

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.  
9       \_\_\_\_\_)

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10                                   **APPELLANT'S APPENDIX VOLUME V PAGES 931-1109**

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

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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 BEFORE THE HONORABLE STEFANY MILEY, DISTRICT COURT JUDGE

15 THURSDAY, AUGUST 7, 2014

16  
17 **TRANSCRIPT OF PROCEEDINGS**

18 **JURY TRIAL - DAY 4**

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22  
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STEVEN M. ALTIG, ESQ.

24  
25 RECORDED BY: MARIA GARIBAY, COURT RECORDER

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GAL FRIDAY REPORTING & TRANSCRIPTION  
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1 Thursday, August 7, 2014 at 9:35 a.m.

2  
3 [Outside the presence of the jury]

4 THE COURT: All right. The defendant is present and counsel's present for  
5 both the State and the defense.

6 Mr. Stanton, you said you have a matter outside the presence?

7 MR. STANTON: Yes, Your Honor. Based upon the objection of counsel to  
8 the photographs, I'd like to advise the Court that today we plan on showing several  
9 witnesses the photographs of Brodie's external injuries at autopsy. And if I could  
10 have just a moment to address Mr. Altig's comments.

11 Mr. Altig made reference to some violation of the court order. I think  
12 the court order -- or the Court already ruled and understand that that issue was not  
13 in front of them. In fact, the motion is to not permit the admission of certain autopsy  
14 photographs.

15 Primarily in their motion and the relief that they requested was the  
16 internal photographs which are obviously extremely graphic by the nature of what  
17 they depict. Nowhere in there was the relief requested then up until Mr. Altig's  
18 comments that somehow if evidence is admitted, there would be some sort of legal  
19 basis on which the evidence could not be used with other witnesses. I'm aware of  
20 no law that states that, because I don't think any exist. Once they're into evidence,  
21 the State or any party, to include the defense, is entitled to use those photographs if  
22 it's relevant and probative. And certainly today we're going to encounter several  
23 witnesses where those injuries and their recognition of the injuries is critical.

24 THE COURT: Okay. And this has -- this is in addition to the discussion we  
25 had yesterday and the Court's ruling?

-4-

1 MR. STANTON: Yes, Your Honor, I just -- and it's just as a matter of caution  
2 to let the Court know that we are going to seek to use those photographs with  
3 witnesses today.

4 MR. ALTIG: Yes, Your Honor. I do not recall the objection and the motion in  
5 limine being to the internal photographs. They were objections to the autopsy  
6 photographs which include photographs taken by the autopsy -- or the coroner's  
7 investigator. All the photographs that were autopsy related, that was what the  
8 objection was from.

9 If I remember Your Honor -- if I remember the State's response to that  
10 objection and their responsive pleading was they needed to show those pictures in  
11 order for the coroner to explain the injuries. Your Honor went ahead and allowed  
12 the pictures in for that limited purpose so that the coroner could explain those  
13 injuries.

14 Now what we have is we have them being displayed multiple times to  
15 the jury through different witnesses that -- where they're not needed to explain any  
16 injuries. They're, in my opinion, being used to bring an emotional response out of  
17 the jury, a highly prejudicial response out of the jury. They're not probative with  
18 these other witnesses of any particular fact.

19 And, Your Honor, as I remember yesterday, in fact, grandmother's  
20 testimony, they put the pictures up, they go through each and every mark on the  
21 body asking if these marks existed. The same evidence can be elicited without the  
22 display of the photographs to the jurors. They don't need to be displayed to the  
23 photographs to the jurors.

24 They asked the grandmother in their direct examination of her if she  
25 had noticed -- she had bathed the child, yes. She had lotioned the child, yes. Did

1 you notice any injuries on them? No. They could have gone through the injuries  
2 orally. They didn't have to display the pictures over and over and over again.

3 Our objection initially was that they were prejudicial in nature, they  
4 weren't probative of anything. The State argued in response that they're probative  
5 as to the coroner's testimony only, not as to these other witnesses. Now they're  
6 being displayed over and over and over again, increasing the prejudicial effect.

7 I would at this point -- and I understand the Court's ruling from  
8 yesterday and I'm not trying to be disrespectful or flippanant or anything like that with  
9 Your Honor. I'd never do that. But I would renew my motion for a mistrial. I  
10 believe that the prejudicial effect of displaying the photographs over and over and  
11 over again isn't something that can be undone. It's something that's happened.  
12 There's no way to undo it.

13 Now they're talking about doing it over and over and over again, which  
14 is not even what they responded to in their -- in the motion -- in their opposition to  
15 our motion in limine. Their opposition to our motion in limine said they needed it for  
16 the specific purpose of having the coroner testify and explaining the coroner's  
17 testimony. And now here we are, because they got moved into evidence for that  
18 purpose, the State's saying now let's open the door for me to use it for any and  
19 every purpose I want to? I don't think that's accurate, and correct, Your Honor  
20 admitted them by motion in limine for a particular purpose. They're being -- that  
21 purpose is now being abused and overused.

22 THE COURT: Okay. The motion for mistrial is going to be denied. As I  
23 previously indicated and as all counsel is aware, prior to a trial obviously I have  
24 information regarding the facts in this case, but as to the relative theories of  
25 prosecution, theories of defense, that really is what's developed over the course of

1 the trial and that is when I first become privy to the real -- how you guys intend to  
2 handle each of your respective cases.

3 When the photographs came up, they came up by way of how the  
4 State was going to lay a foundation for them and how they were going to get them  
5 into evidence, and quite simply, laying the foundation was done by we have already  
6 had testimony from the person who took the photographs and the person who --  
7 you know, the person from the coroner's office that went out to the crime scene  
8 took those photographs which were ultimately admitted into evidence, and then the  
9 coroner's testimony that laid foundation for the photographs that were taken during  
10 the course of the autopsy. So that's really where the discussion came up at the  
11 time of trial.

12 I agree with Mr. Stanton in I don't know any rule that says once they're  
13 -- foundation is laid, once they're properly moved into evidence, that they're not  
14 allowed to be utilized at other parts of the trial. Obviously you've got to take care  
15 not to just use them simply to inflame the jury, but the problem is here -- it's not  
16 really the problem. It's clear now to this Court that the main hinge of this -- the  
17 main crux of this case is the timing of when everything occurred. And thus far the  
18 people that the State has presented the pictures to are people who can put the  
19 timeframe in effect.

20 Quite clearly from the defense's opening, they -- the defense has a  
21 different theory of what caused these injuries and everything else. The State  
22 obviously has a different theory, so I think they're relevant to show the timing issues  
23 of when the injuries occurred or when they became readily apparent to the naked  
24 eye and this is the same ruling I gave yesterday. And I think they're more probative  
25 than prejudicial.

1 MR. ALTIG: I understand, Your Honor. If I may, I think maybe part of the  
2 problem based on your ruling is the fact that we had the coroner come and testify,  
3 was not subject to cross-examination, because I think under cross-examination she  
4 would admit that many of the bruises that the State is pointing to were three to four  
5 days old. She said that in her coroner's report, under cross-examination that was  
6 going to be elicited --

7 THE COURT: And you'll be able to cross her on that. That would go to  
8 weight versus admissibility.

9 MR. ALTIG: Okay.

10 THE COURT: And obviously you'll have your own experts who will be able to  
11 testify in that regard as well.

12 Are there other issues we need to address at this time?

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

14 THE COURT: By the defense?

15 MS. VON MAGDENKO: No, Your Honor.

16 MR. ALTIG: No, Your Honor.

17 THE COURT: All right. Please bring the jury in.

18 MR. STANTON: Your Honor, there's something up on the screen that hasn't  
19 been admitted.

20 MS. VON MAGDENKO: This is just a PowerPoint presentation, Your Honor.  
21 It's not going to be admitted into evidence. The prosecution used a PowerPoint in  
22 their opening. It's just a similar PowerPoint.

23 MR. STANTON: Well, hold on a second.

24 THE COURT: Well you have to be able to lay a foundation for it.

25 MR. STANTON: Judge, we object to anything being shown to this jury that is

1 not evidence.

2 MS. VON MAGDENKO: They used a PowerPoint in their opening.

3 THE COURT: But this is examination. How are you going to use it?

4 MS. VON MAGDENKO: I'm just going to say, you know, ask her a question,  
5 did Brodie have a knot in back of his head on Friday, June 3rd, yes or no?

6 MR. STANTON: Judge, that's improper.

7 THE COURT: I mean I think these are things that you could use in closing.

8 MS. VON MAGDENKO: Okay.

9 THE COURT: I just don't know how you would utilize them in examination.  
10 And I mean, you're always welcome to use the -- I don't know, the boards over  
11 there for demonstrative purposes to aid the jury, but this would not be appropriate --

12 MS. VON MAGDENKO: So I can use the whiteboard for demonstrative  
13 purposes, but I can't use the computer for demonstrative purposes?

14 MR. STANTON: Your Honor --

15 MS. VON MAGDENKO: Is that your ruling?

16 THE COURT: There's a different way -- well -- yes.

17 MR. STANTON: Your Honor, I got to tell you, I'm deeply troubled, deeply  
18 troubled, that we are in the middle of a murder trial and I have defense counsel  
19 attempting to use a document that's not into evidence with no foundation laid and  
20 she's standing here before the Court, it appears from the State, incredulous that  
21 that's not going to be permitted. That is trial lawyer basics 101 and I am deeply  
22 troubled that we're this far down the road and we're in a position where that  
23 fundamental fact isn't obvious to the defense counsel.

24 THE COURT: All I can say is I've already said they're not going to be  
25 allowed in the manner that's been presented.

1 MR. ALTIG: May I have a moment to speak with Ms. Von Magdenko, Your  
2 Honor?

3 THE COURT: Yeah. That's fine.

4 MR. ALTIG: Thank you.

5 THE CLERK: Off, Judge?

6 THE COURT: It looks like it.

7 [Off the record at 9:45 a.m.]

8 [Back on the record at 9:46 a.m.]

9 THE COURT: Are you guys ready?

10 MS. VON MAGDENKO: Yes, Your Honor.

11 THE COURT: Okay.

12 MR. STANTON: Thank you, Your Honor.

13 [Pause]

14 THE MARSHAL: District Court XXIII jury is present.

15 [Jury in at 9:47 a.m.]

16 THE COURT: Okay, welcome back, ladies and gentlemen. When we left off  
17 yesterday, Arica was on the stand. Arica Foster.

18 You want to bring her back in, please?

19 And I think we were ready for cross when we left off?

20 MR. STANTON: We were into cross, Your Honor.

21 THE COURT: Yeah. So if you want to get ready.

22 MS. VON MAGDENKO: I'm ready.

23 THE COURT: Okay.

24 MS. VON MAGDENKO: I need more space, Your Honor.

25 THE COURT: Okay.

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1 MS. VON MAGDENKO: Right here.

2 THE COURT: I didn't know if you want to stand or not. That's -- stand at the  
3 podium or not. It's up to you.

4 THE COURT: All right. Arica, ma'am, Ms. Turner (sic), when you were in  
5 here yesterday, you were placed under oath. You're still under oath at this time.  
6 Do you understand that?

7 THE WITNESS: Yes.

8 THE COURT: All right. Please sit down and make yourself comfortable.  
9 Please begin whenever you're ready.

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

11 ARICA FOSTER

12 [resumed the stand and testified further as follows:]

13 CROSS-EXAMINATION CONTINUED

14 BY MS. VON MAGDENKO:

15 Q I know we were talking -- when we left off, we were talking about  
16 Brodie's ATV accident, but I want to back up and kind of go in some order. So if we  
17 go chronologically, on May 27th -- it's a Friday -- you took Brodie to the doctor  
18 because he was bruising too easily; is that correct?

19 A I took him for the car accident.

20 Q You didn't tell the doctor that he was bruising too easily?

21 A I also told the doctors that he was bruising too easy, correct.

22 Q Okay, and what did the doctor say?

23 A He told me just to bring him and get some bloodwork done; that he was  
24 rambunctious.

25 Q Okay. So this was just -- the doctor felt that this was normal?

-11-



1 A Yes.

2 Q Okay. And when the prosecution was asking you questions, he had  
3 said that -- well he asked you a question and he said did the bruising in the months  
4 prior to Brodie's death increase in severity, frequency and location?

5 A Okay.

6 Q And your response was yes?

7 A Yes.

8 Q And at that time by the time you took him to the doctor on May 27th,  
9 that increase in severity, location and frequency had already happened, correct?

10 A Yes.

11 Q On Friday, June 3rd, and now this would be a week and a half prior to  
12 Brodie's death, did Brodie have a knot on the back of his head?

13 A Do you have a calendar that I can look at, please?

14 MS. VON MAGDENKO: Can I show her my --

15 THE COURT: Do you have just a blank calendar?

16 MR. STANTON: It's evidence, Your Honor, Exhibit 77.

17 THE COURT: Okay. Want to use that?

18 MS. VON MAGDENKO: Yes, Your Honor.

19 THE COURT: I believe it shows what, June 2011?

20 MS. VON MAGDENKO: May I approach, Your Honor?

21 THE COURT: You may.

22 MS. VON MAGDENKO: Thank you.

23 BY MS. VON MAGDENKO:

24 Q I'll just let you hold onto that so it's easier for you. Okay. So that would  
25 be Friday, June 3rd, a week and a half prior to your son's death.

1 A I believe so, yes.

2 Q Do you know how that bump on the back of his head happened?

3 A Brodie told me Bum hurt head.

4 Q Okay. Isn't it true that Mike actually called you at work infuriated that he  
5 had a knot on the back of his head?

6 A Yes.

7 Q And isn't it true that Michael actually said, you know, you bring him to  
8 your parents and now he's around all those kids and how could that have  
9 happened?

10 A I'm not positive. I don't recall at this time.

11 Q You don't recall? You recall giving a statement to the police on June  
12 21st, 2011?

13 A I recall speaking to the police, yes.

14 Q Okay.

15 MS. VON MAGDENKO: This is page 75.

16 Your Honor, may I approach to refresh the witness's recollection?

17 THE COURT: You may.

18 MS. VON MAGDENKO: Thank you.

19 BY MS. VON MAGDENKO:

20 Q And I'll direct your attention to the bottom of the page, this bottom  
21 paragraph, if you could just read that to yourself to see if that refreshes your  
22 recollection.

23 MR. STANTON: Counsel, you said page 75?

24 MS. VON MAGDENKO: Yes.

25 THE WITNESS: Okay.

1 BY MS. VON MAGDENKO:

2 Q Does that refresh your recollection?

3 A Yes.

4 Q And Michael told you, you know, you really need to go feel Brodie's  
5 head?

6 A Yes.

7 Q He was so concerned? Is that true?

8 A He did tell me to feel his head. That's correct.

9 Q Okay. And this same Friday, Michael noticed it when he was actually  
10 giving Brodie a bath, correct?

11 A Correct.

12 Q And was that -- and wasn't it true that Brodie actually still had sand in  
13 his hair because grandma actually didn't wash his hair?

14 A Brodie had just had a bath before he left my mom's house.

15 Q There was -- was there still sand in Brodie's hair?

16 A I wasn't present to know if there was sand in his hair.

17 Q Is that what Michael told you?

18 A Yes.

19 Q Okay. Okay. And the Monday, if we -- actually -- actually Monday's --  
20 he pulled the wood on himself and cut his upper lip?

21 A Correct.

22 MR. STANTON: Just so I can have the record clear, is -- could we have a  
23 foundation as to the date of what Monday she's referring to? Thank you.

24 BY MS. VON MAGDENKO:

25 Q Actually, do you remember which Monday that was?

1 A I don't.

2 Q Okay. So was days before he was -- his death?

3 A It was weeks.

4 Q It was weeks. Okay.

5 A Or a week.

6 Q Okay. And was the wood jagged?

7 A No, not that I know of. I don't recall.

8 Q No or you don't recall?

9 A I don't recall.

10 Q Okay. So on page 78 of the same statement you gave to the police --

11 MS. VON MAGDENKO: Your Honor, may I approach the witness?

12 THE COURT: You may.

13 BY MS. VON MAGDENKO:

14 Q Do you see that? You say the wood is jagged?

15 A Yes.

16 Q Does that refresh your recollection that you told the police that actual  
17 wood was jagged?

18 A Yes.

19 Q And that he cut the inside of his lip, right?

20 A No.

21 Q No. Okay. And you don't remember which Monday that was?

22 A That's correct.

23 Q So where -- was it the outside of his lip then?

24 A Correct.

25 Q Okay. You're positive?

1 A Positive because I brushed his teeth.

2 Q Okay.

3 MS. VON MAGDENKO: Same page, Your Honor, 78, may I --

4 BY MS. VON MAGDENKO:

5 Q Well actually you're positive so I don't have to refresh your recollection.  
6 Isn't it true that the detective asked you on the inside of his lip and your response is  
7 yeah, on his little lip right there? So the detective said inside and your response  
8 was yeah?

9 A But I also said right under that, that I brushed his teeth and there was  
10 nothing in his mouth.

11 Q I didn't ask about brushing his teeth. I asked was the cut on the inside  
12 of the lip?

13 A As I recall, it was the outside.

14 Q Okay. So your statement to the police is different from what you  
15 actually recall as you sit here today?

16 A No. Can you show me where I said that, please?

17 [Colloquy between counsel]

18 MS. VON MAGDENKO: Okay. Your Honor, may I approach?

19 THE COURT: Yes.

20 BY MS. VON MAGDENKO:

21 Q Just these two lines.

22 A But I also said right there, no, no, not his teeth, not on his gums two  
23 sentences before that.

24 Q I didn't ask if he cut his teeth.

25 MR. STANTON: Your Honor, counsel's attempting to elicit testimony. This

1 witness is entirely proper in telling counsel the context of her answer and to put it in  
2 her -- in proper context for the witness.

3 MS. VON MAGDENKO: Your Honor, I'm trying to get a yes or no response.  
4 This goes to credibility of the witness. She tells the detective it was on the inside of  
5 the lip. Today she tells the jury it's not, it's on the outside.

6 THE COURT: I believe she's answered this question multiple times.

7 MS. VON MAGDENKO: Okay. Well I'll move on.

8 BY MS. VON MAGDENKO:

9 Q So on the Friday before his death, Friday, June 10th, this is the last  
10 weekend, does Brodie wake up with pinkeye?

11 A Yes.

12 Q Okay. And that's when you take him to the doctor?

13 A Correct.

14 Q And he prescribes Gentamicin drops?

15 A Correct.

16 Q And was your stepfather -- we'll just call him grandpa, if that's okay,  
17 related to Brodie. Is -- did he come over that day and administer the drops --

18 A Yes.

19 Q -- in Brodie's eyes? Okay. And then Brodie was with the grandparents,  
20 your mother and Brad Moshier -- I'm just going to call them grandparents if that's  
21 okay with you -- Saturday and Sunday?

22 A Correct.

23 Q And so they would have been administering the drops to him?

24 THE COURT: Ma'am, can you speak up, please?

25 THE WITNESS: Yeah, sorry.

1 Yes.

2 BY MS. VON MAGDENKO:

3 Q Okay. When you took him to the pool on Monday, did he still have the  
4 pinkeye?

5 A It was going away.

6 Q Did he --

7 A Yes.

8 Q Okay. And did the pool -- was it a public pool?

9 A Yes.

10 Q So going back to Friday, that's when he fell off of his quad, right?

11 A I don't recall if it was Friday or Thursday.

12 Q Okay. And this is where we -- actually we left off before, and if you're  
13 not sure about which day it was, I want to make sure that you're sure on the date.

14 Okay, and you testified before in court on this matter.

15 A Yes.

16 Q And --

17 A Yes.

18 MS. VON MAGDENKO: It's page 115 of the preliminary hearing transcript.

19 Your Honor, may I approach to refresh the witness recollection?

20 THE COURT: Yes.

21 BY MS. VON MAGDENKO:

22 Q Actually I'll highlight this for you. I just highlighted here where you said  
23 it was Friday.

24 A Okay.

25 Q Okay. Does that refresh your recollection?

-18-

1 A Yes.

2 Q Okay. So this -- the ATV accident happened on Friday. Did you take  
3 him to the doctor -- so he had pinkeye and you immediately took him to the doctor?

4 A That morning, yes.

5 Q Okay. And then you came back and then he fell off his quad?

6 A I don't remember.

7 Q Okay. So you don't remember if he had -- if the doctor saw him before  
8 or after the accident, correct?

9 A I'm not sure.

10 Q Okay. So you don't remember. You can't place that timeline?

11 A Correct.

12 Q Okay. And you testified yesterday that he fell to the side and hit his  
13 cheek?

14 A Correct.

15 Q Right. But you had given a statement to the police two days after the  
16 accident and told them that he had fallen forward and struck his face on the car.

17 A Incorrect.

18 MS. VON MAGDENKO: Okay, this is page 63.

19 Your Honor, may --

20 BY MS. VON MAGDENKO:

21 Q So when the police officer says that you said it sent him forward and he  
22 struck his face on the car, the officer is incorrect?

23 A Yes.

24 Q Okay. And are the counters at your mother's house -- at grandma's  
25 house, so we have some consistency, the same height as Brodie's forehead?



1 A Correct.

2 Q And was Brodie -- had Brodie injured himself on those counters before?

3 A Correct.

4 Q How often would that happen?

5 A On occasion.

6 Q Okay. And when you were previously asked by the detectives you

7 couldn't remember, but it was either Friday or Saturday prior to his death and you

8 weren't sure then. You had said that he had a bump on the back of the right side of

9 his head and you assumed that was from grandma's house?

10 A I don't recall. Is that the same weekend of Friday, the 3rd?

11 Q No, no, no, this -- no. No, this is just the weekend prior to his death

12 now.

13 A I don't remember that.

14 MS. VON MAGDENKO: This is page 62.

15 Your Honor, if I can approach to refresh --

16 MR. STANTON: Sixty-two of?

17 MS. VON MAGDENKO: -- the witness's recollection?

18 MR. STANTON: Which --

19 THE COURT: Sure.

20 MS. VON MAGDENKO: The incident report.

21 THE COURT: Yes.

22 MR. STANTON: Can I see what you're talking about?

23 May we approach?

24 THE COURT: You may.

25 [Bench conference begins at 10:02 a.m.]

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1 MR. STANTON: This page of the incident report that counsel just showed me  
2 is not a transcript. It's the officer's -- detective's report. So while I think that there's  
3 leeway about what someone can use to refresh their recollection, I think it needs to  
4 be clear that it's not a transcript of her statement, that in essence what we're doing  
5 is we're going into a hearsay statement; that is, what the detective noted in his  
6 report. That detective is going to testify today or tomorrow and I just would like the  
7 record to be clear. And if we go too far, I'll be objecting that it's an improper basis to  
8 refresh his recollection. It's a hearsay statement.

9 THE COURT: Okay, so just make sure you make a record of what you're  
10 showing --

11 MS. VON MAGDENKO: Okay.

12 THE COURT: -- her, please.

13 MS. VON MAGDENKO: Okay.

14 [Bench conference ends at 10:03 a.m.]

15 BY MS. VON MAGDENKO:

16 Q So this is page 62 and it's a summary of the detective's statement that  
17 you gave him on June 17th.

18 MR. STANTON: And just so the record is clear, this is not a transcript of the  
19 defendant's -- or the witness's interview with the detective.

20 MS. VON MAGDENKO: Yes, this is the detective's summary.

21 THE COURT: And is prepare -- I just want to make sure it's prepared by the  
22 detective?

23 MS. VON MAGDENKO: This particular one, yes.

24 THE COURT: Okay. Thank you.

25 BY MS. VON MAGDENKO:

1 Q You can just read that and see if it refreshes your recollection.  
2 A I don't recall that.  
3 Q Okay. So you don't recall telling this to the detective?  
4 A Correct.  
5 Q What time on Saturday did you drop Brodie off at grandma's?  
6 A What date?  
7 Q Everything now that I'm going to talk about, unless I say otherwise, will  
8 be the weekend prior to his death --  
9 A Okay.  
10 Q -- so that Saturday. I apologize.  
11 A Probably around 11, 11:30 a.m.  
12 Q Okay. And then what time did you pick him back up Sunday?  
13 A I got to my mom's about 7:30 at night, but I stayed there for a little  
14 while.  
15 Q Okay. What did you do Saturday?  
16 A Went to work.  
17 Q What time?  
18 A I don't recall what exact time, after I dropped him off at my mom's.  
19 Q And what time did you end work?  
20 A Probably 8 p.m.  
21 Q And there's a reason why you didn't go pick Brodie back up?  
22 A Yes.  
23 Q What was that reason?  
24 A He stayed at my mom's on Saturday nights.  
25 Q Always?

-22-

1 A Most likely, yes.  
2 Q And why was that?  
3 A Just to visit with my mom.  
4 Q Did you tell the detectives any other reason?  
5 A I don't know.  
6 Q You don't know?  
7 A I don't know.  
8 Q Okay. This is actually a transcript -- this isn't a summary, this is a  
9 transcript --  
10 MS. VON MAGDENKO: Page 86.  
11 THE COURT: Is it her transcript?  
12 MS. VON MAGDENKO: Yeah, it's her transcript. This is not a summary.  
13 THE COURT: Okay.  
14 BY MS. VON MAGDENKO:  
15 Q -- of a statement you gave on the 21st of June.  
16 A Okay.  
17 THE COURT: And that was given to police?  
18 MS. VON MAGDENKO: The police took it.  
19 THE COURT: Okay.  
20 MS. VON MAGDENKO: It's question and answer format.  
21 THE COURT: Okay.  
22 MS. VON MAGDENKO: If I can approach the witness to refresh --  
23 THE COURT: You may.  
24 MS. VON MAGDENKO: -- her recollection?  
25 THE COURT: You may.

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

2 BY MS. VON MAGDENKO:

3 Q Just this answer here.

4 Did you have a chance to read that?

5 A Yes.

6 Q Okay. So isn't it true that you told the detectives that the reason why  
7 you dropped Brodie off there for Saturday night was so you and Michael could have  
8 a night out?

9 A Yes, on occasion.

10 Q Well I'm not talking --

11 A Yes.

12 Q -- about occasion. So this is a man that you had said earlier that you  
13 were thinking about getting a nanny cam for at the house?

14 A Yes.

15 Q But yet you still -- this Saturday you wanted to be alone with him?

16 A Yes.

17 Q On Sunday night -- again, this is the weekend prior to his death -- you  
18 saw that there was actually pinpoint bruising on Brodie?

19 A Two, yes.

20 Q And it was because grandpa would play a game called typewriter on  
21 him?

22 A Yes.

23 Q Did Brodie bruise that easily? If you just, you know, played a game like  
24 this, he would bruise?

25 A No.

1 Q How hard was grandpa pressing?

2 A I don't know. I wasn't there.

3 Q Okay. Did grandpa play this game often?

4 A Just once in awhile.

5 Q Okay, but grandpa wasn't trying to hurt Brodie, was he?

6 A No.

7 Q How tall is grandpa? Approximately.

8 A Over six foot.

9 Q And how much does he weigh, approximately?

10 A I don't know.

11 Q Is he --

12 A Over 200 pounds. He's a big man.

13 Q Okay. He's a big man. Do you believe that grandpa intended to  
14 actually bruise Brodie?

15 A Never.

16 MR. STANTON: Object as speculation. She'd have no idea what somebody  
17 else intended.

18 THE COURT: Sustained.

19 BY MS. VON MAGDENKO:

20 Q On this Sunday night, that's the Sunday where Brodie had the scrapes  
21 on his back from the curtain rods, right?

22 A Yes.

23 Q Okay. And on Monday, you also notice -- in addition to the top bruise  
24 that was there a week before, you notice a bottom bruise on his lip, so he had both  
25 top and bottom bruised, right?

-25-

1 A No.

2 Q No. What did he have on the bottom?

3 A It was chapped.

4 Q Okay. So --

5 A And I don't recall the top of his lip being damaged at that point in time.

6 Q We already went over that before.

7 Okay, this actually is the summary. Okay.

8 THE COURT: From the detective?

9 MS. VON MAGDENKO: Yeah.

10 BY MS. VON MAGDENKO:

11 Q So would you dispute then the detective -- on page 63, the detective

12 saying that you said I asked her about the bruise on the bottom lip and she said that

13 he sucks his bottom lip? The detective asked you about a bruise on the bottom lip.

14 Do you dispute the detective's summary of your statement?

15 A No.

16 Q So Brodie did have a bruise on the bottom of his lip?

17 A It was chapped. Correct.

18 Q No, that wasn't my question. The detective --

19 A No, it wasn't a bruise.

20 Q So you disagree with the detective's characterization?

21 A Yes.

22 Q Okay. And you testified yesterday that you saw Brodie after you got

23 home from work on Monday? Is that accurate?

24 A If --

25 Q This would have been yesterday, what you said yesterday. I just want

1 to make sure, because it was a lot and I just want to be clear.

2 A I don't remember. I'm sorry.

3 Q Well okay, then I'll ask a different way. Did you actually see Brodie on  
4 Monday when you got back from work?

5 A I don't recall right now. I'm sorry.

6 Q Okay. That's okay. Well you testified in the preliminary hearing --  
7 MS. VON MAGDENKO: Page 88.

8 Q -- that you did not actually see Brodie when you got home on Monday  
9 from work.

10 MS. VON MAGDENKO: Your Honor, if I can approach?

11 THE COURT: You may.

12 BY MS. VON MAGDENKO:

13 Q This is the -- when you testified in court previously, just the highlighted  
14 portions.

15 A Correct.

16 Q Okay. So when you testified before, you actually didn't see Brodie  
17 Monday when you got back from work? You took him to the pool that Monday and  
18 he had additional injuries from the pool, right?

19 A No.

20 Q So if the detective said that's what you said, the detective would be  
21 incorrect?

22 A Correct.

23 Q Tuesday morning -- this is the last full day -- Brodie said his head hurt,  
24 right?

25 A Yes.



1 Q Okay. Did he say Michael hit him?  
2 A No.  
3 Q Okay. And this is the day that you went to -- I'll call it the car wash even  
4 though there's a lot there?  
5 A Yes.  
6 Q And at the car wash there is like a deli type of thing; is that correct?  
7 A Yes.  
8 Q And a gas station?  
9 A Yes.  
10 Q Okay. And this is the day where you had the conversation with Michael  
11 because Brodie was just so bruised?  
12 A Yes.  
13 Q Okay. And you had said I have nothing to hide, he's two, he fell?  
14 A Yes.  
15 Q So Michael hadn't caused these bruises?  
16 A I don't know. I wasn't there.  
17 Q Well you told the detectives that the bruises came from Brodie falling.  
18 A That's what Michael told me.  
19 Q What did you tell the detectives?  
20 A I told the detectives that the defendant said he fell leaving Danny Fico's  
21 house.  
22 Q All the bruises happened that -- at Danny Fico's house?  
23 A The ones that I hadn't described previously, yes.  
24 Q Wasn't it just one additional forehead bruise?  
25 A No.

1 Q No. So Danny's going to testify that it was more than that that --

2 MR. STANTON: Objection to the form of the question.

3 MS. VON MAGDENKO: I'll withdraw.

4 BY MS. VON MAGDENKO:

5 Q So you -- when you told the detectives that, you were just referring to --  
6 what were you referring to?

7 A I'm sorry, I'm not understanding what you're asking.

8 Q You told the detectives that in response to Mike's statement, you said I  
9 have nothing to hide, he's two, he fell.

10 A Yes.

11 Q Okay. You didn't tell the detectives, well, Mike told me he fall -- he fell,  
12 did you?

13 A In a previous statement, yes.

14 Q So which injuries were from Monday then?

15 A Everything besides -- I had only seen a small bruise on his forehead --  
16 The last time I had seen him before his face was -- had more bruises was a small  
17 bruise on his forehead, a tiny shading under his eye and a very faint dime size on  
18 his cheek.

19 Q Okay, so you're saying that all these additional bruises were present  
20 then Tuesday morning?

21 A Yes.

22 Q Okay. Where were you on Monday -- so just the timeline, Monday you  
23 take him to the pool?

24 A Yes.

25 Q And then what do you do?

1 A I go to work.

2 Q For how long?

3 A Four hours.

4 Q Four hours. And where -- and did Michael take Brodie to Danny's  
5 house to see a baseball game?

6 A He said that, yes.

7 Q Okay. And were there other children present?

8 A I wasn't there.

9 Q Is it your understanding that other children were present?

10 MR. STANTON: It would object that that would be an irrelevant question.

11 MS. VON MAGDENKO: Your Honor, it's relevant if other children -- these  
12 are --

13 THE COURT: I'll allow you to ask it. Overruled.

14 BY MS. VON MAGDENKO:

15 Q Were other -- is it your understanding that other children were present?

16 A Yes.

17 Q Okay, and whose children were they?

18 A Jennifer Lee's.

19 Q Okay. And these are the same children that you described were rough  
20 and tumble?

21 A Yes.

22 Q Okay. And -- well you can't actually remember if you saw him Monday  
23 night or not, but you saw him Monday -- Tuesday morning. And he had -- well he  
24 had the facial injuries you already went over so we won't have to go over them  
25 again. When were your days off at that time during this time period this week?

1 A Tuesday, Wednesdays.

2 Q Okay, Tuesday, Wednesday. So all day on Tuesday is your day off?

3 A Correct.

4 Q The only time that you were -- you had left Brodie alone with Michael  
5 was in the car when you went to get your refund at the salon and when you went for  
6 those 56 minutes to get your -- the milk, right?

7 A As far as I recall, yes.

8 Q And how long were you in the salon for? How many minutes was that?

9 A I don't recall exactly how many minutes.

10 Q Can you approximate? An hour, 15 minutes, five minutes?

11 A Five, 10 minutes.

12 Q So this is Tuesday. Did you go to the gas station Tuesday morning?

13 A Yes.

14 Q Okay. And there you -- did you buy some juice for Brodie?

15 A Yes.

16 Q Did you use cash?

17 A I don't recall.

18 Q Or did you use food stamps?

19 A I don't recall.

20 Q You don't recall.

21 MS. VON MAGDENKO: Page 109 of the transcript. It's not a summary, Your  
22 Honor.

23 MR. STANTON: I would object, Your Honor, as relevance.

24 MS. VON MAGDENKO: This goes to credibility of the witness.

25 MR. STANTON: May we approach?

1 THE COURT: Uh-huh.

2 [Bench conference begins at 10:17 a.m.]

3 MS. VON MAGDENKO: Your Honor, the witness testified she owned a  
4 Mercedes, and yet now she's saying she has food stamps. It goes to the credibility  
5 of how someone who owns a Mercedes is eligible for the food stamp program --

6 THE COURT: You're impeaching with an extrinsic matter.

7 MS. VON MAGDENKO: Goes to credibility.

8 MR. STANTON: Well --

9 MS. VON MAGDENKO: If she's going to lie to the food stamp people --

10 MR. STANTON: You can't establish that she's lied to the thing. That's a  
11 collateral matter.

12 THE COURT: I mean collateral, but -- you can't impeach with a collateral  
13 matter.

14 MS. VON MAGDENKO: Okay. Can I ask her if she -- well, that's fine. This  
15 happened the day he died.

16 MR. STANTON: I'm sorry?

17 MS. VON MAGDENKO: She just -- this is the Tuesday. She just goes into  
18 the gas station and gets the juice with the food stamps.

19 MR. STANTON: Yeah.

20 MS. VON MAGDENKO: Can I ask that question?

21 MR. STANTON: She already did. It's --

22 MS. VON MAGDENKO: Okay.

23 MR. STANTON: It's completely irrelevant how she bought the juicebox. All  
24 it's attempting to do is to somehow impugn her character in front of the jury which is  
25 not permitted. What's the relevance about how she bought the juicebox?

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1 MS. VON MAGDENKO: Well Judge already made a ruling.

2 [Bench conference ends at 10:18 a.m.]

3 BY MS. VON MAGDENKO:

4 Q So if we go back to Tuesday, you wake up in the morning and Brodie  
5 says his head hurts.

6 A Yes.

7 Q Do you ask him what happened?

8 A No.

9 Q Do you take him to the doctor?

10 A No.

11 Q And what do you do instead, you go to the gas station?

12 A Yes.

13 Q And then where do you go?

14 A Shark Reef.

15 Q Okay. And isn't it -- you testified earlier that Brodie didn't even want to  
16 be around Michael at all that day, right?

17 A Yes.

18 Q Isn't it true that Brodie actually let Michael pick him up to see the fish at  
19 the Shark Reef?

20 A Yes, he did.

21 Q And that's not someone not wanting to be around him, is it?

22 A He threw a fit about it.

23 Q Did you actually say that when you testified previously in a court of law?

24 A I don't recall.

25 Q You don't recall.

-33-

1 MS. VON MAGDENKO: All right, this is page 123 the preliminary hearing  
2 transcript.

3 Your Honor, may I approach to refresh the witness's recollection of the  
4 transcript?

5 THE COURT: Preliminary hearing?

6 MS. VON MAGDENKO: Yes.

7 THE COURT: Yes.

8 BY MS. VON MAGDENKO:

9 Q And you can just read the highlighted portion. Or anything above or  
10 below it.

11 A (No audible response.)

12 Q So when you were under oath in a court of law before testifying on this  
13 same issue, you didn't tell anyone that Brodie threw a fit, did he -- did you?

14 A Not at that time, no.

15 Q Okay. And that was done in November 2011?

16 A Correct.

17 Q After Shark Reef, where did you go?

18 A Circus Circus.

19 Q Was that the Adventuredome or just the Midway?

20 A We walked around everywhere.

21 Q Okay. Did you ride any rides?

22 A No.

23 Q Okay. And Brodie actually didn't want to eat his McDonald's, did he?

24 A He ate some.

25 Q Did you tell the detectives that?

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1 A I don't recall.

2 MS. VON MAGDENKO: This is page 111 of a transcript.

3 It's not a summary, Your Honor. May I approach and refresh the  
4 witness's recollection?

5 THE COURT: It's a transcript from the preliminary hearing, or the statement  
6 she gave to the police?

7 MS. VON MAGDENKO: Statement she gave the police.

8 THE COURT: Yes, you may.

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

10 BY MS. VON MAGDENKO:

11 Q And what I'm referring to is this line here.

12 A Okay.

13 Q Does that refresh your recollection?

14 A Yes.

15 Q So Brodie didn't want to eat his McDonald's that day, right?

16 A Correct.

17 Q And he didn't want to eat his lasagna dinner that night either, right?

18 A Correct.

19 Q And after Circus Circus, that's when you went to the bank, the salon  
20 and Best Buy?

21 A Correct.

22 Q And you said that Brodie didn't want to be around Michael that day,  
23 right?

24 A Correct.

25 Q And wasn't Brodie actually cranky towards you too?



1 A No.

2 MS. VON MAGDENKO: This is a preliminary hearing transcript, Your Honor,  
3 page 94 --

4 THE COURT: Okay.

5 MS. VON MAGDENKO: -- to 95. May I approach the --

6 BY MS. VON MAGDENKO:

7 Q Actually you testified no so I don't have to refresh. Isn't it true that in a  
8 court of law previously you were asked under oath if Brodie was cranky to you on  
9 Tuesday and you said yeah?

10 A I'm not sure. If that's what it says, then I testified that.

11 Q Okay, so your testimony is changed then? Because on -- when the  
12 prosecution asked you -- when I just asked you, you said no.

13 A Okay.

14 Q So my statement's correct, your testimony has changed; is that correct?

15 A Yes.

16 Q And isn't it true that after Best Buy you went home and you said  
17 everybody was having a great time?

18 A Yes.

19 Q And after -- did Michael get a promotion that night when he went to  
20 work?

21 A No, I -- I don't know.

22 Q You don't -- okay. Well after he came back -- this is Tuesday night --  
23 you -- you made dinner for the defendant, right?

24 A I made dinner for household, yes.

25 Q Okay. And he was part of your household?

1 A Correct.

2 Q Okay. And you had already put Brodie to be by the time Michael came  
3 home?

4 A I put him in his bed, yes.

5 Q Okay. And that's when you went for the milk and the fax?

6 A Correct.

7 Q And isn't it true that when Michael called you the first time for batteries  
8 he sounded fine?

9 A Yes.

10 Q And when he called a second time, he asked what was taking so long  
11 and you had said he was just irritated?

12 A Yes.

13 Q Not angry?

14 A Correct.

15 Q So yesterday when you testified he was angry, that would be an  
16 incorrect statement that you told the jury?

17 A I think of it as a similar -- irritation, annoyed, angry. To me it would be  
18 the same type of a --

19 Q So to you irritation is the same as anger?

20 A Yes, to me at times it is.

21 Q Well I'm not talking about at times. I'm talking about that --

22 A Yes. The same thing.

23 Q Okay. Isn't it true that you told the police that Michael always thought  
24 you were gone forever if you did anything?

25 A Yes.

1 Q And when you came home after getting the milk, Michael was sitting on  
2 the couch?  
3 A Correct.  
4 Q Was he angry on the couch?  
5 A I don't recall.  
6 Q You don't recall?  
7 A No.  
8 Q Was he watching TV?  
9 A I would assume.  
10 Q So I don't want you to assume.  
11 A I don't know.  
12 Q You don't know. Okay. Had Michael -- was Michael drunk that night?  
13 A I don't know.  
14 Q Did you see him drinking a 40.  
15 A Nope.  
16 Q Okay, was Michael high on drugs that night?  
17 A Not that I'm aware of.  
18 Q Did you see him --  
19 A No.  
20 Q And you two -- you and Michael went to bed in the same bed that night?  
21 A Yes.  
22 Q At 10:30?  
23 A Correct.  
24 Q Before you went to bed, was there any blood on Michael?  
25 A Not that I saw.

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1 Q Okay. And in the middle of the night at approximately 1 a.m., Michael  
2 wakes up and says he used the hall bathroom, smelled vomit, and alerted you?

3 A Correct.

4 Q And isn't it true that Michael regularly used that hall bathroom?

5 A I don't recall.

6 Q So you don't recall if you said that -- if Michael had told you he would  
7 use that bathroom?

8 A I don't recall.

9 Q Okay.

10 MS. VON MAGDENKO: Your Honor, this is the actual transcript, it's not a  
11 summary, of the statement she gave to the police on the 21st of June, page 101.

12 THE COURT: Okay.

13 MS. VON MAGDENKO: May I approach?

14 THE COURT: Yeah, that's fine. And I appreciate you clarifying between the  
15 preliminary hearing and then the statement given to the police so we have a clear  
16 record.

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

18 BY MS. VON MAGDENKO:

19 Q Just direct your attention to the bottom of the page.

20 Did you have a chance to read that?

21 A Yes.

22 Q Okay. Does that refresh your recollection?

23 A I'm not really sure what the two have to do with each other, I'm sorry.

24 Q But Michael using the hall bathroom was normal?

25 A I didn't get that out of that, I'm sorry.

1 Q Okay, well I'll ask you was Michael using the hall bathroom normal?  
2 A No. I don't know.  
3 Q You don't know?  
4 A I don't believe so, no. We had a bathroom in our bedroom.  
5 Q And did you tell the detectives after you got the new bed, Michael would  
6 wake Brodie up to use the bathroom?  
7 A Correct.  
8 Q Okay. That bathroom wasn't in Brodie room, it was in the hallway,  
9 right?  
10 A Correct.  
11 Q Okay. And after -- at 1 a.m., you notice there's throw-up everywhere,  
12 right?  
13 A In his bedroom, correct.  
14 Q Okay. And then you take Brodie to the bathroom and he vomits again?  
15 A Yes.  
16 Q Okay. And Brodie told you again like he had told you that morning that  
17 his head hurt?  
18 A Yes.  
19 Q Did you take him to the doctor?  
20 A No.  
21 Q Did you actually remind Brodie that he had the flu?  
22 A No. Not that I recall.  
23 MS. VON MAGDENKO: This is page 119 of the June 21st transcript. It's not  
24 a summary, Your Honor. May I approach the witness and refresh her recollection?  
25 THE COURT: Yes.

1 BY MS. VON MAGDENKO:

2 Q What I'm going to show you is a statement you gave to the police days  
3 afterwards. It's the top here. Sorry, it's hard to read.

4 A Okay.

5 Q Does that refresh your recollection?

6 A Yes.

7 Q And that you did in fact remind Brodie that he had the flu?

8 A I said that in there, yes.

9 Q Okay, and that was an accurate statement?

10 A Yes. To my knowledge at that time it was.

11 Q And how long he had the flu for?

12 A That was the first time he had thrown up that night.

13 Q That wasn't my question. How long had he had the flu for?

14 A He hadn't.

15 Q You reminded Brodie he had the flu --

16 A I said okay, baby, you have the flu.

17 Q Okay, so you thought that was brand new?

18 A Yes.

19 Q Okay. Isn't it true you told the detectives that approximately a week  
20 prior to death Brodie had a bout with diarrhea?

21 A I said weeks before, I believe.

22 MS. VON MAGDENKO: This is page 62. This actually is the summary of the  
23 detective. May I --

24 BY MS. VON MAGDENKO:

25 Q You said today it was weeks, but would you disagree with the detective

1 and his assessment you said that Brodie had diarrhea about a week before he died?

2 A Can I view what context it was in that I was saying it?

3 Q Sure.

4 MS. VON MAGDENKO: May I approach, Your Honor?

5 THE COURT: Yes.

6 BY MS. VON MAGDENKO:

7 Q What I'm referring to is down there.

8 So isn't it true according to the detective you had said about a week  
9 before he died he had a bout with diarrhea? Brodie that is?

10 A I believe in a taped interview I had said weeks before, so I'm going to  
11 disagree.

12 Q All right. So you disagree with the detective's summary?

13 A Yes.

14 Q Okay. So you're saying that Brodie just had -- when you told Brodie,  
15 you know, remember you have the flu, that that was brand new?

16 A Yes.

17 Q So in the weeks prior to his death, he didn't have the flu?

18 A No.

19 Q Okay. You're under oath now --

20 A Yes.

21 Q -- and you were under oath in November of 2011 when there was  
22 another court hearing on this matter, right?

23 A Yes.

24 Q And isn't it true that when you were under oath then, you actually told  
25 the court that he had flu-like symptoms a couple weeks before his demise?

1 A I said he had diarrhea, I believe.

2 Q Question was: Now, you had told I believe it was the detectives that  
3 Brodie had had --

4 MR. STANTON: Page, counsel?

5 MS. VON MAGDENKO: One fourteen.

6 Q -- some flu-like symptoms a couple weeks before his demise, correct?  
7 And your answer was yes.

8 A I believe and I said diarrhea somewhere.

9 Q The question was did he have flu-like symptoms and your answer was  
10 yes.

11 A Yes.

12 Q Okay. So the flu-like symptoms wasn't new to this night, was it?

13 A Yes, it was, the vomiting was.

14 Q I didn't ask about vomiting, I said the flu-like symptoms. So the flu-like  
15 symptoms were not new when you reminded Brodie he had the flu --

16 A They were new.

17 Q Was the flu new?

18 A Yes.

19 Q But you told the court the flu wasn't new?

20 A No, I told the court --

21 MR. STANTON: Objection; ask and answered and we're now argumentative.

22 THE COURT: Sustained. She's responded to the question.

23 MS. VON MAGDENKO: Okay.

24 BY MS. VON MAGDENKO:

25 Q And Michael was there to help you, right?



1 A When?

2 Q In caring for Brodie?

3 A Yes.

4 Q And Michael would give Brodie a bath?

5 A When Brodie let him.

6 Q Okay, so Brodie would let him give him a bath?

7 A Not usually, only on occasion.

8 Q Did you tell the detectives that?

9 A At some point, yes.

10 Q When the detectives interviewed you on June 21st, 2011, did you  
11 mention it then?

12 A I don't know, but I did mention it to Detective Collins.

13 Q Okay.

14 MS. VON MAGDENKO: This is page 72 of the transcript. It's not a summary,  
15 Your Honor. Can I approach the witness and refresh her recollection?

16 THE COURT: Yes.

17 BY MS. VON MAGDENKO:

18 Q I'll just direct your attention to this portion.

19 A Yes, that was in the month, the -- after we had been together for a  
20 month, living together, that he offered to pick him up and give him baths.

21 Q Okay. And you didn't mention at that time to the police that when he let  
22 him?

23 A At some point I did, not at that very time right there because we were  
24 talking about the very first month that we'd been living together was the context --

25 Q How long did the detective interview you for on that day?

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1 A I don't recall the exact length of time.

2 Q Was it -- can you approximate?

3 A No.

4 Q You were there. Was it five minutes, an hour, two hours?

5 A I don't recall.

6 Q Isn't it true that the interviews lasted over two hours?

7 A If that is what that says, then that's correct.

8 Q Okay. So according to this, it started at -- this is military time --

9 MR. STANTON: Your Honor, counsel's reading from a document that's not in  
10 evidence. It's improper and object.

11 MS. VON MAGDENKO: She said if that's what it says. I'm trying to refresh  
12 her recollection.

13 MR. STANTON: Okay. Well that may be her answer, but it's still -- the rules  
14 of evidence apply that if -- you can't read from a document and admit something  
15 that's not into evidence. If counsel would like to --

16 MS. VON MAGDENKO: I'll withdraw it.

17 BY MS. VON MAGDENKO:

18 Q Does two hours sound approximately correct?

19 MR. STANTON: If counsel -- I'm still making my objection on the record. If  
20 counsel wants to admit the transcript, the State has no objection to the entirety of  
21 the transcript of all of these to be admitted.

22 THE COURT: Okay. You withdrawing the question?

23 MS. VON MAGDENKO: Yes.

24 THE COURT: Correct. Then move on, please.

25 BY MS. VON MAGDENKO:

1 Q Does two hours sound like an accurate time period?  
2 A I don't know.  
3 Q Okay. What time would Michael usually get up in the morning?  
4 A Before the sun came up.  
5 Q What time does the sun come up?  
6 A I don't know right now. I don't know -- I can't remember exact times of  
7 what time the sun comes up.  
8 Q Does approximately 5 a.m. sound accurate?  
9 A Probably around there, 4:30, 5 a.m.  
10 Q Okay. And what time do you usually get up at this time period?  
11 A After eight.  
12 Q And what time would Brodie wake up?  
13 A Usually around seven or eight.  
14 Q Okay. So when Brodie wakes up, you're still sleeping?  
15 A It depends on the date.  
16 Q Usually?  
17 A I'd usually get up when he got up.  
18 Q Well you testified that you usually got up after eight.  
19 A I --  
20 Q Right?  
21 A I -- yeah.  
22 Q Okay, and Brodie usually got up before eight, between 7:30 and 8?  
23 A Correct.  
24 Q So that means Brodie's awake but you're still sleeping?  
25 A He'd come and get me when he woke up.

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1 Q But you're -- if he wakes up at 7:30 and you don't wake up till 8:30, that  
2 means you're still sleeping for an hour?

3 A Not unless he comes and gets me.

4 Q So sometimes he would get you?

5 A Most the time he would come and get me.

6 Q Okay. And who normally put Brodie to bed?

7 A It depended on the night.

8 Q So sometimes Michael would put Brodie to bed?

9 A If I wasn't there, yes.

10 Q And Brodie would let Michael put him to bed?

11 A I wasn't there.

12 Q But you as the mother would let Michael put Brodie to bed?

13 A I would let Michael watch him, yes.

14 Q Okay. Isn't it true that Brodie thought that the baby monitors were  
15 walkie talkies?

16 A I don't know. It's possible.

17 Q Okay. And that does it -- you said it's possible. Did you guys ever play  
18 Marco Polo?

19 A Yes.

20 Q Okay.

21 MS. VON MAGDENKO: This is page 102 of the transcript. It's not a  
22 summary. If I can refresh the witness's recollection. And it's the same, it's the June  
23 21st, it's the only -- may I approach?

24 THE COURT: Yes.

25 BY MS. VON MAGDENKO:

1 Q I'll just direct your attention to that.

2 A Okay.

3 Q So in the statement you gave to the detective, does it refresh your  
4 recollection that you told the detective Brodie thought that the baby monitors were  
5 actually walkie talkies to play with?

6 A Yes, he would walk up to it and say Marco and I'd say Polo. He wasn't  
7 touching it though.

8 Q Did you tell the police that?

9 A I don't recall. I believe we went over it in an interview with Detective  
10 Collins that I had never seen him touch the monitors.

11 Q You told the detective that it was within reach of Brodie?

12 A Correct.

13 MS. VON MAGDENKO: Your Honor, I have a series of photos that have not  
14 been admitted into evidence. I would like permission to approach the witness and  
15 have her review them. I've already --

16 THE COURT: Show them to the State, please.

17 MS. VON MAGDENKO: I already gave them to him yesterday.

18 MR. STANTON: Yes, Your Honor.

19 THE COURT: All right, you may.

20 MS. VON MAGDENKO: Thank you, Your Honor. And these are Defendant's  
21 Proposed Exhibits A through M.

22 BY MS. VON MAGDENKO:

23 Q And these are not autopsy photos, they're just family photos.

24 A Okay.

25 Q I just want you to look at these photos and just review them to yourself

1 personally and tell me when you're done if they're fair and accurate of what they  
2 depict and when they were taken if you know.

3 A (Witness complies.)

4 Don't know what this one's from.

5 Q Okay. And that's Proposed Exhibit B. Aside from -- so A and then C  
6 through M, do you recognize these photos?

7 A Yes.

8 Q And are they a fair and accurate depiction of what they show?

9 A What are you referring to?

10 Q Well let's take this photo. Do you know who took it?

11 A Yes.

12 Q Who took it?

13 A I did.

14 Q Okay. And is the photo altered in any way?

15 A No.

16 Q You know, is -- okay. And that's what I'm asking about all the pictures.  
17 Are any of the photos altered?

18 A No.

19 Q Okay. So they're all fair and accurate at the time they were taken?

20 A Yes.

21 Q Okay. And they were taken by you?

22 A Yes -- most of them.

23 Q Okay.

24 A Some of them were not.

25 Q But had you seen these photos before?

1 A A couple of them, yes, some of them, no.

2 Q Okay. Which photos had you seen before? Which ones did you take?

3 MR. STANTON: Your Honor, might I recess or suggest a recess and maybe  
4 to assist counsel, we can streamline this process during the break with the witness  
5 in laying some foundation and then we can I think officially get to the admission of  
6 these documents.

7 THE COURT: Are you at a point where we can take a break?

8 MS. VON MAGDENKO: Sure, yeah.

9 THE COURT: All right, ladies and gentlemen, let's take a 10-minute break.  
10 You're admonished not to converse amongst yourselves or with anyone on any  
11 subject connected with the trial, do not read, watch or form an opinion on this trial.  
12 Come back in 10, please.

13 [Jury out 10:44 a.m.]

14 MS. VON MAGDENKO: Are these the ones you took? You don't know?

15 THE WITNESS: I don't want to talk about it until everybody's back.

16 MS. VON MAGDENKO: Okay.

17 MR. STANTON: Did you ask her a question? Might I suggest that you -- if  
18 you're trying to move these admission and I'm assuming you're attempting to lay the  
19 foundation through this witness --

20 [Colloquy between the Court and the clerk]

21 MR. STANTON: -- to move your exhibit in.

22 MS. VON MAGDENKO: Uh-huh, yes.

23 MR. STANTON: Is that correct?

24 MS. VON MAGDENKO: Yes.

25 MR. STANTON: Then maybe we can spend this time -- this witness can tell

1 us whether or not she knows the date and we can write the date underneath the  
2 photographs, the ones that she knows. Let that assist you in doing it and then if you  
3 do that and she makes those statements, then I'll stipulate to their admission.

4 MS. VON MAGDENKO: Okay.

5 MR. STANTON: Okay? Want to do it that way?

6 MS. VON MAGDENKO: Yeah.

7 [Off the record at 10:44 a.m.]

8 [Proceedings resumed at 11:01 a.m.]

9 [Outside the presence of the jury]

10 THE COURT RECORDER: We're on the record.

11 MR. STANTON: We're ready.

12 THE MARSHAL: District Court XXIII jury is present.

13 [Jury in at 11:02 a.m.]

14 THE COURT: All right, the jury is back and looks like everyone is present if  
15 you'd like to continue?

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

17 MR. STANTON: Your Honor, there was a series of photographs during the  
18 break that I, counsel went over with the witness. To the extent that she can identify  
19 photographs with a date or an approximate date, those dates have been put on the  
20 bottom -- I handwrote the dates with the concurrence of defense counsel and the  
21 State has no objection to those exhibits into evidence.

22 THE COURT: Is that correct?

23 MS. VON MAGDENKO: Yes, Your Honor.

24 THE COURT: All right. Please continue.

25 MS. VON MAGDENKO: Thank you.



1 THE CLERK: Counsel, can you get the exhibit?

2 MS. VON MAGDENKO: They're A, B, C, D, E, F, I, L and M.

3 [Defense Exhibits A, B, C, D, E, F, I, L and M admitted]

4 BY MS. VON MAGDENKO:

5 Q What I'm going to show is what's been marked as Defense Exhibits A  
6 through F, I, L and M, and you've had a chance to look at those? Is that correct?

7 A Yes.

8 Q And you've actually had a chance to actually approximately date those  
9 photos?

10 A Correct.

11 [Colloquy between counsel and the court recorder]

12 MS. VON MAGDENKO: The court reporter's going to turn the Elmo on so we  
13 can show them to the jury.

14 THE COURT RECORDER: It should be on. Oh, you know what, press that  
15 red -- where the red button -- there. Just a moment.

16 BY MS. VON MAGDENKO:

17 Q Okay. And so this picture you approximate was taken in December of  
18 2010?

19 A Correct.

20 Q And where was this photo taken?

21 A In the back yard of my mom's house.

22 Q Okay. And actually the State showed you some other photos of  
23 Brodie's room. Do you recall that?

24 A No.

25 Q There's been certain documents that have been admitted into evidence

1 and one of them is a photo of Brodie's room and this is State's Exhibit 19. Do you  
2 recognize this photo?

3 A Yes.

4 Q Okay. And these are Brodie's toys and bed?

5 A Yes.

6 Q And are these tricycles?

7 A Yes.

8 Q And a other two-year-old age appropriate wheelie thing?

9 A Yes.

10 Q Okay. And what age was this rated for?

11 A I don't recall.

12 Q Okay. And isn't it true that the -- his four-wheeler is about three to four  
13 times the size of these other small trikes?

14 A It's probably two times the size of the dump truck.

15 Q Dump truck. Okay. And then he actually has a bicycle there?

16 A Yes.

17 Q And here's a photo that's been marked as Defense Exhibit B. And  
18 actually there actually is no date on this one. I just want to make sure.

19 MS. VON MAGDENKO: May I approach the witness?

20 THE COURT: You may.

21 BY MS. VON MAGDENKO:

22 Q Is this a photo you had --

23 A I said I didn't know what that one --

24 Q Okay.

25 A -- was; I hadn't seen it in the past.

1 MS. VON MAGDENKO: Just take off B.

2 THE CLERK: B.

3 BY MS. VON MAGDENKO:

4 Q And this photo is Defense Exhibit C, and this was taken, according to  
5 you, approximately in the summer of 2010?

6 A Correct.

7 Q Where was this taken?

8 A In Montana.

9 Q And Brodie was standing on his bike?

10 A A friend's bike, yes.

11 Q Oh, it's pink. I guess it's not his bike. Was that something he would do  
12 routinely?

13 A Yes.

14 Q And State's Exhibit -- Defense Exhibit D is a photo and who is this  
15 photo of?

16 A Brodie and the defendant.

17 Q Okay. It's kind of dark but Brodie's on Michael's shoulders?

18 A Correct.

19 Q And so Brodie let Michael put him on his shoulders?

20 A This is before we lived together. Correct.

21 Q At this time?

22 A At this time, yes.

23 Q Okay. Was Brodie -- was Michael walking around with Brodie on the  
24 Strip like this?

25 A Yes.

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1 Q And this is Defense Exhibit E, and according to you this was taken in  
2 2010?

3 A Correct.

4 Q Where was this taken?

5 A At the living room of my mom's house.

6 Q Why was Brodie on the table?

7 A Because he put the chair up there.

8 Q Brodie did that himself?

9 A Yes. Sorry.

10 Q And this is Defense Exhibit F.

11 A Yes.

12 Q And you said that this happened in April of 2011?

13 A Yes.

14 Q Brodie has some cuts on his face. How did that happen?

15 A I was using the restroom and he was with -- in the hallway running with  
16 a bottle, said Michael, and he fell on it, said the defendant. I didn't witness it.

17 Q So just in the bathroom. He comes out and then --

18 A No, I was using the bathroom, the door was shut. I wasn't present  
19 when it happened. I came out of the bathroom to Brodie screaming. The defendant  
20 said he had tripped and fell running with the water bottle.

21 Q Okay. Did you take him to the doctor after this?

22 A No.

23 Q And this is Defense Exhibit I.

24 A Yes.

25 Q Is that Michael and Brodie together?

1 A Yes.

2 Q And when was this taken?

3 A Shortly after we moved in together.

4 Q Okay. And there again Michael -- Brodie is letting Michael hold him?

5 A Yes.

6 Q And this is Defense Exhibit L. When was this taken?

7 A Can you tell me what the bottom of the picture says, please?

8 Q Oh, I'm sorry, 2009.

9 A It was taken in 2009.

10 Q And there's bruising on Brodie's forehead, cheek and the side. Do you

11 see that?

12 A Those are bug bites.

13 Q Those are bug bites?

14 A Correct.

15 Q And this is Defense Exhibit M.

16 A Correct.

17 Q And this was taken in 2009?

18 A Correct.

19 Q Whose quad is that?

20 A My actual father's.

21 Q Your actual father's. Brodie has a bruise on his cheek then?

22 A It's a sunburn.

23 Q It's a one spot sunburn?

24 A Yes. The rest of his cheeks are a little pink too.

25 Q Okay. This is Exhibit I again. What were you doing that day?

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1 A Walking downtown. Freemont Street.  
2 Q That's all you had done that day?  
3 A I don't recall. I had friends in town.  
4 Q For what? Was it anything special?  
5 A My friend's wedding.  
6 Q Okay. So you had testified yesterday that you were considering moving  
7 out and living separately from Michael?  
8 A Correct.  
9 Q And Michael was actually -- he had a conversation with his sister that  
10 you found out about --  
11 A Yes.  
12 Q -- that he wanted to move out?  
13 A He denied it.  
14 Q Okay. But that was your -- you thought that?  
15 A I don't know what I thought.  
16 Q Well you said yesterday that he was planning -- he may have planned  
17 to move out --  
18 A I said we had had a conversation. I had asked him about a text  
19 message that he didn't know I read in between his sister and him.  
20 Q Did he --  
21 A She --  
22 Q Go ahead. I'm sorry, I don't mean to interrupt --  
23 A She had made a comment about since he had bought a bed that we  
24 were still going to live together.  
25 Q And you didn't tell him that you went through his text messages?

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1 A No. I told him a birdie flew on my shoulder and told me.

2 Q So you just made up a story?

3 A I said a bird flew on my shoulder and told me.

4 Q And that's also the babysitting. When you didn't want Jen to babysit  
5 Brodie anymore, you made up a story to her too, right?

6 A No, it was the truth. My sister would babysit for free.

7 Q I thought you said yesterday that --

8 A I didn't want to hurt her feelings so I said my sister would babysit for  
9 free. That's not a lie. My sister would babysit for free, ma'am.

10 Q You just didn't tell the whole truth?

11 A Correct.

12 Q And how old was your sister at that time?

13 A My sister?

14 Q At that time.

15 A Twenty-eight.

16 Q Was she working?

17 A I don't recall. I believe so.

18 MR. STANTON: And just so the record can be clear, this witness has two  
19 sisters --

20 MS. VON MAGDENKO: Amanda.

21 MR. STANTON: Thank you.

22 BY MS. VON MAGDENKO:

23 Q You think she was working?

24 A I don't really recall.

25 Q Where did she work?

1 A She's a registered nurse.

2 Q Okay. At any point did she get fired from her job?

3 MR. STANTON: Objection; relevance.

4 MS. VON MAGDENKO: She -- Brodie's in the care of someone who may  
5 have been fired from their job as a nurse.

6 THE COURT: Sustained.

7 MS. VON MAGDENKO: Okay.

8 BY MS. VON MAGDENKO:

9 Q And during that weekend before Brodie's death that Sunday, did you go  
10 get your -- you got your hair and nails done and relaxed?

11 A Correct.

12 Q Did Brodie ever complain of any rib pain prior to his death?

13 A No.

14 Q And when you would bathe Brodie, you wouldn't actually bathe him, you  
15 would just let him play in the bathtub; is that correct?

16 A It depends on the last time he had a bath.

17 Q So sometimes you would and sometimes you wouldn't?

18 A Correct.

19 MS. VON MAGDENKO: Court's indulgence.

20 [Colloquy between counsel]

21 BY MS. VON MAGDENKO:

22 Q Just so the record's clear, on Tuesday morning prior to his death, he  
23 was all bruised up from prior, right?

24 A I'm sorry, repeat the question?

25 Q Tuesday --



1 A Okay.

2 Q -- that morning he says his head hurts and he has so many bruises you  
3 and Mike have a fight about taking him out in public because he's so bruised up.

4 A Yes.

5 Q So from Tuesday to Wednesday morning, he did not incur any  
6 additional bruising; is that correct?

7 A I don't recall right now, not that I'm aware of.

8 Q Okay.

9 A Not that I --

10 Q Not that you're --

11 A Not that I -- not that I can think of at this time, no. So from -- you mean  
12 from Tuesday morning when I had visually seen him --

13 Q Yeah.

14 A -- until he passed away I hadn't seen any more bruises that I noticed,  
15 no.

16 Q Okay. Because Wednesday morning around 1 a.m., you took him into  
17 the bathroom, took off his shirt and turned on the light?

18 A Correct.

19 MS. VON MAGDENKO: No further questions.

20 THE COURT: Redirect?

21 MR. STANTON: Thank you, Your Honor.

22 MS. VON MAGDENKO: Oh, these are the State's exhibits.

23 REDIRECT EXAMINATION

24 BY MR. STANTON:

25 Q Arica, I want to have you look at Exhibit 77, the month of June, and

1 specifically direct your attention to obviously Wednesday, the 15th, and --

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

3 THE COURT: Yes.

4 BY MR. STANTON:

5 Q Showing you what has been marked as State's Exhibit 5. Do you  
6 remember when this photograph was taken in relationship to what we're looking at in  
7 the month of June?

8 A I believe that that was the Friday -- Friday morning, the 10th.

9 Q And is that how Brodie looked like on that morning? It's an accurate  
10 depiction of him on that day?

11 A Correct.

12 MR. STANTON: Move for 5 into evidence.

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

14 THE COURT: Admitted.

15 [State's Exhibit 5 admitted]

16 BY MR. STANTON:

17 Q What's Brodie doing in this photograph?

18 A Working out.

19 Q Do you notice anything on his face?

20 A Just a tiny little bruise on his cheek.

21 Q And do you know whether or not this would have been before or after  
22 the Power Wheel incident?

23 A This would have been after.

24 Q Counsel asked you a series of questions about your prior statements to  
25 detectives.

1 A Okay.

2 Q Let me just start off broadly. Do you remember how many times,  
3 separate interviews within the first week after Brodie's death that you gave with the  
4 police?

5 A I believe three or four.

6 Q And you gave -- that's the total number of interviews you gave in this  
7 case. In other words, there weren't any more after approximately a week; is that  
8 correct?

9 A Are you talking on the record or off?

10 Q On the record.

11 A On the record I believe we did -- it was mainly that first week, week and  
12 a half time period, four I believe.

13 Q Now, counsel asked you questions about flu-like symptoms and  
14 diarrhea.

15 A Yes.

16 Q Do you remember those questions?

17 A Yes, sir.

18 Q She showed you a preliminary hearing transcript.

19 MR. STANTON: Once again I'm referring counsel to page 114.

20 BY MR. STANTON:

21 Q I believe it was your testimony that you had described that there was  
22 diarrhea some weeks before?

23 A Correct.

24 MR. STANTON: May I approach the witness, Your Honor?

25 THE COURT: Yes.

1 BY MR. STANTON:

2 Q Directing your attention to page 114 --

3 A Okay.

4 Q -- and lines 12, which is the question posed to you and your answer.

5 Now I'm going to read the question to you. The question was: Now, you told I  
6 believe it was detective that Brodie had some flu-like symptoms a couple of weeks  
7 before his demise, correct? What was your answer?

8 A Yes.

9 Q So this is a couple weeks before.

10 A Okay.

11 Q And then you say did you take him to the pediatrician? What's your  
12 answer?

13 A I don't remember.

14 Q Okay. And were you concerned about his flu-like symptoms? What  
15 was your answer?

16 A Yes.

17 Q And by flu-like symptoms, what would -- would that be a fever? And  
18 what was your answer?

19 A No, sir, diarrhea.

20 Q And then the question: Diarrhea. How about any vomiting? What's  
21 your answer?

22 A No, sir.

23 Q Counsel asked you questions about whether or not you told the  
24 detectives that you went into Brodie's room on Monday night. I'm looking for my  
25 calendar here. Monday night. Do you recall that?

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1 A Yes.

2 Q Okay.

3 MR. STANTON: Page 103.

4 [Colloquy between counsel]

5 MR. STANTON: May I approach the witness --

6 THE COURT: Yes.

7 MR. STANTON: -- Your Honor?

8 It's 103 on mine. I think it's 102 on counsel's or 101.

9 BY MR. STANTON:

10 Q Could you just read the area that I have highlighted there, just to  
11 yourself.

12 A Okay.

13 Q Now what did you tell Detective Collins about Monday evening and  
14 going on and checking Brodie when you got home from work?

15 A That I had went in, checked on him and gave him a kiss on his  
16 forehead.

17 Q And did you notice then the bump and bruise on his forehead?

18 A Correct.

19 Q Now you previously testified that that night, Monday, you confronted the  
20 defendant about how he got that bruise?

21 A Yes.

22 Q And what was his explanation on Monday evening about how he got  
23 that bruise?

24 A That Brodie had fell down leaving Danny Fico's house.

25 Q You were not obviously at that party?

1 MS. VON MAGDENKO: We don't, Your Honor, not at this time.

2 THE COURT: All right. Thank you.

3 Who's your next witness, counsel?

4 MR. STANTON: Brad Moshier.

5 THE COURT: Okay.

6 [Pause]

7 THE MARSHAL: Please remain standing. Please raise your right hand and  
8 be sworn in by our clerk.

9 BRAD MOSHIER

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

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

13 THE WITNESS: Brad Moshier, B-r-a-d, last name is M-o-s-h-i-e-r.

14 MR. GIORDANI: May I --

15 THE COURT: Whenever you're ready.

16 MR. GIORDANI: Thank you, Judge.

17 DIRECT EXAMINATION OF BRAD MOSHIER

18 BY MR. GIORDANI:

19 Q Mr. Moshier, I'm showing you State's Exhibit 3. Do you recognize the  
20 people in that photo?

21 A Yes.

22 Q Who's the little boy there?

23 A My grandson, Brodie.

24 Q Is that Brodie Aschenbrenner?

25 A Yes.

1 Q Who's holding Brodie?  
2 A Arica.  
3 Q Who's Arica to you?  
4 A My stepdaughter.  
5 Q Are you married to her mother?  
6 A Yes, Merridee.  
7 Q And who is that?  
8 A Merridee.  
9 Q And is that Merridee Moshier at this point?  
10 A Yes.  
11 Q Are there other siblings in the family?  
12 A Yes.  
13 Q And who are they?  
14 A Alayne Opie, Amanda Butler, and Morgan Moshier.  
15 Q How long have you been in Ms. Moshier's life?  
16 A Fifteen years now.  
17 Q So were you around Arica, Alayne and the siblings around that same  
18 timeframe?  
19 A Yes.  
20 Q Do you consider them children of yours?  
21 A Yes.  
22 Q Were you around Brodie when he was around his mother? Did you see  
23 them interact?  
24 A Yes, they lived with us from October timeframe of 2010 until they  
25 moved in with Mike.

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1 Q And you mentioned Mike. Do you mean Michael Lee?  
2 A Yes.  
3 Q Do you see that person in the courtroom?  
4 A Yes.  
5 Q Can you point to him and describe an article of clothing he's wearing  
6 today --  
7 A He's wearing a gray suit, white shirt.  
8 MR. GIORDANI: Record reflect identification, Judge?  
9 THE COURT: It will.  
10 MR. GIORDANI: Thank you.  
11 BY MR. GIORDANI:  
12 Q So you said they -- Arica and Brodie lived with you.  
13 A Yes.  
14 Q And did they also live with Merridee?  
15 A Yes.  
16 Q Was there other people living in the household around that time period?  
17 A Yes, my daughter, Amanda, her husband, John Butler, and their kids  
18 had to move in with us for a while.  
19 Q Fair to assume you were around Brodie when he was around Arica on a  
20 number of occasions?  
21 A Yes.  
22 Q Showing you State's 4. Does that about sum up their relationship?  
23 A Yes.  
24 Q When did you meet the defendant you just identified here in court?  
25 A When my daughter started dating him late -- I can't remember what



1 year, late fall --

2 Q And you mentioned October earlier of 2010. Does that sound fair?

3 A No. It was December year before Brodie's death.

4 Q Okay, so --

5 A So he --

6 Q -- that would have been December of 2010? Since Brodie, I represent  
7 to you, died on June 15th of 2011.

8 A Yes.

9 Q Okay. Now before you met the defendant and before he came into  
10 Arica and Brodie's life, you said you were around Arica and Brodie together?

11 A Yes.

12 Q Did you see Brodie alone? Did you ever watch him?

13 A Yes, I babysat him all the time.

14 Q What's all the time mean?

15 A Be on the weekends when his mom was working, when his -- when  
16 Merridee and Arica would go out to do something. I mean, if -- if I was home and  
17 Brodie was home and nobody else was there, I mean I was babysitting him.

18 Q Okay. What type of kid was Brodie if you spent that much time?

19 A Just rambunctious little guy. Always active, always doing something.  
20 Hundred miles an hour. The only time he wasn't moving was when he was sleeping.

21 Q Did Brodie have any nicknames?

22 A Bambam.

23 Q What's the history behind that?

24 A Him and his -- his cousin, Lily, they were Bambam and Pebbles. Brodie  
25 was always playing with a baseball bat or a stick and so he'd pound things and then

1 Lily was Pebbles. Just the two of them together was -- remind you of Bambam and  
2 Pebbles from the cartoon.

3 Q Okay. So the name Bambam came about because he would carry  
4 around a bat?

5 A Yeah.

6 Q And not because he would bam his head into things?

7 A No.

8 Q Okay. Did you yourself play with Brodie?

9 A All the time.

10 Q Wrestle with him like a grandpa would?

11 A Yeah.

12 Q Did you -- do you know the word typewriter --

13 A Yeah.

14 Q -- or the game typewriter?

15 A My wife would get mad at me because Brodie was really ticklish in the  
16 chest and armpit area so I'd just kind of like (indicating) do that type of motion on his  
17 chest and his armpits and he'd just laugh.

18 Q Did he ever indicate that he was in pain when you played typewriter?

19 A No.

20 Q And you mentioned that your wife, Merridee, would get mad at you.  
21 What do you mean by that?

22 A She says I was leaving little like bruises, but I didn't -- you know, it  
23 wasn't -- wasn't intentional. It was just playing with him and she said I played little  
24 too rough sometimes.

25 Q Okay. And the game typewriter, that is limited to the chest and body --

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1 A Yes.

2 Q You don't typewrite on someone's forehead?

3 A No.

4 Q Okay. And again, Brodie didn't indicate ever that he was in pain when  
5 you played typewriter --

6 A No, he was always laughing.

7 Q When you said that it would leave bruises, are we talking every time  
8 you played typewriter or just once or twice?

9 A Once or twice, but Merridee would notice them and yell at me.

10 Q Okay. Close in time to Brodie's death, did you see any bruises from  
11 specifically the typewriter game?

12 A No.

13 Q So this is in the past that we're discussing --

14 A Yes.

15 Q Okay. You mentioned the defendant came into Arica and Brodie's life  
16 around December of 2010?

17 A As far as I can remember, yeah.

18 Q Okay. Can you describe for the ladies and gentlemen of the jury  
19 Michael, the defendant's relationship with Arica?

20 A They seemed to be having a good time together. There was I mean  
21 never any fights that I could see. They just --

22 Q And is -- I -- I'm sorry to cut you off, but is this the beginning of the  
23 relationship you're describing?

24 A Yeah. You know, there was never any issue that I could see. They  
25 were both busy with their lives so they were just sort of, you know, dating.

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1 Q Did Michael, to your knowledge, have any kids of his own?

2 A No. Not that I know of.

3 Q Did there come a point where you noticed a change in the defendant  
4 and Arica's relationship?

5 A Probably the spring of that year there was some issues. I know -- I  
6 think Arica would come over and talk to Merridee about stuff, but you know, I just  
7 didn't pay too much but there was issues --

8 Q Okay.

9 A -- that any young couple might have.

10 Q And when you say spring of that year, do you mean the year of 2011  
11 Brodie's death?

12 A Yes.

13 Q So Brodie dies in June. You're talking about two to three months prior  
14 to Brodie's --

15 A Yes.

16 Q -- death? To your knowledge, was one of the sources of contention  
17 Brodie or anything about Brodie?

18 A Not that I can remember. I mean there might have been, but I can't say  
19 for sure.

20 Q All right. Did you ever see Brodie and Mike interact?

21 A Yes.

22 Q What was their relationship --

23 A At the beginning, it was -- you know, they were like buddies. They --  
24 they'd play, they were always goofing around. Mike would watch Brodie sometimes  
25 and he would like see you papa, I'm going with Mike, he's my buddy, later.

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1 Q And is that in the beginning of the relationship --

2 A That was in the beginning.

3 Q Did there come a point when you saw the relationship between the  
4 defendant and Brodie change?

5 A Yes. There was --

6 Q When was that?

7 A Towards when they -- when Arica and Brodie moved in with Mike into  
8 an apartment, towards the end just before Brodie's death there was periods that  
9 Mike would come to pick up Brodie because Arica was working and Brodie would  
10 start crying and then he would get this look on his face. It's kind of hard --

11 Q Take your time.

12 A It's kind of hard to describe, but he would get this look of like fear  
13 towards him the last week or so. If Mike picked him up, he would just be like scared.

14 Q And you knew Brodie, you were around him very often?

15 A Yes.

16 Q And to the best of your ability you're describing the look on Brodie's  
17 face as fear?

18 A Yes.

19 MS. VON MAGDENKO: Objection, Your Honor; calls for speculation about  
20 Brodie's mental state.

21 THE COURT: Sustained.

22 MR. GIORDANI: Fair enough.

23 MS. VON MAGDENKO: I'd ask --

24 BY MR. GIORDANI:

25 Q That was a couple weeks prior to --

1 MS. VON MAGDENKO: I'd ask that that be stricken then. The jury  
2 admonished disregard that.

3 THE COURT: Ladies and gentlemen, please disregard the last statement by  
4 the witness.

5 Please continue, counsel.

6 MR. GIORDANI: Thank you, Judge.

7 BY MR. GIORDANI:

8 Q And there came a time when the dynamic between the defendant and  
9 Brodie changed?

10 A Yes.

11 Q And did you say that that was a couple weeks or couple months prior to  
12 Brodie's death?

13 A Probably a couple weeks.

14 Q Okay. Did there also come a point in time when you started to notice a  
15 specific set of bruises that you didn't notice ever previously?

16 A There was some bruising along the diaper line. My wife said it looked  
17 like they were fingerprints and she showed me --

18 MR. ALTIG: Objection; hearsay.

19 BY MR. GIORDANI:

20 Q Don't --

21 THE COURT: Sustained.

22 BY MR. GIORDANI:

23 Q Yeah. Don't tell me what she told you. I want to know what --

24 A Well, I seen them.

25 Q -- you observed.

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1 A I mean she showed them to me.

2 Q Okay.

3 A So they were small size of like a finger might make on something, but  
4 there was no -- you really couldn't tell if they were or if he had fallen on something.

5 Q Okay. So at that time you weren't really suspicious; is that fair?

6 A Yes.

7 Q Okay. You were around Brodie very often. Did you see injuries on him  
8 on a regular basis?

9 A Yes.

10 Q And can you describe those types of injuries?

11 A He had, you know, bruising on his shins, his knees. He had one on his  
12 forehead that -- like a week prior to his death, he had -- when we first moved in  
13 house he was able to walk under the counters. And he had been growing. So one  
14 day he was at our house and just kind of turned around and caught the corner of the  
15 counter like right in the forehead.

16 Q Okay.

17 A And we had just been talking about, you know, making sure he didn't  
18 bruise himself.

19 Q Okay. And that was one occasion you described. Did you see that on  
20 any other occasions?

21 A He came to the house with a little mark on his cheek and Arica told us  
22 about him riding his battery-operated toy and hitting the curb and falling.

23 Q Okay. And I want to step back a second. The time that you described  
24 when Brodie reacted strangely when the defendant came to pick him up, do you  
25 know what I'm talking about ?

1 A Yes.

2 Q Did Brodie verbalize anything to you, yes or no?

3 A No. I mean, Brodie still wasn't, you know, making complete sentences  
4 so would be, you know, short one or two words, I'm hungry, tubby --

5 Q What do you mean by tubby?

6 A Bath time was their tubby time.

7 Q Okay. So Brodie couldn't verbalize full sentences or at least didn't  
8 when he was around you?

9 A No.

10 Q Okay. I want to move to a few specific dates. First is going to be  
11 Friday --

12 [Colloquy between counsel]

13 Q -- Friday, June 10th. I'm going to show you a calendar here. Can you  
14 see that up on your screen?

15 A Yes.

16 Q Do you remember around 10 a.m. in the morning what occurred at that  
17 time?

18 A I was at work at a part-time job and I got a text from the wife asking me  
19 what time I got off and could I go --

20 MR. ALTIG: Objection; hearsay.

21 THE COURT: Sustained.

22 MR. GIORDANI: It's not for the truth, Judge, it's just for what he did in  
23 response to the text.

24 THE COURT: All right.

25 MR. GIORDANI: Thank you, Judge.



1 BY MR. GIORDANI:

2 Q You can answer that.

3 A She asked me what I was doing for work -- or what time I was getting  
4 off work and I said, you know, about the -- I told her what time I usually got off work  
5 was about 10. She asked me if I can go babysit Brodie at the house.

6 Q And is that because Merridee was working at the time or --

7 A Yes.

8 Q -- otherwise --

9 A Merridee was working, Arica had to go to work and Brodie had pinkeye.

10 Q Okay. So you were aware at that point that Brodie had pinkeye?

11 A Right.

12 Q Okay. Did you go over to Arica's house?

13 A Yes, after I went home, changed my clothes, got on some different  
14 clothes, got my truck because I'd been riding my motorcycle that day, so I had to  
15 change vehicles and I went over to Arica's house.

16 Q Do you remember what time approximately that you arrived on Friday?

17 A 11:30 timeframe.

18 MR. GIORDANI: May I approach the --

19 THE WITNESS: 11:30, 12, somewhere in there.

20 BY MR. GIORDANI:

21 Q 11:30, 12 timeframe?

22 A Yeah.

23 MR. GIORDANI: May I approach the witness, Judge?

24 THE COURT: Yes.

25 BY MR. GIORDANI:

1 Q At some point did you go and pick up a prescription with Brodie?

2 A Yes.

3 Q And I'm showing you State's 40. Do you recognize that?

4 A Yes.

5 Q Okay. Is that that prescription that you picked up for Brodie?

6 A Yes.

7 Q And what was that for?

8 A His eye drops, his pinkeye.

9 Q Okay.

10 MR. GIORDANI: And this has been previously admitted, Judge. May I  
11 publish?

12 THE COURT: Yes.

13 BY MR. GIORDANI:

14 Q And are those Gentamicin eye drops?

15 A Yes.

16 Q And you went and picked those up?

17 A Yes, I went to the Walmart, Stephanie and American Pacific.

18 Q And did you take Brodie with you?

19 A Yes.

20 Q So you were in charge of Brodie that day?

21 A Yes. All day. All day.

22 Q Okay. What did you do after you went and picked up Brodie's  
23 prescription?

24 A We went back to his house and I gave him his first dose of medicine.

25 Q How did you do that?

1 A Trying to hold down a two and a half year old, you have to kind of  
2 restrain them and then -- because you got to have one eye (sic) open an eye and  
3 one eye (sic) to put the drops in. He was moving around so I just kind of wedged  
4 him between my legs and kind of held him with my legs and then put the eye drops  
5 in.

6 Q Okay. And were you successful? Did you --

7 A Yes.

8 Q Did you get them in? But Brodie I assume didn't like that?

9 A No, they're painful because of the infection in the eye and the drops.

10 Q What'd you do after you put his first dose of eye drops in that day?

11 A He had a nap. And then -- it was couple hour nap. We -- I kind of laid  
12 on the couch. He woke up couple hours later, woke me up --

13 Q And let me stop you for a second. You're still at Arica's house?

14 A Yes.

15 Q You put him down around what time?

16 A It was probably after one or after because of when -- when the  
17 medication was going to be due or when it was going to be ready and then -- so he's  
18 -- yeah --

19 Q Around one?

20 A --- about one --

21 Q Okay.

22 A -- or there.

23 Q And you said he slept for a couple hours?

24 A Yes.

25 Q And did he sleep in his room?

1 A Yes.

2 Q Did you have a typical I guess protocol you went through when you put  
3 him down for a nap or did he just flop down on the bed?

4 A I made sure he had a dry diaper on and then just put him in his bed and  
5 usually he'd just hang out with his music on. And then I just went out and laid on the  
6 couch.

7 Q And you mentioned a diaper. Was Brodie still in diapers all the time?

8 A No. There was a little bit of time that he would be out of a diaper, you  
9 know, hanging out playing at our house. And where -- he was starting to do the  
10 potty training phase where you're trying to get him out of a diaper as long as  
11 possible.

12 Q Okay. And to the best of your recollection, when did that potty training  
13 phase begin? If you can recall. If not, that's okay.

14 A Probably a couple weeks or a month prior to his death.

15 Q Okay. What time did Brodie wake up approximately?

16 A About three, three-ish, somewhere in that timeframe.

17 Q And you said he came to get you?

18 A Yeah.

19 Q Okay. You still on the couch?

20 A Yes.

21 Q What did you do after that?

22 A We just kind of hung out. He was playing with different toys. He was  
23 playing -- there -- they had some exercise equipment and they had one the bands  
24 that you stand on and can do exercise with.

25 Q Okay.

1 A So he -- I kind of showed him how to play with that.  
2 Q How was Brodie's appetite that day?  
3 A It was fine. He ate snacks all day and had some pizza when we had  
4 dinner.  
5 Q So he ate snacks during the day?  
6 A Yes.  
7 Q What types of snacks?  
8 A Crackers, Goldfish or whatever little crackers they had, fruit snacks.  
9 Q Okay. Seem to you that that was his typical appetite?  
10 A Yeah.  
11 Q Showing you State's 5, already admitted. Is that that rubber band you  
12 were talking about?  
13 A Yes.  
14 Q And this is on Friday, June 10th?  
15 A Yes.  
16 Q He was playing around? Is that fair?  
17 A Yes.  
18 Q After -- or in the afternoon, did you give Brodie another dose of his eye  
19 drops?  
20 A Yes, just before I went home.  
21 Q And were you present and anyone else?  
22 A I believe Arica and Mike were home by then.  
23 Q When did Arica and Mike get home?  
24 A About 8:00 that night.  
25 Q Did they arrive separately or together?

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1           A     It was about the same timeframe in -- they were in different cars, but it  
2 was about the same timeframe.

3           Q     So what time do you ultimately leave that residence?

4           A     Probably 8:30-ish. I mean I didn't stay long. Soon as they got home, I  
5 showed them how I'd given him the medicine and then taken off.

6           Q     So you actually instructed them on how to get those drops in his eyes?

7           A     Yeah, if you're one on one with him, he -- he was a little wiggle worm so  
8 you had to kind of hold him down.

9           Q     So Friday, June 10th, you leave around 8 p.m.?

10          A     Yes.

11          Q     On that day, did you ever see any signs of a loss of appetite in Brodie?

12          A     No.

13          Q     Did you ever see any signs of abdominal pain whatsoever?

14          A     No.

15          Q     Did he ever give you any indication he had head pain?

16          A     No.

17          Q     Did he ever vomit?

18          A     No.

19          Q     Did he ever have diarrhea?

20          A     No.

21          Q     Did he ever do anything that indicated to you that you should be  
22 concerned about Brodie's health on Friday, June 10th?

23          A     No.

24          Q     Moving to the next day, Saturday, June 11th. Did you see Brodie in the  
25 morning that day?

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1 A Yes.

2 Q When was that?

3 A Eleven o'clock or so.

4 Q How did you see him that day?

5 A Arica brought him over so we could watch him.

6 Q Was that a typical thing?

7 A Yes. On Saturday we'd watch him most weekends, and we had Lily  
8 that weekend too.

9 Q Okay. Who was present in your home when she dropped Brodie off?

10 A Myself, Merridee and Lily.

11 Q What types of things did you do that morning?

12 A We cleaned the house, basically from top to bottom. We were doing  
13 like spring cleaning.

14 Q And is that you and Merridee?

15 A Yes.

16 Q Both cleaning?

17 A Yes.

18 Q What were the kids doing?

19 A They were playing in the living room and playroom that we had set up  
20 and then they were also out in the back yard.

21 Q Were they ever out of earshot from you or Merridee?

22 A No. We always knew where they were.

23 Q You always knew where they were? And it was common that you let  
24 them play alone separately?

25 A Yeah, there was -- our back yard was pretty childproof. They had their

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1 toys and -- back there.

2 Q And was Brodie with you all day that day?

3 A Yes.

4 Q Did there ever come a point where you heard Brodie scream from the  
5 back yard or indicate to you in any way that he was in pain?

6 A No.

7 Q Around that time, Saturday morning -- I'm sorry, moving to Saturday  
8 night, did you notice any injuries on Brodie?

9 A No.

10 Q Did you bathe him that night?

11 A Yes.

12 Q And by you, do you mean you alone?

13 A Yes.

14 Q What do you do when you bathe Brodie?

15 A We -- well we -- I had the two grandkids, Brodie and Lily, so we take  
16 them up to our master bedroom bathroom at the time and they would take a bath  
17 together, play, and I'd wash their hair because they were in the sandbox so they had  
18 hair -- sand in their hair so we had to scrub their heads.

19 Q So fair to assume they're completely nude head to toe?

20 A Yes.

21 Q And you mentioned washing their hair.

22 A Yes.

23 Q Did you wash Brodie's hair that night?

24 A Yes.

25 Q Did you press on the skull?

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1 A Yeah. Scrubbed it. Fingers deep in it.  
2 Q Did he ever indicate to you that he was in pain in any way in his head  
3 area?  
4 A No.  
5 Q Talking about the injuries that you saw, do you remember seeing a  
6 small bruise on Brodie's forehead that day?  
7 A Yes.  
8 Q And is that the bruise you mentioned previously you thought was from  
9 the counter?  
10 A Yes.  
11 Q At that time when you saw him on Saturday, was that bruise fading?  
12 A Oh yeah. It was probably a week old.  
13 Q Did he also have some discoloration under his eyes?  
14 A Yes.  
15 Q And do you know what that was from?  
16 A From pretty much rubbing his eyes all the time. He had the pinkeye.  
17 Q And don't let me put words in your mouth. I said discoloration. Are we  
18 talking two major black eyes or just discoloration?  
19 A Discoloration. It was more of like the dark colors you'd get underneath  
20 your eyes from not sleeping -- as an adult, the kind of black eyes that you get.  
21 Q Okay. Did Brodie have any bruises to your recollection to his lower  
22 legs?  
23 A Couple maybe on his shins from playing, but --  
24 Q Was that a common thing?  
25 A Yeah.

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1 Q And I'll call them the typical Brodie bumps and bruises?

2 A Yes.

3 Q Nothing that stood out to you?

4 A No.

5 Q At some point did Brodie go to bed at your home that night?

6 A Yes.

7 Q Was Merridee home at that time?

8 A Yes.

9 Q What time was that?

10 A Usually the kids would go to bed at about 8, 8:30 at the latest.

11 Q And I'm specifically referring to that Saturday, June 11th, still.

12 A Yes.

13 Q Was it around that typical 8:00 time?

14 A Yes.

15 Q And did you put Brodie to bed, if you recall?

16 A I think I put one of them, either Brodie or Lily -- we kind of took one into  
17 one room and Lily into another room. So they were separate so we'd just grab them  
18 and they went to their beds and we got them settled in.

19 Q And you saw Brodie that day from 11 a.m. all the way up until 8 p.m.?

20 A Yes.

21 Q Or around 8:00. At any point during that day, did Brodie vomit?

22 A No.

23 Q Did he show signs of head injury?

24 A No.

25 Q Any signs of abdominal pain?

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1 A No.

2 Q Any lack of balance?

3 A No.

4 Q Any exhaustion or overly exhaustion?

5 A No.

6 Q Anything that indicated to you that he was sick or injured significantly?

7 A No.

8 Q Did you see Brodie the next morning on Sunday, June 12th?

9 A Yes, Brodie -- I could hear him from his room and our bedroom was  
10 open and he'd call out my name.

11 Q And did he call you specifically?

12 A He called -- he called me papa. So he was yelling out papa and then I  
13 finally went and checked on him and I was hoping he'd lay back down, but he didn't  
14 so I just changed his diaper and we ended up getting up. Just me and him.

15 Q What'd you do that morning with your grandson?

16 A I went down, started making coffee. He wanted to start eating. You  
17 know, he'd eat from time he woke up to time he went to bed so it was yogurt or  
18 some kind of snack that he wanted.

19 Q And that's Saturday morning. Did you say what time Brodie woke up or  
20 woke you up?

21 A That was actually Sunday morning.

22 Q I'm sorry.

23 A And I think the first time I heard him call my name was like 6:30, 7  
24 timeframe.

25 Q And you mentioned Brodie's appetite was voracious?

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1 A Yeah. I mean it was -- normally he'd eat -- get a yogurt out and just sit  
2 on the coffee table and eat his yogurt watching cartoons.

3 Q So on that Sunday did he eat on a number of different occasions?

4 A Yes.

5 Q Did he eat meals -- full meals or was it more like snacking throughout  
6 the day?

7 A It was -- I don't know if we made breakfast, but if we didn't make him  
8 full-on breakfast, he would have been snacking all day and then lunch.

9 Q And at some point Alayne, your daughter-in-law, she comes over and  
10 picks Brodie up --

11 A Alayne's my stepdaughter.

12 Q Stepdaughter, I apologize. And she comes over and picks Brodie up  
13 that day?

14 A Brodie and Lily.

15 Q What time was that, if you can recall?

16 A 11:30, 12:00.

17 Q In the morning?

18 A Yes.

19 Q Okay. So when we're talking about the snacking, we're referring to a  
20 four and a half hour period from 7 a.m. to about 11:30 --

21 A Yes.

22 Q -- a.m.? When Alayne picked Brodie and Lily up, what did you do? Did  
23 you stay home?

24 A Yes, I stayed home, finished working on the house, yard work, stuff that  
25 I didn't do when the kids were there.

1 Q At some point did Alayne bring those kids home?  
2 A Yes.  
3 Q And what time was that?  
4 A 4:30, 5. I really wasn't watching the time.  
5 Q Okay. If you recall --  
6 A It was later -- it was late afternoon.  
7 Q 4:30, 5. Was dinner being cooked that night?  
8 A Yes, I made hamburgers.  
9 Q And do you recall if Brodie ate burgers that night?  
10 A Yeah.  
11 Q So you saw him eat burgers?  
12 A Yes.  
13 Q And that's Sunday night?  
14 A Yes.  
15 Q Did there come a time that you gave Brodie a bath or someone gave  
16 Brodie a bath that night as well?  
17 A My daughter and my wife did. Alayne and Merridee.  
18 Q So you weren't present for his bath time that night?  
19 A No, I was just sitting on the couch watching TV.  
20 Q And we're talking about Saturday, June 11th?  
21 A Sunday.  
22 Q Okay. So we're talking about Sunday. Let me step back a second and  
23 clarify a couple things. So Saturday during the day, where is Brodie all day?  
24 A With us. With me and Merridee.  
25 Q At some point on that day did -- okay. I apologize. So we're talking

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1 about Sunday. Sunday's the day that Alayne comes, picks them up.

2 A Yes.

3 Q Sunday night, get home at five?

4 A Or so, yes.

5 Q Approximately? And that's the night that the burgers are made?

6 A Yes.

7 Q I lost my train of thought. I apologize. So on that night, you didn't give

8 them the bath?

9 A No.

10 Q Brodie and Lily? After the bath time with Alayne and Merridee, what

11 happened?

12 A About that time Arica came into the -- or came home -- came back to

13 the house to pick up Brodie and the -- Merridee and Alayne and Arica were talking

14 and the grandkids, after they had bathed, went back outside and decided they were

15 going to play in the sandbox again.

16 Q Okay. Do you recall what time they left that evening, Sunday?

17 A It was probably an hour after Arica got there so 6:30, 7 timeframe, 7:30.

18 Q Okay. Did you say goodbye?

19 A Yeah.

20 Q Say goodbye to Brodie?

21 A Yes.

22 Q Was that in fact the last time you saw Brodie alive?

23 A Yes.

24 Q On that day, Sunday, did you ever see any indication of head injuries to

25 Brodie that caused you concern?

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1 A No.

2 Q Any vomiting?

3 A No.

4 Q Any diarrhea?

5 A No.

6 Q Any abdominal pain?

7 A No.

8 Q Falling?

9 A No.

10 Q I want to step forward a couple of days to Wednesday, June 15th.

11 What were you doing that day?

12 A I was -- I was at school and I got a phone call from one of my daughters  
13 and she said Brodie's -- she said Brodie's gone. And I was -- I asked her what she  
14 meant by Brodie's gone and she goes dad --

15 MR. ALTIG: I'm going to object at this point, it's hearsay.

16 MR. GIORDANI: It's not for the truth, Judge, it's just to show how he learned  
17 of it and what his reaction is and what he does next.

18 THE COURT: Re-ask it a different way.

19 BY MR. GIORDANI:

20 Q What time was it that you learned of your grandson's death?

21 A Early morning. I don't remember the time I -- I -- that whole morning,  
22 the time -- time was kind of a blur.

23 Q Okay.

24 A But I was at school and usually we'd start school at like nine. So it was  
25 after 9:00.

1 Q Based upon learning of this information, what did you do?

2 A I grabbed my books and just bolted out of the building and drove as fast  
3 as I could over to Arica's house.

4 Q When you got to Arica's house, who was there? To the best of your  
5 memory.

6 A Arica, Amanda, the police, fire --

7 Q Let me ask you this: Was the defendant there?

8 A I don't know if he was there when I got there or he showed up soon  
9 after I -- I just don't remember.

10 Q Okay. At some point in the day though, did you come into contact with  
11 the defendant?

12 A Yes.

13 Q And was that later on in the day when you went to pick clothes up for  
14 Arica?

15 A No, he was actually -- when we were still at the house -- before they  
16 took Brodie's body out of the house, we were all waiting around, because we really  
17 didn't know what was going on or what the whole -- how they were going to do  
18 everything and so we were just sitting outside the apartment --

19 Q Okay.

20 A -- and Mike was there.

21 Q Later on in the day, did you go to pick clothes up for Arica at her  
22 apartment?

23 A Yeah.

24 Q Did you go back --

25 A Yes, we -- we'd finally gotten Arica over to our house. We'd settled



1 down. Then we finally got word that we could go back into the apartment to get  
2 personal items for Arica and Mike had to get some personal items too.

3 Q And when you say got word, is that from officers or detectives of the  
4 Henderson Police Department?

5 A Yes.

6 Q So at that point they were done with their search to your recollection?

7 A Yes.

8 Q Did you go to the apartment?

9 A Yes. Me and Mike went over.

10 Q When you got there, were there any documents that you had not seen  
11 before?

12 A There -- on the kitchen table there was like paperwork that said they  
13 had searched the house --

14 MR. ALTIG: I'm going to object. It's hearsay, best evidence.

15 THE COURT: Sustained.

16 MR. GIORDANI: Well, Judge, can I respond?

17 THE COURT: Sure.

18 MR. GIORDANI: I'm not asking what the documents actually said. I just want  
19 to know what type of document it was and who left it. I don't need to know --

20 THE COURT: You can use it for that purpose.

21 MR. GIORDANI: Thank you, Judge.

22 BY MR. GIORDANI:

23 Q What was the documents that was -- what were the documents that  
24 were left on the table?

25 A There was I believe two pieces of paper. One -- they were both from

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1 the Henderson police. One was like a paper saying that it was --

2 Q And don't tell me what it says.

3 A Right. It --

4 Q Let me ask you this: Do you know if the papers that were left on the  
5 table were search warrants?

6 A Yes.

7 Q And search warrant returns? Meaning the items that they had taken  
8 from the home --

9 MR. ALTIG: I'm going to object that now he's leading.

10 MR. GIORDANI: I was trying to avoid the objectionable information that he  
11 didn't want in, and that's why I was leading into that area.

12 THE COURT: Watch the form of the question.

13 MR. GIORDANI: Understood.

14 BY MR. GIORDANI:

15 Q So to your knowledge, was the documents that were left on the table a  
16 search warrant?

17 A Yes.

18 MR. ALTIG: I'm going to object again, its leading. It also lacks foundation.

19 THE COURT: It is leading, but he's already testified the answer was yes a  
20 few questions ago.

21 MR. GIORDANI: Thank you, Judge.

22 BY MR. GIORDANI:

23 Q Did you read the items? And don't tell me what they said.

24 A I looked at the list.

25 Q Okay. Did the defendant look at the list?

1 A Yes.

2 Q Did you witness that?

3 A Yes.

4 Q Did he read the list to your knowledge?

5 A Yes.

6 Q Did he flip pages?

7 A I think they were just single piece -- single pages, they weren't that you

8 would have had to like flip through.

9 Q Did there come a point in time where you were aware that Arica went

10 and spoke to the Henderson Police Department?

11 A Yes.

12 Q During that time, did you receive communications from the defendant?

13 A Yes.

14 Q What type of communications were they?

15 A I was waiting out -- they didn't take me back, they took Merridee and

16 Arica back in the back of the building into an office. I was waiting in lobby and Mike

17 called me on my cell phone.

18 Q How many times did he call you?

19 MS. VON MAGDENKO: Your Honor, I'd object to relevancy.

20 MR. GIORDANI: Your Honor, this --

21 MR. STANTON: May we approach?

22 THE COURT: Yes, you may.

23 [Bench conference begins at 12:09 p.m.]

24 THE COURT: Yeah.

25 MR. GIORDANI: Judge, this is extremely relevant. The defendant called him

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1 on a number of different occasions while Arica was being interviewed and was  
2 probing for information asking what she was saying, why is she taking so long. It's  
3 extremely relevant to show that --

4 THE COURT: Okay.

5 MS. VON MAGDENKO: That's hearsay.

6 MR. GIORDANI: It's the defendant's statements. The defendant calling and  
7 asking for information. It's the defendant's --

8 THE COURT: That wouldn't be hearsay if it's the defendant's statements.

9 MR. GIORDANI: Right. That's what I'm asking for is the defendant's  
10 statements --

11 THE COURT: If that's what you're going to ask, then it's okay.

12 MR. GIORDANI: -- specific --

13 THE COURT: Objection will be overruled.

14 [Bench conference ends at 12:10 p.m.]

15 BY MR. GIORDANI:

16 Q When Arica was in speaking with the police, how many times did the  
17 defendant call you?

18 A Once, maybe twice.

19 Q Okay. When he called you, what was he saying or asking?

20 A He was asking me what I knew, what had they told us, what evidence  
21 did they have.

22 Q Was he seeking information in his questions of you?

23 A By the way and what he was asking, yes.

24 Q Did you yourself ultimately speak to Henderson detectives?

25 A After they -- yeah, they called me back in the room.

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1 Q Okay. At some point on June 24th, did you actually give a recorded  
2 interview with them?

3 A Yes.

4 Q A lengthy interview?

5 A Yes.

6 Q And cooperate fully?

7 A (No audible response.)

8 Q I want to move forward about a weekend from Brodie's death. At some  
9 point did you go back to that apartment to pick some items up?

10 A Yes.

11 Q What were those items?

12 A I went back to pick up some clothes for Brodie so that the mortuary  
13 could -- could dress him so that we could have a final --

14 MR. ALTIG: At this point I'm going to object as to the relevancy, Your Honor.

15 THE COURT: What is the relevancy?

16 MR. GIORDANI: Should we approach?

17 THE COURT: Sure.

18 [Bench conference begins at 12:11 p.m.]

19 MR. GIORDANI: When he gets to the apartment, the defendant's sister and  
20 Danny Fico, the defendant's best friend, were there collecting his items, but the  
21 follow-up question to this is was there a viewing, did you attend the viewing, were  
22 there bruises on Brodie -- and I'm not going to show him the photos, but were there  
23 bruises postmortem that you hadn't seen before. I'm trying to avoid showing the  
24 photos again and make duplicative --

25 THE COURT: Why do you need to ask about what was at the apartment?

1 What's relevant to that?

2 MR. GIORDANI: Because he went to pick up the clothes for the viewing. Jen  
3 and Danny were there and she's going to say that she -- he's going to say that Jen  
4 showed absolutely no emotion whatsoever. And Jen is a hostile witness to us. As  
5 you know, she's testifying later today.

6 MS. VON MAGDENKO: Your Honor, if I just may about the viewing, when  
7 there's a viewing, there's makeup on --

8 MR. GIORDANI: And I was going to lay the foundation for that.

9 THE COURT: So all that's to ask about Jennifer's expressions. So how he's  
10 perceiving --

11 MR. GIORDANI: That single question, yes. I can move on to the follow-up  
12 question of the viewing, but I wanted to lay foundation for what was going on during  
13 that time.

14 THE COURT: I -- yeah. I don't think that's relevant when it was at the  
15 apartment --

16 MR. GIORDANI: Okay.

17 THE COURT: -- unless they were doing something to the evidence which it  
18 sounds like they were not.

19 MR. GIORDANI: They were collecting Michael's clothing.

20 THE COURT: But they weren't doing anything else unusual.

21 MR. GIORDANI: Fair.

22 THE COURT: Then move on.

23 MR. GIORDANI: Okay.

24 [Bench conference ends at 12:13 p.m.]

25 BY MR. GIORDANI:

1 Q Mr. Moshier, you mentioned a viewing -- there was a viewing held for  
2 Brodie?

3 A Very small, private, just the family.

4 Q And when you say just the family, do you mean your family?

5 A Yes.

6 Q Okay. Did you view Brodie's body at that time?

7 A Yes.

8 Q And that was about a week after his death?

9 A Yes, after they had released his body.

10 Q Did you notice any bruising on Brodie that was different from when you  
11 last saw him on Sunday?

12 A Yeah, they had put some makeup on him, but the bruises on his face  
13 were still pretty extensive and then he had a bruising on his left ear.

14 Q And that ear bruise, did that stand out to you?

15 A Yeah. It was like straight -- it was a straight line right across the top of  
16 his ear. So the top of his ear was bruised, but it was like a straight line. It wasn't --  
17 there was no jagged edge or anything, it was like a straight line.

18 Q And that bruise you did not see the last time you saw Brodie alive on  
19 Sunday, June 10th?

20 A That's correct.

21 Q 12th.

22 MR. GIORDANI: No further questions, Judge. I'll pass the witness.

23 THE COURT: Cross. Are you going to be a little while with this witness?

24 MS. VON MAGDENKO: Not too long, Your Honor.

25 THE COURT: Okay. It's 12:15. The only reason I was asking I was trying to

1 figure out when to break the jury.

2 [Colloquy between counsel]

3 CROSS-EXAMINATION

4 BY MS. VON MAGDENKO:

5 Q You just testified, sir, that when you last saw Brodie alive, he did not  
6 have a bruise on his left ear?

7 A That's correct.

8 Q Do you recall being interviewed by the police after Brodie's death?

9 A Yes.

10 Q And do you recall that took place on June 24th, 2011?

11 A Yes.

12 Q Prior to today's testimony, did you have a chance to meet with the  
13 detectives and go over what you had told them prior?

14 A I was provided a copy.

15 Q Did you read it?

16 A Yes.

17 Q Isn't it true that when you were interviewed by the police, you told them  
18 that he had in fact a bruise on his left ear that was identical the one he had a month  
19 and a half prior? Isn't that true?

20 A Yes.

21 Q Okay, so your testimony the jury five seconds ago was incorrect?

22 A No.

23 Q No? When you last saw Brodie alive, he had a bruise on his left ear,  
24 correct?

25 A No.



1 Q So when you told the police that, they -- you were making an incorrect  
2 statement?

3 A No. The -- I believe the statement says that he had a bruise a month  
4 and a half prior.

5 Q No. It says he had a bruise on his left ear and it was identical to the  
6 one that he had a month and a half prior.

7 A Yes. When I seen him laying on the -- at the mortuary after his death,  
8 he had a bruise on his left ear which was identical to the one that had healed which  
9 was over a month and a half ago.

10 Q The detectives didn't ask you about the mortuary and what you saw at  
11 the mortuary, did they? They were asking you what you saw the last time you saw  
12 him alive. Weren't they?

13 A I thought they were asking me if I was -- the bruises.

14 Q Right. So they wanted to know what bruises Brodie had the last time  
15 you saw him. Right?

16 A The last time I saw Brodie --

17 Q Alive.

18 A Okay, the last time I saw Brodie, he was at the mortuary and that's  
19 when I seen all the bruises.

20 Q You never mentioned the mortuary to the detectives when you talked to  
21 them back in June, right? This is all new?

22 A I -- yes, I did not mention in that statement mortuary.

23 Q So everything that you told the police about the bruising that you saw  
24 was regarding the mortuary, it wasn't when you saw him alive?

25 MR. GIORDANI: I'm going to object to the form of that question. I don't know

1 what all the bruising and every bruise means.

2 THE COURT: Counsel, I think the question's unclear. Could you please  
3 rephrase it?

4 BY MS. VON MAGDENKO:

5 Q The detectives asked you do you remember any bruising or injuries on  
6 him when you had him that weekend. Do you --

7 A Yes.

8 Q You recall that question being asked?

9 A Yes.

10 Q The question was not asked to you do you recall what bruising Brodie  
11 had when you saw him at the mortuary, right?

12 A Okay.

13 Q So when you gave your answers to the detective, it was about what  
14 bruising Brodie had the last time you saw him that weekend, right?

15 A Okay, I believe there's -- in that statement it talks about the bruising on  
16 his right cheek and the bruise in the middle forehead. Is that in there?

17 Q Yes, it is. But the -- is my statement correct that the detectives asked  
18 you do you remember any bruising or injuries on him when you had him that  
19 weekend; is that correct?

20 A Yes.

21 Q They didn't ask you about the mortuary bruising, did they?

22 A Probably -- no. I don't believe so.

23 Q So when they asked you about bruises and injuries, you told them he  
24 had a bruise on his left ear, right? And actually you told them I noticed it when I  
25 actually seen Brodie on that Sunday.

1 A Well --

2 Q Brodie was still alive that Sunday.

3 A No, Brodie did not have the mark on his ear that Sunday.

4 Q So do you lie to the police?

5 A No.

6 Q Why did you tell the police that?

7 A I didn't lie to the police, I was -- it depends on what Sunday we're talking  
8 about, was it the Sunday -- because Brodie's body was not released for quite awhile  
9 to us.

10 Q The detective asked you do you remember any bruising or injuries on  
11 him when you had him that weekend.

12 A And I said yes.

13 Q Okay. And then you said: Ah, I actually noticed on Sunday the bruise  
14 on his left ear.

15 A Can I --

16 Q Right?

17 A Can I see that statement? Do you mind?

18 MS. VON MAGDENKO: Your Honor, may I approach?

19 THE COURT: You may.

20 MS. VON MAGDENKO: Page 49.

21 BY MS. VON MAGDENKO:

22 Q Just read right there (indiscernible) --

23 A Well the statement also says I noticed when he -- when we actually  
24 seen Brodie on Sunday, we got to visit with him and --

25 Q Did you tell them that he had a bruise on his left ear on Sunday? It's

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1 yes or no.

2 A Not the Sunday that we had him at our house, but yes a Sunday. And I  
3 believe it was a Sunday that we got to visit him at the mortuary.

4 Q You didn't say visit him on -- at the mortuary on Sunday, did you?

5 A Well, Brodie came to -- Brodie came to us. If we got to go visit Brodie,  
6 my -- the way I was reading that and if you look above and below, it was meaning  
7 that I went to visit Brodie at the --

8 Q Did you actually say that?

9 A Did I actually say I went to visit Brodie at the mortuary? No.

10 Q Okay.

11 A I said we went to visit Brodie.

12 Q After he had asked you about the weekend bruises.

13 MS. VON MAGDENKO: Your Honor, we can take a break. This is taking a  
14 little longer.

15 MR. GIORDANI: Judge, I'll do a quick redirect. I think we can --

16 MR. ALTIG: I don't think she's --

17 THE COURT: I don't think she's finished.

18 MS. VON MAGDENKO: No, I'm not finished. A lunch break because it's  
19 taking a little longer than I anticipated.

20 THE COURT: Well how much longer are you going to be, counsel?

21 MS. VON MAGDENKO: Fifteen minutes. Do you want to keep going?

22 THE COURT: Yeah, so we don't have to bring him back. Yeah, that's fine.

23 MS. VON MAGDENKO: Okay.

24 THE COURT: Oh no, no. I'm sorry, I thought you were going to finish --

25 MS. VON MAGDENKO: Oh, okay.

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1 MR. GIORDANI: Thank you, Judge.

2 THE COURT: -- your cross if you were only going to be 15 minutes.

3 MS. VON MAGDENKO: Okay.

4 THE COURT: I'm sorry --

5 MS. VON MAGDENKO: Okay.

6 THE COURT: -- for the confusion.

7 MS. VON MAGDENKO: I apologize.

8 BY MS. VON MAGDENKO:

9 Q You would play a game called typewriter on Brodie?

10 A Yes.

11 Q And you weren't trying to hurt Brodie, were you?

12 A No.

13 Q And you would touch him pretty lightly?

14 A I -- I mean I was pressing on him. I don't know if it was -- it wasn't hard.

15 Q Would you describe it as light pressure, medium pressure --

16 A Medium.

17 Q So medium pressure? And Brodie would not cry, would he?

18 A No.

19 Q Brodie would not say oh you just hurt me?

20 A No.

21 Q So you could touch Brodie in a way that would bruise him but that he  
22 would laugh?

23 A Well I didn't know I was bruising him.

24 Q No, no, no. No, I'm talking about what you knew. You would play  
25 typewriter and sometimes you would leave bruising on Brodie, right?

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1 A Yes.

2 Q During that process, the only physical signs you saw, the only external  
3 signs you saw was Brodie laughing and giggling?

4 A Yes.

5 Q You could bruise him and he wouldn't even acknowledge any pain, he  
6 bruised so easily, right?

7 A No, he didn't bruise easy.

8 Q So you're saying that you playing typewriter that was -- he should have  
9 bruised?

10 A No.

11 Q So when you play typewriter, he should not have bruised, right? That's  
12 not normal?

13 THE COURT: Hold on a second. I guess I'm confused about the context of  
14 the question. Normal for when he played the game or normal for a child in general  
15 to bruise --

16 MS. VON MAGDENKO: Normal -- I apologize. Normal for a child in general  
17 to bruise.

18 THE COURT: I don't know that he's going to be qualified to answer --

19 MS. VON MAGDENKO: Okay.

20 THE COURT: -- that question.

21 BY MS. VON MAGDENKO:

22 Q Did you play typewriter on any other children before?

23 A I got -- yeah. I mean, we play tickle games with all the grandkids.

24 Q Did any of the other grandchildren get bruising when you played  
25 typewriter and tickle games?

1 A Not that I can remember.

2 Q Okay. So was -- Brodie was different? Right?

3 A What do you -- what are you referring to Brodie was different?

4 Q That he would get bruises from the tickle and typewriter games.

5 A Not all the time, no.

6 Q I didn't ask all the time. Sometimes?

7 A Yes.

8 Q You testified before to the jury that he would sometimes bruise by  
9 playing a game. Right?

10 MR. GIORDANI: And I'm going to object to that. I believe that misstates the  
11 testimony. He said it was once or twice.

12 THE COURT: The State's correct. I believe he did state it was once or twice,  
13 not every time.

14 BY MS. VON MAGDENKO:

15 Q So the detectives asked you what bruises and injuries Brodie had that  
16 weekend. Do you recall that?

17 A Yes.

18 THE COURT: That weekend. Hold on, let's be clear as far as timeframe.  
19 Which weekend are you specifying, counsel?

20 MS. VON MAGDENKO: All -- only the weekend before his death.

21 THE COURT: All right, thank you.

22 BY MS. VON MAGDENKO:

23 Q Whenever I say that weekend, I'm referring to the last weekend of his  
24 life, if that's clear. And when they asked you those questions when they were  
25 discussing what bruises he had, you had said that you had grabbed him by the

1 armpits and down in the groin area and that little round, small bruising could  
2 probably come from that. Do you recall those questions being asked of you?

3 A Yes. I remember saying that.

4 Q Okay.

5 A I don't remember saying that I left bruises.

6 Q It was asked little, small, round bruising would most likely probably  
7 come from that and your --

8 MR. GIORDANI: Judge, I'm going to object to this question. If she needs to  
9 refresh his recollection, she can approach and show him a statement. He said he  
10 doesn't recall saying that.

11 MS. VON MAGDENKO: I can approach, Your Honor. It's page 49.

12 BY MS. VON MAGDENKO:

13 Q (Indiscernible) area that question is directed to.

14 Have you had a chance to read this now?

15 A Yeah.

16 Q Does that help refresh your recollection?

17 A Yes.

18 Q And so isn't it true that when they asked you about bruising on his chest  
19 that you had responded affirmatively that that could have come from you?

20 A The small bruising that's in that statement was on a chest. It didn't say  
21 small bruising in the armpits or in the groin area. It said the chest and neck area.

22 Q Right, the chest and neck area. That's what I'm asking you right now --

23 A Right, that's where I would play typewriter with him.

24 Q And that you responded affirmly (sic) that those bruises could come  
25 from that?



1           A     If -- yes. But at the same time you asked me if I grabbed him in the  
2 groin and armpits and that's not where I was saying the bruising was.

3           Q     Okay, so you're saying the bruising was on the chest?

4           A     Right.

5           Q     And that's what the statement says, on the chest.

6           A     Right, but you had --

7           Q     Yeah.

8           A     -- asked me a question about grabbing him in the groin and armpits.

9           Q     Yeah, but you did grab him in the groin and armpits?

10          A     Right.

11          Q     Okay.

12          A     But there was no bruising in groin and armpits.

13          Q     No, I know. I'm just saying you grabbed him in the groin and armpits  
14 and then the typewriter left bruising on his chest.

15          A     It could have, yes.

16          Q     Okay. Just so we're clear. But earlier you testified that that weekend  
17 you did not leave any typewriter bruises, you just said it was once or twice. But to  
18 the detective when he's asking you about these chest bruises, you said oh that  
19 probably came from you?

20          A     I think we're talk- -- okay.

21          Q     Right? When he asked you little, small, round bruises -- like, you know,  
22 like finger, that's little and small -- would most likely probably come from that and  
23 you said yeah. Right?

24          A     Okay.

25          Q     So your testimony is refreshed you had actually forgotten that those

1 bruises -- those typewriter bruises were actually on Brodie that weekend, right?

2 MR. GIORDANI: I'm going to object, Judge. That's not what the transcript  
3 says. We're talking about two different time periods here. He said there was a time  
4 when or one or two times when there were chest bruises from the typewriter game  
5 and now I think we're confusing that statement with the Sunday preceding Brodie's  
6 death. Two separate things.

7 THE COURT: Can you clarify which you're talking about?

8 BY MS. VON MAGDENKO:

9 Q Brodie had just died, right? When the detectives interviewed you?

10 A Yes.

11 Q They wanted to know where all this bruising came from, right?

12 A Right.

13 Q They asked you that weekend what bruising was there, right?

14 A And I believe I said the center of his forehead --

15 Q No, no, no, just answer my questions. They --

16 MR. GIORDANI: Judge, I'd ask that the witness be able to respond to the  
17 question that was asked.

18 MS. VON MAGDENKO: I did ask a question. The question was did they ask  
19 you what bruises were there. It's a yes or a no if they asked the question. I hadn't  
20 asked him tell me what you told the detectives.

21 THE COURT: Okay. Listen closely to what she's asking --

22 THE WITNESS: Yes, ma'am.

23 THE COURT: -- and answer exactly what she's asking.

24 Please ask the question again.

25 BY MS. VON MAGDENKO:

1 Q Did the detectives ask you what bruising Brodie had that weekend?

2 A Yes.

3 Q And during that conversation, they had asked you about chest bruising,  
4 correct?

5 A Yes.

6 Q And you responded that -- affirmatively when they said the chest  
7 bruising could have come from you, correct?

8 A Yes.

9 Q And then in addition to that you mentioned the forehead bruise, the  
10 cheek bruise, the chin bruising, and that you actually told the detectives he had  
11 blackish discoloration under both eyes, correct?

12 A Yes.

13 Q Is that correct?

14 A Yes.

15 Q So Brodie was rubbing his eyes so hard he caused them to become  
16 blackish?

17 A They were -- yes, they were a little discolored.

18 Q Didn't you actually tell the detectives they were blackish? Not  
19 discolored?

20 A Okay. Like I said earlier, they were like if somebody had not slept a  
21 long time --

22 Q Did you tell the detectives that at that time?

23 A I believe so.

24 Q Didn't you actually say he had blackish discoloration under his eyes  
25 from just rubbing?

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1 A Yes.

2 Q You had testified earlier that Brodie had basically a voracious appetite,  
3 he was always eating. Snacking, meals, he had a great appetite, right?

4 A Yes.

5 Q And would it be out of the ordinary if Arica testified to this court that on  
6 Tuesday, the full day prior to his death, he didn't eat his McDonald's and wouldn't  
7 eat his lasagna for dinner? Would that be out of the ordinary for Brodie?

8 A Yes.

9 Q And Brodie was a fearless child, correct?

10 A Yes.

11 Q And if you -- if Brodie did anything, you would just swat him on his  
12 diaper, correct?

13 A If we really wanted to get his attention.

14 Q When you were holding Brodie down when you had to put these painful  
15 eye drops in him, you had to -- you put your legs on him?

16 A I was sitting on the floor and my legs were outstretched and he was  
17 between my legs so his arms and his legs were underneath mine.

18 Q And you were holding his arms down and his head together?

19 A Yes.

20 Q And were you exerting more force when you were holding Brodie down  
21 as he's trying to fight you with the eye drops than you would if you were playing  
22 typewriter on him?

23 A No, because I was just using the weight of my legs to hold him in  
24 position.

25 Q So it would not be -- it would be the same force as playing typewriter?

1 A I -- I don't know how to answer that.

2 Q What has more force, the weight of your legs or your fingers?

3 MR. GIORDANI: Objection; asked and --

4 A Depends on the --

5 MR. GIORDANI: Objection; asked and answered.

6 THE COURT: I'll allow that one question.

7 MS. VON MAGDENKO: Did you -- I'm sorry, Your Honor?

8 THE COURT: Overruled. Ask the question, please.

9 BY MS. VON MAGDENKO:

10 Q Is there more force in playing a game of typewriter with your fingers or

11 with you putting your legs on a two year old?

12 A There's different types of pressure. So yes, there's different types of

13 pressure.

14 Q So was it greater pressure with your legs?

15 A I can't say it's a greater amount of pressure, it's different.

16 Q How much do you weigh? How much did you weigh at that time, I'm

17 sorry. Approximately.

18 A Two fifty.

19 Q And how much did Brodie weigh?

20 A I can't remember.

21 THE COURT: Counsel, maybe we should give the jury a break. I think

22 they're looking like they need to stand up and --

23 MS. VON MAGDENKO: Okay.

24 THE COURT: -- move around. Are you at a point where you can stop?

25 MS. VON MAGDENKO: Yes, Your Honor.

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1 THE COURT: All right. So ladies and gentlemen of the jury -- Jason, how  
2 long do you think they'll need?

3 THE MARSHAL: About six trials going, Judge, so hour and 15.

4 THE COURT: Hour and 15, so 1:45.

5 So ladies and gentlemen of the jury, please come back at 1:45. Again  
6 you're admonished not to converse amongst yourselves or with anyone on any  
7 subject connected with the trial, do not read, watch or listen any report of or  
8 commentary the trial, and do not form or express an opinion on this trial. See you  
9 soon.

10 [Jury out at 12:34 p.m.]

11 THE COURT: All right. Sir, we'll -- is there going to be anything that we need  
12 to put on the record before we go off?

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

14 THE COURT: Okay.

15 MS. VON MAGDENKO: No, Your Honor.

16 THE COURT: All right. Then we'll see you after lunch.

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

18 [Off the record at 12:34 p.m.]

19 [Proceedings resumed at 2:01 p.m.]

20 [Outside the presence of the jury]

21 THE COURT: Okay. And I believe we have all the jury here. Is there  
22 anything we need to address before the jury comes in?

23 MR. STANTON: Not from the State, Your Honor.

24 THE COURT: Okay.

25 MS. VON MAGDENKO: No, Your Honor.

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1 THE COURT: All right.

2 MR. STANTON: Did you get the word?

3 THE COURT: That's not going?

4 MR. STANTON: Yeah --

5 THE COURT: It's not because of me though.

6 MR. STANTON: Oh, no, no.

7 THE COURT: You just have to pick a month.

8 MR. STANTON: Right. We'll get that --

9 THE COURT: And we're talking about another -- a trial.

10 THE MARSHAL: District Court XXIII jury is present.

11 [Jury in at 2:02 p.m.]

12 THE COURT: Okay, welcome back, ladies and gentlemen. Let's get the  
13 witness back on the stand.

14 Mr. Moshier, sir, when you were in here last, you were placed under  
15 oath. You are still under oath at this time, sir. Do you understand?

16 THE WITNESS: Yes.

17 THE COURT: All right. Thank you.

18 Whenever you're -- let's let him get seated and then you can begin.

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

20 BY MS. VON MAGDENKO:

21 Q Mr. Moshier, if your wife -- I'm going to call her grandma since you're  
22 grandpa, if that's okay. If grandma would testify -- had testified that Brodie didn't eat  
23 his dinner Sunday night, would you agree or disagree with her assessment of that?

24 A I don't know if I actually witnessed him eating or not eating.

25 Q Was that just Sunday night?

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1 A Yeah.

2 Q Okay. We had talked about earlier when Friday before Brodie's death  
3 how you -- the position you were in when you were administering the eye drops,  
4 correct?

5 A Yes.

6 Q Where were your hands during that process?

7 A One was on the bottle and one was holding his eye open.

8 Q And how many times a day did you administer the drops to Brodie on  
9 Friday prior this death?

10 A Twice.

11 Q Twice. And do you use the same procedure both times?

12 A Yes.

13 Q And you had Brodie Saturday and Sunday, correct?

14 A Yes.

15 Q And during that time period, did you administer the drops during that  
16 following Saturday, Sunday?

17 A Yes.

18 Q And did your wife help you?

19 A Yes.

20 Q And did you change the process at all when you were administering  
21 those drops?

22 A More than likely, yes.

23 Q You don't remember?

24 A I -- there was two of us so I'm sure we held him down differently.

25 Q Could you have held his face to hold him steady?

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1 A I'm sure.

2 Q Okay. Could you have held his torso to make sure he wasn't  
3 squirming?

4 A No. More than likely it was just his head.

5 Q Just his head? But you don't really remember?

6 A I can't be 100 percent positive.

7 Q Sometimes when Michael came to pick Brodie up, Brodie would throw a  
8 fit?

9 A Yes.

10 Q And did Arica use to do the same thing when she was little?

11 A I -- well, she was 11, 12 when we started dating.

12 Q Did you tell the detectives that Arica did it with me when I first married  
13 her mom?

14 MR. GIORDANI: I'm going to object to relevance, Judge. Brodie was two and  
15 a half. He's talking about an 11 year old.

16 MS. VON MAGDENKO: As a --

17 THE COURT: Counsel --

18 MS. VON MAGDENKO: As a stepparent.

19 THE COURT: Objection sustained. I don't see the relevance in this  
20 questioning.

21 MS. VON MAGDENKO: Okay.

22 BY MS. VON MAGDENKO:

23 Q So Brodie would throw a fit when Michael would pick him up  
24 sometimes, right?

25 A Towards the end, yes.

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1 Q Okay. And isn't it true that sometimes Brodie would throw the same fits  
2 when Arica came to pick him up? Because he just didn't want to leave your house  
3 because it was so much fun?

4 A Well it was -- I don't think it was the same type of fit. I wouldn't say it  
5 was the same type of fit.

6 Q How was it a different fit?

7 A The look on his face. His actions. I mean, one was just leaving us, the  
8 other one was leaving with somebody for some reason that he didn't want to go with.

9 Q Okay, but he'd throw a fit both times with Arica and with Brodie, right?

10 A Like I said, they weren't the same type of fit. They were -- one was  
11 because he wanted to hang out with papa --

12 MS. VON MAGDENKO: Your Honor, I'm going to object to him speculating as  
13 to why Brodie was throwing a fit, unless he was articulating something specific.

14 THE COURT: I think he's responding to your question, counsel.

15 BY MS. VON MAGDENKO:

16 Q Did Brodie tell you why he was throwing a fit when Michael came to  
17 pick him up?

18 A Brodie couldn't put sentences together. He was two and a half.

19 Q Okay. So you don't know the reason behind Brodie's fit with Michael  
20 versus Brodie's fit with Arica?

21 A No --

22 Q Is that fair?

23 A He had a different look on his face when he was throwing a fit with  
24 Mike.

25 Q So when you told the detectives that Brodie said see you, papa, I'm

1 going with Mike, that was not true?

2 MR. GIORDANI: Objection. Your Honor --

3 THE COURT: What's the objection, counsel?

4 MR. GIORDANI: If she wants to refresh the witness's recollection, she can  
5 approach and do so. This is the same issue we had previously.

6 MS. VON MAGDENKO: Your Honor, I'm impeaching. He said Brodie could  
7 not formulate sentences. This is different. I don't need to refresh his recollection if  
8 I'm impeaching him.

9 MR. GIORDANI: She's asking about a specific time when the defendant  
10 picked Brodie up.

11 THE COURT: Go ahead and ask the question.

12 BY MS. VON MAGDENKO:

13 Q Did -- was Brodie able to articulate the sentence see you, papa, I'm  
14 going with Mike at a time when Mike picked Brodie up?

15 A No, he would say see you, papa.

16 Q So if the -- if your typed-written statement says, quote, see you,  
17 comma, papa, comma, I'm going with Mike, period, end quotation, that would be an  
18 incorrect typed-written assessment of what you said Brodie said? See you, papa,  
19 I'm going with Mike.

20 A That's what Brodie would say. He would like (indicating) see you, papa.

21 Q I'm going with Mike?

22 A If -- no, he would just say see you, papa, like he was going with Mike. I  
23 don't --

24 MS. VON MAGDENKO: Your Honor, can I approach the witness? It's page --

25 THE COURT: Sure.

1 MS. VON MAGDENKO: -- 51 of his -- there's only one transcript, there's no  
2 summary.

3 THE COURT: Okay, and it's a statement they gave to the police?

4 MS. VON MAGDENKO: Yes.

5 THE COURT: Okay.

6 BY MS. VON MAGDENKO:

7 Q I'm just going to direct you to the quotation marks.

8 A Okay.

9 Q Did you tell that to the police?

10 A Yes.

11 Q It's your understanding that Michael was not present when Brodie was  
12 found dead, right?

13 A Is my understanding he was at work.

14 MR. GIORDANI: Objection. He was not present. He's not a percipient  
15 witness. It's outside the scope of his knowledge.

16 BY MS. VON MAGDENKO:

17 Q Michael called you after Brodie's death? Couple times you testified to?

18 A When I was -- when Arica and Merridee were in the back office with  
19 Detective Collins.

20 Q And --

21 A That was Friday.

22 Q Friday. And based upon your conversation with Michael, Michael  
23 wasn't present during the death and he wanted to know what happened to Brodie?

24 A I don't know.

25 Q Okay.

1 A He was just asking me what the detectives were telling us.  
2 Q Is your experience that a child can take an attitude with a stepparent?  
3 A In my -- yeah, in my history, yes.  
4 Q So that's normal behavior?  
5 A I guess --  
6 Q And --  
7 A -- in some families, yes; in other families, no.  
8 Q Well in your family, in your experience.  
9 A We had some difficulties with the kids, yeah.  
10 Q And did you opine -- did you state to the detectives that Brodie didn't  
11 want to share mommy?  
12 A I said it may have been why -- I think -- I think -- I think I might have  
13 said Brodie may have been acting like he didn't want to share his mommy with the  
14 new live-in.  
15 Q During the weekend prior to Brodie's death, did you ever watch any  
16 wrestling on TV with the children?  
17 A No.  
18 Q Prior to that, did you ever?  
19 A No.  
20 Q But you would play wrestle at times?  
21 A We'd be rolling around on the floor, but it's not wrestling.  
22 Q Okay. It's not wrestling?  
23 A Are you talking like WWE wrestling, are you talking --  
24 Q Just wrestling in general. However you would define wrestling.  
25 A I mean if you call my grandson climbing on top of me wrestling, then I

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1 guess that would be wrestling.

2 Q Well did you tell the detectives we would always wrestle on our master  
3 bed after the bath?

4 A Yes. I guess if it's in the statement.

5 Q Isn't it true you told the detectives that you thought Michael was eager  
6 to come pick Brodie up; that Michael seemed to want to be a part of Brodie's life?

7 A At first, yes.

8 Q Did you tell the detectives that Michael had changed in his eagerness to  
9 pick Brodie up?

10 A I -- I don't know, I'd have to review --

11 Q Well you talked about earlier you had a chance to review it already,  
12 right?

13 A Well yes, there's quite a few pages.

14 Q But as you sit here today, you don't remember actually saying that?

15 A I know at one -- when he was -- when they first started the relationship,  
16 Mike would come over, Mike was playing with him, and we even told Mike that if at  
17 any time he didn't want to come pick up Brodie that he didn't need to. If he, you  
18 know, had something doing, he could have left Brodie at our house.

19 Q What was Michael's response to that?

20 MR. GIORDANI: Objection. That's hearsay.

21 MS. VON MAGDENKO: It's from the defendant.

22 MR. GIORDANI: It's a party opponent and that's not their opponent.

23 THE COURT: Just ask the question. That's fine.

24 BY MS. VON MAGDENKO:

25 Q What was Michael's response?

1 A I don't remember if he had a response or if he just came and picked up  
2 Brodie anyways.

3 Q Okay.

4 MS. VON MAGDENKO: No further questions.

5 REDIRECT EXAMINATION

6 BY MR. GIORDANI:

7 Q I'm going to hit a few specific areas with you and I'll try to be brief.

8 A Okay.

9 Q You talked about the see you, papa, I'm going with Mike statement. Do  
10 you remember that line of questioning?

11 A Yes.

12 Q When was that in the relationship between Michael, the defendant, and  
13 Brodie?

14 A That was in the first part of the relationship --

15 Q And at some point did you notice a change in Brodie when Michael, the  
16 defendant, would come to pick him up?

17 A Yes.

18 Q And when was that?

19 A Towards the end.

20 Q Okay.

21 A Just before --

22 Q Toward the end --

23 A Just before his death.

24 Q Okay. Do you remember a series of questions about fits he would  
25 throw?

1 A Yes.

2 Q And specifically with regard to the fits he would throw with the  
3 defendant and the fits he would throw when Arica tried to come pick him up.

4 A Yes.

5 Q You described them as being different.

6 A Yes.

7 Q What did you mean by that?

8 A The look on his face. I mean, he knew he could try to -- with his mom,  
9 he could try to weasel --

10 MS. VON MAGDENKO: Objection; calls for speculation about what Brodie  
11 knew he could do.

12 MR. GIORDANI: And if --

13 THE COURT: That'd be sustained. Perhaps if you ask it a different way.

14 BY MR. GIORDANI:

15 Q If you could describe the types of behaviors you observed Brodie doing  
16 when the defendant would come versus when Arica would come and he would  
17 throw a fit.

18 A When -- when Brodie would throw a fit when his mommas come in, it  
19 was he didn't have a look of fear on his face. It was more of like trying to get  
20 something out of a parent where they're kind of smiling but kind of throwing a fit. So  
21 you know they're --

22 MS. VON MAGDENKO: Objection, Your Honor --

23 A -- or you think --

24 MS. VON MAGDENKO: -- calls for speculation. He's saying again saying  
25 fear on Brodie's face. He's not physically describing it. He's ascribing an emotion to

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1 Brodie.

2 MR. GIORDANI: Judge, I've got enough. I can move on to a different  
3 subject.

4 THE COURT: That's fine.

5 BY MR. GIORDANI:

6 Q Do you remember a series of questions about eye drops?

7 A Yes.

8 Q And how you put them in to Brodie's eyes?

9 A Yes.

10 Q You said that you gave him on two different occasions eye drops?

11 A On Friday, yes.

12 Q Okay. And throughout the weekend, Friday, June 10th, through the  
13 Sunday, June 12th, did you give it to him more times?

14 A I think we just two or three times depends on what the prescription was  
15 called for.

16 Q Okay. And there were other people around, Merridee and Lily?

17 A Yes.

18 Q And you had to hold Brodie down?

19 A Yes.

20 Q I assume you didn't hold him down the mechanical way the same time  
21 -- same way every single time you put the drops in, right?

22 A No.

23 Q When you held him down on any occasion to put those drops in, did he  
24 ever scream in pain?

25 A No, he was screaming about the eye drops, the actual eye drops.

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1 Q Was it clear to you that he didn't like the eye drops being put in?

2 A Yes.

3 Q Did you use an amount of force that left injuries to his body that you  
4 saw?

5 A No.

6 MS. VON MAGDENKO: Objection; calls for speculation.

7 MR. GIORDANI: I just asked if there were injuries to the body that he --

8 THE COURT: Overruled.

9 MR. GIORDANI: Thank you.

10 THE COURT: He can testify what he saw.

11 BY MR. GIORDANI:

12 Q There was a line of questioning before the break today about ear  
13 injuries to Brodie?

14 A Yes.

15 Q And it became very confusing about the date of the bruising.

16 A Yes.

17 Q Do you remember your statements to the detectives?

18 A Yes, they were -- they were kind of general because we were going  
19 over bruises and it was, you know, confusing the days and -- but I --

20 Q Let me ask you this way. Did you stay in a chronological line  
21 throughout your interview and answer session?

22 A No, we were bouncing all over the place.

23 Q Okay. And you explained an injury to Brodie that you saw to his ear  
24 and it was on a Sunday?

25 A Yes.

1 Q And did you then clarify that that was at the viewing?  
2 A Yes.  
3 Q And what is the viewing?  
4 A When we went up to the mortuary to see Brodie.  
5 Q And that would be postmortem?  
6 A Yes.  
7 Q You described with defense counsel that injury being seen a month and  
8 a half prior?  
9 A Yeah, there was a injury very similar to the one that I seen on that  
10 Sunday at the mortuary --  
11 Q Okay.  
12 A -- that had healed already.  
13 Q Okay. So it had healed at the point of Brodie's death?  
14 A Yes.  
15 Q And it was a month and a half before you saw the injury at the viewing?  
16 A Right. The first injury was a month and a half, that one healed, and  
17 then we saw one that was almost identical at the mortuary.  
18 Q Okay, so I want to be very clear about Sunday, June 12th, the last day  
19 you and Merridee babysat --  
20 A Yes.  
21 Q -- is that fair?  
22 A Yes.  
23 Q On that day, did you see anything on his ear at all?  
24 A No.  
25 Q Okay. What did you see on Brodie's body that Sunday and the

1 preceding Friday and Saturday since you had him all weekend?

2 A The dot in the forehead, the bruise on the cheek, and some bruising on  
3 his shins and knees areas.

4 Q Absolutely nothing else?

5 A Nothing else.

6 Q Did you ever during that weekend that operative -- the 10th to the 12th,  
7 Friday to Sunday, ever see Brodie exhibit any signs of head pain?

8 A No.

9 Q Abdominal pain?

10 A No.

11 Q Vomiting?

12 A No.

13 Q Diarrhea?

14 A No.

15 Q Nausea?

16 A No.

17 Q And was his appetite normal from what you saw?

18 A Yes.

19 MR. GIORDANI: I'll pass the witness.

20 THE COURT: Anything else of this witness?

21 MS. VON MAGDENKO: Yeah, just one question, Your Honor.

22 RECROSS EXAMINATION

23 BY MS. VON MAGDENKO:

24 Q If right before Brodie's death you felt that Brodie was exhibiting fear  
25 towards the defendant, why would you let Brodie go with him?

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1 A We didn't -- I said he was making a face. I took it as fear on his face,  
2 but as you pointed out, we can't know what he was actually thinking.

3 Q Okay.

4 MS. VON MAGDENKO: No further questions.

5 THE COURT: All right. Anything else of Mr. Moshier?

6 MR. GIORDANI: No, Judge, not from the State.

7 THE COURT: Thank you, sir, for your time. You're free to go, sir.

8 THE WITNESS: Thank you.

9 THE COURT: Next witness please.

10 MR. GIORDANI: State would call Dr. Hesham Sirsy.

11 [Pause]

12 THE MARSHAL: Stand right here. Face the clerk. Raise your right hand,  
13 please.

14 HESHAM SIRSY

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

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

18 THE WITNESS: Hesham Sirsy.

19 THE COURT: Can you spell --

20 MR. GIORDANI: Can you please spell it?

21 THE WITNESS: H-e-s-h-a-m S-i-r-s-y.

22 THE COURT: Whenever you're ready.

23 MR. GIORDANI: Thank you, Your Honor.

24 DIRECT EXAMINATION OF HESHAM SIRSY

25 BY MR. GIORDANI:

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1 Q Doctor, what do you do for a living?  
2 A I'm a pediatrician.  
3 Q And as a pediatrician, what's your primary purpose on the job?  
4 A To take care of children from birth to age 18.  
5 Q Age of 15?  
6 A Eighteen.  
7 Q Eighteen, okay. And what type of education and experience did you  
8 have to have to become a pediatrician?  
9 A I have to have a medical diploma and do a residency program and do a  
10 board certification.  
11 Q And you are board certified?  
12 A Yes.  
13 Q Do you work at a particular practice or hospital or what?  
14 A No, I work in my private office, my practice --  
15 Q Is that ABC Pediatrics?  
16 A ABC Pediatrics.  
17 Q How many staff do you have there?  
18 A I have four.  
19 Q Is there other doctors there or is it just you?  
20 A Just me.  
21 Q And how many patients, if you could guess, do you see on a weekly  
22 basis?  
23 A On a weekly basis? Around 150.  
24 Q Do you know how many patients you have in total?  
25 A In one week?

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1 Q No. In total. I'm guessing you probably don't know how many patients  
2 you have.

3 A No.

4 Q Okay. How long have you been at ABC Pediatrics?

5 A Since '98, so it's about 16 years.

6 Q And that's 1998?

7 A Yeah.

8 Q And I assume you were the only doctor there?

9 A Yes.

10 Q For that period of time?

11 A I have couple of doctors join me, but I'm the only one.

12 Q Okay. And throughout that time period, can you approximate how  
13 many two to three-year-old children you saw as a doctor? Is it in the thousands?

14 A Yeah, I mean this would been like 16 years so I -- thousands of visits,  
15 yeah.

16 Q Fair to say you've been around a fair number of two to three-year-old  
17 children?

18 A Yes.

19 Q And are you familiar then based on your experience with the typical  
20 bumps and bruises that a two to three year old would have?

21 A Yes.

22 Q And do you keep a lookout during any office visit for bruises or injuries  
23 that would stand out and cause you concern?

24 A Yeah, if something abnormally located, you know, I mean looks  
25 suspicious, I have to really look at this and examine them very carefully.

1 Q And --

2 A But if it's a normal location, you know, I mean for bruises for this age  
3 because they learn how to walk and they can have bruises in normal area but --

4 Q Sure. Now when you're looking at a child or examining a patient and  
5 you see something that's out of the ordinary, do you have a duty to report that?

6 A Yes, of course.

7 Q And is that called a mandatory reporter?

8 A Yes.

9 Q And when I say report, who do you have to report suspicious injuries to  
10 if you suspect abuse?

11 A Family service.

12 Q Okay. Can you generally describe kind of what goes on when a patient  
13 comes in to see you? I assume they come in and speak to the front desk?

14 A They first sign in, then wait in the waiting room, and she calls them and  
15 they go back because the medical assistant --

16 Q Okay.

17 A -- takes their vitals and puts them in the room waiting for me to see.

18 Q And when you go into the room, do you have information going in?  
19 Have you spoken with your staff and do you know the reason for the visit?

20 A Yeah, it's -- she writes a history and I look at the history.

21 Q Okay, so you know why you're going in to treat this patient?

22 A Yeah, I got chartal (phonetic) system and laptop so I can look --

23 Q Okay.

24 A -- what's going on.

25 Q And from a general perspective, if someone say comes in for a runny

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1 nose, are you just looking at the kid's nose when he's in the room or are you also  
2 looking for apparent other injuries or other issues that could explain what's going  
3 on? Are you simply limited to what they're coming for?

4 A Sick visits usually different than well and -- or physical exam --

5 Q Okay, so --

6 A -- and so sick visits usually focusing on the local -- but sometimes I  
7 have to look in the ear. If runny nose, could have ear infection so I have to look.

8 Q Okay, and you mentioned three different types of visits; a sick visit, well  
9 visit, and a full physical exam.

10 A Well and physical are the same.

11 Q What is a well or physical?

12 A Well is -- it's comprehensive visit. We have to really examine all the  
13 systems and all parts of the body.

14 Q Okay. When you do that, physically how do you examine all the  
15 systems? Do you do it visually?

16 A History, visually and all the -- all the organs. Undress the patient and  
17 look everywhere.

18 Q And you undress the patient --

19 A Yes.

20 Q -- head to toe and look in all areas of the body?

21 A Yes.

22 Q And that's during a well or a physical?

23 A Yes.

24 Q And for a sick visit --

25 A It depends on what is it. You know, I mean --

1 Q But it's limited to whatever complaint --  
2 A Yeah.  
3 Q -- the patient has? Do you remember a patient by the name of Brodie  
4 Aschenbrenner?  
5 A Yes.  
6 Q And do you remember Brodie's mom? Or do you remember him  
7 coming in with a female?  
8 A Yes.  
9 Q On a number of different occasions?  
10 A Yes.  
11 Q Do you remember him coming in with anyone else?  
12 A I remember was grandma.  
13 Q Okay. Do you recall as you sit here today how many times you saw  
14 Brodie Aschenbrenner as a patient?  
15 A By looking at the charts, you know, I look -- I seen him 11 times.  
16 Q And you mentioned the charts. Are those your medical records that you  
17 keep?  
18 A Yes.  
19 Q Do you keep those in every single case and patient in the ordinary  
20 course of your business?  
21 A Yes.  
22 Q And you reviewed those records before you came in today?  
23 A Yes.  
24 Q In preparation for your testimony?  
25 A Yes.

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1 Q And you said 11 different times?

2 A Yes.

3 Q And that was over the course of how long? Approximately.

4 A About seven months.

5 Q Okay. Each of the 11 times, did Brodie come back to the exam room  
6 and see you in your office -- or in the exam room?

7 A Yes.

8 Q Did the mom or grandma come back into the room with you?

9 A Yes.

10 Q So you don't just see Brodie alone, it's the parent present?

11 A Yes.

12 Q What type of child was Brodie if you can describe him?

13 A He was well nourished, well developed, White American child, normal.

14 Q Normal?

15 A Yeah.

16 Q And you spent time obviously around the mother when she's with  
17 Brodie?

18 A Yes.

19 Q And what was the relationship that you observed between them?

20 A Normal relationship was between doctor and mother.

21 Q Okay. I'm talking about the relationship between mother and son.

22 A And son.

23 Q Did it appear appropriate to you?

24 A Yes.

25 Q The interactions that you observed?

1 A Yes.

2 Q And you've observed hundreds of other interactions between parents  
3 and children?

4 A Yes, if something abnormal, I notice right away.

5 Q Okay. I'm going to briefly go over the details of some specific visits.  
6 You mentioned 11 of them and I'm going to breeze through a number of them and  
7 get to two specifically in depth. Let me start with the first time you saw him back in  
8 November 10th of 2010. Do you recall what that was for?

9 A I -- I'm not sure but --

10 Q And would it help you to look at the records?

11 A Yes, please.

12 MR. GIORDANI: May I approach, Judge?

13 THE WITNESS: I think it was for ear infection --

14 THE COURT: Yes, you may.

15 THE WITNESS: I'm sorry.

16 THE COURT: No, I was talking to the attorney, sir.

17 BY MR. GIORDANI:

18 Q Would it assist you in testifying if you held these records up and  
19 refreshed your recollection and flipped them over every time?

20 A Okay.

21 Q So I can leave them up with you?

22 A Uh-huh.

23 Yeah, it was November 10, 2010.

24 Q What type of visit was that?

25 A Was a sick visit and he had some kind of cold -- diagnosis cold,

1 Eustachian tube dysfunction.

2 Q What is that for the ladies and gentlemen real briefly?

3 A It's pressure on the eardrum.

4 Q So he had ear problems?

5 A He had ear problem, yeah.

6 Q And did those problems kind of persist throughout you seeing him as a  
7 patient?

8 A Yes.

9 Q At some point did you become aware that he got tubes in his ears?

10 A Yes.

11 Q And did those problems with his ears generally subside at that point?

12 A Yeah, after a few visits it's went away --

13 Q Okay.

14 A -- by himself.

15 Q You saw him again on December 9th of 2010?

16 A Yes.

17 Q Do you remember what the purpose of that visit was?

18 A Yes, he had like a sutured wound in his left eyelid.

19 Q And suture, is that another word for stitches?

20 A Yes.

21 Q And do you recall who brought him in to the office to see you that day?

22 A It was mom.

23 Q And what was the purpose of bringing him into you if he already had the  
24 stitches?

25 A Usually is the check and is there infection or he need -- is the sutured

1 helping the healing.

2 Q So it's a follow-up visit?

3 A Follow up.

4 Q To make sure everything's healing?

5 A Yeah.

6 Q Okay. I'm going to skip over a few visits, but would you agree with me  
7 that you saw him on December 13th of 2010, December 30th of 2010, January 13th  
8 of 2011?

9 A Yes.

10 Q All those days?

11 A Yes.

12 Q You saw him again on January 20th of 2011?

13 A Yes.

14 Q February 1st of 2011?

15 A Yes.

16 Q February 9th of 2011?

17 A Yes.

18 Q February 22nd, 2011?

19 A Yes.

20 Q And the following two visits I want to get in a little more detail. You can  
21 set that down for now. Do you remember the May 27th of 2011 visit?

22 A Yes.

23 Q And do you recall what the purpose for that visit was?

24 A Well, if I recall it was follow up on motor vehicle accident.

25 Q Follow up on motor vehicle accident?

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1 A Yeah.

2 Q Did you know when the motor vehicle accident occurred?

3 A The day before.

4 Q Okay. Who brought Brodie in to see you that day?

5 A Mom.

6 Q What types of things did you look at on Brodie that day?

7 A In motor vehicle accident, I have to look in everything is like complete

8 physical.

9 Q Okay. From head to toe?

10 A Head to toe.

11 Q And what are you looking for -- what signs are you looking for, what

12 abnormalities?

13 A I look for any bruises, I look for any fractures, I look of any internal

14 bleeding or -- or any fracture ribs or problem breathing, air entry, any guarding in his

15 -- abdominal bleeding, any hip fracture --

16 Q How do you look for abdominal bleeding?

17 A Mainly you know if there is any guarding or very tenderness or signs of

18 rigidity of the abdomen.

19 Q So you actually physically touch --

20 A Yeah --

21 Q -- the child's abdomen?

22 A Yeah.

23 Q And you also visually look at the child's --

24 A Yes.

25 Q And did you do that to Brodie on May 27th?

1 A Yes.

2 Q And did he have any issues whatsoever with his abdomen?

3 A No.

4 Q Did he have any swelling?

5 A No.

6 Q Any rigidity in the abdomen?

7 A No.

8 Q And did he indicate any signs of pain whatsoever?

9 A No.

10 Q Did you also examine his head that day?

11 A Yes.

12 Q And what were you looking for there?

13 A I look first for his pupils and reaction to light. I look for any bruises, any

14 fractures and --

15 Q Do you physically palpate his skull --

16 A Palpate.

17 Q -- or touch his skull? And did you have any indication whatsoever that

18 Brodie had injuries to his head?

19 A No indication.

20 Q Okay. Now, with regard to Brodie specifically, did he come in at times

21 and you see bumps and bruises on him that you necessarily wouldn't put down in

22 your records?

23 A If it's like I -- I say, you know, if it's in -- in normal places for a kid of this

24 age, I don't really --

25 Q Okay. Is the reason for that that you know kids have bumps and

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1 bruises so you don't need to write down every single time they have a paper cut?

2 A Yes.

3 Q Okay. Moving on to -- actually, on that day -- May 27th is after the  
4 motor vehicle accident. Do you recall being informed by Arica that there were  
5 potential issues with Brodie bruising too easily?

6 A Yes.

7 Q And based upon that, did you do something?

8 A Yes, I -- I order some bloodwork to rule out any bleeding tendencies  
9 and --

10 Q What does that bloodwork tell you?

11 A It tell me if has low platelet counts which can cause bleeding tendency  
12 or --

13 Q Low platelets?

14 A Yeah.

15 Q And did you send those out to another lab?

16 A Yeah, they send the blood to -- to Quest lab.

17 Q So you actually drew Brodie's blood and sent that blood out to another  
18 lab?

19 A No, I didn't draw the blood. I sent him to the lab to draw the blood.

20 Q Okay. And were you informed of the results of that test?

21 A Yes.

22 Q For you to be able to tell Arica, the mother --

23 A Yes.

24 Q -- that everything was okay or something was up?

25 A Yes.

1 Q And you received those results?

2 A Yes, I received it and I called the mom. And they are here, yeah.

3 Q And did you have any concerns whatsoever with Brodie having platelet  
4 issues that would cause him to bruise too easily?

5 A No.

6 Q Moving on to the June 10th visit, June 10th of 2011, and I'm going to  
7 show you State's Exhibit 77 if that helps you. Do you recall a visit with Brodie on  
8 that day, June 10th of 2011?

9 A Can you repeat the question again? I'm sorry.

10 Q Do you recall Brodie coming in with his mom to see you on June 10th of  
11 2011?

12 A Yes.

13 Q And do you recall the purpose of that visit?

14 A Yeah, pinkeye.

15 Q Pinkeye?

16 A Yeah.

17 Q And could you tell from just looking at Brodie that he had the pinkeye or  
18 an issue --

19 A Yes.

20 Q -- with his eye? Did you do a full examination that day or a sick visit  
21 examination?

22 A Sick visit exam.

23 Q Okay. During the course of that examination, did you look at Brodie's  
24 body?

25 A I mainly focus on the eye and the ear because sometimes eye infection

1 goes with ear infection, and also I look in the nose and throat.

2 Q Okay. So you're examining his head generally?

3 A Yeah.

4 Q Do you recall seeing any bruises to his arms or legs that were  
5 exposed?

6 A I -- I don't recall.

7 Q Okay. And if you would have seen bruises to his arms and legs, would  
8 you have documented them if they caused you concern?

9 A Yes.

10 Q Okay. Do you remember seeing any bruises to Brodie's face that  
11 caused you concern?

12 A No, I don't remember.

13 Q Do you recall a bruise to his cheek, either side?

14 A No, I don't recall.

15 Q Did you -- do you remember looking at his bare torso on that day, June  
16 10th?

17 A No, I didn't.

18 Q Okay. I'm going to show you a series of photos, Doctor, and I apologize  
19 for the nature of them.

20 MR. GIORDANI: May I publish, Your Honor?

21 THE COURT: They've been previously admitted?

22 MR. GIORDANI: Yes, they're State's 48 through -- oh geez, they're out of  
23 order. State's 3, 60, 53, 52, 50 and 48.

24 THE COURT: All right.

25 MR. ALTIG: May we approach briefly, Your Honor.

1 THE COURT: Yes.

2 MR. ALTIG: Thank you.

3 [Bench conference begins at 2:36 p.m.]

4 MR. ALTIG: I believe the witness testified that he did not look at Brodie's bare  
5 body that day. He said he does not recall having done that. So now they're going to  
6 go ahead and publish the autopsy photos again --

7 MR. GIORDANI: Oh no. I'm sorry. I'm only publishing the face and the lower  
8 arms.

9 MR. ALTIG: Okay, because you have --

10 MR. GIORDANI: That's it.

11 MR. ALTIG: -- the whole photo --

12 MR. GIORDANI: I know. I had the whole stack out.

13 MR. ALTIG: Okay.

14 MR. GIORDANI: I'm not publishing --

15 THE COURT: Okay.

16 MR. GIORDANI: -- all the body photos.

17 MR. ALTIG: Okay.

18 MS. VON MAGDENKO: Wait, wait, wait, wait. He testified he doesn't recall if  
19 there was bruising on his face.

20 THE COURT: He --

21 MR. STANTON: Yeah, I don't think that's going to be the subject of his  
22 questions.

23 MR. ALTIG: Thank you.

24 [Bench conference ends at 2:37 p.m.]

25 BY MR. GIORDANI:

1 Q Just so the record is clear, I'm going to show you only one or two  
2 photos.

3 THE COURT: Please let defense counsel know which ones before you  
4 publish.

5 MR. GIORDANI: I will, Judge.

6 [Colloquy between counsel]

7 BY MR. GIORDANI:

8 Q Showing you State's 53. When you saw Brodie on June 10th of 2011,  
9 do you recall seeing any of these bruises on his face?

10 A Not at all.

11 Q If you would have seen any of these bruises, would you have reported  
12 to DPS (sic) or family services regarding --

13 A Right away, yeah.

14 MR. GIORDANI: Pass the witness, Judge.

15 CROSS-EXAMINATION

16 BY MS. VON MAGDENKO:

17 Q After the May 27th motor vehicle accident, and that was approximately  
18 three weeks prior to Brodie's death, you did a full abdomen exam, correct?

19 A Yes.

20 Q And during the June 10th exam, you did not examine his abdomen,  
21 correct?

22 A No.

23 Q All right. Even though the platelet count came back normal, did you  
24 have an explanation for why Brodie was bruising so easily?

25 MR. GIORDANI: Well objection. That's outside the scope of his knowledge.

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1 I don't think he was present when the bruises were inflicted and he just said that he  
2 had no concerns from the --

3 THE COURT: I think the question probably is what were the results of the  
4 blood test. Is that what you're going at?

5 MS. VON MAGDENKO: A medical cause. So the platelets came back  
6 normal --

7 THE COURT: Ask the doctor.

8 MS. VON MAGDENKO: Okay.

9 BY MS. VON MAGDENKO:

10 Q The platelets came back normal, correct?

11 A Yes.

12 Q Did you have a medical explanation, aside from the platelets, of why  
13 Brodie was bruising so easily according to the mother?

14 A Well, I didn't see any bruising so I -- is very hard for me to tell if there  
15 was bruising or not, or maybe the location was normal for two years old. So I just --  
16 if it -- if it -- if it look abnormal size or bleeding from orifices like nose or any -- was  
17 any urine or anything like that, I would be really concern, but when I did this  
18 bloodwork I felt comfortable that there was no problem.

19 Q So you didn't follow up with the mother's concern of the easy bruising?

20 A Like I said, you know, I -- I -- I felt, you know, this is normal bruising for  
21 two years old child.

22 Q Okay. As you sit here today, do you have an independent recollection  
23 of Brodie on June 10th, 2011?

24 A Well I mean, of course been a long time, but from looking at the  
25 records, he had the pinkeye.

1 Q That wasn't my question. Do you -- aside -- if you take the records  
2 away, do you have an independent recollection -- can you see Brodie in your mind  
3 on June 10th, 2011 when you did that examination?

4 A It would be very hard, yeah.

5 Q So --

6 A I have to look at the record.

7 Q So the answer is no --

8 A Yeah.

9 Q -- you don't have an independent recollection?

10 A Yeah.

11 Q Is that correct just for the record? Is my question correct?

12 A Yes.

13 Q Okay.

14 MS. VON MAGDENKO: I have no further questions.

15 MR. GIORDANI: Just one --

16 THE COURT: Redirect?

17 MR. GIORDANI: Just one, Judge.

18 REDIRECT EXAMINATION

19 BY MR. GIORDANI:

20 Q To be clear, I'm not asking you if you had seen or if you have an  
21 independent recollection of seeing him that day, but if I -- if you saw any of the  
22 injuries that were in that photo I just showed you, would you have reported and done  
23 something about it?

24 A Of course, yeah.

25 MR. GIORDANI: Nothing further.

1 MS. VON MAGDENKO: Nothing --

2 THE COURT: Is the doctor free to go?

3 MS. VON MAGDENKO: Yes, Your Honor.

4 THE COURT: Thank you, Doctor.

5 THE WITNESS: Thank you.

6 THE COURT: Next witness?

7 MR. GIORDANI: Court's indulgence.

8 [Colloquy between counsel]

9 MR. GIORDANI: Thank you, sir.

10 The State's going to call Alayne Opie to the stand.

11 MR. STANTON: And, Your Honor, while that witness is coming in, can we  
12 approach on a schedule matter?

13 THE COURT: Yes.

14 [Bench conference begins at 2:41 p.m.]

15 MR. STANTON: We have one more witness for this afternoon and there's a  
16 series of three final witnesses that have to be kind of taken in order to make sense.  
17 They're the defendant's sister and then a case detective and the defendant's best  
18 friend. So I just want to let you -- the Court know -- I told your staff earlier that I don't  
19 think we're going to be -- you know, take all the way up to 5:00 today. And then if  
20 we start at 9:30 tomorrow --

21 [Colloquy between counsel]

22 MR. STANTON: But -- won't be the whole day tomorrow, just so you can  
23 advise the jury because we'll be done after those three witnesses if we start at 9:30  
24 tomorrow. So we're going to be done before the end of the day. I don't know how  
25 long they expect to cross on those witnesses, but I don't think it's going to take the



1 whole day.

2 THE COURT: Do you have any witnesses scheduled for tomorrow?

3 MS. VON MAGDENKO: No.

4 MR. ALTIG: No.

5 THE COURT: You're going to start on Monday?

6 MR. ALTIG: (Indiscernible) --

7 MS. VON MAGDENKO: Actually, one of our witnesses is flying back from  
8 back east. He's not available till next Thursday afternoon. He's the pathologist. I'm  
9 trying to get him in earlier, but that was the soonest he could come in due to his  
10 other trial testimony. He's stuck in a trial (indiscernible) court. So --

11 THE COURT: Okay. That means we're going to have a gap in days probably  
12 on the trial.

13 MS. VON MAGDENKO: Yeah. Definitely Wednesday --

14 THE COURT: Okay.

15 MS. VON MAGDENKO: -- for sure.

16 THE COURT: Well we'll figure this out when the jury's not waiting.

17 [Bench conference ends at 2:42 p.m.]

18 MR. GIORDANI: Judge, just so the record is clear, I was informed by your  
19 marshal that Alayne Opie's not yet outside so I'm calling a Joanna Zavala instead.

20 THE COURT: That's fine.

21 [Pause]

22 THE MARSHAL: Please remain standing. Raise your right hand, be sworn in  
23 by our clerk.

24 JOANNA ZAVALA

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

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

3 THE WITNESS: Joanna Zavala, and last name is Z, as in zebra, a-v, as in  
4 Victor, a-l-a.

5 THE COURT: Whenever you're ready.

6 MR. GIORDANI: Thank you, Judge.

7 DIRECT EXAMINATION OF JOANNA ZAVALA

8 BY MR. GIORDANI:

9 Q Ma'am, you're wearing scrubs here in court today; is that fair?

10 A Yes.

11 Q What do you do for a living?

12 A I'm a medical assistant.

13 Q And where at?

14 A Bright Futures Pediatrics.

15 Q Did you previously work at an ABC Pediatrics in Henderson, Nevada?

16 A I did.

17 Q And were you familiar with a patient there by the name of Brodie  
18 Aschenbrenner?

19 A I am.

20 Q And I'm showing you State's 3. Is that Brodie?

21 A Yes.

22 Q Were you present on a number of occasions when Brodie came in to  
23 see the doctor?

24 A I was.

25 Q And who did Brodie come in with?

1 A Mom.

2 Q Mom. Is that Arica Foster?

3 A Yes.

4 Q And did you observe Arica and Brodie interact?

5 A I did.

6 Q What's your position there at ABC?

7 A I was a medical assistant. I roomed the patients.

8 Q What does that mean?

9 A I would take their vitals, find out their chief complaints to find out why

10 they're being seen by the physician.

11 Q Okay, so you actually have them back in the exam room?

12 A Yes.

13 Q And you do the preliminary stuff before the doctor comes in?

14 A Correct.

15 Q Okay. If you could estimate, how many times did you see Brodie there

16 with Arica? And if you can't, that's okay.

17 A I can't say for sure how many times --

18 Q A number of times?

19 A -- I've seen him, but it's -- it was quite a few times.

20 Q Okay. I want to draw your specific attention to May 27th of 2011. Do

21 you recall that visit?

22 A Sort of.

23 Q Okay. What do you mean by that?

24 A I remember seeing him. I remember because our interaction with the

25 kids we play with them to make them feel a little bit more comfortable, so being

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1 friendly. And I kind of remember that mom came in concerned I think about bruising  
2 easily.

3 Q Okay. So I'll represent to you that we're talking about the same visit,  
4 May 27th of 2011.

5 A Correct.

6 Q And you remember mom being concerned about bruising?

7 A Yes.

8 Q Before we get into the details of that, was the interaction between mom  
9 and Brodie appropriate that day?

10 A As far as I can remember, yes.

11 Q And was it generally appropriate any time you saw them together?

12 A Yes.

13 Q What type of kid was Brodie?

14 A He was a fun loving little boy. He would always play either with -- they  
15 had playhouses in the front in the waiting rooms and mom always would tell him that  
16 we had to go and he didn't want to go. He was -- just wanted to stay and play.

17 Q Okay. And on that May 27th date, was Brodie acting like his normal  
18 playful self?

19 A As far as I can remember, yes.

20 Q Do you think it would stand out in your mind if he was acting odd or  
21 different than his normal playful self?

22 A Possibly.

23 Q Okay. Do you recall whether he had also had issues with pinkeye?

24 A Yes, but I can't tell you what date.

25 Q Okay. If I were to represent to you that he came in on June 10th, 2011,

1 does that sound about right?

2 A Yes.

3 Q About two weeks after that 5/27 visit?

4 A Yes.

5 Q So you recall seeing him on that day?

6 A Yes.

7 Q What was his demeanor like that day? Was he normal playful Brodie?

8 A Yes.

9 Q Did you see him interact with mom on that day?

10 A Yes.

11 Q Did he ever indicate or show signs that he was injured severely in any  
12 way?

13 A Not that I can remember.

14 Q Do you remember anyone mentioning to you anything about a red  
15 Power Wheels or him falling off his bike?

16 A It sounds familiar, but I can't specify what day that was.

17 Q Okay. Do you recall a small bruise to Brodie's cheek on that visit you  
18 saw him?

19 A Kind of I seen some redness, but I couldn't tell you if it was from the  
20 pinkeye or from a bruise.

21 Q Okay. And on those two days, May 27th, 2011 and June 10th of 2011,  
22 at any point did he do anything out of the ordinary or exhibit any signs that he was  
23 injured severely?

24 A Not that I can remember.

25 MR. GIORDANI: Pass the witness.

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1 THE COURT: Cross?

2 MS. VON MAGDENKO: Pass the witness. We don't have any questions.

3 THE COURT: All right. Is she free to go?

4 MS. VON MAGDENKO: Yes.

5 MR. GIORDANI: Yes, Judge.

6 THE COURT: All right. Thank you, ma'am.

7 MR. GIORDANI: State would call Sandra Pacheco at this time.

8 [Pause]

9 THE MARSHAL: Please remain standing. Raise your right hand, be sworn in  
10 by our clerk.

11 SANDRA PACHECO

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

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

15 THE WITNESS: My name is Sandra Pacheco, S-a-n-d-r-a P-a-c-h-e-c-o.

16 THE COURT: Whenever you're ready.

17 MR. GIORDANI: Thanks, Judge.

18 DIRECT EXAMINATION OF SANDRA PACHECO

19 BY MR. GIORDANI:

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

21 A I work at ABC Pediatrics as a medical assistant.

22 Q How long have you been working at ABC Pediatrics?

23 A About seven and a half years.

24 Q What are your responsibilities as a medical assistant?

25 A I call the patients from the waiting room to the back to get their weight,

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1 a temperature, put them in a room and ask a chief complain (sic).

2 Q Do you recall a patient by the name of Brodie Aschenbrenner?

3 A Yes.

4 Q And is -- State's Exhibit 3. Is that Brodie?

5 A Yes.

6 Q On May 27th, towards the end of May of 2011, did you see Brodie and  
7 his mom in your office?

8 A I -- I can't recall the date exactly, but I do remember seeing him coming  
9 in.

10 Q And did you see him also again in June -- June 10th approximately of  
11 2011?

12 A Yeah, he -- he would always come in with this mom so I -- whenever he  
13 would go to the office, I see him with his mom.

14 Q Okay. Let me ask you this way. Did there come a time when you  
15 became aware that Brodie had passed away?

16 A I don't know exactly the date, but it was on the morning when the  
17 coroner's office had called to request the --

18 MR. ALTIG: Going to object; hearsay.

19 A -- the official medical records.

20 MR. GIORDANI: It's not for the truth, Judge.

21 THE COURT: I'll allow it for that purpose.

22 THE WITNESS: That was the -- whenever I became aware that he had  
23 passed away whenever the coroner's office had called and requested for the -- the  
24 official medical records. I -- that's how I found out about it.

25 BY MR. GIORDANI:

1 Q Okay. And is it fair to say that you had seen Brodie in a relatively short  
2 time period before you found out that he had passed away?

3 A Yes, I -- I don't recall exactly the time, but I could tell you that it was  
4 maybe within a couple days, a week.

5 Q I understand.

6 A It was a very short amount of time, yes.

7 Q I don't expect you to remember the exact date. On the last time you  
8 saw Brodie, how did he appear to you?

9 A Like a normal kid. I mean he -- I do recall the last time that he came in  
10 was for because he had an ear -- an eye infection.

11 Q Okay.

12 A I took him from the waiting room to the back office, took his weight, his  
13 temperature, I -- it was obvious -- you know, his eyes were, you know, goopy stuff  
14 coming out of it, nothing really different than normal and that's -- that's -- that was  
15 pretty much all, you know, just that was the reason why he was in there and -- and  
16 that -- that was actually like the only thing that I recall from the visit that he had the  
17 pinkeye and then that's about it.

18 Q Okay. On that day, did you see any bruises to his face or head that  
19 stand out to you in any way?

20 A Not at all.

21 Q Did you observe any other injuries to his body in any location that  
22 caused you concern in any way?

23 MR. ALTIG: Going to object; lack of foundation.

24 MR. GIORDANI: She saw him in the exam room, she took his temperature --

25 THE COURT: Well, why don't you lay a little bit more foundation for what she



1 was able to observe?

2 BY MR. GIORDANI:

3 Q You're not a doctor, right?

4 A Yeah, no, I'm not, I'm only a medical assistant, yes.

5 Q So you're not doing a full examination of Brodie; is that fair?

6 A Yes. When I saw him, he clothe -- a shirt, maybe some shorts. I don't  
7 recall exactly what he was wearing, but from what I could see of his face and arms, I  
8 don't -- I don't recall anything unusual.

9 Q Okay. Thank you very much.

10 MR. GIORDANI: I'll pass the witness.

11 MS. VON MAGDENKO: We don't have any questions, Your Honor.

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

13 THE WITNESS: Thank you.

14 MR. GIORDANI: State will call Alayne Opie.

15 [Pause]

16 THE MARSHAL: If you can remain standing. Please raise your right hand  
17 and be sworn in by our clerk.

18 ALAYNE OPIE

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

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

22 THE WITNESS: Alayne Opie, A-l-a-y-n-e, last is O-p-i-e.

23 THE COURT: Whenever you're ready.

24 MR. GIORDANI: Thank you, Judge.

25 DIRECT EXAMINATION OF ALAYNE OPIE

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1 BY MR. GIORDANI:

2 Q Ma'am, what's your relationship to Brodie Aschenbrenner?

3 A Brodie was my nephew.

4 Q Who is Brodie's mom?

5 A Arica Foster, my sister.

6 Q That's your sister by blood?

7 A Yes.

8 Q What do you do for a living?

9 A An attorney.

10 Q Where at?

11 A Lewis Brisbois.

12 Q Here in Las Vegas?

13 A Yes, here in Las Vegas.

14 Q Okay. When did you go to law school?

15 A 2009 until 2011.

16 Q And during that time were you living out of state?

17 A Yes.

18 Q And was that in California?

19 A San Diego, California.

20 Q Were there times that you came back into town during time period of  
21 law school?

22 A Often. At least twice a month.

23 Q And were you around Brodie during those times?

24 A Yes.

25 Q How frequently were you around Brodie while you were here in town?

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1 A Every time I came back to town, I made a point to see him at least for a  
2 few hours if not during an afternoon when I'd babysit him.

3 Q Can you describe kind or the type of child Brodie was for the ladies and  
4 gentlemen?

5 A Brodie was full of energy, he was rambunctious, he loved to play like a  
6 puppy and jump off the back of couches. He was just two-and-a-half-year-old boy.  
7 He just liked to play. He was always laughing.

8 Q And when you saw Brodie on those occasions, did there come times  
9 when you saw minor injuries to his body?

10 A Toward the later part of his life, yes.

11 Q And were you around Brodie enough to know when something was  
12 concerning and not concerning?

13 A Yes.

14 Q Do you know a person by the name of Michael Lee?

15 A Yes, I do.

16 Q Do you see that person here in court today?

17 A Yes, I do.

18 Q Can you please point to him and describe an article of clothing he's  
19 wearing today?

20 A Gray suit on the left.

21 MR. GIORDANI: Record reflect identification, Judge.

22 THE COURT: It will.

23 MR. GIORDANI: Thank you.

24 BY MR. GIORDANI:

25 Q How do you know the defendant?

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1 A Mike was dating my sister.  
2 Q Which sister?  
3 A Arica.  
4 Q You have more than one sister, correct?  
5 A I do have -- I have a ton of brothers and sisters.  
6 Q When did you come to know the defendant?  
7 A Me personally I knew him probably when my sister started dating him. I  
8 can't remember exactly what month they started dating, but I would say Brodie  
9 passed June, so I probably met Mike sometime October before he passed, October  
10 2010.  
11 Q October 2010?  
12 A Yeah, sometime around that timeframe.  
13 Q Okay. And was your interactions with the defendant kind of the same  
14 as it was with Brodie where you would come into town and see them together?  
15 A Maybe rephrase the question.  
16 Q Did you see the defendant with Brodie during those times that you  
17 would come into town and see Brodie?  
18 A Yes. Briefly, but yes.  
19 Q Okay. Can you estimate the number of times that you saw the  
20 defendant with Brodie -- interact with Brodie whatsoever?  
21 A Maybe four, five.  
22 Q Okay.  
23 A He wasn't -- Mike wasn't around the times that I had Brodie.  
24 Q Was there --  
25 A More often than not he was not around.

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1 Q Okay. Now I want to move into June of 2011. Was there a particular  
2 time that you saw the defendant with Brodie without Arica present?

3 A Yeah, the -- the first time that I can recall was a few weeks before  
4 Brodie passed.

5 Q What was going on that day?

6 A I believe I -- I was watching Brodie because Arica was going to get her  
7 hair done that day.

8 Q Okay.

9 A And I'd had him at Arica's and Mike's house all day long. It's just easier  
10 when I watched him to have him in his own environment so that, you know, he had  
11 his toys and things like that. Mike came home after work and he came through the  
12 door. Brodie had I guess been eating cheese all day long and made a mess on the  
13 counter which is unlike me to clean it up or it's not like me to not clean it up, but I left  
14 a mess. And Mike wasn't happy about the mess and just got after Brodie a little bit.  
15 Brodie kind of just shunned away and went into his room.

16 Q What do you mean by Mike getting after Brodie? Can you describe that  
17 a little further?

18 A He didn't yell at him, but just kind of scolding him. You know, why is  
19 there a mess? It just struck me as a little odd because it's two and a half year old, of  
20 course there's going to be a mess with a two and a half year old.

21 Q And what was Brodie's reaction? You said he shied away?

22 A He -- he shied away. He -- he went into his room and played.

23 Q And that was when you, the defendant and Brodie were present  
24 together alone, correct?

25 A Correct.

1 Q And Arica was not present?

2 A Arica was not there.

3 Q All right. I want to move forward a little bit to June 12th of 2011. That's  
4 a Sunday.

5 A Okay.

6 Q Familiar with that date?

7 A Yes.

8 Q Why are you familiar with that date? Did you see Brodie then?

9 A That's the last day that -- that's the last day that I had Brodie. That I  
10 ever saw Brodie.

11 Q Where did you see Brodie that day?

12 A I had been in town from San Diego and I went to pick Brodie up with my  
13 other niece, Lilian, from my mom's house that Sunday morning at about 10:30.

14 Q What did you do with the kids that day?

15 A That morning I took them to Coco's to eat and just to get them out of the  
16 house for a little bit. He had eaten almost a stack of pancakes and drank all of his  
17 syrup and I remember that distinctly because I thought he was like Alf, that  
18 character on TV because he drank --

19 Q The Will Ferrell movie?

20 A Oh no, not Elf. Alf it was back in the -- I think the early '90s.

21 Q So that was early morning or just before noon on Sunday, June 12th?

22 A Correct.

23 Q And I'm going to show you 77 if that helps, I'll put that up. We'll get into  
24 that. So Brodie ate a whole stack of pancakes?

25 A Correct.

1 Q And then he also drank his syrup?

2 A Yeah, he drank the syrup.

3 Q Did he appear in any way out of shape or odd to you or was he reacting  
4 to things differently than he normally would? What was his demeanor?

5 A He was typical Brodie. I mean I showed up to my mom's house to pick  
6 him up and his reaction was the same to me. As soon as auntie came in town, he  
7 knew it was time to get his shoes and we were going to go -- go the park or go  
8 wherever. He was happy and healthy. He was eating, he was fine. I mean there  
9 was nothing out of the ordinary, other than he had a bruise on his -- his right cheek.

10 Q I'm going to show you --

11 MR. GIORDANI: May I approach, Judge?

12 THE COURT: You may.

13 BY MR. GIORDANI:

14 Q -- State's 79 -- State's Proposed 79. Do you recognize that photo?

15 A Yes.

16 Q What is it?

17 A This is the photo that I took of Brodie and Lily when we were at Coco's  
18 that morning.

19 Q And that's the morning of Sunday, June 12th?

20 A Yes.

21 Q Fair and accurate depiction?

22 A Yes.

23 MR. GIORDANI: Move for its admission, Judge.

24 THE COURT: Any objections?

25 MR. ALTIG: Your Honor, may I see the photograph, please?

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1 No objection.

2 THE COURT: Okay.

3 MR. GIORDANI: May I publish it?

4 THE COURT: It's admitted and yes, you can publish it.

5 [State's Exhibit 79 admitted]

6 MR. GIORDANI: Thank you.

7 BY MR. GIORDANI:

8 Q Brodie on the right, Lily on the left?

9 A Correct.

10 Q And you said that's around 11 a.m. on Sunday, June 12th?

11 A Yes.

12 Q You mentioned a bruise to Brodie's face. Do you see it in that photo  
13 there?

14 A Yes, I do.

15 Q And you have a screen up. You can actually touch that and I'd ask you  
16 to circle that bruise for the ladies and gentlemen.

17 A (Witness complies.)

18 Q So it's on his right cheek area?

19 A Yes.

20 Q Did you see any other bruises to Brodie's face that you -- that stood out  
21 to you at that time?

22 A Under his eyes were a little darker than normal.

23 Q Okay.

24 A But at that time, what I'm looking at is -- I mean I -- he has clothes on so  
25 that's all I can see is -- so just the eyes and the -- the cheek.

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1 Q What did you do after you left Coco's?

2 A After we left, we went back to Arica and Mike's place and just spent the  
3 afternoon there and --

4 Q Who was present there at Arica and Mike's?

5 A Myself, Brodie and Lilian.

6 Q So Arica and the defendant were not present?

7 A Correct.

8 Q Okay. What did you do there?

9 A Just played. We had lunch there. We watched TV. His favorite thing  
10 was SpongeBob so watched several episodes of SpongeBob and Scooby Doo.

11 Q You mentioned lunch. Did you eat again after Coco's?

12 A Yeah. He ate -- he just ate everything under the sun. He had cheese.  
13 He loved cheese; kid always loved cheese. I remember him going to the refrigerator  
14 several times. I thought maybe it was a new game that he was playing that he'd just  
15 figured out how to open the fridge by himself but -- he was constantly in the fridge.  
16 Cheese crackers, pickles, cheese.

17 Q Okay. And was that throughout the day on Sunday, June 12th, after the  
18 Coco's thing after --

19 A Correct.

20 Q Was his demeanor any different than before as playful and  
21 rambunctious as he had been previously?

22 A No difference. Same Brodie.

23 Q And some point did you go over to your mom, Merridee's house?

24 A I did.

25 Q Do you recall when that was?

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1 A Right around dinnertime we went back to my mom's.

2 Q And would dinnertime be five, six?

3 A Yeah, about five or six. I don't recall exactly what time, but sometime  
4 around then.

5 Q And who was there when you arrived?

6 A I remember my mom. My dad might have been, but my dad -- if I recall  
7 right, he was studying at the time so he spent a lot of time in his computer room.

8 Q Okay.

9 A But I remember my mom.

10 Q At some point did someone mention some tubby time?

11 A Yes.

12 Q And what is tubby time?

13 A I give the kids a bath.

14 Q And did you actually give Brodie a bath on that day?

15 A Yes, I did.

16 Q With who? Was someone else with you?

17 A With my mom, Merridee Moshier.

18 Q Did you also bathe Lily?

19 A Yeah. They -- they took a bath together. They played in the bath.

20 Q Did you see Brodie naked from head to toe?

21 A I did.

22 Q And did you see any injuries on Brodie that caused you any concern  
23 whatsoever?

24 A None at all.

25 Q Who washed Brodie's hair?

1 A I did.

2 Q Did you rub his head, touch his head, palpate his head?

3 A I did.

4 Q Did he show any signs of pain at all?

5 A No pain.

6 Q Was he having a good time in tubby time?

7 A Yeah.

8 Q At some point did Arica come over to Merridee's house that night?

9 A Yes -- yeah, she did.

10 Q Did she take Brodie and go home?

11 A She did. She took Brodie after we sat in my mom's room for a little bit  
12 and talked and Arica left with Brodie that night.

13 Q And did you talk with Arica yourself?

14 A I did.

15 Q And was Merridee also present?

16 A Yeah, she was.

17 Q What was the topic of discussion?

18 A How her and Mike's relationship wasn't going very well --

19 MR. ALTIG: And I'm going to object at this point, Your Honor, on hearsay --

20 MR. GIORDANI: And I'm not asking for the actual statement of Arica. All I'm  
21 asking for is the topic of conversation.

22 THE COURT: That's fine.

23 BY MR. GIORDANI:

24 Q What was the --

25 THE COURT: Overruled.

1 MR. GIORDANI: Thank you, Judge.

2 BY MR. GIORDANI:

3 Q What was the topic of conversation?

4 A The status of Mike and Arica's relationship.

5 Q When was the last time you saw Brodie that evening, if you could  
6 estimate?

7 A About eight -- I don't -- I don't recall exactly what time but --

8 Q When he left, did he have any injuries on his body that caused you  
9 concern at all?

10 A None.

11 Q During the time you spent with him on that Sunday, did you ever see  
12 any indication that he was vomitus?

13 A No.

14 Q Or have diarrhea?

15 A No.

16 Q Any signs of abdominal pain whatsoever?

17 A Not at all.

18 Q Want to move to June 15th, that Wednesday, 2011. Where were you at  
19 the time on that day?

20 A When I got the call that Brodie had passed, I was at school in the  
21 basement studying.

22 Q And is that at law school out of state?

23 A Correct.

24 Q Did you come back to Vegas immediately?

25 A I flew the next flight. I took the next flight to Vegas.

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1 Q Okay. At some point did you arrive to Arica's home?

2 A I went to my mom's. Everyone was at my mom's.

3 Q And who's everyone? Who was present?

4 A My sister, Arica, my mom, Amanda, my other sister, my dad, and Mike.

5 Q And later on a couple days later, did you end up speaking with  
6 detectives about the case?

7 A I did.

8 Q And did you give a written -- I'm sorry, voluntary recorded statement  
9 with police?

10 A I did.

11 MR. GIORDANI: Pass the witness, Judge.

12 THE COURT: Cross?

13 MR. ALTIG: Thank you.

14 CROSS-EXAMINATION

15 BY MR. ALTIG:

16 Q Good afternoon.

17 A Good afternoon.

18 Q Is it Opie? Is that how you pronounce your name -- last name?

19 A Yes.

20 Q Okay. You talked about this incident with the cheese. When exactly --  
21 what day was that?

22 A Are you referring to when the cheese was on the table?

23 Q The only time you talked about the cheese.

24 A I want to say two or three weeks before my nephew passed away.

25 Q Okay. And in that incident you said that Mike came home and there

1 was a mess with cheese that Brodie had left on the table or counter, right?

2 A Yes.

3 Q And then you said Mike became upset and he scolded Brodie?

4 A Correct.

5 Q And Brodie went and -- turned and went to his room, right?

6 A Correct.

7 Q Did Mike ever hit Brodie?

8 A No.

9 Q Okay. Did Mike --

10 A Not to my knowledge.

11 Q Did Mike punish Brodie in any way?

12 A I mean he scolded him. I would consider that --

13 Q Did he punish him?

14 A I would consider that punishment.

15 Q Okay. Did Brodie go to his room because Mike told him to go to his

16 room?

17 A I don't recall.

18 Q Did he go and sit Brodie in the corner of the house somewhere?

19 A I don't think so.

20 Q Did he yell at Brodie?

21 A No. As I testified, he did not yell at him.

22 Q Okay. Did he discipline Brodie in any way?

23 A If scolding is -- or if scolding is disciplining, then yes.

24 Q Okay. Do you recall talking to the police on June 23rd of 2011?

25 A Yes, I did.

1 Q Okay. And do you recall the officer speaking to you about whether or  
2 not Mike ever disciplined Brodie?

3 A Yes, I do.

4 Q Okay, and do you recall telling the police officers at that time -- when  
5 they asked you did Mike ever discipline Brodie at all for anything, you said no. Do  
6 you recall that?

7 A Yes, I believe I did say -- say that.

8 Q Do you believe or do you recall as truth?

9 A If you can refresh my recollection, I --

10 Q Would you like to have your memory refreshed?

11 A Please.

12 [Colloquy between counsel]

13 MR. ALTIG: May I approach, Your Honor?

14 THE COURT: You may.

15 MR. ALTIG: Thank you.

16 BY MR. ALTIG:

17 Q This is your statement. I'm showing your statement recorded by the  
18 police. Here you go right here.

19 Okay.

20 A Correct

21 Q Does that refresh your recollection as to what you said to the police that  
22 day on June 23rd, 2011?

23 A Yes.

24 Q What did you tell the police on June 23rd of 2011?

25 A When I was asked about disciplining Brodie, they wanted to know if I'd

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1 ever seen Mike discipline him and I said Arica would be the one to discipline him by  
2 way of putting him in the corner.

3 Q Hold on a second. I just showed you where they said -- let's try this  
4 again.

5 MR. ALTIG: Judge, may I approach?

6 THE COURT: Yes.

7 MR. ALTIG: Thank you.

8 BY MR. ALTIG:

9 Q I'm showing you your recorded statement.

10 A Yes.

11 Q Showing you right here. Now the police say okay, as far as discipline,  
12 did you ever see Michael discipline Brodie at all for anything, and your answer was  
13 no. Do you see that?

14 A Yes.

15 Q Okay, so you -- on that day on June 23rd, 2011, when the police asked  
16 you if you had disciplined Brodie -- if you ever saw Michael discipline Brodie for  
17 anything at all, you said no, correct?

18 A At that time.

19 Q Okay.

20 A Yes, I had said that.

21 Q Thank you. Now, after the cheese incident when you said Michael  
22 scolded Brodie, how long before you left the house? Or the apartment, I'm sorry.

23 A I left fairly quickly. I felt awkward hanging out with Mike.

24 Q Because you guys never talked, right?

25 A We just don't have anything in common and I just -- I don't know him.

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1 Q Okay. You didn't feel awkward because you were afraid that Mike was  
2 going to hurt Brodie, right?

3 A No. That is correct.

4 Q Okay. You didn't feel awkward because you thought Mike was going to  
5 beat Brodie, right?

6 A That's correct

7 Q Okay, you felt awkward because you didn't really know Mike all that well  
8 and you guys had nothing in common, right?

9 A Correct.

10 Q Okay. And then how was Mike and Brodie's relationship?

11 A When?

12 Q Whenever you witnessed it, how was it?

13 A I didn't -- like I said earlier, I didn't really see them together that often so  
14 I couldn't -- I can't say --

15 Q When you did see them together, how was their relationship?

16 A I mean, Mike was fairly standoffish.

17 Q Did you ever notice and ever state that their relationship it was pretty  
18 normal?

19 A Yes, I do recall saying that.

20 Q To the police?

21 A Yes.

22 Q On June 23rd?

23 A Yes.

24 Q That Mike and Brodie's relationship was normal?

25 A Correct.

1 Q Okay. And did you tell the police also that Brodie wasn't scared when  
2 Michael came?

3 A I'm sure I did say that.

4 Q Okay. And did you also say that you would not have sent Brodie off  
5 with Michael if you thought that Brodie was scared?

6 A I never personally witnessed Brodie scared --

7 Q I'm not asking you what you witnessed. I'm asking did you state that  
8 you wouldn't personally send Brodie off with Michael if Brodie was scared?

9 A Yes.

10 Q Okay, that's what you told the police on June 23rd?

11 A Yes.

12 Q Did you -- were you asked by the police as to whether or not you found  
13 anything alarming about Michael and Brodie's relationship or the way Michael  
14 treated Brodie?

15 A I don't recall.

16 Q Okay. Do you recall telling the police you found nothing alarming about  
17 their relationship?

18 A I don't recall.

19 Q Okay. Do you --

20 MR. ALTIG: Court's indulgence one moment, please.

21 BY MR. ALTIG:

22 Q Would it refresh your recollection if I showed you your statement?

23 A Sure.

24 THE COURT: And yes, you can approach?

25 MR. ALTIG: Excuse me? I'm sorry, Your Honor?

1 THE COURT: You can approach.

2 MR. ALTIG: Thank you.

3 BY MR. ALTIG:

4 Q Circled area there.

5 Do you recall on June 23rd, 2011 telling the police that there was  
6 nothing alarming to us about that relationship?

7 A Correct.

8 Q And by us, who were you referring?

9 A I don't know. Your -- I mean I was in shock at that time. I don't know  
10 who I was referring to.

11 Q Okay. You said there was nothing out of the ordinary? Right?

12 A Correct.

13 Q You never saw Michael hit Brodie?

14 A No.

15 Q Ever?

16 A Never.

17 Q Okay. And you never saw Michael discipline Brodie, ever?

18 A Ever.

19 Q Correct?

20 A Correct.

21 Q Okay. In fact, you would not have let Brodie go with Michael if you felt  
22 he was going to hit him or do anything like that to him, right?

23 A Of course I never would have let my nephew go with someone who I  
24 thought would hit him.

25 Q Okay. Or you had witnessed that done something like that, right?

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1           A     I never would have left my nephew with someone I thought was going  
2 to hurt him --

3           Q     Okay.

4           A     -- ever.

5           Q     Thank you.

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

7           THE COURT: Redirect?

8           MR. GIORDANI: No, Judge.

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

10          THE WITNESS: Thank you.

11          MR. GIORDANI: We have no further witnesses to call today, Judge.

12          THE COURT: Are we finished for the day?

13          MR. GIORDANI: Looks like it.

14          THE COURT: All right. Ladies and gentlemen, we'll see you back tomorrow  
15 at 9:30 in the morning. You are admonished not to converse amongst yourselves or  
16 with anyone on any subject connected with the trial, do not read, watch or listen any  
17 report of or commentary on the trial, and do not form or express an opinion on this  
18 trial. See you tomorrow.

19                               [Jury out at 3:17 p.m.]

20                               [Colloquy between the Court and the clerk]

21          THE COURT: All right. Okay, the jury's out of the room. Is there anything we  
22 need to address --

23          MR. ALTIG: One.

24          THE COURT: -- before we go off the record?

25          MR. ALTIG: One thing, Your Honor. There was --

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1 THE COURT: Yeah.

2 MR. ALTIG: -- brought to my attention that one of our witnesses will not be  
3 here till I think Thursday afternoon?

4 MS. VON MAGDENKO: It's the pathologist.

5 MR. ALTIG: I do have a prearranged -- I'm supposed to be giving a talk to  
6 250 children at the YMCA on Friday afternoon at 3 p.m. Not this Friday but the  
7 following. I don't know if the trial will go into Friday, but if it does, I would appreciate  
8 if we could leave at three. If we can't, I can try to find someone else --

9 THE COURT: Absolutely, I'll let you go to that and I --

10 MR. ALTIG: Okay.

11 THE COURT: -- can't imagine that we'd be still taking testimony on Friday.

12 MR. ALTIG: Okay.

13 MS. VON MAGDENKO: No --

14 MR. ALTIG: I just wanted to make sure.

15 THE COURT: Because the pathologist would probably be the only person  
16 and what time do we start next Thursday?

17 THE CLERK: 9:30, Your Honor.

18 THE COURT: 9:30.

19 MS. VON MAGDENKO: He can only be here in the afternoon. He's flying in  
20 Thursday morning.

21 THE COURT: Okay, then --

22 MR. STANTON: Your Honor, may I inquire about that?

23 THE COURT: Yeah.

24 MR. STANTON: Can we find out from defense counsel about what efforts we  
25 can -- she can make to determine whether or not there's any ability to get him here

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1 sooner?

2 MS. VON MAGDENKO: It's his trial calendar. He testifies a lot. He -- so --

3 THE COURT: Is he in trial till next Thursday?

4 MS. VON MAGDENKO: He has two different trial -- well, including this trial,  
5 next week he'll have three different trials he's testifying in, in three different states.

6 THE COURT: Okay, well just will you touch base with him to see if something  
7 changes?

8 MS. VON MAGDENKO: I will. I will. I --

9 THE COURT: Because -- okay, so if we call him Thursday afternoon --

10 MS. VON MAGDENKO: He'll be the --

11 THE COURT: -- we're probably going to be dark a few days and then we  
12 won't be able to do closings until -- are we doing Friday morning? Yeah, because I  
13 took that case off.

14 THE CLERK: Yes, Your Honor, we'll go Friday --

15 THE COURT: So we would do closings Friday morning I guess.

16 MS. VON MAGDENKO: Yeah.

17 THE COURT: I don't know how else we can calendar it. And then we'll send  
18 it out to the jury hopefully by Friday midday.

19 Okay. So is there anything else we need to address?

20 MR. STANTON: The only thing I was going to suggest, Your Honor, is I'm  
21 going to be prepared tomorrow to submit to you our proposed jury instructions both  
22 clean and with cites to the Court. I'm hopeful that we can get defense counsel's at  
23 that time as well. And then based upon what I just heard, we're certainly not in a  
24 rush to settling, but I think it would probably be better to settle them sooner than  
25 later.

1 THE COURT: I would agree. It sounds like next week we're going to have  
2 plenty of time during the middle of the week.

3 MR. STANTON: Think so.

4 THE COURT: Okay, and you want to just go ahead and admonish the  
5 defendant tomorrow on his right to testify or not to testify?

6 MR. ALTIG: We can, Your Honor.

7 THE COURT: You -- okay. So let's make a note we'll do it tomorrow after the  
8 State finishes. Okay. Anything else?

9 MR. STANTON: And at that time, Your Honor, before we canvas him, I'd like  
10 to, you know, talk to the Court before we -- I do it. Obviously it's going to be outside  
11 the jury's presence, but there's be a matter I'd like to bring up to the Court.

12 THE COURT: Can we address it now?

13 MR. STANTON: Not right now, Your Honor. I'd prefer to address it tomorrow  
14 if possible. Can we approach?

15 THE COURT: Well the only reason I ask is I don't want to keep the jury  
16 waiting for a long time in the morning.

17 MR. STANTON: Oh no, this won't be any time while the jury's waiting. It's  
18 only when the jury's done and -- do you anticipate canvassing the defendant after the  
19 close of the evidence tomorrow?

20 THE COURT: Probably, because you have one witness left, but they'll go into  
21 their case in chief Monday.

22 MR. STANTON: Correct.

23 [Colloquy between counsel]

24 MR. STANTON: Yeah, it could be done when we're finished with court  
25 tomorrow.

1 THE COURT: The out of the presence?

2 MR. STANTON: Yes.

3 THE COURT: Okay, that's fine and then we'll admonish the defendant  
4 somewhere tomorrow, probably around the same time.

5 MR. STANTON: Thank you, Your Honor.

6 MR. ALTIG: Thank you.

7 THE COURT: That's fine. Okay.

8 MR. GIORDANI: Thank you.

9 THE COURT: Then we'll see you tomorrow.

10 MR. GIORDANI: All right.

11 [Proceedings concluded at 3:21 p.m.]

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

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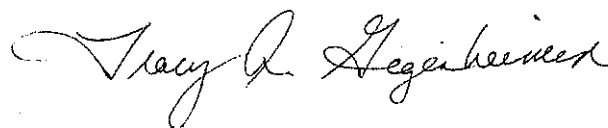
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Tracy A. Gegenheimer, CER-282, CET-282  
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I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 25th day of Sept, 2015. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

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