child?

15 A Yeah, both parents were there that first visit.

16 Q Okay. So let's go forward to -- well, did you at some point become
17 concerned that maybe Khayden -- there had been some delay in treatment at some
18 point with Khayden?

19 A Well, that October 24 visit mom came in and she said that he had some
20 reflux, some congestion and cough. And I asked her why she didn't come in sooner
21 since, you know, we're trying to be on top of every little symptom that came up. And
22 she said it was because he looked -- he -- I can look off the notes, but it says the
23 symptoms were so mild and she thought Khayden looked fine.

24 Q Okay. So what do you do as a result of knowing that he's coming in
25 with these symptoms now and there has -- was there some sort of length of time

1 that these symptoms had been going on?

2 A She said -- looking at the notes it says that he was a little spitting up
3 and had some nasal congestion for two weeks.

4 Q Okay.

5 MS. LEMCKE: Can I just find out what -- because I know the witness is
6 looking at something I think, so can I just get a reference point?

7 THE COURT: What are you looking at, doctor?

8 BY MR. STAUDAHER:

9 Q What are you looking at, doctor?

10 A This is the office note for October 24, 2009.

11 Q So your own office note?

12 A Yeah. I think you guys should have the same copy/

13 MS. LEMCKE: Would you -- are you on page 1, doctor, just so I'm clear.

14 THE WITNESS: Am I on what?

15 MS. LEMCKE: Page 1 of that day's notes? The notes for 10-24-2009.

16 THE WITNESS: I'm on 10-24--2009.

17 MS. LEMCKE: Right. Page 1?

18 THE WITNESS: I can't hear you. I'm sorry.

19 MS. LEMCKE: That's all right.

20 THE COURT: Are you looking at page 1 of those October 24th notes?

21 THE WITNESS: Yes.

22 THE COURT: Okay.

23 BY MR. STAUDAHER:

24 Q Okay. So go on, if you would.

25 A So, yeah, it says mild nasal congestion for two weeks, but mom wasn't

1 able to suck anything out. And then just a really mild intermittent cough about the
2 same time.

3 Q Okay. So what do you do as a result of finding out that this has been
4 going on for a while and they didn't bring him in?

5 A Well, I -- well, I did ask mom, you know, why she didn't come in and she
6 said it was because, you know, the symptoms were so mild. So I did order a chest
7 X-ray, blood culture and a CBC just to make sure.

8 Q Okay. So let me go back a little bit. Had you previously on any visit
9 ordered a chest X-ray or anything on Khayden?

10 A No, this was the first one.

11 Q And what date is this?

12 A October 24, 2009.

13 Q Okay. So a chest X-ray was subsequently done; is that right? Did you
14 hear me, sir?

15 A Yes.

16 Q Okay. Was a chest X-ray subsequently done?

17 A Yes.

18 Q Okay. And what did that -- did that show any problem?

19 A No, this was a normal chest X-ray.

20 Q Okay. So let's go forward in time. Any issues after that?

21 A So then I saw him -- I told mom to bring him back two days later for a
22 recheck and she brought him back and she said that things were better and she
23 does think that the cough and congestion might have been related to the spitting up.

24 Q Okay. So let's go forward in time to the next time or next issue with
25 Khayden.

1 A Okay. So then I saw him back on November 20, 2009 and that was for
2 a two month well-child check.

3 Q Any issues with him at that time?

4 A So she said that Khayden's completely back to his baseline. He does
5 spit up a little bit and it does come out of his nose, but no signs of illness.

6 Q Okay. So let's go forward.

7 A So the next and last time I saw him was January 4, 2010.

8 Q Okay.

9 A And mom brought him in for fever for four days, an off and on cough
10 and a running nose.

11 Q Now at that point, since you had the previous discussions, did you also
12 address why there had been a delay of four days or so from actual presentation with
13 those kinds of symptoms?

14 A I did. I asked mom, you know, with the fever for four days why she
15 didn't come in sooner.

16 Q And?

17 A I don't remember what she said. I didn't write that part down.

18 Q Okay. So what did you do as a result of that then?

19 A So I ordered a chest X-ray. And then mom said that he was coughing
20 really hard and he had a little blood spot on his sclera so I did a pertussis swab.
21 You know, with whooping cough sometimes you can cough so hard you -- you can
22 rupture a subconjunctival -- have a subconjunctival hemorrhage and so I sent them
23 off for X-ray and I swabbed his nose.

24 Q Okay. Now you had mentioned that there was a slight hemorrhage and
25 did you say the sclera?

1 A Yeah.

2 Q And what part --

3 A The white part of the eye.

4 Q -- of the body is the sclera? Where's the sclera located?

5 A Either the white -- the white portion of your eye.

6 Q Okay. So there's a hemorrhage there that you saw and the explanation

7 was coughing; is that right?

8 A Yes.

9 Q Okay. So --

10 A Well, he was coughing and he had that little sclera, so sometimes with

11 whooping cough you can cough so hard that you can burst a little blood vessel.

12 Q The tests that you did for whooping cough did that come back positive,

13 negative?

14 A That come back negative.

15 Q Okay. So then you sent him off to get a chest X-ray. Is this because

16 you're concerned again?

17 A Yeah, and he was breathing a little shallow so I did a chest X-ray. You

18 know, with the fever, cough, he was breathing a little shallow. So they had to drive

19 to the Children's Hospital because they would be the best place to do a -- an X-ray

20 on someone this young.

21 Q Okay. So do they do the chest X-ray and do you get the results back?

22 A They do do the chest X-ray. And soon after they take the pictures the

23 radiologist called and said that she noted left rib fractures on the fourth, fifth, sixth

24 and seventh ribs and possible one on the right sixth rib.

25 Q Okay. Based on that what happens -- what do you do next?

1 A So I called the parent's cell phone and mom answered. They were still
2 driving back from the hospital so I told her to turn around and take him back for an
3 admissions so we could figure out what was going on.

4 Q Okay. Now when he goes -- does he get admitted to the best of your
5 knowledge?

6 A Yes, he gets admitted under the pediatric hospital staff.

7 Q Okay. And do you get indications -- reports later on about what the
8 findings were about any skeletal surveys or anything like that that were done of him?

9 A So, yeah, they take over the care and then CPS got involved and --
10 yeah, I did get reports back.

11 Q What did those reports say?

12 A I -- most of them were verbal reports, but I believe there was a femur
13 fracture. I looked through my notes, but they didn't actually send me any hard
14 copies. I just got verbal updates over the phone.

15 Q Okay. So -- but those are things that you received and then made note
16 in your records; correct?

17 A I didn't make a note of it since I didn't see him, but, you know, they just
18 updated me as things progressed.

19 Q Okay. So you said a femur fracture; is that right?

20 A Yes.

21 Q And were there indications of other rib fractures on both -- ribs fractures
22 on both sides?

23 A Yes.

24 Q And four through six on both sides?

25 A No. Left was fourth, fifth, sixth, seventh and the right was the sixth.

1 Q Okay. That's the report that you had initially; is that right?

2 A Yeah, that's all I had.

3 Q Okay. And did you ever see the child again after that?

4 A No.

5 Q You said CPS and that's Child Protective Services I assume?

6 A Yes.

7 Q They got involved and then you never saw Khayden again?

8 A No.

9 Q Okay.

10 MR. STAUDAHER: I have nothing further for this witness, Your Honor.

11 THE COURT: Cross?

12 MS. LEMCKE: Thank you.

13 **CROSS-EXAMINATION**

14 BY MS. LEMCKE:

15 Q Doctor, to your knowledge Khayden was born on September 18th of
16 2009?

17 A Yes.

18 Q Can you hear me okay by way?

19 A Yeah.

20 Q Okay. And he was delivered by a Dr. Guillermo?

21 A No, he -- that was another pediatrician who he initially saw after the
22 hospital.

23 Q Okay. So Dr. Guillermo is a pediatrician?

24 A Yes.

25 Q And he went to the hospital when Khayden was four days old to check

1 on him?

2 A I'm not sure.

3 Q Okay. Can you look in your records and tell me if you see in there -- I
4 would show it to you if I was with you, but unfortunately --

5 A I think that record that you have is probably in her office after --

6 Q Okay. Well, let me ask you this. Would it surprise you if I told you that
7 the record suggests that Dr. Guillermo went to see Khayden when he was four days
8 old?

9 A No.

10 Q That would be standard protocol for a newborn?

11 A Well, it depends. So when I have newborns in the hospital the hospital
12 staff takes care of them. So if -- if Khayden was under her care in the hospital she
13 should've saw him every day.

14 Q Okay. But you -- as you sit here right now you don't know based on the
15 records you have whether or not the doctor saw him every day?

16 A No.

17 Q But it wouldn't surprise you if she did?

18 A If he was under her care and she was the admitting doctor then she
19 should see him every day until he's discharged, yeah.

20 Q Okay. And then once he's discharged then to the extent that you are
21 his treating pediatrician then the parents or caretaker would bring him to you for
22 further well checks?

23 A No, I think they followed up with her because she would be the
24 pediatrician that he would follow up with. So initially they chose her as their
25 pediatrician.

1 Q But they ended up -- you ended up treating him; right?

2 A Yes, on the 18th day.

3 Q Okay. Right. So on -- after -- about 18 days after he was born
4 thereabouts that's when you first saw Khayden?

5 A Yes.

6 Q And you didn't have any reason to believe up to that point or did you
7 that there were any issues with his health at that point?

8 A No, I had no concerns.

9 Q And so on that first visit -- that is -- let's talk about October 6th of 2009.
10 He was brought in by both parents?

11 A Yes.

12 Q And in fact when you -- a child is presented to your office you note
13 which parent brings the child in; correct?

14 A Yes.

15 Q And so on that date it indicates that both parents came in?

16 A Yes.

17 Q And there was discussion about the young -- the other sibling dying
18 from pneumonia?

19 A Yes.

20 Q And you were -- you instructed the parents, look, relative to that
21 pneumonia death, if Khayden were to become symptomatic -- you know, sick in
22 such a form you definitely want to bring him right in right away for us to take a look
23 at him?

24 A Yes.

25 Q And at that time Khayden appeared to be in good health?

1 A Yes.

2 Q The parents indicated that he was however spitting up a little bit?

3 A Yeah, he does spit up.

4 Q And you -- I think -- and correct me if I'm wrong. I'm kind of just
5 interpreting from your notes, but it looks to me like you diagnosed at least tentatively
6 that he had some kind of reflux problem that was causing that?

7 A Yeah, that's probably what I thought it was with some spit up.

8 Q Okay. And because of that you instructed the parents to decrease the
9 feedings to two to three ounces at most per feeding?

10 A Yeah.

11 Q But then they could increase it to prevent -- they could increase it then if
12 they want -- in frequency then?

13 A Yeah. You know -- I mean, half of kids have some reflux. So, you
14 know, with a 18 day old it looks like they were giving him maybe two to five ounces.
15 So five ounces is kind of on the larger volume side so it's not too uncommon to have
16 some spit up after that.

17 Q Okay. So five ounces on the lower -- on the higher end in terms of
18 volume, so you instructed them to decrease that?

19 A Yeah, and go more frequently. You know, smaller feeds more
20 frequently usually doesn't distend the stomach as much.

21 Q And might help with the reflux problem?

22 A Yes.

23 Q And when you noted in your notes to decrease the volume but increase
24 the frequency you indicated to prevent gerd, G-E-R-D. And those are -- that must
25 be an acronym for something?

1 A Yeah, gastroesophageal reflux disorder.

2 Q Okay.

3 A So like spit up.

4 Q I'm sorry?

5 A Oh, like spit up.

6 Q Okay. So you -- you were hoping that then, if I understand correctly,
7 the decrease in volume and the increase in frequency would help eliminate that
8 reflux and the spitting up?

9 A Yes.

10 Q Okay. So then going to October 24th is the next time that he comes in;
11 is that right?

12 A Yes.

13 Q And he comes in for a one month checkup?

14 A Yes.

15 Q And his mother is the one who brings him in?

16 A Yes.

17 Q And again she reports that there is the spitting up going on with the
18 feedings?

19 A Yes.

20 Q Some nasal congestion?

21 A Yes.

22 Q And that's when you referred for that first chest X-ray just to make sure
23 everything was okay?

24 A Yes.

25 Q And after receiving all the testing -- the testing results that you ordered

1 Khayden appeared to be fine?

2 A Yes.

3 Q And you instructed Christina, his mom, to make sure that she monitors,
4 you know, any further symptoms relative to the congestion and the spitting up?

5 A Yes.

6 Q And then she had to come back two days later, is that right, to get the
7 tests results from the test that you ordered?

8 A No. We already went over -- well, actually I probably called her with the
9 results, but just a couple days later to make sure things didn't get worse. You know,
10 if he had a cold and it got worse I just wanted to make sure I checked him out to
11 make sure he was okay.

12 Q Okay. So on the -- your notes from the 26th, at the top it says brought in
13 by mom. Would that be an accurate representation as to what happened? In other
14 words, did do you think she came in or do you think you called her?

15 A Oh, on the 26th. No, she definitely came in on October 26.

16 Q Okay. So she came in on the 24th and then came back again on the
17 26th?

18 A Yes, just like I instructed.

19 Q Okay. And so she was good about following your instructions in that
20 regard?

21 A Yes.

22 Q And when she came back in on the 26th she indicated that the
23 congestion didn't seem to be any worse?

24 A Yeah.

25 Q And she didn't seem to think that he was sick?

1 A Yeah, she -- she said that he just coughs once in a while and he's still a
2 little congested. Let's see. He had no rapid breathing and mom did not think he
3 was sick.

4 Q Okay. And -- but she did mention again that he was still doing the
5 spitting up thing?

6 A Yeah.

7 Q And so on that day, with respect to what you suggested to her where
8 that was concerned, you indicated may decrease foods to two ounces on demand?

9 A Yes.

10 Q Okay. And burp him frequently?

11 A Yes.

12 Q And then it says keep inclined post feed for about 30 minutes; is that
13 right?

14 A Yes.

15 Q Okay. And again you told Christina to monitor closely any symptoms
16 that Khayden might have where that's concerned and to call immediately if she has
17 any questions?

18 A Yes.

19 Q Okay. Then moving on to November 20th. Again we're talking about
20 another well check visit. Is that right for this one?

21 A Yes, this is the two month.

22 Q Okay. And so -- and I assume that you had instructed Christina to bring
23 him back again for another well check at the two month --

24 A Yes.

25 Q -- milestone. And so she did that?

1 A Yes.

2 Q And again she was the one who brought Khayden in on that occasion?

3 A Yes.

4 Q Again you discussed the spitting up issue and she indicated that
5 sometimes it comes out of his nose?

6 A Yes.

7 Q But other than that he appeared to be normal and in good health?

8 A Yes.

9 Q She indicating that in compliance with what you suggested to her that
10 she was doing small feeds and feeding him on demand?

11 A Yes.

12 Q And again that was what you had suggested to try and help with that --
13 with the reflux issue?

14 A Yeah.

15 Q Okay.

16 MS. LEMCKE: Court's indulgence.

17 BY MS. LEMCKE:

18 Q But other than that you indicated at least of that 11-20 date completely
19 normal physical exam; is that right?

20 A Yes.

21 Q That he was growing well with normal development for his age?

22 A Yes.

23 Q No signs of infection or other distress?

24 A Yes.

25 Q Okay. And then -- then turning to the January 4th visit. Again he was

1 brought in by his mother?

2 A Yes.

3 Q And she reported that Khayden had had a fever on and off for the last
4 few days?

5 A Yes.

6 Q With the intermittent cough?

7 A Yes.

8 Q There was no other respiratory distress though that she indicated;
9 correct?

10 A No, just a little runny nose.

11 Q Okay. And she indicated that the fever had actually stopped a couple
12 days before the visit?

13 A That's right.

14 Q But she went ahead and brought him in anyway?

15 A Yes.

16 Q And you were concerned about a upper respiratory infection; is that
17 right?

18 A Yeah.

19 Q And so that's why you sent Khayden for that chest X-ray?

20 A Yes.

21 MS. LEMCKE: Court's indulgence.

22 BY MS. LEMCKE:

23 Q Okay. I want to ask you some questions about the treatment that was
24 rendered at the hospital. You indicated on direct examination -- and forgive me,
25 doctor. Without you physically present here it's hard because I'd show you all the

1 records that I have from the hospital and ask you to see if they're familiar to you but
2 I can't do that, so just stop me as I go along. And if there's something that I ask you
3 about which you're not familiar just let me know and we'll see if we can figure out a
4 way to get around it; okay?

5 A Okay.

6 Q You indicated, if I understood you correctly on direct examination, that
7 you -- after you got the report of the chest X-ray you called Christina immediately
8 and told her to turn around and go back to the hospital?

9 A Yes.

10 Q And that's because you wanted to have further treatment done and
11 diagnostics run on Khayden relative to any other problems he might have with those
12 rib fractures?

13 A Yes.

14 Q And so -- and to your knowledge she did that?

15 A Yes.

16 Q Went right back to the hospital without any delay?

17 A Yes.

18 Q And after there was -- well, you're aware that there was some treatment
19 rendered there at the hospital?

20 A See, so from that point on they took over care so I'm no longer the
21 attending and so I did not go through all of their records to see what they did. And
22 since Khayden never followed up with me I didn't go through each step of what
23 needed to be done since he was out of my care.

24 Q Okay. So if I were to ask you questions about -- okay. Well, let me ask
25 you this. Do you know Dr. James Lin?

1 A Yes.

2 Q And he was the treating doctor that oversaw Khayden's issues when he
3 went to the hospital?

4 A That's the one note I have from his admission. But they do rotate also
5 because they're a hospital team, so there are a number of different physicians who
6 rotate shifts.

7 Q Okay. So have you -- as part of the -- the information that you received
8 from the hospital after Khayden was evaluated and treated have you read any of the
9 reporting that he authored?

10 A I had scanned in the report from Dr. Lin on -- looks like it's from January
11 4, 2010.

12 Q Okay. Is that the only report that you have?

13 A That's the only report that I have here. I think that -- I think that's the
14 only one I have in my computer also.

15 Q Okay. Do you have the patient care summary at all?

16 A I don't have -- I don't have that.

17 Q Okay. Let me ask --

18 A That's the summary at the end that they send out; right?

19 Q Well, I wouldn't -- I don't know that because I don't know the hospital's
20 typical procedures in this kind of thing. All I know is they were provided pursuant to
21 the prosecution's request for information on his treatment there at the hospital. So I
22 can't actually tell you when --

23 A Oh, I see.

24 Q -- that is -- when that reporting is generated. But let me ask you some
25 questions. And I'll tell what, if you don't know the answer you just -- you just don't

1 know; okay?

2 A Okay.

3 Q In the reporting that you have available from the hospital, you're aware
4 that at some point both parents were present at the hospital?

5 A I -- I'm not -- I think so.

6 Q Okay.

7 A They -- I guess they were interviewed, but I wasn't actually there so I'm
8 not sure.

9 Q Okay. That neither one of them reported any trauma to Khayden?

10 A Yeah. From what I've seen nobody had any history of trauma that they
11 were aware of.

12 Q Okay. That mom, that is Christina, appeared -- and I'm quoting here,
13 appropriately tearful and concerned over the patient's condition, end quote?

14 A Yeah.

15 Q That the father, Mr. Quisano, seemed, quote, cooperative with the
16 interview, end quote?

17 A Yeah.

18 Q Okay. Both parents were caretakers for Khayden?

19 A See, I'm not sure. I would -- I'm not sure.

20 Q Okay. That's fine. You're -- you're aware that mom was the primary
21 caretaker for most of his life up to that point because father was working the majority
22 of the time?

23 A No, I'm not sure.

24 Q Okay. That's fine if you don't know. And you don't know, based on the
25 information that you were given by the hospital or otherwise, who else had access to

1 Khayden in those first three months of his life?

2 A On this report -- I mean, I'm just reading what Dr. Lin wrote, but -- you
3 know, I think -- let me see. Yeah, I guess, you know, they named a babysitter.
4 Yeah, but see all of this -- this wasn't my history so I can't really comment.

5 Q Right. Okay. So then -- but you're aware that they did -- that the
6 hospital did consider other possible causes of the rib fractures other than non-
7 accidental trauma?

8 A Yes.

9 Q Such as osteogenesis imperfecta?

10 A Can you repeat that?

11 Q Such as osteogenesis imperfecta?

12 A I believe that was one of them.

13 Q Right. And rickets?

14 A I see that was listed on here also, yes.

15 Q Right. They were also concerned about maybe an endocrinologic
16 issue?

17 A Yes.

18 Q A hypo or hyperthyroid issue?

19 A Oh, I know he put endocrine. Yeah, but see -- so from this point on I
20 wasn't really involved in the workup, so I haven't gotten all the results or the
21 conclusion to most of this stuff.

22 Q Okay. You just know that -- but when I -- but you have a copy of the
23 reporting that was generated pursuant to his treatment; right?

24 A I'm looking at the one that you're looking at, so I have that one from
25 January 4th.

1 Q Okay. And they noted in there when he was brought to the hospital in
2 any event that there might be some other causes for the fractures that were
3 observed in the chest X-ray?

4 A That's what Dr. Lin wrote on, yes.

5 Q Okay.

6 MS. LEMCKE: Court's indul --

7 BY MS. LEMCKE:

8 Q And that also -- just one more that he noted was renal disease affecting
9 a calcium or a phosphorus metabolism issue?

10 A Yeah, I think he had that listed down.

11 Q Okay. So they also did some follow up testing, some imagining with
12 Khayden?

13 A I believe so, yes.

14 Q They did a -- forgive my pronunciation, but an ophthalmo --
15 ophthalmoscopic evaluation. In other words, they were looking for retinal
16 hemorrhages?

17 A Yes.

18 Q And in fact they didn't find any retinal hemorrhaging?

19 A I'm not sure.

20 Q Okay. They did an MRI of the brain?

21 A I'm not sure too?

22 THE COURT: Is this -- I mean, I think we're getting a little beyond what the
23 witness --

24 MS. LEMCKE: I'm almost done.

25 THE COURT: Okay.

1 MS. LEMCKE: I just wanted to show that every -- that all the images --
2 because the problem is this is the only doctor that they're going to testify. I could be
3 the CPS people might be able to testify to this, but --

4 THE COURT: Okay.

5 MS. LEMCKE: -- if he can adopt and give us the fact that they looked for
6 other symptoms and there was nothing else there.

7 MR. STAUDAHER: Oh, I thought we agreed to stip to the medical records
8 from Hawaii. Is that -- if that's the case we don't have an issue with any of them.

9 MS. LEMCKE: Oh, okay. Well -- okay. I'm just about done. Literally this was
10 my last question. So if I can -- if I can just finish with -- that was literally -- that was
11 -- that was it.

12 THE COURT: Okay.

13 MS. LEMCKE: That was my last question.

14 THE COURT: Mr. Staudaher, do you have any redirect?

15 MR. STAUDAHER: No, not of this witness, Your Honor.

16 THE COURT: All right. So that's all the questions for this witness?

17 MR. STAUDAHER: Correct.

18 THE COURT: Doctor, thank you for your testimony. There are no additional
19 questions for you so you are excused at this time.

20 THE WITNESS: Okay.

21 THE COURT: And then we need to get the other -- the next witness from
22 CPS.

23 THE WITNESS: Okay. Thank you.

24 THE COURT: All right. Thank you. Don't hang up.

25 MR. STAUDAHER: Don't hang up.

1 THE WITNESS: Okay.

2 THE COURT: Don't hang up. Just put the receiver down.

3 THE WITNESS: Okay.

4 THE COURT: All right.

5 MR. STAUDAHER: Sorry, Your Honor. I thought I saw him going down.

6 THE COURT: That's what I -- no, I said it too. And hopefully somebody there
7 gets the next witness.

8 [Pause in proceedings]

9 THE COURT: Hello.

10 THE WITNESS: Hello. This is Iwalani.

11 THE COURT: All right. Ma'am, can you hear me?

12 THE WITNESS: I can hear you faintly.

13 THE COURT: Okay. Oh, faintly. Can you hear me better now?

14 THE WITNESS: I can hear you a little better now.

15 THE COURT: Okay. If you can't hear any of us just let us know and we'll
16 hold a microphone.

17 THE WITNESS: Okay.

18 THE COURT: Okay. I need you to remain standing and our court clerk here
19 is going to administer the oath to you so raise your right hand.

20 THE WITNESS: Okay. Sure.

21 **IWANLANI LUM**

22 [having been called as a witness and being first duly sworn, testified via video
23 conference as follows:]

24 THE COURT CLERK: Thank you. You can be seated. Go ahead and sit
25 down.

1 THE WITNESS: Okay.

2 THE COURT: And would you state and spell your name.

3 THE WITNESS: My name is lwalani Lum, I-W-A-L-A-N-I; last name Lum,
4 L-U-M.

5 THE COURT: All right. Mr. Staudaher, you may proceed.

6 MR. STAUDAHER: Well, it's Ms. --

7 THE COURT: Okay.

8 MR. STAUDAHER: -- Jobe.

9 **DIRECT EXAMINATION**

10 BY MS. JOBE:

11 Q What is your occupation, Ms. Lum?

12 A I am a CPS social worker in the State of Hawaii Child Welfare Services.

13 Q How long have you been so employed?

14 A I've been a social worker for ten years.

15 Q And were you working as a social worker from 2010 to 2012?

16 A Yeah.

17 Q Okay. Generally speaking, what are your duties and responsibilities as
18 a social worker?

19 A To assess safety concerns, make referrals, write court reports, have
20 [indiscernible] contact with service providers and conduct home visits and visit with
21 the child and the family.

22 Q In 2010 did the Quisano family come to your attention?

23 A Yes.

24 Q When in 2010 did that happen?

25 A In July of 2010 it was referred to a specialty court, zero to three Family

1 Court.

2 Q What does zero to three Family Court mean?

3 A It's a -- it's a specialty court for children between newborn and three
4 years old. Services for them like Enhanced Healthy Start; we have parenting
5 classes targeted specifically for children of newborn to three years old, and we have
6 court hearings every month.

7 Q As a social worker working with the Quisano family did you have to
8 prepare reports for the Court in this case?

9 A Yes.

10 Q Okay. As far as the family makeup goes, the first child you had contact
11 with was Khayden Quisano; correct?

12 A Yes.

13 Q And his birthday is September 18, 2009?

14 A Yes.

15 Q And in September of 2010 a sibling was born to Khayden; correct?

16 A Yes.

17 Q By the name of Khaysen?

18 A Yes, Quisano.

19 Q And the parents of both those children were Christina Rodrigues and
20 Jonathan Quisano?

21 A Yes.

22 Q And that's the family we're discussing; correct?

23 A Yes.

24 Q Okay. As far as -- when you received the case in July 2010 what was
25 their -- how did they come to the attention of Child Welfare Services?

1 A My understand was the -- Khayden was presented with various injuries.
2 And physical abuse and neglect issues were -- these allegations were confirmed.

3 Q At the time you received the case had those allegations been found to
4 be true in a court?

5 A Yes.

6 Q And that's a Family Court; correct?

7 A Yes.

8 Q Okay. At the time that the family came to you was Khayden residing
9 with his parents?

10 A No, he was in foster care.

11 Q At what point was Khayden removed from the custody of his parents?

12 A I believe when the initial investigator had done the interview and that
13 was in January of 2010.

14 Q Was that Chad Kojima?

15 A Yes.

16 Q All right. And when you received the case as a social worker assigned
17 to the family do you receive the history, all the work that's been done by Child
18 Welfare Services?

19 A Yes, I received the entire case record.

20 Q And as part of your duties and responsibilities assigned to the family do
21 you review those documents and reports and any information that's happened with
22 Child Welfare Services before you come on the case?

23 A Yes.

24 Q Okay. As part of preparing your reports for the Court do you
25 incorporate all of the historical information when reporting to the Court?

1 A Yes.

2 Q As far as the injuries that Khayden suffered did you conduct an
3 independent investigation?

4 A I did. I was ordered by the Court upon receiving the case in zero to
5 three to review the investigation, to re-interview the identified childcare people, as
6 well as mom and dad.

7 Q And when I said independent, just to clarify, you didn't do this outside of
8 your capacity as a social worker. It was an investigation as the social worker;
9 correct?

10 A Yes. As a social worker, yes.

11 Q Okay. As far as what you reviewed in your investigation did that include
12 doctors' reports?

13 A Yes.

14 Q That included -- did you also speak with the parents?

15 A I spoke with both parents, yes.

16 Q And you also referred to another person who provided care for
17 Khayden, is that correct?

18 A Yes.

19 Q During the course of your investigation did you rule that individual out?

20 A Yes. They did not at that time had reported the injuries to Christina
21 Rodrigues and, therefore, she proceeded with the medical attention and had taken
22 him in.

23 Q So based on your investigation --

24 MS. LEMCKE: Wait, wait, wait. Can I -- just stop one second and ask a
25 question because you're referring to an individual.

1 MS. JOBE: I was going to --

2 MS. LEMCKE: Can we just get a name?

3 MS. JOBE: Yeah.

4 MS. LEMCKE: Is that okay?

5 MS. JOBE: That's what I was going to do.

6 BY MS. JOBE:

7 Q The individual you are speaking of was that the babysitter?

8 A The babysitter, yes.

9 THE COURT: Do you know the name of the babysitter?

10 THE WITNESS: I do not have it in this record, but I can --

11 THE COURT: That's okay.

12 MS. JOBE: And as far -- if I may, Your Honor.

13 THE COURT: Can you tell us again why you ruled the babysitter out?

14 THE WITNESS: At the time of -- when I had interviewed -- initially when child
15 -- had also interviewed her he was not presented with any injuries. He did not seem
16 -- I apologize. So at the time of the investigation she -- she stated that he was
17 presented with these injuries and had talked with Christina about what had
18 happened. He was -- he seemed very different and so she made a phone call to
19 Christina; that was my understanding. When I had interviewed her a second time,
20 when I had gotten the case, she said that when -- same report that when she had
21 received him he seemed a bit odd. That he was presented with these injuries and
22 had phoned Christina.

23 THE COURT: So you're saying you excluded the babysitter because the
24 babysitter told you that when the babysitter took custody, if you will, of the baby, the
25 baby was already exhibiting some kind of symptoms?

1 THE WITNESS: Yes.

2 THE COURT: Okay. So you just trusted the -- I guess, version of events that
3 was given to you by the babysitter or was that corroborated by anything else that
4 you learned in your investigation?

5 THE WITNESS: The police officers had also interviewed them and they
6 participated in the investigation with Honolulu Police Department.

7 THE COURT: Okay. So did the police tell you it's not the babysitter, it's
8 somebody else or --

9 THE WITNESS: They had also ruled out -- I had spoken with them after --
10 after the fact I have -- that I interviewed them.

11 THE COURT: Okay. Go on, Ms. -- I'm sorry, Ms. Jobe.

12 MS. JOBE: Thank you, Your Honor.

13 BY MS. JOBE:

14 Q When you were working with the family in your investigation did you
15 ultimately reach a conclusion as to whether or not Christina and Jonathan had some
16 sort of fault for the injuries Khayden suffered?

17 A Yes. When I had completed my investigation I identified both parents
18 as the perpetrators of harm.

19 THE COURT: Well, how -- what did you base that on?

20 THE WITNESS: Based upon the doctors' reports, there are some medical
21 reports, interviews. They did not -- they weren't able to elaborate in regards to --
22 besides the childcare provider their exact history in regards to the night before.
23 Information about that -- just lack of information in regards to that. They had made a
24 lot of references to the babysitter. And based upon -- I had spoken with Dr.

25

1 Ninomiya. I did not know at that time that there was a death of -- of a older child
2 prior to that for medical attention they did not seek --

3 THE COURT: Well --

4 THE WITNESS: -- immediate medical attention.

5 THE COURT: Did you interview Jonathan and mother of the child -- Jonathan
6 Quisano and the mother of the child together or did you interview them separately or
7 what?

8 THE WITNESS: I interviewed them together and separately.

9 THE COURT: Ms. Jobe, go ahead.

10 MS. JOBE: Okay.

11 BY MS. JOBE:

12 Q As far as your findings, do you recall what injuries or specific injuries
13 Khayden had suffered in January of 2010?

14 A I do recall that he was presented with multiple fractures. He did have
15 several rib fractures and then there was -- his right femur there was a fracture there.

16 Q And as far as --

17 A There were also some concerns about retinal hemorrhage damage.

18 Q As far as the rib fractures are concerned the information you obtained
19 from the doctors and relied upon was that he had multiple rib fractures on both the
20 right and left side, front and back; correct?

21 A Yes.

22 Q And as far as additional fractures the information from the doctors that
23 you relied on was that he also had a metaphyseal fracture of his femur?

24 A Yes.

25 Q Okay. As far as how those injuries occurred did you rely on information

1 from the doctors as far as the mechanism of injury for the rib fractures?

2 A Yeah.

3 Q And what kind of mechanism did you rely on?

4 A Can you repeat that? I'm sorry.

5 THE COURT: Did you -- could you figure out how the injuries occurred from
6 the information or did the doctors provide you with information as to how these
7 injuries had occurred?

8 THE WITNESS: They -- we had a MDT meeting, and this prior to the case
9 coming to me, and they had stated that I could have been that the child was held in
10 a position with both hands and that could've caused the injuries. In regards to the
11 femur, either like shaking or somehow squeezed the child and that could have
12 caused these injuries. In regards to the broken femur the amount of force to have a
13 fracture they did say it could be with force either turning child or holding the right leg
14 quite hard and twisting -- in a twisting motion.

15 THE COURT: You said you eliminated the babysitter. Did anyone come to a
16 conclusion as to whether it was Jonathan Quisano or the mother of the child that
17 caused these injuries?

18 THE WITNESS: We identified both parents as the cause of the injuries.
19 There were -- there were safety concerns with both of them in regards to domestic
20 violence and anger management. We did identify some risk factors with both of
21 them, yes.

22 THE COURT: But you never determined which one actually caused the
23 injuries?

24 THE WITNESS: If which one -- we identified both parents. So we stated
25 mother, Christina Rodrigues, was at fault, as well as father that caused the injuries,

1 yeah. So mother and father. So we provided services for causing the injuries to
2 Khayden.

3 THE COURT: Go on, Ms. Jobe.

4 BY MS. JOBE:

5 Q If I can clarify. I believe what the Court's trying to get at is --

6 THE COURT: Well, right. Who's holding the baby? I don't think one's
7 holding one side and the other's holding the other side. Who's hands are those on
8 the rib cage? That's what I want to know.

9 BY MS. JOBE:

10 Q During the course of your investigation you couldn't determine if the
11 mother or the father -- actually who inflicted the rib fractures; correct?

12 A They were both defensive at the time that we had the case open. They
13 didn't participate in the HPD investigation. So they stipulated to the Family Court's
14 jurisdiction and we are court ordered to provide services that identified both of them
15 injuring Khayden.

16 Q And fair to say as part of your investigation you relied on the doctors'
17 representations that the rib fractures are from a squeezing or a compression
18 mechanism and the femur fracture was from a [indiscernible] -- a rotational
19 mechanism; correct?

20 A Yes.

21 Q And based on your investigation and relying on doctors, and I believe
22 you referred to a multidisciplinary team, fair to say Khayden could not have caused
23 those injuries to himself?

24 A No, not at all.

25 Q And there was no history of trauma to indicate how he sustained those

1 injuries?

2 A No.

3 Q Okay. As far as your work with the family, once they're in the court
4 process and you make those findings of fault as to both parents what services are
5 provided in order to try to reunify or put the kids back in the home with their parents?

6 A Well, we relied on the -- they both participated in a psychological
7 evaluation so we incorporated that into their services. They participated on hands-
8 on parenting. We didn't recommend a parenting class. We recommended
9 specifically for them to do -- somebody to come in every week to provide information
10 on development, on child rearing, appropriate interaction, bonding and attachment.
11 There were several classes that they had to participate, so -- and as well as
12 Enhanced Healthy Start services, which is a service specifically for zero to three
13 years olds. And Khayden was special needs. He was -- he did not speak so they
14 provided extra services throughout the week for him and throughout the month.

15 Q As far as the services that were provided, did any of those services
16 address non-accidental injuries?

17 A Yes. The -- in therapy they had a couple's counselor, Dr. Herman.
18 They also -- so they had changed to a variety of different therapists. But the home
19 based therapist through Catholic -- PACT, which is a parent and child together.
20 They're a home based services so they provided services in regards to -- and we
21 identified what the safety concerns were, so non-accidental, medical attention, delay
22 in medical attention, child interaction, safety. Even from safety seat to discussion on
23 a safety plan to address if there's an emergency who would be the person that you
24 would call first and second and third, and what you would be able to explain to both
25 doctors and people who are asking you questions.

1 Q Okay. So if I understand, the training they received had to do with non-
2 accidental injuries. So injuries inflicted by other people against Khayden; correct?

3 A Yes.

4 Q Did it -- was there training as to what they should look for when a child's
5 suffering from an injury and who they should call and what they should do if the child
6 has those injuries?

7 A Yes.

8 Q Any training or classes as far as providing for the safety of children,
9 taking dangers out of their way, looking out for things that might cause harm to
10 them?

11 A Yes.

12 Q Any --

13 A We also -- through the zero to three program we have a parenting class
14 prior to the court hearing every month and we focus on a variety of different things.
15 Topics include shaken baby, food and nutrition, medical attention, therapy,
16 Enhanced Healthy Start, which is a service that's mandatory for our cases. We had
17 doctors come in to explain safety in regards to your household and how even
18 regular products or wires could actually injure a child. So it was a variety of different
19 topics every month.

20 Q Okay. Were there also topics on when they should call 9-1-1 or some
21 emergency services?

22 A Well, during the case they were -- they were required -- and this is
23 something that we had built in their safety plan, that they are to -- if there's like a
24 fever or an injury that they are to contact their doctor to explain what had happened
25 and that -- to document the injuries. If -- so like if they fell down, you know, what to

1 monitor for. So there was a lot of consultation in regards to that.

2 THE COURT: So you told them if their child fell down that they were
3 supposed to do what?

4 THE WITNESS: First of all, if -- depending on what had happened. So if it
5 was that they either fell backwards or, you know, had fallen -- a lot of the times --
6 like had fallen off a bed or something that they, you know, check the child. If need
7 be call 9-1-1 here; contact a doctor; contact family members, because at the time
8 there were family members that were in the house, and to make sure that the child
9 would be seen in a doctor's -- within 24 hours.

10 BY MS. JOBE:

11 Q You said call emergency service if need be. What kinds of things or
12 scenarios were they taught when emergency services would be need?

13 A If the child, you know, looked lethargic or there was a -- that they were
14 crying or obviously had broken something that they would contact 9-1-1
15 immediately.

16 Q In working with the family, at some point in time Khayden and Khaysen
17 were returned to the care of their parents; correct?

18 A Yes.

19 Q And they initially went home in April of 2011?

20 A Yes.

21 Q But that was with a safety plan and a family support in the home;
22 correct?

23 A Yes.

24 Q Who was the family support in the home?

25 A That would be maternal great-grandmother, Clara.

1 Q Was that Clara Rodrigues?

2 A Yeah, Clara Rodrigues.

3 Q As the other adult in the home was Clara responsible for essentially
4 supervising these children with their parents?

5 A Yes.

6 Q Constantly -- all hours of the day?

7 A Yes.

8 Q And at some point in time the parents developed to the point or degree
9 where they could have the children without Clara's supervision; is that correct?

10 A There were other family members as support that were there, but they
11 were not monitored as severely as when she was there. Yes. So it went from
12 supervised completely by her to partially supervised and then unsupervised.

13 Q What were they required to do -- the parents required to do or
14 demonstrate in order to lessen the amount of supervision?

15 A So their active participation in Enhanced Healthy Start and the home
16 based services, which addressed the parenting, anger management and then
17 couple's counseling. So they had favorable reports in regards to that. There was no
18 other injury to either child during the time that there was family sup and there was a
19 [indiscernible] protective parent, and even well after that as well. So --

20 Q So while --

21 A I'm sorry.

22 Q So while you were monitoring them or the courts were monitoring them
23 there were no additional injuries to Khayden to Khaysen?

24 A No. Service providers were in the home at least two to three times a
25 week and they had observed that there was no -- no other injuries, no other

1 concerns; that they were actively participating in all the services recommended by
2 court.

3 Q And while Child Welfare Services was supervising the family, did the
4 family call you or call the people they were supposed to report to if a child was sick,
5 or if the child had fallen off the bed, or if the child had fallen and scraped a knee?

6 A Yes.

7 THE COURT: Well did that ever happen?

8 THE WITNESS: They had -- Christina had called me --

9 THE COURT: Did anybody ever --

10 THE WITNESS: -- had follow-up with a doctor's note, so she did do that. She
11 followed-up and did that.

12 THE COURT: I'm sorry. You said that there was an incident where there was
13 a follow up required. What happened?

14 THE WITNESS: So she would -- if he was sick -- or if either child was sick
15 she would call and provide a doctor's note if needed.

16 MS. LEMCKE: Can I just ask --

17 THE WITNESS: During the times they did not fall I did not get a report that
18 they had fall -- fallen either by the family members or the service providers that they
19 were observed to be healthy and happy. But if there was a fever she would call and
20 just let me know her follow-up appointment.

21 THE COURT: So in other words, you're not aware of any incidents where the
22 kids fell off the bed or fell down, but there was some times when maybe the child
23 had a fever and then the mother followed up with the physician. Is that what
24 happened?

25 THE WITNESS: Yes, if there was any -- I did not receive any injury --

1 THE COURT: Okay.

2 THE WITNESS: -- from any of the family members, so I wasn't aware if there
3 was anything.

4 THE COURT: Okay.

5 THE WITNESS: Yes.

6 BY MS. JOBE:

7 Q Ultimately the case closed in July of 2012; correct?

8 A Yes.

9 Q So the case was opened from January 2010 to July 2012. Is that two
10 and a half years approximately?

11 A Yes.

12 Q Is that normal for a case to be opened for two and a half years?

13 A No.

14 Q Why -- what was different about the Quisano family that made the case
15 stay open for two and a half years?

16 A In the beginning it was their defensiveness. We want to ensure that
17 they understood the medical, as well as the development of their children. They did
18 have an older child that had passed away around the same time as Khayden had
19 had his injuries between two to three months, so we wanted to make sure that
20 Khaysen had -- that they had followed through with his services as well and they
21 were able to ensure that they could provide for both children.

22 Q During the course of you being on the case for approximately two years
23 did you have the opportunity to observe Khayden and Khaysen in person?

24 A Yes, several times.

25 Q Under what circumstances would you observe them?

1 A At Family Court, during activities, home visits. Sometimes I would see
2 them out in the community just randomly. I think I saw them a few times -- with
3 service providers, with -- during meetings and Ohana conferences, which is a
4 specific meeting that we talk about services and concerns.

5 Q What, if anything, did you note about Khayden's demeanor?

6 A I know that he was quiet. He wasn't usually very whiny or specific -- he
7 was just very quiet and he would just kind of point to things. He didn't speak. He --
8 he wasn't -- he didn't climb up or do things very adventurous. He usually looked for
9 approval from both Christina and Jonathan if it was okay if he was to climb -- like get
10 a toy or something during a home visit.

11 Q What would you consider or what did you observe his activity level to
12 be?

13 A Pardon? I'm sorry, can you repeat that?

14 Q What did you observe Khayden's activity level to be?

15 A You know, it kind of depended -- if it was -- if there was ball or if it was
16 during his session with Enhanced Healthy Start and they brought toys then he would
17 be inquisitive and he would engage with the service provider. You know, and
18 sometimes he would be very active and then usually just kind of very observant.

19 Q As far as the amount of time it took the parents to complete their
20 services, were some of the initial hold ups related to the parents' perception of
21 Khayden and his needs?

22 A Yes.

23 Q And were those perceptions that they indicated, specifically with respect
24 to Jonathan as far as Khayden is concerned.

25 MS. LEMCKE: I would just interpose an objection. It says they together. I

1 think this is -- these proceedings are pertaining to Mr. Quisano so I would just ask
2 that we can --

3 MS. JOBE: That's why I clarified.

4 THE COURT: So just ask about the Defendant.

5 MS. JOBE: Sorry. I tried to clarify that.

6 BY MS. JOBE:

7 Q As to Jonathan, what did he indicate with respect to Khayden and his
8 perceptions of Khayden?

9 A Well, that he was fine. That -- and I talked to them about him not
10 speaking and the concerns about his learning and interaction. And I don't believe
11 that they necessarily completely minimized, but it was -- it was an interaction in
12 regards to speaking for him. Is that what you're asking about like what -- what of his
13 special needs?

14 Q We're referring to Jonathan's evaluation in March of 2010. Isn't it true
15 that he indicated that he thought Khayden was difficult and demanding?

16 A It did say that in his -- I believe it was in psych eval. I asked if he was
17 colicky when -- when I re-interviewed both parents and they didn't say at all that he
18 was colicky or -- so --

19 Q And were part of the services to address Jonathan's indicating he
20 considered Khayden to have trouble adjusting to his schedule and be demanding of
21 attention?

22 A Yes. That's with the home based services and the Enhanced Healthy
23 Start, child rearing, milestones, bonding and attachment. They participated in a
24 ABC project, which is attachment and bonding. It's a ten week program that they
25 videotape and they show them how -- specific things that they have to -- what's it

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2
3 JONATHAN QUISANO,) No. 66816
4 Appellant,)
5 vi.)
6 THE STATE OF NEVADA,)
7 Respondent.)
8)
9)

10 **APPELLANT'S APPENDIX VOLUME VI PAGES 1250-1499**

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16 **CERTIFICATE OF SERVICE**

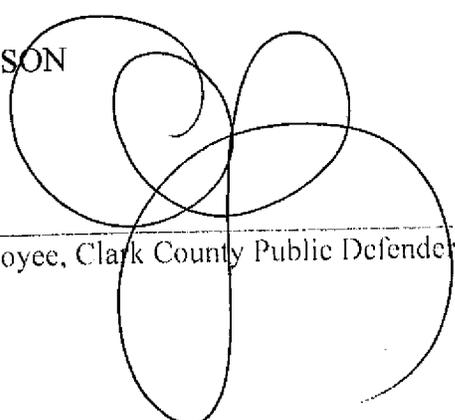
17 I hereby certify that this document was filed electronically with the Nevada
18 Supreme Court on the 13th day of Feb, 2014. Electronic Service of the
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20 CATHERINE CORTEZ MASTO
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22 I further certify that I served a copy of this document by mailing a true and
23 correct copy thereof, postage pre-paid, addressed to:

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BY  Employee, Clark County Public Defender's Office