

1                                   **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2                                   \_\_\_\_\_

3   MICHAEL LEE,                                   )   No. 66963

4   Appellant,                                   )

5   v.   )

6   )

7   THE STATE OF NEVADA,                                   )

8   Respondent.                                   )

Electronically Filed  
Sep 09 2015 08:35 a.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

9                                   \_\_\_\_\_

10                                   **APPELLANT'S APPENDIX VOLUME IV PAGES 701-930**

11   PHILIP J. KOHN  
12   Clark County Public Defender  
13   309 South Third Street  
14   Las Vegas, Nevada 89155-2610

15   Attorney for Appellant

STEVEN B. WOLFSON  
Clark County District Attorney  
200 Lewis Avenue, 3<sup>rd</sup> Floor  
Las Vegas, Nevada 89155

ADAM LAXALT  
Attorney General  
100 North Carson Street  
Carson City, Nevada 89701-4717  
(702) 687-3538

Counsel for Respondent

**INDEX**  
**MICHAEL LEE**  
**Case No. 66963**

**PAGE NO.**

1		
2		
3	Clarification of Record No Hearing Requested filed 08/20/2014 .....	367-368
4	Criminal Complaint filed 10/26/2011.....	001-002
5	Defendant Michael Allan Lee's Disclosure of Documents filed 12/11/2013 .....	196-216
6	Defendant Michael Allan Lee's Witness Disclosure filed 12/11/2013 .....	192-195
7	Defendant's Motion for Dismissal filed 06/10/2014.....	293-301
8	Defendant's Motion in Limine to Exclude Autopsy Photographs filed 06/10/2014.....	263-292
9	Defendant's Opposition to Motion in Limine RE: Defendant's Expert (Rundell) and to	
10	Foundational Aspects of the Defense Experts' Opinion filed 06/05/2014.....	253-258
11	Defendant's Opposition to State's Motion for Production of Discoverable Material filed	
12	06/05/2014 .....	259-262
13	Defendant's Proposed Jury Instructions Not Used at Trial filed 08/14/2014.....	317-319
14	District Court Minutes from 11/21/2011 through 10/27/2014 .....	413-439
15	Ex Parte Application for Court Approval of Payment of Specific Categories of Ancillary	
16	Defense Costs filed 05/01/2012.....	156-160
17	Ex Parte Order Declaring the Defendant Indigent for Purposes of Authorizing Payment of	
18	Specific Categories of Ancillary Defense Costs filed 05/01/2012 .....	161-162
19	Information filed 11/18/2011.....	060-062
20	Instructions to the Jury filed 08/15/2014.....	322-346
21	Judgment of Conviction filed 11/10/2014.....	408-408a
22	Justice Court Minutes from 10/27/2011 through 11/09/2011 .....	003-005
23	Motion for Judgmental of Acquittal filed 08/18/2014.....	349-354
24	Motion for New Trial filed 08/20/2014.....	358-365
25	Motion in Limine to Exclude Prior Bad Acts of Defendant filed 10/017/2013 .....	175-186
26	Motion to Continue Trial filed 06/19/2012 .....	163-167
27	Notice of Appeal filed 11/24/2014 .....	409-412
28	Notice of Expert Witnesses filed 12/15/2011 .....	098-103
	Notice of Motion and Motion for Proper and Correct Service filed 10/30/2013 .....	187-191
	///	

1	Notice of Motion and Motion in Limine RE: Defendant's Expert (Rundell) and to Foundational Aspects of the Defense Experts' Opinion filed 01/02/2014.....	217-246
2	Notice of Witnesses filed 12/15/2011 .....	104-107
3	Notice Resetting Date and Time of Hearing filed 12/13/2011.....	096
4	Order Denying Defendant's Motion for Judgment of Acquittal and Order Denying Defendant's Motion for New Trial filed 09/16/2014.....	386-387
5	Order Denying Defendant's Motion in Limine to Exclude Autopsy Photographs and Order Denying Defendant's Motion for Dismissal filed 07/10/2014.....	311-312
6	Order for Production of Inmate Michael A. Lee, BAC #81950 filed 01/18/2012 .....	154-155
7	Order for Production of Inmate Michael A. Lee, BAC #81950 filed 03/11/2013 .....	173-174
8	Order for Production of Inmate Michael A. Lee, BAC #81950 filed 10/20/2014 .....	406-407
9	Petition for Writ of Habeas Corpus filed 12/12/2011.....	063-095
10	Receipt of Copy filed 12/13/2011 .....	097
11	Receipt of Copy filed 06/19/2012 .....	168
12	Receipt of Copy filed 08/20/2014 .....	366
13	Reply to State's Opposition to Motion for Judgment of Acquittal and Motion for New Trial filed 08/29/2014.....	379-385
14	Reply to State's Return to Petition for Writ of Habeas Corpus filed 12/30/2011 .....	122-153
15	Reporter's Transcript of Preliminary Hearing heard 11/08/2011.....	006-059
16	Return to Writ of Habeas Corpus filed 12/22/2011.....	108-121
17	Second Supplemental Notice of Witnesses filed 07/28/2014.....	313-316
18	Sentencing Memorandum filed 10/14/2014 .....	388-405
19	State's Motion for Production of Discoverable Material Pursuant to NRS 174.245's Reciprocal Discovery Provisions and NRS 174.234 Governing Expert Witness Disclosures filed 01/17/2014.....	247-252
20	State's Opposition to Defendant's Motion for Dismissal filed 06/13/2014 .....	302-305
21	State's Opposition to Defendant's Motion for Judgment of Acquittal filed 08/21/2014.....	369-373
22	State's Opposition to Defendant's Motion for New Trial filed 08/22/2014.....	374-378
23	State's Opposition to Defendant's Motion in Limine to Exclude Autopsy Photographs filed 06/20/2014.....	306-310
24	State's Proposed Jury Instructions Not Used at Trial filed 08/14/2014 .....	320-321

1	Stipulation Pursuant to NRS 175.552(2) Waiving Penalty Hearing and Agreeing to Have Sentence Imposed by Trial Judge filed 08/18/2014 .....	355-357
2		
3	Supplemental Notice of Expert Witnesses filed 01/11/2013 .....	171-182
4	Supplemental Notice of Witnesses filed 01/11/2013 .....	169-170
5	Verdict filed 08/15/2014.....	347-348
6		
7	<b><u>TRANSCRIPTS</u></b>	
8	Transcript of Proceedings, <b>Jury Trial—Day One</b>	
9	Date of Hrg: 08/04/2014.....	492-670
10	Transcript of Proceedings, <b>Jury Trial—Day Two</b>	
11	Date of Hrg: 08/05/2014.....	671-773
12	Transcript of Proceedings, <b>Jury Trial—Day Three</b>	
13	Date of Hrg: 08/06/2014.....	774-930
14	Transcript of Proceedings, <b>Jury Trial—Day Four</b>	
15	Date of Hrg: 08/07/2014.....	931-1109
16	Transcript of Proceedings, <b>Jury Trial—Day Five</b>	
17	Date of Hrg: 08/09/2014.....	1110-1209
18	Transcript of Proceedings, <b>Jury Trial—Day Six</b>	
19	Date of Hrg: 08/11/2014.....	1210-1253
20	Transcript of Proceedings, <b>Jury Trial—Day Seven</b>	
21	Date of Hrg: 08/14/2014.....	1254-1323
22	Transcript of Proceedings, <b>Jury Trial—Day Eight</b>	
23	Date of Hrg: 08/15/2014.....	1324-1361
24	Recorder's Transcript <b>Jury Trial—Day Nine</b>	
25	Date of Hrg: 08/18/2014.....	1362-1367
26	Recorder's Transcript of Proceedings, Calendar Call	
27	Date of Hrg: 01/11/2012.....	443-446
28	///	

1	Recorder's Transcript of Proceedings, Calendar Call	
2	Date of Hrg: 01/08/2014.....	475-478
3	Recorder's Transcript of Proceedings, Calendar Call	
4	Date of Hrg: 07/30/2014.....	489-491
5	Recorder's Transcript of Proceedings, Confirmation of Counsel (Nadia von Magdenko)	
6	Date of Hrg: 03/13/2013.....	464-469
7	Recorder's Transcript of Proceedings, Defendant's Motion for Judgment on Acquittal; Defendant's Motion for New Trial	
8	Date of Hrg: 09/03/2014.....	1368-1376
9	Recorder's Transcript of Proceedings, Defendant's Motion in Limine to Exclude Autopsy Photographs; Defendant's Motion for	
10	Dismissal; State's Motion for Production of Discoverable Material Pursuant NRS 174.245's	
11	Reciprocal Discovery Provisions and NRS 174.234 Governing Witness Disclosures; State's	
12	Motion in Limine RE: Defendant's Expert [Rundell] and to Foundational Aspects of the Defense	
13	Expert's Opinion	
14	Date of Hrg: 06/25/2014.....	479-188
15	Recorder's Transcript of Proceedings, Defendant's Motion in Limine to Exclude Prior Bad Acts of Defendant	
16	Date of Hrg: 10/28/2013.....	470-474
17	Recorder's Transcript of Proceedings, Defendant's Motion to Continue Trial	
18	Date of Hrg: 07/02/2012.....	456-459
19	Recorder's Transcript of Proceedings, Defendant's Petition for Writ of Habeas Corpus	
20	Date of Hrg: 01/30/2012.....	447-455
21	Recorder's Transcript of Proceedings, Further Proceedings; Clarification of Sentence on Count 2	
22	Date of Hrg: 10/27/2014.....	1395-1398
23	Recorder's Transcript of Proceedings, Sentencing	
24	Date of Hrg: 10/20/2014.....	1377-1379
25	Recorder's Transcript of Proceedings, Sentencing	
26	Date of Hrg: 10/21/2014.....	1380-1394
27	Recorder's Transcript of Proceedings, State's Request: Reset Trial Date	
28	Date of Hrg: 03/04/2013.....	460-463
29	Recorder's Transcript of Hearing, Arraignment	
30	Date of Hrg: 11/21/2011.....	440-442

1 just get the injury and then drop dead a few hours later.

2 What was Michael's demeanor that day? The last day, this Tuesday.  
3 The last day of Brodie's life. Was he beating Arica? Is she going to say that? Was  
4 he using drugs that day? Was he drunk?

5 Question is was this a homicide committed in these four to seven hours  
6 prior to death, or was it an accidental death from his ATV accident?

7 Arica's actually going to testify after Brodie vomits at 1 a.m., she goes  
8 into the bathroom and takes his shirt off, turns the light on, and doesn't see any new  
9 bruising. Again Brodie says, like he did that previous morning, my head hurts.

10 That day previously, he wouldn't eat. Was he cranky and screaming  
11 because his stomach hurt, or was he cranky and screaming because he was afraid  
12 of Mike?

13 Did she mention to the doctor he was in an ATV accident?

14 In addition to the surgeon the defense is going to present, Dr. Tiwary,  
15 the defense is going to present a pathologist who has the same job in another state  
16 as the coroner in this case. His name is Dr. Arden.

17 Dr. Arden is going to present medical evidence that when a person is  
18 injured, the body responds in a certain way in certain time intervals. Prosecution  
19 mentioned it: Brodie died of peritonitis, which is inflammation in the stomach area.  
20 There are three stages of inflammation that Dr. Arden will testify to.

21 First responders, this is the acute phase, and they come in on the  
22 scene. This happens within minutes and within hours you can see it under a  
23 microscope.

24 Then second is the mop-up crew. Dr. Arden's going to give you the  
25 actual technical medical terms. This mop-up crew, they do not come on the scene

-31-

1 until two to three days after the injury. Two to three days minimum after an injury.  
2 And what's special about this mop-up crew is they carry iron with them that you can  
3 see under microscope and you can do a special test to see if it's present.

4 Two to three days. And then iron.

5 Prosecution's theory, based upon the coroner, is that it was four to  
6 seven hours prior to death. Where was Brodie during that time period? He was with  
7 Arica. If you go back in time these three hours, he was on the couch. On the couch  
8 alone.

9 There was no additional door blocking Brodie off from her, just the  
10 regular bedroom door. And this is an apartment. What kind of walls are in an  
11 apartment? If Brodie was beaten to death in the apartment during this time period,  
12 would Arica have heard her own son being beaten to death?

13 Would Brodie have told her Michael just hit me, Michael just beat me  
14 up? Arica's going to testify Brodie said his head hurt. If Brodie was able to say his  
15 head hurt, would he have been able to say Michael just hit me?

16 And did Arica tell the detectives at the time about a nanny cam, or is  
17 that new for trial?

18 Why would Arica leave her son with a man she thought was abusing  
19 her child? Whether in the car or to go and get milk. Why would she spend the  
20 entire weekend with him and drop her son off at her mother's house? Is that a  
21 concerned mother?

22 Brodie was in an ATV accident just days prior to his death. There was  
23 no additional bruising when she turned on the lights after he vomited. He had no  
24 appetite that day. He peed his pants three times.

25 Was this an accidental death or was it a homicide? That is what we ask

1 you to consider the evidence fully. Thank you.

2 THE COURT: By the State, your first witness?

3 MR. STANTON: State would call Sergeant Swanson.

4 [Colloquy between counsel]

5 MS. VON MAGDENKO: Your Honor, could we approach first quickly?

6 THE COURT: You may.

7 [Bench conference begins at 2:12 p.m.]

8 MS. VON MAGDENKO: I'm not really sure if there was a witness in the  
9 courtroom? Are you planning on bringing him to testify?

10 MR. STANTON: Yeah, it's Brodie Aschenbrenner's biological father, Dustin  
11 Aschenbrenner. He's a penalty phase witness.

12 MS. VON MAGDENKO: Okay, so that means Gary Lee can attend the trial?

13 MR. STANTON: No, he's a guilt phase witness, especially based upon your  
14 opening.

15 MS. VON MAGDENKO: Okay.

16 MR. STANTON: Okay.

17 THE COURT: Oh and by the way, the recording system is on but it doesn't  
18 record well, so if it's --

19 MR. STANTON: Okay.

20 THE COURT: -- important, then you guys need to make a record --

21 MR. STANTON: But outside --

22 THE COURT: -- at the break.

23 MR. STANTON: Great.

24 MS. VON MAGDENKO: Okay.

25 [Bench conference ends at 2:13 p.m.]



1 THE MARSHAL: Sergeant, if you raise your right hand, please be sworn in by  
2 our clerk.

3 MONIQUE PANET-SWANSON

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

5 THE CLERK: Please state and spell your first and last name for the record.

6 THE WITNESS: Monique Panet-Swanson. First name is M-o-n-i-q-u-e. Last  
7 name, P-a-n-e-t hyphen capital S-w-a-n-s-o-n.

8 THE COURT: Please make yourself comfortable.

9 MR. STANTON: May I proceed, Your Honor?

10 THE COURT: You may.

11 DIRECT EXAMINATION OF MONIQUE PANET-SWANSON

12 BY MR. STANTON:

13 Q Ma'am, I want to direct your attention back to June 15th of 2011. On  
14 that day, ma'am, how were you employed?

15 A As a Sergeant with the Henderson Police Department assigned to the  
16 patrol division.

17 Q And would you be termed or would it be accurate to state you were a  
18 patrol supervisor on that day?

19 A Yes, it would be.

20 Q And as you testify here in court today, are you still employed by  
21 Henderson?

22 A No, it's -- I'm not. I'm retired.

23 Q And how long had you been a police officer prior to your retirement?

24 A Since -- I'm sorry, can you restate that question?

25 Q Certainly. How long were you a police officer before you retired? How

-34-

1 many years?

2 A I -- 19 years and 10 months.

3 Q And I'd like to --

4 MR. STANTON: May I approach, Your Honor?

5 THE COURT: You may.

6 BY MR. STANTON:

7 Q -- ask you on that day if you were dispatched to a particular location  
8 here in the Las Vegas Valley?

9 A Yes, I was.

10 Q And do you recognize what's depicted in that photograph?

11 A Yes, I do.

12 Q And is that the area that you were dispatched to?

13 A Yes, it is.

14 Q Do you recall the address of that location?

15 A Believe it was 2900 Sunridge Heights.

16 Q That's here in Clark County?

17 A It is.

18 Q And was there a particular apartment that you were directed to?

19 A There was. I don't recall exactly the number. I believe it might have  
20 been but I don't know exactly -- but I do remember it was downstairs on the first  
21 floor.

22 Q Okay. Does that -- and that photograph that I showed you accurately  
23 depicted the apartment complex that you went to?

24 A Yes.

25 MR. STANTON: Your Honor, this has been marked as State's Exhibit 6. I

1 move for its admission at this time.

2 THE COURT: Objections?

3 MS. VON MAGDENKO: No objection, Your Honor.

4 THE COURT: Admitted.

5 [State's Exhibit 6 admitted]

6 BY MR. STANTON:

7 Q What was the general nature of what you knew about the call when you  
8 were communicated or dispatched to that location?

9 A The call was regarding responding to a child who was unresponsive.

10 Q And when you arrived at that location, were other first responders  
11 there?

12 A Yes, the paramedics, fire department were on scene.

13 Q And what is the -- as a patrol supervisor, what are you concerned about  
14 when you arrive at that scene?

15 A Typically any scenes that we respond to, our first priorities are safety  
16 and then securing the scene and locating any potential witnesses. Same with this  
17 scene here. We want to first make sure that it was safe. In this case, the child was  
18 safe, the people were safe. And then to secure the scene and then to locate  
19 witnesses.

20 Q And based upon your arrival, was -- did you observe that indeed from at  
21 least patrol officers from Henderson that the area was secure?

22 A It was secured in terms of we could go in. There was no hazards,  
23 there's nothing that was putting anybody in a hazardous position.

24 Q And as far as the nature of the scene as far as the public or other  
25 people going in and out of the apartment, was that permitted?

1 A There -- the only people that were going -- no, it was not permitted.  
2 The only people that were going in and out was just the first responders, the -- there  
3 was a woman on scene. She was in the apartment, but there was nobody else at  
4 that time that was going in and that would not have been permitted.

5 Q And so from the secure portion of my question is it was secure from the  
6 police and first responders being able to come and go, but obviously other people  
7 were not permitted --

8 A That is correct.

9 Q Okay. And at some point were you advised by medical personnel at the  
10 scene that this child was deceased?

11 A Yes, I was. It was right when I was arriving on -- when I arrived into the  
12 apartment.

13 MR. STANTON: And may I approach again, Your Honor?

14 THE COURT: You may.

15 BY MR. STANTON:

16 Q Sergeant, I'm going to ask you to look at two photographs. One is  
17 State's Exhibit 1, which is the photograph to your right, and State Exhibit 2 to your  
18 left. Do you recognize who's depicted in each one of those photographs?

19 A Yes, I do.

20 Q And were those people that you saw ultimately at the scene both upon  
21 your initial arrival and ultimately when you were still at the scene?

22 A Yes.

23 Q Do they accurately depict the people that you saw at the scene?

24 A Yes.

25 MR. STANTON: Move for State's 1 and 2 into evidence.

1 THE COURT: Objections?

2 MS. VON MAGDENKO: I just don't see the second photograph.

3 MR. STANTON: I apologize.

4 MS. VON MAGDENKO: Sorry.

5 MR. STANTON: It's okay.

6 MS. VON MAGDENKO: Okay, thanks.

7 THE COURT: Objections?

8 MS. VON MAGDENKO: No objections, Your Honor.

9 THE COURT: Admitted.

10 [State's Exhibits 1 and 2 admitted]

11 BY MR. STANTON:

12 Q Now you indicated you saw the mother inside the apartment. Showing  
13 you State's Exhibit Number 2. Do you recognize who's in that photograph?

14 A This is the woman that I recognize that was inside the apartment upon  
15 my arrival. And later I realized that she was the mother of the child.

16 Q As you testify here today, do you recall her name?

17 A Arica.

18 Q And can you describe to the ladies and gentlemen of the jury how you  
19 observed the demeanor of Arica when you arrived at the scene and in the near  
20 proximity of time upon your arrival?

21 A She was absolutely distraught, crying, unable to speak. I can picture  
22 her still just in this position (indicating), just broken, just nothing. She -- there was  
23 nothing that could come out. She was just crying. She couldn't talk. Almost like  
24 she wanted to vomit. It was just -- it was just that. It was just there was nothing that  
25 we could get from her.

-38-

1 Q And for the record, Sergeant, you described the position that she was in  
2 kind of a turned in or almost fetal position from your upper body?

3 A Yes.

4 Q Is that accurate?

5 A Yes.

6 Q Now, the individual that you identified in Exhibit Number 1, the  
7 defendant, he was not at the scene when you arrived; is that correct?

8 A Not upon my arrival. Correct.

9 Q At some point does he arrive at the scene?

10 A Yes, he does.

11 Q Do you recall how long it was after you arrive that he arrived?

12 A I don't recall the exact timeline, but I would say it was in like a 15 minute  
13 to half hour timeline.

14 Q Okay. And can you describe what his demeanor was when he arrived  
15 at the scene?

16 A What I recall when he first came on scene was that -- was that aspect  
17 of what's going on, what's going on demeanor of -- of curious, was concerned, a  
18 little worried, and was kind of what, what? That was how it impacted me. That was  
19 what I recall.

20 Q And at some point did you see an interaction that you noted both in  
21 your memory and in prior discussions with officers about what happened when  
22 these two were together at the scene?

23 A Yes, I do. What I recall very clearly is I recall the man going to put his  
24 arms around the mother in this manner, and I just remember her pushing him away,  
25 just -- just get away from me (indicating) and just pushing him away --

1 MR. ALTIG: I'm going to object at this time, Your Honor, as to either her lack  
2 of personal knowledge or she's stating things that are hearsay if she's saying this  
3 get away stuff.

4 THE WITNESS: I heard her say get --

5 MR. STANTON: Well just --

6 THE WITNESS: Sorry.

7 MR. ALTIG: Then I would object. It's hearsay.

8 MR. STANTON: Your Honor, as to the personal knowledge, she's a  
9 percipient witness so I don't know how she wouldn't have personal knowledge  
10 foundationally. As far as the hearsay, I believe based upon the officer's previous  
11 testimony that it would certainly fall under the excited utterance rule.

12 THE COURT: I agree with the State on both grounds. Objection's overruled.  
13 BY MR. STANTON:

14 Q Go ahead. What did you hear the mother say?

15 A I heard the mother say, as she was pushing him away (indicating), get  
16 away from me.

17 Q Did you hear the defendant say anything to her during this time period?

18 A During that time and then when they were sitting on opposite sides --  
19 there was a stairwell and she was sitting on one side -- on one side of the door and  
20 he was sitting along the wall, sitted (sic) down on the ground, and he would turn to  
21 her and say Arica, I'm sorry -- trying to get her attention, he -- he would say I'm sorry  
22 and she would say don't even talk to me. And so he kept trying to get her attention,  
23 I'm sorry, and she just didn't want anything to do with him. And that is my  
24 speculation, but from her saying don't even talk to me and get away from me and  
25 turning away from him and turning her whole body against him is what I observed.

1 MR. STANTON: Thank you. I have no further questions.

2 THE COURT: Cross?

3 CROSS-EXAMINATION

4 BY MR. ALTIG:

5 Q Good afternoon.

6 A Good afternoon.

7 Q Now you stated when you first arrived, you arrived approximately --  
8 what time was it that you arrived at?

9 A It was approximately nine in the morning.

10 Q Okay. And you said it was about 15 minutes before Mr. Lee arrived?

11 A I -- I did not time it --

12 Q Okay.

13 A -- so I don't have an actual timeline.

14 Q Okay. How long do you think it was?

15 A Again, it's somewhere between maybe 15 minutes and half an hour, but  
16 that --

17 Q Okay.

18 A -- was not my focus is -- was not timing how long it took him to get  
19 there.

20 Q Okay, so 15 minutes -- 15 to 30 minutes you think? Okay.

21 A Yes.

22 Q And you said when you first arrived that you couldn't get anything out of  
23 Arica at all, right?

24 A No, I didn't say I couldn't -- very difficult to get anything out of her  
25 because she was so distraught for her to talk, and at that time --



1 Q Okay.

2 A -- it wasn't a lot of that -- questions that we were asking her.

3 Q You weren't asking her a lot of questions?

4 A I was not.

5 Q Okay, you did ask her, her name?

6 A Somewhere we got that -- we got her name, whether we asked her

7 directly or the paramedics got it.

8 Q Okay. So this distraught reaction you said Arica had --

9 A Yes.

10 Q -- you said on direct examination that she couldn't speak?

11 A She was having very difficult time speaking.

12 Q Okay, and who was she trying to speak to?

13 A Anyone -- the paramedics that could have been asking her do you want

14 some water --

15 Q Okay.

16 A -- could have been anybody -- anybody being just either would have

17 been a --

18 Q Okay.

19 A -- first responder, paramedics or the police.

20 Q It wasn't you?

21 A It could have been me at the same time.

22 Q You don't remember?

23 A What's -- what part of it? There was so much that was going on --

24 Q Before you --

25 A -- that there was -- if she wanted water, if she's okay, what's going on --

-42-

1 Q A second ago I asked you if you --

2 A -- just general stuff.

3 Q -- spoke to her. You said you didn't spoke to her -- you didn't speak to  
4 her. Then you said she was having a difficult time getting information out. I said to  
5 who. You said it could have been you. I'm just trying to find out if you spoke to her  
6 or not.

7 A Okay.

8 Q Did you speak to her?

9 A I would say yes, I spoke to her --

10 Q Okay.

11 A -- because I do recall being right there with her.

12 Q Okay. And she had a difficult time relaying information to you?

13 A Yes, I remember there was difficulty for her getting her words out.

14 Q How long did that difficulty last?

15 A I did not time it, sir.

16 Q Okay. Was it up until the time Michael showed up?

17 A At that point when Michael showed up, I believe she was outside and I  
18 don't know if she was talking to the other officers. I moved on to other -- doing other  
19 things. So I didn't stay right with her and time how long it took for her to be able to  
20 start talking more coherently.

21 Q Okay, so at a point when Michael came up and gave her -- tried to  
22 embrace her --

23 A Yes.

24 Q -- you were then standing by her again?

25 A I was standing right outside right -- and I saw the whole thing right

1 between the two of them.

2 Q Where were you standing?

3 A I was actually standing right between the two of them off probably  
4 towards a triangle if you had to. It's a very small area. So I was outside the front  
5 door.

6 Q When exactly did that happen?

7 A I did not look at my watch.

8 Q Was it right as he arrived?

9 A It was very shortly after he -- as -- after he arrived, yes.

10 Q And at that point you didn't seem to have any problems seeing Arica  
11 say anything or get information out, right?

12 A That's correct. She said that very articulately.

13 Q Okay. At that particular point?

14 A Yes, she did.

15 Q Within 15 to 30 minutes?

16 A Yes.

17 Q Okay. Thank you.

18 MR. ALTIG: No further questions, Your Honor.

19 THE COURT: Redirect.

20 MR. STANTON: None, Your Honor.

21 THE COURT: All right, ma'am, thank you for your time. You're free to go.

22 THE WITNESS: Thank you.

23 THE COURT: Next witness please.

24 MR. GIORDANI: State would call Nancy Dahl.

25 [Colloquy between counsel]

1 THE MARSHAL: Please remain standing, raise your right hand and be sworn  
2 in by our clerk.

3 NANCY DAHL

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

5 THE CLERK: Please state and spell your first and last name for the record.

6 THE WITNESS: Nancy Dahl, N-a-n-c-y D-a-h-l.

7 THE COURT: You may sit down, ma'am, and make yourself comfortable.

8 Thank you.

9 MR. GIORDANI: May I, Judge?

10 THE COURT: Whenever you're ready, counsel.

11 MR. GIORDANI: Thank you.

12 DIRECT EXAMINATION OF NANCY DAHL

13 BY MR. GIORDANI:

14 Q Ma'am, what do you do for a living?

15 A I'm a coroner investigator.

16 Q With the Clark County Coroner's Office?

17 A Yes, sir.

18 Q And what do you do in that position?

19 A In my position I am the eyes and ears of the medical examiner out on  
20 the scenes and I examine folks that have passed away and determine if there's  
21 anything suspicious and go from there.

22 Q Okay. How did you get that job and what kind of training and  
23 experience did you have to have to get it?

24 A Well I spent many years working in an operating room as a scrub tech,  
25 and then I became interested in criminal justice when my son was going to college,

1 and then I did trauma intervention as a volunteer for folks that were traumatized, and  
2 then I took the reserve class at the Clark County Coroner's Office and they hired me.

3 Q Fair to say you need specific medical training -- at least general medical  
4 training to get that position?

5 A There's specific medical training in our class. There's general medical  
6 training that most of us have prior to getting there.

7 Q Okay. And before the coroner's office you mentioned a couple different  
8 jobs you had. What is the CARE Team? What did you do on that team?

9 A I'm -- I'm still a member of the CARE Team. There are five of us that  
10 work for the coroner's office. It's the Child and Infant Response Team and we are  
11 responsible for maintaining communications with the parents, letting them know  
12 what's going on when a cause of death is determined. And many times it takes a  
13 while, it's pending, so we try to stay in contact with them so they know. And they are  
14 always free to ask us any questions, but our biggest thing is to maintain  
15 communication with the families.

16 Q Okay. And let me just clarify, so coroner's investigator would respond  
17 to any death, not just child deaths, correct?

18 A Oh yes, sir.

19 Q But you yourself, you're on a specific child death team. Is that fair?

20 A Yes, sir.

21 Q Okay.

22 A As well as regular. That's aside, yeah.

23 Q Okay. If you could estimate, maybe you can't, but if you could, how  
24 many child death scenes have you responded to in your career?

25 A Far too many. Far too many.

1 Q Hundreds?

2 A Far too many. I don't know.

3 Q So you mentioned earlier that when you go to a child scene, it's  
4 somewhat unique and specific. What are you looking for when you go to a child  
5 scene in general?

6 A Well, when it's called in to us by dispatch, we are called in that there's a  
7 child deceased somewhere, whether it's a hospital or at the home, and so we don't  
8 have any predisposed opinions prior to getting there. So what we look for is, you  
9 know, the is there petechia in the eye, is there marks on the body, are there -- are  
10 things suppose -- where they're supposed to be? When I touch them, do they feel  
11 right? How -- how long, their rigor mortis, their lividity, all of those things, are they  
12 consistent with what was told by -- to us.

13 Q Okay. So step back a second. I missed it -- I missed a question. Are  
14 you looking for whether the trauma is accidental or non-accidental?

15 A No, I'm just looking for the trauma. That's not up to me to decide.

16 Q Okay. Are autopsies conducted on all children?

17 A Yes.

18 Q When you respond to -- or I should ask did you respond to a scene at  
19 2900 Sunridge Heights on June 15th of 2011?

20 A I did.

21 Q And what information did you have when you went into the scene?

22 A That there was a two-year-old child that had aspirated.

23 Q And what does aspirated mean for those who don't know?

24 A Basically they ate food and it went down the wrong pipe.

25 Q So when you get on scene, what do you do, what do you see?

1           A     When I walked in, I was -- well, everyone was there and I was quite  
2 taken aback by what I saw because that didn't look like an aspiration to me. Just  
3 before I examined him, I just -- what I saw didn't look like it was a child that had  
4 choked and just fallen over.

5           Q     Okay. And just set the scene a little bit. Generally when you respond is  
6 there other medical personnel, is there officers on scene?

7           A     There's always officers, there's always detectives, and there's always  
8 crime scene investigators.

9           Q     And that was the case in this specific --

10          A     Yes, sir.

11          Q     -- call? And you respond to an apartment? Is that fair?

12          A     Yes.

13          Q     So you go in and what do you do first?

14          A     Well, the first thing I did was -- was talk to the detective and -- and ask  
15 him what the basic story was and -- and what -- what he knew of and he told me.  
16 And then I went to talk to the CSI lady and then I started to examine Brodie.

17          MR. GIORDANI: May I approach, Judge?

18          THE COURT: You may.

19                                 [Colloquy between counsel]

20          MR. ALTIG: Court's indulgence.

21          BY MR. GIORDANI:

22          Q     I'm going to show you a series of photos --

23          A     Okay.

24          Q     -- State's Proposed Exhibits 42 through 47. Can you just thumb  
25 through those --

1 A Yes.

2 Q -- and tell me if you recognize them.

3 A I do.

4 Q What are those?

5 A Those are picture (sic) of Brodie Aschenbrenner.

6 Q And are those fair and accurate depictions of Brodie as you saw him on  
7 that day, June 15th, 2011?

8 A Yes, sir. Yes. Yes.

9 MR. GIORDANI: Your Honor, State moves for admission of 42 through 47.

10 THE COURT: Have you shown them to the defense?

11 MR. GIORDANI: Yes, I have.

12 MS. VON MAGDENKO: No --

13 THE COURT: Any objections?

14 MS. VON MAGDENKO: No objection, Your Honor.

15 THE COURT: Admitted.

16 [State's Exhibits 42 through 47 admitted]

17 MR. GIORDANI: Thank you.

18 BY MR. GIORDANI:

19 Q So you mentioned you walked back and saw Brodie. Where was  
20 Brodie when you came in?

21 A He was lying supine which is back on the floor, supine on his back in  
22 the bedroom.

23 Q And was that the main bedroom in the back of the home?

24 A It was the -- the master bedroom, yes.

25 Q Okay. I'm going to briefly show you 42. You mentioned seeing



1 injuries --

2 A Yeah.

3 Q -- to Brodie.

4 A Yes.

5 Q And you mentioned that's how you saw him in the bedroom when you  
6 first came in?

7 A Yes. Yes, sir.

8 Q And how do you recall or what do you recall seeing on Brodie?

9 A A little boy that was covered with bruises.

10 Q Okay.

11 A I mean that's what I saw when I first walked in.

12 Q Fair enough. And you're there to determine what type of trauma this is;  
13 is that correct?

14 A Well I'm -- I'm there to gather what I can see and present it to the  
15 medical examiner. They --

16 Q Well said.

17 A -- determine the type of trauma that it is.

18 Q Well said.

19 A I just know that it's bruises at this point.

20 Q Based upon that, let me ask you this: Were you suspicious that this  
21 could be non-accidental trauma?

22 A Yeah. Yes, I was.

23 Q And after you examined the front of Brodie's body, did you do some  
24 more examination?

25 A I did. I --

1 Q Well let's -- while he's on his back, do you actually examine him up  
2 close and look for specific injuries?

3 A I did. Yes.

4 Q Showing you State's 43. It's obviously a close-up there?

5 A Uh-huh.

6 Q And did you take note of the injuries to Brodie's face and head?

7 A I did. The raised area on the left side of his face, the multiple apparent  
8 bruising, the abrasions -- he had abrasions on the back of his -- both of his ears, as  
9 well as bruising all over.

10 Q Okay.

11 A Yeah, around his mouth and eyes, neck --

12 Q Show you State's --

13 A -- forehead.

14 Q I'm sorry.

15 A I'm sorry.

16 Q Show you State's 44.

17 A Yes.

18 Q What is that?

19 A That is the frenulum. We all have them --

20 Q Can you describe that?

21 A Oh, sorry. We all have two of them. This isn't a medical term, but it's  
22 the little thingy that connects your lip to your gums. We have one on our top and  
23 one on our bottom. And everybody has them. Little children, when I examine them,  
24 that's one of the first things that I look for because if there's been any sort of trauma  
25 ever how it got to them, many times that's not intact. That -- that's something that I

1 look for. This one was not intact and not only was it not intact, there was a void  
2 where it should have been.

3 Q A hole essentially?

4 A Yeah. I mean I'm not -- like I said, I'm not a doctor. It wasn't like a hole,  
5 but it was -- it was obviously not there and there was a void where it should have  
6 been.

7 Q Okay, and just for the record, you were indicating when you're  
8 describing the frenulum the top and bottom lip --

9 A It was the top frenulum.

10 Q And you're pointing to the inside of your top and bottom lip --

11 A Well I was showing them what a frenulum was that we had two.

12 Q I'm just making a record, so that's what you were doing when you were  
13 up there?

14 A Yes.

15 Q Let's move to State's 45. Some point you flip Brodie over, right?

16 A Yes.

17 Q What do you see there?

18 A Well, what I see is four crescent-shaped apparent fingernail marks.  
19 That's what I would call them.

20 Q And would you --

21 A But I -- I don't know though.

22 Q And would you call those suspicious injuries?

23 A Yes, I would.

24 Q After you examined Brodie's injuries and his body, did you make  
25 contact with Brodie's mother, Arica?

1 A I did.

2 Q And where was that, that you made contact?

3 A She was sitting outside on the steps, I believe.

4 Q Did you attempt to speak with her?

5 A I did.

6 Q Do you remember how long after the call came in that you spoke to  
7 Arica? Was it a significant amount of time in between?

8 A To be honest, I don't remember the exact amount of time, but she was  
9 there and I did speak to her.

10 Q And did you speak to her with anyone else present?

11 A (No audible response.)

12 Q Did you speak to Arica with anyone else present with you?

13 A I believe her mom was there. I think her mother was there. There were  
14 a lot of people there.

15 Q And was there a detective also present?

16 A Yes.

17 Q Was that Gerry Collins?

18 A Gerry Collins was there. Yes, sir.

19 Q And what's the purpose of speaking with the mother of child like this?

20 A To get a history of the child's history, the birth, did they have problems  
21 at birth, was there any medical conditions that maybe we didn't know of, their typical  
22 habits, what they ate, what they -- you know, did -- was he on regular food, was he  
23 just on formula, you know, those kinds of a little bit of history, and then what she  
24 knew prior to her finding him deceased. You know, what was her -- what did she  
25 know.

1 Q Because at the end of the day you're trying to figure out what happened  
2 to this child?

3 A Right. So it's kind of a timeline, yeah.

4 Q Okay. If you recall, what was her demeanor like when you finally spoke  
5 with her?

6 A She was undone. She was undone. I don't know another way to say it.  
7 She was completely undone.

8 Q Was she able to get words out -- was she able to formulate sentences?

9 A Yeah, some. She was able to communicate, but she was very very  
10 very distraught.

11 Q When you talked to Arica, did you go through Brodie's medical  
12 background?

13 A Yes, you know, what he had, did he have his shots, that sort of thing.

14 Q So very general information?

15 A General information.

16 Q Did you also go through any potential accidents he may have had with  
17 the mother?

18 A Yeah, she was forthcoming with they had been mildly rear ended about  
19 two to three weeks before as I recall. She took him to the doctor. Doctor said he  
20 was fine.

21 Q Did you also discuss him having pinkeye at some point?

22 A Yeah, she told me that he had pinkeye. Yes, I remember that.

23 Q And did you talk about a Power Wheels accident?

24 A Did I talk about it? I don't remember that at all.

25 Q Talk with her about it.

1 A Oh with her? No. I don't remember that.

2 Q How about an incident with a curtain or curtain rod?

3 A Yes, we talked about the curtain rod a little bit. One of the injuries on  
4 his back was very linear, about a half inch wide, and it had some voids in it. It was  
5 just a very specific mark. And I asked her about it and she said that he would get  
6 tangled up in the curtain rod and she had to take it away from him.

7 Q So she mentioned that to you?

8 A Uh-huh. Well I asked her about the injury. That's what she said.

9 Q Okay. Did she also describe generally about Brodie being rough and  
10 tumble for lack of a better term?

11 A She said he was very clumsy, that he fell down a lot.

12 Q And you stated earlier that you've been to a number of child death  
13 scenes. Too many to count?

14 A Yes.

15 Q Is that fair?

16 A Yes. Yes, sir.

17 Q Have you seen situations where a kid is rough and tumble or their  
18 parents describe them as Bambam?

19 A Well I've seen a lot of little boys and little boys do climb and jump and  
20 scrape their knees and run their cars and crack their shins and, you know, all that --  
21 hit their elbows and climb trees and yes, I've seen a lot of that. That --

22 Q Based on your training and experience, was that something you took  
23 into consideration when you asked that the coroner do an autopsy?

24 A Well, I didn't take that into consideration. That's -- like I said, that's not  
25 something that I do, but what I -- what I did was remark to that in my report and to

-55-

1 the medical examiner that he had been described as being very clumsy.

2 Q And in your experience, were the injuries that you saw on Brodie  
3 consistent with injuries of a clumsy nature?

4 A Absolutely not.

5 MS. VON MAGDENKO: Objection; calls for speculation. She just said she's  
6 not an expert.

7 THE WITNESS: Well, I --

8 MR. GIORDANI: She just described --

9 THE WITNESS: -- I got four kids and 15 grandkids. I'm an expert. So --

10 THE COURT: The objection's overruled.

11 THE WITNESS: Yeah.

12 MR. GIORDANI: Thank you, Your Honor.

13 BY MR. GIORDANI:

14 Q Can you repeat that answer?

15 A I've got four kids and 15 grandkids so I -- yeah, I know about little boys  
16 and --

17 Q And these injuries --

18 A -- the answer is no, it was not consistent.

19 Q Thank you.

20 MR. GIORDANI: I'll pass the witness, Judge.

21 THE COURT: Cross?

22 CROSS-EXAMINATION

23 BY MS. VON MAGDENKO:

24 Q Did Arica Foster tell you that two weeks prior to Brodie's death that she  
25 had taken him to the doctor because he was bruising too easily?

-56-

1 A I -- hold on. Okay. To be honest, she may have. I don't remember it.  
2 Q Okay.  
3 A Okay.  
4 Q And you have how many kids?  
5 A I have four.  
6 Q And you have 15 grandchildren?  
7 A Uh-huh.  
8 Q Is that a yes just for the record? The court recorder can't take down  
9 uh-huh. So is that a yes?  
10 A It is.  
11 Q Okay.  
12 A I couldn't hear you. That's what I said mmm.  
13 Q Okay. I'll try and speak up.  
14 A Thank you.  
15 Q I apologize. Did any of your children or your grandchildren have any  
16 instances where you had to take them to the doctor --  
17 A Abs- --  
18 Q -- because they were bruising too easily?  
19 A Abs- -- not because they bruised too easily, because they --  
20 Q Okay.  
21 A -- hurt themselves.  
22 Q But that's not my question.  
23 A No.  
24 Q So --  
25 A They never went to the doctor because they bruised too easily.

-57-



1 Q Okay. And you're not an expert on children with bruising too easily, are  
2 you?

3 A I am not.

4 Q Okay. Did Arica tell you when you were with her that in addition to the  
5 curtain rod causing those pattern mark bruises that Monday prior to his death that  
6 he actually had another mark from the pool on his back?

7 A I don't remember that. If I didn't put it in my report, I don't remember it.

8 Q Okay. And she -- but Arica did say that he was always falling?

9 A She did.

10 Q Okay. Did any of your children or grandchildren always fall?

11 A Not always.

12 Q Okay. So this was different?

13 A Yes, ma'am.

14 Q Okay. And it's not like your children or grandchildren?

15 A I don't -- I -- my children didn't bruise like that.

16 Q Did Arica tell you that her nickname for her child was the bruiser?

17 A That who was a bruiser?

18 Q Did Arica tell you that Brodie's nickname was the bruiser?

19 A She may have. I don't remember that.

20 Q Did Arica tell you that Brodie always had bruising on his forehead?

21 A She just said that he was really clumsy. That's what I -- you know,  
22 that's what I wrote, that's what I remember.

23 Q And who calls the time of death? Is that you or is that the coroner?

24 A That's me. It's called at the point in time I get there.

25 Q Okay. And what was the time of death?

1 A The time of death was 11:10.

2 Q A.m.?

3 A A.m.

4 Q Okay. Is that time of death what the actual coroner uses to establish  
5 her timeline for how many hours have passed since the injury causing death  
6 occurred?

7 A Well, you'll probably have to ask her that.

8 Q Okay. You don't know. All you know is that you called the time of  
9 death and it was 11:10 a.m. --

10 A We just pronounce when we get there. I mean, obviously when people  
11 are deceased before we get there.

12 Q I have no further questions. Thank you.

13 THE COURT: Redirect?

14 MR. GIORDANI: Just briefly, Judge.

15 REDIRECT EXAMINATION

16 BY MR. GIORDANI:

17 Q I want to clarify that time of death issue.

18 A Okay.

19 Q You said that you call time of death when you arrive.

20 A Yes.

21 Q Does that tell you when the child's heart stopped pumping?

22 A No.

23 Q It just has to do with when you arrive on scene?

24 A It's -- yeah, it's just has to do when we arrive to give it a time of death.

25 Q And were you aware that Arica awoke and Brodie was cold to the

-59-

1 touch?

2 A Yes.

3 Q So does that indicate to you based on your training and experience that  
4 he was dead prior to 8:50 a.m. when she woke up?

5 A Absolutely.

6 Q Thank you.

7 MR. GIORDANI: Nothing further, Judge.

8 THE COURT: Anything else?

9 All right, ma'am, thank you for your time.

10 THE WITNESS: Thank you.

11 THE COURT: You're free to go, ma'am.

12 Why don't we give the jury just a brief break? Why don't we take a  
13 break till 3:00, ladies and gentlemen, so you can use the restroom, stretch, get  
14 water, whatever you need.

15 Again you're going to hear this every time at breaks: You're  
16 admonished not to converse amongst yourselves or with anyone on any subject  
17 connected with the trial, do not read, watch or listen to any report of or commentary  
18 on the trial by any means of information, do not form or express an opinion on this  
19 case. See you at three.

20 [Jury out at 2:47 p.m.]

21 THE COURT: Okay, we'll see you guys in a minute.

22 MS. VON MAGDENKO: Thank you, Your Honor.

23 MR. ALTIG: Thank you.

24 [Off the record at 2:47 p.m.]

25 [Proceedings resumed at 3:05 p.m.]

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

[Outside the presence of the jury]

MR. STANTON: -- not on behalf of the State, Your Honor.

MR. ALTIG: No, Your Honor.

THE COURT: Okay. Let's bring the jury in.

[Pause]

THE MARSHAL: Department XXIII jury is present.

[Jury in at 3:06 p.m.]

THE COURT: All right. The State's next witness, please. All the jurors are present.

MR. STANTON: State would call Dr. Lisa Gavin.

THE MARSHAL: Doctor, remain standing, please raise your right hand, be sworn in by our clerk.

LISA GAVIN

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

THE CLERK: Please be seated. State and spell your first and last name for the record.

THE WITNESS: Good afternoon. I'm Dr. Lisa Gavin, L-i-s-a G-a-v-i-n.

THE COURT: Whenever you're ready.

MR. STANTON: Thank you, Your Honor.

DIRECT EXAMINATION OF LISA GAVIN

BY MR. STANTON:

Q Dr. Gavin, how are you employed?

A I'm currently employed as a forensic pathologist or known as a medical examiner at the Clark County Coroner's Office here in Las Vegas.

Q And for you to perform those duties, have you received any specialized

-61-

1 educational background and also training in that to perform those functions?

2 A Yes, I have.

3 Q And could you describe first your educational background?

4 A Yes. I went to medical school at the University of Connecticut School of  
5 Medicine in Connecticut. Then I went on to do a pathology residency program in  
6 Hartford Hospital also in Connecticut. I did a surgical pathology residency -- excuse  
7 me, fellowship also in Hartford Hospital in Connecticut. Then I went to New Mexico  
8 where I did a forensic pathology fellowship. And then I came here to Las Vegas to  
9 be employed as a forensic pathologist, and I have a medical license to practice here  
10 in the state of Nevada.

11 Q And so you are a licensed physician in this state?

12 A That's correct.

13 Q Let me ask you about some terms you just used and if you could  
14 explain them in layperson's terms to the ladies and gentlemen of this jury. You  
15 mentioned the term pathology. What does pathology mean?

16 A Pathology is the study of disease process in the body. An example  
17 would be if you had had a skin tag or a lesion on your arm removed or you had a  
18 breast lesion or you had a colonoscopy and they took biopsies of those things, they  
19 would be sent to a doctor. That doctor is a pathologist who would make a diagnosis  
20 of what that lesion is; tell you whether it's benign or malignant or something like that.

21 Underneath that there are several different types of individuals. One  
22 would be a surgical pathologist that I described and also could be a cytologist. For  
23 example, when you get a pap smear as a woman or when you have something  
24 aspirated, for example, and they give it to a cytologist.

25 Another example would be what I do as a forensic pathologist where I

1 specifically look at bodies and perform autopsies.

2 Q And the area of forensic pathology I believe you just described is a  
3 subspecialization of pathology?

4 A That's correct.

5 Q And what is forensic pathology?

6 A Our job is to look at people who have died suddenly or unexpectedly  
7 and determine the cause of death and manner of death of that individual.

8 Q And is there a medical procedure that assists you in making that  
9 determination of cause and manner of death?

10 A There are many. Investigation goes into it and that makes us a little  
11 unusual in part from other pathologists. None of us work in a vacuum so we always  
12 need information to provide us with a background on the individual. And we also  
13 perform external examinations on bodies, internal examinations on bodies often  
14 called the autopsy, and then we'll do additional testing where we may look under the  
15 microscope. We may do radiographs or x-rays, and we may do toxicology or  
16 microbiology depending on what the case is and what it calls for.

17 Q So an autopsy, the medical procedure that is by that name, is one  
18 function out of many that assist people like yourselves, physicians that determine  
19 cause and manner of death?

20 A That is correct.

21 Q Now, how many autopsies have you been involved in either as a  
22 primary attending physician conducting the autopsy or assisting in your background  
23 training and experience up until June of 2011?

24 A Up until June of 2011, it was probably about 800 cases and then add on  
25 about another -- gosh. A good guestimate would be add on another 300 to that.

1 Q From that date until your testimony here today?

2 A From my -- from that date till my testimony today, it's probably a total  
3 cases that I've done is closer to 1,200 to 1,500. So as I was training, I did anywhere  
4 from probably about 250 to 300 plus cases that was during my training. And then  
5 after training up until the date you described or the 11th, I did an additional 800  
6 cases. And then since 2011, I've done easily another 400 cases. So I'm  
7 somewhere between 1,200 and 1,500 cases.

8 Q Now you used two terms that I believe in your field of forensic pathology  
9 are terms of art. That is cause and manner. I'd like to begin first with cause. Could  
10 you explain to what the cause of death means in your field?

11 A The cause of death can mean many things. It can mean -- myocardial  
12 infarction or a heart attack as a common -- it's commonly known. It could be chronic  
13 obstructive pulmonary disease like emphysema or asthma. It can also be blunt  
14 force injury of head, for example. It could be methadone intoxication. There are a  
15 variety of causes of death that may lead someone to die either sudden or  
16 unexpectedly.

17 Q And in your field, what you want to or you (sic) hopeful in determining in  
18 your autopsy and your examination and ultimately the report that you prepare is  
19 what caused someone's body to stop functioning and cause their death; is that  
20 accurate?

21 A That's accurate.

22 Q Now what is manner of death?

23 A There are essentially five manners of death. One of them is natural  
24 which we briefly discussed by talking about a myocardial infarction or a heart attack,  
25 a natural death. One of them might be accidental like you'd see with someone who

1 doesn't -- has an overdose, for example, or is involved in a motor vehicle collision.  
2 Another would be a suicide as in again you could have someone who took too much  
3 medication intentionally, or you can have someone who hung themselves or shot  
4 themselves. And the other is homicide where someone has essentially died at the  
5 hands of another.

6 If for some reason we can't fit something into one of those particular  
7 categories, there is an undetermined manner of death and that would be an  
8 example like if we found a skeletonized remains, you may not be able to tell  
9 something that caused their death unless they had something dramatic to their  
10 skeleton that occurred.

11 Q So in your world, the world of forensic pathology, in determining manner  
12 of death, would it be accurate to state that there are four ways you would categorize  
13 someone died and there's a fifth or one that's uncategorized?

14 A That's correct.

15 Q Now I'd like to talk to you about the date of June 16th, 2011. Did you  
16 and were you the primary physician assigned to conduct the autopsy of Brodie  
17 Aschenbrenner?

18 A Yes, I was the primary person and I conducted the autopsy.

19 Q Before I get into the contents of the autopsy and that procedure, I just  
20 want to take a moment to ask you some questions about how it came that you  
21 conducted this autopsy versus any other person, the physicians that are employees  
22 of the Clark County Coroner's Office. How did that case get assigned to you? Just  
23 in a general fashion.

24 A In general, we have different days that each doctor is on call. Currently  
25 there are five doctors, now four actually of -- as of yesterday, four doctors at the



1 office and we'll rotate our days on call. And generally the person who is on call  
2 would take the more difficult cases or the anticipated challenging cases of the day  
3 which often includes children or homicides, for example. And I imagine on this day I  
4 was probably on call and I assigned this case to myself. So that's probably how I  
5 got this particular one.

6 Q And as far as your compensation, both in general as an employee of  
7 the medical examiner's office and your compensation testifying here today, would it  
8 be accurate to state that you're a salaried employee?

9 A Yes.

10 Q And so you're not hired by myself or Mr. Giordani to come in and  
11 consult and render your opinion today; is that accurate?

12 A That's correct.

13 Q And your assignment on this case was the procedure that you just  
14 outlined?

15 A Yes, this is my job.

16 Q In other words, I didn't call up Michael Murphy, the Coroner of Clark  
17 County, and tell him who I wanted to do the autopsy?

18 A No.

19 Q That doesn't happen?

20 A No.

21 Q Okay. Let me ask you about a couple of things before we get into the  
22 autopsy proper. There is an investigation that occurs and information that is  
23 provided to you, is that accurate, before you begin an autopsy?

24 A Yes.

25 Q And we just heard testimony from a woman by the name of Nancy Dahl.

1 Are you familiar with Ms. Dahl?

2 A Yes.

3 Q And who is she and what role does she play from your perspective in  
4 the coroner's office?

5 A She's one of our investigators. They serve as kind of our eyes and our  
6 ears at the scene, and when a body has been found at a scene, they will be called  
7 out there to do our investigation, to serve essentially as our eyes and ears. And  
8 they'll document the scene, they'll document the body, and then they'll take any  
9 photographs, write any information and generate their own report. Usually by the  
10 following morning they may or may not have finished their report completely, so  
11 they'll put together a little synopsis for us so that we can review it at our morning  
12 meeting to have an idea of what the case might entail.

13 Q And in this particular case, prior to your testimony today, I asked you to  
14 select from a large number of photographs that are taken at this autopsy what  
15 photographs would you believe assist the jury in understanding your findings as you  
16 observed them and as the autopsy took place on the 16th of June; is that accurate?

17 A Yes.

18 Q And you've previously reviewed and they have been now marked as  
19 State's Exhibit 48 through 76 prior to your testimony today; is that accurate?

20 A Yes.

21 MR. STANTON: Your Honor --

22 BY MR. STANTON:

23 Q Do those photographs all truly and accurately depict various aspects of  
24 your autopsy?

25 A I assume it's the photographs we discussed and that they would be

-67-

1 from my autopsy and --

2 MR. STANTON: May I approach, Your Honor?

3 THE COURT: You may.

4 BY MR. STANTON:

5 Q I'm going to show you what has been marked as a series of 48 through  
6 76. Doctor, if you could just take a look at those and to assure that they're the same  
7 ones we've previously discussed.

8 A (Witness complies.) Yes, these are.

9 Q And do they accurately depict various injuries that you observe -- noted  
10 and observed on the date of his autopsy?

11 A Yes, they are.

12 MR. STANTON: Your Honor, I'd move for 48 through 76 into evidence.

13 THE COURT: Any objections?

14 MS. VON MAGDENKO: No objection, Your Honor.

15 THE COURT: They'll be admitted.

16 Are you requesting to publish?

17 MR. STANTON: Yes, Your Honor.

18 THE COURT: Request granted.

19 [State's Exhibits 48 through 76 admitted]

20 BY MR. STANTON:

21 Q Doctor, I want to begin by showing you Exhibit 48. And could you tell  
22 us the purposes this photograph and what your general impressions were upon  
23 observing Brodie in this fashion?

24 A This is a picture of Brodie after we've cleaned up his body and laid him  
25 out to take an overall photograph of him. And we usually put a small gray placard

1 that you can see here in the center. And that represents the case number so that  
2 we can correspond the body to the case number and then that case number to my  
3 report, as well as Investigator Dahl's report.

4 Q And observing -- or Exhibit Number 49. What of note in this photograph  
5 drew your attention to this portion of Brodie's body?

6 A This is before his face has been cleaned up and then there's some  
7 element of purge and vomit present near his mouth.

8 Q And was there any signs or injury to the side -- to the right side rib area  
9 in this -- and hip in this photograph?

10 A Yes, there is.

11 Q Let me zoom in. Could you -- I know you're used to the screen system  
12 here that we have. Could you point those out to the ladies and gentlemen of the  
13 jury?

14 A There's a contusion running parallel to the line that I've just drawn here  
15 that's on his right flank, and then there are contusion that are present here on his  
16 right hip towards his right thigh and a small abrasion in the same region, sorry, up  
17 there.

18 Q Okay, you used two terms there that I know are terms of art in your  
19 field. One is contusion and the other abrasion or abraded injury. And what is a  
20 contusion?

21 A A contusion is like a bruise.

22 Q And what is the cause of a contusion and what is it that we're seeing  
23 when we see a contusion on a body?

24 A Contusions have occurred from blunt force injury. So if you, for  
25 example, banged your knee or your arm against something, you might have a

1   discoloration to your skin from the bursting of the blood vessels that are present in  
2   that area. And it can be extensive -- it can be towards the superficial level or  
3   extensive going towards the deeper level and the layers of the skin.

4           Q     And how about an abraded injury or abrasion? What causes that and  
5   how does it appear to you?

6           A     An abrasion is like a scrape. So if you skinned your knee, for example,  
7   or bumped it into something rough, that's one way that it can occur. Again, it's a  
8   term we use under blunt force injury as an overall heading and we use abrasions  
9   and contusions are the types of injuries that can occur -- some of the types of  
10  injuries that can occur under blunt force injury.

11          Q     Let me back out on this photograph now to get a frame pointing to you  
12  to the contusion injury here. Anatomically, what is underneath the skin of Brodie in  
13  the area that I'm pointing right here?

14          A     The ribs are there.

15          Q     Showing you Exhibit 50. Can you tell us, Doctor, what we're looking at  
16  there?

17          A     And again -- again we have some more bruises, contusions that are  
18  present on his arms. You can see several of them up here on his right arm, also  
19  near his elbow and on his right forearm.

20          Q     Now, abraded and contusion injuries, when they are actually inflicted --  
21  abraded, kind of the friction that you're talking about, and contusions, blunt force  
22  trauma -- are they immediately visually apparent when they're inflicted on a live  
23  person?

24          A     When they occur, you can imagine to yourselves, sometimes you may  
25  not even realize it until the next day you might see something that's present there.

-70-

1 Abrasions you tend to be able to see a little quicker and that the skin may be peeled  
2 back off of that area that's been injured, but sometimes the contusion, the bruise  
3 may not show up for like within the next day is when you might notice it. Sometimes  
4 it depends on the severity too, the force at which it's occurred, whether or not you  
5 could see it immediately, have it's --have swelling and -- and skin color changes or  
6 whether it'll take a little bit of time for that to generate.

7 Q And when we see a bruise as we see in this photograph, what are we  
8 actually seeing? Why is that dark color?

9 A The dark color that you can start to see are the different changes that  
10 can occur in the quality of the bruise. As you noticed probably on yourselves,  
11 there's different changes that occur to the bruise from when you first get it to when it  
12 passes over a period of time, and that can occur because the body starts to break  
13 down the blood that's been released into that bruise into that area and as it breaks it  
14 down, it becomes more of a brown color rather than the initial purple color that it can  
15 be.

16 Q And as we're looking at this bruise in Brodie's right elbow, what we're  
17 actually seeing is blood underneath the dura or the skin; is that --

18 A Not dura but underneath the skin.

19 Q The skin.

20 A Yes.

21 Q And Exhibit 51. Can you describe what we're looking at and  
22 anatomically where we're at in this photograph?

23 A Can you zoom out just a little bit, please?

24 Q Sure.

25 A Just a tad. Okay, thank you.

-71-

1 Again we're seeing more contusions. This is his right leg. We're  
2 looking near his right knee. We can see several of them on the right anterior lower  
3 leg as well and up by the right knee as well.

4 Q Exhibit 52. Can you tell us what we're looking at there?

5 A This is Brodie's left arm, and you can see again that there are  
6 contusions present on his left upper arm. There's a slight circular area over here.  
7 That's part of the adhesive from an EKG pad. So that's not a -- not a bruise, that's a  
8 circular adhesive from that, but these other ones are contusions and bruises that are  
9 present on his left arm.

10 Q Now, Doctor, in your examination of children, and especially in the  
11 examination of Brodie Aschenbrenner, are you concerned when you document  
12 these injuries about the location, frequency and severity of the bruises?

13 A Yes.

14 Q Why?

15 A You see a variety of stages in some of these bruises. Some of them  
16 are a little browner than they are pink so they've occurred over some period of time,  
17 there's been a variety of injuries that have occurred, and the location of them  
18 becomes sometimes concerning because it's not often that you'll see the kids have  
19 bumps and bruises up on their upper arms or up on their -- their thighs, but you may  
20 see them on the lower legs or something like that that they bumped into as toddlers.  
21 You might not necessarily see them as you see them up on the upper part of their  
22 arms or necessarily on their hips.

23 Q So there's certain parts of the body that you would expect to see  
24 bruising on children?

25 A Yes.

1 Q Exhibit 53. Can you tell us what injuries you noted in this area of his  
2 body?

3 A This is a shot that we use for a couple purposes. You can see that  
4 we've placed a white towel around him and then we use our placard. This is what  
5 we call our identification shot to be able to look at his face should we need to use it  
6 for identification of who he is. Often little kids aren't fingerprinted and so we have to  
7 result to taking pictures of them and then putting them into black and white so that  
8 we can show them to either a friend of the family or someone for identification. So  
9 that's why you see the -- the cloth here present in this particular case.

10 What we can also document then are the injuries that we see here.  
11 And in this case we see multiple bruises that are present all scattered around his  
12 face, present on his forehead, up near his hairline, in the center of his forehead,  
13 around his eye. There's abrasions that are present on his cheeks. There's an  
14 abrasion that's below on the bottom part of his lip. There's additional contusions  
15 that are present down on the side of his lips. There's another one present on the  
16 cheek and a little one that's present over here on the eyebrow. I can keep going.  
17 They're present on his eyes, both side of his eyes as well.

18 Q And once again, when you denoted both bruising and abrasions, that  
19 abrasion is a friction injury --

20 A Correct.

21 Q Showing you been marked with -- as State's Exhibit 54. What did you  
22 note in this area of Brodie?

23 A Again, we can see the side of his face and some of the bruising that we  
24 have already identified that's present all the way up into the hairline, present on the  
25 cheeks. There's some discoloration present of his ear and then -- we can also see a

-73-



1 small abrasion that's present on his left shoulder.

2 Q Exhibit 55.

3 A And this is his left knee and just above it there's contusion present on  
4 his left thigh.

5 Q Now the location, severity of the bruise that you've denoted on the  
6 screen, is that something that you would consider a typical bruise on a child of this  
7 age?

8 A You can see bruises around the knees and the lower legs on kids. It's  
9 not particularly unusual on toddlers.

10 Q Fifty-six. Can you tell us what injury you noted in this photograph?

11 A This area is focusing specifically on what we call the frenulum, which is  
12 that small piece of tissue that's present between your lip and your gum, and in this  
13 case there's a big defect that's present in there because it's been torn.

14 Q And have you seen torn frenulums in other cases?

15 A Yes.

16 Q Do you have an opinion, Doctor, about how torn frenulums occur?

17 A One of the ways that they can occur is from somebody holding a hand  
18 over a child's mouth, and if the child's old enough to be able to move back and forth,  
19 they can move enough that they'll actually tear that frenulum.

20 Q Exhibit 57. Can you tell us what we're looking at there and what  
21 importance that had to you, Doctor?

22 A This is his left eye and you're looking at the white of the eye which we  
23 call the sclera. And within there, there is a hemorrhage present in that eye and that  
24 generally occurs from significant blunt force injury. And sometimes when they're  
25 much smaller than this and tinier, they're called petechial hemorrhages where

1 they're burst blood vessels that occur. In this case, this looks more like an injury  
2 that's occurred to the -- the eye.

3 Q Now, based upon my previous questions to you about accidental versus  
4 non-accidental injury or injuries that you would consider in a child -- a young man  
5 two and a half years of age as being normal type injuries, where does this fall in?

6 A This would be unusual for a child to have a scleral injury.

7 Q And would the same be true about the ripped frenulum?

8 A Yes, it would be unusual.

9 Q Exhibit 58. Could you orient us first anatomically where we're looking at  
10 Brodie here?

11 A We're looking at his mouth. And this is his upper lip. And then we've  
12 pulled down his lower lip with a forcep and here we could see in the center is the --  
13 his frenulum which attaches his gum to his lower lip. This one's intact and looks  
14 good. This is what the other one should look like, but it doesn't.

15 In addition -- can you clear that, please? Thank you.

16 You can see some abrasion present of the upper lip. I put a checkmark  
17 on either side of it. And then you can see a little bit of contusion that's present of his  
18 lower lip as well. So a scrape and a bruise.

19 Q Exhibit 60. Can you tell us what injuries grossly at this photograph and  
20 then we'll go to them individually?

21 A When we do our procedures in taking photographs at the time of  
22 autopsy, you recall that we had one of his entire front and we look at the overall  
23 picture, and then this is a picture of his back to be able to demonstrate what he  
24 looks like from the back. And from this magnification we can see that there are  
25 several injuries that are present scattered across his back, up in his shoulders,

1 towards the upper mid-back, across the middle of the back and even extending off  
2 to the left side.

3 Q And Dr. Gavin, do you have an opinion about the location of these  
4 injuries regarding my previous questions about normal injuries to children of this  
5 age?

6 A This is very unusual.

7 Q Like to begin on the back with State's Exhibit 62 and ask you if you can  
8 tell anatomically where we are and then could you describe the injury as you  
9 observed it and what it meant to you?

10 A You can see the little crook in his neck up on top and his chin is toward  
11 -- turned towards his left shoulder up here. And then you can see his right armpit on  
12 this side, so he's on his back and we're looking at his right upper back area. And  
13 then there's a slightly patterned injury that's present here. It's a V-shaped abrasion  
14 that has smaller abrasions extending out from it in a parallel fashion. We call this a  
15 pattern injury because it's not just a simple scrape, it actually shows a shape to it.

16 Q And, Doctor, this device here, this ruler, that's placed in there on  
17 purpose?

18 A Correct.

19 Q What's the purpose of it?

20 A We use these rulers to be able to -- to be able to demonstrate what the  
21 measurements would be of that particular injury, and then if we find some object or  
22 weapon that may be associated with the scene to see whether or not the  
23 dimensions of that object would match up to the dimensions of this particular injury.

24 Q And when you say a patterned injury as opposed to a generalized  
25 contusion or bruise, or abrasion, what does a patterned injury mean to you?

-76-

1           A     A pattern injury in general means that some object was used to be able  
2 to inflict this particular injury.

3           Q     And the dimensions and the locations of those wounds that are  
4 patterned are important -- very important to you in noting them and its dimensions?

5           A     Correct.

6           Q     Exhibit 63. Can you tell us what we're looking at there?

7           A     Does it focus?

8           Q     I apologize. It does and it's on auto so it -- can you see that?

9           A     I can.

10                   Can everyone or no? Okay. Seems like a majority of you can see it so  
11 here is his chin down at the bottom towards the right end of the picture. And then  
12 it's actually -- I believe it's my hands holding his ear back and there's an abrasion  
13 behind his ear. And again I used the L-shaped ruler in case there's something that  
14 we can identify that matches up to this particular injury. This doesn't hold a  
15 particular pattern to me, but it is an abrasion behind his ear.

16           Q     You note in your report that this is a pressure abrasion; is that correct?

17           A     Yes, the top of the skin surface on this wasn't as scraped off as I've  
18 seen in other abrasions like the one we saw up on the back, so it reminds me of  
19 something that's been applied in a great deal of pressure behind the ear.

20           Q     Now in your experience -- in particular now my question, Dr. Gavin, is in  
21 the area of abused children -- is the location of the ear and a pressure abrasion a  
22 common artifact in physical abuse cases that result in death?

23           A     I don't know if I would call it an artifact as much as an injury that can  
24 occur either by perhaps the ear's been grabbed and tugged on or pressed on very  
25 hardly -- hard, for example.

1 Q And can you describe for those that may not be familiar with that part of  
2 the anatomy for my following question about the blood flow? How easy is it or  
3 difficult to cause an abrasion or contusion in the earlobe area?

4 A For any of you have had your ears pierced, you can get quite a bit of  
5 blood that's present there, but flowing into the cartilage is a little bit less. So you  
6 may not see bleeding from it, but you can get a significant bruising to occur, but it  
7 takes a fair amount of pressure to be able to do that.

8 Q Sixty-five. I believe you've mentioned those previously. Now I'd like to  
9 ask you a series of specific questions. From this photograph it appears to be  
10 apparent that this is the lower back area of Brodie?

11 A That's correct.

12 Q And could you tell us, Doctor, what caused you concern and what you  
13 noted about the injuries located near the ruler in this photograph?

14 A This has abrasion as well as contusion to the pattern that we see here.  
15 It has a semicircular pattern to it as well, and then it has another contusion that  
16 would be near to it or proximate to it. It reminded me of either a hand or even a foot,  
17 but it could be a hand that was gripping onto his lower back and -- and causing this  
18 level of contusion, as well as abrasions up near where the nails might be.

19 Q And in the sense of where you said the nails, obviously we have your  
20 ruler here for dimensions purposes and then we have these bruises here or the  
21 abrasions in this area. How many do we have there?

22 A There's one, two, three, four, five contusions and four abrasions.

23 Q And out of the abrasions, the ones that I'm pointing here to the far left,  
24 that would be one, two, three and four, correct?

25 A Correct.

1 Q Now, Doctor, can you tell us anatomically what is underneath Brodie's  
2 body if we were to go into his body at this location going back to front?

3 A In this particular locations it's a little lower than his kidneys. It's more  
4 towards the intestines would be in this area.

5 Q I apologize for this one, but Doctor, could you tell us -- advise the jury  
6 that's it's going to be a graphic photograph. Could you describe to us in 67 what  
7 we're looking at anatomically in this case and why is this done?

8 A Although this seems rather gruesome, the point of it is to show the force  
9 at which you can see some of these injuries have occurred and we will cut down the  
10 back and pull back the skin to be able to look at the injuries and how they've been  
11 inflicted underneath. And this is that area where we saw that patterned injury that  
12 was present of his lower back and this is showing you the right side of underneath  
13 his skin there.

14 Q And for purposes of the anatomical area, this would be generally the  
15 area of Brodie's spinal column?

16 A Correct, right down the middle would be the spinal column.

17 Q And his ribs would be off to the right of that column and to the left in this  
18 area; is that correct?

19 A Correct. Almost -- almost all of the -- the picture would be almost all  
20 ribcage right up until where you start to see the injury underneath the skin.

21 Q Now where is the duodenum anatomically in this photograph?

22 A It's on the other side and it would be approximately not quite in the  
23 center, just a little bit below center.

24 Q Once again I apologize. Exhibit 68. And this would be on the left side  
25 retracted on the back of Brodie; is that correct?

-79-

1           A     So we first saw these injuries as I retracted it to the other direction and  
2 now we see the same injury that we were referring to with the abrasions and the  
3 contusions that are present on the left side and they're corresponding to the ones  
4 that we saw on the skin on the lower back.

5           Q     Now, Doctor, before I get to the next photograph, I'd like to ask you  
6 some questions about the autopsy proceeding that deals with head injuries. You  
7 described the external examination of Brodie in photographs that depict his face  
8 both of the front and there was also an external examination done on the rear of  
9 Brodie's head; is that correct?

10          A     Correct.

11          Q     External. What -- and once again, if you could describe it in a general  
12 fashion how is an internal examination of the skull and the brain area performed in  
13 general and that with Brodie?

14          A     In general, the way that we do our examination -- we already saw the  
15 external evidence in terms of all the bruises and abrasions that are present of the  
16 head and then we do similarly to what you had seen in the back in that we cut below  
17 the ears and we cut around the back of the scalp and then we start to reflect that  
18 scalp forward and backward to be able to look at the subscapular, the stuff  
19 underneath the scalp, to look at that amount of injury if it's present at all. And then  
20 we can also view the skull at that point to be able to see if there's any injuries we  
21 could see on the outside of the skull. After that we will cut into the skull to remove  
22 that to be able to examine the brain itself.

23          Q     There are a lot of organs in our body that are very critical organs.  
24 Would you agree with that?

25          A     Yes.

1 Q And the brain is one of them?

2 A Yes.

3 Q And there are a number of anatomical devices that we're created with  
4 that protect that area of our body; is that accurate?

5 A Correct.

6 Q If you could give me a little bit of an anatomy lesson, Dr. Gavin, and tell  
7 me if we were to work from the outside of my head towards the brain, what is there  
8 there anatomically to protect my brain from brunt -- blunt force trauma?

9 A We start with the skin that's on the surface to be able to protect the  
10 brain. Then we go to -- there's a thin layer that's part of that scalp that -- that's  
11 present, the skin, the scalp, and it's called the galeal layer. It's just a thin fibrous  
12 layer that sits on the skull itself. The skull being the bone part of it would also  
13 protect our brain. Beneath the skull there's something called the dura which is like a  
14 thin membrane that holds the brain juice, if you will. It sits in the juice around the  
15 brain. And then even on the brain itself there's a tiny thin layer that has all of the  
16 blood vessels are present that's called the arachnoid.

17 Now to help you a little more visually with that -- that's the anatomic  
18 stuff. And this is very simplified. I try to explain it as if you took an orange and put it  
19 on a stick and you put it inside of a coconut, the coconut is the hard outer layer, the  
20 rind around the orange would be the dura, and then sometimes when you peel an  
21 orange it has that thin layer that stays on top of the orange, that would be the  
22 arachnoid. And then the brain matter would be the pulp and the other stronger  
23 fibers that are in it. And so if you move it around inside the head, it's going to rotate  
24 in different directions and it's going to bang around inside of the head as well.

25 Q Now you described -- and I appreciate the assistance of understanding



1 the anatomy of our head and brain. But you described the orange and you said  
2 some brain juice. The fluid that surrounds our brain inside our skull, is that a  
3 particular type of fluid also designed to protect our brain?

4 A Yes, it's called the cerebral spinal fluid.

5 Q And is that like water or is it different from water?

6 A It's different than water. It's more viscous, if you will. It carries proteins,  
7 it carries cells in it, and it can also have blood in it if it's a -- been an injury that's  
8 occurred.

9 Q And it's -- when you say viscous, that is a term that describes the  
10 thickness of the water, so the brain fluid is a thicker water or thicker liquid than water  
11 itself?

12 A Correct.

13 Q I apologize for this. Showing you Exhibit 69. Can you tell us  
14 anatomically where we're looking at here and what it meant to you, Doctor?

15 A This is Brodie's right ear, and if you remember we were talking about  
16 the bruise, the abrasion that was behind his ear before and that's what we're looking  
17 at here. And then we've peeled back the scalp forward and backward, and as you  
18 can see just by looking at the picture, there's a lot of hemorrhage that's present in  
19 the subscalpular area.

20 In addition, you can almost see that there's a thin fibrous layer that we  
21 were talking about that's present on the skull itself and that's the galeal layer that's  
22 present. Even just looking at this picture, you could see the right side is greater than  
23 the left and that the -- we don't really see much blood present on the left side, but  
24 there's a predominant amount of blood present on the subscalpular and galeal  
25 surface on the right side of the head.

1 Q Doctor, could you tell us, using yourself as an example of Brodie's  
2 head, where you anatomically saw this significant hemorrhage? What area of the  
3 brain on Brodie are we talking about? Or the skull, I'm sorry.

4 A The skull itself -- essentially started from his frontal scalp, so the front  
5 area of his forehead, extended across the entire right side all the way to the back of  
6 his head, and then partially on to the left side correspondingly.

7 Q Now, Doctor, do you have an opinion as to the mechanism in a sense  
8 of what caused this injury, not the device but whether it was blunt force trauma?

9 A This is blunt force trauma. This is not a sharp force injury. This isn't a  
10 gunshot wound. This is not natural. This is blunt force that occurred here to his  
11 head.

12 Q And when you said it's not natural, what is your opinion as it relates to  
13 common injuries of a non-accident -- or of an accidental nature to children around  
14 Brodie's age? Do you typically see this type of injury?

15 A No.

16 Q Is this a significant amount of trauma to the skull?

17 A Yes.

18 Q What types of incidents have you been involved in, in autopsies where  
19 you would see this much trauma inflicted to a skull, child or not?

20 A Motor vehicle collisions would be an excellent example of where I see  
21 this level. You actually can see it in gunshot wounds where you have this kind of  
22 hemorrhage that you had occur to a head. I've seen it in stabbings where people  
23 have tried to stab at the skull and had injury occur to that subscalpular region.

24 Q Now when you talk about motor vehicle accidents, are you talking about  
25 motor vehicle accidents of such a severe magnitude that the person dies from that

1 blunt forced injury?

2 A Yes, those are the people I see in my office, so --

3 Q So you wouldn't expect, just so it's clear, anywhere near this type of  
4 injury in a low speed fender bender?

5 A It would be extremely unusual to see this if not never.

6 Q Now, Doctor, let me ask you about the injuries that we just looked at in  
7 the photograph. Is there a way and did you attempt to determine the timing of these  
8 injuries?

9 A Yes.

10 Q And how did you do that?

11 A Microscopically using a microscope to look at the tissue itself with a  
12 glass slide.

13 Q And where on those injuries did you look microscopically?

14 A I -- since all of that injury appeared to be consistent, it all had the same  
15 amount of clot in terms of the timing and the injury that occurred, I took a  
16 representative section of that area and looked at that underneath the microscope.

17 Q And what are you looking for when you look underneath the  
18 microscope?

19 A You're looking for evidence of certain types of cells that are present.  
20 The body recognizes when an injury has occurred and it has cells that are present in  
21 it that try to respond to that injury to either fix it somehow or wall it off or put it to the  
22 side, if you will, in some way to protect the organism. And I look for those particular  
23 types of cells and they come out in different sequences. One of the first to come out  
24 tends to be something called the neutrophil. And then as time goes on, the  
25 macrophages come on. And as the injury progresses, you'll see a distribution of

1 lesser of the neutrophils and more of the later cells that might be lymphocytes for  
2 example.

3 Q So there's things in your profession that you would expect to see as the  
4 body naturally reacts to an injury?

5 A Correct.

6 Q And that's something that you can determine and see microscopically?

7 A Correct.

8 Q In addition to that, did you also request a consult outside of your office  
9 with a particular type of physician regarding these injuries and the slides that are  
10 taken from them?

11 MS. VON MAGDENKO: Your Honor, I would object to this since -- if that  
12 expert isn't here to lay a foundation for that.

13 MR. STANTON: Well, I'm not sure -- I'm not laying a foundation through the  
14 witness because I'm not getting into the content of that consult. I'm merely asking  
15 her whether or not she submitted that for a consult.

16 MS. VON MAGDENKO: Okay.

17 THE COURT: You can ask her that.

18 BY MR. STANTON:

19 Q Did you?

20 A Yes, I did.

21 Q And what type of expert do you send slides like this to?

22 A A neuropathologist.

23 Q And that neuropathologist is someone that specializes in looking at  
24 injuries and trauma to the head and brain area?

25 A They specifically are involved in looking at the brain, the spinal cord, the

1 eyes, the dura that we spoke about that's present around them. They can look at  
2 muscle tissue as well.

3 Q And what did you send to this neuro physician?

4 A To the neuropathologist I sent the brain, the dura matter, the spinal  
5 cord, and the eyes.

6 Q And as a result of that, a report by this neuropathologist was prepared?

7 A Correct.

8 Q And sent back to you?

9 A Correct.

10 Q Is that a normal procedure in a case like this?

11 A Absolutely.

12 Q As a result of your examination in its -- in total about this injury, do you  
13 have an opinion, Dr. Gavin, about the timing of the injury that we see to Brodie's  
14 head and skull?

15 A Yes.

16 Q And what time do you have in that regard?

17 A About 24 hours before his death.

18 Q And is there a range in that?

19 A It can be. That's a general range. It can -- once you start to see those  
20 early cells occur, that occurs within minutes to hours. And then as those later cells  
21 develop it takes hours to days. So there can be a range in between from anywhere  
22 from hours of the occurrence to days.

23 Q And what about iron staining? Was that part of what was done when  
24 you sent out the brain to the neuropathologist?

25 A I did the iron staining.

1 Q Okay. And what is iron staining and what does it mean to you?

2 A We use a stain called iron. Basically, as -- we were talking earlier that  
3 the bruises themselves that you see on your body, the blood ends up being  
4 absorbed, and one of the things that it breaks down into is the iron or the  
5 hemoglobin that you carry on your red blood cells. So as the red blood cells that  
6 cause the hemorrhage break up, you have more and more of that iron buildup and  
7 that causes some of that color changes along with the hemoglobin in your skin.

8 Same is true all over the body and the cells that are responsible for  
9 eating up all that extra hemoglobin and the -- that's present are the macrophages.  
10 And so when you get the neutrophils first and the macrophages start to come on  
11 afterwards, you start to look to see how long they've been there by seeing whether  
12 or not they've started to eat up all that iron yet. And you can use a stain that  
13 specifically makes the iron show itself underneath a glass slide to be able to see  
14 whether it's present.

15 Q And when you did the iron staining in this case to assist you in  
16 formulating the timing of the injury, did you see iron staining?

17 A I did.

18 Q And what if -- and we're just sticking to the skull at this point and the  
19 injuries we just saw in the last photograph. Did that change or affect your opinion in  
20 any way about the timing of the injury?

21 A The -- no, it didn't in that it looked like it appeared to be around 24  
22 hours of time, give or take.

23 Q And when you say give or take, what is the -- kind of the time period  
24 that we're talking about that you -- the range, if you will, of 24 hours?

25 A Hours. Not days.

1 Q Okay. Now I'd like to talk to you about -- or let me just back up for to  
2 transition to the next area. Is there -- in your opinion, Doctor, the injuries that we  
3 saw to Brodie's head, was there attendant injury to his brain?

4 A When I observed the brain -- let me back up a second. First we look at  
5 the outer injury that everyone saw. That's a dramatic amount of injury to have  
6 occurred to the child. And I briefly mentioned to you that sometimes if you have so  
7 much injury that's occurred and blunt force to the skull, that the brain itself can rattle  
8 around in there. And when a brain rattles around inside, there's injury that occurs to  
9 that softer tissue that's the brain. In this case, I gave you the analogy of the pulp or  
10 the fibrous tissue.

11 Now, when I opened up the skull, I didn't see any bleeding in and  
12 around the brain. But because I knew that I had that demonstrable amount of  
13 external injury occurring that it was very likely that I was going to see microscopic  
14 injury present to the brain and I thought it best in this case to have the  
15 neuropathologist who's done additional study on the brain to be able to look at that,  
16 dissect the brain, and then bring back the slides to me to be able to examine them  
17 and -- and concur what my speculation was, which turned out that there was some  
18 damage to the fibrous bands, if you will, that are present in between the brain tissue  
19 itself.

20 Q And, Doctor, is there a phenomenon or a term that you're familiar with  
21 by the name of hypoxia?

22 A Yes.

23 Q What is hypoxia?

24 A Hypoxia is a lack of oxygen.

25 Q And did that occur to Brodie?

1 A Yes.

2 Q And could you explain that?

3 A There is evidence that the brain was swollen. There is also microscopic  
4 evidence that there was some hypoxia present in the brain as well. And you could  
5 see some changes even in the heart muscle as a result of hypoxia, a lack of oxygen.

6 Q And in this particular case you found that in Brodie?

7 A That's correct.

8 Q And do you have an opinion, Doctor, as to whether or not -- we had  
9 talked about earlier the cause of death; that is, what it is that causes someone's life  
10 to cease. Do you have an opinion about the injury that we just observed and that  
11 you've been testifying about -- I'll refer to it as the head injury of Brodie -- as to the  
12 cause of his death?

13 A Yes, I think it's a significant contributing condition.

14 Q And what would be the symptoms, Dr. Gavin, that you would expect to  
15 see with Brodie after this injury is inflicted and up until the time that he actually  
16 ceases life, his heart stops beating?

17 A He could complain of headaches. He could be tired, fatigue, and  
18 mostly -- sometimes they lose consciousness depending upon the severity of the  
19 damage to the inside of the brain that we were referring to.

20 Q Now I'd like to go to the interior examination of Brodie's abdomen, and  
21 specifically to the internal examination of his abdomen, and I'm showing you Exhibit  
22 Number 70. Could you orient us anatomically where Brodie's head would be and  
23 what part of his anatomy we're looking at here?

24 A Yes. Brodie's head is up in this region. You can see his ribcage here  
25 and then this is down where his penis would be and then just taking an overall view

-89-



1 of his abdomen at this point in time. His balls are distended and you could see the  
2 liver is present here.

3 Q Now, Doctor, there is a portion of your abdominal wall called the  
4 duodenum that you found a significant finding during the course of your autopsy.  
5 Could you show us in this photograph where the duodenum is located?

6 A The duodenum is not part of the abdominal wall, but with that said,  
7 briefly, the abdominal wall is -- is right here. This is a portion of it. And it kind of has  
8 this opaque color that's present here. That is not a normal color. That is due to  
9 what we end up talking about here is the intestinal contents that ended up getting  
10 loose inside of his abdomen and causing what's called peritonitis, an inflammation of  
11 the wall that surrounds all of the organs inside of your abdomen.

12 Q And ultimately you opine that what caused -- in conjunction with the  
13 head injury that you just testified to, what killed Brodie?

14 A Yes.

15 Q And what was that?

16 A He has a transection of his duodenum that we'll see in a moment.

17 Q Now, Doctor, let me ask you first some questions about the duodenum.  
18 What does a duodenum do in our body? What function does it have?

19 A When you eat your food, it goes into your mouth and then goes into  
20 your esophagus. And then from there it goes into your stomach and your stomach  
21 will churn that food around and break it down into smaller bits and then it sends it  
22 out into the duodenum which is the first part of your small intestine. So we saw that  
23 the intestines were kind of expanded here and the duodenum is just a little bit  
24 deeper because it rests behind the stomach. And as the stomach releases the food  
25 into the duodenum, the duodenum send -- goes off towards the right side and then

-90-

1 loops around towards the left.

2 Q Now, anatomically in my torso, the duodenum from front to back and  
3 from side to side, where is it generally anatomically located?

4 A The duodenum will rest right overlying the spinal cord, so it'll sit -- you'll  
5 have in front will be your liver that we just saw. Right to the left of that you'll see  
6 your stomach and then below that'll be your duodenum that kind of rides on top of  
7 your spinal cord. Between the two would be the pancreas.

8 Q Now, the function of that within life sustaining activities of our body,  
9 would that be a critical area of our body in order to be and maintain life?

10 A It's not like your brain, but if you have your duodenum torn apart, well  
11 then what happens logically is that the food as you put it into your stomach is going  
12 to leak out into that cavity that I was just showing to you. It's not going to continue  
13 on into your intestines and go out the poop shoot because it can't. It's just not  
14 connected anymore. It's like a break in a firehose, if you will.

15 Q And Exhibit 71. Can you tell us what finding you see in this photograph  
16 and why it was important to you?

17 A Brodie's head is up towards this area. And again, this is the lower part  
18 of his body. I've removed the ribcage at this point and I've moved up -- this is his  
19 large intestine that I've lifted up to show you the area that's in the back which is  
20 where the duodenum is and the mesenteric tissue. There's soft tissue there that  
21 contains a lot of vessels in it and you can kind of see those vessels as they extend  
22 out into all of your small bowel and they're responsible for getting all the nutrients in.  
23 And those vessels themselves kind of meet up in what we call the root, and in that  
24 root is also torn as well; the vessels are torn in that area.

25 Q And we see a darker red color here and also I think you mentioned

1 earlier in the other photograph about the color that wasn't normal. Can you explain  
2 that?

3 A This is hemorrhage. This is bleeding into those tissues.

4 Q Exhibit 72. What did you find of note here, Doctor?

5 A This is a close-up that we took at the time of examination demonstrating  
6 that same area and a close examination showing that the blood is extending into the  
7 mesentery out from the area of the tear.

8 Q And Exhibit 74?

9 A And some of that hemorrhage is extending up into the area just beneath  
10 the liver and this is the liver that we have I'm holding in my hand and this is the  
11 gallbladder, but I have it reflected upwards.

12 Q And can you tell us what we're looking at in Exhibit 75?

13 A In order to demonstrate this, I took the intestine out completely, which  
14 we standardly do in an examination, but I wanted to keep it somewhat intact in that  
15 here's the esophagus going down into the stomach, and then as I told you, it loops  
16 behind and so I'm showing that behind area. This forcep that I have right here is  
17 holding the duodenum and if you could clear that for me for a second?

18 The duodenum here is just open. It's just opened up into the peritoneal  
19 cavity that I showed to you. It's supposed to be connected to the other end where I  
20 have this probe present. They're supposed to be connected to each other. So  
21 they're separated. They've been transected from each other completely.

22 Q And when you say transected completely, that's distinctive from a tear  
23 or rip in the organ. This is so that it's completely separated as I'm demonstrating  
24 now?

25 A Correct.

1 Q And Exhibit 76 is yet even a close-up of that area you just described; is  
2 that correct?

3 A Correct. So this is the duodenum itself. My -- part of my forcep is  
4 inside it and that -- what you're seeing there, that kind of yellowish part, that's where  
5 your food goes through. That's where you start to do your digestion. And then my  
6 other probe is present in the other half extending down into it and they're not  
7 connected to each other.

8 Q And, Doctor, do you have an opinion what type of energy was taken -- I  
9 don't mean levels or anything like that, but how does one get a completely  
10 transected duodenum?

11 A This is a significant amount of force. This is like being punched in the  
12 stomach and then having your duodenum pressed up against the spinal cord such  
13 that it ends up tearing. That's the kind of force that you're talking about.

14 Q And, Doctor, can you and did you make attempts to time or indicate the  
15 timing of the injury to Brodie in this regard?

16 A Yes, I did.

17 Q And is that the same or similar fashion as you described about the  
18 timing to the head injury?

19 A Yes, the manner in which I did that was similar.

20 Q And what was the -- what was your conclusion and opinion regarding  
21 the timing of the dissected duodenum to Brodie?

22 A When you have an injury like this, you're going to have a very quick  
23 response. If you can imagine any food that may have been present in his stomach  
24 or even in his intestines afterwards is now going to go to the place of least  
25 resistance. It's going to start coming out into the abdomen. So right away you're

1 going to have those neutrophils I talked about coming out there within minutes to  
2 hours. Very quickly you're going to have that inflammatory process and you're going  
3 to see a significant amount of damage very quickly there. And then again, within  
4 that 24-hour period, you're going to start to see those macrophages I talked to --  
5 talked to you about trying to get in there and to chew everything up.

6 And I remember I was saying to you that when you injure your skin,  
7 when you injure your head, and even when you injure your abdomen, the sequence  
8 of events is very similar in terms of the way the body tries to protect itself and the  
9 timing is similar too. So when you have an event like this where you're just spilling  
10 everything into the abdomen, it's very quickly going to respond, the neutrophils are  
11 going to respond quickly, and the process of healing is going to be similar in terms  
12 of that timing. So although it may start off quickly in that the body says oh my gosh,  
13 there's all this food present in my abdomen, you can see those changes occur over  
14 a period of time, even up to 24 hours or around 24 hours.

15 Q And what type of symptoms both as -- let me just stick with a child. If a  
16 child had a transected duodenum, how would that child present as far as  
17 symptomatology wise?

18 A They're not going to feel well. They again can really not want to have  
19 much of an appetite. They're really not going to want to eat very much. If they do  
20 eat, they're probably going to vomit because there's no place for the food to go and  
21 the body again reacts so it doesn't want that present there. They may or may not  
22 still have bowel movements because remember food is already gone past. So they  
23 may still have a bowel movement, but it may not be related to the food that they just  
24 ate at that time. They may have pain in their abdomen. They may end up starting  
25 to run fevers and they may end up getting lethargic and that can take anywhere

1 from, you know, minutes where they start to feel the immediate discomfort and pain  
2 to hours over the time period that it takes for all that stuff to ooze out and the body to  
3 have that reaction.

4 Q And you said up to 24 hours that would indicate someone indicating  
5 lethargic, that they're tired, abdominal pain I believe you also said, and a loss of  
6 appetite?

7 A Correct.

8 Q And you also did the staining process, the iron staining process and the  
9 duodenum and peritonitis injury?

10 A Correct.

11 Q And as far as the results of those slides that you looked at, that assisted  
12 you in the conclusion of the time period of hours to 24 hours is the window for that  
13 injury?

14 A Yes.

15 Q And, Doctor, do you have an opinion as to that acute peritonitis as to  
16 whether or not it was the cause of Brodie's death?

17 A Yes.

18 Q And compared to the brain and to the peritonitis, what was your opinion  
19 as to the cause of Brodie's death?

20 A I think Brodie died and I know he died of acute peritonitis due to a  
21 transacted duodenum due to blunt force injury. And then contributing conditions are  
22 the acute mild traumatic brain injury due to the blunt force injury of the head.

23 Q And did you also do a consult with a radiologist in the case of Brodie?

24 A I did.

25 Q And what was the concern when you looked at the radiology

1 photographs of Brodie?

2 A When I looked at his radiographs, I suspected that I saw a fracture of  
3 one of his ribs on the left side. And because of the nature of everything that I'm  
4 seeing with this case and all the constellation of findings that are present here, again  
5 I asked for a consultation on someone who does this everyday all the time and  
6 asked for a radiology consult to confirm what I had already seen.

7 Q And based --

8 MS. VON MAGDENKO: Your Honor --

9 Q -- based upon --

10 THE COURT: Hold on a second.

11 I'm sorry, is there objection?

12 MS. VON MAGDENKO: Yeah, we would just object to the introduction of any  
13 evidence related to that report that she actually didn't do. She's relying on another  
14 expert for her opinion. It's the same objection with the brain consult.

15 MR. STANTON: Yeah, and Judge, my question and I believe the doctor's  
16 answer has to do with the process of the consult that she did and who she consulted  
17 with. I did not ask nor do I believe the doctor testified to the results of either this  
18 consult or the neuropathologist.

19 THE COURT: As long as you're not going to ask those questions, the  
20 objection's overruled.

21 BY MR. STANTON:

22 Q Doctor, based upon your examination and the procedure that you just  
23 described, do you have an opinion about the left eighth rib of Brodie?

24 A Yes, it's fractured.

25 Q Now when you say fractured, in the ribcage, can you explain what a

1 mid-bone fracture of the rib is and describe the area of where the fracture occurred  
2 in this case with Brodie?

3 A In this case, the fracture was a non-displaced fracture. In other words,  
4 the rib stayed in its shape, but it had a nonunion between it, if you will.

5 Q And where does the rib -- in particular, the eighth rib that we're talking  
6 about now, where does that connect anatomically to the body?

7 A The left eighth rib -- there are 12 of them in the thoracic area and the  
8 eighth one is one that you could palpate on the side. It would probably be about the  
9 second one up from what you're able to palpate on most of your bodies.

10 Q And where does it connect? Does it connect to the spine?

11 A Oh yes.

12 Q And the fracture in this particular case was located where?

13 A It was more laterally.

14 Q And what do you mean by laterally?

15 A Towards to sides.

16 Q And what type of occasions do you see a fracture of a rib on a two and  
17 a half year old as far as the amount of force applied in that area?

18 A It can be a pretty significant force for a little one to break a bone.  
19 They're still growing and they're still pretty pliable, if you will. So it takes a little -- it  
20 takes more significant force than it would for most adults actually.

21 Q And the fracture that we're talking about in the left eighth rib, can that  
22 cause by pressure?

23 A Yes, it's possible.

24 Q Now, anatomically did you review radiologist or x-rays I guess as we  
25 commonly refer to them about Brodie's fifth and sixth ribs that caused you concern?



1           A     I -- we do -- on all of our child deaths, we do a complete x-ray of their  
2     entire body, a complete skeletal survey. It's common, I do it every single time, and I  
3     do it on all of my homicides whether it be adults or kids. So it's -- I very regularly  
4     look at x-rays.

5                     On this one, the most demonstrable one was the eighth rib. The fifth  
6     and sixth were not as clear.

7           Q     Okay, and what did the periosteal irregularity mean to you in the fifth  
8     and sixth?

9           A     The -- the irregularity can indicate that there is some type of injury that's  
10    occurred. The timing of it may not be clear radiographically.

11          Q     And finally, Doctor, I want to ask you a series of questions -- we've  
12    talked about the cause of death and I believe your testimony was is there were two  
13    causes of death, the head injury and the acute peritonitis. Let me talk to you now  
14    going back to the description of what you said as to the manner of death. Do you  
15    have an opinion about the manner of death of Brodie Aschenbrenner?

16          A     Yes, I do.

17          Q     And what is that?

18          A     It's homicide.

19          Q     That is, it was committed at the hands of another?

20          A     Correct.

21          Q     Doctor, let me ask you a question about the injuries in total that you  
22    observed on Brodie Aschenbrenner and that you've testified here for the past hour  
23    or so. Do you have an opinion as to whether or not those injuries are indicative of  
24    child abuse?

25          A     Yes.

1 Q And are they?

2 A Yes.

3 Q And do you have an opinion, Doctor, as it relates to child abuse the --  
4 whether they're accidental versus non-accidental in nature?

5 A I'm not sure I understand your question.

6 Q The ones that you see as kind of normal injuries of a child of this age  
7 versus non-accidental.

8 A He has some injuries that are -- I have seen on toddlers, some of those  
9 ones that are present on the lower legs that we've talked about, some of those that  
10 might have been present on the arms, but the injuries that we talked about to his  
11 head, to his back, to his internal organs, to the subscalpular injury and those to his  
12 brain, those are abusive injuries.

13 Q And you've been provided with information gleaned from your  
14 investigator -- coroner investigator, Nancy Dahl, about the history of Brodie before  
15 his death; is that true?

16 A Correct.

17 Q Did some of those -- some of that information was the medical records  
18 from ABC Pediatrics.

19 A Correct.

20 Q And this had to do with a low speed motor vehicle collision about 21  
21 days or 20 days prior to Brodie's death; is that accurate?

22 A Correct.

23 Q Do you have an opinion, Doctor, after reviewing those medical records  
24 whether or not that incident of the motor vehicle accident had anything to do with  
25 any injuries that you saw on Brodie?

1 A No, it did not.

2 Q And do you have any opinion as to whether or not any of those injuries  
3 that you did observe, were they attributable to what I just described to you and what  
4 you observed in the medical records?

5 A The timing is way off, 21 days versus the injuries that we talked about  
6 that we see here at around the time of his death causing his death.

7 Q And you were also aware of an incident involving a trike or a powered  
8 ATV involving Brodie; is that true?

9 A That's correct.

10 Q And do you have an opinion as to whether or not that incident had  
11 anything to do with the cause and manner of Brodie's death?

12 A No, my opinion that did not contribute.

13 Q And why -- what is that based, Doctor?

14 A The injuries that occurred to him were part of his -- described as being  
15 part of a small abrasion that was present on his head and a small contusion that  
16 was present on his head, and nothing to the extent that we've seen and no injury to  
17 the duodenum, no injury that would be extensive enough to see that subscalpular  
18 injury.

19 Q And in addition you've been provided information once again through  
20 the normal investigative procedure, including Mr. (sic) Dahl and the detectives in this  
21 case about -- from Arica Foster, the mother of Brodie, about his behavior and  
22 activities involving head pain, lack of appetite and vomiting leading up to Brodie's  
23 death. You were all provided that information, correct?

24 A Correct.

25 Q And is that consistent with the opinions that you've expressed in this

1 courtroom here today?

2 A Yes.

3 MR. STANTON: Pass the witness.

4 THE COURT: Actually, I think the jury needs to use the restroom real quick.  
5 That's fine. So a very quick break for the restroom. So please come back at 25  
6 after. Again you're admonished not to converse amongst yourselves regarding this  
7 trial, do not talk about this trial with anyone, do not form or express an opinion on  
8 this trial. Please come back at 25 after.

9 [Off the record at 4:18 p.m.]

10 [Proceedings resumed at 4:27 p.m.]

11 [Outside the presence of the jury]

12 MR. STANTON: Judge, just as a timing matter, this doesn't necessarily need  
13 to be on the record, but Dr. Gavin -- I know we're starting tomorrow at 1:00. Dr.  
14 Gavin is unavailable until the following Monday after her testimony here today. So I  
15 just wanted to let the Court and counsel know.

16 MS. VON MAGDENKO: Your Honor, I don't think -- I'm not sure that half an  
17 hour is going to be enough time for my cross-examination.

18 THE COURT: Would it be -- would it flow better if you just waited until  
19 Monday, or do you want to get started today?

20 MS. VON MAGDENKO: The problem is that our two experts don't live here  
21 and one of them has already booked his flight, through the county actually, to come  
22 on Monday. And so I don't know if he's -- and I don't think it makes any sense to  
23 have her after when I haven't -- to actually have my experts after her. I mean before  
24 her. I'm sorry. Yeah, before her. To have my surgeon before her, I don't think that  
25 makes sense, so that's my only concern is that I don't know if he is -- if the county

-101-

1 will change his flight and if it will, if he's even available on Tuesday.

2 THE COURT: How long would she be? Can't we do them both on Monday?  
3 We have four hours. I understand your point but --

4 MS. VON MAGDENKO: Yeah, yeah, yeah, I guess -- yeah, I guess because  
5 we have four hours, two hours each, yeah. He's not going to be that long.

6 THE COURT: Doctor, what time do you leave -- do you leave -- are you gone  
7 all day tomorrow?

8 THE WITNESS: Tomorrow I'm working in the morning an autopsy and then  
9 I'm gone by 1:30 in the afternoon. I cut cases in the morning and then I'm gone in  
10 the afternoon.

11 THE COURT: I understand.

12 THE WITNESS: Yeah.

13 THE COURT: I'm trying to figure if I could squeeze you in, in the morning. I  
14 don't think I can because I have calendar.

15 MS. VON MAGDENKO: No, that's fine. We -- if -- you know what, you're  
16 right. You're right. I -- the surgeon's not going to be that long. We can just do her  
17 and the surgeon on Monday.

18 THE COURT: Yeah, so we'll do -- can you come back Monday at 1:00?

19 THE WITNESS: Of course.

20 THE COURT: And then you can call your expert after that. Now, do you want  
21 to start your cross now or later so it all kind of flows? It --

22 MS. VON MAGDENKO: Later.

23 THE COURT: -- doesn't matter to me.

24 Mr. Stanton, do you have any objections to that?

25 MR. STANTON: No, Your Honor.

1 THE COURT: Well you know what? If there's no other witnesses, I've  
2 already admonished the jury for the evening. We can just let them go.

3 MR. STANTON: That's fine with the Court. If counsel prefers to do the  
4 examination on Monday, that's -- I appreciate them accommodating Dr. Gavin and  
5 that's fine with the State.

6 THE COURT: Okay. Then, Jason, just let the jury know tomorrow come back  
7 at 1:00.

8 THE MARSHAL: Okay, Judge.

9 THE COURT: And we'll see you guys tomorrow at one.

10 MS. VON MAGDENKO: Thank you, Your Honor.

11 MR. ALTIG: Yes, Your Honor. Thank you.

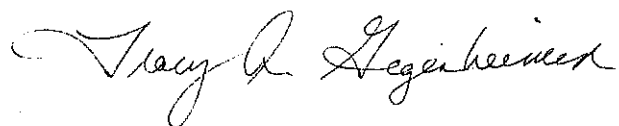
12 MR. STANTON: Thank you, Judge.

13 THE COURT: Thank you. See you next week.

14 THE WITNESS: Thank you, Your Honor. I appreciate that.

15 [Proceedings concluded at 4:29 p.m.]

16 ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual  
17 proceedings in the above-entitled case to the best of my ability.

18  
19 

20  
21 Tracy A. Gegenheimer, CER-282, CET-282  
22 Court Recorder/Transcriber  
23  
24  
25

1 TRAN

2  
3  
4  
5  
6 DISTRICT COURT  
7 CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 vs.

11 MICHAEL LEE,

12 Defendant.  
13

CASE NO. C277650-1

DEPT. XXIII

14  
15 BEFORE THE HONORABLE STEFANY MILEY, DISTRICT COURT JUDGE

16 WEDNESDAY, AUGUST 6, 2014

17 **TRANSCRIPT OF PROCEEDINGS**

18 **JURY TRIAL - DAY 3**

19 **APPEARANCES:**

20 For the State:

DAVID STANTON, ESQ.  
Chief District Attorney  
JOHN L. GIORDANI, III, ESQ.  
District Attorney

21  
22  
23 For the Defendant:

NADIA VON MAGDENKO, ESQ.  
STEVEN M. ALTIG, ESQ.

24  
25 RECORDED BY: MARIA GARIBAY, COURT RECORDER

-1-

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

INDEX OF WITNESSES

PAGE

FOR THE STATE:

KAMI BECKWITH

Direct Examination by Attorney Giordani	5
Cross-Examination by Attorney Von Magdenko	25

MERRIDEE MOSHIER

Direct Examination by Attorney Stanton	30
Cross-Examination by Attorney Von Magdenko	56
Redirect Examination by Attorney Stanton	72
Recross Examination by Attorney Von Magdenko	73

ARICA FOSTER

Direct Examination by Attorney Stanton	76
Cross-Examination by Attorney Von Magdenko	146



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

INDEX OF EXHIBITS

PAGE

FOR THE STATE:

3	Photograph	32
4	Photograph	79
6-41	Photographs	9
41	Photograph	138
77	Calendar	28
78	Photograph	13
80	CD	146

1 Wednesday, August 6, 2014 at 1:13 p.m.

2  
3 [Outside the presence of the jury]

4 THE COURT: Are all the jurors here?

5 THE MARSHAL: They are, Judge.

6 THE COURT: All right, counsel, is there anything we need to address before  
7 we bring the jurors back in?

8 MR. STANTON: Not on behalf of the State, Your Honor.

9 THE COURT: Okay.

10 MR. ALTIG: No thank you, Your Honor.

11 THE COURT: Okay. Bring them in please.

12 [Pause]

13 THE MARSHAL: District Court XXIII jury is present.

14 [Jury in at 1:14 p.m.]

15 THE COURT: Welcome back, ladies and gentlemen. When we left off  
16 yesterday, we had a doctor -- let me get her exact name. We had Dr. Gavin on the  
17 stand. Because of scheduling issues, we're going to kind of take her a little bit out  
18 of order in that we're going to call -- the State's going to call some additional --  
19 different witnesses at this time and Dr. Gavin will come back on Monday afternoon  
20 at the time the defense attorneys will have a chance to speak with Dr. Gavin. So I  
21 just wanted to let you know we'll be seeing Dr. Gavin once again.

22 So the State, if you could call your next witness.

23 MR. GIORDANI: Kami Beckwith.

24 [Pause]

25 THE MARSHAL: Please step up. Please remain standing. Raise your right

-4-

1 hand and be sworn in by our clerk.

2 KAMI BECKWITH

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

4 THE CLERK: Please be seated. State and spell your first and last name for  
5 the record.

6 THE WITNESS: Kami Beckwith, K-a-m-i B-e-c-k-w-i-t-h.

7 THE COURT: Whenever you're ready.

8 MR. GIORDANI: Thank you, Judge.

9 DIRECT EXAMINATION OF KAMI BECKWITH

10 BY MR. GIORDANI:

11 Q Ma'am, what do you do for a living?

12 A I'm currently employed with the City of Henderson as a code  
13 enforcement officer, and then prior to code enforcement, I also worked for them as a  
14 crime scene analyst.

15 Q And what does a crime scene analyst do exactly?

16 A My job as a crime scene analyst was to go to the scene and try to take  
17 all the photographs as accurately as possible before anybody even goes into the  
18 scene and collect any potential evidence that we find and work collaboratively with  
19 the detectives, the laboratory, coroner's investigator and any officers that are on  
20 scene.

21 Q So do you call that processing a scene, generally?

22 A Correct.

23 Q Is that the term for it?

24 A Yes.

25 Q Okay.

-5-

1 A I don't do any interviews, no arrests.

2 Q What type of information do you typically have going into a call? And  
3 by that I mean do you have specific information about what potentially went on in  
4 order to lead you in your investigation?

5 A Usually what happens is a Sergeant over the unit that's being called out  
6 will contact my supervisor and then the supervisor would direct me to go out and I'm  
7 usually briefed on what the call is regarding, why I'm going, but I usually don't have  
8 details going in.

9 Q I want to draw your specific attention to June 15th of 2011. On that  
10 day, did you respond to a scene at 2900 Sunridge Heights?

11 A I did, yes.

12 Q Is that here -- actually in Henderson, Clark County, Nevada?

13 A Correct.

14 Q And did you go to a specific apartment?

15 A Yes, I went to Apartment 1416.

16 Q Okay. What was the nature of the call when you received it?

17 A When I got the call, the details I got for this particular case was that it  
18 was a child death investigation and that the child had just vomited couple hours prior  
19 that night.

20 Q Okay. When you respond to the scene, who is present at the scene?

21 A When I got there, everybody was outside the door. Officer Rasmussen  
22 was one that was securing the front door and I went in and started doing the  
23 photography exactly as it was depicted when I arrived, and then I allowed them to  
24 go ahead and go in and begin their search and I would start doing measurements --

25 Q Okay.

1 A -- and doing my processing as well.

2 Q Okay. And we'll get to that in a second. When you first arrived to this  
3 scene, you said that Officer Rasmussen was securing the scene. What do you  
4 mean by that?

5 A He basically doesn't let anybody inside that door. He keeps it secure so  
6 that nobody's basically tampering with the scene before I get there and take  
7 photographs. And anybody that goes into the scene, they have to log in. We all  
8 have to -- even when I got there, I have to sign in and let them know that I am going  
9 into the scene.

10 Q And is it fair to assume that officers and detectives would be allowed in  
11 the scene if they follow the protocol --

12 A Correct.

13 Q -- inside? But laypeople and people who are potentially involved are  
14 not allowed in the scene?

15 A The -- just those that are involved in that particular investigation. If  
16 they're another detective or another unit, they would not be allowed in.

17 Q Okay, and I --

18 A Only those working.

19 Q So no laypeople? No --

20 A Correct.

21 Q -- regular citizens --

22 A No.

23 Q Okay. So on this specific scene, you arrive, there's a number of officers  
24 there. What do you first do when you go in to process a scene?

25 A The very first thing that I did was photography.

-7-

1 Q Okay. And you mentioned that you did a walkthrough photography. Is  
2 that different from processing certain items in particular?

3 A Yes, that's correct. I do overall photos and then as we're going through,  
4 I'll find items of evidence and I'm going to go ahead and do like an overall and  
5 close-up photos, taking them with measurements and be a little bit more specific to  
6 the items that we're looking at.

7 Q Okay. And the walkthrough, the initial photographing at the scene, is  
8 that so you get everything in place as it was?

9 A Correct.

10 Q All right. I'm going to show you a series of photos --

11 MR. GIORDANI: If I may approach, Judge?

12 THE COURT: You may.

13 MR. GIORDANI: And I've shown these to the defense.

14 BY MR. GIORDANI:

15 Q I'm showing you what's been marked State's Proposed Exhibit 6  
16 through 41. I want you to briefly thumb through those and tell me if you recognize  
17 them.

18 A (Witness complies.)

19 Q And while you're doing that, I'm going to ask you when you respond to  
20 a scene like this, are there members from the coroner's office who are also present?  
21 And you can keep thumbing through those --

22 A Yes, they -- they come after I have arrived and I'm not allowed to touch  
23 the body until after they have gotten there and then we review it together.

24 Q Okay. And the reason I ask is that sometimes that they would also  
25 photograph certain things?

1 A Yes.

2 Q Okay. So as you're going through those, I just ask that you keep in  
3 your mind some of them may not have been taken by you, but I just want to know if  
4 you recognize the photos.

5 A Okay.

6 Okay.

7 Q Do you recognize those photos?

8 A I do.

9 Q Are those fair and accurate depictions of the apartment you responded  
10 to and a number of items inside that apartment as they appeared on June 15th,  
11 2011?

12 A Yes, they are.

13 MR. GIORDANI: And I'd move for the admission of 6 through 41, Judge.

14 THE COURT: Objections?

15 MS. VON MAGDENKO: No objection, Your Honor.

16 MR. ALTIG: No objection.

17 THE COURT: Admitted.

18 [State's Exhibits 6 through 41 admitted]

19 MR. GIORDANI: Permission to publish them?

20 THE COURT: Yes.

21 MR. GIORDANI: Thank you.

22 BY MR. GIORDANI:

23 Q Showing you State's 6. You recognize that?

24 A Yes, that's Building 14.

25 Q So it's an apartment complex?

1 A Correct.

2 Q Showing you State's 7. What is that?

3 A That's the entry into the apartment, 1416.

4 Q As you walk through the door, and I'm showing you State's 8, what is

5 that?

6 A That is taken from the dining room looking into the living room.

7 Q And can you see on your screen there too?

8 A I do.

9 Q Is there a TV there on the left?

10 A I -- yes.

11 Q And a couch on the right?

12 A I'm sorry, could you repeat the question?

13 Q And a couch on the right?

14 A That's correct.

15 Q State's 9. Is this a close-up of that same couch?

16 A That's the couch in the living room, yes.

17 Q What is this in State's 10?

18 A And that is taken from the living room looking at the dining room with

19 the kitchen.

20 Q Did you actually go into the dining room?

21 A I did.

22 Q State's 12. What is that?

23 A That is the kitchen and that's the fridge that was in there.

24 Q What's the purpose of taking that photo?

25 A He had been drinking some blue liquid in a tumbler cup that was found

-10-



1 with him in the bed, and there's blue Gatorade in the bottom of the fridge, so I was  
2 trying to show that those both coincided with one another.

3 Q Okay. And let me step back for a second before we go through the rest  
4 of the apartment. You said that this was specifically a child death scene; is that fair?

5 A Yes.

6 Q Is there a particular way that you process a child death scene as  
7 opposed to any other death scene or crime scene?

8 A Yeah. As soon as I knew that it was a child death investigation, my first  
9 thought is he puked so that was concerning to me. I have a background with family  
10 services and that's usually a sign or can be a sign of abuse.

11 Q And what's your background with family services?

12 A I worked with Clark County Family Services here in Las Vegas.

13 Q In what role?

14 A I was working for the emergency response team as a family services  
15 specialist.

16 Q So you've actually dealt with several cases of child abuse in particular?

17 A Yes, we probably average as many as 30 a month. Yes.

18 Q And over a long period of time?

19 A I'm sorry?

20 Q Should I -- is it fair to assume that there are hundreds of cases that  
21 you've responded to specifically with regard to child abuse?

22 A Both here and with the FBI. I also did some as a victim specialist in  
23 working as a crime scene investigator for them as well.

24 Q And you responded to specifically child death scenes with the FBI?

25 A That is correct.

1 Q Okay. Let's get back to the photos. State's 11. Is that just the freezer  
2 to that fridge?

3 A Correct.

4 Q State's 13. What is this? If you can --

5 A That is the kitchen where the fridge is and then the laundry room is just  
6 beyond that.

7 Q What was the significance of the laundry room in this case?

8 A I apologize, I'm deaf in my left ear and --

9 Q Oh, I'm sorry.

10 A -- I'm plugged up with this monsoon season so I'm having a hard time  
11 hearing. What was that?

12 Q What was the significance of the laundry room, if any, in this case?

13 A The -- they said that there was bedding in the wash that had been  
14 washed from --

15 Q And is that an item of evidentiary value potentially for you?

16 A Correct.

17 Q And State's 14. Is that a photo of those items?

18 A Those are the clothes that were in the washer. Yes.

19 Q State's 18. What is that?

20 A That is the bedroom that I was told to be Brodie Aschenbrenner's  
21 bedroom, and it was down a north/south hallway from the entrance.

22 Q And after you went through this entire scene, did you prepare a diagram  
23 of the apartment and where items of evidence were found?

24 A I did.

25 Q Would it help you to explain to the jury kind of where these rooms are if

1 you show -- if I showed that to them?

2 A Sure.

3 Q And showing you State's 78. Recognize that?

4 A Yes, that's my crime scene diagram.

5 MR. GIORDANI: And I'd move for --

6 BY MR. GIORDANI:

7 Q It's fair and accurate depiction of how the apartment appeared on that  
8 day?

9 A Yes, it is.

10 MR. GIORDANI: Move for the admission of 78, Judge.

11 MS. VON MAGDENKO: No objections, Your Honor.

12 THE COURT: Admitted.

13 [State's Exhibit 78 admitted]

14 MR. GIORDANI: May I publish it?

15 THE COURT: You may.

16 MR. GIORDANI: Thanks.

17 BY MR. GIORDANI:

18 Q So let me show you this for a moment. You mentioned the bedroom  
19 was down a hallway.

20 A Yes, it's the southeast -- let's see. Yeah, the southeast bedroom.

21 Q And if you could, you can actually write on that screen there. Can you  
22 circle that bedroom for the ladies and gentlemen?

23 A (Witness complies.)

24 Q And that's the bedroom with all the toys in it that we just saw?

25 A Yes, it is.

1 Q State's 19. Same room?

2 A That is -- still is bedroom, yes.

3 Q State's 20. What is that?

4 A That's the dresser that was in his bedroom along the west wall.

5 Q With a TV on top?

6 A And TV, yes.

7 Q Number of items. In the left-hand corner there seems to be a giant

8 exercise ball and a tub?

9 A Yes, and what I believe was a toy bin.

10 Q Okay. And there are a number of toys in that?

11 A Yes, there was.

12 Q State's 21.

13 A That's a picture of the mattress on the floor, and then there's also a --

14 trying to think what that is. It's a corner bumper, I guess you would say, that's up

15 along the wall.

16 Q Like a baby bumper against the wall?

17 A Yes, it is.

18 Q In between the bed and the wall? Showing you State's 23. Why zoom

19 in on the bed like that?

20 A I angled in on the corner of the bed there because there was vomit and

21 I wanted to collect the bumper where the vomit had been found.

22 Q So you actually -- did you manipulate that bumper at some point and

23 move it up?

24 A That is exactly as it was found.

25 Q Okay. And later, State's 24, is that the same bumper?

-14-

1 A Yes, it is, and that's me pulling it up to show more closely what the  
2 vomit was.

3 Q And just for the record, is there some red appearing fluid on that  
4 bumper?

5 A There is, yes.

6 Q State's 25. What is that?

7 A That's a picture of the bathroom, the main bathroom.

8 Q When you say main bathroom, what do you mean?

9 A It was a central bathroom that was on the way to the southeast  
10 bedroom.

11 Q I'm going back to State's 78, the diagram. Can you circle that bathroom  
12 for the ladies and gentlemen?

13 A The E, central bathroom.

14 Q Moving along State's 26. What is that?

15 A That's a picture of the balcony off of the living room.

16 Q And there's a small -- looks like a Power Wheels that's red in that  
17 photo?

18 A Yes, it is. Couple chairs and a table.

19 Q At some point did you proceed to the back bedroom where you knew  
20 Brodie's body to be?

21 A Yes. That was where I spent most of my time processing because  
22 that's where he was found.

23 Q Showing you State's 15. What is that?

24 A That's a picture of a infant boy and a bed against the wall and there's a  
25 large fan in there.

1 Q And is that how Brodie laid when you first walked into the scene?  
2 A That's exactly how he was when I got there.  
3 Q And for the record, he's on his back. His right arm is a little -- above his  
4 head. Is that fair?  
5 A Yes.  
6 Q Showing you State's 16. Sorry, 16. Is that --  
7 A That's a picture showing a better view of where Brodie is in relation to  
8 the bed and to the doorway.  
9 Q Okay.  
10 A And that's a master bathroom that's just beyond.  
11 Q So there's a master bathroom that's actually in the master bedroom?  
12 A That's correct.  
13 Q I'm going back to State's 78. Can you show the master bedroom first,  
14 circle that.  
15 A (Witness complies.)  
16 Q And then circle the master bathroom.  
17 A (Witness complies.)  
18 Q Can you now circle the bathroom you described earlier as the main  
19 bathroom and its location?  
20 A It's the central.  
21 Q Fair to say that the main bathroom is a number of feet away from the  
22 master bedroom?  
23 A Correct.  
24 Q And there's another option or another bathroom that's closer?  
25 A Yes.

1 Q In fact, there's a door in between the master bathroom and the master  
2 bedroom?

3 A Yes.

4 Q Now you mentioned earlier that you go through the scene and with  
5 particular regard to a child death, you'll measure surfaces. What's the purpose of  
6 doing that?

7 A Based on my prior experience, I know a lot of times arguments that will  
8 come up is they fell off the bed, they fell off a couch, what have you, and so purpose  
9 of my measurements is to show that those type of injuries -- it's not typical to receive  
10 those type of injuries.

11 Q Showing you State's 27. Let me take that out. What is that?

12 A That's a picture of leather furniture and the measurements of the  
13 height (sic) from the carpet up to the seat.

14 Q And up to the seat and actually the --

15 A Well I guess it's up to the arm, I apologize, yes.

16 Q I'm sorry, there we go. Can you tell from this photo and your ruler in the  
17 photo how tall the --

18 A It's approximately two feet to the arm and approximately one foot seven  
19 inches to the seat.

20 Q And this is -- where is this located in the apartment?

21 A That's in the living room.

22 Q Okay. So that's the couch we saw earlier?

23 A Yes, it is.

24 Q State's 28.

25 A That's a picture of the mattress and it's a measurement next to it

1 showing that it's about one foot four inches high.

2 Q Okay. Let me step back to this for a moment. Showing you State's 78.  
3 Was there also a chair in the living room?

4 A Yes, there was.

5 Q This is -- is that the couch or the chair? Can you recall?

6 A Based on the fact that there's a rug in the corner, I'm guessing that's the  
7 chair. I would have to look at my previous photos because I would show the overall  
8 that would show where that is.

9 Q Fair enough. And this was three years ago, right?

10 A (Indiscernible) --

11 Q You also mentioned earlier that you went through and you processed  
12 and looked for items of evidence to be impounded; is that fair?

13 A Yes, I did.

14 Q And did you impound a number of different items from this home?

15 A I did.

16 Q Do you know the number off the top of your head how many items?

17 A I believe it was around 25. I would have to look at the diagram to see  
18 exactly how many there were.

19 Q Okay.

20 A Or my report, the evidence impound report.

21 Q I'm going to show you State's 78 again.

22 A Twenty-three.

23 Q And that lists the items of evidence that you impounded on the  
24 right-hand side of the diagram?

25 A Yes, it is.



1 Q Twenty-three total?

2 A Yes.

3 Q I want to go through a couple of them. State's 32. What does that  
4 appear to be to you?

5 A That's a picture of a clear plastic hanger.

6 Q State's 33. Same hanger?

7 A Another clear plastic hanger.

8 Q State's 34.

9 A That's the plastic hanger with measurement.

10 Q What's the purpose of --

11 A It's a ABFO scale. And the purpose for that a injury that I found on him  
12 and I wanted to show -- it looked like an indentation and so I was looking at what the  
13 measurements of that indentation were with that hanger.

14 Q Is that commonly referred to as a pattern injury?

15 A Yes.

16 Q Do you recall if that pattern injury was on Brodie's back?

17 A There were four of them that I identified, yes.

18 Q Okay, so -- and I should have mentioned earlier you actually flipped  
19 Brodie's body, or someone did, and you examined his back as well?

20 A Yes, I did.

21 Q And is that prior to processing the scene and everything we just went --

22 A Before collecting the items of evidence, yes, that's the last step that I  
23 take.

24 Q Okay. State's 35. What does that appear to be to you?

25 A That's a curtain rod that was in Brodie's bedroom.

1 Q State's 36.  
2 A That's a measurement of the curtain rod.  
3 Q And for the same reasons as you just described?  
4 A Yes, and then the investigator had told me that --  
5 MR. ALTIG: Going to object, hearsay.  
6 A -- he had pulled that down just a couple weeks prior -- I'm sorry.  
7 THE COURT: Hold on a second.  
8 MR. GIORDANI: And as to what the detective told her, it's for the effect on  
9 the listener. It's not for the truth of the matter asserted.  
10 THE COURT: Overruled.  
11 BY MR. GIORDANI:  
12 Q And you can answer that.  
13 A I did the measurement just to see the size of that blind based on the  
14 fact that I had been told that that had been an injury earlier in the week.  
15 Q Okay. So the blind or the curtain rod is --  
16 A Correct. The curtain rod.  
17 Q So you were aware of that information and that's why you impounded  
18 and measured this item?  
19 A Correct.  
20 Q State's 37. What does that appear to be?  
21 A That's a baseball bat. I believe that was found in the closet.  
22 Q Which bedroom? Or which room?  
23 A Master bedroom.  
24 Q Okay. Just a couple more here. State's 38. Same baseball bat?  
25 A That's the same one, yes.

-20-

1 Q State's 39. Sorry.

2 A That's the measurement of it, showing it's about three feet.

3 Q And is that also measured and impounded based on the fact that there  
4 were pattern injuries on Brodie's body?

5 A I collected that one because when the coroner investigator and I were  
6 feeling his head, there was a soft spot above his left ear and that was concerning to  
7 me.

8 Q And --

9 A So --

10 Q Okay.

11 A -- I collected it.

12 Q Based on your training and experience, did you believe that this is an  
13 implement that could have been used to cause --

14 MR. ALTIG: I'm going to object.

15 THE WITNESS: Yes.

16 MR. ALTIG: I don't think there's a foundation laid that this person can answer  
17 that type of question.

18 THE COURT: I agree, counsel. You'd have to lay a foundation for this  
19 question.

20 So ladies and gentlemen of the jury, please disregard the last response  
21 at this time.

22 BY MR. GIORDANI:

23 Q Just generally, when you are aware of injuries to a body, to a child or an  
24 adult, doesn't matter, when you're going through the scene and looking for items  
25 that could have caused that injury, do you in your mind as a layperson and as an

1 expert think of the size of the injury and compare that to the items that you  
2 impound?

3 A Yes, I was concerned there was a blunt trauma and this is an item that I  
4 often see with blunt trauma.

5 Q And you were specifically concerned based upon all that with a head  
6 injury that you had seen?

7 A Yes, and usually the vomiting is a result of a head trauma as well.

8 Q Okay. Now there's one more item that you impounded. Do you  
9 remember impounding a ruler? A ruler-type instrument.

10 A I'm sorry, one more time?

11 Q Do you remember impounding and examining a ruler-type instrument?

12 A Yes, it was a toy that was found in his toy box in his room.

13 Q Showing you State's 29. Is that it?

14 A Yes, that's the toy bin with the orange ruler at the top.

15 Q And if you could circle the ruler?

16 A (Witness complies.)

17 Q State's 30?

18 A That's a picture of the ruler that was impounded.

19 Q And State's 31. Did you measure that ruler as well?

20 A I did, yes.

21 Q And the ruler already had measurements on it --

22 A Yes.

23 Q Thorough I guess. After you impound all the items that were on the list,  
24 the 23 I believe, what do you do next?

25 A After that then I take them back to the office and I basically secure it

1 and nobody else has access to it. I take it directly to the evidence locker and it stays  
2 secured and then we have to sign out as a chain of custody for anybody who  
3 reviews it after I have impounded it.

4 Q Okay. I jumped ahead. One more photo. State's 41. Do you  
5 recognize that?

6 A Yes, it's a grocery receipt, Smith's.

7 Q Where was that found?

8 A That's inside a purse I -- I would have to look at the photos that were  
9 the overall. I believe it was in the dining area on the table.

10 Q Okay. And that's okay. It was in a purse though is --

11 A Yes.

12 Q -- how you recall it? And it's a Smith's receipt?

13 A Yes.

14 Q So you process the scene, you gather the evidence, you impound it and  
15 put it in the evidence vault. What do you do at that point? Do you have other  
16 involvement in this scene?

17 A No.

18 Q Do you move on to a different scene at 98 Sea Holly?

19 A Yes, I did.

20 Q And what was the purpose of your going there?

21 A One of the injury patterns on his back had four crescent shaped areas  
22 on his back that looked consistent to me with fingers and so I wanted to do swabs  
23 underneath the fingertips and the nails. And we also did buccal swabs. That was  
24 after the detectives obtained a search warrant so that's when we moved to the next  
25 scene.

1 Q Okay. Just generally, what's the purpose of a fingernail swab? What  
2 are you looking for?

3 A Basically any kind of -- I was looking for blood, any kind of DNA that we  
4 might get from underneath those nails.

5 Q And from who's nails were you looking at this point?

6 A It was Michael Lee and Arica Foster.

7 Q And Michael Lee, do you see him in the courtroom today?

8 A I do.

9 Q Can you please point to him, describe an article of clothing he's wearing  
10 today?

11 A Yes, he's sitting in front of me in a dark suit and a red tie and a white  
12 shirt.

13 MR. GIORDANI: And would the record reflect identification, Judge?

14 THE COURT: It will.

15 BY MR. GIORDANI:

16 Q So you actually made contact with the defendant?

17 A I did.

18 Q And did you take buccal swabs and -- I'm sorry, fingernail swabs and a  
19 buccal swab?

20 A Yes, I did.

21 Q And just briefly, what's a buccal swab for the ladies and gentlemen?

22 A A buccal swab is where -- it's kind of got a soft cotton tip and we just  
23 scrape on the inside of the cheek and that scrapes off the cheek cells and that'll give  
24 us DNA.

25 Q And did you do the same for Arica?

1 A Yes, I did.

2 Q Both fingernails and buccal?

3 A Yes, I did.

4 Q And with regard to Arica specifically, do you remember her fingernails  
5 and anything of note about her fingernails?

6 A Yes, they were cosmetically altered.

7 Q And did it seem to you or appear to you that they were undamaged and  
8 freshly manicured?

9 A Yes, they were.

10 MR. GIORDANI: Pass the witness, Judge.

11 THE COURT: Cross?

12 CROSS-EXAMINATION

13 BY MS. VON MAGDENKO:

14 Q So you did DNA testing? Is that right?

15 A I collect the DNA, but I don't do the testing. That's done by the forensic  
16 lab.

17 Q Okay. So you don't know what the results of the DNA tests were to see  
18 if those are --

19 A I usually never hear that, no.

20 Q Okay. So in this case, you can identify Michael Lee as a person you  
21 saw, but not as a person whose fingermarks were on Brodie, right?

22 A Based on the people that were at the scene when he died, that's why I  
23 collected from anybody who had been there. Yes.

24 Q But when you identified Michael just now just for the jury, you're not  
25 identifying him as the perpetrator of any crime, are you?

-25-

1 A No.

2 Q Okay. And you're not identifying Michael as being -- his hand being  
3 consistent with what -- a mark on Brodie, are you?

4 A No.

5 Q And you're not saying that Michael's DNA was on Brodie, are you?

6 A No.

7 Q Okay. Was there a mark of a baseball bat on Brodie's head?

8 A That would be hard for me to answer because that's blunt trauma.

9 There is no pattern that necessarily comes -- underneath hair it would be hard to  
10 see that, but I -- there was softness is the best way I can describe it. No pattern.

11 Q Okay. So there was no baseball bat pattern?

12 MR. GIORDANI: I'm going to object --

13 THE WITNESS: No.

14 MR. GIORDANI: -- to that, Judge. That's outside the scope of her knowledge  
15 as she just stated.

16 THE COURT: Sustained.

17 MS. VON MAGDENKO: Court's indulgence?

18 THE COURT: Yes.

19 [Colloquy between counsel]

20 BY MS. VON MAGDENKO:

21 Q You had testified earlier that sometimes when a child vomits that's  
22 indicative of abuse.

23 A Yes.

24 Q Are there any other reasons why a child could vomit?

25 A Sure. They could have been poisoned. They can be ill.



1 Q Okay.

2 MS. VON MAGDENKO: All right. I have no further questions. Thank you.

3 MR. GIORDANI: Nothing further --

4 THE COURT: Redirect?

5 MR. GIORDANI: No, Judge.

6 THE COURT: All right, is she free to go?

7 THE WITNESS: Okay.

8 MR. GIORDANI: (No audible response.)

9 THE COURT: Yes. Thank you, ma'am, for your time.

10 MR. STANTON: Next witness -- are you ready? Yes.

11 THE COURT: Yes. I'm sorry, I was --

12 MR. STANTON: That's all right.

13 THE COURT: -- expecting you tell me who it was.

14 MR. STANTON: I was expecting you to ask me --

15 THE COURT: I was like --

16 MR. STANTON: -- call your next witness.

17 THE COURT: -- is this it? Are you going to tell me?

18 MR. STANTON: Yeah.

19 THE COURT: Yeah. Next witness please.

20 MR. STANTON: State would call Merridee Moshier.

21 Judge, while we're waiting for Ms. Moshier to enter the courtroom, I

22 have previously marked with your clerk Exhibit 77 which is a calendar of the month

23 of June of 2011. I'd move for its admission at this time.

24 THE COURT: Any objections?

25 MS. VON MAGDENKO: No objection, Your Honor.

1 THE COURT: Admitted.

2 [State's Exhibit 77 admitted]

3 [Colloquy between counsel]

4 MR. STANTON: She out there?

5 [Pause]

6 MR. STANTON: She's coming, Your Honor. She was just in the restroom.

7 THE COURT: Okay.

8 MS. VON MAGDENKO: Your Honor, can we approach while we're waiting for  
9 her?

10 THE COURT: Uh-huh.

11 [Bench conference begins at 1:45 p.m.]

12 MS. VON MAGDENKO: I don't know if you want me to do this now or later,  
13 but I just want to object to the introduction of these autopsy photos during Merridee's  
14 examination because she wasn't -- these already been shown by the jury -- to the  
15 jury. It would just seek to inflame the jury to see them over and over again with  
16 every witness and she wasn't there -- there's no evidence she was there at the time  
17 these were taken.

18 THE COURT: What is she going to testify to?

19 MR. STANTON: That the injuries that she sees in those photographs that  
20 were not present when she last saw her grandson alive.

21 THE COURT: I think that's relevant.

22 MR. STANTON: I agree --

23 MS. VON MAGDENKO: She would never have pulled down his eye to see  
24 something down there.

25 MR. STANTON: I think if you review her statement -- I think if you review her

-28-

1 statement, during the Saturday and Sunday when she was caring for him, she was  
2 putting the eye drops for the pinkeye in her (sic) eye. I think she's competent to  
3 testify of every part of the body that's depicted in those photographs because she  
4 saw him completely naked over a period of two days.

5 MS. VON MAGDENKO: You don't have to pull down the eye to put in eye  
6 drops. I made the objection for the record and the Judge made the ruling --

7 THE COURT: Okay, and you know what, you need to make it better at the  
8 break, okay? So we can make sure it's preserved.

9 MS. VON MAGDENKO: Okay. Okay.

10 THE COURT: Okay.

11 [Bench conference ends at 1:47 p.m.]

12 THE COURT: Jason, would you like to bring her in if she's out of the  
13 restroom, please?

14 THE MARSHAL: She's not, Judge.

15 THE COURT: She's out.

16 THE MARSHAL: She's not there yet.

17 THE COURT: She's not out. Okay.

18 MR. STANTON: I think she's on the floor below, Your Honor.

19 THE COURT: Okay.

20 [Pause]

21 THE MARSHAL: Please remain standing, raise your right hand, be sworn in  
22 by our clerk.

23 MERRIDEE MOSHIER

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

25 THE CLERK: Please be seated. State and spell your first and last name for

-29-

1 the record.

2 THE WITNESS: My first name is Merridee, M-e-r-r-i-d-e-e. Last name  
3 Moshier, M-o-s-h-i-e-r.

4 THE COURT: Whenever you're ready.

5 MR. STANTON: Thank you, Your Honor.

6 DIRECT EXAMINATION OF MERRIDEE MOSHIER

7 BY MR. STANTON:

8 Q Ms. Moshier, who are you to Brodie Aschenbrenner?

9 A I'm his grandmother, his nana.

10 Q And I want to ask you a series of questions about your background in  
11 the timeframe of June of 2011. During that time period, ma'am, how were you  
12 employed?

13 A I worked at UMC, University Medical Center, here in town.

14 Q And what did you do there at UMC?

15 A I'm an RN. I was managing cath lab, cardiac lab, specials, specials  
16 trauma and telemetry.

17 Q And what -- how many years in June of 2001 (sic) had you been a  
18 registered nurse?

19 A Twenty-seven.

20 Q And what were your prior experiences, job assignments as a registered  
21 nurse?

22 A We moved a lot. My husband was military so I was ICU, CCU --

23 Q Let me just stop you. ICU means what?

24 A Intensive care, I'm sorry.

25 Q And that is an intensive care unit in a general hospital?

-30-

1 A In hospitals. Some of the hospitals were great big hospitals, training,  
2 others were small rural. CCU, critical care unit, med surg, telemetry --

3 Q Let me just go back to CCU. What type of patients are --

4 A Cardiac.

5 Q And keep on going. Thank you.

6 A Inpatient, outpatient. I've done clinics. I've been a consultant for  
7 various companies to go in and fix units. I've worked pediatrics, I've worked ER.  
8 Pretty much anything except for OB. I didn't ever do that.

9 Q The obstetrics --

10 A Right.

11 Q -- gynecology?

12 A Right.

13 Q Ma'am, I want to ask you how many adult children do you have?

14 A I have three and one stepdaughter.

15 Q And how many grandchildren do you have?

16 A There's eight, including Brodie.

17 MR. STANTON: May I approach, Your Honor?

18 THE COURT: You may.

19 BY MR. STANTON:

20 Q I'm going to show you what has been marked as State's Exhibit 3 and  
21 for the record, I've shown these -- all these photographs to defense counsel. Do you  
22 recognize who is depicted in that photograph?

23 A It's Brodie and Arica.

24 Q And who is Arica to you?

25 A My daughter.

1 Q And what order in your daughters or your childrens (sic) is Arica?  
2 A Arica's the youngest, except my stepdaughter's a little bit younger.  
3 Q Okay. Do you have a general idea the timeframe of where that -- when  
4 that photograph would have been taken?  
5 A This was taken in our rental in Las Vegas, so I moved there about a  
6 year before this occurred.  
7 Q Okay, so sometime in June of summer of 2010?  
8 A Yes.  
9 Q And does it accurately depict your grandson, Brodie, and your  
10 daughter, Arica, at that time?  
11 A It's beautiful, of course.  
12 Q Okay.  
13 MR. STANTON: Move for it's admission at this time.  
14 THE WITNESS: He's laughing.  
15 MR. ALTIG: No objection.  
16 THE COURT: Objections?  
17 MS. VON MAGDENKO: No objection, Your Honor.  
18 MR. ALTIG: Not to that photograph.  
19 THE COURT: Admitted.  
20 [State's Exhibit 3 admitted]  
21 BY MR. STANTON:  
22 Q Now, Ms. Moshier, do you recognize the item that I'm pointing to down  
23 in the front of this photograph, this red item?  
24 A That looks like the top of his Power Wheels.  
25 Q His Power Wheels?

1 A Yeah.

2 Q Is that a toy that your grandson, Brodie, had?

3 A It is. I don't remember which Christmas he received it, but it's the top  
4 because it was red.

5 Q And can you tell me generally speaking, Ms. Moshier, about what  
6 Brodie was like as a child into 2011? In particular, the April, May, beginning of June  
7 2011, how did he act and behave?

8 A Brodie was -- first he was a gift. And he'd come in the door yelling  
9 nana, nana. And he would watch cartoons, he'd crawl up on the couch, he would  
10 get out on the quad, he'd do things like dance on my coffee table to The Wiggles,  
11 and you'd walk by and he'd be like catch me and he'd just jump, one, two, three  
12 jump and you'd catch him. He'd climb up shelves in my refrigerator. He was just --  
13 he was one of those babies that didn't cry that just was loving and generous and  
14 laughing all the time.

15 Q He was active?

16 A Always very, very active.

17 Q And during the course of your interaction with Brodie, would you say  
18 that you interacted -- and now my question is focusing into the timeframe of the year  
19 2011 -- on a regular basis with Brodie?

20 A Yes, for quite a while right -- prior to this, for nine months Arica and  
21 Brodie lived with us. So she worked and we always had Brodes. And then when  
22 Arica left and moved out, we kept him at least one weekend night, sometimes two.

23 Q Okay, so sometime you said that Brodie and Arica actually lived with  
24 you and your husband?

25 A From September when he was like nine months old up until the time

-33-

1 she moved out with Mike which was -- I think it was February, March.

2 Q Of 2011?

3 A Correct.

4 Q And when you say the individual by the name of Mike, is that the  
5 defendant, Michael Lee?

6 A Yes.

7 Q Do you see him in court today?

8 A He's sitting there in a black suit with a red tie.

9 MR. STANTON: May the record reflect --

10 THE WITNESS: Right there (indicating).

11 MR. STANTON: -- the identification of the defendant?

12 THE COURT: It will.

13 BY MR. STANTON:

14 Q Were you familiar in your experience both in your background as a  
15 nurse, as a mother and a grandmother, and your involvement in Brodie's life with the  
16 normal injuries, bruises, abrasions that Brodie would get both as to the number of  
17 them, the location of them, and the severity?

18 A Yes, I was.

19 Q And you indicated that there was a transition of where Arica and Brodie  
20 lived in February or March of 2011. Sometime earlier, specifically in October of  
21 2010, did it become known to you that Arica had a new boyfriend and that is the  
22 defendant?

23 A Correct.

24 Q Were you able to observe the interaction -- and now we're about the  
25 timeframe of October of 2010 until June of 2011 -- how Brodie interacted with the



1 defendant?

2 A When they were first dating, Mike would come over and sit and watch  
3 TV or hang out, and so Brodie would be there with us and Mike and Arica.  
4 Sometimes the three of them would leave and go do various activities. Sometimes  
5 they'd be at the house with us. So I was -- I was there. I could see the interaction.

6 Q And do you have an opinion based upon what you observed as to  
7 whether or not there was any change in that behavior; that is, what you observed  
8 Brodie interact with the defendant, especially leading up to the month of June of  
9 2011?

10 A Brodie right there at -- towards the end would get upset when Mike  
11 picked him up. However, sometimes he would get upset no matter who picked him  
12 up. He -- he really loved staying at our house. You know, it was -- we're  
13 grandparents, we spoil him, let him do probably things his mother never would, so  
14 you know, sometimes he just wanted to say with us, but there were times he did not  
15 want to leave with Mike.

16 Q And that was different -- noticeably different to you from when the first  
17 part of the relationship or the interaction between Brodie and the defendant?

18 A I would say so, yes.

19 Q Now, I want to direct your attention to about 20 days prior to June 5th of  
20 2011.

21 A Okay.

22 Q Did you become aware of the fact that Arica and Brodie were in a  
23 fender bender?

24 A Yes. I was -- she called me when they were in the wreck. It was down  
25 by the junior high. She was picking up one of my other granddaughters. And I left

1 work and went down there, so I actually met her at the car with Brodie directly after  
2 the accident.

3 Q So where the cars were originally stopped, you went to that location?

4 A She had just pulled into the church parking lot. The -- the junior high as  
5 I came down -- I can't remember the road. My mind is -- anyway, it was on the left  
6 and they had -- the cars were not that wrecked, so they pulled into the parking lot to  
7 the right at the church.

8 Q Now --

9 A And then the cops were coming and the fire department, so --

10 Q And when you were there, did you have an interaction with Brodie?

11 A I did. I picked him up and I was walking around with him and -- and  
12 somehow he didn't have his shoes -- Brodie and his shoes, they were always  
13 missing. I don't know what he did with this shoes, so I had picked him up and took  
14 him out where there was some grass and we were playing while this was going on  
15 with Arica. They were doing the report. And then John, my brother-in-law, came  
16 down and got Brodie and took him back to the house with Lily.

17 Q Okay, how much time were you with Brodie physically at the scene,  
18 would you estimate?

19 A You know, John was at work on the other side of town, so it probably  
20 took him, you know, a good 30 minutes to get down -- school's over, traffic's getting  
21 busy.

22 Q So during this time period you indicated that you actually picked up  
23 Brodie and you're carrying him around?

24 A Well the pavement was hot. It was June or whatever month. So --

25 Q So is that a yes that --

1 A Yes.

2 Q -- that's what you were doing?

3 A Yeah.

4 Q At anytime, anytime, did you ever see any signs or indications that

5 Brodie had any of the following injuries, and I'm just going to list them off and then

6 you answer me, okay?

7 A This is pertaining to the wreck?

8 Q That's --

9 A Okay.

10 Q Yes, exactly, ma'am. Abdominal pain?

11 A No.

12 Q Loss of appetite?

13 A No.

14 Q That his head was hurting?

15 A No.

16 Q And that he was vomiting?

17 A No.

18 Q Did you ever see any of those symptoms from Brodie in days after this?

19 A No.

20 Q I'm going to show you now Exhibit 77 which I'll represent to you, Ms.

21 Moshier, is a calendar month of June of 2011. I want to ask you about a specific

22 incident that occurred on or around -- this being the 15th of June, Wednesday -- the

23 9th, almost -- or six days before --

24 A Right.

25 Q -- Thursday. Did you or were you advised by someone that there had

1 been an incident with Brodie and the Power Wheels that you had previously  
2 described in that photograph?

3 A Arica informed me --

4 Q I don't want to get into the conversation, just --

5 A No. Yes.

6 Q -- let me just --

7 A She did.

8 Q -- walk you through this. Did you become advised about an incident  
9 with Brodie and the Power Wheel?

10 A Yes.

11 Q At or around the same time, were you advised about Brodie and  
12 something with his eyes?

13 A He had pinkeye.

14 Q And you're familiar with pinkeye?

15 A Conjunctitis (sic), yes.

16 Q And that's --

17 A Really with a lot of kids, yes.

18 Q Both your own and at work?

19 A Correct. And grandkids. It goes through like wildfire.

20 Q And would that have been -- do you recall the day that you would have  
21 found out about Brodie and pinkeye, looking at the map or the calendar?

22 A It was Friday, the 10th, and I don't remember if we were texting or  
23 calling and that particular night Brodie was supposed to come over to the house  
24 while Arica worked and because my oldest daughter's children were also at the  
25 home, we didn't want the kids to get infected with the pinkeye because they were

-38-

1 going to go to Montana, so Arica had called or text and asked if we could watch  
2 Brodie at her house.

3 Q Now your older daughter's name is what?

4 A Amanda. And Alayne.

5 Q And then Alayne is the next youngest?

6 A The second, yes.

7 Q So Amanda has some kids. There's some concerns about transferring  
8 that within the first 24 hours. So it's decided that Brodie is not going to come over?

9 A Right, and so I text Amanda and Alayne because Alayne was in town.  
10 She lived in San Diego then. And asked them -- or asked Brad, my husband, if he  
11 would go watch Brodie till I got off work or if I should get Amanda or Alayne to go  
12 over.

13 Q And did you, to the best of your knowledge, believe that Brad indeed  
14 went and did that and he was away from your home that evening?

15 A Yes, he went and watched Brodie.

16 Q Now I'd like to direct your attention to Saturday, the 11th of June. Did  
17 there come a day -- time on that day, ma'am, where you received Brodie to care for  
18 him through the weekend?

19 A It was -- he did come over. It was somewhere -- I don't know the exact  
20 time, between 11 or 12 that particular day so Arica could go to work.

21 Q So on 11 -- is that in the morning or in the evening?

22 A The morning, 11 a.m.

23 Q Brodie is delivered to your home where you and Brad live?

24 A Correct.

25 Q Brad's there?

1           A     Brad's there and we had Lily, the other little -- my little -- she was then  
2 three, my little granddaughter.

3           Q     And that would be Amanda's daughter?

4           A     Correct, her youngest.

5           Q     And so at the home on Saturday is you and your husband, Lily and  
6 Brodie; is that correct?

7           A     Correct.

8           Q     Now did you have occasion to observe Brodie on Saturday?

9           A     Yes.

10          Q     Did you see any injuries on Brodie?

11          A     He had a little fingertip bruise on his right or my left cheek, like the size  
12 of his pinky, and it was starting to yellow. And that's the one that Arica had said  
13 happened on the Power Wheel. And then he had a little bruise like an eyeliner  
14 (indicating) bruise under his left eye that we felt was from the conjunctivitis.

15          Q     Okay. Now you just demonstrated that in kind of a eyeliner that you  
16 went across transversed as the makeup eyeliner would be on the lower left lid --

17          A     Right.

18          Q     -- of Brodie's left eye?

19          A     From the outer corner maybe about halfway through to the pupil.

20          Q     And did you see Brodie doing anything with his eye during Saturday?

21          A     He was rubbing his eyes. He had pinkeye, they itched.

22          Q     And did you have medication for the pinkeye?

23          A     We had Gentamicin drops and Arica brought them in -- in fact, I had to  
24 send her back to the car to go get them. So the drops were I believe three times a  
25 day. It could have been four. So we put the drops in.

-40-

1 Q When you say we, who would have done that?

2 A Brad helped because Gentamicin drops typically don't -- they sting  
3 when they're inserted, so he didn't like them.

4 Q He being?

5 A Being Brodie --

6 Q Okay.

7 A -- didn't like having the drops.

8 Q And so when you say we, how did you and Brad facilitate getting the  
9 drops in?

10 A I had Brad just hold his hands and then I opened the eye with my thumb  
11 and index finger (indicating) and then you take your pinky and you pull back the lid  
12 because you drop the drop actually in the sack of the eye, not the eye itself.

13 Q Okay, and so you're demonstrating that you lift both the upper lid and  
14 the lower lid to put the drops in; is that correct?

15 A Correct. And then you pull the corner down with your pinky (indicating).

16 Q And would you have done that for both of his eyes, his right eye and left  
17 eye?

18 A Yes, because it'll just travel to the other eye.

19 Q How about Brodie's behavior on Saturday? How would you describe it?  
20 Normal? Typical?

21 A It was normal. He was, you know, getting into things and him and Lily  
22 were playing and they had a little wading pool in the back yard and they had the  
23 hose out and they were running around and getting in the sandbox and I think at one  
24 point they took all the yard chalk and put it in the dog's water so we had a big mess  
25 with that and they were just doing their normal playing through the house.

-41-

1 Q Nothing unusual?

2 A No.

3 Q How about his appetite?

4 A Brodie was eating everything. I think I remember making the comment  
5 that he'd get into the fridge by himself and get yogurt. So we'd have to leave  
6 everything on the bottom shelf, otherwise he would climb my shelves of my  
7 refrigerator to get things.

8 Q I'm going to go through a list of injuries. Any abdominal pain?

9 A No.

10 Q Any loss of appetite?

11 A No.

12 Q Head hurting?

13 A No.

14 Q Vomiting?

15 A No.

16 Q Brodie goes to bed Saturday night. There's no incidents or anything  
17 remarkable that occurs that day?

18 A Typical night; dinner, baths, teeth, go to bed.

19 Q And when you brushed Brodie's teeth both on Saturday night and  
20 Sunday, did you notice any sign of discomfort or injury to his teeth or gums?

21 A No, you know, sometimes the kids would get in the tub and we'd give  
22 them a cup of water and then we'd give them a toothbrush with their toothpaste and  
23 let them brush in the tub. And then of course we'd have to finish because they  
24 wouldn't get all the spots. They were two and three.

25 Q So on Saturday and Sunday would you actually assist and physically



1 brush Brodie's teeth?

2 A Uh-huh.

3 Q Is that a yes?

4 A Yes.

5 Q Thank you, ma'am. Now let me transition to Sunday, the 12th of June.

6 A Okay.

7 Q Presume Brodie gets up Sunday morning and what are the activities of  
8 Sunday?

9 A He typically got up fairly early and Lily did not. She's a sleeper inner.  
10 So Brad would get up early with him so it was the same. You know, they were  
11 running around and playing and Brodie was probably up first and then -- my middle  
12 daughter came and picked the kids up at some point, like noon, 1:00, and they went  
13 to one of the waterparks here in town for a while.

14 Q You did not go there?

15 A No. I took a nap.

16 Q And at some time they returned?

17 A They came back four, five o'clock. We were barbecuing hamburgers.

18 Q And once again, can you tell me around the barbecue time? Who's at  
19 the home?

20 A Alayne's there, my middle daughter, at that point, and Brodie and Brad  
21 and me and Lily.

22 Q So the same four, plus your daughter, Alayne's now there?

23 A Correct.

24 Q And did there come a time in the evening of Sunday, prior to Arica  
25 coming over, where you and Alayne were bathing both Brodie and his cousin?

1 A Yes.

2 Q And what time of evening would that have been?

3 A After dinner. So, you know, dinner five, I don't know, six, somewhere in  
4 there. And then typically after dinner we'd yell tubby time and they'd go racing up  
5 the stairs.

6 Q Okay, so tubby time was kind of a term used within your family?

7 A Yes.

8 Q And how did Brodie react when it was tubby time?

9 A He was racing up the stairs in his diaper.

10 Q And what happens in tubby time? Can you kind of describe just in a  
11 general fashion about what that was like Sunday evening?

12 A Well, Alayne had come up with me so one of us would start the water.  
13 We had bubbles in it. Lily would strip and get right in the tub. Brodie would like strip  
14 and then play in the mirror. There's this big wall-to-ceiling mirror. And so he'd play  
15 in there. And then you'd have to say a couple times get in the tub, Brodie, get in the  
16 tub. So he would. And then the kids were just playing and splashing and sliding  
17 and -- and then Alayne would have washed their hair because I can't bend to wash  
18 hair; I've had previous injuries. So when she start washing hair, then I'd go lay on  
19 the master bedroom bed because we could see each other. And she'd rinse the  
20 kids off and bring one at a time out and I would always lotion them and dry them off.

21 Q So both Lily and Brodie come to you after the bath and they're both  
22 completely naked?

23 A Yes, usually they're wrapped in a towel but they are.

24 Q Besides the towel they're --

25 A That's it.

1 Q -- completely naked?

2 A They're naked.

3 Q And when you lotion them down, would it be fair to say or you tell me  
4 could you see their entire body head to toe?

5 A Correct, head to toe. The little kids would get dry in the desert here  
6 you'd have to -- I always lotioned them.

7 Q Tell me the injuries that you saw on Brodie Sunday as you're lotioning  
8 his body.

9 A He still had the little bruise on his right cheek. It was fading. He had  
10 the little eyeliner under his eye. His eyes were a little bit red, the conjunctiva,  
11 because he'd had pinkeye and he'd been rubbing. He probably had one or two little  
12 skins on his knees because that was normal for him. I think he had a toenail that he  
13 stubbed his toe on something so maybe it was a little ripped, but that's -- going back  
14 through it in my mind, that's what I remember.

15 Q And at any time as you're lotioning Brodie on his face and his head, did  
16 he complain that his head was hurting?

17 A No. I mean he said his eyes itched or hurt -- you know, eyes hurt but --  
18 they were red, so --

19 Q How about when you started lotioning his chest and his back? Did he  
20 ever complain of abdominal pain?

21 A No, he was just being his normal little wiggle worm. You'd be lotioning  
22 and he'd be squirming and then you're trying to get the diaper on and he's laughing  
23 and -- and, you know, it was just -- it was a game.

24 Q Have you in your career, professionally or as a mother and a  
25 grandmother, ever palpated or touched or lotioned either your children or been

1 involved in a medical procedure or examination of a child patient where you've  
2 touched an area or palpated it and it hurt and the child reacted to that pain?

3 A Yes.

4 Q Did Brodie in any way, shape or form react to any pain when you  
5 lotioned his entire body Sunday evening?

6 A No, he was just laughing and squirming. The Wiggles were on TV; that  
7 was our normal.

8 Q Did he ever complain of any of the vomiting, loss of appetite, head  
9 injury, head hurting on Sunday?

10 A No.

11 Q Ma'am, I'm going to show you a series of photographs. These  
12 photographs are taken after Brodie's death of June 15th. And I want you to look at  
13 them and I've told you previously that the screen to your left will act as a telestrator,  
14 the pressure of your finger will make a line. And my question is going to be the  
15 same on every single one of these photographs and that is, can you tell me if you  
16 see any injuries on these photographs that you recall seeing on Brodie on Sunday,  
17 June 11th. Okay?

18 A Okay.

19 Q I'm going to show you first State's Exhibit 53. Does anything look  
20 familiar?

21 A No.

22 Q I'm sorry, ma'am.

23 A No.

24 Q Exhibit 52. And I want to direct your attention to the upper left bicep to  
25 shoulder area, as well as to the left side from the temple down to the chin of Brodie.

1 Do you recognize any of the injuries depicted in that area?

2 A No. No.

3 Q Showing you now Exhibit 49. I'm going to zoom in to Brodie's right  
4 side --

5 A Oh my god.

6 Q -- to his right hip and to the right ribcage area. Did you see any of those  
7 injuries?

8 A No.

9 Q Exhibit 50. Specifically, I'll represent to you that is Brodie's right elbow.  
10 Did you see any of those injuries in the size, severity and location?

11 A No.

12 Q Now to Brodie's left eye in Exhibit 57. You descried earlier --

13 A Oh my god, that's not it. That's not conjunctivitis.

14 Q You did not see that injury --

15 A No.

16 Q -- when you were putting the eye drops in Brodie on any time --

17 A No.

18 Q -- the three times on either Saturday or Sunday --

19 A No.

20 Q -- is that correct?

21 A That's correct.

22 Q Exhibit 59, the upper right lip in the area called the frenulum. When you  
23 were brushing Brodie's teeth Saturday and Sunday, did you see any trauma or any  
24 signs of sensitivity or pain when this area was touched during those brushing  
25 incidences?

1 A No.

2 Q Exhibit 61. And I'm going to focus initially in Brodie's lower back in this  
3 photograph. Did you see anything like that on his back when you lotioned him?

4 A No.

5 Q Represent to you testimony that this is Brodie's upper right shoulder or  
6 right below his neck. Orienting you, Ms. Moshier, that would be Brodie's head. This  
7 would be in his upper shoulder area. Did you see any bruise of a pattern nature of  
8 those three that we see in that photograph?

9 A No.

10 Q Finally, 63, Brodie's right ear. Did you see any injury like that?

11 A No.

12 Q The typical injuries that you saw on Brodie, any of those injuries that I  
13 just depicted to you in any of those photographs seem to be what you would  
14 consider Bambam or Brodie injuries in normal play?

15 A No.

16 MR. STANTON: Pass the witness.

17 THE COURT: Cross.

18 [Pause]

19 MS. VON MAGDENKO: Do you need a minute, ma'am?

20 THE WITNESS: (No audible response.)

21 MS. VON MAGDENKO: Okay.

22 THE COURT: Do you need to take a break, ma'am?

23 THE WITNESS: (No audible response.)

24 THE COURT: All right, ladies and gentlemen, why don't we take a 10-minute  
25 break. Please come back at 25 after. You're admonished not to converse amongst

-48-

1 yourselves or with anyone on any subject connected with the trial, do not read,  
2 watch or listen to any report of or commentary on this trial, and do not form or  
3 express an opinion. Please come back --

4 [Jury out at 2:16 p.m.]

5 THE COURT: Hold on a second. Don't go off, Maria, please.

6 Is everyone out of the -- yeah, everyone's out of the courtroom, all the  
7 jurors are out.

8 At the bench you guys made an objection to certain photographs.  
9 Would you please go ahead and make a record of that?

10 MR. ALTIG: Yes, Your Honor.

11 MR. STANTON: Your Honor, can I have the witness go out to the anteroom  
12 with --

13 THE COURT: Yeah, that's fine.

14 MR. STANTON: Thank you, Your Honor.

15 THE COURT: Jase, would you show here where to go, please?

16 THE MARSHAL: I will.

17 MR. STANTON: I appreciate, Your Honor.

18 [Witness out at 2:17 p.m.]

19 THE COURT: All right, so the witness has stepped out.

20 Again, you made objections to certain photographs. If you could just  
21 please make the objections and which specific photographs you're objecting to and  
22 the basis.

23 MS. VON MAGDENKO: Can I --

24 MR. STANTON: Sure. These were the ones.

25 MS. VON MAGDENKO: Okay. Your --

1 MR. STANTON: They're not a group. They're not sequential so you'll have  
2 to --

3 MS. VON MAGDENKO: Your Honor, we objected to the witness being shown  
4 State's Exhibit 52, 49, 54, 50, 57, 53, 59, 61, 62, and 63. And for -- 63 shows the  
5 back of the ear. There's actually no evidence that she actually pulled the ear back  
6 during the time she had him.

7 These were also shown -- all of these photos were shown to the jury  
8 before and the re-showing of them we believe just inflames the jury and is focusing  
9 on the photos instead of the evidence. He could have simply asked what injuries he  
10 had. He could have asked the witness what injuries Brodie had during the weekend  
11 when she had him.

12 Also specifically to photo number 57, this photo shows about an inch or  
13 so pulled down with a forcep of the eye. There's no evidence that she actually took  
14 a forcep and pulled down that low to see when she was giving the drops that he  
15 would have this mark under his lower eyelid.

16 Also she testified that she brushed Brodie's teeth. Picture number 59  
17 shows the forcep again being pulled up about an inch or two. There's no evidence  
18 that when you brush a child's teeth, you -- she didn't testify to it; that you actually  
19 pull the top of the lip an inch or two to do that, so therefore she wouldn't have seen  
20 this internal type of injury.

21 Those are our objections, Your Honor.

22 MR. STANTON: Your Honor, the relevance of these photographs -- there  
23 was a pretrial motion filed by the defense and the State responded and the Court  
24 has previously ruled as it relates to Dr. Gavin addressing cause and manner and the  
25 number of injuries involved in this case.



1 As I'm sure the Court is aware, the number of injuries, the location and  
2 severity are critical to this jury making the determination -- kind of the crux of this  
3 case -- as to whether or not the death of Brodie Aschenbrenner is accidental versus  
4 non-accidental. I think not only is it amplified now more after opening statements of  
5 yesterday than it was prior to trial when the Court ruled is that at least to the extent I  
6 was able to grasp the gravamen of the counsel's opening statement was that they,  
7 at least in part, asserted that Brodie's injuries were accidental in nature. I think it  
8 was directly attributed to this Power Wheels incident of several weeks before, or  
9 several days before.

10 Thus, the probative value of these photographs become increasingly  
11 heightened and what we have here is a nurse of 27 years who bathes this child and  
12 examines him from head to toe on Sunday evening and we are now talking about  
13 within at least close to 48 hours of the time that Brodie's life stops, let alone when  
14 the fatal injuries are delivered, which I think the evidence going to show that  
15 occurred at two distinct periods of time.

16 In addition, Your Honor, to all that -- and I know the Court's not aware of  
17 this because it hasn't been probably served on the Court, but in the notice of experts  
18 of the defense counsel, they noticed three experts; two physicians, one a forensic  
19 pathologist out of those two, and then a biomechanical engineer. My reading of  
20 their reports and the opinions expressed in there, at least to a significant degree,  
21 attempt to argue and place the aging of these injuries back days and hours prior to  
22 what you heard Dr. Gavin express yesterday as it relates to two fundamental  
23 injuries; that is, the major and the minor component of the cause of Brodie's death,  
24 the head trauma and the acute peritonitis.

25 Therefore, based upon the defense's own opening statement, the timing

1 of these injuries, the location, the severity of those injuries in toto and in particular,  
2 are directly relevant to the prime issues in this case.

3 Now as to the objections to 57, the eye, and 59 of the frenulum,  
4 counsel's saying that there's no evidence to say that they saw that. I would  
5 respectfully disagree. What we have is the testimony of this nurse that she actually  
6 brushes his teeth, that she is involved in that physically in doing it besides  
7 observing, and the question is did you see any of the trauma? And maybe she can  
8 or can't because of how far she saw with her (sic) lip pulled up, but the more  
9 operative question is, is whether or not Brodie reacted in any pain when the teeth  
10 were brushed.

11 And the witness -- and I'll leave it for the record as the Court observed  
12 Ms. Moshier demonstrating pulling both the right eye and the bottom eyelid open  
13 simultaneously to put in the eye drops, but that specific demonstration I think speaks  
14 volumes as to whether or not she would have been a percipient witness to a bruise if  
15 it existed and was present on that day.

16 And finally the ear. I would just submit that when you look at the picture  
17 of Brodie, both the front of his ear and the back of his ear would be relatively  
18 obvious to any person near him based upon his hair length and that it is visual to the  
19 naked eye.

20 MR. ALTIG: Your Honor, if I may just briefly? Thank you.

21 The State's absolutely right. There was a motion that was filed by the  
22 defense, a motion in limine, asking that we prevent certain photographs -- these  
23 photographs from coming before the Court. The State argued that they were  
24 needed and required because the coroner needed them to describe their testimony.  
25 We argued to the Court that we believed that the photographs were much more

1 prejudicial than they were probative, if anything, but you allowed them to be  
2 introduced for purposes of the coroner's testimony.

3 And here we are a day later and they're being introduced again and  
4 shown to the jury again through a different witness. They aren't needed to explain  
5 that witness's testimony. They aren't needed for anything that's probative. They're  
6 using them for the prejudicial effect on the jury and to bring out the ire of the jury to  
7 have an emotional effect on the jury. That's what they're being shown again.  
8 They're not being shown for any probative value. You can simply ask the witness  
9 did any of these injuries exist at the time you saw Brodie and the witness can say  
10 no, they did not. You don't need to -- showing the -- publishing the photographs  
11 over and over and over again.

12 So we would renew the objection that they're not probative of any fact.  
13 We believe and I actually would believe that the showing of them to this particular  
14 witness violates the Court's order with regard to the motion in limine that they could  
15 be used and provided to the coroner for explanation of the coroner's testimony.

16 And actually I think at this point, Your Honor, since that order's been  
17 violated, a motion for mistrial may even be needed at this point because the Court's  
18 order on the motion in limine to use them only solely for the purpose of the coroner's  
19 and to explain the coroner's testimony has been violated. They've been published  
20 to the jury again and we can move for a mistrial and would move for a mistrial.

21 THE COURT: Okay. Let me just rule -- let me state the basis for allowing the  
22 State to show the pictures.

23 As it's become evident over the course of the trial based upon the  
24 questions asked, since there's been questions regarding this four-wheeler injury,  
25 that the child was called Bambam, there were several nicknames for him because

1 he was always bumping into things, falling and everything else, it's obvious that the  
2 position for both sides is all going to come down to timing when did the injuries  
3 occur.

4 It's obviously the State's position that the injuries occurred in a short  
5 window of time and closer to the time of death. It's been the defense's position, both  
6 based upon the questions asked as well as the statements that were made during  
7 openings, that the injuries that ultimately resulted in Brodie's death were actually  
8 sooner than that.

9 The grandmother can help put the timeframe into context. That's why  
10 the Court finds it more probative than prejudicial in that she was someone who saw  
11 Brodie a couple days before the death occurred. She can put the injuries into  
12 context whether or not they did in fact exist at the time she saw him, which was  
13 several days before death like the defense seems to allude, or whether the injuries  
14 were newer and occurred after she saw him closer to the time the actual death  
15 occurred.

16 As far as the showing of the eye, the ear and the frenulum, you know,  
17 Brodie has short hair so I do think that there is appropriate foundation laid that the  
18 grandmother in putting lotion on him and just taking care of him and dealing with the  
19 face by putting drops into the eyes that that would be an area of the body which  
20 would be readily apparent. And again, he is a boy and he had short hair as  
21 evidenced in the photographs.

22 As far as the eye and the frenulum -- I can't -- I'm having difficulties with  
23 that word. But anyways, I think there was appropriate foundation laid with respect to  
24 that as well in that she had just a couple days prior been looking at the eye, doing  
25 things around the eye because the child had conjunctivitis and needed drops in the

1 eye, and also that she was active in making sure the child had brushed the teeth.  
2 And the Court also notes that she is a nurse who worked in the area dealing with  
3 injuries to individuals.

4 As far as violating Court's order, the Court finds it did not violate the  
5 Court's order. When the photographs were originally showed to me, I mean I only  
6 get a brief glimpse of the -- the sides' respective positions at the time of trial and at  
7 that point the only person I was aware it would -- they would come up with was the  
8 coroner and the Court felt that it was helpful and assistive to the jury for the coroner  
9 to have photographs to show what was done exactly and what the coroner believed  
10 to be the manner and cause of death and -- but I did not know that the grandmother  
11 was also -- you know, the intent was to have the grandmother testify to put the  
12 timing in sequence also.

13 So had I known that, I would not have specifically limited my ruling. My  
14 ruling was based upon the information that was provided to me at that time. So the  
15 request for a mistrial would likewise be denied.

16 I'm going to run to the restroom real quick if you --

17 MR. ALTIG: Thank you.

18 THE COURT: -- guys need to go.

19 MR. ALTIG: Yes, please.

20 MS. VON MAGDENKO: Yes.

21 THE COURT: And then we'll bring the grandmother in if she's composed.

22 MR. ALTIG: Thank you.

23 [Off the record at 2:29 p.m.]

24 [Proceedings resumed at 2:38 p.m.]

25 [Outside the presence of the jury]

-55-

1 [Witness in at 2:38 p.m.]

2 THE WITNESS: I'm sorry.

3 THE COURT: It's okay.

4 THE MARSHAL: District Court XXIII jury is present.

5 [Jury in at 2:39 p.m.]

6 THE COURT: All right. The jury is back if you'd like to begin cross, please,  
7 counsel.

8 MS. VON MAGDENKO: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MS. VON MAGDENKO:

11 Q Ma'am, Brodie was at your house from Saturday morning to Sunday  
12 night; is that correct?

13 A Sunday at about probably eight, yes.

14 Q Eight p.m.?

15 A Uh-huh.

16 Q Is that yes just for the record?

17 A Yes.

18 Q And you testified earlier that when you were putting the drops in  
19 Brodie's eyes -- your husband's name is Brad, correct?

20 A Correct.

21 Q And that Brad only held down Brodie's hands? That's what you told the  
22 jury when the prosecution was asking you questions, right?

23 A Okay.

24 Q That happened 10 minutes ago; is that correct? Is that what you told  
25 the jury?

1 A Correct.

2 Q Okay. Do you recall being interviewed by the police previously?

3 A Yes.

4 Q Okay. And do you recall that that took place on June 23rd, 2011?

5 A Correct.

6 Q And did you tell the police the truth then?

7 A Yes.

8 Q Okay. And do you recall then telling the police when they asked you  
9 about that Gentamicin pinkeye, that you actually said Brad --

10 MR. STANTON: Your Honor, I'm going to object to the form of the question at  
11 this juncture. The witness is entitled to refresh her recollection if counsel's  
12 challenging to impeach her. I'd ask that she be afforded that opportunity.

13 MS. VON MAGDENKO: Okay. May I approach --

14 THE COURT: Counsel's correct.

15 MS. VON MAGDENKO: -- the witness, Your Honor?

16 THE COURT: You may.

17 BY MS. VON MAGDENKO:

18 Q I want you to read --

19 MR. STANTON: Page counsel?

20 MS. VON MAGDENKO: Is page 15 of the incident report. It's the typewritten  
21 question and answer of Merridee Moshier.

22 BY MS. VON MAGDENKO:

23 Q Can you read this part to yourself?

24 A Uh-huh.

25 Q Did you read it?

1 A I read it.

2 Q Okay. Has this refreshed your recollection?

3 A Vaguely, yes.

4 Q Okay. Isn't it true that you actually told the police not that Brad only  
5 held down Brodie's hands, but that he had to actually hold down his arms and his  
6 legs; isn't that true?

7 A That's true.

8 Q Okay. So what you told the jury was not true?

9 A I remembered part of it. This is three years ago.

10 Q Okay, so then we can't rely on your testimony today?

11 MR. STANTON: Objection; argumentative.

12 THE COURT: Sustained.

13 BY MS. VON MAGDENKO:

14 Q You testified earlier that Brodie had an eyeliner type of bruise?

15 A Correct.

16 Q That was his left eye?

17 A Correct.

18 Q Was that on the top or the bottom?

19 A It was the bottom lid.

20 Q Okay. And do you think Arica saw that bruise?

21 MR. STANTON: Objection; speculation.

22 THE WITNESS: I don't know what Arica saw.

23 BY MS. VON MAGDENKO:

24 Q Did you tell the police whether or not you thought Arica saw that?

25 MR. STANTON: Once again, speculation, Your Honor, objection.



1 THE COURT: Overruled.

2 THE WITNESS: I believe I told the police that there was a bruise -- an  
3 eyeliner bruise on the left lower lid, yes.

4 BY MS. VON MAGDENKO:

5 Q But did you tell the police you didn't think Arica noticed that?

6 A I don't recall.

7 Q Okay.

8 MS. VON MAGDENKO: And this is all the same summary statement.

9 Your Honor, may I approach and refresh the witness's recollection?

10 THE COURT: You may.

11 MR. STANTON: Page counsel?

12 MS. VON MAGDENKO: Page 16.

13 THE COURT: And just for the record, what are you showing her?

14 MS. VON MAGDENKO: It's the same -- it's all the same. I'm showing the  
15 witness only one document and that is the incident report. It's the transcript of the  
16 statement of Merridee Moshier taken on June 23rd, 2011, pages 12 through 24.

17 THE COURT: Okay, thanks.

18 BY MS. VON MAGDENKO:

19 Q If you can just read from here to here, the highlighted portions.

20 A Okay.

21 Q Okay. So isn't it true that you told the police that you didn't think your  
22 own daughter even noticed that bruise on his eye? Is that correct?

23 A Is that what the verbiage just said?

24 Q Yes.

25 A Yes.

1 Q Okay.

2 A It was a small bruise.

3 Q Oh I didn't ask a question, so you can just wait till I ask a question. So

4 Brodie had nicknames; is that correct?

5 A Correct.

6 Q And one of them was Bambam?

7 A Correct.

8 Q And one of them was the bruiser?

9 A Uh-huh. Yes.

10 Q And why was he given the nickname of the bruiser?

11 A It went with the Bambam nickname.

12 Q And what was the Bambam nickname for?

13 A Because he liked to play -- we had this baseball thing that was a stick  
14 with a ball attached to it that you -- that you give to small children and he had a bat  
15 and he'd hit that and then we would take the ball off the stick and at two and a half  
16 he could hit the ball and he'd carry the bat. So he'd hit the ball like Bambam from  
17 the Flintstones and then Lily would catch it.

18 Q Okay, so that explains Bambam. How does -- how does bruiser -- can  
19 you explain that?

20 A Because he was always getting into things. He would get normal child  
21 bruises. He would get bruises on his knees. He would get into things.

22 Q Okay. But so -- but was it abnormal because you called him the  
23 bruiser? Would you call Lily the bruiser?

24 A No. They were different children.

25 Q Okay. So Brodie was different?

-60-

1 A Uh-huh.

2 Q Is that a yes just for the record?

3 A Yes.

4 Q Okay. And so you have multiple grandchildren?

5 A Correct.

6 Q And are any of them -- do they -- any of them get bruises the way

7 Brodie got bruises?

8 A My middle grandchild, Eric, did. Yes.

9 Q But not the other ones?

10 A Not the girls, no.

11 Q Okay. Would Brodie get up on your countertops?

12 A If you -- yes, he could.

13 Q Okay. And would Brodie jump from the tables?

14 A The coffee table.

15 Q Okay. And would Brodie constantly be hitting his head on your

16 counters?

17 A Not constantly, but it did happen, yes.

18 Q Okay. It happened. And he would get a bruise from it, right?

19 A Usually he'd get a little bruise on the right side of his forehead.

20 Q Okay. And even though he got a bruise and even though he injured

21 himself, he wouldn't cry, would he?

22 A Not always, no.

23 Q Okay. In fact, you told the police that he would just walk off, walk it off?

24 A For a small bruise, yes, he would just walk it off.

25 Q And so he regularly would get a bruise on his forehead from your own

-61-

1 countertops?

2 A This was just for a couple weeks because he grew to a point that as he  
3 came around the corner, if he was running and chasing the dog or Lily, he would hit  
4 that little corner.

5 Q Did he outgrow that before his death?

6 A No.

7 Q Okay. So at the time of his death, he would regularly smack his own  
8 forehead on your countertop?

9 A What's your definition of regularly?

10 Q What -- okay. Let me refresh your recollection. This is page 17.

11 MR. STANTON: Your Honor, I'd object. The witness didn't answer in a form  
12 that she didn't have a recollection.

13 BY MS. VON MAGDENKO:

14 Q I'm going to say -- I'm going to define regularly as every time.

15 THE COURT: I'm sorry, are you taking from her statement?

16 MS. VON MAGDENKO: No, no, no, she asked me. I was trying to respond to  
17 his objection.

18 BY MS. VON MAGDENKO:

19 Q So I'll define regularly as every time.

20 A He did not hit the counter every time he walked through the kitchen, no.

21 Q Okay.

22 MS. VON MAGDENKO: Your Honor, I'd like to approach the witness and  
23 refresh her recollection.

24 THE COURT: Let me see the transcript, please. And what page are you on?

25 MS. VON MAGDENKO: I'm on page 17 and right here with the beginning of

1 so.

2 THE COURT: You can show it to her.

3 MS. VON MAGDENKO: This is page 17 for the prosecution.

4 BY MS. VON MAGDENKO:

5 Q And if you could just read this answer starting with so?

6 A So every time.

7 Q Okay, just read this to yourself and tell me when you're finished.

8 A I'm finished.

9 Q Okay. Does this refresh your recollection that every time he went  
10 around the corner in your kitchen he would smack his head on your counters?

11 A That's what the statement says, yes.

12 Q And is the statement incorrect?

13 A He would walk through the kitchen probably 20 times a day, so no, he  
14 didn't hit his head 20 times a day every time he walked through the kitchen, no.

15 Q Okay. So this typewritten statement's incorrect?

16 MR. STANTON: Objection. She'd have no foundation laid that she would  
17 even know whether the transcript is correct. She didn't prepare it.

18 BY MS. VON MAGDENKO:

19 Q Do you believe the substance of what is -- what was written here after  
20 you've read it is incorrect?

21 A I'm not really sure what you want me to answer.

22 Q You told the detectives that every time he would hit his head on the  
23 counter. Did you tell the detectives that?

24 A Yes, I did.

25 Q Okay. Thank you. And he would get a forehead bruise when he would

1 do it?

2 A Yes, that's what I said.

3 Q Okay. And in the weekend before his death he was at your house?

4 A Correct.

5 Q And those countertops were still there?

6 A Correct.

7 Q You weren't remodeling?

8 A No.

9 Q Okay. You had --

10 A I --

11 Q Did Brodie play the game monkeys falling off the bed?

12 A Yes.

13 Q Was that just a verbal game or would he actually fall off the bed?

14 A He did not fall off the bed.

15 Q Okay. So you're just saying the words?

16 A So when him and Lily would get out of the tub, they would jump on the  
17 bed and I would be on the bed with them and I would start singing the song about  
18 monkeys jumping off the bed and hit their head and we had to call the doctor. So  
19 then we'd put them on the floor and they'd laugh.

20 Q So would he -- he wouldn't stay on the bed, he'd jump on the floor?

21 A We'd put them back on the floor.

22 Q You would just pick Brodie up and set him on the floor?

23 A Right, or we'd say get off the bed and they'd scooch off.

24 Q Okay. When the kids were at your house, you just mostly just let them  
25 run, right?

1 A They were supervised.

2 Q That wasn't my question. I said when Brodie was at your house and the  
3 other children, you would mostly just let them run?

4 A They weren't fenced, no.

5 Q That wasn't my question. When Brodie was at your house with the  
6 other children, you would just let them run?

7 A Sure.

8 Q And your house was so wild, you would have to clean up boys' pee off  
9 the floor?

10 A Could I see what I said there?

11 Q I'm just asking you a question first. So you have to --

12 A Small boys would pee on my floor. There was -- there was many small  
13 boys and they --

14 Q How old were they at the time?

15 A Brodie was two, Zach was maybe six, Eric was seven, Caleb was nine,  
16 and little boys miss and pee on the floor. Yes, they do.

17 Q Are you talking about the bathroom or other places?

18 A The bathroom.

19 Q Okay. So it was only in the bathroom that they'd pee on the floor?

20 A Correct.

21 Q Okay. And isn't it true that Brodie, according to you, always had bruises  
22 on his lower legs?

23 A He would have bruises on his legs, yes.

24 Q That wasn't my question.

25 A Yes.

1 Q Isn't it true that you said Brodie always had bruising on his lower legs?  
2 A Yes, I said that.  
3 Q Okay. And isn't it true that he -- there'd always be shin or knee bruises?  
4 A Is that what I said?  
5 Q Well I need to ask you first before I can refresh your recollection. Do  
6 you remember --  
7 A I would have to see what I said exactly.  
8 Q No, no, no, I want you -- you're sitting here and you're telling the jury as  
9 you remember things that they were three years ago, right?  
10 A Uh-huh.  
11 Q Is that a yes just for the court reporter? You have to respond verbally.  
12 You can't just say uh-huh. It's being recorded, so if an answer to my question is  
13 yes, you have to say yes or no. You can't say uh-huh or huh-uh --  
14 A Would you repeat the question?  
15 Q Okay. You're here today giving the jury your memory of what happened  
16 three years ago, correct?  
17 A Correct.  
18 Q And during the prosecution, he asked you questions about the state of  
19 Brodie's bruising during the weekend that you had him.  
20 A Correct.  
21 Q Okay. Now, did Brodie have bruises on his lower arms when you would  
22 have him?  
23 A I don't recollect that that weekend he did.  
24 Q Okay. Did your husband play a game called typewriter on Brodie?  
25 A He did.

-66-



1 Q And would that leave bruising on Brody?

2 A It left two small bruises.

3 Q Okay. And was that that weekend ?

4 A I don't honestly remember if it was that weekend.

5 Q Okay, so you don't actually remember what bruising Brodie had that  
6 weekend, do you?

7 A I remember the ones I stated.

8 Q There could have been others that you don't remember?

9 A There could have been small bruises, yes.

10 Q Okay. Would Brodie get up on the edge of the bathtub during tubby  
11 time?

12 A Yes.

13 Q And you would let him crash into the tub?

14 A He would get on the edge of the tub on his little feet squatted down and  
15 slide down the tub.

16 Q Okay. And did you think that they were going to hurt themselves  
17 because of what they were doing in the bathtub? Him and Lily? Did you tell the  
18 detective that? Do you remember that?

19 A I don't remember that.

20 Q Okay. Let me -- this page 21.

21 MS. VON MAGDENKO: If I can approach the witness to refresh her  
22 recollection?

23 THE COURT: Yes.

24 BY MS. VON MAGDENKO:

25 Q So let's start in here to here.

1 A Yes, I said that.

2 Q Okay. So you thought Brodie was going to hurt himself he was playing  
3 so rough that weekend?

4 A I stated you guys are going to hurt yourself to the children.

5 Q Okay. So did you say that and not mean it?

6 A I don't think I meant it as you're going to hurt yourself. It was more like  
7 you guys are going to hurt yourself, stop.

8 Q Okay. Did Brodie run into the side of your house leaving a stucco mark  
9 on his forehead?

10 A He did, but not that weekend.

11 Q When was it?

12 A Did I state in there? I'm sorry.

13 Q Do you remember?

14 A I remember him doing it, but it wasn't that weekend.

15 Q When was it?

16 A It was one of the other weekends we had him.

17 Q Do you remember which one?

18 A No.

19 Q And you -- do you know if Brodie would throw a fit if Arica came to pick  
20 him up from your house?

21 A Sometimes he would be unhappy. He liked to stay with us.

22 Q Okay. So -- and you testified to the jury that in the month preceding  
23 Brodie's death that Brodie was unhappy when Michael came to pick him up?

24 A Sometimes he was, yes.

25 Q But sometimes he wasn't?

-68-

1           A     I don't think it was an every single time Mike picked him up, no. There  
2 were days he did not want to go with Mike. I think I said that.

3           Q     Okay. So it wasn't just some all of a sudden starting in June, Brodie  
4 didn't want to go with Michael? That's incorrect statement? I just want to make sure  
5 that I understand your testimony. Correct me if I'm wrong.

6           A     Sometimes he did not like to go with Mike. No. Sometimes he did not  
7 like to go with Arica. Our house was fun.

8           Q     Okay. So it wasn't then -- my -- tell me if my statement's correct. It  
9 wasn't that all of a sudden starting in June, Brodie did not want to go with Michael?

10          A     I did -- I do remember telling Arica I would prefer that she picked up  
11 Brodie, not Mike.

12          Q     Why?

13          A     Because Brodie was starting to get upset when Mike picked him up and  
14 I don't like it when he's upset.

15          Q     And Brodie could get upset when Arica picked him up too?

16          A     Sometimes.

17          Q     Okay. And are you -- you're a nurse?

18          A     Yes.

19          Q     Okay. And as a nurse, are you a mandatory reporter?

20          A     Yes.

21          Q     And can you explain to the jury what a mandatory reporter is?

22          A     If you see or suspect abuse, you have to call child protective services or  
23 adult protective services.

24          Q     And you never reported any abuse, did you?

25          A     No.

1 Q Okay, and you never suspected any abuse then?

2 A No.

3 Q Okay. Oh. The weekend prior to his death, did Brodie have bruising on  
4 his feet?

5 A He had a torn toenail.

6 Q No, that wasn't my question. The weekend prior to his death, did  
7 Brodie have bruising on his feet?

8 A He might have had a bruised toe.

9 Q Yes?

10 A Yes.

11 Q Okay. So what you told the jury earlier, you actually had forgotten  
12 some additional bruising; isn't that correct?

13 A Think I said he had a torn toenail.

14 Q That wasn't my question. You told the jury of three areas of bruising;  
15 the cheek, the eye, and actually, you didn't even mention the knees bruising, you  
16 just mentioned the scabs. But in cross-examination, now you remember additional  
17 bruising on the lower legs, arms, feet --

18 A I don't remember any on the arms.

19 Q You don't remember on the arms?

20 A No.

21 Q Did Brodie ever have bruising on the arms?

22 A He could have, you know, had one or two on his lower arms once in a  
23 while from toys or -- but not that weekend I don't remember -- I do not recall  
24 anything on his arms that weekend.

25 Q You don't recall? So there could have been? Right?

-70-

1           A     When I gave the statement to the detective, it was much more fresh. It  
2 was a week later. And my recollection was the eye and the face and the toenail, I  
3 believe.

4           Q     But sitting here today, you don't remember all of Brodie's bruising that  
5 weekend, do you?

6           A     If there was more, I don't recall them, no.

7           Q     Okay. When Brodie was at your house that weekend, he wasn't eating  
8 much, was he?

9           A     Which meal?

10          Q     Just -- actually you told the jury earlier that he was eating the entire  
11 time he was at your house that weekend, right?

12          A     He was eating Saturday and Sunday, yes.

13          Q     Okay.

14          MS. VON MAGDENKO: Your Honor, show the witness page 21 to refresh her  
15 recollection?

16          THE COURT: All right.

17          THE WITNESS: You're referring to he didn't eat dinner because he drank  
18 syrup at a restaurant.

19          BY MS. VON MAGDENKO:

20          Q     So he wasn't eating much, right?

21          A     Not dinner. He ate lunch with my daughter.

22          Q     Okay. So now your testimony's changing?

23          MR. STANTON: Objection. It's argumentative. It's not counsel's position to  
24 tell the jury about what testimony is changing.

25          BY MS. VON MAGDENKO:

1 Q So was -- so --

2 THE COURT: Sustained.

3 BY MS. VON MAGDENKO:

4 Q Brodie wasn't eating much that weekend, was he?

5 A He ate that weekend most meals, yes.

6 Q But you told the detectives he wasn't eating much?

7 A I told the detectives he didn't eat dinner on Sunday.

8 Q Did you actually tell the detectives that statement? Or did you tell him

9 Brodie wasn't eating much?

10 A Brodie ate except for dinner that weekend.

11 Q Okay, so Brodie didn't eat dinner that weekend?

12 A Correct.

13 Q Okay. So your earlier statement that he was eating with no problem

14 was inconsistent --

15 MR. STANTON: Objection --

16 Q -- (indiscernible) dinner?

17 MR. STANTON: -- argumentative.

18 THE COURT: Overruled.

19 THE WITNESS: He didn't eat dinner because he drank syrup at a restaurant  
20 with Alayne.

21 MS. VON MAGDENKO: Okay. I have no further questions.

22 THE COURT: Redirect.

23 REDIRECT EXAMINATION

24 BY MR. STANTON:

25 Q Counsel during her cross-examination on multiple occasions

-72-

1 approached you with a transcript of a statement that you gave.

2 A Correct.

3 Q Do you recall giving that statement?

4 A I do. Yes.

5 Q Do you remember when in time to June 15th -- I'll put Exhibit 77 up  
6 there for you. Wednesday, June 15th, when you gave the recorded statement that  
7 you just were shown by counsel?

8 A I believe it was June 23rd.

9 Q So that would have been a little over a week after the incident?

10 A Correct.

11 Q You indicated that Brad is your husband and he played a game called  
12 typewriter.

13 A Correct.

14 Q Could you explain that game to me?

15 A He was tickling Brodie and he just -- he'd do typewriter on the chest.  
16 We'd -- you know, it was a game and Brodie would laugh and giggle and squirm.

17 Q So you anticipated my next question to you is what was Brodie's  
18 response when he was the recipient of the typewriter as you just described?

19 A He had the most infectious laugh of any baby I've ever seen or heard.

20 Q And that's what he would do when typewriter was played on his chest?

21 A Just giggle and laugh. It was a deep belly laugh that he had.

22 Q Thank you.

23 MR. STANTON: Nothing further.

24 THE COURT: Anything else before Ms. Moshier's excused?

25 RECROSS EXAMINATION

-73-

1 BY MS. VON MAGDENKO:

2 Q Is Brad right handed or left handed?

3 A He's right handed, I believe.

4 Q Okay. And were you on -- taking any medications at the time of  
5 Brodie's death that weekend?

6 A I -- that's a long time ago. I don't remember.

7 Q You don't remember if you were taking any -- you have a back  
8 problem?

9 A Yes, I do.

10 Q And do you take medication for that?

11 A Currently, yes.

12 Q Okay. And did you back then?

13 A We had just moved -- I -- I honestly don't remember if -- if I was taking  
14 medication then. I could have been.

15 Q Okay.

16 MS. VON MAGDENKO: Court's indulgence.

17 [Colloquy between counsel]

18 BY MS. VON MAGDENKO:

19 Q So you don't recall if you were taking Oxycoton (sic) at the time?

20 A No, I don't.

21 Q Okay. Have you ever taken it?

22 A Yes.

23 Q Are you taking it currently?

24 A Yes.

25 Q Okay. When did your back problem start?



1 A 1999.  
2 Q Okay. Would the boys watch wrestling? On TV?  
3 A Yeah. They would.  
4 Q Would they try -- would they wrestle then, try and act it out?  
5 A I don't recall that. I didn't -- I don't watch wrestling with them.  
6 Q Who does?  
7 A Brad or John or -- or somebody. Wrestling's not my thing.  
8 Q Who is John?  
9 A John's my -- my son-in-law married to Amanda.  
10 Q Okay, Amanda's husband.  
11 A Husband. Correct.  
12 Q Okay. Thank you.

13 MS. VON MAGDENKO: No further questions.

14 MR. STANTON: Nothing further, Your Honor.

15 THE COURT: All right, ma'am, thank you for your time. You're free to go.

16 THE WITNESS: Thank you.

17 THE COURT: Next witness please.

18 MR. STANTON: Your Honor, the State would call Arica Foster.

19 [Pause]

20 THE MARSHAL: Please remain standing, raise your right hand, be sworn in  
21 by our clerk, please.

22 ARICA FOSTER

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

24 THE CLERK: Please be seated. State and spell your first and last name for  
25 the record.

-75-

1 THE WITNESS: Arica Foster, A-r-i-c-a, last name Foster, F-o-s-t-e-r.

2 THE COURT: Whenever you're ready.

3 MR. STANTON: Thank you, Your Honor.

4 DIRECT EXAMINATION OF ARICA FOSTER

5 BY MR. STANTON:

6 Q Ms. Foster, as you testify here today, ma'am, how old are you?

7 A Twenty-six.

8 Q I want to direct your attention back to December of 2008. In that time  
9 period, ma'am, did you give birth to a young boy?

10 A Yes.

11 Q And what is that young boy's name?

12 A Brodie Aschenbrenner.

13 THE COURT: Can you --

14 BY MR. STANTON:

15 Q I'm sorry, you have to keep your voice up --

16 A Brodie Aschenbrenner.

17 Q And the father of Brodie is who?

18 A Dustin Aschenbrenner.

19 Q I'm assuming at that time or soon there -- around there you had a  
20 relationship with him?

21 A Yes.

22 Q And did sometime after his birth that relationship dissolve?

23 A Correct.

24 Q Did you have custody of Brodie?

25 A Pretty much, yeah.

1 Q And during the course of Brodie growing up, where were you living  
2 predominantly during that time period?

3 A In Las Vegas.

4 Q Here in Clark County?

5 A Correct.

6 Q Now we just heard testimony from a person by the Merridee -- by the  
7 name of Merridee. Is that your mother?

8 A Yes.

9 Q And you have a number of siblings?

10 A Yes.

11 Q Can you tell me who your sisters are and your siblings?

12 A Amanda Butler, Alayne Opie.

13 Q And are they younger or older than you?

14 A Older.

15 Q And at the time of Brodie's life, was your mom married?

16 A Yes.

17 Q To who?

18 A Brad Moshier.

19 Q Like to have you look at the screen in front of you what's been admitted  
20 as State's Exhibit 3. Do you recognize that photograph?

21 A Yes.

22 Q Can you tell me what general timeframe, month and year, if you will,  
23 when that photograph was taken?

24 A December 2010.

25 Q And is this person Brodie that I'm pointing to?

-77-

1 A Yes.

2 Q And is that you?

3 A Yes.

4 Q Can you give me an impression about how Brodie was as a child -- let's  
5 start from his second birthday forward. Can you just describe how he would behave  
6 on a regular basis day to day? If I were to look at Brodie, what kind of kid would I be  
7 looking at?

8 A Fearless, loving, rambunctious.

9 Q He was an active child?

10 A Very.

11 Q And during the time year obviously from his birth until his death, were  
12 you his primary caretaker?

13 A Yes.

14 Q Were you around him mostly on a daily basis?

15 A Yes.

16 Q Are you familiar with what I'll term as typical injuries that Brodie would  
17 suffer?

18 A Absolutely.

19 Q And what about Brodie's doctor? What was the situation or the doctor  
20 you had selected to be his pediatrician?

21 A It was ABC Pediatrics.

22 Q And that is in Henderson, Nevada?

23 A Correct.

24 Q And are you familiar with a doctor by the name of Dr. Sirsy?

25 A Yes.

-78-

1 Q Was he the pediatrician that saw Brodie on a regular basis?

2 A Yes.

3 [Colloquy between counsel]

4 MR. STANTON: May I approach, Your Honor?

5 THE COURT: Yes.

6 BY MR. STANTON:

7 Q Showing you been -- what's been marked as State's Exhibit 4.

8 A Okay.

9 Q Do you recognize both the date and time and who's in that photograph  
10 and the comment that's above that photograph?

11 A Yes.

12 Q Is that accurate as what exist on September 2002 (sic) and are you the  
13 author of the comment?

14 A Yes.

15 Q Does it accurately reflect your feelings about Brodie then and into June  
16 of 2011?

17 A Absolutely.

18 MR. STANTON: Move for its admission.

19 MS. VON MAGDENKO: No objection, Your Honor.

20 THE COURT: Admitted.

21 [State's Exhibit 4 admitted]

22 BY MR. STANTON:

23 Q Can you tell me what that says?

24 A He's my world.

25 Q Was he your only child?

1 A Yes.

2 Q And, ma'am, let me ask you in the time of Brodie's life, did you have to  
3 take him to doctor appointments on -- that were both scheduled; that is, ones that  
4 were necessary as kind of a follow up of newborns into infants, as well as on  
5 occasions when Brodie became sick?

6 A Yes.

7 Q Where would you take Brodie as far as his medical treatment? Was it  
8 one place or multiple places?

9 A It depended.

10 Q On what?

11 A If his make -- if his pediatrician was open, I'd always bring him to them.

12 Q Once again, ABC Pediatrics in Henderson?

13 A Correct.

14 Q And if he wasn't open, where would you take him?

15 A To the ER if he was hurt.

16 Q And what ER did you go to?

17 A St. Rose Siena.

18 Q Once again, that's in Henderson?

19 A Correct.

20 Q At some time in Brodie's life, did there come a occasion where some  
21 tubes were needed for Brodie's ears?

22 A Yes.

23 Q Can you explain to me just in a general fashion, Arica, how that came  
24 about?

25 A He had frequent ear infections. They were coming every other week so

-80-

1 we were at the pediatrician a lot so he gave me a referral for the ENT.

2 Q And after he had his tubes -- is that what you were familiar with as a  
3 term?

4 A Yes.

5 Q Placed in his ear, did you notice any change in Brodie's behavior?

6 A Yeah, he didn't have ear infections anymore.

7 Q How about in his energy level and what he would do?

8 A I don't remember.

9 Q Okay. Did you remember whether or not there was a change in how he  
10 -- his level activity -- his energy that was in the day or injuries that he would -- that  
11 would occur to him?

12 A His balance was a little better.

13 Q After he had the implants in?

14 A Yes.

15 Q Would it be fair to say that you are familiar with the amount, frequency  
16 and severity of the types of injuries Brodie would normally get on a day-to-day,  
17 week-to-week, month-to-month time period from when he's one and a half to his  
18 death?

19 A Yes.

20 Q Ma'am, I want to direct your attention to the time period of October of  
21 2010. Around that time, did you meet a person by the name of Michael Lee?

22 A Yes.

23 Q Do you see Mr. Lee in court?

24 A Yes.

25 Q Could you please point to him and describe an article of clothing that

1 he's wearing this afternoon?

2 A A suit top and a red tie (indicating).

3 MR. STANTON: May the record reflect the identification of the defendant?

4 THE COURT: It will.

5 BY MR. STANTON:

6 Q Did there become a dating relationship between you and the defendant  
7 at or around that time?

8 A Yes.

9 Q Your sister is named Amanda, correct?

10 A Yes.

11 Q Is she your oldest sister?

12 A Yes.

13 Q Was there a connection between Amanda and some person related to  
14 the defendant that led to your introduction?

15 A Yes.

16 Q Who was that?

17 A Jennifer Lee.

18 Q And who is Jennifer Lee to the defendant as you know?

19 A His sister.

20 Q Can you describe how Brodie reacted when he was around the  
21 defendant during this October timeframe from when you first met him -- and I'll give  
22 you a timeframe of February of the following year. So that four-month period of  
23 October of 2010 to approximately January, February of 2011, what did you observe?

24 A They got along. They played. They liked each other.

25 Q And did there come a time where the defendant's sister began to



1 babysit Brodie?

2 A Yes.

3 Q Do you remember the month and year that that started?

4 A December, January 2010 or 2011.

5 Q And what was the relationship -- what was the agreement, if you will,  
6 between you and Ms. Lee about babysitting Brodie?

7 A She'd babysit when I had to work for -- I'd pay her hourly.

8 Q And how much would you pay her hourly?

9 A Either six or eight dollars and hour. I can't remember.

10 Q Were there other children that were with the defendant's sister, Ms.

11 Lee, while Brodie was being babysat?

12 A Yes.

13 Q How many children and what were their age?

14 A Two children, maybe six and four. I can't remember their exact ages.

15 They were older than Brodie.

16 Q And from the time period of when you first met the defendant; that is, in  
17 October of 2010 until June of 2011, did you have occasion to observe on more than  
18 one occasion, in fact multiple occasions, the interaction between the defendant and  
19 his sister, Jennifer Lee?

20 A Yes.

21 Q How would you describe their relationship as you observed it?

22 A They were very close.

23 Q Do you know from your observations -- personal observations whether  
24 or not they communicated on a regular basis -- on a daily basis?

25 A Yes, both.

1 Q How would they communicate? In what fashion would they  
2 communicate?

3 A Text, phone calls, visits.

4 Q And it appeared to you that they were very close?

5 A Yes.

6 Q Directing your attention now, ma'am, to February of 2011. Did there  
7 have an occasion in that time period -- or let me just stop. Prior to February of 2011,  
8 where were you living or who were you living with?

9 A Living in Green Valley with my parents.

10 Q Brad and your mother?

11 A Yes.

12 Q And you and Brodie?

13 A Yes.

14 Q In February 2011, did that change?

15 A Yes.

16 Q What did you do in 2011 in February?

17 A Moved in with Michael Lee.

18 Q And when you moved in with the defendant, do you recall the address  
19 of 2900 Sunridge Heights, Apartment 1416?

20 A Yes.

21 Q Is that where you moved?

22 A Yes.

23 Q Did you pick out that apartment?

24 A Yes.

25 Q I'd like to ask you a question about the status of Brodie during that time

1 period of February 2011 and the issue of potty training. Can you describe to me  
2 how that was -- what stage or how were you going along with Brodie at that point?

3 A He hadn't started potty training yet.

4 Q Did there come a time in March of 2011 where you left Brodie for the  
5 first time alone with the defendant?

6 A Yes.

7 Q Were you working at that time?

8 A Yes.

9 Q What days of the week would you work and what was your hours of  
10 work?

11 A I believe I was off Tuesday and Wednesday. I'd work four-hour shifts  
12 and then eight-hour shifts.

13 Q So some days would be four, some days would be eight?

14 A Correct.

15 Q And was the defendant employed?

16 A Yes.

17 Q Where did he work?

18 A America's Mart.

19 Q And what is America's Mart?

20 A A gas station.

21 Q And what did your boyfriend, the defendant, do as you understood it at  
22 that location?

23 A Carwash attendant.

24 Q And when did he work, as you recall?

25 A I believe his days off were Monday and Tuesday.

1 Q And how many hours a day would he work?

2 A Varied 8 to 10.

3 Q Eight a.m.?

4 A Eight -- like -- I don't -- eight in the morning till like five or six in the  
5 afternoon.

6 Q Did there come a time where you became concerned about the physical  
7 condition of Brodie in the earlier parts of 2011?

8 A Yes.

9 Q Can you tell me when it was that you began, if you recall, the month of  
10 when you became concerned in that regard?

11 A I don't remember the date.

12 Q Do you remember a general time period? If you don't, that's okay.

13 A I can't remember right now. I'm sorry.

14 Q It's okay. You gave, as a result of this investigation, a total of three  
15 interviews to the police; is that accurate?

16 A Yes.

17 Q One on the date of June 15th?

18 A Yes.

19 Q One two days later on the 17th?

20 A Yes.

21 Q And then one approximately four days later on the 21st of June?

22 A Yes.

23 Q Let me ask you about what it was that drew concern to you about  
24 Brodie.

25 A Okay.

1 Q What was it?

2 A More bruising.

3 Q And when you say more bruising, what do you mean by that?

4 A He'd have normal bruises like on his legs and his -- just from playing,

5 but it was bruises like began to show up on his face.

6 Q Okay. And you saw more of it? Is that correct?

7 A Yes.

8 Q Take your time. When you said that you saw more of them, was it just

9 the number of bruises or was there another concern to you about the bruising?

10 A The severity that they're darker than just normal everyday bumps.

11 Q How about the location of the bruises?

12 A They weren't on his legs just his legs anymore or -- they were

13 appearing more often different places, on his forehead and --

14 Q On his forehead?

15 A (No audible response.)

16 Q Anywhere else that you can recall?

17 A On his ear one time.

18 Q And during the time period in early May, drawing your attention to that

19 time period, do you recall whether or not there was a subject matter that was a sore

20 spot between you and the defendant as it related to Brodie?

21 A Yeah, potty training.

22 Q And can you describe to the ladies and gentlemen of this jury what the

23 defendant's perspective was and why it was a point of irritation between you and

24 him about potty training of Brodie?

25 A Because he said he should have already been potty trained and I was

-87-

1 just babying him.

2 Q That you were babying him?

3 A Yes.

4 Q Did you have more than one discussion with the defendant in that  
5 regard?

6 A Yes.

7 Q Did you have what some people would consider an argument about  
8 that?

9 A Yes.

10 Q On more than one occasion?

11 A Yes.

12 Q What was your perspective about potty training Brodie?

13 A No kid every -- ever went to kindergarten not potty trained, he'd get  
14 there.

15 Q You were going to let it -- time take its course and --

16 A Yeah.

17 Q -- be patient?

18 A Yeah.

19 Q Did you notice a change in the behavior of Brodie around the defendant  
20 in the April, May time period?

21 A Yes.

22 Q Could you describe that for me?

23 A Brodie would cower. He wouldn't want him around him. He'd cry and  
24 run to me.

25 Q He would cry and run to you? Is that correct?

-88-

1 A Yes.

2 Q Was this all the time, occasionally? How frequent was that behavior of  
3 Brodie in the April, May time period?

4 A Seldom.

5 Q And how did that affect the relationship between you and the  
6 defendant?

7 A Put a strain on.

8 Q Did you have discussions and arguments about that aspect of Brodie's  
9 behavior?

10 A Yes.

11 Q Did there come a time in May, either the 6th or 7th, when you made a  
12 decision about Brodie's bruising?

13 A Yes.

14 Q What decision did you make, ma'am?

15 A That my sister was going to start to babysit.

16 Q Which sister?

17 A Amanda.

18 Q Now I think you previously testified Ms. Lee, Jennifer Lee, was  
19 babysitting --

20 A Oh, yeah.

21 Q And you wanted to terminate that relationship and have Amanda  
22 babysit?

23 A Correct.

24 Q Did Amanda charge you money to babysit Brodie?

25 A No.

1 Q What was your impression or belief Ms. Lee's reaction was going to be  
2 when you advised her that Brodie was no longer going to go over to be babysat by  
3 her?

4 A I thought she'd be mad.

5 Q Why?

6 A Because I wouldn't -- she wouldn't have the money anymore.

7 Q You knew Jennifer -- had been around her?

8 A Yeah.

9 Q You knew that was a concern of hers?

10 A Yes.

11 Q And did you come up with a story for her?

12 A Yes.

13 Q Why did you come up with a story?

14 A I didn't want her to be mad or cause conflict.

15 Q Now this is the defendant's sister that you're --

16 A Yes.

17 Q -- we're talking about. Now, what story did you tell Jennifer about the  
18 termination of the babysitting situation?

19 A That my sister offered to babysit for free.

20 Q And do you know what -- do you recall what Jennifer's reaction was  
21 when that happened?

22 A She was frustrated.

23 Q Did there come a time where it was communicated to you a concern or  
24 a problem with Ms. Lee; that is Jennifer Lee, about money owed for babysitting?

25 A Yes.



1 Q When was that? What timeframe --

2 MS. VON MAGDENKO: Your Honor, I'm going to object to the relevance  
3 about money owed to a person who's not on trial.

4 MR. STANTON: Can we --

5 THE COURT: I understand.

6 MR. STANTON: Can we approach?

7 THE COURT: Yeah.

8 [Bench conference begins at 3:24 p.m.]

9 MR. STANTON: Ms. Lee is going to be a witness tomorrow. She's the  
10 defendant's sister. I'm eliciting this information in anticipation she is a adverse  
11 witness to the State. Her conduct in this investigation was to refuse to speak to  
12 detectives. I think the relationship between this person -- she babysat Brodie, the  
13 infant child, as you just heard. Obviously she's relevant for the bruises and the  
14 activities of Brodie in that regard, but also it's evidence of the bias of the defendant  
15 or bias of Ms. Lee as it relates to this witness and the case in general.

16 THE COURT: I'll allow just a few questions. I mean how far are you going to  
17 go into the money thing?

18 MR. STANTON: That's it.

19 THE COURT: Okay.

20 [Bench conference ends at 3:25 p.m.]

21 BY MR. STANTON:

22 Q Do you recall my last question or would you like me to repeat it to you?

23 A Repeat please.

24 Q Sure. When you made up this -- this story to Ms. Lee, there was a  
25 question or concern about money owed.

-91-

1 A Yes.

2 Q Who related that information back to you?

3 A Michael Lee.

4 Q The defendant?

5 A Correct.

6 Q And he told you that his sister was upset and that you owed her  
7 money?

8 A Correct.

9 Q How much money did you owe?

10 A Like \$160.

11 Q What happened or what was your observations about Brodie's bruising  
12 when the babysitting with Jen Lee ended?

13 A It went away.

14 Q For how long?

15 A Two to three weeks.

16 Q At the end of two to three weeks, what happened about what you were  
17 observing with Brodie?

18 A The bruising started again.

19 Q And can you describe whether or not the bruising was the same as you  
20 just described before; that is, the severity, the location, frequency, or was it  
21 different?

22 A It just started to slowly appear again. And then it started to get bad  
23 again.

24 Q Was it bad in the sense of the severity?

25 A Yes.

-92-

1 Q Was it bad in the sense of frequency?

2 A Yes.

3 Q Was it bad in the sense of location?

4 A Yes.

5 Q Ma'am, I want to take -- draw your attention to the date of May 25th,  
6 2011.

7 A Okay.

8 Q On that day did you have your son, Brodie, in a car?

9 A Yes.

10 Q Were you involved in a -- what's commonly referred to as a fender  
11 bender?

12 A Yes.

13 Q Can you describe briefly in an overall fashion what happened in that  
14 event?

15 A I was going to pick up my niece from school and I had stopped to make  
16 a left-hand turn and the car behind me hit me because the car behind it hit it.

17 Q So if I understand your testimony, car number one strikes car number  
18 two which strikes car number three and you're car number three?

19 A I was the very first car.

20 Q Okay.

21 A So --

22 Q Yeah, not in the intersection but in the form of who hit first. So car  
23 number one strikes the car behind you.

24 A Yeah.

25 Q Car number two strikes you.

-93-

1 A Yeah.

2 Q Was your foot on the brake or off the brake?

3 A Off the brake.

4 Q And how far did you roll after being struck?

5 A Probably about half a block.

6 Q Where was Brodie in the vehicle?

7 A The back seat on the right-hand passenger side.

8 Q Was he in a car seat or not a car seat?

9 A In a car seat.

10 Q Was there any damage to the car seat?

11 A The Styrofoam popped out.

12 Q Where did the Styrofoam pop out?

13 A On the right-hand side of it, the top part.

14 Q Okay. Was it just a piece of Styrofoam or was it a whole portion of the

15 seat -- the Styrofoam backing of the seat?

16 A It was just the top backing right-hand corner.

17 Q Did you look at Brodie?

18 A Yes.

19 Q Did you talk to Brodie?

20 A Yes.

21 Q How did he appear to you?

22 A Fine.

23 Q How about yourself?

24 A I hit my head on the window.

25 Q The windshield or the side --

-94-

1 A On the side window.  
2 Q Did you go to the hospital?  
3 A Yes.  
4 Q Any injuries at the hospital or treatment?  
5 A No. They just did x-rays. I was fine.  
6 Q You were released that day?  
7 A Yes.  
8 Q Who took Brodie?  
9 A My mom.  
10 Q Did she come to the scene?  
11 A Yes.  
12 Q When you got home that night, the night of May 25th, did you examine  
13 your son, Brodie?  
14 A Yes.  
15 Q Were you concerned about him?  
16 A No.  
17 Q Why?  
18 A Because he was just being his normal playful self.  
19 Q He didn't act any differently?  
20 A No.  
21 Q He wasn't complaining of headaches?  
22 A No.  
23 Q He wasn't vomiting?  
24 A No.  
25 Q He had no abdominal pain?

-95-

1 A No.

2 Q He had no loss of appetite?

3 A No.

4 Q It was Brodie as Brodie was?

5 A Yes.

6 Q On May 27th, two days later, did you take Brodie to ABC Pediatrics?

7 A I brought him the next day.

8 Q Okay. And what was the reason why you brought Brodie to the doctor

9 the next day?

10 A Just to be safe.

11 Q Safe about what?

12 A Just because we got into a car wreck and I had been checked out. So I

13 just wanted him to get checked out too.

14 Q You saw no signs or symptoms of Brodie, but you felt that taking him to

15 doctor was what?

16 A Smart thing to do.

17 Q And did Dr. Sirsy examine him?

18 A Yes.

19 Q Was his staff around you and Brodie during that examination process

20 both before and after the doctor?

21 A Yes.

22 Q How was Brodie acting at the doctor's office?

23 A Funny. He was playing. Climbing on stuff.

24 Q Typical Brodie?

25 A Typical Brodie.

1 Q Now if I were to tell you the term racecar bed, would that mean  
2 something to you?

3 A Yes.

4 Q What does it mean to you?

5 A Brodie had a racecar bed.

6 Q Can you describe that for me?

7 A It was a red toddler bed that had a toddler mattress in it. It was  
8 Lightning McQueen.

9 Q And that was something that Brodie slept in?

10 A Correct.

11 Q Was that in his room?

12 A Yes.

13 Q How long had Brodie had that as a bed to sleep in?

14 A A year.

15 Q And when did you make the determination not to have Brodie sleep in  
16 that bed?

17 A When he kept getting head bruises.

18 Q And what time period was that? What month and year?

19 A June, 2011.

20 Q June of 2011 you decided to do something with the racecar bed. Do  
21 you remember the exact day that you did that?

22 A It was I believe the first weekend of June.

23 Q Showing you Exhibit 74 -- 77 in front of you. That would have been the  
24 4th of June?

25 A The 3rd or 4th, correct.

1 Q What did you do with the racecar bed?  
2 A I took it apart.  
3 Q Why?  
4 A Because I -- I thought he was getting hurt on it.  
5 Q Was there padding on that bed?  
6 A No.  
7 Q Did you then change beds for Brodie?  
8 A Yes.  
9 Q What did you do with the bed that he was now going to be in at your  
10 apartment?  
11 A The new bed?  
12 Q Yes, ma'am.  
13 A I put padding around it.  
14 Q You put padding around it? Is that correct?  
15 A Yes.  
16 Q How did you put padding around his new bed?  
17 A I took his -- sorry.  
18 Q Take your time. Just relax.  
19 A I took the foam part from his baby crib, the bumper from his old baby  
20 crib and I stapled it around the wall where his new mattress was at.  
21 Q And this is once again the weekend of the 4th into the 5th or the 3rd,  
22 4th, and 5th of June, 2011?  
23 A Yes.  
24 Q Why did you put the padding around his bed?  
25 A So he wouldn't bump his head on the wall.

-98-



1 Q You thought that was the cause of his injuries?

2 A Yes.

3 Q Did there come a time once again in the May, June time period of 2011  
4 where you found out or had a discussion with the defendant about waking up Brodie  
5 in the early morning hours and the bathroom?

6 A Yes.

7 Q Can you describe that for me?

8 A I told him -- sorry, I can't collect myself.

9 Q It's okay. Just take your time. I'll repeat the question. Did there come  
10 a time where you and the defendant had an argument and a discussion about  
11 waking up Brodie in the morning?

12 A Yes, I told him not to wake him up to go potty.

13 Q What was it that you knew he was doing about Brodie in the early  
14 morning hours and potty?

15 A He'd wake him up and have him go to the bathroom and he'd change  
16 him out of his pull-up to big boy panties.

17 Q And when you put Brodie to bed at night, what was the habit and  
18 custom about whether he had a diaper on or not when you put him to bed?

19 A I put him in a diaper so he didn't wet the bed.

20 Q And when you would wake up in the morning once again in the April or  
21 March, April and June or March, April, May and June time period, did you ever  
22 notice that Brodie would be in something other than what you put him in when he  
23 went to bed at the night?

24 A Yes, he'd be in his underwear.

25 Q And was that one of the reasons why you knew something was

-99-

1 happening?

2 A Yes.

3 Q Did you talk to the defendant about it?

4 A Yes.

5 Q What did you tell the defendant as to whether you liked that or didn't like  
6 that?

7 A I told him I didn't like him doing that.

8 Q And did you tell him not to do it again?

9 A Yes.

10 Q Was there a baby monitor in Brodie's room?

11 A Yes.

12 Q And there's a receptive monitor in your bedroom I would presume?

13 A Yes.

14 Q Would you turn that on at night when Brodie went to bed?

15 A Yes.

16 Q On occasion -- once again, I'll be more focused now from the May to  
17 June time period of 2011; that you found in the morning that the monitor in Brodie's  
18 room was not on?

19 A Correct.

20 Q How many times did you see that occur?

21 A Couple a week.

22 Q Couple a week?

23 A Yes.

24 Q Did Brodie -- could Brodie reach the monitor?

25 A Yes.

-100-

1 Q Were you concerned that Brodie turned it off?

2 A Yeah.

3 Q Did you ever see him do that?

4 A No.

5 Q How about your preference and what you did about the bedroom door  
6 to Brodie's room? Can you tell me about what your preference was in that regard?

7 A I wanted to keep it open and put the doggy gate up so the dog couldn't  
8 get in there.

9 Q You had a dog?

10 A Yeah.

11 Q And there was a doggy gate to prevent that?

12 A Yes.

13 Q Why did you want Brodie's door open?

14 A So I can hear him if he got up in the night.

15 Q And was that a point of contention between you and the defendant?

16 A Yes.

17 Q Why?

18 A Because he wanted the doors closed.

19 Q The defendant did?

20 A Yes.

21 Q He wanted Brodie's door -- bedroom door closed?

22 A Yes.

23 Q Did you find that door closed when you woke up in the morning on more  
24 than one occasion?

25 A Yes.

-101-

1 Q How often would that happen?  
2 A All the time.  
3 Q Did you discuss that with the defendant?  
4 A Yes.  
5 Q Did you tell him that you did not want that to occur?  
6 A Yes.  
7 Q Did there come a time where you were concerned about the bruising to  
8 Brodie that you did some research about something to help you explain this  
9 phenomenon?  
10 A Yes.  
11 Q What did you look for, ma'am?  
12 A Nanny cams.  
13 Q In the beginning of June of 2011, were you also looking for a new place  
14 to live?  
15 A Yes.  
16 Q Why?  
17 A Because Brodie didn't like Mike, the defendant, anymore.  
18 Q Why did that phenomenon, that fact that Brodie didn't want Mike to be  
19 around, the defendant, cause you to look for a new apartment?  
20 A Because I didn't want Brodie upset all the time.  
21 Q What was your number one priority, Brodie or your relationship with the  
22 defendant?  
23 A My son.  
24 Q Did you discuss your searches into nanny cams and the apartment with  
25 members of your family?

-102-

1 A Yes.

2 Q Ma'am, I want to direct your attention to Monday, June 6th, once again,  
3 for reference on the calendar to your left.

4 A Okay.

5 Q Did you have any recollection of an injury that occurred to Brodie's face  
6 on that day?

7 A Yes.

8 Q Can you describe what you saw about Brodie's injury?

9 A He -- he had (indicating) a fat lip.

10 Q And you pointed to your upper lip underneath the nose; is that correct?

11 A Yes.

12 Q When did you see that? What time of day was it that you saw that?

13 A In the evening.

14 Q And were you there when this happened?

15 A No.

16 Q Who was home with Brodie at that time?

17 A The defendant.

18 Q And did you ask him about how that injury took place to your son?

19 A Yes.

20 Q What did the defendant tell you?

21 A That the board from the toddler bed had fell on him.

22 Q Did you brush Brodie's teeth that night?

23 A Yes.

24 Q Was that common for you to do?

25 A Yes.

-103-

1 Q At any time when you were brushing Brodie's teeth that evening, did  
2 Brodie ever give you any indication that he was in pain while you were doing that?

3 A No.

4 Q Showing you what has been admitted as evidence 26. Direct your  
5 attention to the red object in that photograph. Do you recognize that?

6 A Yes.

7 Q Is that the Power Wheel?

8 A Yes.

9 Q Like to direct your attention now -- and in front of the Power Wheel is a  
10 lawn chair. Do you see that?

11 A Yes.

12 Q Is this seat of the lawn chair approximately the same height as the seat  
13 on the Power Wheel?

14 A What do you mean?

15 Q Is the height -- if someone were to sit down in that lawn chair, would  
16 they be sitting about the same distance off the ground as if you were if Brodie sat on  
17 the seat of the Power Wheel?

18 A Yes.

19 Q Directing your attention, ma'am, to June 9th --

20 A Okay.

21 Q -- Thursday. Do you remember being with Brodie while he was on his  
22 Power Wheel that day?

23 A Yes.

24 Q What were you doing?

25 A Walking the dog on -- around the apartment complex and letting him

1 ride his Power Wheel.

2 Q And could Brodie ride a Power Wheel?

3 A Yes.

4 Q Did he like doing it?

5 A Yeah.

6 Q What did he do that day that you observed?

7 A He hit the curb.

8 Q The curb of -- on the street?

9 A Yeah.

10 Q Did he fall off of it?

11 A Yes.

12 Q Where did he strike, if anything, on his body?

13 A His cheek.

14 Q Can you tell me and show me where on his cheek? And what side of  
15 his face it would have been on?

16 A I can't remember which side, but it was just a tiny little bruise  
17 (indicating) on his cheek.

18 Q Okay. You're indicating in kind of the fleshy portion of the jowls of some  
19 -- of Brodie's face?

20 A Yes.

21 Q How did Brodie react when he fell off the Power Wheel?

22 A He just jumped back up.

23 Q Was that typical Brodie? Is that a yes?

24 A Yes.

25 Q That evening or from that incident till you put Brodie to bed that night of

1 June 6th -- or June 9th, I apologize, did you see any change in Brodie's behavior?

2 A No.

3 Q Did he ever have or express to you abdominal pain?

4 A No.

5 Q Did he ever have a loss of appetite?

6 A No.

7 Q Did he ever vomit?

8 A No.

9 Q Did he ever complain to you about his head hurting?

10 A No.

11 Q Did he ever say to you that I'm tired or want to go to bed in a  
12 non-normal time period, not naps or evening?

13 A No.

14 Q Was there anything about Brodie's behavior on Thursday, June 9th, that  
15 caused you concern?

16 A No.

17 Q Was there anything that caused you concern about his behavior on the  
18 10th of June regarding that incident and the description of injuries I just described to  
19 you?

20 A No.

21 Q On the 11th, that weekend prior to his death, Brodie went where on  
22 Friday or Saturday?

23 A My mom's.

24 Q Going back to Friday, the 10th of June --

25 A Okay.

-106-



1 Q -- did you notice anything about Brodie the following morning when he  
2 woke up?

3 A Yes.

4 Q What did you notice?

5 A His eyes were goopy.

6 Q Did you talk to your mom?

7 A Yes.

8 Q As a result of that discussion with your mother, did you take Brodie to  
9 the physician's office?

10 A Yes.

11 Q What physicians?

12 A ABC Pediatrics.

13 Q Was he diagnosed with a medical condition that day?

14 A Yes.

15 Q What was it?

16 A Pinkeye.

17 Q Did you get medication for him?

18 A Yes.

19 Q What type of medication did you have?

20 A Eye drops.

21 Q Do you recall how many times a day you had to put eye drops in  
22 Brodie's eyes?

23 A No.

24 Q Was it more than once a day?

25 A I can't remember.

-107-

1 Q But that was the medicine that was required of Brodie and pinkeye?  
2 A Yes.  
3 Q Did you put it in both eyes?  
4 A Yes.  
5 Q Do you recall how Brodie reacted when you put the medicine in his  
6 eyes?  
7 A Yeah. Yes.  
8 Q Now --  
9 A Yeah, he got angry. He did not like it.  
10 Q Did it appear that Brodie was in pain when that occurred?  
11 A He just didn't like it.  
12 Q Did you ever mention to Dr. Sirsy, this staff or anybody at ABC  
13 Pediatrics on Friday the incident with the Power Wheel?  
14 A No.  
15 Q Ma'am, why not?  
16 A Because he didn't complain of anything.  
17 Q It wasn't of concern enough for you to mention to the doctors?  
18 A No.  
19 Q I'd like to direct your attention now to the morning of Saturday, June  
20 11th.  
21 A Okay.  
22 Q Do you remember when Brodie woke up that morning whether or not  
23 the clothing that you put him in the night before was different?  
24 A I don't remember.  
25 Q Do you remember whether or not he was in his underwear not his

-108-

1 diaper?

2 A I can't remember.

3 Q Do you remember on that morning, Saturday, June 11th, having any  
4 discussion with the defendant about the problems of changing Brodie and having  
5 him go into the bathroom in the early morning hours?

6 A I can't remember anything right now. I'm sorry.

7 Q Okay. If I were to ask you as to whether or not you have any specific  
8 memory of what you told the detectives in your interviews about that, do you have  
9 any memory about that? What you told the detectives.

10 A I'm not sure if --

11 Q Okay. What time of day on Saturday, June 11th, did you drop Brodie  
12 off at your parents' home if you can recall?

13 A Early afternoon.

14 Q Did you go to work that evening?

15 A Yes.

16 Q On Saturday?

17 A Yes.

18 Q What time did you go to work? Or did you arrive at work?

19 A Probably noon.

20 Q And what time did you get off that day?

21 A Eight I believe.

22 Q Eight p.m.?

23 A Yes.

24 Q Did the defendant work that Saturday?

25 A Yes.

-109-

1 Q Do you recall what would have been his normal time that he would get  
2 off on that day?

3 A Maybe six.

4 Q Did you and the defendant have plans for that Saturday night?

5 A Yes.

6 Q What were your plans?

7 A We went out to eat dinner.

8 Q Was that an unusual event in your life during this time period?

9 A No.

10 Q You were now alone, no children? Is that correct?

11 A Yes.

12 Q And did you have a discussion or at least an argument with the  
13 defendant that evening?

14 A Yes.

15 Q Can you tell me what the subject matter of that argument was?

16 A On Saturday, the 11th, correct?

17 Q Yes, ma'am.

18 A Jealousy between him and Brodie.

19 Q What did you tell the defendant was your concern about that?

20 A That they didn't get along.

21 Q And did you tell them -- did you tell the defendant who was your number  
22 one priority?

23 A Yes, I told him Brodie was my number one priority.

24 Q Did you confront him about information that you believed you  
25 possessed that would indicate he may be thinking about leaving the relationship as

-110-

1 well?

2 A Yes.

3 Q What did the defendant say about that?

4 A He wasn't planning anything.

5 Q He denied that he was?

6 A Yes.

7 Q Was he concerned about who told you that?

8 A Yes.

9 Q Did you ever tell him?

10 A No.

11 Q Did you sleep in the master bedroom that evening; that is Saturday,  
12 June 11th?

13 A No.

14 Q Where did you sleep?

15 A In Brodie's bed.

16 Q Was that normal or was that abnormal in the normal activities between  
17 you and the defendant?

18 A Abnormal.

19 Q Sunday morning, June 12th, when you and the defendant wake up, did  
20 the defendant say anything to you?

21 A Yeah. Yes.

22 Q What did he say?

23 A He'd do just whatever it takes for everything to work out and us to be  
24 together.

25 Q And were you in agreement with that?

-111-

1 A Yeah.

2 Q Did there come a time on Sunday, June 12th, where you left your  
3 apartment to go and have some chores done?

4 A Yes.

5 Q What did you do and what time did you leave the apartment? If you can  
6 recall.

7 A I left early morning. I brought the dog to the dog park. On my way  
8 home, I went and got my nails done, and then went and got my hair done.

9 Q Do you remember what time you would have come back from the nails  
10 and hair to your apartment?

11 A I went to work after that.

12 Q What time did you work that day?

13 A Three o'clock.

14 Q That's when you started?

15 A Yes.

16 Q What time did you get off work Sunday, June 12th?

17 A Probably around 7 or 7:30.

18 Q And where did you go when you got off work?

19 A My mom's house.

20 Q Did you go straight from work to your mom's?

21 A Yes.

22 Q Who was there when you arrived at your mom's house?

23 A My mom, my sister, Brodie, my dad.

24 Q Was Lily there?

25 A Yes.

-112-

1 Q Did you -- how long did you stay at your parents' house?  
2 A Probably somewhere around an hour.  
3 Q Did you observe Brodie there?  
4 A Yes.  
5 Q Did you see any change in his normal Brodie behavior?  
6 A No.  
7 Q Where did you and Brodie go when you left your parents' house?  
8 A Our apartment.  
9 Q Meaning the defendant and your apartment?  
10 A Yes.  
11 Q What did Brodie do when he got home?  
12 A Got mad.  
13 Q Do you know why he got mad?  
14 A Yeah, because Bum was there.  
15 Q And who is Bum?  
16 A The defendant.  
17 Q What did Brodie call the defendant?  
18 A Bum.  
19 Q Was that a reference to anything if you know?  
20 A No. He just used to say it when he was kidding around when we first  
21 met. So Brodie just picked up on it and that's what he started to call him.  
22 Q Okay. Did there come a time that evening, once again June 12th,  
23 Sunday evening, at your home, when you noticed that Brodie had been involved  
24 with the curtains in your home?  
25 A Yes.

-113-

1 Q Can you describe what happened?

2 A I was in the kitchen and I was looking through his doorway and he was  
3 spinning in his curtains. He was --

4 Q Is that in his room?

5 A Yes, he was in his bedroom. He was twirling in his curtains and then  
6 the curtain fell down. And the rod scratched his back, his lower back. So I went in  
7 there and untangled him from the curtain and put his curtain rod in his closet so he  
8 wouldn't get hurt on it anymore.

9 Q Okay. Was Brodie crying when this happened or after the event?

10 A No.

11 Q Did you notice any injuries on his body as a result of this what I'll refer  
12 to as the curtain incident?

13 A Just two small scrapes down the center of his back.

14 Q The center of his back?

15 A Yes.

16 Q Was he bleeding?

17 A Barely. It was like just like a scratch.

18 Q And how about the bruise on his cheek from the Power Wheels  
19 incident? How did that look to you?

20 A It was going away. It was almost gone.

21 Q Did you put Brodie to bed that night?

22 A Yes.

23 Q Did you notice any other bruises or injuries on his person other than  
24 what you've already testified to or normal bruises for Brodie?

25 A No.

-114-



1 Q Do you recall indicating to detectives that he had two pinpoint bruises  
2 on his forehead?  
3 A That --  
4 Q That evening.  
5 A I don't remember.  
6 Q Okay. Let me go to the morning of June 13th, Monday morning.  
7 A Okay.  
8 Q How did Brodie behave when he got up Monday morning?  
9 A He was fine. He didn't --  
10 Q What --  
11 A Sorry.  
12 Q Go ahead.  
13 A He didn't want Mike to be around him.  
14 Q The defendant?  
15 A Yes.  
16 Q Was that obvious to you?  
17 A Yes.  
18 Q In what way?  
19 A He --  
20 Q How did Brodie react?  
21 A He just ran away from him.  
22 Q He'd run away from the defendant? Is that a yes?  
23 A Yes.  
24 Q Do you recall what you did Monday morning as far as activities outside  
25 your apartment? Did you go somewhere?

-115-

GAL FRIDAY REPORTING & TRANSCRIPTION  
10180 W. Altadena Drive, Casa Grande, AZ 85194 (623) 293-0249

1 A Yes.  
2 Q Where did you go?  
3 A To the swimming pool.  
4 Q And was anybody else with you when you were at the swimming pool  
5 on Monday, June 13th?  
6 A Yes.  
7 Q Who was there?  
8 A Jennifer Lee, her two boys and the defendant.  
9 Q And did you see Brodie swimming that day?  
10 A Yes.  
11 Q How was Brodie acting when he was swimming that day?  
12 A He was fine.  
13 Q Did you notice his body, did you observe it while he was swimming?  
14 A Yes.  
15 Q How was he clothed?  
16 A In swim shorts.  
17 Q Did he have anything on the upper part of his body?  
18 A No.  
19 Q Did he have something that normally he would swim with, float devices?  
20 A No, because they wouldn't let him have it at that pool.  
21 Q That pool didn't permit it?  
22 A Yes.  
23 Q So what was -- how did that change, if anything, what you did or how  
24 you observed Brodie when he was at the pool?  
25 A He was just in his swim shorts and we stayed on the really shallow end.

-116-

1 Q Not normally where Brodie would go if he had his floaties on?  
2 A Yeah.  
3 Q Do you remember what time the three of you; that is, the defendant,  
4 Brodie and yourself, returned home on Monday?  
5 A Early afternoon, maybe 1:30, 2.  
6 Q Okay. Did you go to work Monday afternoon?  
7 A Yes.  
8 Q Do you recall what time you went to work?  
9 A Three.  
10 Q Do you remember what time you came home?  
11 A Probably 1:30, 2. Two -- I can't remember, early afternoon.  
12 Q Do you recall working at four and coming home at 8:15?  
13 A Yeah.  
14 Q Was that shift four hours long?  
15 A Yes.  
16 Q Prior to your leaving, what was the condition of Brodie? What did you  
17 see Brodie do when you left for work on Monday?  
18 A I laid him down to take a nap.  
19 Q And was he asleep when you left?  
20 A Yes.  
21 Q Who else was in the home when you left?  
22 A The defendant.  
23 Q No one else besides him and Brodie?  
24 A No.  
25 Q When you came home that evening just after 8:15, did you check on

-117-

1 Brodie?

2 A Yes.

3 Q Did you notice anything unusual about his appearance when you went  
4 into his room to check on him?

5 A I gave him a kiss and he had a bruise on his forehead.

6 Q Can you show me where on the forehead his bruise was?

7 A I think in here (indicating) I gave him a kiss.

8 Q And you're pointing above -- and the forehead above the right eye; is  
9 that correct?

10 A Yes.

11 Q Can you describe the bruise for me?

12 A Just a round like reddish bruise.

13 Q How big was it?

14 A Maybe dime.

15 Q Dime sized? Is that a yes?

16 A Quarter size. Yes.

17 Q And was it a severe bruise as far as the color that you saw?

18 A No.

19 Q What did you do, if anything, about asking the defendant what had  
20 happened regarding that injury?

21 A I asked him what happened.

22 Q What did he tell you happened?

23 A That Brodie fell leaving his friend's house.

24 Q Do you know what his friend's name was?

25 A Danny Fico.

-118-

1 Q Had you met Danny Fico before?

2 A Yes.

3 Q How many times had you met Mr. Fico?

4 A Numerous.

5 Q What was the defendant's relationship with Mr. Fico from your  
6 observation?

7 A They were best friends.

8 Q Did the defendant tell you any details about how Brodie fell?

9 A Not that I recall.

10 Q As you testify here today, you don't recall the details that he told you?

11 A Yes, as of today I can't -- I can't remember.

12 Q But you remember that he told you that Brodie fell at Danny Fico's  
13 house?

14 A Yes.

15 Q Now Tuesday, June 14th --

16 MR. STANTON: Your Honor, may I approach?

17 THE COURT: You may.

18 [Bench conference begins at 3:58 p.m.]

19 MR. STANTON: (Indiscernible) through five?

20 THE COURT: Why don't we give them a very quick break to use the  
21 restroom?

22 MR. STANTON: Yeah, whatever, I just want to know because I -- you know, I  
23 could -- this is a natural place to break and then --

24 THE COURT: That's fine.

25 MR. STANTON: -- I didn't know if you were going to do another one before

1 we were done today.

2 THE COURT: Yeah, let's just give them a couple minutes. Are you going to  
3 finish -- are you going to finish today?

4 MR. STANTON: The direct examination of her? Yeah, I think so.

5 THE COURT: Okay, we'll still have her for cross tomorrow?

6 MR. STANTON: Yes.

7 THE COURT: Okay.

8 [Bench conference ends at 3:58 p.m.]

9 THE COURT: Ladies and gentlemen, let's take just a quick 10-minute break  
10 to use the restroom and to stretch. You're admonished not to converse amongst  
11 yourselves or with anyone on any subject connected with the trial, do not read,  
12 watch or listen to any report of or commentary on the trial, and do not form or  
13 express an opinion on this trial. See you shortly.

14 [Jury out at 3:59 p.m.]

15 THE COURT: Okay.

16 [Off the record at 3:59 p.m.]

17 [Proceedings resumed at 4:12 p.m.]

18 [Outside the presence of the jury]

19 THE COURT: Okay, it looks like everyone is back in here so let's bring the  
20 jury in.

21 [Pause]

22 THE MARSHAL: District Court XXIII jury is present.

23 [Jury in at 4:13 p.m.]

24 THE COURT: All right, the jury is back if you want to continue, Mr. Stanton.

25 MR. STANTON: Thank you, Your Honor.

-120-

1 BY MR. STANTON:

2 Q Ma'am, I believe we left off on Tuesday, June 14th. Do you recall  
3 Brodie's demeanor and behavior when he woke up on that morning?

4 A Yes.

5 Q How was it?

6 A Very upset.

7 Q Very upset?

8 A Yes.

9 Q And how was he acting towards you and towards the defendant?

10 A He came running into the room just screaming and yelling and wanted  
11 me to cuddle him.

12 Q Was that normal from Brodie?

13 A No.

14 Q Did you notice anything about his physical condition that morning when  
15 he woke up?

16 A Yes.

17 Q Had his injuries that you had seen, the bruise on his forehead, had that  
18 changed?

19 A Yes.

20 Q How did it look to you Tuesday morning?

21 A He had a lot more bruises.

22 Q Where were the other bruises?

23 A He had a couple bruises on his forehead. The bruise on his cheek was  
24 a lot bigger and darker. And then he had -- his bottom lip was a little chapped.

25 Q Did he eat that morning?

-121-

1 A Yes.

2 Q What did he eat?

3 A Pancakes.

4 Q Pancakes? Keep your voice up --

5 A Sorry. Pancakes.

6 Q And did he have anything to drink?

7 A Yes.

8 Q Did there come a time that morning where you made plans, the family

9 in your apartment, to go somewhere that day?

10 A Yes.

11 Q Where did you plan to go?

12 A The Mandalay Bay Shark Reef.

13 Q And did you dress Jodie to go there?

14 A Brodie.

15 Q Brodie, I'm sorry.

16 A Yes.

17 Q And what did Brodie say, if anything, while you were dressing him?

18 A That his head hurt.

19 Q What were you doing about dressing him when he told you his head

20 hurt?

21 A Putting his t-shirt on.

22 Q Did the defendant say anything to you about taking Brodie outside into

23 the public that morning before you left your apartment?

24 A Yes. Yes.

25 Q What did he say?

-122-



1 A He said we -- it looks like -- he said he didn't want to really bring him  
2 anywhere because it looked like we beat him.

3 Q And prior top going to the Shark Reef, did you stop someplace before  
4 going there?

5 A Yes.

6 Q Where did you stop?

7 A America's Mart, the gas station.

8 Q Is that where the defendant worked?

9 A Yes.

10 Q When you arrived there and you got out of the car, did the defendant  
11 say something to you about bringing Brodie into the store?

12 A Yes.

13 Q What did he say to you?

14 A That he didn't want me to bring him in.

15 Q Did he say why?

16 A Because of his bruises.

17 Q Did the defendant go into the convenience portion of the store with you  
18 and Brodie?

19 A No.

20 Q Where did he go as far as you could observe?

21 A The car wash part.

22 Q Did you notice or recognize anybody inside the store when you and  
23 Brodie went in?

24 A Yes.

25 Q Who?

-123-

1 A Danny Fico.

2 Q Danny Fico, the defendant's best friend?

3 A Yes.

4 Q Did he say anything to you?

5 A Yes.

6 Q What did he say?

7 A He commented on the bruises.

8 MR. ALTIG: I'm going to object. It's hearsay.

9 MR. STANTON: Judge, it's not offered for the truth of the matter.

10 THE COURT: Overruled.

11 BY MR. STANTON:

12 Q Go ahead. What did he say?

13 A He had a lot more bruises.

14 Q Danny Fico said that?

15 A Yeah.

16 Q He commented about Brodie's condition, the bruising on his face?

17 A Yes.

18 Q Could you see any other bruises besides bruises on Brodie's face when  
19 you brought him in the convenience store?

20 A No.

21 Q Did you leave and go to the Shark Reef?

22 A Yes.

23 Q Do you remember what time you arrived at the Shark Reef?

24 A No.

25 Q Was it in the morning, noon or afternoon?

1 A Early afternoon.

2 Q Do you recall what, if anything, happened between Brodie and the

3 defendant when you arrived in the parking garage?

4 A Yes.

5 Q What happened?

6 A Brodie didn't want to hold his hand.

7 Q Didn't want to hold whose hand?

8 A The defendant's hand.

9 Q Did he complain about it? How did you know he didn't want to do it?

10 A He said no.

11 Q And what did you do?

12 A I told Brodie that he had to hold his hand.

13 Q And what did you tell Brodie you would do if he didn't hold the

14 defendant's hand?

15 A That we'd have to go.

16 Q Couldn't go to the Shark Reef?

17 A Yes.

18 Q Did he hold the defendant's hand?

19 A Yes.

20 Q For how long?

21 A Just through the parking garage.

22 Q What time did you leave the Shark Reef?

23 A Early afternoon.

24 Q Did you go somewhere after the Shark Reef?

25 A Yes.

-125-

1 Q Where?  
2 A Circus Circus.  
3 Q Why'd you go there?  
4 A Just to have an outing.  
5 Q Did you go someplace inside the Circus Circus to eat?  
6 A Yes.  
7 Q Where was that?  
8 A McDonald's.  
9 Q Was Brodie hungry at McDonald's?  
10 A He just ate some French fries.  
11 Q Was that normal for him?  
12 A Yeah.  
13 Q Was there anything unusual about his behavior at McDonald's or did an  
14 event take place at McDonald's?  
15 A Yes.  
16 Q What was that?  
17 A He wet through his pull-up.  
18 Q And what kind of pull-up did you have on him?  
19 A A swimmer one.  
20 Q And when you first observed that, do you remember where you were  
21 physically? What store or location?  
22 A I'm sorry, what?  
23 Q Do you remember where you were when you discovered that he had  
24 wet himself?  
25 A Yes, in McDonald's.

-126-

1 Q What was the defendant's reaction when you discovered he had wet  
2 himself?

3 A He was annoyed.

4 Q Did he express that to you verbally?

5 A Yes.

6 Q What was he annoyed about?

7 MR. ALTIG: I'm going to object -- lack of foundation, lack of personal  
8 knowledge and speculation.

9 MR. STANTON: Well, it's not speculation if she's a percipient witness and  
10 hears the defendant tell him why he's annoyed which is --

11 MR. ALTIG: Then lack of foundation. We haven't gotten there yet.

12 MR. STANTON: She's standing right next to him at McDonald's.

13 THE COURT: I'm going to overrule it.

14 BY MR. STANTON:

15 Q You can go ahead and answer the question.

16 A Now I'm confused and forgot what the question --

17 Q Okay.

18 A I'm sorry.

19 Q You said the defendant was annoyed.

20 A Yes.

21 Q Did he express that to you?

22 A Yes.

23 Q How did he express it to you? What did he say?

24 A He was frustrated. He said he should be potty trained, why did he just  
25 pee all over?

1 Q How did the defendant behave after the wetting incident when you were  
2 walking to other locations?

3 A He just -- we were just ready to go.

4 Q Did he ever walk apart from you?

5 A Yes.

6 Q When was that?

7 A After we left McDonald's.

8 Q How was he walking away from -- what was the difference between  
9 how you were walking when you were going through this area?

10 A He walked in front of us.

11 Q The defendant?

12 A Correct.

13 Q Where's Brodie?

14 A In the stroller.

15 Q Did Brodie ever fall asleep after Shark Reef when you were in this  
16 area?

17 A No.

18 Q Sometime after the peeing incident and McDonald's, did he, Brodie, ask  
19 you that he had to go to the bathroom again?

20 A Yes.

21 Q When was that?

22 A After McDonald's, before we walked out of Circus Circus.

23 Q And what did you do?

24 A Brought him in to go potty.

25 Q And did he go to the bathroom?

-128-

1 A Yes.

2 Q You said the defendant said that you're leaving. Was he normal  
3 behavior or was he acting differently when he said we're leaving?

4 A Just angry, annoyed.

5 Q When you got to the car, what did you do with Brodie about his  
6 clothing?

7 A Changed him.

8 Q Did you put anything on Brodie along his groin area?

9 A Yes.

10 Q What did you put on?

11 A A pink pull-up.

12 Q Why did you do that?

13 A Because his pull-up was sopping wet.

14 Q Okay. And is that the -- did you have any pull-ups to put on him at that  
15 point?

16 A I had one in my trunk for my niece.

17 Q Okay. So it happened to be pink?

18 A Yeah.

19 Q How did Brodie respond when you put that on?

20 A He was excited that he could wear Lily's pink pull-up.

21 Q And where did you put Brodie in the car when you left the Shark Reef?

22 A In his car seat.

23 Q Is that -- what type of car were you driving?

24 A Ford Focus.

25 Q And where was Brodie physically in the car?

-129-

1 A The center seat in the back.  
2 Q Was he in his car seat?  
3 A Yes.  
4 Q Was it the same car seat that was involved in the incident 20 days  
5 prior?  
6 A No.  
7 Q Different car seat?  
8 A Yes.  
9 Q Where did you go after you left the Shark Reef?  
10 A To the hair salon.  
11 Q On the way from the Shark Reef to the hair salon, did Brodie fall  
12 asleep?  
13 A Yes.  
14 Q Why did you go to the hair salon?  
15 A Because they had overcharged me for my hair the day -- the day  
16 before.  
17 Q So you went to pick up that money?  
18 A Correct.  
19 Q And how did you leave the car based upon Brodie being asleep? Did  
20 you do anything different when you got out of the car?  
21 A I just -- I didn't slam the door, I just tried to shut it quietly so he wouldn't  
22 wake up.  
23 Q Did you go in the store?  
24 A Yes.  
25 Q How long were you in the store?

-130-



1 A Maybe 5, 10 minutes.

2 Q When you returned and you opened the door to your car, can you tell  
3 us what you observed and what was going on inside the car when you got back?

4 A Brodie was screaming.

5 Q When you say screaming --

6 A He was --

7 Q -- was that loud?

8 A Yeah, he was upset. He was crying.

9 Q And did you ask the defendant what had happened?

10 A Yes.

11 Q What did he tell you?

12 A That he got mad when I got out of the car he woke up.

13 Q Where did you go after that?

14 A The bank.

15 Q That was for something that the defendant had to do there?

16 A Yes.

17 Q And then you went to someplace else. Where did you go?

18 A Best Buy.

19 Q As you walked into Best Buy, was there an incident with Brodie?

20 A Yes.

21 Q Can you describe that for me?

22 A He didn't want to walk. He wanted me to carry him.

23 Q Was that unusual?

24 A Yeah.

25 Q And what happened as far as carrying Brodie? Did that -- was there a

-131-

1 discussion with the defendant about carrying him?

2 A Yes.

3 Q And what happened in that discussion?

4 A He told me not to baby him.

5 Q Did you put Brodie down?

6 A Yes.

7 Q What was Brodie's reaction to the defendant as you were walking into  
8 Best Buy?

9 A He didn't want him to touch him.

10 Q Did Brodie say anything to you that indicated at this time when you're  
11 entering Best Buy that he was tired?

12 A Yes.

13 Q What did he tell you in the words that Brodie would use to tell you he  
14 was tired?

15 A He said momma night night.

16 Q Night night?

17 A Night night.

18 Q Is that Brodie's way of telling you as his mother that he was tired and  
19 wanted to go to bed?

20 A Yes.

21 Q How many times did he tell you inside the Best Buy that he was tired  
22 and wanted to go night night?

23 A Three, four.

24 Q Did you put Brodie in timeout as you were entering Best Buy because  
25 of his behavior towards the defendant?

1 A Yes.

2 Q How was Brodie acting once you got into the store?

3 A He -- just tired. He didn't want to walk.

4 Q He didn't want to walk?

5 A No.

6 Q Did you carry him at times while you were in the store?

7 A Yes.

8 Q Did there come a time inside Best Buy when Brodie wanted to get a

9 movie?

10 A Yes.

11 Q Did you tell Brodie that if he did something you would get him that

12 movie?

13 A Yes.

14 Q What did you tell Brodie he had to do to get that movie?

15 A Be nice to Mike. They had to get along.

16 Q Did there come a time inside Best Buy when Brodie didn't do that?

17 A Yes.

18 Q Can you describe that for me?

19 A Mike went to walk up and Brodie got angry and told him no, no, no. So

20 I had to put his movie back.

21 Q You had to put what?

22 A His movie back.

23 Q He was throwing a fit when the defendant came up to him?

24 A Yes.

25 Q When you got home, where did you put Brodie inside your apartment?

-133-

1 A I put him in his bedroom.  
2 Q Did you put -- turn --  
3 A With his --  
4 Q Go ahead. I'm sorry.  
5 A With his cup and I turned his Bob the Builder on his --  
6 Q Bob the Builder, what's that?  
7 A A movie.  
8 Q So Brodie's in his room and he's watching a movie?  
9 A Yes.  
10 Q How is he behaving when he's at home from what you observed?  
11 A Better.  
12 Q Did you cook dinner that evening?  
13 A Yes.  
14 Q What did you cook for dinner?  
15 A I made lasagna.  
16 Q Was Brodie hungry at dinnertime?  
17 A He wouldn't really eat. He -- he wouldn't really eat.  
18 Q How did you feed Brodie that night?  
19 A I spoon fed him.  
20 Q Spoon fed him? Is that yes?  
21 A Yes.  
22 Q Was that normal for you to spoon feed Brodie for evening meals or any  
23 meals?  
24 A Not usually.  
25 Q He ate some lasagna?

-134-

1 A Yes.

2 Q And did you put him to bed?

3 A Yes.

4 Q Normal time or earlier than normal?

5 A A little early.

6 Q How were his injuries that you observed on Brodie when you put him to  
7 bed that night?

8 A He just had his forehead -- the couple bruises on his forehead, the  
9 bruise on his cheek was worse, and he had a little scuff under his lip (indicating).

10 Q Was the defendant at home when you and Brodie were eating?

11 A No.

12 Q Where was he?

13 A He left to go to the gas station.

14 Q To his place of employment?

15 A Correct.

16 Q Do you remember did you contact him there?

17 A Yes.

18 Q Did you tell him dinner was ready?

19 A Yes.

20 Q Did he come home right away?

21 A Shortly after.

22 Q Did you and him then eat dinner?

23 A Yes.

24 Q Did there come a time after Brodie's in bed and after dinner when you  
25 told the defendant that you had to go for some errands that evening away from your

-135-

1 apartment?

2 A Yes.

3 Q What was the defendant's reaction to you telling him that that's what  
4 you had to do?

5 A He asked why I didn't just do it earlier.

6 Q Was he upset --

7 A Yes.

8 Q -- irritated or normal?

9 A Upset.

10 Q What were the things that you needed to go do?

11 A I needed to go to my mom's and drop off papers from the car wreck that  
12 had just came in the mail that night so she could fax them for me, and then I needed  
13 to go get milk because Brodie had just ran out.

14 Q And did you leave the apartment?

15 A Yes.

16 Q Did you make an offer to the defendant about taking Brodie with you?

17 A Yes.

18 Q What did you tell him?

19 A If he didn't want me to leave him, I'd just bring him.

20 Q You'd wake up Brodie and bring him with you?

21 A Yes. I didn't know if he was asleep yet, I'd just bring him.

22 Q And what did the defendant say?

23 A No, it's fine, just leave him.

24 Q So when you left that night; that is, Tuesday, the 14th of June, to run  
25 these errands, Brodie is in bed, you had recently put him in, and the defendant's

1 inside your apartment?

2 A Yes.

3 Q Is there anybody else inside your apartment?

4 A No.

5 Q Do you remember how long you were gone from when you left to when  
6 you arrived?

7 A Not even an hour.

8 Q Do you remember the precise number of minutes?

9 A Something like 56 minutes.

10 Q Why is it that you know almost to the minute how long you were gone?

11 A Because I told Mike I wouldn't be more than an hour, so I wanted to be  
12 a smartass and time it.

13 Q And when you left your apartment, did there come a time where the  
14 defendant called you soon after leaving there?

15 A Yes.

16 Q How long or where were you when you got the phone call from the  
17 defendant?

18 A Not even out of the gate yet.

19 Q What did the defendant say to you?

20 A Told me to get batteries.

21 Q He wanted you to get batteries?

22 A Yes.

23 Q Did you go to your mother's?

24 A Yes.

25 Q Did you do what you had to do as far as faxing items there?

1 A I just handed them to her and left.

2 Q So your mom did that for you?

3 A Yes.

4 Q Where did you go there -- then?

5 A To the Smith's right by our house.

6 MR. STANTON: May I approach, Your Honor?

7 THE COURT: You may.

8 MR. STANTON: Counsel's observed State's Exhibit 41. I move for its  
9 admission at this time.

10 MS. VON MAGDENKO: No objection, Your Honor.

11 THE COURT: Admitted.

12 [State's Exhibit 41 admitted]

13 BY MR. STANTON:

14 Q Showing you State's Exhibit 41, do you recognize this receipt?

15 A Yes.

16 Q Is this the receipt that you obtained pursuant to your testimony that you  
17 just gave to the ladies and gentlemen of this jury?

18 A Yes.

19 Q Did you keep this receipt in your purse after you got it from Smith's?

20 A Yes.

21 Q After you left Smith's or at least on this trip, did you attempt to contact  
22 the defendant again?

23 A Yes.

24 Q Why did you try to call the defendant?

25 A I can't remember. I think to ask if he needed anything else from the



1 store.

2 Q Did he answer your phone call?

3 A No.

4 Q Did there come a time on your way home when you're almost at home  
5 where the defendant calls you?

6 A Yes.

7 Q What did he say to you when you picked up the phone?

8 A I think I had to call him back.

9 Q Okay.

10 A I didn't hear it.

11 Q And when you called him back, what was the defendant's comment to  
12 you?

13 A I can't remember the exact words.

14 Q Was he upset?

15 A Yes.

16 Q And did you tell him that you're almost home and that it took 56  
17 minutes?

18 A Yes.

19 Q When you got home, did you put the groceries away?

20 A Yes.

21 Q What's the defendant doing?

22 A Sitting on the couch.

23 Q What did you do after you put your groceries away?

24 A Took a bath.

25 Q Do you remember observing the door to your son's room?

-139-

1 A Yes.  
2 Q What condition was the door to your son's room when you came home  
3 that night?  
4 A Shut.  
5 Q Shut?  
6 A Yes.  
7 Q Completely shut closed?  
8 A Yes.  
9 Q Was the dog door or dog gate up?  
10 A No.  
11 Q Did you go to sleep in your bed that night?  
12 A Yes.  
13 Q Did the defendant?  
14 A Yes.  
15 Q Do you remember what time you went to bed?  
16 A No.  
17 Q Do you remember waking up that night into the early morning hours?  
18 A Yes.  
19 Q Do you remember what time of morning or evening it was?  
20 A One a.m.  
21 Q This would be now 1 a.m. on January 15th, Wednesday?  
22 A Yes.  
23 Q When you woke up, was the defendant in your bed?  
24 A No.  
25 Q After you noticed that, did you then see the defendant?

-140-

1 A Yes.

2 Q What was he doing?

3 A Walking in the bedroom.

4 Q What, if anything, did he say to you?

5 A That he went to use the bathroom -- Brodie's bathroom and it stinks.

6 He thinks he threw up.

7 Q Was it normal for the defendant to use, as you refer to, Brodie's

8 bathroom, the bathroom outside your master bedroom?

9 A No.

10 Q His normal behavior when he used the bathroom was to use the master

11 bathroom?

12 A Yes.

13 Q Did you go into the bathroom? His bathroom? Brodie's bathroom?

14 A I went to Brodie's room.

15 Q Okay. And what did you see about Brodie when you went into his

16 room?

17 A He was full of vomit. He was full of vomit.

18 Q Could you smell it?

19 A Yes.

20 Q Okay. What did you do after you saw Brodie in that condition?

21 A I walked him to his bathroom.

22 Q What did you do inside the bathroom?

23 A He threw up again. And then I just quickly wiped him off.

24 Q When you say you wiped him off, what did you wipe him off with?

25 A A washrag.

-141-

1 Q You're in the bathroom?  
2 A Yes.  
3 Q Was the light on?  
4 A I -- yeah.  
5 Q Did you see any injuries to Brodie at that time?  
6 A Just the ones that I'd seen before.  
7 Q Okay. Did you notice any new injuries?  
8 A No.  
9 Q Did you take a long time to examine Brodie?  
10 A No.  
11 Q Did you dress him again?  
12 A No.  
13 Q What did you put him in?  
14 A He was just -- he was just in his diaper.  
15 Q Where did you bring Brodie?  
16 A To the couch in the living room.  
17 Q Was it light or dark in the living room?  
18 A Dark.  
19 Q What did you do with Brodie when you got him in the living room?  
20 A I put a towel down and laid him on the couch.  
21 Q And what, if anything, were you and Brodie doing on the couch?  
22 A I just leaned over and give him a kiss and I laid next to him for a  
23 second.  
24 Q Did there come a time where you -- soon thereafter that you believed  
25 Brodie was asleep?

-142-

1 A Yes, almost immediately.

2 Q Did he complain about anything, the condition of his head, when you

3 were --

4 A Yeah, he told me his head hurt. Momma head -- his head hurt.

5 Q After Brodie fell asleep, did you leave the television on for him?

6 A Yes.

7 Q Was that normal for you to do with Brodie to help him fall asleep?

8 A Yes.

9 Q Did you go back into your bedroom into your bed?

10 A Yes.

11 Q What, if anything, did the defendant say to you when you got back into

12 your bed?

13 A Why did you just leave the TV on?

14 Q Was that a concern of the defendant?

15 A Yes.

16 Q Why?

17 A Because the power bill was higher that month.

18 Q How much was your power bill that month?

19 A A little bit over a hundred dollars.

20 Q So what did you do when he said that?

21 A I got up and went and turned the TV in the living room off.

22 Q What was the next time you remember after you going back into bed --

23 I'm assuming that you fell asleep?

24 A Yes.

25 Q Do you remember anything occurring or the next time that you

-143-

1 remember something occurring in your bedroom? What was that?

2 A The defendant carried Brodie in a fuzzy blanket to lay him next to me.

3 Q Do you remember what time that was?

4 A The sun wasn't up yet.

5 Q It was still dark?

6 A Yes.

7 Q Do you have any knowledge or did you look at a clock at all about what  
8 time it was?

9 A No.

10 Q Did anything unusual occur about Brodie being in the bed with you at  
11 that time?

12 A He wasn't usually in my -- I can't breathe.

13 Q Let me rephrase the question to you, Arica. Was there anything  
14 unusual that occurred from the time the defendant came in with Brodie until you  
15 woke up again sometime later that morning?

16 A Huh-uh.

17 Q Is that a no?

18 A No. I can't remember. No.

19 Q Nothing unusual happened?

20 A No, he just laid him next to me.

21 Q Now, you woke up sometime after that?

22 A Yes.

23 Q Was the time approximately 8:50 in the morning?

24 A Yes.

25 Q What did you first notice about Brodie when you woke up that final

1 time?

2 A It looked like he was going to fall off the bed.

3 Q And what did you do?

4 A I rubbed his back.

5 Q His back?

6 A Yes.

7 Q And what --

8 A I said Brodie --

9 Q I'm sorry?

10 A And I just said Brodie, buddy, and I rubbed his back.

11 Q I think you said that you rubbed his back?

12 A Yes.

13 Q Okay. Did you notice anything unusual when you rubbed his back?

14 A Yes.

15 Q What did you notice?

16 A He was cold.

17 Q Did you notice anything else about his body?

18 A He was just cold, so I jumped up -- something wasn't right and I ran  
19 around the bed and his eyes were just cracked open (indiscernible) and I said  
20 Brodie, Brodie.

21 Q Did you put him on the bedroom floor in your bedroom?

22 A 911 told me to because I called 911.

23 MR. STANTON: May I approach, Your Honor?

24 THE COURT: Yes.

25 BY MR. STANTON:

1 Q I -- we're almost done, Arica. I have in front of you Exhibit 80. I asked  
2 you to review and to initial that CD if it was an accurate copy of the recording that  
3 you made to Henderson 911; is that correct?

4 A Yes.

5 Q And you initialed it?

6 A Yes.

7 Q That's your initial on the cover of this or the actual CD itself?

8 A Yes.

9 Q And does that recording accurately depict what was said to you by  
10 dispatch and what you said to them as you just described when you called 911 on  
11 the morning of June 15th?

12 A Yes.

13 MR. STANTON: I move for its admission, Your Honor.

14 THE COURT: Objections?

15 MS. VON MAGDENKO: No objection, Your Honor.

16 THE COURT: That's fine, admit.

17 [State's Exhibit 80 admitted]

18 MR. STANTON: Arica, thank you very much and I pass the witness.

19 CROSS-EXAMINATION

20 BY MS. VON MAGDENKO:

21 Q Miss Foster, did Michael ever hit you?

22 A No.

23 Q You had testified that when you got back from getting the milk and the  
24 batteries and the fax that his door was actually shut?

25 A Yeah.

-146-

GAL FRIDAY REPORTING & TRANSCRIPTION  
10180 W. Altadena Drive, Casa Grande, AZ 85194 (623) 293-0249



1 Q Okay, do you remember testifying in court previously in this case?

2 A Yeah.

3 Q Okay. And you testified truthfully at that time?

4 A Yes.

5 Q And isn't it true that when you gave your testimony to the Court  
6 previously, you told the Court you did not know whether or not his door was open or  
7 shut?

8 A Possibly.

9 Q Okay. So -- and you were asked multiple times? Right?

10 A I don't remember.

11 Q Okay.

12 MS. VON MAGDENKO: Your Honor, if I can approach to refresh her  
13 recollection? This preliminary hearing --

14 THE COURT: Yes, what are you referencing, please?

15 MS. VON MAGDENKO: The preliminary hearing transcript, page 103.

16 THE COURT: All right.

17 BY MS. VON MAGDENKO:

18 Q You can just look at the highlight portion.

19 A Okay.

20 Q Okay. And so you in fact actually don't remember whether or not his  
21 door was open or closed when you got back, do you?

22 A I don't know.

23 Q You don't know. Okay. You had testified that Brodie normally -- when  
24 you were at Best Buy, Brodie normally didn't want to be held? He wanted to walk on  
25 his own?

1 A Yeah.

2 Q But didn't you testify earlier when you were at Circus Circus you had a  
3 stroller?

4 A Yes.

5 Q Okay. So that day he wanted to be in his stroller at Circus Circus?

6 A It's a long walk.

7 Q Okay. And you -- he had been walking all day?

8 A Yes.

9 Q Okay. Because not only had you gone to Circus Circus, you went to  
10 the Shark Reef, you went to Best Buy, and didn't he actually pee his pants three  
11 times at McDonald's? Not just --

12 A No.

13 Q No?

14 A His pull-up was just sopping wet.

15 Q Okay, so you never said before that he peed his pants three times?

16 A I may have.

17 Q You may have?

18 A Uh-huh.

19 Q Okay. So you actually don't really remember what happened that day?

20 A I remember what happened that day.

21 Q Okay. So your story's different today?

22 A No.

23 MR. STANTON: Objection; argumentative, Your Honor.

24 THE COURT: Overruled.

25 BY MS. VON MAGDENKO:

1 Q So your story's different then?

2 A No.

3 Q Huh?

4 A No.

5 Q It's not. Okay. Then I'll refresh your recollection.

6 MS. VON MAGDENKO: Court's indulgence.

7 This is the June 21st, 2011 incident report, page 112. If I can  
8 approach?

9 THE COURT: You may.

10 BY MS. VON MAGDENKO:

11 Q I'll show you where it is.

12 Right here talks about you're at Circus Circus and he peed.

13 A Uh-huh.

14 Q And then he actually peed again? Do you see that?

15 A Yes.

16 Q Okay. So now that your recollection is refreshed, he actually peed  
17 multiple times while at McDonald's?

18 A When we were at McDonald's, I -- he stopped peeing halfway through  
19 his pee. So I'm assuming he finished that first pee.

20 Q You didn't take him to the bathroom?

21 A Second, yes.

22 Q Okay. So he peed twice?

23 A Yes.

24 Q And Brodie hadn't had his -- was Brodie napping once a day at that  
25 time?

1 A Usually.

2 Q For how long?

3 A I don't recall.

4 Q Okay. And that day, how long did he sleep for?

5 A Just a short time in the car.

6 Q Okay. Did you ever tell the police or anyone that you were getting --

7 you were thinking about getting a nanny cam for Michael?

8 A Yes.

9 Q You did?

10 A Yes.

11 Q When did you tell them that?

12 A In an interview that I had with Detective Collins.

13 Q When was that ?

14 A Probably our second interview.

15 Q We'll have to ask Detective Collins about that.

16 MR. STANTON: Your Honor, I object to counsel's ad hominem comments.

17 She's not testifying.

18 BY MS. VON MAGDENKO:

19 Q Okay. What -- and when you were in the car accident, what kind of car  
20 were you driving?

21 A A Mercedes two-door --

22 Q How many hours a week were you working?

23 A Maybe 30 -- 20, 30, part time.

24 Q Part time. And how did you afford the Mercedes?

25 A With my paycheck.

-150-

1 Q Okay. It wasn't owned by Michael?

2 A No.

3 Q And isn't it true that two weeks prior to Brodie's death on June 27th, you  
4 took Brodie to the doctor because you were concerned he was bruising too easily?

5 A Yes.

6 Q And at that time he was jumping off desks?

7 MR. STANTON: Your Honor, I think counsel misspoke. June 27th --

8 MS. VON MAGDENKO: I mean May 27th. I'm sorry, he's right.

9 MR. STANTON: -- Brodie's deceased.

10 BY MS. VON MAGDENKO:

11 Q And at that time was he jumping off the desks and jumping off chairs at  
12 the doctor's office?

13 A Jumped off of the -- he was climbing on the exam table.

14 Q Okay. Do you consider that a desk?

15 A No, I consider it a exam table.

16 Q Okay, well isn't it true that when your statement was taken by the police  
17 on June 21st, you said that yeah, he's jumping off the desk? He's doing this,  
18 jumping off chairs?

19 A If that's what it says, then that's what I said.

20 Q Okay. So did you ask -- you said that after the tubes were put in his  
21 ears, his balance was a little bit better.

22 A Correct.

23 Q Okay, but wasn't he still falling regularly?

24 A He would trip, yes.

25 Q Would he trip on his own feet?

-151-

1 A If he was running.

2 Q Is that a yes just --

3 A Yes.

4 Q Okay. Was it suggested to you that if his balance didn't approve that  
5 you should take him to see a neurologist?

6 A By the ENT.

7 Q Is that a yes?

8 A Yes.

9 Q Would the dog knock Brodie down?

10 A Yes.

11 Q Would Brodie use his bicycle to get things?

12 A Yes.

13 [Colloquy between counsel]

14 MS. VON MAGDENKO: Court's indulgence.

15 [Colloquy between counsel]

16 BY MS. VON MAGDENKO:

17 Q And you said that you started noticing a lot of bruising when Jennifer  
18 Lee started babysitting.

19 A Yes.

20 Q And how old were her children? At that time.

21 A A couple years older than Brodie.

22 Q And were they male or female?

23 A Male.

24 Q Okay. And were they calm children or were they rowdy, rambunctious?

25 A Rambunctious.

1 Q Okay. And you started noticing that bruising -- just so I get the timeline  
2 right, Michael hadn't moved in with you yet, had he?

3 A Yes, he had.

4 Q He had? Okay, so Mike moved in and then Jennifer started  
5 babysitting? I just want to make sure I have the timeline right.

6 A Sorry. Jen would babysit and then Mike and I moved in together.

7 Q Okay. So Jen started babysitting and then later Michael moved in?

8 A Yes.

9 Q And then while Jennifer was babysitting, you started noticing additional  
10 bruises?

11 A Not until Michael and I moved in together.

12 Q Oh, okay. Okay. And you had testified earlier that while at Jen's  
13 house, Michael -- I mean Brodie got a bruise inside his ear?

14 A He got a bruise on the top of his ear.

15 Q And that -- isn't it true that Brodie -- you testified in -- not testified, you  
16 gave a statement to the police previously that Brodie always had bruising on his  
17 forehead?

18 A Occasionally.

19 Q That wasn't my question.

20 A Sure, yeah.

21 Q So on Monday when Brodie has a bruise on his forehead, that's not  
22 uncommon?

23 A No.

24 Q And isn't it true that Brodie would even knock his own head on his  
25 dresser?

1 A Yeah.

2 Q And isn't it true that you had indicated to the police that you thought  
3 Brodie needed to be in a bubble?

4 A Not to the police that I recall.

5 Q Okay.

6 A I told them I --

7 Q Let's -- let me refresh your recollection then.

8 MS. VON MAGDENKO: This is page 74 of the incident report, dated June  
9 21st, 2011. It's the recorded interview of Arica Foster.

10 May I approach the witness, Your Honor, to refresh her recollection?

11 THE COURT: Yes.

12 BY MS. VON MAGDENKO:

13 Q And I'll just direct your attention to the bottom of the page.

14 A Uh-huh.

15 Q Does that refresh your recollection?

16 A Yeah, I told the detective that that's what I told them.

17 Q Okay. So you told the detective Brodie needs to be in a bubble? Is that  
18 correct?

19 A In a conversation about if I told that to Mike and Jennifer Lee, yes.

20 Q Okay. So when you -- when Jennifer was babysitting the -- Brodie, he  
21 had bruising?

22 A Yes.

23 Q And then Jen stopped babysitting him and then he had a different  
24 babysitter, right?

25 A Yes.



1 Q And the bruising started up again?

2 A Couple weeks later.

3 Q Would Michael babysit Brodie?

4 A On Mondays.

5 Q Because you worked four to eight?

6 A Yes.

7 Q And isn't it true that Brodie would actually wake up with bruising on his  
8 forehead?

9 A Yes.

10 Q When Brodie was on his four-wheeler, he tried to jump a curb?

11 A Yes.

12 Q Was he trying to jump down or up?

13 A He was trying to go up the curb.

14 Q Trying to go up the curb. And he fell forward?

15 A No.

16 Q He didn't? How did he fall?

17 A Side -- off sideways.

18 Q Which side?

19 A Left.

20 Q He fell to the left. Okay. And do you recall being interviewed by the  
21 police on June 6 -- June 17th, rather, 2011?

22 A Yeah -- kind of. I was interviewed a lot.

23 Q You were interviewed a lot. Okay. And --

24 MS. VON MAGDENKO: Court's indulgence.

25 BY MS. VON MAGDENKO:

-155-

GAL FRIDAY REPORTING & TRANSCRIPTION  
10180 W. Altadena Drive, Casa Grande, AZ 85194 (623) 293-0249

1 Q Isn't it true that on June 11th you actually told the police that when he  
2 struck the curb, it sent him forward?

3 MR. STANTON: Your Honor, on June 11th, she never had any --

4 MS. VON MAGDENKO: I mean June -- June 17th. I'm sorry, there's a lot of  
5 dates here. I apologize.

6 BY MS. VON MAGDENKO:

7 Q On June 17th when you were interviewed by the police, isn't it true that  
8 you told them that Brodie went forward?

9 A I don't remember anymore.

10 Q You don't remember anymore?

11 THE COURT: Counsel, are we getting close to a stopping point?

12 MS. VON MAGDENKO: Yeah, we can stop. I can resume this tomorrow.

13 THE COURT: Okay.

14 Then ladies and gentlemen -- at 9:30?

15 THE CLERK: 9:30.

16 THE COURT: 9:30 tomorrow please. Again, you're admonished not to  
17 converse amongst yourselves or with anyone on any subject connected with the  
18 trial, do not read, watch or do any research on your own, and do not form or express  
19 an opinion on this case. See you tomorrow.

20 [Jury out at 4:58 p.m.]

21 THE COURT: All right, I know the witness is still on the stand, but is there  
22 anything we need to address before we go off the record?

23 MR. STANTON: Not on behalf the State, Your Honor.

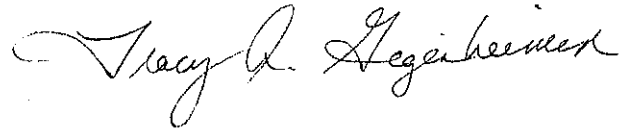
24 MS. VON MAGDENKO: No, Your Honor.

25 THE COURT: All right. See you tomorrow.

1 MS. VON MAGDENKO: Thank you.

2 [Proceedings concluded at 4:58 p.m.]

3 ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual  
4 proceedings in the above-entitled case to the best of my ability.

5 

6  
7 Tracy A. Gegenheimer, CER-282, CET-282  
8 Court Recorder/Transcriber  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- 29
- 30
- 31
- 32
- 33
- 34
- 35
- 36
- 37
- 38
- 39
- 40
- 41
- 42
- 43
- 44
- 45
- 46
- 47
- 48
- 49
- 50
- 51
- 52
- 53
- 54
- 55
- 56
- 57
- 58
- 59
- 60
- 61
- 62
- 63
- 64
- 65
- 66
- 67
- 68
- 69
- 70
- 71
- 72
- 73
- 74
- 75
- 76
- 77
- 78
- 79
- 80
- 81
- 82
- 83
- 84
- 85
- 86
- 87
- 88
- 89
- 90
- 91
- 92
- 93
- 94
- 95
- 96
- 97
- 98
- 99
- 100

No. 66963

vi.

Respondent.

ADAM LAXALT  
Attorney General  
100 North Carson Street  
Carson City, Nevada 89701-4717  
(702) 687-3538  
Counsel for Respondent

HOWARD S. BROOKS  
KEDRIC A BASSETT

MICHAEL A LEE  
NDOC # 81950  
c/o HIGH DESERT STATE PRISON  
PO Box 650  
Indian Springs, NV 89070

Employee, Clark County Public Defender's Office