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Elizabeth A. Brown  
Clerk of Supreme Court

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### Counsel for Respondent

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1 residence, Donovine's in the living room with Chance rocking  
2 him. That's what she observes when she walks in.

3 And she saw Chance's injuries, they had to go to  
4 the hospital. Donovine provides a version to Metro when he's  
5 being interviewed and also when he's doing the reenactment  
6 video. And Donovine's version is he was watching the  
7 children alone because she had an appointment. He boiled  
8 water in a pot to make coffee. And during the reenactment  
9 video -- you all will get to see it -- he goes through the  
10 apartment and points out where the pot is, where the mug is  
11 and where all the pieces are to this story that he tells  
12 Metro.

13 And this is a picture of the pot that he selects  
14 that he says he was boiling water in. So he tells Metro he's  
15 boiling water in a pot to make coffee. That he poured the  
16 boiling water into a mug and that he placed it on a counter.  
17 You'll get all the pictures. You'll be able to see where all  
18 this goes.

19 But at the time he does the reenactment, he points  
20 out that this mug that's overturned in the sink with all this  
21 stuff on it and no handle at that, is the mug that he poured  
22 the boiling water in during the course of these events.  
23 That's another picture of the mug that was taken when Metro  
24 was conducting their investigation. And a picture of the  
25 inside of the mug that Metro also took when they were

1 conducting their investigation.

2 Now, it's important to remember while Metro's  
3 conducting their investigation is the timeline goes injuries,  
4 Jasmin comes back to the apartment, Donovine, Jasmin and the  
5 two children leave the apartment, go to Sunrise pediatrics  
6 for treatment of Chance's injuries.

7 From the time they leave that apartment until the  
8 time Metro comes to the house with Donovine, no one's been in  
9 that apartment. No clean-up has happened. Nothing else has  
10 been done since they left the apartment that morning after  
11 those injuries were sustained.

12 Donovine's story continues. So he pours the water  
13 into the mug. He leaves the mug on the counter because he  
14 goes to attend to Jordyn who's in another room. He says he  
15 hears her babbling or making some kind of noise so he goes to  
16 check it out and he says that he changes Jordyn's diaper.

17 He says leaves the mug. He points out in the video  
18 that the mug is approximately right here with the X is on the  
19 counter. And then he walks out of the room. And when he  
20 walks out of the room, Chance is in the living room. He  
21 doesn't know exactly what Chance is doing, but Chance is in  
22 the living room watching TV, playing games or doing  
23 something.

24 So he leaves. He says Chance at the time was  
25 wearing a super heros t-shirt. It's a short-sleeved shirt.

1 Comes to approximately, the waist. Chance has a diaper on.  
2 He also has socks on when these injuries happen. That's the  
3 shirt that he was wearing. Again, I point out that it's  
4 short-sleeves, average size T-shirt, so it's not like it  
5 hangs down all the way to the floor. And then he went to  
6 change Jordyn's diaper.

7 Donovan says while he's changing Jordyn's diaper,  
8 he hears Chance screaming. And when Donovan's describing  
9 the scream to Metro, he doesn't describe a hysterical child.  
10 He doesn't describe an inconsolable child. He calls Chance's  
11 screams, he's screaming as if he wants something.

12 And he said -- Donovan says he comes back into the  
13 kitchen, says he doesn't rush. Sounded like he wanted  
14 something so he just walked back in when he was done changing  
15 Jordyn's diaper, and Chance is sitting there shaking his  
16 hands saying "hot".

17 Donovan says that he sees that mug without the  
18 handle that he saw the mug that was on the counter with the  
19 hot water in it, he says is now on the floor. And he noticed  
20 the burns on Chance's hand. He takes them into the hallway  
21 to look at his burns. Only saw burns on Chance's hands. He  
22 describes Chance not being wet all over his body, just has  
23 the burns on his hands. So he runs Chance's hands under cold  
24 water, calls Jasmin, tells her to come back, Chance has  
25 burned his hands.



1           Donovine says he puts Chance in the tub to run his  
2 hands under cold water and put his hands in the tub to run  
3 his hands under cold water and put his hands under the cold  
4 water because of the burns. He leaves Chance in the tub and  
5 then Donovanine says that he cleans up. He cleans up whatever  
6 mess may or may not have been there from the mug falling off  
7 the counter, as he says.

8           Donovine, when he's describing the mess that he's  
9 supposedly cleaning up, he says it's only a little water on  
10 the floor. He says the cup is in the sink. Again, the  
11 picture I showed you with the cup that's upside down. And he  
12 also tells detectives when he's being interviewed at the  
13 hospital, that the pot he boiled the water in is actually in  
14 the sink.

15           Donovine's asked during his interview with Metro,  
16 "How do you think Chance burned his hands?" Donovanine says,  
17 "He must have grabbed the cup on the counter because it was  
18 on the floor. Must have hit the edge, pulled it down. I  
19 wasn't really in the room. I don't really know, but if I  
20 were to guess, that's what I would guess."

21           Jasmin told police Chance wouldn't touch a cup if  
22 it was hot. Both Jasmin and the defendant tell Metro that if  
23 Chance were doing a reach for the cup that was up on the  
24 counter, that he would have to stand on his tippy toes. And  
25 Metro actually measured the counter. The counter height is,

1 you'll see is 35 inches and Chance, according to the records  
2 is 37 inches at the time, so he'd have to reach above his  
3 shoulders to reach up on to the counter to get to the cup,  
4 they both say he'd have to be on his tippy toes.

5           There's the measurement of the counter. You can  
6 there's approximately 35 inches. And again, that's Chance  
7 who would have to stand up and the 37 inches as he's measured.  
8 is obviously going to be at the top of his head.

9           The treatment investigation, as I said, he's at  
10 Sunrise Hospital being treat by Dr. Olson. The hospital  
11 calls Metro. Metro responds and investigates and then he --  
12 Chance has follow-up treatment at the UMC Burn Unit. And  
13 you'll hear some of those details as far as Chance's injuries  
14 are concerned from people who will testify today.

15           As I said, doctor Ceti was consulted, the pediatric  
16 abuse specialist, as well as Philip Peltier, who's a burn  
17 specialist. And they'll tell you that in looking at the burn  
18 patterns and evaluating the information they had, that Chance  
19 had second degree burns to the tops of both of his hands.  
20 They'll both point out that those are the only injuries that  
21 Chance had as a result of these events. And they'll tell you  
22 why that's significant to them.

23           They both reached the conclusion that they're  
24 non-accidental injuries because they're second degree burns,  
25 because the location is just on the top of the hand. They'll

1 also talk about the pattern of burns, as you saw on his  
2 hands. There's certain patterns that they will point out and  
3 the significance of the patterns, for instance, the wrists,  
4 where on his hands is burnt, the blistering, those types of  
5 things. Why that's significant to them in concluding what  
6 type of an injury or the mechanism of the injury and that  
7 it's non-accidental.

8 And again, the significant fact they'll tell you  
9 about as part of their opinions is the fact that there's no  
10 other burns, there's no other injuries on Chance's body. And  
11 they will tell you that the injuries are consistent with  
12 pouring of hot liquid on to Chance's hands.

13 At the end of our testimony, at the end of the  
14 evidence we're going to close this case, as the Judge  
15 explained, you all will go back to deliberate and State is  
16 confident that once you hear all the evidence, put all the  
17 pieces together, you will come to the conclusion that the  
18 defendant is guilty of what he's been charged with, child  
19 abuse and neglect with substantial bodily harm. Thank you  
20 for your time.

21 THE COURT: Thank you.

22 MS. KIERNY: Thank you, Your Honor.

23 DEFENDANT'S OPENING STATEMENT

24 MS. KIERNY: June 5th, 2016, started out like any  
25 normal day for Donovine. He woke up at the house that he

1 shares with his grandma and grandpa. Then he went over to  
2 his girlfriend Jasmin's house. Jasmin he's known since high  
3 school, and Jasmin, as you heard, lived with her two  
4 children, Chance and Jordyn. Jordyn, Donovine was familiar  
5 with. He had spent a lot of time with her. Taken her to his  
6 house. Helped her learn to walk.

7           And Chance, not quite as familiar with, like the  
8 State indicated. He had only recently been returned from  
9 California where he had been staying with his dad. And he  
10 had been in the house about a week. And even though he had  
11 only been there a short time, Donovine had interacted with  
12 him, had spent time with him. He bought him some shoes. He  
13 bought him some clothes, you'll hear. And though it had been  
14 a short time, he had -- Chance was calling Donovine dad.

15           You're going to hear that Chance might have had  
16 some behavior issues that he picked up at his dad's house,  
17 but you will also hear that Jasmin was disciplinary and dealt  
18 with any of those issues. You will also hear that on that  
19 day, that morning, she had an appointment with her apartment  
20 complex manager, and that was right downstairs. It was  
21 expected to be a very short meeting, 20 minutes or so.

22           And so, of course, Donovine had no problem watching  
23 the children. And she had no reason whatsoever to doubt that  
24 he was able to watch those children. He decided to make  
25 coffee so with those instant coffee granules that he kept --

1 that they kept in a cupboard next to the Kool Aid, next to  
2 the hot cocoa. He started boiling some water in a pot, and  
3 you'll see the pictures of the pot. And then he put the  
4 water into the mug, and it was too hot so he let it cool.

5 And during that time, he went to check on Jordyn.  
6 Jordyn, it turns out, had a dirty diaper, and so he changed  
7 it, you know, so she didn't get a rash, and since -- so she  
8 didn't have an issue. And then he heard Chance crying. And  
9 again, it wasn't a cry that -- at first it wasn't a blood  
10 curdling cry. He thought that Chance wanted something. But  
11 when he went in, he realized this was a very serious  
12 situation.

13 He saw Chance crying and saying "hot". And so he  
14 looked at his hands and they looked dirty, as you'll hear  
15 Donovine describe. And there was a little flap of skin, and  
16 so, you know, he went into action. He put Chance right away  
17 -- he put water in the bathtub, cool water, put Chance in  
18 that bathtub, took his clothes off to try to cool his hands  
19 down.

20 Chance kind of stops crying. So then he uses that  
21 time to call Jasmin so get her there and to also clean up the  
22 kitchen a little bit. When Jasmin gets there, Donovine tells  
23 her what happened, and it's the same thing I just told you  
24 what he -- what he said. The same thing that Jasmin will  
25 testify to that he told her. And it's the same thing that he

1 would eventually tell detectives.

2           When they got there, Jasmin looked at those hands  
3 and said, you know, we need to go to the hospital, and he  
4 didn't protest. He didn't have an issue with it. Donovine  
5 agreed let's go to Sunrise. So they decided to walk there.  
6 It was about five minutes away from their house. So this was  
7 a very short walk.

8           Jasmin had to find her insurance card first, so it  
9 took a little bit of time. Eventually, they arrive at  
10 Sunrise Hospital at 9:53 a.m., I think, is the first time  
11 that Chance is seen. So the detective -- eventually officers  
12 come to the hospital and the detective comes, as they do when  
13 there's -- every there's major injuries to children like  
14 this, as you'll hear.

15           And as you'll hear, Donovine is in the room with  
16 Chance. He's there with Jordyn, Jasmin and Donovine's family  
17 is there, too. They had been called to come check on the  
18 little guy. The detectives interviewed Donovine. Donovine  
19 -- then they ultimately concluded that Donovine's story, you  
20 know, is that Chance didn't get hurt, didn't match the  
21 injuries. Didn't match up with what they're seeing. And the  
22 only possible explanation that they saw from that point was  
23 that this was abuse. That Donovine intentionally poured that  
24 water on Chance. And they called -- as you'll hear, they  
25 called this abuse and neglect expert out, they called the

1 burn expert out to confirm that the story didn't make sense.

2           These experts did not see Chance, they did not  
3 examine him. They just heard about the story, looked at the  
4 pictures. But what you're going to hear is Donovine didn't  
5 give a story as to how Chance get hurt. He didn't. He  
6 wasn't there. He didn't know exactly what happened. So some  
7 of the things that he said were kind of guesses about Chance  
8 pulling the water on himself.

9           He wasn't there when Chance got burned. He was  
10 with Jordyn. So when he was asked how he thought that Chance  
11 got hurt, he said, you know, he probably pulled the mug down  
12 on himself. But again, he wasn't there, so he was never able  
13 to give a definitive answer. Despite this -- the idea that  
14 he's not even there, he doesn't know exactly what happened.  
15 The detectives asked if he would do a recreation of the  
16 scene.

17           And you're going to see this recreation. And of  
18 course, since he wasn't there, he's just making some guesses  
19 as he pulls -- as he says what happened. You're going to  
20 hear from the State's experts that if Chance had pulled this  
21 mug down on himself, those injuries would absolutely be  
22 different. It wouldn't be the tops of his hands that were  
23 injured -- that were just burned and the front of his body,  
24 his legs would be involved as well. There would be these  
25 splash marks. There wouldn't be this line of demarcation on

1 his hands that you guys saw. We agree with all of this.

2 It's pretty clear that Chance didn't pull the mug  
3 down on himself, like everyone in the case is assuming.  
4 Donovine guessed wrong about what Chance did when he was out  
5 of the room.

6 You're going to -- there are many different ways  
7 that the water could have been spilled that were accidental  
8 and could have produced the injuries that Chance suffered.

9 You are going to hear that Chance's hands were  
10 burnt by accident and not intentionally by Donovine. You're  
11 not going to hear any eyewitnesses to this incident. You're  
12 not going to hear any reason or motive as to why Donovine  
13 would want to do this to Chance. You're not going to have  
14 any proof that this wasn't an accident.

15 You're just going to have some experts' opinions  
16 and assumptions. And in the end, you're going to hear that  
17 Donovine isn't guilty of these charges, and we'll ask you to  
18 find him not guilty. Thank you.

19 THE COURT: You may call your first witness.

20 MR. BURTON: Thank you, Your Honor.

21 MS. JOBE: Your Honor, may we approach briefly?

22 THE COURT: Sure.

23 (Bench conference begins).

24 MS. JOBE: We want to invoke the exclusionary rule.  
25 I wasn't sure that that's something we do in front of the



1 A. I did.

2 Q. And would looking at that report refresh your  
3 recollection as to the event number?

4 A. Yes.

5 MR. BURTON: May I approach, Your Honor?

6 THE COURT: You may.

7 BY MR. BURTON:

8 Q. Officer Bethard, I'm handing you a two-page  
9 document; do you recognize it?

10 A. Yes.

11 Q. Is that the report that you wrote about this case?

12 A. It is.

13 Q. And does that refresh your recollection as to the  
14 event number?

15 A. It does.

16 Q. Will you hand it back to me, please. So is the  
17 event number 160105-1552?

18 A. Correct.

19 Q. What is an event number?

20 A. Event number is generated when a call is made to  
21 dispatch for patrol units to be dispatched somewhere.

22 Q. Are event numbers unique to each thing that you're  
23 dispatched to or each thing that you respond to?

24 A. They are. Each call each day receives its own  
25 event number on each call.

1 Q. Do you recall what the nature of the dispatch was?

2 A. It was -- it had to do with a child at the  
3 emergency room that had, I think, burns on his hands.

4 Q. Do you recall what the source of the report was?  
5 Was it hospital staff --

6 A. Hospital -- I believe, it was a nurse that called  
7 it in.

8 Q. Have you -- was this your first or only time that  
9 you've responded to Sunrise?

10 A. No, sir.

11 Q. Was this your only time that you responded to  
12 Sunrise due to injuries to a child?

13 A. No, sir.

14 Q. Can you tell the jury just in general when you  
15 receive those kinds of calls, what is your role? What are  
16 you going to Sunrise to do?

17 A. My role as a patrol officer is do the initial  
18 investigation, to gather information that's available at that  
19 time, and then I would call an abuse neglect detail, relay  
20 the information to them, and follow whatever they decide to  
21 do after that.

22 Q. Is that what did you in this case?

23 A. That's correct, yes.

24 Q. Did you eventually see the child that had injured  
25 hands or had --

1 A. I did. I remember seeing him. His hands were  
2 bandaged at the time, so I don't believe we took the bandages  
3 off, but you can see that he definite was injured.

4 Q. When you saw him, was he in a hospital room? Where  
5 was he?

6 A. He was. He was in one of the -- I guess a waiting  
7 room inside. An individual waiting room, like an emergency  
8 room, I suppose.

9 Q. Was he alone in that room?

10 A. No, sir. It was his mom and then her boyfriend.

11 Q. Anybody else in the room besides those two and the  
12 child?

13 A. I don't recall.

14 Q. As you get into the room, what is it that you did?

15 A. I took a look at the child, see approximately, the  
16 age and see if there were injuries. Best I could tell that  
17 his hands were bandaged and the mom had told me that he had  
18 got burned. I asked the mom what had happened. She told me  
19 that she had gone to the management office of the apartment  
20 complex. She received a call from her boyfriend  
21 approximately, 30 minutes after she left saying that her son  
22 had burned his hands and she needed to come back.

23 Q. Did you also speak to the boyfriend?

24 A. I did. After the mom told me that, the boyfriend  
25 and I stepped outside of the room and I asked him what

1 happened. And he said that his girlfriend had left at  
2 approximately 9:00 o'clock, she went to go to the front  
3 office. I don't know, dispute on rent or something of that  
4 nature. He boiled some water to make coffee, had poured it  
5 in a mug, set the mug down on a table, letting it cool before  
6 he put the coffee in it. He was distracted by his  
7 girlfriend's other child, who was in a separate room.

8 He went to see what was going on with that. At  
9 that point, he heard a scream coming back from where the --  
10 the younger child was, Chance, I believe, is his name. He  
11 ran back in the room and he told me that he saw Chance  
12 standing by -- with -- over the spilled cup of hot water with  
13 the mug on the ground.

14 Q. Did you speak to anybody else about the injuries?

15 A. Not that I can -- nothing that's in my report, but  
16 I'm sure the nurse at some point had -- we spoke.

17 Q. As a result of -- you said that the boyfriend had  
18 said that he put a cup of hot water on a table. Do you  
19 recall it being a counter and not a table?

20 A. It might have been a counter.

21 Q. Would looking at your report refresh your  
22 recollection?

23 A. It would.

24 MR. BURTON: I'm showing opposing counsel the same  
25 report. May I approach?

1 THE COURT: You may.

2 MR. BURTON: Thank you.

3 (Court/Court Recorder conferring)

4 THE COURT: Okay. So we need to stop?

5 THE COURT RECORDER: Just for a minute, please.

6 THE COURT: Okay.

7 (Court recessed at 3:48 p.m. until 3:52 p.m.)

8 (Outside the presence of the jury)

9 THE COURT: Is there something outside the  
10 presence?

11 MS. JOBE: Just briefly, Your Honor.

12 THE COURT: Sure.

13 MS. JOBE: I went out in the hallway to use the  
14 facilities, and what I observed was that the people in the  
15 courtroom who were supportive of the defendant had rushed out  
16 and around the -- one of the witnesses in this case, the  
17 mother of the child at issue, and they appeared to be talking  
18 about, I don't know specifically if it what they observed or  
19 what was said in court, but they were communicating something  
20 to her. And some jurors in the hallway had stopped and  
21 huddled together and looked back at what was going on. So  
22 the State -- obviously, the jurors have been admonished not  
23 to consider anything they see in the hallway.

24 The State's also concerned the exclusionary's been  
25 invoked by the defense. The information from the courtroom

1 is being conveyed to witnesses out in the hallway. I'm not  
2 saying it was. I'm just saying that's the State's concern  
3 based on what I had the opportunity to observe in the  
4 hallway.

5 MS. KIERNY: After hearing this issue, I went  
6 outside and spoke with the family. They indicated that they  
7 just -- and we can call them in, if you want, but they just  
8 -- they said that they told her there was a recess, how  
9 Donovine looked, that he looked nice in the clothes that she  
10 had purchased for him. They said that they did not discuss  
11 anything. I asked them to now sit separately until she is no  
12 longer a witness in the case.

13 But if you want to hear further from them, their  
14 representation to me was that nothing about the case was  
15 said. And I did them it's improper -- it looks a little  
16 improper and asked them to knock it off.

17 THE COURT: Okay. Is there -- are they friendly  
18 towards each other?

19 MS. KIERNY: Yes.

20 THE COURT: Okay.

21 MS. KIERNY: They -- Mr. Mathews has a --

22 THE COURT: Just want to know.

23 MS. KIERNY: -- has a baby with Jasmin and --

24 THE COURT: Oh.

25 MS. KIERNY: -- the baby's here, and so --

1 THE COURT: Okay.

2 MS. KIERNY: -- and that's, you know, his  
3 grandmother and uncle, the baby's -- his daughter's uncle and  
4 his daughter's grandmother, yeah. So they are friendly at  
5 least, you know, and familiar because they've had this child  
6 in common.

7 THE COURT: Okay. I'm satisfied.

8 MS. KIERNY: Okay.

9 THE COURT: We can bring them in.

10 THE MARSHAL: All rise for the entering jury,  
11 please.

12 (In the presence of the jury).

13 THE COURT: Does the State stipulate to the  
14 presence of the jury panel?

15 MS. JOBE: Yes, Your Honor.

16 THE COURT: The defense?

17 THE MARSHAL: Thank you. Please be seated.

18 MS. HOLIDAY: Yes, Your Honor.

19 THE COURT: Thank you. You may proceed.

20 BY MR. BURTON:

21 Q. So I think where we left off was I asked you if you  
22 had written any in your report that it was a counter and not  
23 a table?

24 A. Correct.

25 Q. You could not exactly recall that. I was about to

1 refresh your recollection --

2 A. Correct.

3 Q. -- is that correct?

4 MR. BURTON: May I approach?

5 THE COURT: You may.

6 BY MR. BURTON:

7 Q. Now showing you page 2. Do you recognize that as  
8 the narrative of your report?

9 A. I do.

10 Q. If you'd read the second paragraph to yourself and  
11 look up at me when you're done. (Witness reading). Does  
12 that refresh your recollection?

13 A. It does.

14 Q. Do you recall whether the boyfriend said that it  
15 was on a counter or a table?

16 A. According to my report, it was on a counter.

17 Q. Did you get names of all these people, the little  
18 boy, the mom and the boyfriend?

19 A. I did.

20 Q. Do you recall the little boy's name being Chance  
21 Jacksper?

22 A. Correct.

23 Q. The mother name being Jasmin Cathcart?

24 A. Correct.

25 Q. And the boyfriend's name being Donovine Mathews?



1 A. Correct.

2 Q. And you had also mentioned that you couldn't  
3 exactly recall, but generally you speak to someone, either a  
4 nurse or a doctor, about the nature of the injuries --

5 A. Correct.

6 Q. -- in these types of investigations?

7 A. Yes, sir.

8 Q. Does that -- the info -- information that you get  
9 from either a nurse or a doctor, does that impact your  
10 decision as to reporting this to abuse and neglect  
11 detectives?

12 A. No.

13 Q. Does that influence the type of report that you  
14 give to abuse and neglect detectives?

15 A. No.

16 Q. Do you have to, as a part of your role in this,  
17 have to make an initial decision as to whether the injuries  
18 that you see or hear about are consistent with the account  
19 that you'd been given as to how those were caused?

20 A. Could you ask the question again?

21 Q. Sure. As part of your role, do you have to make  
22 some kind of initial assessment as to whether the account  
23 that you've been given as to how the injuries occurred and  
24 the nature of the injuries themselves are consistent?

25 A. Yes.

1 Q. Does that influence whether you report to abuse and  
2 neglect detectives?

3 A. No.

4 Q. Does that influence the type of report that you  
5 give to abuse and neglect detectives?

6 A. No.

7 Q. If the nature of the injuries is inconsistent with  
8 the account that you've been given, does that change the type  
9 of information you give to abuse and neglect detectives?

10 A. I would still give them the information that I have  
11 at that time.

12 Q. Do you relay your impressions to the detectives?

13 A. No. I just tell them the statements that I receive  
14 from people who are involved and ask them if they are going  
15 to come out for a particular call or are they -- or am I just  
16 going to take a report and forward it to them.

17 MR. BURTON: Nothing further, Your Honor.

18 THE COURT: Cross-examination.

19 MS. HOLIDAY: Court's brief indulgence.

20 CROSS-EXAMINATION

21 BY MS. HOLIDAY:

22 Q. Good afternoon, Officer.

23 A. Hello.

24 Q. Officer, you spoke with Chance while he was in the  
25 hospital?

1 A. I did not speak with him. I don't know if he was  
2 verbal at the time I met him. I just remember him being in  
3 the hospital.

4 Q. So you did not ask Chance how he was injured?

5 A. No.

6 Q. Officer, is it true that you contact detectives  
7 from the abuse and neglect unit any time there's a major  
8 incident involving a child or an elderly person?

9 A. That's correct.

10 MS. HOLIDAY: Court's indulgence. No further  
11 questions, Your Honor.

12 THE COURT: Thank you. Any redirect?

13 MR. BURTON: No, Your Honor.

14 THE COURT: Thank you very much for your testimony  
15 here today. You may step down. You are excused from your  
16 subpoena. Thank you for being here. You may call your next  
17 witness.

18 MR. BURTON: Thank you, Your Honor. State calls  
19 Jasmin Cathcart. Your Honor, may I approach the Clerk while  
20 the witness is coming in?

21 THE COURT: You may.

22 MR. BURTON: Thank you.

23 JASMIN CATHCART, STATE'S WITNESS, SWORN

24 THE CLERK: Thank you. Please be seated. Could  
25 you please state and spell your name for the record.

1 THE WITNESS: Jasmin Cathcart, J-a-s-m-i-n,  
2 C-a-t-h-c-a-r-t.

3 THE CLERK: Thank you. Direct Examination.

4 MR. BURTON: May I proceed, Your Honor?

5 THE COURT: You may.

6 MR. BURTON: Thank you.

7 DIRECT EXAMINATION

8 BY MR. BURTON:

9 Q. Hello, Ms. Cathcart.

10 A. Hi.

11 Q. What I'm going to do -- I think you're a little  
12 soft spoken, so I'm going to stand clear back here. If you  
13 can hear me and I can hear you, then the members of the jury  
14 can hear both of us, okay?

15 A. Okay. Okay.

16 Q. Just make sure you speak into that microphone?

17 A. Okay.

18 Q. Ms. Cathcart, do you know Chance Jacksper?

19 A. Yes.

20 Q. Is that your son?

21 A. Yes.

22 Q. Do you know what his date of birth is?

23 A. Yes.

24 Q. What is it?

25 A. 1/30/13.

1 Q. Thank you. Do you know Donovine Mathews?

2 A. Yes.

3 Q. Do you see Donovine Mathews here in court today?

4 A. Yes.

5 Q. Can you please point to him and describe something  
6 that he's wearing.

7 A. A blue shirt.

8 MR. BURTON: Your Honor, may the record reflect  
9 identification of the defendant?

10 THE COURT: So reflected.

11 MR. BURTON: Thank you.

12 BY MR. BURTON:

13 Q. Is Donovine Mathews the natural father of Chance?

14 A. No.

15 Q. Did you, in the year of 2015, have a relationship  
16 with Mr. Mathews, the defendant?

17 A. Yes.

18 Q. Do you recall when that relationship started in  
19 2015?

20 A. April or May.

21 Q. During the year of 2015, was Chance living with you  
22 for the entire year?

23 A. Not until December.

24 Q. So where was Chance living until December of 2015?

25 A. California.

1 Q. Who was he living with in California?

2 A. His dad.

3 Q. His dad?

4 A. His biological father.

5 Q. Thank you. Do his biological father, Chance's  
6 biological father, and the defendant know each other or know  
7 of each other?

8 A. Yes.

9 Q. Are you aware of how the defendant feels about  
10 Chance's biological father?

11 A. Yes.

12 Q. How does Chance -- excuse me. How does the  
13 defendant feel about Chance's biological father?

14 A. He's an ex of mine's.

15 Q. He doesn't like him, right?

16 A. For personal reasons.

17 Q. But he doesn't like him?

18 A. No.

19 Q. Right? So they don't get along, correct?

20 A. No.

21 Q. Now, you had another child living with you in 2015,  
22 before December of 2015, correct?

23 A. Yes.

24 Q. Who was that?

25 A. My daughter.

1 Q. What's her name?

2 A. Jordyn.

3 Q. What's her date of birth?

4 A. 2/18/14.

5 Q. When exactly did you get Chance back?

6 A. December 28th, 2015.

7 Q. Where were you living at the time you got Chance  
8 back in December 28th, 2015?

9 A. My apartment.

10 Q. Where is your apartment? Where was your apartment  
11 at that time?

12 A. On Maryland and Desert Inn.

13 Q. 1029 Lisbon Avenue?

14 A. Yes.

15 Q. Apartment No. 5?

16 A. Yes.

17 Q. And that's here in Clark County, Nevada, correct?

18 A. Yes.

19 Q. What was Chance's behavior like when he came back  
20 from California?

21 A. Like an average kid.

22 Q. Did you have any behavior issues with Chance after  
23 he returned from California?

24 A. Yes.

25 Q. Describe those, please.

1 A. Cursing, hyper, that's pretty much it.

2 Q. Who was he cursing at?

3 A. Just in general he would curse. Not at anybody.

4 Just in general he would curse.

5 Q. And you said he was hyper. Can you give a little  
6 bit more detail? What was he hyper about? What --

7 A. Running around.

8 Q. At the time you got Chance back in December, how  
9 often was the defendant at your house there on Lisbon Avenue?

10

11 A. He was with me every day.

12 Q. Would he spend the night?

13 A. Yes.

14 Q. Did he have personal items there?

15 A. Yes.

16 Q. Clothing?

17 A. Yes.

18 Q. Pictures?

19 A. No.

20 Q. What other personal items did he have at your  
21 house?

22 A. His ID, stuff like that.

23 Q. Let's go to the morning of January 5th, 2016. Do  
24 you remember that morning?

25 A. A little bit.



1 Q. Well, let's start at the beginning. When did you  
2 wake up?

3 A. I don't remember.

4 Q. Did you talk with detectives about this case clear  
5 back in January of 2016?

6 A. At the hospital, yes.

7 Q. Were you aware at that time that the statement that  
8 you gave --

9 A. Yes.

10 Q. -- was being recorded?

11 A. Yes.

12 Q. Fair to say that on the day you would have  
13 remembered a little bit better when you woke up as opposed to  
14 almost a year later?

15 A. I remember the time I left, but I don't remember  
16 the time I woke up.

17 Q. Do you remember telling the detectives that you  
18 woke up at 8:00 o'clock that morning?

19 A. I don't remember saying that, but if it's recorded,  
20 then that's the time I woke up.

21 Q. And who was in the house that on -- did you wake up  
22 at Lisbon?

23 A. Yes.

24 Q. Who was in the house at the time you woke up at  
25 8:00 a.m. or whenever you woke up?

1 A. Donovine, me, and Jordyn and Chance.

2 Q. Can you describe for the members of the jury kind  
3 of what this apartment looks like. How many rooms does it  
4 have. Where are they, that kind of thing?

5 A. It's a two-bedroom, one bathroom. And it's just --  
6 it's a small apartment.

7 Q. When you walk into the front door, what's the first  
8 thing you see?

9 A. The kitchen and the living room.

10 Q. As you walk in the front door, is the kitchen  
11 straight in front of you, to the left, to the right?

12 A. When you go straight, my room's right there on the  
13 right and the room next to it is the kids' room. Then next  
14 to the kids' room is the bathroom.

15 Q. So when I walk in the front door, where is the  
16 living room? Is it to my left or to my right?

17 A. Well, from where I'm sitting, it's on the right.

18 Q. And then the kitchen is on the left?

19 A. Yes.

20 Q. Thank you. And then if I keep walking, you said  
21 your bedroom is straight forward?

22 A. Well, it's the wall right there and then it's right  
23 there on the right.

24 Q. And then --

25 A. The kids' room right there.

1 Q. Okay.

2 A. Then the bathroom next to it.

3 Q. Okay. You said that you remember leaving the  
4 apartment and what time you left?

5 A. 8:59.

6 Q. Do you remember, did you have to start getting  
7 ready for leaving apartment at any specific time?

8 A. I don't remember the time of getting ready. I  
9 don't.

10 Q. Would it be fair -- well, would you have any reason  
11 to doubt me if I told you the detectives -- you told the  
12 detectives 8:45?

13 A. Probably. I always get ready late.

14 Q. What time -- well, why were you leaving the  
15 apartment?

16 A. I had an appointment.

17 Q. What time was the appointment?

18 A. 9:00 o'clock.

19 Q. Did you just get yourself ready or did you do  
20 anything with the kids as part of getting ready?

21 A. I don't remember. Probably just myself.

22 Q. Do you remember telling the detectives that you  
23 changed the children's diapers before you left?

24 A. I don't remember saying that, but if it's recorded,  
25 then that's what happened.

1 MR. BURTON: Showing defense counsel.

2 BY MR. BURTON:

3 Q. Would looking at your statement refresh your  
4 recollection as to what you said back in January 2016?

5 A. Well, it was a conversation. It was a year ago.

6 THE COURT: Is that a yes or a no?

7 THE WITNESS: Yes.

8 BY MR. BURTON:

9 Q. Do you think looking at your statement will help  
10 you remember?

11 A. Yes.

12 THE COURT: You can approach her.

13 MR. BURTON: May I approach?

14 THE COURT: You may.

15 MR. BURTON: Thank you.

16 BY MR. BURTON:

17 Q. Ms. Cathcart, I'm showing you a document. I'm  
18 showing you the first page. Do you see your name there on  
19 it?

20 A. Yes.

21 Q. Okay. And what I'd like you to do is look at page  
22 19. Read that to yourself. Don't read it out loud. Tell me  
23 -- look up at me when you're done. (Witness reading). Do  
24 you recognize that as part of the recorded statement you gave  
25 to detectives on January of 2016?

1 A. Yes.

2 Q. Does that help you remember what you said about  
3 whether you changed the children's diapers at 8:45 when you  
4 were getting ready for your appointment?

5 A. Yes.

6 Q. What did you say?

7 A. Yes.

8 Q. That you changed their diapers, correct?

9 A. Yes.

10 Q. Thank you. So you -- your recollection is you left  
11 for your appointment at 8:59, correct?

12 A. Yes.

13 Q. And your appointment was at 9:00?

14 A. Yes.

15 Q. And where was your appointment at?

16 A. The office of my apartments.

17 Q. How did you get to that appointment?

18 A. I walked.

19 Q. Who did you leave in the home when you left for  
20 your appointment?

21 A. I can't hear you.

22 Q. I'm sorry. Who did you leave in your apartment  
23 when you went to your appointment?

24 A. My kids and Donovine.

25 Q. Before January 5th, 2016, had Donovine been left

1 alone with Jordyn?

2 A. Yes.

3 Q. Before January 5th, 2016, had Donovan been left  
4 alone with Chance?

5 A. No.

6 Q. During your appointment, did you receive a phone  
7 call from Donovan?

8 A. Yes.

9 Q. Do you recall what time that phone call came in?

10 A. Probably 9:15, maybe, around there.

11 Q. How did you get that phone call? I mean, do you  
12 have a cell phone?

13 A. Yes.

14 Q. Do you remember showing your cell phone to  
15 detectives during your recorded statement as to what time you  
16 got a call from Donovan?

17 A. Yes.

18 Q. Do you recall that time being 9:19?

19 A. Probably, I don't know.

20 Q. Would looking at your statement help you remember?

21 A. Yes.

22 MR. BURTON: Showing opposing counsel. May I  
23 approach?

24 THE COURT: You may.

25 MR. BURTON: Thank you.

1 BY MR. BURTON:

2 Q. So Ms. Cathcart, now I'm showing you page 22 of  
3 that same statement. If you could read that to yourself and  
4 then look up at me when you're done. (Witness reading).

5 Have you read that?

6 A. Yes.

7 Q. Does that help you remember what time the phone  
8 call came to your cell phone?

9 A. Yes.

10 Q. What time was that?

11 A. 9:19.

12 Q. When you left the apartment, what was Chance  
13 wearing?

14 A. A t-shirt.

15 Q. Anything else?

16 A. A diaper.

17 Q. Anything else?

18 A. No.

19 Q. I'm sorry, I just want to make sure the jury heard.  
20 That last answer it was a no, correct?

21 A. No.

22 Q. When you left, did Chance have any injuries?

23 A. No.

24 Q. Specifically, did Chance have any injuries on the  
25 backs of his hands?

1 A. No.

2 Q. When the defendant called you at 9:19, did you  
3 answer?

4 A. Yes.

5 Q. What did the defendant say?

6 A. What time would my appointment be over.

7 Q. Were you still in the middle of your appointment  
8 when you took the call?

9 A. It was near the end.

10 Q. Did he say anything else other than when is your  
11 appointment going to be over?

12 A. Not that I remember.

13 Q. Do you remember him telling you that Chance had  
14 burned himself?

15 A. Yes.

16 Q. Did you finish your appointment after you hung up  
17 with the defendant?

18 A. Yes.

19 Q. Did you then go home?

20 A. I grabbed a filter, then went home.

21 Q. You grabbed a filter?

22 A. Yes.

23 Q. What type of filter?

24 A. The one that you use for the air conditioning.

25 Q. Where did you get that filter at?



1 A. The office.

2 Q. After you got a filter from the office, you walked  
3 home, correct?

4 A. Yes.

5 Q. When you got home, did you see the defendant and  
6 Chance?

7 A. Yes.

8 Q. Where were they when you first saw them?

9 A. On the couch.

10 Q. Do you recall how long it took you to get from the  
11 phone call back to your apartment?

12 A. No.

13 Q. Do you remember telling the officers you estimated  
14 two to three minutes?

15 A. I don't remember saying that, but it's not a long  
16 walk.

17 Q. And that would also include the time that it took  
18 to get a filter, correct?

19 A. Yes, the filter's right there.

20 Q. So you said when you came in, the defendant and  
21 Chance were on the couch?

22 A. Yes.

23 Q. Describe what they were doing on the couch.

24 A. He was just sitting in his lap. He was just  
25 holding him.

1 Q. Who was sitting in whose lap? I know it's obvious,  
2 but --

3 A. Chance was sitting in Donovine's lap.

4 Q. Thank you. What was Chance wearing?

5 A. A t-shirt and a diaper.

6 Q. What was Chance's demeanor? How was he acting?

7 A. He was crying.

8 Q. Was he loud?

9 A. A little bit, not really.

10 Q. What about the defendant's demeanor? What was he  
11 -- how was he acting?

12 A. Concerned.

13 Q. Did you at that point go and look at Chance and  
14 take a look at these injuries, these burns that --

15 A. Yes.

16 Q. Where did you see burns?

17 A. On his hands. The back of his hands.

18 Q. And again, those burns weren't there when you left  
19 at 9:00 o'clock, correct, or 8:59?

20 A. No. No.

21 Q. Did you see burns anywhere else besides the back of  
22 Chance's hands?

23 A. No.

24 Q. What did you decide to do when you saw the burns on  
25 Chance's hands?

1 A. Take him to the hospital.

2 Q. Did you change him? Did you -- how did -- did you  
3 just get up and go right then?

4 A. Well, we got the kids ready, and Donovine carried  
5 him and I pushed Jordyn in the stroller.

6 Q. Describe getting the kids ready, specifically  
7 Chance. What did you need to do to get him ready to go?

8 A. I don't remember. We put his pants on, put his  
9 shoes on. And he was -- he had a blanket around him.

10 Q. Did you change his shirt?

11 A. Yes.

12 Q. So you changed his shirt as part of getting him  
13 ready to go to the hospital?

14 A. Well, he had on a black shirt. When we went to the  
15 hospital, he had a on red shirt.

16 Q. So when you first saw Chance, he was wearing a  
17 black shirt?

18 A. When I left the apartment he was wearing a black  
19 shirt.

20 Q. So when you came back to the apartment, is he still  
21 wearing that same black shirt?

22 A. I don't remember. I think, maybe.

23 Q. And your recollection is that you then changed him  
24 into a red striped shirt?

25 A. Yes.

1 Q. How did you get to the hospital?

2 A. We walked.

3 Q. And fair to say you decided not to call the  
4 ambulance because you were worried they wouldn't let Jordyn,  
5 your other child ride in the ambulance, correct?

6 A. Yes.

7 Q. How close was the hospital?

8 A. Five to ten minutes away.

9 Q. And that's walking, right?

10 A. Yes.

11 Q. So if you got home roughly 9:22, 9:23, how many  
12 minutes were you in the apartment before you started walking  
13 to the hospital?

14 A. Probably five to eight.

15 Q. Five to eight minutes?

16 A. Yes.

17 Q. Okay. So you're leaving roughly around right  
18 before 9:30 or maybe right on the dot 9:30?

19 A. I don't remember.

20 Q. Well, your recollection is five to eight minutes in  
21 the apartment getting people ready to go to the hospital?

22 A. Yes.

23 Q. Then you said it took five to how many minutes to  
24 get to the hospital?

25 A. Five to ten.

1 Q. When you arrived at the hospital, did they admit  
2 Chance?

3 A. Yes.

4 Q. Describe how that happened?

5 A. Well, when we got there, we told them that they had  
6 burns on his hands. They told us to go through the double  
7 doors, the whole staff followed us and we went to a room.

8 Q. Did they start treating Chance?

9 A. Yes.

10 Q. And what did they do to start treating Chance?

11 A. They kept pouring cold saline on his hands.

12 Q. Would they give Chance any pain medication?

13 A. Not that I remember.

14 Q. Before you got to the hospital, did the defendant  
15 tell you how Chance burned his hands?

16 A. Yes.

17 Q. What did the defendant say about how Chance burned  
18 his hands?

19 A. He -- well, he didn't say exactly because he  
20 doesn't know either because he turn his back.

21 Q. I'm sorry, I missed the last part.

22 A. Well, he turned his back so he's not really sure.  
23 So it's just an assumption of how he burned his hands.

24 Q. What did the defendant say about how Chance burned  
25 his hands?

1           A.   Well, he said that he went to change Jordyn's  
2   diapers and he came back and Chance was crying and screaming.

3           Q.   Do you remember telling the detectives what the  
4   defendant said about how Chance burned his hands?

5           A.   Yes, I remember telling them.

6           Q.   Would that refresh your recollection as to what the  
7   defendant said?

8           A.   If I see it, yes.

9           Q.   Okay.

10          MR. BURTON: May I approach?

11          THE COURT: You may.

12   BY MR. BURTON:

13          Q.   Now showing you page 24 of the same statement. If  
14   you could read that to yourself, look up at me when you're  
15   done. (Witness reading).

16               Does that refresh your memory as to what the  
17   defendant said happened, how Chance got his hands burned?

18          A.   Yes.

19          Q.   What did the defendant say happened to get Chance's  
20   hands burned?

21          A.   He set the cup on the counter, and he went to go  
22   change Jordyn's diaper, and when he was dealing with her,  
23   Chance started crying, and obviously, the burns were there.

24          Q.   Did he say what was in the cup that he put on the  
25   counter?

1 A. Hot water.

2 Q. Did he say what the hot water was for?

3 A. Coffee.

4 (Pause in the proceedings)

5 BY MR. BURTON:

6 Q. As you were getting yourself or your children ready  
7 to go to the hospital, did you clean up the house at all?  
8 Did you move anything in the house?

9 A. No.

10 Q. While at the hospital, did anyone other than  
11 yourself, the defendant, Chance and Jordyn come to visit you?

12 A. Yes.

13 Q. Did any family come to the hospital?

14 A. Yes.

15 Q. Whose family?

16 A. His family.

17 Q. His family?

18 A. Yes.

19 Q. Do you recall who in his family came to the  
20 hospital?

21 A. Yes.

22 Q. Who?

23 A. His grandmother and his aunt.

24 Q. And by "his family", you mean Donovine's family,  
25 correct?

1 A. Yes.

2 Q. Did anyone from the Las Vegas Metropolitan Police  
3 Department come to the hospital?

4 A. Yes.

5 Q. And you had already said that at the hospital you  
6 talked with the detectives, correct?

7 A. Yes.

8 Q. And that was the recorded statement that we've been  
9 referring to, correct?

10 A. Yes.

11 Q. And you're aware that the defendant was also spoken  
12 to by the detectives at the hospital, correct?

13 A. Yes.

14 Q. He also talked with the detectives?

15 A. Yes.

16 Q. At some point did the defendant and the detectives  
17 leave you, Chance and Jordyn at the hospital?

18 A. Yes.

19 Q. Where was it they were going, according to your  
20 understanding?

21 A. Back to the apartment.

22 Q. Do you know why they were going back to the  
23 apartment?

24 A. To take pictures.

25 Q. While they went to the apartment, did you stay at



1 the hospital with Chance?

2 A. Yes.

3 Q. Jordyn stayed with you, too, correct?

4 A. Yes.

5 Q. Did you have to give the detectives and the  
6 defendant a key to get into the apartment?

7 A. Yes.

8 Q. And that's because you left the door locked, right?

9 A. I think so.

10 Q. Now, you also eventually, leave the hospital with  
11 Chance that day when he's got his hands burned January 5th,  
12 correct?

13 A. Yes.

14 Q. And you don't go back to the apartment at that  
15 point, right?

16 A. No.

17 Q. You went somewhere else, correct?

18 A. Yes.

19 Q. Where is it that you went with Chance?

20 A. To my mom's house.

21 Q. And when the detectives and the defendant decided  
22 to go back to the apartment, that was with your consent,  
23 correct?

24 A. Yes.

25 Q. So to your knowledge, was anyone in your apartment

1 from the time that you left to go to the hospital, and the  
2 defendant and the detectives entered for pictures?

3 A. No.

4 Q. Did the detectives a couple of days later on  
5 January 8th, come to you and ask to enter your apartment  
6 again?

7 A. Yes.

8 Q. And you agreed to allow them to do that, correct?

9 A. Yes.

10 Q. And they provided you something called a consent to  
11 search card, correct? They gave you something to sign?

12 A. No. Not that I'm aware of.

13 MR. BURTON: May I approach the Clerk, Your Honor?

14 THE COURT: You may.

15 THE WITNESS: Not that I'm aware of.

16 MR. BURTON: Showing what's been marked as State's  
17 Proposed Exhibit 76. May I approach?

18 THE COURT: You may.

19 MR. BURTON: Thank you.

20 BY MR. BURTON:

21 Q. Ms. Cathcart, I'm showing you what's been marked as  
22 State's Proposed Exhibit 76. Do you recognize it?

23 A. Yes.

24 Q. Do you recognize your signature near the bottom of  
25 that document?

1 A. Yes.

2 Q. Is this a fair -- what do you recognize it to be?

3 A. A Consent To Search Form.

4 Q. Just make sure you're being loud enough so that  
5 everybody can hear you.

6 A. Okay.

7 Q. What do you recognize this document to be?

8 A. A Consent To Search Form.

9 Q. And that was for your apartment on January 8th,  
10 correct?

11 A. Yes.

12 Q. And you signed that?

13 A. Yes.

14 Q. This is a fair and accurate copy of the consent to  
15 search form, correct?

16 A. Yes.

17 MR. BURTON: Your Honor, at this time, the State  
18 would move to admit State's Exhibit -- Proposed Exhibit 76.

19 MS. HOLIDAY: No objection, Your Honor.

20 THE COURT: It's admitted.

21 (State's Exhibit 76 admitted).

22 BY MR. BURTON:

23 Q. All right. And Ms. Cathcart, I'd like to show you  
24 some other documents.

25 MR. BURTON: And if we could switch over to the

1 Elmo.

2 THE COURT RECORDER: Sure.

3 (Off-record colloquy)

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

5 THE COURT: You may.

6 BY MR. BURTON:

7 Q. Ms. Cathcart, I'm showing you what's been marked as  
8 State's Proposed Exhibits 3 through 13. If you could take a  
9 look at those, please. Do you recognize those, all those  
10 photos that were taken of Chance on January 5th, 2016?

11 A. Yes.

12 MR. BURTON: Your Honor, at this time, I believe  
13 there's a stipulation to admit Proposed Exhibits 3 through  
14 13.

15 MS. HOLIDAY: That's correct, Your Honor, no  
16 objection.

17 THE COURT: 3 through 13 are admitted.

18 (State's Exhibits 3 through 13 admitted, by stipulation)

19 MR. BURTON: Thank you.

20 BY MR. BURTON:

21 Q. Showing State's Exhibit 3, can you see that on the  
22 screen right in front of you Ms. Cathcart?

23 A. Yes.

24 Q. Do we need to zoom out a little bit? It seems like  
25 it's a little close. There we go. That's Chance, right?

1 A. Yes.

2 Q. Showing State's Exhibit 8. Do you recognize that?

3 A. Yes.

4 Q. Is that Chance's right hand on January 5th?

5 A. Yes.

6 Q. And the --- what do we see? What's --- what do we  
7 see on the back of Chance's hands?

8 A. Burns.

9 Q. If you look at State's Exhibit 13, is this Chance's  
10 left hand?

11 A. Yes.

12 Q. What do we see on the back of Chance's left hand?

13 A. Burns.

14 (Pause in the proceedings)

15 BY MR. BURTON:

16 Q. State's Exhibit 12, what do we see in 12?

17 A. Burns.

18 Q. Is this to Chance's left hand?

19 A. Yes.

20 Q. This is a different angle, correct?

21 A. Yes.

22 Q. And looking at State's Exhibit 5, what do we see in  
23 State's Exhibit 5?

24 A. Chance's hand covered in gauze.

25 Q. Is that something they did at the hospital?

1 A. Yes.

2 Q. And if we look at State's Exhibit 4, is that  
3 Chance's other hand covered in gauze?

4 A. Yes.

5 Q. Now, if we look at State's Exhibit 6, what are we  
6 looking at here?

7 A. Chance's right hand.

8 Q. Does that show the palm area of Chance's hand?

9 A. Yes.

10 Q. Fair to say there's no gauze placed on that palm  
11 side?

12 A. Yes.

13 Q. Did he have any burns on the palms of his hands?

14 A. No.

15 Q. Looking at State's Exhibit 7, this is Chance's left  
16 hand again, correct?

17 A. Yes.

18 Q. And that's the palm of that left hand?

19 A. Yes.

20 Q. And again, no burns, correct?

21 A. Yes.

22 Q. Did Chance's injuries to his hands -- the  
23 appearance of them, did they change over time?

24 A. Yes.

25 Q. So for example, when you first saw him, did his

1 hands look different a day or two later?

2 A. They were covered so I didn't know what they looked  
3 like.

4 Q. Were you ever present when Chance's hands were  
5 unwrapped, either for doctor's visits or procedures or what  
6 have you?

7 A. Yes.

8 Q. Did they look different when they were unwrapped  
9 than when you first saw them?

10 A. Yes.

11 Q. Describe that.

12 A. Well, both hands were different so just at first it  
13 was just -- what do you call the bubbles?

14 Q. You saw bubbles on the tops of his hands?

15 A. Yeah. And some were like just gooey.

16 Q. And you said that the hands looked different?

17 A. Yes.

18 Q. So if we look again at State's Exhibit 8, that's  
19 Chance's right hand, correct?

20 A. Yes.

21 Q. And if we compare that to State's Exhibit 11,  
22 that's Chance's left hand, correct?

23 A. Yes.

24 Q. And so, excuse me, the injuries to both hands, they  
25 look a little different; is that what your testimony is?

1 A. Yes.

2 Q. After Chance was released on January 5th, 2016, was  
3 he prescribed any pain medication?

4 A. From Sunrise, no.

5 Q. Did he have any appointments with doctors after he  
6 was discharged from the hospital on January 5th, 2016?

7 A. Yes.

8 Q. Were those appointments at Sunrise or somewhere  
9 else?

10 A. Somewhere else.

11 Q. Where were they at?

12 A. UMC Burn Unit.

13 Q. Did you go to those appointments with Chance?

14 A. Yes.

15 Q. Do you recall there being an appointment on January  
16 6th, the day after the injuries at UMC Burn Unit?

17 A. Yes.

18 Q. You were there with Chance?

19 A. Yes.

20 Q. Were you with him -- between January 5th and  
21 January 6th, did you give Chance any pain medication?

22 A. Yes.

23 Q. What did you give him?

24 A. Children's Tylenol.

25 MR. BURTON: Your Honor, may I approach?



1 THE COURT: You may.

2 BY MR. BURTON:

3 Q. Now, I'm showing you what's been marked as State's  
4 Exhibit 14 through 25. If you could take a look at those.  
5 Do you recognize these photographs?

6 A. Yes.

7 Q. Do you recognize these as photographs showing  
8 injuries to Chance's hand both on January 6th and January 7,  
9 2016?

10 A. Yes.

11 Q. And you were present and saw these injuries for  
12 yourself, correct?

13 A. Yes.

14 Q. Do these photos fairly and accurately depict how  
15 those injuries looked on January 6th and January 7, 2016?

16 A. I don't understand your question.

17 Q. Well, you saw the injuries yourself, correct?

18 A. Yes.

19 Q. Did they look in these pictures fairly and  
20 accurately like they looked when you saw them for yourself?

21 A. Yes.

22 MR. BURTON: Your Honor, at this time, the State  
23 would move to admit State's Proposed Exhibits 14 through 25.

24 MS. HOLIDAY: Judge, may we approach?

25 THE COURT: You may. Can you bring them over?

1 MR. BURTON: Yes, Your Honor.

2 (Bench conference begins).

3 MS. HOLIDAY: Our objection to these pictures is  
4 just that we don't know who took them. It's our  
5 understanding that the detectives got them from the medical  
6 staff at UMC. I'm not sure if it's clear to the detective.

7 THE COURT: Well, what's the legal objection? It  
8 doesn't matter who took them. It's just do they fairly and  
9 accurately --

10 MS. HOLIDAY: Foundation.

11 THE COURT: -- depict --

12 MS. HOLIDAY: Foundation. We don't know because we  
13 don't know who took them. We don't know if they made any  
14 alterations to them. If you can -- you can see from the  
15 photos that they're kind of bright red, like the color seems  
16 to be a little bright red.

17 MS. KIERNY: Like if there's a certain filter, you  
18 know, enhance the red in them and you can see that in  
19 comparison, like, of the shirt he's wearing because there's  
20 other pictures where he's wearing that same shirt and it's  
21 much brighter.

22 MS. HOLIDAY: Right..

23 THE COURT: So the objection is foundation? Do you  
24 want to respond?

25 MS. HOLIDAY: Foundation.

1 MR. BURTON: Yes, Your Honor.

2 THE COURT: Sorry.

3 MR. BURTON: No, it's okay. I asked her if she  
4 recognized them as pictures of --

5 THE COURT: Um-h'm.

6 MR. BURTON: -- her son, she said, yes, she was  
7 there when these pictures were taken on January 6th and  
8 January 7th. That she would fairly and accurately -- she  
9 said they fairly and accurately depict the way that her --  
10 the injuries looked to her as she looked at them in person.

11 THE COURT: Okay.

12 MS. HOLIDAY: Our objection is they make the  
13 injuries look worse and they're not a fair and accurate  
14 representation because --

15 THE COURT: I'm not sure how a camera can make  
16 these injuries look worse. I don't understand that. What do  
17 you mean?

18 MS. KIERNY: Because a filter can change the color.

19 MR. BURTON: Well, they can certainly get into that  
20 on cross-examination.

21 THE COURT: You think a filter would change the  
22 color of these injuries?

23 MS. KIERNY: I have no idea because I don't know  
24 who took them.

25 MS. HOLIDAY: Right.

1 THE COURT: Okay.

2 MS. KIERNY: What I'm saying is they look -- the  
3 color of the red looks a lot brighter than all the other  
4 photos, and because we don't know who took the photos, we  
5 can't ask them questions about what kind of filter they may  
6 have had on their phone.

7 THE COURT: Okay. Objection's overruled. They're  
8 going to be admitted.

9 MR. BURTON: Thank you.

10 MS. KIERNY: Okay.

11 (Bench conference concluded)

12 THE COURT: They're admitted.

13 (State's Exhibits 14 through 25 admitted)

14 MR. BURTON: Thank you, Your Honor.

15 BY MR. BURTON:

16 Q. Ms. Jacksper (sic), had any of your children or  
17 yourself or anyone that you know been burned like Chance --  
18 well, let me -- strike that. Did you take Chance in to UMC  
19 Burn Unit on January 6th, 2016 for a procedure?

20 A. Yes.

21 Q. Do you recall what that procedure was? What did  
22 they do to him?

23 A. Just changed the gauze on his hands and rewrapped  
24 his hands.

25 Q. Did they do anything to the hands themselves?

1 A. They popped the bubbles.

2 Q. The blisters or the bubbles on top of his hands?

3 A. Oh, yeah, blisters. Yes.

4 Q. And do you recall them debriding or taking off  
5 layers of skin of the hand itself on January 6th and January  
6 7th?

7 A. I remember them taking off skin, but I don't  
8 remember what day it was.

9 Q. So you remember at some point in time, they did  
10 more than pop bubbles or blisters, they took off layers of  
11 skin, correct?

12 A. Yes.

13 Q. Were you there when they actually did that  
14 procedure, where they took off layers of Chance's skin?

15 A. Yes.

16 Q. What did they use to take off those layers of skin?

17 A. I don't remember.

18 Q. Was it medical instruments? Was it surgery gloves?  
19 What -- do you recall?

20 A. They had on gloves. They always had on gloves, but  
21 I think they just -- it was dead skin so I think they just  
22 peeled it off with their hands.

23 Q. I'm showing you what's been now admitted as State's  
24 Exhibit 16. Do you recognize this? Do you recognize this as  
25 a photo of Chance's hands on that date?

1 A. Yes.

2 Q. Do we see a bubble or a blister on the top of his  
3 hands in this picture?

4 A. Yes.

5 Q. And because the lighting's a little off, could you  
6 please circle that for the members of the jury. If you touch  
7 your screen, it's just like --

8 A. Oh.

9 Q. -- Monday night football.

10 A. What?

11 THE MARSHAL: Now, don't touch anything.

12 THE WITNESS: Do it now?

13 BY MR. BURTON:

14 Q. Um-h'm.

15 A. Okay.

16 Q. Thank you.

17 A. Okay, it's doing it again.

18 THE COURT: I don't know why it's doing that.

19 THE COURT RECORDER: Can you clear it from  
20 (inaudible)?

21 (Off-record colloquy)

22 BY MR. BURTON:

23 Q. So that was the blister that you circled, correct?

24 A. Yes.

25 Q. Or one of the blisters on Chance's hands?

1 A. Yes.

2 Q. And that would have been before the procedure where  
3 they're popping blisters or -- correct?

4 A. Yes.

5 Q. And now if we're looking at State's Exhibit 14,  
6 this is Chance's hand as well?

7 A. Yes.

8 Q. Would this have been after a procedure where  
9 they're taking off that dead skin you described?

10 A. Yes.

11 Q. So if we look back at State's Exhibit 16, that  
12 would be before that procedure where they're taking off --  
13 not only popping the blister, but taking off that skin,  
14 correct?

15 A. Yes.

16 Q. Did they give Chance any pain medication or  
17 anesthesia for this procedure to take off this skin?

18 A. Not that I remember.

19 Q. Now if we're looking at State's Exhibit 15, is this  
20 another photograph of Chance's hand after this procedure  
21 where they're taking off that dead skin?

22 A. Yes.

23 Q. And that would be his left hand, correct?

24 A. I can't -- it looks like the right from here.

25 Q. I'm sorry, what?

1 A. It looks like the right from here.

2 Q. State's Exhibit 19, is that his left or his right  
3 hand?

4 A. His left.

5 Q. And that would be after the procedure of taking off  
6 the dead skin, correct?

7 A. Yes.

8 Q. Were you -- you were actually there for that  
9 procedure, right, in the same room as chance?

10 A. Yes.

11 Q. State's Exhibit 20, this is the right hand,  
12 correct?

13 A. Yes.

14 Q. And again, after that procedure?

15 A. Yes.

16 Q. So what is that -- describe the color difference.  
17 Why do we see a different color between say Chance's wrist  
18 and the top of Chance's hand?

19 A. That's what it looked like after they pulled off  
20 the dead skin.

21 Q. There's kind of a change in skin color there,  
22 correct?

23 A. Yes.

24 Q. Now, after that procedure did the doctors prescribe  
25 Chance any pain medication?



1 A. Yes.

2 Q. What did the doctors prescribe Chance for pain?

3 A. I don't remember exactly what it was, but it was  
4 some type of Tylenol.

5 Q. Do you recall it being Tylenol with codeine?

6 A. Yes.

7 Q. Did you fill that prescription for Chance?

8 A. No.

9 Q. After that procedure, do you recall coming back to  
10 UMC the next day?

11 A. Yes.

12 Q. Why did you come back to UMC the next day after the  
13 procedure?

14 A. Because they were going to change his bandages.

15 Q. Do you recall telling the doctors about the night  
16 between the procedure and when you were back at the UMC Burn  
17 Unit the next day?

18 A. I don't understand what you're asking me.

19 Q. Do you recall the night between when Chance had  
20 that skin taken off --

21 A. Um-h'm.

22 Q. -- and the next day?

23 A. Yes.

24 Q. Did Chance have any pain that night?

25 A. Yes.

1 A. Yes.

2 Q. When you told the doctors these things, what did  
3 the doctors do?

4 A. I don't remember.

5 Q. Do you remember being checked into the hospital on  
6 January 8th or excuse me, Chance being checked into the  
7 hospital on January 8th?

8 A. Yes.

9 Q. Do you remember how long Chance was in the hospital  
10 for after he was checked in?

11 A. A few days.

12 Q. Do you remember if there were any procedures while  
13 Chance was in the hospital?

14 A. Yes.

15 Q. Did they take more of his skin off?

16 A. I don't know what -- exactly what they did, but I  
17 believe so.

18 Q. Do you remember having to sign forms for  
19 procedures?

20 A. Yes.

21 Q. If I showed you the forms that you signed, would it  
22 refresh your recollection what the procedures actually were?

23 A. Yes.

24 MR. BURTON: Showing opposing counsel. May I  
25 approach?

1 THE COURT: You may.

2 BY MR. BURTON:

3 Q. Showing you a document. Do you recognize your  
4 signature?

5 A. Yes.

6 Q. Okay. Or your initials, I'm sorry.

7 A. Yes.

8 Q. Okay. Is that one of the forms that you signed  
9 when Chance was in the hospital for a procedure?

10 A. Yes.

11 Q. And do you recall -- does that refresh your  
12 recollection as to a procedure where they were taking off  
13 more of his skin from his hands?

14 A. Yes.

15 Q. Do you recall if Chance had to be sedated for this  
16 procedure in the hospital?

17 A. Yes.

18 Q. Do you recall having to sign a consent for that as  
19 well?

20 A. Yes.

21 Q. And it being general anesthesia, correct?

22 A. Yes.

23 Q. When Chance was discharged, you said a few days  
24 after he was put in the hospital --

25 A. Yes.

1 Q. -- he was allowed to go home?

2 A. Yes.

3 Q. Did the doctors at that time prescribe any pain  
4 medication?

5 A. I don't remember.

6 Q. Do you remember signing forms as part of Chance's  
7 discharge from the hospital?

8 A. Yes.

9 Q. Would looking at one of those forms refresh your  
10 recollection as to whether they prescribed him anything?

11 A. Yes.

12 MR. BURTON: Showing opposing counsel. May I  
13 approach?

14 THE COURT: You may.

15 MR. BURTON: Thank you.

16 BY MR. BURTON:

17 Q. Do you recognize your signature on this document,  
18 Ms. Cathcart?

19 A. Yes.

20 Q. It's dated January 11th, correct?

21 A. Yes.

22 Q. If you could look at that, read over it and look up  
23 at me when you're done. (Witness reading).

24 Does that refresh your memory as to whether Chance  
25 was given any prescribed -- excuse me, my pain medication --

1 A. Yes.

2 Q. After he was discharged from the hospital on  
3 January 11th, 2016, did he have further doctor's appointments  
4 and visits?

5 A. Yes.

6 Q. Do you recall how long that went on for?

7 A. No.

8 Q. Well, could you even give it a kind of a general  
9 idea? Weeks, months?

10 A. Probably four to six weeks, maybe.

11 Q. Do you remember Chance having a doctor's  
12 appointment in March 2016?

13 A. Yes.

14 Q. So that would be three months after the burn,  
15 correct?

16 A. Yes.

17 Q. Coming back around to Chance's behavior when he  
18 came back to your house December 28th, 2015. Did he have  
19 trouble listening?

20 A. Yes.

21 Q. Was at that one of his behavioral issues that he  
22 kind of picked up from California?

23 A. Yes.

24 Q. Does your apartment have -- your kitchen, does it  
25 have cupboards?

1 A. Yes.

2 Q. And you have dishes in the cupboards, correct?

3 A. Yes.

4 Q. Specifically, cups. Do you have cups?

5 A. Yes.

6 Q. What kind of cups do you have in your -- what kind  
7 of cups did you have in your apartment in January of 2016?

8 A. I had all different kinds.

9 Q. So tell me some of the kinds of cups or, you know,  
10 things that you can drink out of that you had in your  
11 cupboard.

12 A. Mugs, coffee cups, cups from 7-Eleven.

13 MR. BURTON: Showing State's Proposed 53. May I  
14 approach?

15 THE COURT: You may.

16 BY MR. BURTON:

17 Q. Ms. Cathcart, I'm showing you what's been marked as  
18 State's Proposed Exhibit 53. Do you recognize that?

19 A. Yes.

20 Q. What do you recognize it to be?

21 A. Dishes.

22 Q. Is that a picture of dishes in your Lisbon Avenue  
23 apartment?

24 A. Yes.

25 Q. Is that a fair and accurate depiction of what

1 and Donovine are a family?

2 A. Yes.

3 Q. Jasmin, do you think --

4 MS. JOBE: Objection.

5 THE COURT: Probably just rephrase it.

6 BY MS. HOLIDAY:

7 Q. Is it your opinion that Donovine is being accused  
8 of a crime he didn't commit?

9 MR. BURTON: Objection, Your Honor.

10 THE COURT: Sustained.

11 BY MS. HOLIDAY:

12 Q. Do you think -- is it your opinion that Donovine  
13 burned your son intentionally?

14 MR. BURTON: Objection, Your Honor. Relevance.

15 THE COURT: Sustained.

16 MS. HOLIDAY: I'll move on.

17 BY MS. HOLIDAY:

18 Q. You and Donovine originally met in the ninth grade,  
19 right?

20 A. Yes.

21 Q. That's when you first dated?

22 A. Yes.

23 Q. And then you broke up for a time?

24 A. Yes.

25 Q. You got back together in May or April of 2016?

1 A. Yes.

2 Q. Jordyn was born in February of 2016 or January?

3 A. Jordyn?

4 Q. Jordyn.

5 A. Jordyn was born in February 2014.

6 Q. 2014?

7 A. Yes.

8 Q. Okay. Chance went to live with his dad in May of  
9 2016, right?

10 A. May or June.

11 Q. May or June?

12 A. Yes.

13 Q. When you and Donovine got back together around the  
14 spring of 2016, Chance was with his father, right?

15 A. Yes.

16 Q. But Jordyn was with you, right?

17 A. Yes.

18 Q. Jordyn and Chance have the same father, right?

19 A. Yes.

20 Q. When you and Donovine were dating, you both spent a  
21 lot of time around Jordyn, right?

22 A. Yes.

23 Q. Donovine spent a lot of time around Jordyn?

24 A. Yes.

25 Q. Donovine spent time alone with Jordyn, right?



1 A. Yes.

2 Q. Because Donovine helped you out by watching Jordyn  
3 sometimes for you, right?

4 A. Yes.

5 Q. Donovine lived with his grandma and his grandpa  
6 around that time, correct?

7 A. Yes.

8 Q. In fact, Donovine would bring Jordyn over to his  
9 grandma and grandpa's house, right?

10 A. Yes.

11 Q. Sometimes he'd bring Jordyn to his grandma and  
12 grandpa's house so that his mom could visit with Jordyn,  
13 right?

14 A. Yes.

15 Q. And that's because Donovine considered Jordyn to be  
16 his daughter, right?

17 A. Yes.

18 Q. And so Donovine's family was very close with  
19 Jordyn?

20 A. Yes.

21 Q. And they all had a good relationship?

22 A. Yes.

23 Q. Donovine was good with Jordyn?

24 A. Yes.

25 Q. Donovine was patient with Jordyn?

1 A. Yes.

2 Q. Jordyn was still a baby back then, right?

3 A. Yes.

4 Q. So she's probably not always easy to deal with?

5 A. No.

6 Q. A little frustrating at times?

7 A. Yes.

8 Q. But Donovine didn't get frustrated with her, right?

9 A. No.

10 Q. Did he lose his temper with her?

11 A. No.

12 Q. You never saw Donovine hurt Jordyn?

13 A. No.

14 Q. You never saw Donovine spank Jordyn?

15 MR. BURTON: Your Honor, I'm going to object.

16 Relevance.

17 THE COURT: Sustained.

18 MS. HOLIDAY: Your Honor, it goes to motive.

19 THE COURT: It -- I don't think it's relevant. The  
20 objection's sustained based on relevance. You can proceed.

21 MS. HOLIDAY: Court's indulgence.

22 BY MS. HOLIDAY:

23 Q. You trusted Donovine to spend time with Jordyn,  
24 right?

25 A. Yes.

1 Q. Did you ever have any concerns about Donovine  
2 spending time with Jordyn?

3 A. No.

4 Q. I want to talk to you a little bit about Donovine's  
5 family. You are close with Donovine's family, as you just  
6 talked to the District Attorney with, right, about?

7 A. Yes.

8 Q. Donovine has two aunts, correct?

9 A. Yes.

10 Q. One aunt is named Beverly?

11 A. Yes.

12 Q. Aunt Beverly has children?

13 A. Yes.

14 Q. How old are they?

15 A. 21, 17, 8 and I think 6 or 5.

16 Q. So a couple of her children are 8 and either 6 or  
17 5?

18 A. Yes.

19 MR. BURTON: Objection. Relevance.

20 MS. HOLIDAY: Same, Your Honor. It goes to motive,  
21 and if you -- if we would like to approach, we --

22 THE COURT: Sure, maybe you should approach.

23 (Bench conference begins)

24 THE COURT: I mean, it sounds like you're  
25 apparently trying to open the door to he's a wonderful,

1 peaceful person that would never harm a child.

2 MS. HOLIDAY: Well, I'm trying to address one of  
3 the things that the District Attorney brought up in her  
4 opening, which was that when this accident happened --

5 THE COURT: Um-h'm.

6 MS. HOLIDAY: -- that was the first time that  
7 Donovine had spent time alone with Chance.

8 THE COURT: Right.

9 MS. HOLIDAY: I think to the extent that the  
10 District Attorney wants to argue that -- of course, I don't  
11 know what they're argument as to motive is going to be  
12 precisely, but to the extent they want to argue that Donovine  
13 wasn't experienced enough to handle him correctly, that he  
14 lost his temper or got frustrated and that's why he burned  
15 him, or that he just couldn't wait to get a little child  
16 alone to hurt a little child intentionally. In any of those  
17 scenarios, the evidence --

18 THE COURT: I don't think any of those scenarios --

19 MS. HOLIDAY: -- that we have --

20 THE COURT: -- have been brought up. I mean, so  
21 I'm not sure it's relevant to go into how he is around  
22 everybody else's child.

23 MS. HOLIDAY: I think it's relevant to show that  
24 he's spent time alone with other children before. This  
25 certainly isn't his first time with a child. He knows how to

1 handle other children because he's been with them. He's  
2 babysat other children. He's got experience. And I think  
3 that goes directly to what the District Attorney was trying  
4 to say in their opening when they said this was the first  
5 time that Donovine had been alone with Chance.

6 THE COURT: I think it was just a fact, right? It  
7 was just a fact.

8 MS. HOLIDAY: It is a fact, but at some point --

9 THE COURT: Okay.

10 MS. HOLIDAY: -- I think the District Attorney is  
11 going to have to explain why they think Donovine would do  
12 this.

13 THE COURT: Not really.

14 MS. HOLIDAY: Or at the very least --

15 THE COURT: You don't have to -- I haven't heard  
16 anything about motive.

17 MR. BURTON: No, motive is not.

18 THE COURT: Nor are they required and the jury will  
19 be instructed the State doesn't have to establish motive.

20 MS. HOLIDAY: And the jury will be wondering why he  
21 would do this. The jury's going to be wondering about  
22 motive. I mean, if we're accusing somebody of a crime, the  
23 jury's always going to be wondering what the motive is.  
24 Motive isn't a --

25 MR. BURTON: Well, they're specifically instructed

1 to --

2 MS. HOLIDAY: -- you know --

3 THE COURT: Well, I've had a lot of cases where I  
4 don't know what the motive is. I mean, I don't know what you  
5 want me to tell you, but that is very common where --

6 MS. HOLIDAY: I think --

7 THE COURT: -- we just don't know what the motive  
8 is.

9 MS. HOLIDAY: And I think that goes to reasonable  
10 doubt. I mean, I absolutely think the jury can consider if  
11 there was motive or if there wasn't. If there was evidence  
12 of motive.

13 MR. BURTON: They're explicitly told not to  
14 consider motive.

15 THE COURT: They're -- I mean, I'll going to  
16 specifically instruct them. I think you're getting into  
17 things that you think may be brought out. They haven't been  
18 brought out. I don't think it's relevant how he is around  
19 everybody else's child.

20 MS. HOLIDAY: I don't think it's relevant how he is  
21 around everyone else's child. It's relevant how is he around  
22 children. It's relevant that he has experience with  
23 children.

24 THE COURT: I mean, I let you go a little bit into  
25 that. I really don't think it's relevant. Okay.

1 THE COURT: Okay.

2 (Bench conference concluded)

3 THE COURT: You may proceed. The objection is  
4 sustained.

5 BY MS. HOLIDAY:

6 Q. Chance came back to live with you at the end of  
7 December, as you testified earlier, right?

8 A. Yes.

9 Q. And Chance was with you for roughly a week before  
10 the accident happened, right?

11 A. Yes.

12 Q. During that week, you and Donovine spent a lot of  
13 time together?

14 A. Yes.

15 Q. You and Donovine spent time together with Chance?

16 A. Yes.

17 Q. Donovine and Chance developed a relationship during  
18 that time?

19 A. Yes.

20 Q. In fact, Donovine bought Chance some clothes and  
21 some shoes during that time, right?

22 A. Yes.

23 Q. During that time, Chance called Donovine dad?

24 A. Yes.

25 Q. In fact, you told detectives a year ago that during

1 that time you felt Donovine had a better relationship with  
2 Chance than you did?

3 A. Yes.

4 Q. As a mother of two, now three children --

5 A. Yes.

6 Q. -- you have a lot of work to do, right?

7 A. Yes.

8 Q. It's not easy?

9 A. No.

10 Q. Sometimes you probably feel overwhelmed, like all  
11 of us parents do?

12 MR. BURTON: Objection, Your Honor. Relevance.

13 THE COURT: Sustained.

14 BY MS. HOLIDAY:

15 Q. Do you sometimes yell at your children?

16 A. Yes.

17 MR. BURTON: Objection, Your Honor. Relevance.

18 THE COURT: I'm not sure what the relevance is. Do  
19 you want to respond?

20 MS. HOLIDAY: I will find a different way to ask  
21 it.

22 THE COURT: The objection's sustained.

23 BY MS. HOLIDAY:

24 Q. Did Donovine ever yell at her children?

25 A. No.



1 Q. Did you and Donovine have an agreement about  
2 discipline?

3 A. Yes.

4 Q. What was your agreement about discipline?

5 A. If she's doing something outrageous like sticking  
6 scissors in sockets, he can hit her. Not like that, but he  
7 can hit her on the hand to tell her no or anything like that.

8 Q. So if one of your children were to stick some  
9 scissors in the light socket --

10 A. Yes.

11 Q. -- Donovine could hit them on the hand to indicate  
12 that they can't do that because it's dangerous?

13 A. Yes.

14 Q. Okay. Back when the detectives talked to you last  
15 year, you talked to the detectives about discipline --

16 A. Yes.

17 Q. -- in your household?

18 A. Yes.

19 Q. You told the detectives that you don't necessarily  
20 believe in discipline at that age --

21 A. Yes.

22 Q. -- because those children, meaning Jordyn, when she  
23 was roughly a year old, and Chance when he was almost three,  
24 those children are too young to understand the difference  
25 between right and wrong?

1 MR. BURTON: I'm sorry, Your Honor, could I get a  
2 page number on that?

3 THE WITNESS: Yes.

4 MS. HOLIDAY: Sure. Court's indulgence.

5 THE COURT: Was the question is that what she  
6 believes or is that what she told the police?

7 MS. HOLIDAY: Is that what she told the police.

8 THE COURT: Okay.

9 MS. HOLIDAY: Specifically.

10 BY MS. HOLIDAY:

11 Q. So you told the detectives that you didn't  
12 discipline them because they were too young to understand the  
13 difference between right and wrong?

14 A. Yes.

15 Q. Okay. However, because they're young children, you  
16 still have to do something or react in some way if they're  
17 doing something bad, right?

18 A. Yes.

19 Q. You can't exactly train your children, but if  
20 they're putting themselves in a position to hurt themselves,  
21 like you just testified about the scissors in the light  
22 socket --

23 A. Yes.

24 Q. -- you have to take steps to stop them, right?

25 A. Yes.

1 Q. And to indicate that they can't do that because  
2 they could hurt themselves?

3 A. Yes.

4 MR. BURTON: Your Honor, at this time, I'm going to  
5 object. I don't know what the discipline opinions of this  
6 witness, how they're relevant.

7 THE COURT: Overruled. I'm going to allow it at  
8 this point.

9 BY MS. HOLIDAY:

10 Q. Did Donovine -- at one point, Donovine felt that  
11 you yelled at the children too much, right?

12 A. Yes.

13 MR. BURTON: Objection. Speculation.

14 THE COURT: Sustained.

15 BY MS. HOLIDAY:

16 Q. At one point, Donovine told you that you yelled at  
17 the children too much?

18 MR. BURTON: Objection. Hearsay.

19 THE COURT: Sustained.

20 BY MS. HOLIDAY:

21 Q. Were you stricter with the children than Donovine  
22 was?

23 A. Yes.

24 Q. Jasmin, do you remember Officer Bethard, who was  
25 the first officer that spoke with you, coming to the hospital

1 to speak with you?

2 A. At Sunrise, yes.

3 Q. He was at Sunrise. Do you remember Officer  
4 Bethard?

5 A. Yes.

6 Q. Okay. Officer Bethard came into the room where  
7 Chance was, correct?

8 A. Yes.

9 Q. Did Officer Bethard ask Chance how he was injured?

10 MR. BURTON: Objection, Your Honor.

11 THE WITNESS: Yes.

12 MR. BURTON: Hearsay.

13 THE WITNESS: Yes.

14 THE COURT: Sustained. I guess you can ask was the  
15 question asked, but you can't go into the hearsay.

16 BY MS. HOLIDAY:

17 Q. Without saying how Chance responded, did Officer  
18 Bethard ask Chance how he got injured?

19 A. Yes.

20 MS. HOLIDAY: Court's indulgence.

21 BY MS. HOLIDAY:

22 Q. Without saying what Chance's response was, did  
23 Chance answer him in some way?

24 A. Yes.

25 MS. HOLIDAY: Your Honor, may I approach the

1 witness?

2 THE COURT: You may.

3 BY MS. HOLIDAY:

4 Q. Jasmin, I'm going to show you a couple of photos.  
5 Please let me know if you recognize those photos.

6 THE COURT: Have they been marked?

7 MS. HOLIDAY: What's that?

8 THE COURT: Have they been marked?

9 MS. HOLIDAY: Yes, they have been --

10 THE COURT: Okay.

11 MS. HOLIDAY: -- marked.

12 MS. JOBE: And admitted.

13 MS. HOLIDAY: In fact, they've been marked as a  
14 State's exhibit.

15 THE COURT: Okay..

16 MS. HOLIDAY: I can get the originals..

17 THE COURT: Do you want to use -- okay.

18 MS. HOLIDAY: Sure.

19 THE COURT: Go ahead.

20 MS. HOLIDAY: I can get the originals from the  
21 State's exhibits. Jasmin, I'm showing you what's previously  
22 been marked as State's Exhibit 48 and State's Exhibit 62. Do  
23 you recognize these?

24 THE WITNESS: Yes.

25 BY MS. HOLIDAY:

1 Q. Specifically, for State's Exhibit 48, how do you  
2 recognize that photo?

3 A. It's the food in the cabinet.

4 Q. It's the food in the cabinet where?

5 A. In the kitchen.

6 Q. At your house?

7 A. Yes.

8 Q. Do you -- a detective took that photo, correct?

9 A. Yes.

10 Q. When he came to your house in January of last year?

11 A. Yes.

12 Q. After the accident?

13 A. Yes.

14 MR. BURTON: Your Honor, I'm going to object. I  
15 believe, the testimony is this witness was not present when  
16 this photograph was taken so she can't testify as to the  
17 circumstances when --

18 THE COURT: Was she? So, I guess, the objection is  
19 foundation?

20 BY MS. HOLIDAY:

21 Q. Were you present when the photos were taken?

22 A. No. Donovine was.

23 Q. Okay. But you recognize them to be what your  
24 cupboard looked like in your house?

25 A. Yes.

1 Q. During the time of the accident?

2 A. Yes.

3 Q. Okay. And for State's Exhibit 62, do you recognize  
4 this photo?

5 A. Yes.

6 Q. Does it look like your kitchen --

7 A. Yes.

8 Q. -- looked at the time of the accident?

9 A. Yes.

10 Q. Okay.

11 MS. HOLIDAY: Your Honor, permission to publish  
12 State's Exhibit -- Proposed Exhibit 48 and 62 to the jury?

13 THE COURT: Have they been admitted?

14 MR. BURTON: Yes.

15 MS. JOBE: They have, Your Honor.

16 THE COURT: Okay. They've been admitted and you  
17 may publish.

18 BY MS. HOLIDAY:

19 Q. Okay, Jasmin, can you tell me where this is?

20 A. By the door.

21 Q. In your apartment?

22 A. The front door. Yes.

23 Q. Is that how your apartment looked the morning of  
24 the accident?

25 A. Yes.

1 Q. Do you see a diaper in this picture?

2 A. Yes.

3 Q. Jasmin, Donovine stayed with you around 90 percent  
4 of the time --

5 A. Yes.

6 Q. -- back around the time of the incident, right?

7 A. Yes.

8 Q. Did you know Donovine to drink coffee?

9 A. Yes.

10 Q. Donovine drank coffee from time to time?

11 A. Yes.

12 Q. There was a time when your dad lived with you,  
13 correct?

14 A. Yes.

15 Q. And your dad drank coffee, too?

16 A. Yes.

17 Q. Your dad drank instant coffee?

18 A. Yes.

19 Q. So your dad made his coffee by boiling water?

20 A. Yes.

21 Q. And put it in a mug?

22 A. Yes.

23 Q. And then adding instant coffee to the water?

24 A. Yes.

25 Q. The instant coffee was in a canteen in the form of



1 granules, like loose coffee, right?

2 A. Yes.

3 Q. So your dad would take some of the granules out of  
4 the canteen and put them into the mug to make his coffee?

5 MR. BURTON: Objection, Your Honor, relevance.

6 THE COURT: I'm not sure what the relevance is.

7 MS. HOLIDAY: I think the next question will  
8 indicate the relevance.

9 BY MS. HOLIDAY:

10 Q. Donovine --

11 THE COURT: Okay.

12 BY MS. HOLIDAY:

13 Q. -- saw your dad make coffee, right?

14 THE COURT: All right.

15 THE WITNESS: Yes.

16 THE COURT: I'll allow it.

17 BY MS. HOLIDAY:

18 Q. Donovine made his coffee this way, too, right?

19 A. Yes.

20 Q. Donovine would boil water, put it in a mug --

21 A. Yes.

22 Q. -- and then add the instant coffee granules to the  
23 mug to make coffee?

24 A. Yes.

25 Q. He used the same coffee out of the same canteen

1 that your father used, right?

2 A. Yes.

3 Q. At some time did your father move out of your home?

4 A. Yes.

5 Q. And he took his canteen of coffee with him?

6 A. Yes.

7 Q. But you saved some of that coffee for Donovine,  
8 right?

9 A. Yes.

10 Q. By taking some of the granules out of the canteen  
11 and putting them into a baggy?

12 A. Yes.

13 Q. Jasmin, the morning of the incident, do you  
14 remember if there was coffee in your home?

15 A. Yes.

16 Q. I'm showing you what's been previously marked as  
17 State's Exhibit 48. Can you tell us -- it's kind of hard to  
18 see.

19 THE COURT: It's really dark.

20 THE COURT RECORDER: Maybe if we turn the light off  
21 over here.

22 THE MARSHAL: You just have to hit the lamp button.  
23 Do it again.

24 (Pause in the proceedings)

25 THE COURT: Can the jury see? Yes? Okay.

1 THE WITNESS: Yes.

2 THE COURT: All right.

3 BY MS. HOLIDAY:

4 Q. Jasmin, when you talked to detectives during the  
5 time of the accident, did they ask you if there was coffee in  
6 your house?

7 A. I don't remember.

8 Q. Did they ask you if you knew where the coffee was?

9 A. I don't remember.

10 Q. Can you tell us what's in this photograph?

11 A. Food.

12 Q. Is that your cupboard?

13 A. Yes.

14 Q. And it looks like your cupboard on the day of the  
15 accident?

16 A. Yes.

17 Q. By looking at this picture, can you tell where the  
18 coffee was in the cupboard?

19 A. No.

20 Q. Can you tell us -- there's -- there appears to be  
21 something sticking up behind the Pop Tarts box. It looks  
22 like a brown packet.

23 A. Yes.

24 Q. What is that?

25 A. Hot chocolate.

1 Q. To the left of the hot chocolate, it looks like  
2 more packets. Can you tell what that is?

3 A. Kool-Aid.

4 Q. Kool-Aid packets?

5 A. Yes.

6 Q. Like the type that you put in water and mix in the  
7 water?

8 A. Yes.

9 Q. Okay. Do you remember if you kept your coffee  
10 underneath your hot chocolate next to your Kool-Aid packets?

11 A. Yes.

12 Q. Jasmin, a few days after the incident, did you look  
13 for your coffee?

14 A. Yes.

15 Q. Did you find it in your cupboards?

16 A. Yes.

17 Q. Where did you find it?

18 A. Under the hot chocolate and Kool-Aid.

19 Q. Behind the Pop Tarts box, right?

20 A. Yes. Just underneath everything.

21 Q. Okay.

22 MS. HOLIDAY: Court's indulgence. No further  
23 questions, Your Honor.

24 THE COURT: Any redirect?

25 MR. BURTON: Yes, Your Honor. May we approach

1 first?

2 THE COURT: Sure.

3 (Bench conference begins).

4 MR. BURTON: Your Honor, here's where we're at.

5 The very first question that Counsel asked on  
6 cross-examination was about whether Chance still lives with  
7 her, whether she still has custody of him and how he's doing.  
8 We have jail calls where is she talks about the custody  
9 situation of Chance, in March 2016. And much more  
10 importantly, she talks about the fact and Donovine talks  
11 about the fact that contact with him puts her custody of  
12 Chance at jeopardy.

13 So she is contacting the defendant, continuing  
14 relationships with the defendant at the risk of losing  
15 custody of her children. Furthermore, it's our understanding  
16 that she at this point, does not have custody of Chance.

17 THE COURT: Well, she said she did.

18 MR. BURTON: I understand that, but --

19 THE COURT: That's what she said on cross.

20 MR. BURTON: -- I believe that this raises --

21 THE COURT: Do you believe that's -- do you  
22 believe --

23 MS. HOLIDAY: I asked -- I asked her is Chance  
24 still with you?

25 MS. JOBE: We have it on --

1 THE COURT: And when you say yes -- yeah. I mean,  
2 do you have --

3 MS. JOBE: We have information that he's actually  
4 technically under a guardianship with her brother and that's  
5 how they closed out the case.

6 MS. HOLIDAY: We don't have that information. We  
7 never got that.

8 THE COURT: So she doesn't have custody of her  
9 child?

10 MS. JOBE: The child's under her a guardianship  
11 with her brother. I don't have --

12 THE COURT: Okay.

13 MS. JOBE: -- CP --

14 MS. HOLIDAY: She's (inaudible).

15 MS. JOBE: -- but just so we're clear --

16 THE COURT: Are you -- first of all, are you asking  
17 if you can ask on redirect about custody of her call?

18 MR. BURTON: About the jail calls.

19 MS. HOLIDAY: No.

20 MR. BURTON: They have the jail calls, Your Honor.

21 MS. JOBE: They have.

22 MS. HOLIDAY: We do have the jail calls, but this  
23 gets into the CPS issue. This is exactly why we wanted --

24 THE COURT: Okay.

25 MS. HOLIDAY: -- CPS records.

1 MS. KIERNY: And you're going to --

2 MR. BURTON: But it goes --

3 MS. KIERNY: We're going to (inaudible) at  
4 (inaudible) that he's -- you know, that he (inaudible) know  
5 he's in custody at that point.

6 MS. JOBE: No, that's not --

7 MR. BURTON: No.

8 MS. KIERNY: Once you play jail calls --

9 MS. JOBE: That's not what we're talking about.

10 MR. BURTON: No, I was talking about --

11 MS. HOLIDAY: (Inaudible) jail calls (inaudible).  
12 (Speaking simultaneously).

13 THE COURT: Well, here's the thing; we don't tell  
14 the jury you're not allowed to know that the defendant got  
15 arrested. Everybody gets confused. And everybody in America  
16 knows if you're here, you got arrested. So we're not trying  
17 to keep a secret.

18 MS. HOLIDAY: (Indiscernible).

19 THE COURT: He's entitled to the presumption of  
20 innocence. We play jail calls all the time.

21 MS. HOLIDAY: But March is two months afterwards.  
22 They're not entitled to --

23 MS. JOBE: May I -- I --

24 MS. HOLIDAY: -- know that he's in custody. That's  
25 why we don't have them this here while he's dressing out.

1 THE COURT: Okay. You can go into the custody of  
2 the child; whether she has custody of the child, whether it's  
3 guardianship. And why do you want to go into the -- because  
4 if she said yes, then what?

5 MR. BURTON: If she says yes as to what?

6 THE COURT: If she said yes again because she has  
7 said yes, she has custody of the child.

8 MR. BURTON: I understand. Then I will leave it,  
9 because we can't -- we don't have the CPS records to prove it  
10 up by extrinsic evidence.

11 THE COURT: Yeah.

12 MR. BURTON: But I think I can go into it on  
13 cross-examination.

14 THE COURT: I think you can go into that. Now tell  
15 me why it is you want to get into the -- into these jail  
16 calls, because they basically portrayed her as being this  
17 mother protecting her child when, in fact --

18 MR. BURTON: Right. Exactly, exactly.

19 THE COURT: -- she's having contact with the  
20 defendant and --

21 MR. BURTON: And Your Honor, we have this defense  
22 theory that they're all this big happy family when, in fact,  
23 she's risking losing her children, at least to our  
24 understanding. And that's why I think we can go into with  
25 just the jail calls because she explicitly says in these jail



1 calls, if I get caught talking to you on Facebook through  
2 your family, on the phone, with a letter, I'm going to lose  
3 custody of my children and he understands that.

4 THE COURT: So she decided to talk to him on a  
5 recorded line instead.

6 MR. BURTON: Exactly. Yes.

7 MS. KIERNY: We would like to know more information  
8 about that restriction. Is she restricted from having  
9 contact with Donovine according to CPS?

10 THE COURT: It doesn't really matter. If that's  
11 her state of mind --

12 MR. BURTON: If she (inaudible).

13 THE COURT: If that's her state of mind, it goes to  
14 her state of mind. It goes to motive. It goes to a motive  
15 here today and how she's testifying. Have you listened to  
16 the jail calls?

17 MS. HOLIDAY: No, I have not. We have them. I  
18 have not listened to them.

19 THE COURT: But you haven't listened to the ones --

20 MS. KIERNY: They didn't -- we had a bunch of disks  
21 and we didn't have any indication of which ones they were  
22 going to play.

23 THE COURT: Okay.

24 MR. BURTON: A bunch of disks, we're talking 20  
25 phone calls, Your Honor.

1 THE COURT: Okay. I'm going to allow it, but I'm  
2 concerned that they haven't listened to the exact -- are  
3 there any redactions that need to be made? I mean --

4 MR. BURTON: We wouldn't be playing the jail calls.

5 THE COURT: Oh.

6 MR. BURTON: There would be major redactions.

7 THE COURT: That's --

8 MR. BURTON: If she denies it, then --

9 THE COURT: Okay.

10 MR. BURTON: -- we're going to question and answer  
11 format with the detective.

12 THE COURT: Okay. So you're not -- you don't want  
13 to play the calls?

14 MR. BURTON: No, no.

15 THE COURT: Okay. Got it. You just want to go  
16 into them?

17 MR. BURTON: I just want to inquire on  
18 cross-examination.

19 THE COURT: Okay.

20 MS. HOLIDAY: And for the record --

21 THE COURT: Any objection to that?

22 MS. HOLIDAY: Yes. We maintain our objection.

23 Again, I still don't think it's appropriate, because to  
24 respond to this, we would want to provide details of what CPS  
25 has said to her about contact with Donovine. We would want

1 to know why they've said that, or if there are certain  
2 limits, or if that ended at a certain period of time because  
3 it's my -- again, I don't know much about the CPS case, but  
4 it's my understanding that the CPS case regarding this  
5 incident was closed at a certain period of time.

6           So, I'd want to ask her questions about that, but  
7 it's hard to do that when I don't have the details of the  
8 CPS. I don't have the details of what the CPS person told  
9 her. I don't have the details of why she told her that. It  
10 would be great to respond to their, you know, evidence that  
11 she had the state of mind if we had details. These are  
12 details we don't have and we asked for and Your Honor  
13 ordered.

14           MR. BURTON: Well, we talked about that, and they  
15 could have asked for a continuance. They decided not to get  
16 those records. The bottom line, Your Honor, is this  
17 impeachment and they elicited this. They opened the door.

18           MS. KIERNY: We did not open the door --

19           THE COURT: Okay. The objection's overruled.

20           MS. KIERNY: -- by asking if she has custody of the  
21 child.

22           THE COURT: Oh, sure you did. She said she has  
23 custody of the child (inaudible).

24           MS. KIERNY: That was our understanding. We  
25 (inaudible) otherwise.

1 THE COURT: If she doesn't?

2 MS. KIERNY: Otherwise. If we had those CPS  
3 records, we would have known that we didn't have that  
4 information.

5 THE COURT: You know, I'm sorry because this is  
6 just so basic to me. A mother needs to understand what her  
7 custody is. It's shocking to me. You had contact with her.  
8 She should know what her custody is.

9 MS. HOLIDAY: Here's my -- here's my concern.

10 THE COURT: If she told you she has custody, I  
11 mean, I don't know what in the world she's going to say on  
12 redirect.

13 MS. HOLIDAY: Here's --

14 THE COURT: You're -- you're the ones that have  
15 contact with her. She doesn't show up to see the DAs. She's  
16 -- she's -- you know, that's unusual. You guys have an  
17 advantage. She's cooperating with you. She's -- she's  
18 friendly towards you.

19 MS. HOLIDAY: The other concern is it sounds like  
20 -- and correct me if I'm wrong, Ms. Jobe, it sounds like Ms.  
21 Jobe isn't quite sure what the situation is with CPS, right,  
22 or what the status is?

23 MS. JOBE: No, I know exactly what it is because if  
24 a mother who's had DFS or CPS involved in their lives, since  
25 I used to work down there, I always check, because if that

1 mom shows up with a child she's not supposed to have, I am  
2 legally obligated to do something about it. And so --

3 MS. HOLIDAY: So where did you get this  
4 information?

5 MS. JOBE: I'm getting to that. So I e-mailed my  
6 counterparts, because Jasmin offered to bring Chance with  
7 her. So I e-mailed my counterparts to see if she was legally  
8 supposed to have him in her custody, and that's when I got  
9 the information, no documents, no nothing, from my  
10 counterparts that he was -- the case was closed with the  
11 guardianship to her brother that is still in effect.

12 MS. KIERNY: Well, obviously, this is  
13 information --

14 THE COURT: The brother has --

15 MS. KIERNY: -- we could have had and we do  
16 (inaudible).

17 THE COURT: The brother has guardianship?

18 MS. JOBE: Yes.

19 MS. KIERNY: Also, what are the limits of that --

20 THE COURT: Okay.

21 MS. KIERNY: -- guardianship? If the brother wants  
22 to allow Chance to spend the night with Jasmin, is that  
23 something he can do with his guardianship?

24 MS. JOBE: That's why no CPS report has been made.

25 MS. KIERNY: It's also a discovery violation

1 because this is information we could have had. We would have  
2 questioned it differently if we had known that she didn't  
3 have custody. We asked her about that information. If we  
4 had records -- you knew --

5 MS. JOBE: I have no records.

6 MS. KIERNY: -- that she didn't -- you knew that  
7 she had custody --

8 THE COURT: There's no records.

9 MS. KIERNY: -- that she did not have custody of  
10 this kid.

11 THE COURT: You could have the CPS records and I  
12 told you you could have a continuance.

13 MS. KIERNY: We told you that she would bring  
14 Chance.

15 THE COURT: I mean, you guys chose to go forward.

16 MS. JOBE: Your Honor --

17 MS. KIERNY: Well, it's becoming apparent that that  
18 was a bad decision because --

19 THE COURT: What?

20 MS. KIERNY: Yes, because this -- because the CPS  
21 issue keeps coming up with stuff that we just don't have and  
22 we are at a disadvantage.

23 MS. JOBE: We don't have it either.

24 MS. HOLIDAY: What about the e-mail? You said she  
25 e-mailed you back and told you -- gave you this information?

1 MS. JOBE: You're not entitled to e-mails between  
2 deputies and my office.

3 MS. HOLIDAY: If this is information that you're  
4 going to use as evidence in your case --

5 MR. BURTON: We're not. We're just inquiring on  
6 it.

7 THE COURT: Okay. Here's the thing --

8 MS. HOLIDAY: Just asking the question.

9 THE COURT: -- how are they supposed to know that  
10 she's going to come in and testify contrary to what the  
11 custody status is? So, the objection's noted. It's  
12 overruled. You can go into that --

13 MR. BURTON: Thank you.

14 THE COURT: -- on redirect.

15 MR. BURTON: That's all I have. Thank you, Your  
16 Honor.

17 (Bench conference concluded).

18 REDIRECT EXAMINATION

19 BY MR. BURTON:

20 Q. Ms. Cathcart, I just wanted to make something very  
21 clear. You were not present when Chance was injured,  
22 correct?

23 A. Yes.

24 Q. You were outside of the home, correct?

25 A. Yes.

1 Q. And when you got back, Chance was already injured,  
2 correct?

3 A. Yes.

4 Q. Sitting on the couch, correct?

5 A. In Donovine's lap.

6 Q. In Donovine's lap?

7 A. Yes.

8 Q. Thank you. Now, I think, I also wanted to clear up  
9 something. Chance was in California beginning in May 2015,  
10 correct?

11 A. May or June, one or the other.

12 Q. But the year was 2015, correct?

13 A. Yes.

14 Q. Okay. I thought I heard you on cross-examination  
15 say 2016. I wanted to make sure we had that corrected.

16 A. Yes.

17 Q. So, May 2015 -- May, June 2015 --

18 A. Yeah.

19 Q. -- Chance is in California?

20 A. Yes.

21 Q. Until December of 2015, December 28th, correct?

22 A. Yes.

23 Q. And then the injury happens on January 5th, roughly  
24 a week later, 2016, correct?

25 A. Yes.



1 Q. It's your testimony that the defendant has never  
2 yelled at either Chance or Jordyn, correct?

3 MS. HOLIDAY: Objection. Misstates the testimony.

4 THE COURT: Overruled. You can answer.

5 THE WITNESS: What? Can you ask it again?

6 BY MR. BURTON:

7 Q. On cross-examination, you were asked does Chance  
8 yell at Jordyn, correct?

9 A. Yes.

10 Q. And you said no, correct?

11 MS. KIERNY: Objection. She was never asked if  
12 Chance -- what Chance's interaction with Jordyn was.

13 MR. BURTON: I'm sorry. Did I -- I misspoke.

14 THE COURT: Okay.

15 BY MR. BURTON:

16 Q. You were asked on cross-examination whether the  
17 defendant ever yelled at Jordyn, correct?

18 A. I don't know.

19 Q. You don't remember being asked if the defendant  
20 ever yelled at --

21 A. No.

22 Q. -- Jordyn?

23 A. No.

24 Q. Well, let me ask it. Has the defendant ever yelled  
25 at Jordyn?

1 A. No.

2 Q. So the defendant has never told Jordyn to shut up?

3 A. No.

4 Q. The defendant has never told Jordyn to shut her ass  
5 up?

6 A. No.

7 Q. The defendant has never told you to tell Jordyn to  
8 shut her ass up?

9 MS. HOLIDAY: Objection, Your Honor. Relevance,  
10 argumentative.

11 THE COURT: Overruled.

12 MS. HOLIDAY: Foundation.

13 THE COURT: Overruled. You can proceed.

14 BY MR. BURTON:

15 Q. The defendant has never told you to tell Jordyn to  
16 shut her ass up?

17 A. No.

18 Q. And if I understood your testimony correctly, the  
19 defendant -- you gave the defendant permission to physically  
20 discipline either of your children, correct?

21 A. Yes.

22 Q. And that discipline would be to the back of their  
23 hands, correct?

24 A. Yes.

25 Q. Slap them on hair hands, correct?

1 A. Yes.

2 Q. This conversation or this interaction that you had  
3 with the first officer that got to the hospital, do you  
4 remember talking about that on cross-examination?

5 A. Yes.

6 Q. That was never mentioned before today, correct?

7 A. The conversation?

8 Q. The exchange, correct?

9 A. With the cop and me --

10 Q. Right.

11 A. -- or with the court?

12 Q. You talking about that interaction. Have you ever  
13 talked about that before today?

14 A. No.

15 Q. So you had a recorded statement with the  
16 detectives, correct?

17 A. Yes.

18 Q. And you didn't talk about this interaction,  
19 correct?

20 A. No.

21 Q. And you actually came to court before today and  
22 testified in another hearing, correct?

23 A. Yes.

24 Q. Okay. And you testified for the defendant in that  
25 hearing, correct?

1 A. Yes.

2 Q. And you never talked about this interaction with  
3 Officer Bethard and Chance, correct?

4 A. No.

5 Q. And while we're on that subject, where the coffee  
6 is in your house, you never talked about that before today,  
7 correct?

8 A. No.

9 Q. You never brought that up in your recorded  
10 statement with detectives, correct?

11 A. Not that I remember.

12 Q. You talked about coffee, right?

13 A. I believe so.

14 Q. With the detectives because we talked about that  
15 yesterday, right?

16 A. Yes.

17 MS. HOLIDAY: Can I get a page number now, Your  
18 Honor?

19 THE COURT: Sure.

20 MR. BURTON: Page 24.

21 BY MR. BURTON:

22 Q. And again, you testified at a hearing before trial  
23 for the defendant, correct?

24 A. Yes.

25 Q. And you never talked about where the coffee is at,

1 who used the coffee or anything about that, correct?

2 A. Not that I remember.

3 Q. And your testimony is that a few days after Chance  
4 was burned, you went back to this apartment on Lisbon,  
5 correct?

6 A. Yes.

7 Q. And you looked for coffee, correct?

8 A. Yes.

9 Q. And you did that because the defendant asked you to  
10 do that, correct?

11 A. No.

12 Q. So you just on your own went back to look for the  
13 coffee?

14 A. No.

15 Q. So somebody told you to go look for the coffee?

16 A. Yes.

17 Q. And you found the coffee, correct?

18 A. Yes.

19 Q. And you were so excited to find the coffee that you  
20 told nobody, correct?

21 A. Yes.

22 Q. You didn't tell the detectives, correct?

23 A. No.

24 Q. You didn't tell any police officers, correct?

25 A. No.

1 Q. You didn't tell any doctors, correct?

2 A. No.

3 Q. You didn't tell the prosecuting attorneys, correct?

4 A. No.

5 Q. You didn't tell the court at the prior Preliminary

6 Hearing, correct?

7 A. No.

8 Q. You saved that for today, correct?

9 A. Yes.

10 Q. At the time of Chance's injuries, Chance was in

11 diapers, correct?

12 A. Yes.

13 Q. Jordyn was in diapers, correct?

14 A. Yes.

15 Q. Lots of diapers between two kids, right?

16 A. Yes.

17 Q. Diapers used and new all over that house, right?

18 A. Yes.

19 Q. Because there's two kids, right?

20 A. Yes.

21 Q. And you changed both of their diapers at 8:45

22 before you left that morning, correct?

23 A. Yes.

24 Q. You testified that Chance is with you, correct?

25 A. Yes.

1 Q. Do you have custody of Chance?

2 A. No.

3 Q. Have you maintained a relationship with the  
4 defendant and maintained contact with the defendant even at  
5 risk of losing custody of your children?

6 MS. KIERNY: Objection. Can we approach?

7 THE COURT: Sure.

8 (Bench conference begins)

9 MS. KIERNY: Mr. Burton just --

10 THE COURT: This was --

11 MS. KIERNY: I'm sorry.

12 THE COURT: This was exactly what we talked about  
13 at the bench.

14 MS. KIERNY: I understand. Mr. Burton couched it  
15 as she give an incorrect answer about the custody status.  
16 That was then clarified. So the door is -- I mean, they  
17 fixed the issue that they thought they had. This is no  
18 longer relevant.

19 THE COURT: No, overruled.

20 MR. BURTON: Thank you.

21 THE COURT: She can answer.

22 (Bench conference concluded)

23 THE COURT: The objection's overruled. She can  
24 answer.

25 BY MR. BURTON;

1 Q. Do you remember the question?

2 A. No.

3 Q. Do you maintain contact and a relationship with the  
4 defendant even at the risk of losing custody of your  
5 children?

6 A. No. We stopped talking for a period of time.

7 Q. So it's your testimony that you stopped talking  
8 with the defendant because you wanted to keep your children  
9 in the home?

10 A. Yes.

11 Q. You didn't call him?

12 A. No.

13 Q. You didn't write him any letters or statements or  
14 anything like that?

15 A. We wrote letters, but we stopped.

16 Q. And the defendant has a Facebook account, correct?

17 A. Yes.

18 Q. You didn't post anything on his Facebook?

19 A. No, I took his Facebook down. It was up at first,  
20 but I took it down.

21 Q. You didn't try and contact him through members of  
22 his family?

23 A. Yes, I did.

24 Q. So your testimony is that you did contact and  
25 maintain a relationship with the defendant --



1 A. Through his family.

2 Q. -- through his family? Was it your understanding  
3 that you were not allowed to contact him through members of  
4 his family?

5 A. No.

6 Q. So you thought it was okay so long as it was  
7 through members of his family?

8 A. Yes.

9 MR. BURTON: Brief indulgence, Your Honor. Nothing  
10 further, Your Honor.

11 THE COURT: Any recross?

12 MS. HOLIDAY: Yes, Your Honor.

13 RECROSS-EXAMINATION

14 BY MS. HOLIDAY:

15 Q. Jasmin, we talked a little bit about the  
16 interaction with Officer Bethard and you and Chance in the  
17 hospital.

18 A. Yes.

19 Q. Was anyone else present in the room during that  
20 interaction?

21 A. Not that I remember.

22 Q. Detectives interviewed you in this case, right?

23 A. Yes.

24 Q. Did they ask you about that interaction with  
25 Officer Bethard?

1 A. Not that I remember.

2 Q. You testified at the Preliminary Hearing in this  
3 case, correct?

4 A. Yes.

5 Q. Attorney Mr. Littman (phonetic) asked you  
6 questions, correct?

7 A. Was that his attorney?

8 Q. Do you remember a male attorney asking you  
9 questions at the Preliminary Hearing?

10 A. Yes.

11 Q. Do you remember the District Attorney asking you  
12 questions at the Preliminary Hearing?

13 A. Yes.

14 Q. Did the male attorney ask you any questions about  
15 Officer Bethard at the Preliminary Hearing?

16 A. Not that I remember.

17 Q. Did the District Attorney ask you any questions  
18 about Officer Bethard --

19 A. No.

20 Q. -- at the Preliminary Hearing? Regarding the  
21 coffee, Jasmin, who told you to look for that coffee or who  
22 asked you to look for that coffee?

23 A. Joanna.

24 Q. Who's Joanna?

25 A. My CPS worker.

1 Q. Was Joanna present at your house when she asked you  
2 to look for the coffee?

3 A. Yes.

4 Q. And so what did you do?

5 A. Looked for the coffee.

6 Q. Where were you standing when Joanna asked you to  
7 look for the coffee?

8 A. In the kitchen.

9 Q. And so did you start looking through the cupboards  
10 or did you know right where to find it or how did you find  
11 the coffee?

12 A. I started looking through the cupboards.

13 Q. And where did you find the coffee?

14 A. In the cabinet.

15 Q. Behind the Pop Tarts back?

16 A. Yes.

17 Q. Was Joanna present for that?

18 A. Yes.

19 Q. She saw you do that?

20 A. Yes.

21 Q. How many days after the accident was this?

22 A. Probably two or three days later.

23 Q. Two or three days after the accident?

24 A. Probably, I'm not really sure.

25 Q. Had you tried to look for the coffee before this?

1 A. No.

2 Q. So when CPS worker Joanna was in your home, that's  
3 the first time you tried to look for the coffee?

4 A. That's the first time I came back to the house  
5 after the incident.

6 Q. That was the first time you had come back to the  
7 house after the accident?

8 A. Yes.

9 Q. Where had you been after the accident?

10 A. My mom's house.

11 Q. So the first time you returned to your home after  
12 the incident, you were with the CPS worker, Joanna?

13 A. Yes.

14 Q. She asked you look for the coffee?

15 A. Yes.

16 Q. You looked for the coffee?

17 A. Yes.

18 Q. And you found it behind the Pop Tarts box?

19 A. Yes.

20 Q. Did the detective in this case ask you where the  
21 coffee was when he interviewed?

22 A. Yes. I don't remember.

23 Q. Did the detective in this case ask you anything  
24 about coffee when he interviewed you?

25 A. I don't think so, but I'm not sure.

1 Q. Did the male attorney who questioned you at the  
2 Preliminary Hearing ask you anything about coffee?

3 A. I don't remember.

4 Q. Did the District Attorney who asked you questions  
5 at the Preliminary Hearing ask you anything about coffee?

6 A. I don't remember.

7 MS. HOLIDAY: Court's indulgence.

8 BY MS. HOLIDAY:

9 Q. Jasmin, you said you don't remember whether the  
10 detectives asked you where the coffee was, correct?

11 A. Yes.

12 Q. And you said you don't remember whether the  
13 detectives asked you about your interaction with Officer  
14 Bethard, correct?

15 A. Yes.

16 Q. Would reviewing a copy of your recorded statement  
17 refresh your recollection about whether you had conversations  
18 with the detective about the coffee or about Officer Bethard?

19 A. Yes.

20 Q. I'm going to hand you your transcript --

21 MR. BURTON: I'm sorry, can I see that, Counsel? I  
22 just want to make sure. Thank you.

23 BY MS. HOLIDAY:

24 Q. -- of your voluntary recorded statement. Go ahead.  
25 and read through it, take your time.

1 THE COURT: Read through it?

2 BY MS. HOLIDAY:

3 Q. And just let me know when you're done.

4 THE COURT: You want her to read through the entire  
5 thing?

6 MS. HOLIDAY: Your Honor, she testified that she  
7 doesn't remember --

8 THE COURT: Okay.

9 MS. HOLIDAY: -- whether the detectives asked her  
10 about the coffee or about Officer Bethard.

11 THE COURT: I just asked you if you wanted her to  
12 review the entire thing. If you do, that's fine.

13 MS. HOLIDAY: Yes, please.

14 (Pause in the proceedings; witness reviewing transcript)

15 MR. BURTON: Your Honor, may we approach?

16 THE COURT: Sure.

17 (Bench conference begins).

18 MR. BURTON: Your Honor, I appreciate what's going  
19 on and what defense counsel is doing. We're willing to  
20 stipulate that there is no mention of interaction with  
21 Officer Bethard in anywhere of the Voluntary Statement or the  
22 Preliminary Hearing transcript and the only mention of coffee  
23 is on page 24. So if she wants to read just page 24, we'll  
24 stipulate that that's the only place where coffee is  
25 discussed in her Voluntary Statement.

1 MS. KIERNY: We would appreciate that.

2 MS. HOLIDAY: Specifically, but it's -- the  
3 question isn't asked by the detectives.

4 MR. BURTON: She can go into the specifics. I'm  
5 fine with that.

6 THE COURT: You'll accept the stipulation?

7 MS. KIERNY: Yes.

8 THE COURT: Okay, perfect.

9 (Bench conference concluded)

10 THE COURT: Okay. The State and the defense have  
11 reached a stipulation. Do you want to state it for the  
12 record, please?

13 MR. BURTON: Yes, Your Honor. At this time, the  
14 parties are going to stipulate that in both Jasmin's recorded  
15 statement as well as her testimony at the Preliminary  
16 Hearing, there is no direct question regarding an interaction  
17 with Officer Bethard. In the Preliminary Hearing transcript  
18 there is no direct question about coffee. And in the  
19 Voluntary Statement, the only specific discussion about  
20 coffee is on page 24.

21 MS. HOLIDAY: That's correct, Your Honor.

22 THE COURT: Okay. And do you want to -- do you  
23 have anymore questions for the witness, then?

24 MS. HOLIDAY: I have further questions, Jasmin.  
25 Thank you.

1 THE COURT: Okay. Anything else from the State?

2 MR. BURTON: Very briefly, Your Honor.

3 THE COURT: Okay.

4 MR. BURTON: Thank you.

5 FURTHER REDIRECT EXAMINATION

6 BY MR. BURTON:

7 Q. Jasmin, your testimony is that when you found the  
8 coffee two to three days after the burns, that Joanna from  
9 CPS was there?

10 A. Yes.

11 Q. And that you showed her the coffee?

12 A. Yes.

13 Q. Now, it's also your testimony that it's the  
14 defendant that uses that coffee, correct?

15 A. And my dad, yes.

16 Q. Not you, correct?

17 A. No.

18 Q. And at the time, your dad was moved out, correct?

19 A. Yes.

20 Q. So the only person that would be using that coffee  
21 is the defendant, correct?

22 A. Yes.

23 Q. Fair to say that you never volunteered to the  
24 detectives as to where the coffee was at? -

25 A. Not that I remember.



1 MR. BURTON: Nothing further, Your Honor.

2 THE COURT: Anything else?

3 MS. HOLIDAY: Very briefly, Your Honor.

4 FURTHER RECROSS-EXAMINATION

5 BY MS. HOLIDAY:

6 Q. Jasmin, did the detective interview you before or  
7 after the detective and Donovine went back to your apartment?

8 A. I think before.

9 Q. They interviewed you before they went back to your  
10 apartment with Donovine?

11 A. Yeah, I think so.

12 Q. You think so?

13 A. Yes.

14 MS. HOLIDAY: Thank you, Your Honor.

15 THE COURT: Okay.

16 MR. BURTON: Nothing further, Your Honor.

17 THE COURT: Thank you very much for your testimony  
18 here today. You may step down. You are excused. Can she be  
19 released from her subpoena?

20 MR. BURTON: Yes, Your Honor.

21 THE COURT: Okay. And the defense is okay with  
22 that, too?

23 MS. KIERNY: Yes.

24 THE COURT: Okay.

25 MS. HOLIDAY: Um, yes, Your Honor. Yes.

1 THE COURT: Okay. You may call your next witness.

2 MR. BURTON: Thank you, Your Honor. The State  
3 calls Dr. Sandra Cetl.

4 DR. SANDRA CETL, STATE'S WITNESS, SWORN

5 THE CLERK: Thank you. Please be seated. Could  
6 you please state and spell your name for the record.

7 THE WITNESS: Dr. Sandra, S-a-n-d-r-a, Cetl,  
8 C-e-t-l.

9 THE CLERK: Thank you.

10 THE COURT: You may proceed.

11 MR. BURTON: Thank you, Your Honor.

12 DIRECT EXAMINATION

13 BY MR. BURTON:

14 Q. Dr. Cetl, how are you employed?

15 A. So, I work out of two facilities here in Nevada, in  
16 southern Nevada. I work at a Sunrise Children's Hospital as  
17 well as the Southern Nevada Children's Assessment Center. I  
18 work in kind of two areas; one as an emergency physician, but  
19 my main employment is as a child abuse evaluator. And so at  
20 both facilities I'll evaluate concerns of child abuse and  
21 neglect.

22 Q. How long have you worked for the Southern Nevada  
23 Children's Assessment Center?

24 A. About six-and-a-half years.

25 Q. And how long have you worked for Southern -- excuse

1 me, Sunrise Children's Hospital?

2 A. The same.

3 Q. How long has your job at kind of both of these  
4 places to evaluate concerns of child abuse or neglect?

5 A. The entirety.

6 Q. Can you please just tell the members of the jury  
7 how many -- in your time there, how many cases you've  
8 reviewed?

9 A. Of abuse, or in general patients?

10 Q. Abuse.

11 A. Abuse. So, more than likely, I don't have an exact  
12 number, but it would be in the thousands, probably up to  
13 about 5,000; 6,000 now.

14 Q. When you're reviewing, what type of -- what  
15 determination are you trying to make?

16 A. So, with review of any child, whether it's in the  
17 Emergency Department or concerns of child abuse, my main  
18 concern is to evaluate a child and have a differential.  
19 Basically, is there some kind of a medical condition a child  
20 has? Is there some kind of accidental mechanism that has  
21 injured a child? Is there a concern of abuse or an inflicted  
22 injury and then any other disease processes would kind of  
23 open up that differential up as well.

24 Q. In a few thousand evaluations of suspected child  
25 abuse that you've evaluated, have you determined child abuse

1 in every case?

2 A. Oh, no, no.

3 Q. Sometimes you determine abuse, sometimes you don't?

4 A. Correct.

5 Q. What type of -- can you go into your training and  
6 experience for child abuse specifically?

7 A. Sure. So for child abuse specifically, prior when  
8 I was still in residency, there's a child abuse pediatrician  
9 who was working here in town. I began taking rotations with  
10 her, and then eventually attending several conferences for  
11 child abuse and neglect. Once I graduated residency and was  
12 able to be employed for Sunrise Hospital as well as the  
13 SNCAC, the Children's Assessment Center, I underwent an  
14 apprenticeship with that physician. I continued to do yearly  
15 conferences as well as peer review process both of myself and  
16 of my colleagues.

17 And then additionally, you know just training and  
18 experience in the Emergency Department as well as the  
19 patients that I see.

20 Q. Do you work with colleagues both locally and around  
21 the country concerning child abuse?

22 A. Yes, I do.

23 Q. Does that also give training and experience to you?

24 A. Yes, I'm a part of several international groups and  
25 societies on -- that discuss child abuse and neglect concerns

1 as well as general medicine concerns. We pretty much  
2 communicate on a daily basis regarding various cases or  
3 opinions or research or literature that's come out. And so  
4 throughout that and just keeping up with all of the  
5 literature and science as it comes in is -- is how I maintain  
6 my kind of education in the medical field.

7 Q. Fair to say your training is ongoing? You have to  
8 keep -- keep abreast of things?

9 A. Constantly, yes.

10 Q. Do you have training and experience as it relates  
11 to burn injuries or burn type injuries?

12 A. Yes.

13 Q. Can you go into detail for that?

14 A. So again, both in the Emergency Department where  
15 kids come in for everything, from a runny nose to possibly a  
16 burn, and then additionally through residency, medical school  
17 and through just being a board certified pediatrician and  
18 going -- ongoing education about that. There are several  
19 conferences that I attend every year. One of them  
20 specifically is a coroner's conference as well as a  
21 international child and family maltreatment conference in San  
22 Diego that's held yearly and both of those address burns  
23 within childhood as well as in any, you know, burn scenarios  
24 and so I tend to those fairly regularly.

25 Q. Are you -- do you have experience treating burns

1 that were the result of an accidental spill?

2 A. Yes.

3 Q. Do you do that at the Sunrise Children's Hospital?

4 A. Yes.

5 Q. How often do you see those types of injuries?

6 A. So I -- of the shifts that I work there, probably  
7 burns maybe in about half or so of the patients that we see  
8 we'll come in. Somebody will come in with a burn. Not half  
9 the patients with burns, but half the time I work there,  
10 excuse me, we'll see a burn come in.

11 Q. Have you ever testified as an expert in child abuse  
12 here in Clark County, Nevada?

13 A. Yes, I have.

14 Q. Have you ever testified as an expert in burn  
15 injuries here in Clark County, Nevada?

16 A. I don't know if it was specifically defined as an  
17 expert in burn injuries.

18 Q. Have you ever testified as an expert in child abuse  
19 when the injury was a burn?

20 A. Yes.

21 Q. Were you asked to consult on a case involving  
22 Chance Jacksper?

23 A. Yes, I did.

24 Q. Do you recall when you were contacted and asked to  
25 consult on that case?

1 A. It was about the middle -- or excuse me, the  
2 beginning of January of 2016.

3 Q. Who contacted you for that consultation?

4 A. I believe, it was one of the outside agencies,  
5 either CPS or law enforcement. We staffed the concerns of  
6 the case together.

7 Q. Have you received any payment above and beyond what  
8 you make through Sunrise and the Southern Children's  
9 Assessment Center for consultations like that?

10 A. No.

11 Q. Do you receive any payment for your testimony here  
12 today?

13 A. No.

14 Q. What did you do -- did you agree to consult on the  
15 Chance Jacksper case?

16 A. Yes.

17 Q. How did you go about doing that?

18 A. So any time I have a consultation, I want as much  
19 information as I can get or as much information as needed to  
20 make a determination about an injury. For Chance, I reviewed  
21 photo documentation that was obtained through the CSI or ID  
22 department of law enforcement. I additionally, reviewed  
23 Chance's medical records from Sunrise.

24 I talked to the treating physician, Dr. Olson, who  
25 was at Sunrise at the time. And I reviewed -- Chance ended

1 up having to be transferred and eventually admitted to UMC  
2 Hospital and so I reviewed those records as well.

3 Q. Let's talk about burns in general. Can you kind of  
4 describe different burns as far as the degree of burn?

5 A. Oh, sure. So -- and the names have changed a  
6 little bit medically so we call first degree burns kind of  
7 partial thickness and second degree, we have full thickness,  
8 partial site. So it gets a little confusing. But  
9 essentially, the way we think of it is the first degree burn  
10 is kind of just that top layer of skin. It's a sunburn  
11 essentially.

12 The second degree burn starts going into past the  
13 top layer of skin and kind of into the layer where our nerves  
14 are and it's quite a painful type of burn. Third degree goes  
15 just past that layer and it's getting closer and closer to  
16 with a we call subcutaneous, so the fatty layer that you see  
17 underneath the skin.

18 And then fourth degree is usually when there's  
19 ligaments or bones that are exposed,

20 Q. Common first degree burn sunburn?

21 A. Yes.

22 Q. So pretty superficial, correct?

23 A. Yes.

24 Q. And then second degree you described it as well as  
25 partial thickness --



1 A. Yes.

2 Q. -- is that correct? What type of pain do you  
3 expect the patient to have from a second degree burn?

4 A. So second degree burns are the most painful type  
5 because how the nerves are exposed. They tend to be painful  
6 from the moment that the skin is burned and then through  
7 ongoing treatment. So pain medication is often required.  
8 And also, because of kind of where in the layer of the skin  
9 it is, a lot of times there has to be procedures to take off  
10 layers of that skin and so that adds to additional pain.

11 Q. Why is it that second degree burns are more painful  
12 than third or fourth when third and fourth degree burns are  
13 more extreme or severe?

14 A. Third and fourth degree burns are deeper and those  
15 deeper burns then actually pretty much kill away or affect  
16 the nervous tissue so your nerves aren't exposed and  
17 constantly being stimulated and painful.

18 So third and fourth degree burns, that part of the  
19 burn itself is not as painful, but they're surrounded by  
20 second degree burns. So they will be painful as well, but  
21 the more extreme it is, the deeper it is, you're just not  
22 getting nervous -- nerve tissues being exposed.

23 Q. You mentioned that if you have a third degree burn,  
24 that's not going to actually be what's driving the pain  
25 because the nerve endings are destroyed. It's the second

1 degree burn area that would surround the third degree burn?

2 A. Correct.

3 Q. So why would a third degree burn be surrounded by a  
4 second degree burn?

5 A. Oftentimes, and again, it depends on a situation,  
6 but we do see sometimes with implements or even liquids or  
7 any type of burns at the center of what's burning will be  
8 hotter than the surrounding.

9 Q. And if we were specific on liquids, why would it be  
10 that the center is going to be more severe than the outlying  
11 areas of a burn involving liquid?

12 A. Right. So depending, again, how the liquid is  
13 exposed to the skin, where the liquid first touches will be  
14 hottest and then will cool off as, one, skin is burning or as  
15 it's exposed to the air, or as gravity feeds, you know, the  
16 liquid elsewhere in a different direction.

17 Q. What type of treatment would you expect to see for  
18 a second degree burn?

19 A. So the first type of treatment we have is pain  
20 control. And then because skin is what protects us from  
21 bacterias, we often give antibiotic type of treatment.  
22 Sometimes we have to do IV or oral antibiotics. But more  
23 often than not will be some kind of topical antibiotic.

24 A second degree burn, we also continue to monitor  
25 to make sure that it's healing well. And if it's not healing

1 well, sometimes surgical intervention's necessary to scrape  
2 off layers of the burn to continue the healing process.

3 So basically, it's going to be pain control,  
4 maintenance of that healing process, you know, hopefully to  
5 prevent severe scar -- and then an antibiotic to prevent  
6 infection.

7 Q. Let's talk about, you specifically mentioned a  
8 potential for surgical intervention. Can you describe what  
9 that would look like, what that would be?

10 A. Right. So that would be where a burn surgeon or  
11 trauma type surgeon, they would take a patient to the  
12 operating room, sometimes they do it in the room itself, and  
13 will sedate to some extent the patient, and also give pain  
14 medications, and then using a scalpel and other tools, will  
15 actually cut away the skin that has been burned in order to  
16 allow the healing process so continue.

17 Q. Is there a term for that process?

18 A. A debridement.

19 Q. Debridement?

20 A. Yes.

21 Q. Spelled d-e-b-r-i-d-e-m-e-n-t?

22 A. I -- I trust you. I'm not sure that I could spell  
23 that in my head right now.

24 Q. I do that more for the court recorder than anybody  
25 else. All right. So you mentioned that you took a -- you

1 looked at photographs --

2 A. That's correct.

3 Q. -- in this case.

4 MR. BURTON: Your Honor, may I approach the Clerk?

5 THE COURT: You may.

6 MR. BURTON: Your Honor, may I approach?

7 THE COURT: You may.

8 BY MR. BURTON:

9 Q. Doctor, I'm showing you what's been marked and  
10 admitted as State's Exhibit 3 through 13. If you could take  
11 a look at those.

12 A. Okay. (Witness reviewing documents). Okay.

13 Q. Do you recognize those as some of the photographs  
14 that you looked at in this case?

15 A. Yes.

16 Q. So this is a photograph of the patient you were  
17 asked to consult, Chance Jacksper, correct?

18 A. Correct.

19 Q. We're looking at State's Exhibit 4. What do you  
20 see here?

21 A. So that is his right hand. On the, what we call  
22 the dorsum or the back of the hand, there's a bit of a burn  
23 creeping up towards his wrist and as well as a moistened  
24 gauze that is placed over -- like a wrapping over his hand of  
25 the burn.

1 Q. What would you describe that as?

2 A. I would say it's fairly well demarcated, meaning  
3 that it's not, you know, a perfect line, but it's not kind of  
4 -- it doesn't have jagged edges. It's a fairly smooth line  
5 and there seems to be one small -- possibly a small splash  
6 mark to the kind of middle of the wrist.

7 Q. Can you circle that for the jury, the splash mark?  
8 And you indicated he could -- where do you see this fairly  
9 smooth line?

10 A. The line I'm drawing is supposed to be smooth, but  
11 it's jagged on the computer. I apologize.

12 Q. Now, looking at State's Exhibit 10. This is  
13 Chance's left hand, correct?

14 A. Correct.

15 Q. Can you get a better idea here of where the burn  
16 starts and stops -- or let me ask you this, it's not covered  
17 by moistened gauze, correct?

18 A. Correct.

19 Q. So can we get a better idea of where the burn  
20 starts and stops on his hand?

21 A. Yes. Similar area, where it's from the wrist area  
22 down to kind of the knuckle on his hand, on his fingers.

23 Q. We also see blisters, correct?

24 A. Correct.

25 Q. Can you describe how those blisters would form?

1 What you see typically?

2 A. So there are a couple of different ways, but  
3 blisters are just kind of a damaged layer of skin. It starts  
4 to kind of detach from what is connecting it underneath. And  
5 so those blisters start filling also with fluid. It's a part  
6 of the inflammatory or kind of protective healing process.  
7 Sometimes we see it if something cold is applied right  
8 away. So cold water or something like that. Sometimes it  
9 happens on its own, and sometimes it can happen mechanically  
10 so actually something touching that surface.

11 Q. You described on the right hand that we had a  
12 fairly smooth line of demarcation. Can you see anything like  
13 that on his left hand?

14 A. Yes, it's a little hard to see on this picture, but  
15 that it -- you know, there's a fairly kind of smooth area  
16 where it does stop and then also, it doesn't -- and again, I  
17 don't know that this picture, you can see the fingers as  
18 well, but there tends to be just stopping right, there.

19 Q. Now, if we're looking at State's Exhibit 11, this  
20 is the same left hand, correct?

21 A. Correct.

22 Q. Can we see better the lines or the lines of  
23 demarcation you're talking about in this photograph?

24 A. Yes. On the thumb there definitely an area of burn  
25 versus not burn and then we can see that the -- you know, the

1 fingers -- the fingers are affected, but not below where the  
2 knuckle line is.

3 Q. Can you see how high up it gets on the wrist or the  
4 arm area?

5 A. On this picture, this wrist area, it appears to be  
6 about here. Unfortunately, it looks very red underneath that  
7 and I don't know if that's just the picture and how it's  
8 being represented right here.

9 Q. State's Exhibit 12, what are we looking at here?

10 A. This is his left hand as well, and that's the side  
11 where his thumb and wrist come around from the -- from the  
12 dorsum or the backside coming.

13 Q. Based on your review of the medical records and the  
14 pictures in this case, how would you describe Chance's burn?  
15 First degree, second degree?

16 A. They appeared to be pretty uniformly second degree.

17 Q. What do you mean by pretty uniformly second degree?

18 A. So when we look at burns, your burn can have, you  
19 know, first degree elements, second degree elements, third  
20 degree elements all in one burn so that wouldn't be a uniform  
21 burn. That would have varied degrees. Or you can have one  
22 where it's all second degree burn. And so this is all second  
23 degree burn, pretty much, the entirety of it.

24 Q. So you don't see on the outlying area less severe  
25 burns?

1 A. It doesn't appear so.

2 Q. And you said that you reviewed the medical records  
3 in this case?

4 A. Yes.

5 Q. From your review of the medical records, did Chance  
6 receive treatment for these burns?

7 A. Yes.

8 Q. Did he receive the types of treatments that you  
9 described are typical of second degree burns?

10 A. Yes.

11 Q. Do you recall if he received or was prescribed pain  
12 medication?

13 A. He was, yes.

14 Q. Do you recall what pain medication he was  
15 prescribed?

16 A. So while he was in the hospital, he received  
17 morphine, and then I think eventually, they weaned him down  
18 to Tylenol with codeine and then he -- I believe, went home  
19 with Tylenol with codeine.

20 Q. Do you recall if he was at any time prescribed  
21 acetaminophen with codeine?

22 A. Acetaminophen, Tylenol, same thing, I'm sorry.

23 Q. That was going to be my question.

24 A. Yeah, sorry. Yes.

25 Q. To all us lay people, what is acetaminophen?



1 A. It's Tylenol.

2 Q. Did he receive Hydrocodone?

3 A. Yes, I believe that he did as well.

4 Q. What is Hydrocodone?

5 A. So we would know it by -- it's an opiate medication  
6 such as Vicodin or Norco or Lortab. It's the same. That's  
7 the same medication that's in it. It's mixed with  
8 acetaminophen or Tylenol as well.

9 Q. Would this be part of the pain management?

10 A. Yes.

11 Q. Did he receive any anti-bacterial treatment or  
12 medication?

13 A. Yes, he did.

14 Q. Aquacel?

15 A. Yep. So Aquacel will help with the healing, and it  
16 kind of creates more of a barrier so because our skin is a  
17 our barrier and then I believe, he received Silvadene, which  
18 is a antibiotic cream.

19 Q. And I don't know if I'm going to pronounce this  
20 right, Bacitracin.

21 A. Bacitracin as well. So that's another antibiotic  
22 cream or ointment.

23 Q. Did Chance receive that in this case?

24 A. Yes.

25 Q. From your review of the medical records, did Chance

1 undergo any surgical intervention?

2 A. He did, yes.

3 Q. What surgical intervention did he undergo?

4 A. So after -- so it's debridement. Essentially,  
5 after he was in the Emergency Department at Sunrise, he was  
6 then discharged to home with close follow up at the burn  
7 center at UMC. Once he came to UMC, it was determined that  
8 the burn was not healing -- it was actually looking worse and  
9 it wasn't healing to their satisfaction so he was admitted  
10 and their Burn Unit physician then was able to do the  
11 debridement surgical procedure, so the scraping and cutting  
12 off of any of the skin that's not healing to expectation or  
13 optimally.

14 MR. BURTON: May I approach?

15 THE COURT: You may.

16 BY MR. BURTON:

17 Q. Doctor, I'm showing you what's been marked and  
18 admitted as State's Exhibit 14 through 19. Can you take a  
19 look at those?

20 A. Yes.

21 Q. Well, now if we're looking at State's Exhibit 14,  
22 what are we looking at here?

23 A. So there's some sterile towels and appears that the  
24 surgeon or the person who's pointing -- I don't know who it  
25 is -- is wearing sterile gloves. So it appears that they're

1 in a sterile environment. And the hand has been debrided of  
2 all of the kind of loose skin that's been around it. So it  
3 seems to be post operative.

4 Q. How does the skin appear in this photograph?

5 A. It's pink and very smooth and appears to be and  
6 healing without all of the kind of that loose skin that's  
7 been burned on it.

8 Q. Is that -- the way it typically looks after  
9 debridement's done?

10 A. Yes.

11 Q. Is that because all the dead skin's taken off?

12 A. Correct.

13 Q. So for example, if we look at State's Exhibit 16 --

14 A. Yeah, it's hard to see on the computer.

15 Q. Yeah.

16 A. But on the picture, yes.

17 (Off-record colloquy Court Recorder/Mr. Burton)

18 BY MR. BURTON:

19 Q. Okay. Does that make it a little bit easier for  
20 you to see?

21 A. Yes.

22 Q. Would this be pre-op?

23 A. Yes.

24 Q. So we see this dead skin, correct?

25 A. Correct.

1 Q. And we also see a blister?

2 A. Yes.

3 Q. You mentioned that typically with debridement the  
4 surgical intervention where they're taking that dead skin off  
5 that there's usually anesthesia?

6 A. Yes.

7 Q. What type of anesthesia can be used?

8 A. How do you mean -- like, I think -- well, they used  
9 IV anesthesia and sometimes inhalant anesthesia.

10 Q. So I guess, my question is, is this a local  
11 anesthesia or --

12 A. Oh, no.

13 Q. -- general?

14 A. No, no, no, general anesthetic.

15 Q. So Chance -- was Chance given anesthesia in this  
16 case?

17 A. Yes.

18 Q. And that would have been general anesthesia?

19 A. Correct.

20 Q. Do you know if Chance had one or more debridement  
21 operations?

22 A. I know there was one major one, but I don't recall  
23 if he had any -- how many he had at bedside.

24 Q. Is it typical or not unusual to have more than one  
25 debridement?

1 A. Yes, it's not unusual.

2 Q. Why would that happen?

3 A. Because as it's healing, I mean, you know, you're  
4 -- you're forming layers that are trying to protect but  
5 sometimes are creating more of a barrier to getting the  
6 medications to prevent infections and scar tissue that may  
7 hinder joints or small areas of the hand. And so the  
8 continued need for removal of kind of dead and dying skin  
9 might be important for the healing.

10 Q. And you had mentioned that the debridement  
11 happened, excuse me, at UMC Burn Unit, correct?

12 A. That is correct.

13 Q. Why wouldn't it happen at Sunrise?

14 A. Specifically, because UMC does have an excellent  
15 Burn Unit and that is where we would send and transfer for  
16 any higher end procedures or higher level of care.

17 Q. Now I'd like to switch gears and talk about  
18 accidental spills.

19 A. Okay.

20 Q. In your training and experience when you have an  
21 accidental spill, what types of areas do you expect to be  
22 hurt?

23 A. Sure. So when we have accidental spills,  
24 specifically with -- in the pediatric environment, the most  
25 common one is reaching up and pulling something down on a

1 child. So, whether it's from a microwave or counter or even  
2 the stovetop. And so typically we'll have either hot liquid  
3 top of burn. So coffee coming out of the microwave are on a  
4 -- on a top or we'll -- you know, on a stovetop or something  
5 of that nature or we'll have grease burns. So if somebody's  
6 heating up oil on the stovetop and that pan gets moved down.

7 So those are typically the two types. And if they  
8 get pulled down, the burns are on the face, on the chest,  
9 kind of on the torso area, abdomen and kind of come down. We  
10 also can see them on the shoulders and the arms.

11 Q. And as you're kind of miming to the jury, you see  
12 cases where they're pulling it down, correct?

13 A. Correct.

14 Q. And that's why you would see those burns on those  
15 areas, correct?

16 A. Yes, yes.

17 Q. Would you always -- would you also potentially see  
18 burns in what are called exploratory areas?

19 A. Yes.

20 Q. What are exploratory areas?

21 A. So especially when we're learning how to walk and  
22 crawl and just being in the environment of the world,  
23 children will be exploring with their hands out or if they  
24 bump into things it will be in the front of their bodies and  
25 on the palms of their hands and so the burns that we see, for

1 instance, not necessarily from liquid burns, but say a hot  
2 stovetop and a child puts their hand on that, that -- the  
3 palm of their hand, that's an exploratory area.

4           You -- you know, you fall when you're on a scooter  
5 going forward, you get a goose egg on your forehead, that's  
6 an exploratory area, you're exploring your environment  
7 sometimes painfully, but with the front of the body.

8           Q.    Would the front of the body include in some cases  
9 legs or the tops of the feet?

10          A.    Yes, it can.

11          Q.    As that water is falling and hitting different  
12 parts of the body, do you expect to see less severe burns?

13          A.    Yes. So the first place that a hot liquid would  
14 touch on the skin, that would be your hottest part. And then  
15 as one -- the process of burning will cool down that liquid.  
16 And then subsequently, also exposure to air, and then as  
17 gravity causes that burn to kind of flow down the body or get  
18 caught up in shirts and clothing and whatnot, that will all  
19 cool it down.

20                And so the burn won't be uniform. It will be the  
21 worst at the hottest spot and then kind of cooled down as it  
22 goes down the body.

23          Q.    And the hottest spot being where the water hit  
24 first?

25          A.    Correct.

1 Q. When you reviewed the medical records and the  
2 photographs in this case, were you also provided a series of  
3 events that supposedly caused the injuries to Chance?

4 A. Yes, I did.

5 Q. Can you describe what you received as that  
6 information?

7 A. That his caregiver -- so Chance was with, I  
8 believe, mom's boyfriend, and he had stepped out of the  
9 kitchen after boiling some water in preparation to make  
10 coffee, I believe. Had placed a cup of boiling water onto  
11 the kitchen counter. Had stepped out of the room for a  
12 moment and when coming back had heard Chance say something to  
13 the effect of "ow" or "hot", and then the burns were noticed  
14 and the cup was overturned.

15 Q. Do you recall having the information provided to  
16 you being that the cup was on the ground?

17 A. I believe, that it was on the ground, yes, but I  
18 can't -- I don't remember specifically that.

19 Q. Part of the information that you received, did you  
20 also learn the measurements of the counter where this cup was  
21 initially and Chance?

22 A. Yes. So that Chance was about 37 inches tall and  
23 the counter was about 35 inches tall, I believe.

24 Q. Based on those measurements and your training and  
25 experience, would that mean that Chance would have to reach



1 above his shoulders or reach up to access the counter?

2 A. Absolutely.

3 Q. In your training and experience and your opinion,  
4 was the series of events that you were given consist went or  
5 inconsistent with the injuries you saw to Chance?

6 A. Inconsistent with.

7 Q. Why?

8 A. So accidental burns will happen on one side of the  
9 body, again, exploratory areas, will have this non-uniform  
10 appearance to them, especially with hot liquids that are  
11 above the level of the shoulder of a small child. In this  
12 Chance's case he was, I believe, two years old at the time  
13 that we had seen him.

14 And so none of those patterns followed. He had  
15 pretty uniform burns. They were on the backs of both of his  
16 hands. They were, you know, fairly symmetrical. There was  
17 areas of sparing, meaning, there was areas that weren't  
18 burned that I would anticipate being burned if there was more  
19 of an accidental mechanism there. Fairly smooth lines.  
20 Again, not jagged edges of somebody moving away from hot  
21 injuries or hot water as we tend to. That's a -- just a  
22 reflex. So kind of putting the totality of everything  
23 together, it was inconsistent with him reaching above and  
24 knocking over a cup of water.

25 MS. HOLIDAY: Objection, Your Honor. Foundation,

1 facts not in evidence.

2 THE COURT: Overruled.

3 BY MR. BURTON:

4 Q. Let's break some of that down a little bit, Doctor.

5 A. Okay.

6 Q. So if we're looking at State's Exhibit 3, do we see  
7 exploratory areas depicted in that photograph?

8 A. Yes.

9 Q. Where would Chance's exploratory areas be as we see  
10 them in this photograph?

11 A. So basically, things that are sticking out and  
12 would touch the world, so foreheads, noses, chins, sometimes  
13 chest and that would be most of the exploratory areas on him.  
14 On his right hand you can see a little bit of the forearm.  
15 Sometimes we do have, you know, exploration over here as  
16 well.

17 Q. And did you see any burns or documented or  
18 photographed to Chance's exploratory areas?

19 A. No.

20 Q. If we look at State's Exhibit 7, would we classify  
21 his left palm as an exploratory area?

22 A. Yes.

23 Q. There are no burns on his palm, correct?

24 A. Correct.

25 Q. You even said something, you said sparing. Can you

1 please describe what that is to the jury and why that formed  
2 in your opinion?

3 A. It's just an area where it's spared so there is  
4 burn on one area, it's not spared of the burn, and in the  
5 area that doesn't have a burn, that's the sparing area. So  
6 it's spared of the burn area.

7 Q. Why is that significant to you that there's  
8 sparing?

9 A. So again, you know, a lot of the reflexes when  
10 we're touching hot things and to move around, you would  
11 expect certain areas that would have burns. So where is not  
12 burned is significant because it would indicate either  
13 something that his palms were either on something cooler or  
14 that his hands were in a fist or something where the water  
15 couldn't access that area.

16 Q. If we look at State's Exhibit 6, this is his right  
17 palm, again, an exploratory area, correct?

18 A. Correct.

19 Q. And again, based on your review of the photographs  
20 and the medical records spared?

21 A. Correct.

22 Q. Is it significant to you that both palms are  
23 spared, as opposed to just one palm being spared and one not  
24 being spared?

25 A. Yes. Again, like getting burned is a pretty

1 chaotic kind of situation so, you know, having the control of  
2 having both of the backs of the hands being burned and  
3 nothing else is very significant. If it was spilling all the  
4 way around on one hand, but one hand was, you know, spared,  
5 the severity of that type of burn, that would mean a lot more  
6 because you wouldn't have the symmetry of -- of burn.

7 Q. And let's go now to State's Exhibit 13. You were  
8 talking about clear lines. Let me try this. Does that make  
9 the photograph a little easier to see?

10 A. Yes.

11 Q. So you talked about how -- I'm sorry, you talked  
12 about how there were lines that you could see or that there  
13 was a uniform pattern, that's what you had said.

14 A. Correct.

15 Q. Do you see that depicted in this photograph?

16 A. Well, the uniformity is mostly with the depth of  
17 the burn, but also the kind of the lines where they start and  
18 stop. The way they're projected is a little difficult to  
19 see, but there appears to be boundaries here as well as right  
20 here. Sorry, these are not as sensitive.

21 Q. So you said that the burn itself, the thickness,  
22 the degree of the burn was uniform?

23 A. Correct.

24 Q. Why did that inform your opinion?

25 A. Because when we have an accidental spill of some

1 sort or an accidental touching of hot water or hot liquid of  
2 any sort, again, you're going to have periods where it cools  
3 down, where you're, you know, getting away from it or if  
4 something spills on the face and it cools down as it comes  
5 down, you know, gravity just pulls down the -- the fluid.

6 And so when it's just completely uniform, again, it  
7 suggests that, you know, whatever touched that area liquid or  
8 otherwise was there for a certain amount of time and that  
9 nobody was pulling away from a hot water situation or hot  
10 implement or anything like that.

11 Q. You're touching on reflexes a little bit. You're  
12 familiar with reflexes as it relates to pain?

13 A. Yes.

14 Q. Are you familiar with reflexes as it relates to  
15 different forms or mechanisms of pain?

16 A. Yes.

17 Q. In other words, are there different reflexes or  
18 blunt force pain as opposed to pain caused by a burn?

19 A. So it's not so much the pain, it's the mechanism of  
20 burns. So we would call it a thermal injury. Those neurons,  
21 they send messages faster than the actual pain messages. And  
22 so you tend -- your reflex is to move away from the -- you  
23 know, the thermal injury area and then you start feeling the  
24 pain.

25 Q. Does that affect the reflexes and what you

1 understand about reflexes in thermal injury cases, which are  
2 hot liquid burns?

3 A. Yes.

4 Q. Or include hot liquid burns?

5 A. That includes it.

6 Q. Does that change the way injury typically looks?

7 A. Yes.

8 Q. Does that change the degree of injury on the kind  
9 of outlining areas?

10 A. More often than not, yes, it does.

11 Q. Describe that for the jury.

12 A. So again, if hot water is -- you know, hot water,  
13 liquid is on the back of the hand, the first reflex that your  
14 brain does in your spinal cord is to move the hand away, and  
15 especially if someone's reaching or anything like that, then  
16 your hand is going to be not in a horizontal position, but  
17 more of a vertical or even, you know, pointing downwards and  
18 that --

19 MS. HOLIDAY: Objection. Speculation.

20 THE COURT: Overruled. You may continue.

21 THE WITNESS: Okay. And so then that -- what we  
22 typically see then is that pooling gravitational movement of  
23 the water.

24 BY MR. BURTON:

25 Q. So gravity being not only things fall down to the

1 ground, but as things are in motion, like pulling away from a  
2 hot item or a hot liquid, that moves the water or whatever  
3 liquid would be left on there --

4 A. Correct.

5 Q. -- and affects the way the injury looks?

6 A. Correct.

7 Q. You don't see any of that in these injuries?

8 A. There doesn't appear to be, no.

9 Q. If we look at State's Exhibit 9, now this is the  
10 right hand, correct?

11 A. Yes.

12 Q. Same thing in terms of uniformity of the burn?

13 A. Yes.

14 Q. So there's no lesser severe or lower degree of burn  
15 on the outlying area of the burn?

16 A. Nothing significant, no.

17 Q. Does your understanding -- is your understanding of  
18 reflexes and your examination of the photographs in this case  
19 consistent with Chance being held or restrained at the time  
20 of the burn?

21 A. It was more consistent with that, yes.

22 Q. In accidental spill cases, do you typically see  
23 what are referred to as splash marks?

24 A. Yes.

25 Q. Describe what splash marks are.

1 dishes you had in your apartment in January 2016?

2 A. Yes.

3 MR. BURTON: Putting this up on the Elmo,

4 THE COURT: Any objection?

5 MS. HOLIDAY: No objection.

6 MR. BURTON: I apologize.

7 THE COURT: It's admitted. That's okay. You may  
8 publish.

9 (State's Exhibit 53 admitted)

10 BY MR. BURTON:

11 Q. So if we look at State's Exhibit 53, we have --  
12 this is the cupboard with the cups, correct?

13 A. Yes.

14 Q. And like you said, there's some milk cups, there's  
15 some mugs, there's some plastic cups, there's some glass  
16 cups, correct?

17 A. Yes.

18 Q. Did you have a kitchen table in your kitchen?

19 A. No.

20 Q. Did you have a kitchen -- like kitchen chairs?

21 A. No.

22 Q. You had a high chair for Jordyn, correct?

23 A. Yes.

24 Q. Do you recall -- well, at the time of the injury,  
25 did Chance understand what hot things were, to your belief?



1 A. No.

2 Q. I'm sorry?

3 A. No.

4 Q. He did not understand what hot was?

5 A. Well, yes.

6 Q. To your belief, did he understand to not touch hot  
7 things?

8 A. No, not really.

9 Q. Do you remember telling the detectives that if  
10 Chance touched a cup that -- excuse me, a cup that was hot,  
11 he would know not to touch it?

12 A. Yes.

13 Q. So is your testimony that at the time of January  
14 2016, Chance knew not to touch hot things?

15 A. Well, what if the -- the cup, if it's hot on the  
16 inside, what if it wasn't hot on the outside of the cup?

17 Q. I'm just asking you if Chance knew in January 2016,  
18 to not touch hot things?

19 A. Yes.

20 Q. You have a counter in your apartment in Lisbon,  
21 correct?

22 A. Yes.

23 Q. Where is that counter located?

24 A. In the kitchen.

25 MR. BURTON: May I approach the Clerk?

1 THE COURT: You may.

2 MR. BURTON: Showing opposing counsel State's  
3 Proposed Exhibits 33 and 34. May I approach?

4 THE COURT: You may.

5 BY MR. BURTON:

6 Q. Ms. Cathcart, I'm showing you what's been marked as  
7 State's Proposed Exhibits 33 and 34. If you could take a  
8 look at those. Do you recognize those photographs?

9 A. Yes.

10 Q. What are those photographs of?

11 A. My kitchen.

12 Q. Is that a fair and accurate depiction of how it  
13 looked in January 2016?

14 A. Yes.

15 MR. BURTON: Your Honor, at this time, the State  
16 would move to admit State's Exhibits 33 and 34.

17 MS. HOLIDAY: No --

18 THE COURT: Any --

19 MS. HOLIDAY: -- objection.

20 THE COURT: Okay. They're admitted.

21 (State's Exhibits 33 and 34 admitted).

22 BY MR. BURTON:

23 Q. So looking at State's Exhibit 33, this is kind of  
24 an overall picture of your kitchen, correct?

25 A. Yes.

1 Q. And where would the front door of your apartment  
2 be? Do we see it in this photograph?

3 A. A little bit.

4 Q. Okay. Can you please circle that on your screen  
5 for the members of the jury? So then the photographer would  
6 be kind of standing in your living room, if this --

7 A. Yes.

8 Q. -- picture's -- now looking at State's Exhibit 34,  
9 this is more of a close-up of part of the kitchen, correct?

10 A. Yes.

11 Q. And there's a counter shown in this photograph,  
12 correct?

13 A. Yes.

14 Q. Do you know how tall that counter is?

15 A. No.

16 Q. At the time of the injury --

17 A. Yes.

18 Q. -- could Chance reach onto that counter?

19 A. Yes.

20 Q. Did he have to stand on anything? Did he have to  
21 stand on his tippy toes?

22 A. No.

23 Q. Do you remember telling the detectives in January  
24 2016, that Chance could reach the counter but only if he  
25 stood on his big toes or his tippy toes?

1 A. Depending on how far back things were.

2 Q. I'm just asking you if you remember telling the  
3 detectives in January 2016, if Chance could reach the  
4 counter, only if he stood on his tippy toes or his big toes?

5 A. Yes.

6 Q. Thank you.

7 THE COURT: Okay. At this time, we're going to  
8 conclude for the day. During this recess, you're admonished  
9 not to talk or converse amongst yourselves or with anyone  
10 else on any subject connected with this trial or read, watch  
11 or listen to any report of or commentary on the trial or any  
12 person connected with this trial by any medium of  
13 information, including without limitation, newspapers,  
14 television, the Internet or radio, or form or express any  
15 opinion on any subject connected with this trial until the  
16 case is finally submitted to you.

17 We'll be in recess until tomorrow morning at 8:30.  
18 You'll report to the courthouse, come up to the 14th floor,  
19 at which time Officer Hawkes will greet you. When you're all  
20 here, we'll start. Thank you very much. Have a good  
21 evening.

22 THE MARSHAL: Thank you. All rise for the exiting  
23 jury.

24 (Outside the presence of the jury)

25 THE COURT: Jasmin, you just need to be back

1 to her about anything other -- at all. So we will not be  
2 discussing anything with her.

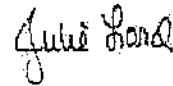
3 THE COURT: Okay. Just be back here tomorrow  
4 morning at 8:30. You can go.

5 THE WITNESS: Oh.

6 (Court recessed at 5:11 P.M., until Wednesday,  
7 January 11, 2017, at 8:45 A.M.)

8 \* \* \* \* \*

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

12  
13 

14  
15 \_\_\_\_\_  
16 JULIE LORD, INDEPENDENT TRANSCRIBER  
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*Steven D. Grierson*

TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

THE STATE OF NEVADA,	.	CASE NO. C-16-313047-1
	.	
Plaintiff,	.	DEPT. NO. XII
	.	
vs.	.	TRANSCRIPT OF
	.	PROCEEDINGS
DONOVINE MATHEWS,	.	
	.	
Defendant.	.	
.....	.	

BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE

JURY TRIAL - DAY 3

WEDNESDAY, JANUARY 11, 2017

FOR THE PLAINTIFF:	CHRISTOPHER F. BURTON, ESQ.
	MICHELLE Y. JOBE, ESQ.
	<i>Deputy District Attorneys</i>

FOR THE DEFENDANT:	KRISTY S. HOLIDAY, ESQ.
	CARLI L. KIERNY, ESQ.
	<i>Deputy Public Defenders</i>

COURT RECORDER:

KRISTINE SANTI  
District Court

TRANSCRIPTION BY:

VERBATIM DIGITAL REPORTING, LLC  
Englewood, CO 80110  
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EXHIBITS

<u>DESCRIPTION</u>	<u>ADMITTED</u>
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STATE'S EXHIBITS:

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1 LAS VEGAS, NEVADA, WEDNESDAY, JANUARY 11, 2017, 9:00 A.M.

2 (Outside the presence of the jury)

3 THE MARSHAL: All rise. Eighth Judicial District  
4 Court, Department 12 is now in session. The Honorable  
5 Michelle Leavitt, presiding. Come to order, be seated,  
6 please.

7 THE COURT: Good morning. The record will reflect  
8 that the hearing is taking place outside the presence of the  
9 jury panel and the witness is here and in the courtroom.

10 MS. JOBE: Yes, Your Honor. Just briefly to  
11 expedite things while the witnesses are on the stand, the  
12 parties have agreed that State's Exhibits 26 through 31,  
13 which are photos of Chance from UMC that haven't previously  
14 been admitted, Exhibit 32, Exhibits 35 to 52, Exhibits 54 to  
15 75, which are all of the house, and Exhibits 77 to 82, which  
16 are investigative photographs will all be admitted pursuant  
17 to stipulation, so we won't be laying the foundation.

18 MS. HOLIDAY: That's correct. Your Honor.

19 THE COURT: Okay. They're all admitted.

20 (State's Exhibits 26 through 31, 35 through 52, 54 through  
21 75, and 77 through 82 are admitted, by stipulation)

22 MS. JOBE: Thank you, Your Honor. That's  
23 everything, Your Honor.

24 THE COURT: Okay. I know, but the Marshal's -- I'm  
25 assuming he's getting the jury panel --



1 MS. JOBE: Yes.

2 THE COURT: -- ready.

3 (Pause in the proceedings)

4 THE MARSHAL: All rise for the entering jury,  
5 please.

6 (In the presence of the jury).

7 THE COURT: Does the State stipulate to the  
8 presence of the jury panel?

9 MS. JOBE: Yes, Your Honor.

10 THE COURT: The defense?

11 MS. HOLIDAY: Yes, Your Honor.

12 THE MARSHAL: Thank you, everyone. Please be  
13 seated.

14 THE COURT: Okay. Ms. Cathcart, you may return to  
15 the witness stand. When you get there, please remain  
16 standing and raise your right hand. The Clerk's going to  
17 administer the oath.

18 JASMIN CATHCART, STATE'S WITNESS, SWORN

19 THE CLERK: Thank you. Please be seated. And  
20 could you please state and spell your name for the record.

21 THE WITNESS: Jasmin Cathcart, J-a-s-m-i-n.

22 MR. BURTON: May I?

23 THE COURT: You may proceed.

24 MR. BURTON: Thank you, Your Honor.

25 THE WITNESS: C-a-t-h-c-a-r-t.

1 THE CLERK: Thank you.

2 DIRECT EXAMINATION

3 BY MR. BURTON:

4 Q. Jasmin, I wanted to show you a few more pictures.

5 We're looking at what's been admitted into evidence as

6 Exhibit 26.

7 THE COURT: Okay.

8 BY MR. BURTON:

9 Q. Do you recognize that photograph?

10 A. Yes.

11 Q. Is that you and Chance?

12 A. Yes.

13 Q. Is that at the UMC Burn Unit?

14 A. Yes.

15 Q. Is he wearing bandages on his hand?

16 A. Yes.

17 Q. Do you recall when this picture was taken or  
18 approximately when this picture would have been taken?

19 A. No. Sometime in January.

20 Q. And we look at State's Exhibit 27. Do you  
21 recognize that as another photograph taken of Chance,  
22 specifically, his right hand at UMC?

23 A. Yes.

24 Q. And we can see next to the bandage where it ends on  
25 the wrist, can we see some of the skin change, the color

1 change in the skin?

2 A. Yes.

3 Q. And that wasn't there before January 5th, 2016,  
4 correct?

5 A. Yes.

6 Q. Now if we look at State's Exhibit 28, this again is  
7 another picture of Chance's right hand?

8 A. Yes.

9 Q. And we can again see some of the skin change on his  
10 fingers, correct?

11 A. Yes.

12 Q. How long did Chance need to wear those bandages  
13 for, do you recall?

14 A. Just until they came off.

15 Q. Until what came off, the bandages?

16 A. Yes.

17 Q. Do you know how long he had to have them on for?

18 A. No.

19 Q. State's Exhibit 29, is this another photograph of  
20 Chance's right hand?

21 A. Yes.

22 Q. We can see again that skin color change on the  
23 wrist?

24 A. Yes.

25 Q. State's Exhibit 30, this is Chance's left hand,

1 correct?

2 A. Yes.

3 Q. He's pressing a toy with his first finger, his  
4 forefinger?

5 A. Yeah.

6 Q. And we can see the skin color change on his wrist,  
7 correct?

8 A. Yes.

9 Q. And State's Exhibit 31, that would be Chance's left  
10 hand again, correct?

11 A. Yes.

12 Q. And you can see the fingers and some of the color  
13 change on the fingers, some of the skin still coming off,  
14 correct?

15 A. Yes.

16 Q. Do you remember I showed you some photographs from  
17 a procedure that Chance had on January 6th and January 7th of  
18 2016 yesterday, right?

19 A. Yes.

20 Q. What I wanted to do is, I wanted to show you that  
21 picture again. Do you remember this picture we looked at it  
22 yesterday?

23 A. Yes.

24 Q. Okay. And this picture was taken after the burns  
25 on January 5th, 2016, correct?

1 A. Yes.

2 Q. So this -- where we see the patient name, the  
3 medical records, somebody's holding up where they've written  
4 Chance Jacksper on the room and the date specifically, the  
5 date reads January 7, 2015, correct?

6 A. Yes.

7 Q. But it was actually January 7, 2016, correct?

8 A. Yes.

9 Q. So they just -- if we look at State's Exhibit 21,  
10 again, they just have the wrong date there, correct?

11 A. Yes.

12 Q. So this picture actually was taken on January 7th,  
13 2016, correct?

14 A. Yes.

15 Q. And we talked about the fact that you were in a  
16 relationship with Donovine in 2015, correct?

17 A. Yes.

18 Q. And isn't it true that you're still in a  
19 relationship with Donovine?

20 A. Yes.

21 Q. All right. You have plans together, correct?

22 A. Yes.

23 Q. Plans for the future?

24 A. Yes.

25 Q. Have you a child together, correct?

1 A. Yes.

2 Q. And you were pregnant with his child on January  
3 5th, 2016?

4 A. Yes.

5 Q. When Chance was burned?

6 A. Yes.

7 Q. You have a relationship with his family, correct?

8 A. Yes.

9 Q. When you came to court yesterday, did you come  
10 alone?

11 A. No.

12 Q. Who brought you to court?

13 A. His family.

14 Q. "His" meaning the defendant's, correct?

15 A. Yes.

16 Q. Who all in his family brought you to court  
17 yesterday?

18 A. His mom, his aunt and his cousin.

19 Q. And when you came to court today, did you come  
20 alone?

21 A. No.

22 Q. Who brought you to court today?

23 A. His family.

24 Q. Same defendant's family, correct?

25 A. Just his mom and his aunt.

1 Q. You and I never met before yesterday, correct?

2 A. No, we have not.

3 Q. We were supposed to meet last Friday, correct?

4 A. Yes.

5 Q. You had an appointment to come and meet with me and  
6 my co-counsel, Ms. Jobe, last Friday, correct?

7 A. Yes.

8 Q. At 2:30?

9 A. Yes.

10 Q. Did you make that appointment?

11 A. No.

12 Q. Did our office then call you?

13 A. Yes.

14 Q. And you said you were running late, correct?

15 A. Yes.

16 Q. And you told us that you would be by at 4:00 or  
17 4:00-ish?

18 A. Yes.

19 Q. Did you make that appointment?

20 A. No.

21 Q. Have you met with either of Mr. Mathews' attorneys?

22 A. Yes.

23 Q. Did you meet with them Friday?

24 A. Yes.

25 Q. Did you meet with them before court yesterday?

1 Before you testified yesterday, did you meet with  
2 Mr. Mathews' attorneys?

3 A. Yes.

4 Q. Did either Mr. Mathews' attorneys call you last  
5 night after you were done testifying?

6 A. No.

7 Q. Did you meet with them today before you came onto  
8 the stand?

9 A. Yes.

10 Q. And you spoke with them today, correct?

11 A. Yes.

12 Q. You and I did not speak about this case yesterday?

13 A. No.

14 Q. Until you testified, correct?

15 A. Yes.

16 Q. And you and I did not speak about this case today  
17 before you testified, correct?

18 A. Yes.

19 MR. BURTON: Brief indulgence, Your Honor.

20 THE COURT: You bet.

21 MR. BURTON: Nothing further.

22 THE COURT: Cross-examination.

23 MS. HOLIDAY: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MS. HOLIDAY:



1 Q. Morning, Jasmin.  
2 A. Good morning.  
3 Q. Jasmin, is Chance still with you?  
4 A. Yes.  
5 Q. How's he doing now?  
6 A. Good.  
7 Q. He's doing good?  
8 A. Um-h'm.  
9 Q. As the District Attorney just asked you, you have  
10 two other kids?  
11 A. Yes.  
12 Q. In fact, you have a beautiful new baby?  
13 A. Yes.  
14 Q. What's area baby's name?  
15 A. Anastasia (phonetic).  
16 Q. And Donovine is Anastasia's father, right?  
17 A. Yes.  
18 Q. Again, as the District Attorney just asked you, you  
19 and Donovine are still in a relationship?  
20 A. Yes.  
21 Q. Okay. Donovine loves your kids?  
22 A. Yes.  
23 Q. You and Donovine love each other?  
24 A. Yes, that's true.  
25 Q. In fact, you and Chance and Jordyn and Anastasia

1           A.    Again, it's kind of chaotic. Whether you're  
2   stepping into hot water or liquid or something's pouring on a  
3   person, you know, that person's trying to get away and so as  
4   that, you know, kind of chaotic body movements happen you get  
5   splashes, and those splashes will often not leave these kind  
6   of smooth lines. You'll see actual little droplets or places  
7   where that liquid touched that are kind of smaller in, you  
8   know, in nature.

9           Q.    Do you see the types of splash marks you expect to  
10   see in accidental spills in the photographs in this case?

11           MS. HOLIDAY: Objection. Factual basis,  
12   speculation.

13           THE COURT: I'm sorry, what was the question?

14           MR. BURTON: Do you see the types of splash marks  
15   you would expect to see in accidental spill cases in these  
16   photographs?

17           THE COURT: Okay. The --

18           MS. HOLIDAY: Factual --

19           THE COURT: -- same objection?

20           MS. HOLIDAY: Factual, foundation and speculation.

21           THE COURT: Overruled. You can answer.

22           THE WITNESS: Okay. There seems to be one splash  
23   mark but not the multitude that I would have anticipate in an  
24   accidental type of burn.

25   BY MR. BURTON:

1 Q. Do you see that, what you describe as a splash mark  
2 here in --

3 A. Yes.

4 Q. -- State's Exhibit, excuse me, 9?

5 A. Yes. It's kind of towards the middle of the wrist.  
6 (Indicating). That area.

7 Q. And if we zoom in, do you see any marks sort of  
8 next to that area that you specifically pointed at above it?

9 A. I mean, there are a kind of darker area in this  
10 area here.

11 Q. Do you have any opinion as to what that darker area  
12 might be?

13 A. I mean, it potentially could be a little bit of a  
14 lighter burn or a less severe burn or it's just that the --  
15 the skin hasn't come off yet.

16 Q. So this would be associated with the burn as well?

17 A. Yes.

18 Q. Are you familiar with the term bilateral in hot  
19 spill or hot liquid cases?

20 A. Yes.

21 Q. What is bilateral?

22 A. Bilateral's a -- you know, often used in the  
23 medical area as two-sided or both sides.

24 Q. Did you see bilateral burns in this case?

25 A. Yes, on both of the backs of the hands.

1 Q. So when you say bilateral you're meaning that  
2 there's burns to both of the backs of the hands?

3 A. Correct.

4 Q. As opposed to just one hand?

5 A. Correct.

6 Q. Did that inform your opinion as to whether it was  
7 consistent or inconsistent with the factual scenario you  
8 were given?

9 A. Yes.

10 Q. How so?

11 A. Again, as we -- especially toddlers, as they  
12 explore their environments, having two fairly uniform burns  
13 on the same location on both hands from an accidental spill  
14 would be, you know, as next to impossible as it comes, and  
15 there is, you know, I --

16 MS. HOLIDAY: Objection. Factual, foundation and  
17 speculation.

18 MR. BURTON: Your Honor, she's giving her testimony  
19 as to how many burns, how many accidental burns she's seen.  
20 This is her estimation as to thousands of cases that she  
21 (inaudible).

22 THE COURT: Overruled. You may continue.

23 THE WITNESS: So, you know, and the literature  
24 supports this as well and just experiential, both myself,  
25 colleagues, and you know, all the science that comes out is

1 that accidental burns will be on unilateral or one-sided.  
2 They won't be symmetrical. They're being kind of -- they  
3 show that kind of chaotic motion when exposed to something  
4 hot.

5 So having on the backs of the hands, a  
6 non-exploratory area and both hands symmetric burns is of  
7 high concern.

8 BY MR. BURTON:

9 Q. When you were given the series of events, were you  
10 told as well what clothing Chance had on at the time of the  
11 burn?

12 A. Yes.

13 Q. And do you recall him wearing a diaper and a  
14 t-shirt?

15 A. Yeah, a short-sleeved t-shirt.

16 Q. Short-sleeved t-shirt. Does that inform your  
17 opinion as to what you would expect to see burned if it was  
18 an accidental spill?

19 A. Somewhat, yes.

20 Q. How so?

21 A. So again, so anything that's being pulled from  
22 above I would anticipate pooling in a -- in a t-shirt, and  
23 then having more --

24 MS. HOLIDAY: Objection, Your Honor. Factual,  
25 foundation, speculation.

1 THE COURT: Overruled. You can continue.

2 THE WITNESS: Okay. So you can have pooling in the  
3 -- in the shirt itself. That can cause sometimes even more  
4 severe burns, but sometimes if it's not attached to the skin,  
5 then you have less severe burns.

6 So it really just depends on, you know, where the  
7 -- the water falls or the hot liquid falls. Wearing a  
8 short-sleeved t-shirt, as opposed to a long-sleeved t-shirt,  
9 I would anticipate, again, anything being pulled from the  
10 top. What we typically see would be the forearms, shoulders  
11 and having burns here and not limited just to the, again, the  
12 dorsum or the backs of hands.

13 BY MR. BURTON:

14 Q. And for the record, you were pointing to your  
15 shoulder and your forearm --

16 A. Yes.

17 Q. -- when you were saying burns here?

18 A. Yes.

19 Q. Doctor, are doctors mandatory or mandated  
20 reporters?

21 A. Yes.

22 Q. Is that by law?

23 A. Yes.

24 Q. What does that mean?

25 A. It means if there is any concerns -- you don't have

1 to diagnose abuse or neglect. There just has to be a concern  
2 that either the safety of the child is somehow impaired or  
3 that that injury was caused by an abuse or neglect or could  
4 have been caused, then medical staff is required to call  
5 Child Protective Services as well as law enforcement.

6 Q. Does that change the way that you evaluate a  
7 child's injuries when you're looking at a child?

8 A. I don't think I understand that question.

9 Q. When someone comes in --

10 A. Yeah.

11 Q. -- and you're on call at Sunrise, do you look at a  
12 child's injuries differently based on the fact that you're a  
13 mandated reporter?

14 A. No. I mean, since I'm a mandated reporter, I look  
15 at all the injuries the same and I make my evaluation based  
16 on a differential. If they appear to be concerning for  
17 abuse, then I would, you know, have the staff or myself call  
18 it in. But it wouldn't change how I approach the evaluation.

19 Q. Does it require medical staff to call in any time a  
20 child is injured?

21 A. Yeah. Not every time a child is injured. It's  
22 only if there's a concern, if its history is not consistent,  
23 if the injury mechanism is not consistent with the injury  
24 that is seen. If the injury is very severe and again, there  
25 is no mechanism given or history given that is consistent

1 with the severity of the injury or the type of injury.

2 Q. Are you familiar with what's called a SCAN report?

3 A. Yes.

4 Q. What is a SCAN report?

5 A. So a SCAN is just a program that I -- I direct at  
6 Sunrise. It's called Suspected Child Abuse and Neglect, and  
7 the report is a handwritten report so that it can be  
8 documented any findings that are concerning for child abuse  
9 and/or neglect, also given an evaluation page and some  
10 drawing pages. And it's just a handwritten report to kind of  
11 simplify some of the medical terminology of a suspected child  
12 abuse or neglect situation.

13 Q. So when would a SCAN report be used or be filled  
14 out?

15 A. Any time there is concerns of abuse or neglect. We  
16 have them for sexual abuse and we have them for physical  
17 abuse and neglect as well. So they're filled out if there is  
18 an anticipation that Child Protective Services or law  
19 enforcement is going to be called due to the type of injury  
20 that is noted.

21 Q. Is there a section in that report for, you know,  
22 what the injury is?

23 A. Yes.

24 Q. And you mentioned, you know, diagrams or drawings  
25 so that they can be --



1 A. Um-h'm..

2 Q. -- depicted on those, correct?

3 A. Yes.

4 Q. Is there a section for whether photo documentation  
5 was done?

6 A. Yes.

7 Q. And by who?

8 A. Yes.

9 Q. Is there a section titled "findings suspicious for  
10 abuse and neglect"?

11 A. Yes.

12 Q. What's the purpose of that section?

13 A. So that section is just to explain what are all the  
14 findings and which are the ones that are causing concern. A  
15 child comes in and has, you know, a bruise to the shin,  
16 that's not going to be something that's necessarily noted as  
17 a concern for abuse and neglect. That's kind of a normal kid  
18 thing. Versus has a, you know, a, you know, a black eye  
19 without a history and then that would be marked as a concern  
20 for abuse and neglect. And those are basically the focus of  
21 why the evaluation became a concern.

22 Q. Is there a section for disposition?

23 A. Yes.

24 Q. What is that section for?

25 A. So disposition is to indicate based on the findings

1 at the time, if there is no concern for abuse, this seems  
2 like an accident, is it possible abuse, but further  
3 investigation needs to be done since that investigative parts  
4 are out of the scope of a, you know, a doctor or provider's  
5 practice. So it says okay, it might be an accident, but I  
6 don't know, there needs to be more history.

7 And then there's another area with checkboxes that  
8 talk about probable. So more likely than not this was some  
9 type of abusive event. And then the last one is definitive  
10 and the definitive one is due to the nature of the findings,  
11 this is an abusive injury.

12 Q. Did you -- you reviewed the medical records in this  
13 case, correct?

14 A. Yes, I did.

15 Q. Both from Sunrise and UMC?

16 A. Yes.

17 Q. In your review of the medical records, was a SCAN  
18 report completed in this case?

19 A. Most of it was completed, yes.

20 Q. Did you rely upon that in forming your opinion?

21 A. Partially, yes.

22 Q. It was the basis -- some of the basis to form --

23 A. Correct.

24 Q. -- part of the basis?

25 A. Yes.

1 Q. Based on the totality of this review, the  
2 photographs, the medical record -- oh, I'm sorry, did you  
3 ever see Chance personally?

4 A. No.

5 Q. Based on your totality of review --

6 A. Um-h'm.

7 Q. -- did you come to an expert opinion as to whether  
8 injuries were accidental or something else?

9 A. I did.

10 Q. What is at that opinion?

11 A. That it's a abusive or inflicted injury.

12 Q. Why do you come to that opinion?

13 A. So for all the factors we've been talking about,  
14 This is a two-year-old kiddo who is about the same height as  
15 a counter, the history of how the burn occurred with the  
16 caregiver wasn't consistent. And then we look at the burns  
17 themselves. Even no history or, you know, partial history,  
18 however it is, having both of the backs of the hands up to  
19 the knuckles burned is suggestive of an abusive event.

20 Q. When you were provided a scenario as to how these  
21 burns occurred, were you -- well, let me ask you this, have  
22 you ever looked at photographs of the location where these  
23 burns happened?

24 A. Yes.

25 Q. So if I show you State's Exhibit 34 --

1 A. Yes.

2 Q. -- do you recognize that as the location where  
3 these burns happened?

4 A. Yes, correct.

5 Q. Do we see a pan on the back burner of that stove,  
6 correct?

7 A. Correct.

8 Q. And then there's a counter to the left of that  
9 stove?

10 A. Yes.

11 Q. And if I gave you information that a child either  
12 pulled a mug down from the counter or somehow pulled the pot  
13 down and there was hot liquid in either one, will that be  
14 consistent with the injuries that you saw in this case?

15 A. No.

16 Q. If I told you that a child actually got up on to  
17 the counter and put his hands in the cup or in that pot with  
18 hot liquid inside, would that be consistent with these  
19 injuries?

20 A. No.

21 Q. What type of injuries would we expect to see in  
22 that scenario?

23 A. Putting hands in?

24 Q. Correct.

25 A. Well, the cup is fairly small so -- for a coffee

1 cup.

2 THE COURT: Sorry.

3 THE WITNESS: And -- oh.

4 THE COURT: Sorry.

5 THE WITNESS: Is it going to fall --

6 THE COURT: No, you're okay.

7 THE WITNESS: -- or something? Am I good? The  
8 whole thing just moved, sorry. You know, would anticipate  
9 that only maybe one hand would be exposed and so it would be  
10 fingertips or exploratory pads of the fingers of that nature.

11 If it was inside of an actual entire pot, same kind  
12 of thing. I mean, if a child puts, you know, both hands in  
13 there potentially, the fingers and you know, up to when they  
14 first reflexively move out and so those are the types of  
15 injuries. And we've seen them. This is not like a  
16 hypothetical situation. This actually occurs --

17 MS. HOLIDAY: Objection, Your Honor. May we  
18 approach?

19 THE COURT: Sure..

20 (Bench conference begins).

21 MS. HOLIDAY: Now, Dr. Cetl is doing the exact same  
22 thing that I believe Your Honor said our expert couldn't do.  
23 She is examining a hypothetical and determining whether or  
24 not it's likely to have occurred given the pattern of burns.

25 THE COURT: But this is not what your biomechanic

1 was asked to do. I mean, this is a doctor and she's just --  
2 you objected and she says this is not hypothetical. This is  
3 what I see in my practice.

4 MS. HOLIDAY: But the --

5 THE COURT: So what's the legal objection?

6 MS. HOLIDAY: The legal objection is that there's  
7 no factual foundation. She's going beyond the scope of her  
8 knowledge because just like you were going to ask Dr. Johnson  
9 to evaluate the possibility and the pattern of burns that  
10 would result if a mug were to spill from left to right, she's  
11 evaluating the kind of burns that would result if a child  
12 were to submerge his hands into a pot of hot water. There's  
13 absolutely no testimony or facts in evidence to show that  
14 that's something that could have happened in this case if it  
15 did happen, just as Your Honor ruled that there's no facts or  
16 testimony to support Dr. Johnson's analysis.

17 THE COURT: Okay, so the --

18 MS. HOLIDAY: It's the same thing.

19 THE COURT: -- objection is it goes beyond her  
20 scope of her expertise?

21 MS. HOLIDAY: And there's to factual foundation to  
22 support it in this case.

23 THE COURT: Okay. Overruled. She can continue.  
24 She was kind of cut off at the end so I don't know what  
25 you --

1 MR. BURTON: I'll reask the question.

2 THE COURT: Okay.

3 (Bench conference concluded)

4 THE COURT: The objection's overruled and you may  
5 proceed.

6 BY MR. BURTON:

7 Q. So Doctor, we were talk -- we talked about the mug  
8 and we were about to talk about the stove -- or excuse me,  
9 the pot on the stove.

10 A. Okay.

11 Q. What type of injuries would you expect to see if  
12 the child had put both hands at the same time on a stove of  
13 hot liquid? Excuse me, a pot on the stove filled with hot  
14 liquid?

15 A. It would be unusual, but again, it would start  
16 where we explore the world. So what is that? And putting  
17 fingers in first. You know, an injury where a child explores  
18 the environment with the backs of both hands is just not  
19 developmentally consistent with a child of that age or of  
20 really any age.

21 Q. Are the injuries to Chance consistent with his  
22 hands either being on a flat, cool surface or his fingers  
23 being curled, crunched into a fist?

24 A. Yes.

25 Q. If I told you that a child same size as Chance had

1 reached up onto that counter and knocked over a mug while  
2 both hands were on the counter, would that be consistent with  
3 the injuries that you saw to Chance?

4 MS. HOLIDAY: Your Honor, may we approach?

5 THE COURT: What's -- is it the same objection?

6 MS. HOLIDAY: Yes, Your Honor.

7 THE COURT: Okay. It's overruled. You can  
8 proceed.

9 THE WITNESS: So again, I mean, it depends on where  
10 the cup is, of course. But either way, if both hands are on  
11 top of a counter and a cup falls over, you're either pushing  
12 it forward and it falls backwards and the flow of water is  
13 then coming from the back to the front. I wouldn't --

14 MS. HOLIDAY: Objection, Your Honor. Beyond the  
15 scope of expertise.

16 THE COURT: Okay. Overruled. You may continue.

17 THE WITNESS: You know, again, if -- if it's, you  
18 know, hit from the side. I mean, the -- the cup of water,  
19 the way it falls to land, you know, on both the backs of  
20 hands would be -- would be near impossible without some kind  
21 of mechanism in order to knock that cup down without using  
22 the hands. So I just would anticipate being able to have  
23 both of the hands burned in a scenario like that.

24 BY MR. BURTON:

25 Q. When you're talking about mechanism, you're saying



1 something else pushing the cup over?

2 A. Yes.

3 Q. Besides the two hands?

4 A. Yeah.

5 Q. Did you receive information that there is a sink in  
6 the kitchen, sink in the bathroom and a bathtub in the  
7 bathroom?

8 A. Yes.

9 Q. Did you receive information that the sink in the  
10 kitchen can reach 155 degrees in 2 minutes?

11 A. Yes.

12 Q. And that the bathtub can reach 142 degrees in 5  
13 minutes?

14 A. Yes.

15 Q. Are the injuries that you saw consistent with  
16 turning that faucet on, a child turning that faucet on full  
17 hot and putting their hands in voluntarily?

18 A. So, and above or over the head. Again, there's  
19 really no pooling or where the -- the water would flow down  
20 elsewhere. So I would -- no, that wouldn't be consistent  
21 with the back of both hands burned from a -- a sink.

22 Q. Would your understanding of reflexes in that  
23 scenario also make it inconsistent?

24 A. Correct, yes.

25 Q. How so?

1           A.    So from moving away as soon as that hot water would  
2 touch, even if it is both hands, the moving away and not  
3 having sparing of the palms of the hands.

4           Q.    What would be the burn look like in that scenario?

5           A.    So we see hot water --

6           MS. HOLIDAY:  Objection, Your Honor.

7           MR. BURTON:  Excuse me, I'm sorry.

8 BY MR. BURTON:

9           Q.    What would you expect the burn to look like in that  
10 scenario?

11           MS. HOLIDAY:  Objection, Your Honor.  Same  
12 objection.

13           THE COURT:  Overruled.  You may answer.

14           THE WITNESS:  Oh, okay.  So we do -- you know, we  
15 do have hot water burns.  A child is left in the bathtub  
16 unattended, bathtub, you know, water is warm and then one of  
17 the kids who's in there turns on the hot water or same with  
18 the sink.  And so again, it lands in one spot, spills over  
19 and there's more often than not will be splash marks.  It's a  
20 bit jagged and kind of chaotic as the child is trying to move  
21 away from that hot water.

22 BY MR. BURTON:

23           Q.    Did you see those types of injuries in this case?

24           A.    No.

25           Q.    What about are the injuries consistent with a child

1 touching the stovetop, the outside of a pot with boiling  
2 water inside or the outside of a cup or mug with water -- hot  
3 liquid inside?

4 A. No. It did appear to be a liquid burn based on how  
5 it looks and how it was kind of peeling and bubbling versus a  
6 implement of something that's hot that is making a contact  
7 burn.

8 Q. Have you seen both hot liquid and hot contact  
9 burns?

10 A. Oh, yes.

11 Q. You can tell the difference between the two?

12 A. Correct, yes.

13 Q. In your opinion, this was a hot liquid, not a hot  
14 contact burn?

15 A. Yes.

16 Q. What would you expect the injuries to Chance --

17 MS. HOLIDAY: Objection, Your Honor.

18 MR. BURTON: Excuse me, excuse me.

19 MS. HOLIDAY: Foundation.

20 BY MR. BURTON:

21 Q. What would you expect the --

22 THE COURT: Let me hear the question first.

23 BY MR. BURTON:

24 Q. What would you expect the injuries to look like in  
25 a hot contact case like suggested?

1           A.    So contacts usually have the shape of whatever was  
2 touched more often than not or even smudging, lines, things  
3 like that. So those different patterns. But the skin itself  
4 looks more like when you skin your knee rather than having a  
5 lot of bubbling. You can have some bubbling with it, but  
6 more often than not, it will be kind of that surface burn  
7 with more of a scab appearance at the top of it.

8           MR. BURTON: Brief indulgence, Your Honor.

9           THE COURT: Uh-huh.

10          MR. BURTON: Nothing further.

11          THE COURT: Okay. At this time, we're going to  
12 take a recess. During this recess, you're admonished not to  
13 talk or converse amongst yourselves or with anyone else on  
14 any subject connected with this trial or read, watch or  
15 listen to any report of or commentary on the trial or any  
16 person connected with this trial by any medium of  
17 information, including without limitation, newspapers,  
18 television, the Internet or radio, or form or express any  
19 opinion on any subject connected with this trial until the  
20 case is finally submitted to you.

21          We'll be in recess for the next 15 minutes.

22          THE MARSHAL: Thank you. All rise for the exiting  
23 jury, please.

24          (Court recessed at 11:09 a.m. until 11:25 a.m.)

25          (Outside the presence of the jury)

1 THE COURT: Do you want the witness in the  
2 courtroom?

3 MS. HOLIDAY: No, Your Honor. If we could just --

4 THE COURT: Okay. Do you mind just stepping  
5 outside for a moment? Okay. And the record will reflect  
6 that the hearing is taking place outside the presence of the  
7 jury panel. And the witness is about to exit the courtroom.  
8 Okay, the witness is out.

9 MS. HOLIDAY: Thank you, Your Honor. Your Honor, I  
10 just wanted to take this opportunity during the break to make  
11 a record about some of the things we've talked about in our  
12 bench conferences, and I want to renew --

13 THE COURT: Just you don't have to remake a record  
14 that's already up here.

15 MS. HOLIDAY: So I -- it's my understanding that  
16 your bench conferences are recorded, correct?

17 THE COURT: They're recorded and reported.

18 MS. HOLIDAY: So they're --

19 THE COURT: Transcribed.

20 MS. HOLIDAY: -- they're automatically made part of  
21 the record?

22 THE COURT: Yes.

23 MS. HOLIDAY: Okay. All right, that makes it  
24 easier then. I like that. We'd also like to at this time  
25 renew our request for our expert to testify and our

1 opposition to the State's motion and the Court's granting of  
2 the motion to strike your expert. The reason I'm making  
3 this --

4 THE COURT: I'm not sure this motion has to be made  
5 before cross-examination.

6 MS. HOLIDAY: But --

7 THE COURT: Can we handle it before lunch?

8 MS. HOLIDAY: That's what I was just going to say  
9 about the reason I'm making this objection now.

10 THE COURT: Oh, I'm sorry.

11 MS. HOLIDAY: That's okay. The reason I'm making  
12 this objection now, Your Honor, is because if our expert were  
13 to be allowed to testify, then it would certainly inform the  
14 way I would conduct my cross-examination of Dr. Cetl and the  
15 things that I would ask her and the things that I would go  
16 into, the things that I would expect to be able to later ask  
17 of Dr. Johnson. So that's why we're renewing the objection  
18 now.

19 We want to, you know, continue to underscore to the  
20 Court that we think this is our theory of the defense.  
21 Dr. Johnson could present it. It's kind of destroyed if we  
22 can't present Dr. Johnson's testimony, especially when  
23 State's experts testify to things like if burns to both of  
24 the back of the hands in a situation like this would -- what  
25 did she say? They're as next to impossible as it comes.

1 For a child to have burns to the back of both of  
2 his hands in a situation like this, they're next to as  
3 impossible as it comes. Dr. Johnson, as we explained, would  
4 be able to tell the jury that that's not impossible because  
5 he was able to show how it's very possible.

6 THE COURT: He was able to create a situation.

7 MS. HOLIDAY: Absolutely. So that certainly means  
8 it's not impossible. And the situation was very plausible  
9 given the facts and circumstances of this case. Again, she  
10 was testifying --

11 THE COURT: I thought she said impossible. She  
12 didn't say a situation couldn't be created. I mean, I know  
13 what she testified to.

14 MS. HOLIDAY: Right. And so, Your Honor, that's  
15 why we think that again, it just threads and it destroys our  
16 theory of defense especially when the State presents evidence  
17 that we can rebut. We have the ability to rebut it, and  
18 we're just not being allowed to. So that's why we would at  
19 this time renew your objection.

20 MS. JOBE: And Your Honor, the hypothetical was  
21 posed in the context of would you expect to see these types  
22 of burns or injury patterns on the child. So in that  
23 specific context, it was within -- was appropriate for Cetl  
24 to respond to based on the State's burden of proof. State's  
25 position is it still doesn't open the door to Dr. Johnson

1   testifying because she didn't talk about the biomechanics of  
2   it, she didn't talk about how the cup would have fallen, as  
3   Your Honor indicated, she didn't say it wasn't possible in  
4   some controlled environment or those types of things, but  
5   that it was nearly impossible. And I'd renew the argument I  
6   made yesterday to the extent that in the videos that we have  
7   provided by Dr. Johnson, and he even said he wasn't trying to  
8   look at accidental or non-accidental, but all the videos were  
9   the cup tips over.

10           The cup tips over by itself. The child doesn't  
11   actually -- is not the mechanism for that cup tipping over.  
12   And the State's understanding based on the representations by  
13   counsel and -- yesterday is that that's what he would  
14   essentially testify to. And since there's been nothing  
15   produced and nothing he would testify to showing a child  
16   could both knock over the cup and at the same time get the  
17   hands down to have them both burned, that his testimony  
18   should still be excluded.

19           The State still doesn't believe he has the  
20   requisite foundational basis of his knowledge or his training  
21   or his experience as articulated yesterday and that it would  
22   also not be not something that would assist the jury.

23           MS. HOLIDAY: If I may respond, Your Honor?

24           THE COURT: Sure.

25           MS. HOLIDAY: Actually, I believe Dr. Johnson could



1 have provided testimony explaining how the child could have  
2 tipped over the cup on his own.

3 THE COURT: Right. He said the child would put his  
4 hands up there and he used, I guess, his right hand to  
5 indicate the cup would tip over and then the hands would have  
6 to be flat.

7 MS. HOLIDAY: Right. And Dr. Johnson --

8 THE COURT: I'm not sure how that would happen but  
9 that's basically what he described.

10 MS. HOLIDAY: And if he would have been allowed to  
11 finish the evidentiary hearing, or to go further into the  
12 evidentiary hearing, he could have provided the Court and the  
13 prosecutor with more details about how that would be possible  
14 under his field of expertise. He's a bio injury mechanic --  
15 or he's a biomechanic specifically regarding to injuries.

16 And so he could have enlightened all of us on how  
17 that's possible. He could have given the Court more details  
18 and the prosecutor more details and explained to all of us  
19 why that's not only possible but why the way he conducted his  
20 experiments were a reasonable recreation of that and why that  
21 would still assist the injury.

22 I mean, you know, yesterday when Your Honor asked  
23 me how long I believe the hearing would last, and I said a  
24 few hours, that's because I expected Dr. Johnson to be able  
25 to explain in detail every aspect of his experiment, why it

1 was justified the way he did it, why it's, you know, based on  
2 the reasonable facts of this case, why it's not based on  
3 assumption and conjecture and why it would specifically help  
4 not only the jury to understand the facts and issues in this  
5 case, but certainly the Court, and certainly the District  
6 Attorneys, because here we all are speculating on how it  
7 would be possible for the child to knock over a cup.

8 Certainly, Dr. Cetl is speculating that. And so  
9 again, Dr. Johnson's testimony could have helped inform all  
10 of us, not just his testimony in front of the jury, but his  
11 complete testimony in an evidentiary hearing.

12 Your Honor, once again, Dr. Cetl did analyze the  
13 exact situation that Dr. Johnson was going to analyze. I  
14 mean, the State definitely asked her about the exact  
15 mechanism of injury that we proposed. She had the  
16 opportunity to analyze it. She started to talk about things  
17 that we believe are outside her field of expertise; how a mug  
18 could fall. Why a cup couldn't fall over and create that  
19 kind of pattern of water.

20 I mean, almost the exact same things we were  
21 talking about yesterday.

22 THE COURT: I think a lay person can testify about  
23 how water comes out of a cup. I'm not sure you need to be a  
24 biomechanic expert to testify about common sense things and  
25 common things we all experience, and that's what she

1 testified to. I don't think she testified out of her  
2 experiences as a pediatric ER physician when she said that  
3 water flows a certain way when it comes out of a cup.

4 MS. HOLIDAY: And if that's true, Your Honor, then  
5 it's not appropriate for an expert to testify to things that  
6 a reasonable person -- or that it's part of common sense. I  
7 mean, that's one of the things that I even think the  
8 prosecutors in their motion pointed out.

9 THE COURT: It's not common sense what that hot  
10 liquid would do when it pours over, but you're contending she  
11 testified outside of her experience by testifying about how  
12 water flows.

13 But she said, you know, water flows out of a cup a  
14 certain direction, and then the type of patterns that it  
15 leaves on the skin. That's where the expertise comes in.

16 MS. HOLIDAY: I think the type of patterns that the  
17 -- that it leaves on the skin would fall under her expertise.

18 THE COURT: Sure.

19 MS. HOLIDAY: But the way that the water could  
20 spill out of the mug on top of the countertop, that's not  
21 inside her scope of expertise. And certainly, as she  
22 testified to about the mugs and how a cup can spill, the  
23 direction the mug can move, why it would be -- again, I think  
24 for a second time she said this would be near impossible  
25 unless there was a mechanism that was creating it or

1 something to that effect.

2 So twice, you know, in different contexts she  
3 testified about what would be either near impossible or as  
4 next to impossible as it comes. Both are things that our  
5 expert can show are squarely within the realm of possibility  
6 and even likely.

7 And once again, if he were allowed to testify in  
8 front of the jury, he could explain why those things are very  
9 likely and if he had been allowed to testify fully at an  
10 evidentiary hearing, he could have explained to all of us why  
11 those things are possible.

12 MS. JOBE: Can I just reiterate that those  
13 questions when Dr. Cetl asked them, said nearly impossible  
14 and impossible was the tail end of the question. It wasn't  
15 the biomechanics. It was at this -- what type of burns or  
16 patterns would you expect to see, and she was talking about  
17 the types of burns and patterns and injuries in this case  
18 being nearly impossible, under that hypothetical.

19 THE COURT: Okay. The objection's noted and we're  
20 going to proceed with -- the Court's previous ruling stands,  
21 and we'll proceed with cross-examination.

22 MS. HOLIDAY: Your Honor --

23 THE COURT: How long --

24 MS. HOLIDAY: -- at this --

25 THE COURT: I'm sorry.

1 MS. HOLIDAY: At this point, we would also request  
2 the Court to grant a stay of this trial so that we can file  
3 an extraordinary Writ to the Supreme Court.

4 THE COURT: The stay is denied, but clearly, you  
5 can do whatever you think -- a stay to the Supreme Court for  
6 what?

7 MS. HOLIDAY: A stay of the trial so that we can  
8 file an extraordinary writ to the Supreme Court with our  
9 objection to the Court's -- and of course, Your Honor  
10 knows --

11 THE COURT: Oh, about the expert witness?

12 MS. HOLIDAY: Yes.

13 THE COURT: Okay.

14 MS. HOLIDAY: Your Honor knows I --

15 THE COURT: I just wanted to make sure.

16 MS. HOLIDAY: -- have practiced in front of you all  
17 the time. I certainly always very much respect your  
18 opinions --

19 THE COURT: Oh.

20 MS. HOLIDAY: -- and your rulings, but you know, I  
21 think in this situation, we believe in it so firmly, and we  
22 think that it's such an importance to Mr. Mathews getting a  
23 fair trial, and to Mr. Mathews' theory of defense, that it  
24 would be appropriate at this time to stay the trial and so  
25 that we can file an extraordinary writ to the Supreme Court

1 asking them to just review the decision, and that way we  
2 could proceed knowing that Mr. Mathews was getting a fair  
3 trial before it actually happens.

4 THE COURT: Okay. The request for a stay is  
5 denied. I'm just wondering how long you think your cross  
6 will go?

7 MS. JOBE: And Your Honor, I apologize. Without  
8 giving too much detail, Dr. Cetti has a medical appointment  
9 this afternoon, so to the extent to which we can get her done  
10 before the lunch break.

11 THE COURT: Okay. Well, I just don't want to -- I  
12 had a feeling it was going to be quite extensive.

13 MS. HOLIDAY: Yeah.

14 THE COURT: What time does she have to be out of  
15 here?

16 MS. HOLIDAY: I think it will be quite extensive.

17 MS. JOBE: I'll have to check with her.

18 THE COURT: Can you check with her because --

19 MS. JOBE: Absolutely.

20 THE COURT: -- I don't know if I want to hold this  
21 jury hostage either --

22 MS. JOBE: No, I appreciate that.

23 THE COURT: -- without letting them eat. How long  
24 do you think your cross will be? An hour?

25 MS. HOLIDAY: Over an hour.

1 THE COURT: Okay. Like an hour-and-a-half? Two  
2 hours? That's okay. If you think --

3 MS. HOLIDAY: To be safe, an hour-and-a-half to two  
4 hours --

5 THE COURT: Okay.

6 MS. HOLIDAY: -- I think would be safe.

7 THE COURT: Yeah, because the -- yeah, they're  
8 saying two hours. It's already 11:30.

9 MS. JOBE: 1:30 is her time frame. I know.

10 THE COURT: She's probably going to have to  
11 reschedule. I'll keep going, but the jury's -- they were  
12 here pretty early. People are going to probably get hungry.

13 MS. HOLIDAY: I certainly just don't want to  
14 underestimate.

15 THE COURT: Right. I understand. I don't know, or  
16 we can go and she can go to her appointment and we can break  
17 for lunch and she can come back.

18 MS. HOLIDAY: I'd be okay with that, certainly.  
19 Absolutely.

20 MR. BURTON: Your Honor, the other issue we have is  
21 Dr. -- excuse me, Mr. Peltier is coming in this afternoon.  
22 He has to testify beginning and end this afternoon. So we  
23 have two witnesses with little tight timelines.

24 THE COURT: Something's got to give.

25 MR. BURTON: I understand.

1 MS. JOBE: I apologize, Your Honor. Would there be  
2 any opportunity or any way we can break Cetl's testimony  
3 since we've passed her and they want to cross and bring her  
4 back tomorrow to finish?

5 THE COURT: I could do that. It's --

6 MS. HOLIDAY: I think that would be a great idea.

7 MS. JOBE: I've talked -- she's going to make the  
8 necessary arrangements. Though difficult, she says that's  
9 more manageable than rescheduling.

10 THE COURT: Okay. Do you want to start your cross?  
11 Because do you have your other witness out there waiting?

12 MS. JOBE: We have another witness out there, Your  
13 Honor, a very short witness. Our next witness is going to be  
14 very long, so the State was anticipating if we can squeeze in  
15 the last short witness, take our break, and then we'll do the  
16 whole afternoon with the other witness.

17 MS. HOLIDAY: That sounds good to me.

18 THE COURT: I don't -- okay. And you're okay with  
19 that? I just don't like to --

20 MS. HOLIDAY: And I'll do Dr. Cetl --

21 THE COURT: -- break up your --

22 MS. HOLIDAY: -- tomorrow.

23 THE COURT: -- cross-examination.

24 MS. HOLIDAY: That's fine. Absolutely.

25 MS. JOBE: I apologize.



1 THE COURT: Okay. So, 10:30? She can come back at  
2 10:30 tomorrow?

3 MS. JOBE: I'll let her know, Your Honor.

4 THE COURT: Okay. Thank you, Doctor.

5 MS. JOBE: She's coming back.

6 THE COURT: Right. And again, you don't want to  
7 start your cross, correct?

8 MS. HOLIDAY: That's correct, Your Honor.

9 THE COURT: You want -- okay. All right. So if  
10 you'll just come back tomorrow morning at 10:30.

11 THE WITNESS: Okay.

12 THE COURT: And then you'll have an opportunity for  
13 cross-examination. Sorry about that.

14 THE WITNESS: Okay, thank you.

15 THE COURT: But we do appreciate your willingness  
16 to come back. And she's under subpoena, correct?

17 MS. JOBE: Yes, Your Honor.

18 THE COURT: All right. I just want to remind you  
19 that you're still under subpoena.

20 THE WITNESS: Okay, thank you.

21 THE COURT: Thank you. Okay. Who's the next  
22 witness?

23 MS. JOBE: Robbie Dahn, the CSA.

24 THE COURT: Okay. I think we're ready.

25 (Pause in the proceedings)

1 THE MARSHAL: All rise for the entering jury,  
2 please.

3 (In the presence of the jury).

4 THE COURT: Does the State stipulate to the  
5 presence of the jury panel?

6 MS. JOBE: Yes, Your Honor.

7 THE COURT: The defense?

8 MS. HOLIDAY: Yes, Your Honor.

9 THE COURT: Okay. At this time, ladies and  
10 gentlemen --

11 THE MARSHAL: Thank you. Please be seated.

12 THE COURT: -- we're going to take a break in the  
13 testimony. The Doctor had another appointment so I excused  
14 her for the day. She's going to come back tomorrow morning  
15 at 10:30, and she'll be available for cross-examination.

16 The State may call their next witness.

17 MS. JOBE: The State calls Robbie Dahn.

18 ROBBIE DAHN, STATE'S WITNESS, SWORN

19 THE CLERK: Thank you. Please be seated. Could  
20 you please state and spell your name for the record?

21 THE WITNESS: Yes, I can. My name is Robbie Dahn.  
22 First name R-o-b-b-i-e. Last name spelled D-a-h-n.

23 THE CLERK: Thank you.

24 MS. JOBE: May I proceed, Your Honor?

25 THE COURT: You may.

1 MS. JOBE: Thank you.

2 DIRECT EXAMINATION

3 BY MS. JOBE:

4 Q. Ms. Dahn, how are you employed?

5 A. I'm employed as a senior crime scene analyst with  
6 the Las Vegas Metropolitan Police Department.

7 Q. How long have you been so employed?

8 A. 18-and-a-half years.

9 Q. And generally speaking, what are your duties and  
10 responsibilities as a crime scene analyst for Metro?

11 A. We respond for calls for service either through  
12 detectives requesting us or police. We are like the primary  
13 photographers for the police department so we perform crime  
14 scene photography, latent print processing, evidence  
15 collection, diagraming, a whole -- whatever's needed on the  
16 scene to get information and to recover evidence.

17 Q. So fair to say as a crime scene analyst you can be  
18 required to do a number of tasks at a specific location being  
19 investigated by detectives?

20 A. Yes.

21 Q. All right. And as far as your role is concerned,  
22 you have to be called by detectives or someone requesting  
23 that you respond to a scene in order to do whatever it is  
24 they want you to do, correct?

25 A. Yes.

1 Q. And what training and experience do you have as a  
2 crime scene analyst?

3 A. I have a four-year degree in criminal justice and  
4 then I went through the crime scene analyst academy. It's  
5 not the police academy. It's a 14-week crime scene analyst  
6 academy. Field training and then the field training is like  
7 quite a long extensive time, too, that was all back in 1998.

8 But throughout the course of my career, we're  
9 constantly being sent to different types of training programs  
10 and this type of thing so that we can keep like a list of all  
11 our training and experience so we can come to court and have  
12 the record of that.

13 Q. Directing your attention to January 13th of 2016,  
14 were you called to respond to 1029 Lisbon Avenue, No. 5 in  
15 Las Vegas, Clark County detectives (sic) to perform some  
16 functions as a crime scene analyst?

17 A. Yes.

18 Q. All right. And was -- we've heard a little bit  
19 during trial about Metro event numbers, but when you respond,  
20 does that generate a specific event number on that date of  
21 January 13th, 2016?

22 A. Yes, it does.

23 Q. Okay. And was that event number 1601131159?

24 A. Yes.

25 Q. Fair to say there's been -- there's a different

1 Metro event number under which everything's being  
2 investigated?

3 A. Yes. When we're -- when we are requested to do  
4 some type of a follow-up, then we will go ahead and use the  
5 original event number. But yes, we do generate a cross  
6 referenced event, which is the event you just read.

7 Q. Okay. And the work you were doing was under the  
8 main event number of 1601051552; is that correct?

9 A. Yes.

10 Q. And who did you encounter when you responded to  
11 this residence?

12 A. I went upstairs to the residence and I encountered  
13 two detectives. One was Detective DePalma and Detective  
14 Grivas.

15 Q. And did they let you inside the residence?

16 A. Yes. They were already inside the residence. The  
17 door was open to the apartment.

18 Q. And as far as the information you had at that point  
19 in time, were they there based on a consent to search that  
20 had been signed by the person occupying that residence?

21 A. Yes.

22 Q. All right. And when you responded, what did they  
23 ask you to do?

24 A. They asked if I could -- and I knew this before I  
25 left the crime lab because I needed to bring some equipment,

1 but I was requested to do some water temperatures.

2 Q. Have you ever done water temperatures before?

3 A. Yes, I have.

4 Q. Do you have a rough guesstimate of how many times  
5 you've done water temperatures in your career as a --

6 A. Between like ambient air temperatures like in a hot  
7 vehicle or any type of taking of temperatures in my 18-and-a-  
8 half years, I'd say probably just a handful, maybe 15 times.

9 Q. Okay. And had you tested water temperatures before  
10 that day?

11 A. Yes, I had.

12 Q. All right. What is the process for testing water  
13 temperatures at a given location?

14 A. When we go out to the crime scene, I fortunately,  
15 was at the crime lab, so I checked out a thermometer there at  
16 the crime lab. And then when we go out to the crime scene,  
17 we take the temperature either for standing water or in this  
18 particular case, it was running water, and we open up the  
19 thermometer. It's a flip-it Fisher Scientific thermometer.  
20 It flips open. It's got a metal probe, and you run that into  
21 the running water and it creates a temperature.

22 Q. All right. And do you just test the water one time  
23 or you test it more than one time, what do you do?

24 A. I always double check, if not triple check the  
25 water temperatures. So once I will take a temperature,

1 whether it's in a car or not, I'll get that thermometer back  
2 down to the ambient air temperature. Say, if I'm at a hot  
3 car, I'll go, you know, to another location where I can get  
4 the thermometer down. And then I'll go back and double check  
5 and triple check that to make sure that temperature is  
6 correct.

7 Q. Okay. And what would you do, let's say you're  
8 testing a water source and you get three very different  
9 readings as far as what the temperature is concerned?

10 A. It would be a bit -- a huge red flag that there was  
11 a battery error or problem with the thermometer.

12 Q. All right. Now, in this instance, you were asked  
13 specifically to test the water temperature in certain  
14 locations within the residence; is that accurate?

15 A. Yes.

16 Q. All right.

17 MS. JOBE: May I approach the witness, Your Honor--

18 THE COURT: You may.

19 MS. JOBE: -- after I show Counsel the pictures?  
20 I'm just going to do it on the Elmo, if that's okay, Your  
21 Honor.

22 THE COURT: Sure.

23 BY MS. JOBE:

24 Q. All right. Showing you what's been admitted as  
25 State's 37. Do you recognize that sink?

1 A. Yes, I do.

2 Q. And what do you -- is that the sink at that  
3 location you responded to?

4 A. Yes. I had an opportunity to review the  
5 photographs. So I do recognize this sink as being the sink.

6 Q. Okay. And did you take a water temperature for the  
7 water coming out of that sink?

8 A. I did. On the hot water side only.

9 Q. Okay. So when you say the hot water side only,  
10 does that mean -- and this may sound obvious, so I apologize  
11 if it sounds like a dumb question. So is that when you turn  
12 only on the hot water side and you don't turn the cold at  
13 all, correct?

14 A. No cold water at all. Just the hot.

15 Q. And do you make sure the cold water is turned all  
16 the way off before you turn the hot water on?

17 A. Yes.

18 Q. Okay. So you turn the hot water on and what do you  
19 do?

20 A. At that point, I went ahead and turned the hot  
21 water on. I let the hot water run for a length of time in  
22 order to get to, you know, the highest temperature possibly  
23 that it could get. And then I opened up the thermometer, put  
24 the probe into the running water and at the point where it  
25 gets to the highest level it will be and then you can just



1 like, you know, press a button for hold and then record that  
2 temperature.

3 Q. Okay. And I just want to make sure I understand  
4 you correctly. So you said you turned the hot water on, you  
5 let it run for a little bit?

6 A. Yes.

7 Q. Do you document or keep track of how long it's  
8 running before you take the temperature?

9 A. In this particular case, I didn't really document.  
10 I believe, it was around like maybe 3 minutes, 4 minutes.

11 Q. Okay. Do you recall if Detective DePalma was  
12 keeping track of the time?

13 A. I didn't know that he had kept track of the time  
14 until later after I reviewed some documents at work.

15 Q. Okay. So as far as you were concerned, just for  
16 your purposes, you turned the hot water on, you wait a little  
17 bit, and then you stick the thermometer in?

18 A. Yes.

19 Q. And you said something about when it gets to the  
20 highest temperature. Is the temperature changing while the  
21 thermometer's under the water?

22 A. No. I have not yet put the thermometer in. I just  
23 gave it a little bit of time just in my normal everyday  
24 dealing with faucets, I can pick up on like, you know, once  
25 the water's really got a good flow and probably, you know, a

1 good -- you know, the temperature that it would be.

2 Q. And what temperature reading did you get from this  
3 faucet?

4 A. The faucet there was 155.3 and that was in  
5 Fahrenheit.

6 Q. Okay. So 155.3 degrees Fahrenheit?

7 A. Yes, ma'am.

8 Q. All right. And did you do the process like we  
9 discussed, tested it multiple times to see if it was the same  
10 temperature?

11 A. Yes, I did.

12 Q. All right. And 155.3 is what was recorded as being  
13 consistent through those tests?

14 A. It was consistent.

15 Q. All right. Showing you what's been admitted as  
16 State's 68. Do you recognize what's depicted in that photo?

17 A. Yes, that looks like it was the sink in the hall  
18 bathroom.

19 Q. Okay. And did you --

20 A. I'm not --

21 Q. -- test the water in that sink for hot water?

22 A. This sink I did not test the water.

23 Q. And why not?

24 A. I wasn't -- I wasn't requested to do it.

25 Q. Okay. And showing you what's been admitted as

1 State's 70. Do you recognize that?

2 A. Yes, that looks like the -- that's the tub in the  
3 hall bathroom.

4 Q. Okay. And did you measure the temperature of the  
5 hot water in the tub?

6 A. Yes, the detectives requested that I check the  
7 temperature of the hot water --

8 Q. Okay.

9 A. -- in this tub.

10 Q. Just for orientation purposes, I'm going to show  
11 you State's 67. Fair to say that's a picture of the whole  
12 bathroom, correct?

13 A. Yes.

14 Q. So the sink that you were not requested to test,  
15 correct?

16 A. Yes.

17 Q. And then the bathtub, right?

18 A. Yes.

19 Q. Okay. And let's talk about the bathtub. Did you  
20 follow the same process and procedure in testing the water  
21 temperature of the bathtub?

22 A. Yes, ma'am.

23 Q. Okay. And when you tested the water temperature of  
24 the bathtub, were you able to obtain a consistent reading of  
25 your multiple -- "test" is not the right word -- the multiple

1 times you put --

2 A. Multiple checks.

3 Q. -- the thermometer in?

4 A. Yes. Yes, they were -- they were all consistent.

5 Q. Okay. And what was the -- the recorded -- hottest  
6 recorded temperature of the hot water in the bathtub?

7 A. The hot water was 142.8 degrees Fahrenheit.

8 Q. Okay. And as far as you recall, did you test the  
9 sink in the kitchen first and then the bathtub?

10 A. Yes, I did the sink first and then the bathtub.

11 Q. Okay. And you captured all your recorded  
12 temperatures in a report; is that fair?

13 A. Yes.

14 MS. JOBE: Pass the witness.

15 THE COURT: Cross?

16 MS. KIERNY: Court's indulgence.

17 MS. HOLIDAY: We have no questions, Your Honor.

18 THE COURT: Thank you. Thank you very much for  
19 your testimony here today. You may step down.

20 THE WITNESS: Thank you, Ma'am.

21 THE COURT: And you are excused from your subpoena.

22 THE WITNESS: Thank you.

23 THE COURT: Do you have any other witnesses before  
24 lunch?

25 MS. JOBE: Not -- no, Your Honor.

1 THE COURT: No? Okay. At this time, we're going  
2 to recess for lunch. During this recess, you're admonished  
3 not to talk or converse amongst yourselves or with anyone  
4 else on any subject connected with this trial or read, watch  
5 or listen to any report of or commentary on the trial or any  
6 person connected with this trial by any medium of  
7 information, including without limitation, newspapers,  
8 television, the Internet or radio, or form or express any  
9 opinion on any subject connected with this trial until the  
10 case is finally submitted to you.

11 We'll be in recess until 1:30. Thank you.

12 THE MARSHALL: Thank you. All rise for the exiting  
13 jury, please.

14 (Court recessed at 11:54 a.m. until 1:26 p.m.)

15 (Outside the presence of the jury)

16 THE MARSHAL: Please come back to order. The court  
17 is now back in session.

18 THE COURT: The record will reflect that the  
19 hearing is taking place outside the presence of the jury  
20 panel. And this is necessary before the next witness --

21 MS. KIERNY: Yes.

22 THE COURT: -- correct? Who's the next witness?

23 MS. JOBE: Philip Peltier.

24 THE COURT: Okay.

25 MS. KIERNY: Your Honor, over the lunch break we

1 received a -- some notes from the expert. They're entitled,  
2 Case Review, two pages, and then Thoughts. And so we believe  
3 this is tantamount, and we have obviously requested any notes  
4 or reports, anything written at our discovery motion, and we  
5 did not receive them until, you know, maybe an hour before  
6 he's supposed to testify.

7 As you know, NRS --

8 THE COURT: For today? You got it right before  
9 lunch?

10 MS. KIERNY: We got it right to -- at lunch.

11 THE COURT: Okay.

12 MS. KIERNY: Yeah. You know, NRS 174.2342, any  
13 expert witness should be noticed not less than 21 days before  
14 trial, and the written notice should contain a copy of any  
15 reports made by or at the direction of the expert witness.  
16 Obviously, we didn't get those at that time. The State --

17 THE COURT: Did you get a report?

18 MS. JOBE: There is no report, Your Honor.

19 MS. KIERNY: We got these notes, which I would  
20 say --

21 THE COURT: Which don't have to --

22 MS. KIERNY: -- are tantamount to a report.

23 THE COURT: But which --

24 MS. KIERNY: Oh --

25 THE COURT: Which don't have to be turned over,

1 correct?

2 MS. KIERNY: Your Honor, it's his case review and  
3 his thoughts, which a copy of any reports that are made by  
4 him or at the direction of him.

5 THE COURT: Is it your contention that's a report,  
6 the handwritten notes?

7 MS. KIERNY: Yes. At this point, we have asked for  
8 -- and additionally, in our discovery motion we asked for any  
9 notes by him. At this point, it's trial by ambush. The NRS  
10 174.235 discovery statute was violated. It's a due process  
11 violation under the 5th and 14th amendment and the Article 1,  
12 Section 8 in Nevada's Constitution. It's a violation of his  
13 6th amendment right to confront these witnesses against him  
14 and effective assistance of counsel because the State's  
15 failure to turn these over means we are not prepared to  
16 cross-examine based on these notes.

17 THE COURT: Do you mind just approaching and  
18 letting me see what they are?

19 MS. KIERNY: Sure.

20 THE COURT: Thank you.

21 MS. KIERNY: Did you want me to continue or do you  
22 want to read --

23 THE COURT: Sure, Sure, please.

24 MS. KIERNY: Okay. The Court -- obviously, you  
25 rejected our expert notice -- or our expert, in part, because

1 you felt that he failed to demonstrate adequate foundation  
2 for his conclusions. And as stated earlier, we believe that  
3 this violates our ability to present our theory of defense.

4 Had this report before turned over, we could have  
5 given this to Dutch, and he could have rebutted certain  
6 things in there, thereby forming a foundation for his  
7 testimony. In short, he probably would have -- he might have  
8 been able to testify if we had had these reports earlier and  
9 his rights would have been preserved.

10 Also, in August in this case, the State forced a  
11 continuance after announcing ready in the calendar call for  
12 exactly this reason. They said they couldn't proceed because  
13 we failed to turnover a report regarding our expert, and all  
14 the while the State -- this report, these notes from Dutch,  
15 existed, which they didn't produce until day three of the  
16 trial.

17 MS. JOBE: I --

18 MS. KIERNY: I understand that they didn't have  
19 them until five minutes before, but under Kyles v. Whitley, I  
20 believe that anything in the constructive possession of their  
21 -- if the possession of their expert is in the constructive  
22 possession of the DA's Office.

23 So my motion at this point is for a mistrial  
24 because we cannot competently proceed under these conditions  
25 for exactly the same reasons the State gave in August. It's



1 their experts, their report, and as a result, we would be  
2 ineffective under the 6th Amendment.

3 THE COURT: Okay.

4 MS. JOBE: First and foremost, Your Honor, Ms.  
5 Kierny makes numerous assumptions as the foundation of her  
6 argument, which are absolutely erroneous. First and  
7 foremost, these are the expert's notes. They are not a  
8 report. They were not done at the direction of the State.

9 Secondly --

10 THE COURT: Well, why did you turn them over today?  
11 Why did you feel like you needed to turn them over?

12 MS. JOBE: Out of an -- I didn't know if he was  
13 going to bring his notes up there.

14 THE COURT: Oh, okay.

15 MS. JOBE: And I figured that I would be polite and  
16 considerate as an attorney. And so if he was going to have  
17 notes with him and take notes up there, I've decided to make  
18 a copy so both counsel was able to review them and have them  
19 so we didn't have to have the whole back and forth  
20 potentially escorting the jury out so we could all walk up  
21 and see what his notes are.

22 So as soon as I've had personal contact with him,  
23 which was right as we broke more lunch today, Your Honor, I  
24 went downstairs, met him for the first time, got his notes,  
25 which I asked him to bring, and I asked him last night in an

1 e-mail to be sure to bring your notes, and this is what he  
2 brought.

3 And for the record, the expert, though noticed,  
4 didn't do any officially work on this case and wasn't  
5 specifically retained by our office with a fee schedule for  
6 him to actually review stuff and make notes and prepare for  
7 any type of testimony or form any opinions until Friday of  
8 last week.

9 So I haven't had these notes. These notes weren't  
10 made back in August or October or anything. These notes, the  
11 State's understanding is, are a product of his review of  
12 materials, in fact, this week. And so this is the earliest  
13 I've received them. Under the statute, I don't have to turn  
14 them over because it's not a report. It's just him jotting  
15 down the information he has, as he puts together his thoughts  
16 as he reaches his conclusions in the process.

17 So based on those things, Your Honor, it is  
18 absolutely not trial by ambush. It is not a willful or even  
19 any type of failure to turn anything over that is owed to the  
20 defense under the statute or any of the disclosures, and so  
21 we'd ask that their motion be denied.

22 MS. KIERNY: Your Honor, if I may respond briefly.

23 THE COURT: Sure.

24 MS. KIERNY: This is not a situation where he was  
25 hired at the last minute and just looked at the case. This

1 -- he was contacted by the police -- by Detective DePalma in  
2 this matter to give his expert opinion, which was then  
3 incorporated into their police report. And some of the  
4 points that he has in there, not all, are put into the police  
5 report.

6 So this is a document that was made back, perhaps,  
7 in January of 2016. And there are some things in there that  
8 Dutch could directly rebut some of his conclusions, but we  
9 didn't have those conclusions at the time for Dutch to look  
10 at. So --

11 THE COURT: Like what? He doesn't have any  
12 conclusions. It looks like two pages of factual things that  
13 you would have already known. He has some thoughts. I don't  
14 even know if those are conclusions. Those appear to be  
15 thoughts and then something about defendant statements.

16 This all appears to be him writing down actual  
17 facts that everybody knew about.

18 MS. KIERNY: There is --

19 THE COURT: There's nothing on here that you didn't  
20 know prior to today.

21 MS. KIERNY: There's a reference regarding an  
22 Arrowhead burn pattern that we did not know --

23 THE COURT: Okay.

24 MS. KIERNY: -- which is something that --

25 THE COURT: Let me just --

1 MS. KIERNY: -- Dutch could rebut.

2 THE COURT: Where are you at?

3 MS. KIERNY: I'm sorry. I think I'm on the first  
4 page.

5 THE COURT: Okay. The first page. Say that again.

6 MS. KIERNY: An Arrowhead burn pattern.

7 THE COURT: Oh, just the -- basically what he  
8 observed, the burn pattern?

9 MS. KIERNY: Right. And --

10 THE COURT: Okay.

11 MS. KIERNY: -- in referring when we talked to our  
12 expert, he indicated that he did not see that pattern. If  
13 you are not inclined to grant the mistrial, I have other  
14 remedies that I would like to suggest. My second remedy  
15 would be to strike their expert and any reference to things  
16 that he has said. I know it would be hard to unring the bell  
17 because they have already opened to him testifying, but that  
18 would be, I guess, my second request.

19 Finally, if not, then I'd ask that he be allowed to  
20 testify, but we be allowed to call our expert to rebut these  
21 things that we now learned about in the notes.

22 THE COURT: Okay. Anything else?

23 MS. KIERNY: No, Your Honor.

24 MS. JOBE: I would just point out that as far as  
25 the direction and any -- as far as Peltier's discussion with

1 Metro, I don't have any notes from that. I don't have any  
2 notes from January of 2016. These are notes obtained from  
3 the expert based on the information provided him by State  
4 once we agreed to pay his fees, which I've provided them his  
5 fee schedule on Friday of last week.

6 I'd also note that as far as information of what  
7 his conclusions may be, all of that is contained or at least  
8 to some extent is contained in the arrest report in that it  
9 -- the officer preparing the arrest report, DePalma, relays  
10 information from his conversation with Peltier, where Peltier  
11 talks about how patterns of burns -- page 4 of 5, counsel --  
12 starting from his fingers moving down towards his wrist  
13 splashing on to his arms and it goes on.

14 So this isn't surprise. This isn't ambush. It's a  
15 courtesy.

16 THE COURT: Okay. At this time, I'm going to deny  
17 the request. I'm going to make a finding these are notes.  
18 I'm not sure that this is a report that would even be  
19 required to be turned over, but I'd like to make this a part  
20 of the record.

21 MS. KIERNY: I appreciate that, Your Honor.

22 THE COURT: Is this your only copy?

23 MS. KIERNY: It is. I apologize.

24 THE COURT: Okay. I'll have a copy and I'll have  
25 this made part of the record as Court's Exhibit --

1 THE CLERK: It will be 4.

2 THE COURT: Court's Exhibit No. 4.

3 MS. KIERNY: And one final issue. In viewing those  
4 notes and the police report that the State pointed to, I  
5 would object to Dr. Peltier testifying at all is this seems  
6 to be cumulative. It's going to be basically the same  
7 conclusions as Dr. Cetl just testified to, the same  
8 methodology. He just reviewed some photographs and put his  
9 opinions on them, which seem to be the same as Dr. Cetl's.

10 It seems like the State is going to be able to have  
11 two experts or possibly three medical experts testified to  
12 cumulative information that it's justify the same thing being  
13 regurgitated.

14 THE COURT: Okay. That he might be coming in and  
15 giving the same information that the pediatrician did?

16 MS. KIERNY: Yes. Okay.

17 MS. JOBE: And Your Honor, his testimony's going to  
18 be yes, it's about the burn lines, but it's about the type of  
19 material that would cause the burn patterns, the flow or the  
20 movement of the material on the hands and why it creates the  
21 burns and the burn patterns that Peltier sees.

22 He's more specific as -- he's a burn expert. He  
23 studies how burns occur, what types of things cause the burns  
24 and what patterns, deliberate pours versus accidental types  
25 of things. And so the State's contention is though there

1 will be some mild overlap and I'm going to try to avoid as  
2 much overlap as possible. The fact is, he's the burn expert  
3 talking about the pattern of burns and the causation issue,  
4 whereas, Cetl was talking about the injuries and the  
5 treatment of those types of things and the abuse and neglect  
6 determination.

7 THE COURT: Okay. So he's not going to be  
8 testifying about the same thing --

9 MS. JOBE: No, Your Honor.

10 THE COURT: -- is basically what I hear? Okay.  
11 But I would entertain any objections, because I agree, it  
12 doesn't need to just be cumulative.

13 MS. KIERNY: Okay. And additionally, it says that  
14 at this point -- sorry to keep going on this direction, but  
15 Ms. Jobe just said that he is going to talk about how the  
16 burns were caused. And I think we run into the same  
17 foundation objection as to, you know, why our expert was  
18 concluded. He obviously wasn't there. He doesn't have any  
19 information as to, you know, via statements, via eyewitnesses  
20 or anything like that to which he's basing his conclusions  
21 on.

22 So I think there's a lack of foundation for him to  
23 testify as to how she's burns were caused as well.

24 MS. JOBE: And unlike their expert, State's expert  
25 has been working with burns, burn injuries, criminal cases,

1 investigation of burns since, I believe, 1981, and has  
2 developed methods and procedures for testing those, for  
3 studying those that are now used by -- around the world and  
4 be in numerous criminal cases. He's testified multiple  
5 countries, multiple courtrooms across this country about his  
6 investigation of burns, his conclusions and such.

7 So clearly, his history, his training and  
8 experience is far different than the biomechanics expert put  
9 up by the defense.

10 THE COURT: Okay. He'll be permitted to testify.  
11 You can bring them in.

12 THE MARSHAL: Yes, ma'am.

13 (Pause in the proceedings)

14 THE MARSHAL: All rise for the entering jury.

15 (In the presence of the jury).

16 THE COURT: Does the State stipulate to the  
17 presence of the jury panel?

18 MS. JOBE: Yes, Your Honor.

19 THE COURT: The defense?

20 MS. HOLIDAY: Yes, Your Honor.

21 THE COURT: You may call your next witness.

22 THE MARSHAL: Thank you. Please be seated.

23 MS. JOBE: The State calls Phylip Peltier.

24 PHYLIP PELTIER, STATES WITNESS, SWORN

25 THE CLERK: Thank you. Please be seated. Could



1 you please state and spell your name for the record.

2 THE WITNESS: Phylip J. Peltier. Phylip is spelled  
3 P-h-y-l-i-p. Peltier is P-e-l-t-i-e-r.

4 THE CLERK: Thank you.

5 MS. JOBE: May I proceed, Your Honor?

6 THE COURT: You may.

7 DIRECT EXAMINATION

8 BY MS. JOBE:

9 Q. Good afternoon, Mr. Peltier. What is your  
10 occupation?

11 A. I'm a retired DA investigator.

12 Q. Okay. And do you currently have a business?

13 A. I do.

14 Q. And what is that?

15 A. It's not an official name. I call it Blue Dye  
16 Presentations, but it's -- I do teaching, consulting,  
17 training, and I investigate suspicious burn injuries.

18 Q. Have you always investigated suspicious burn  
19 injuries?

20 A. I have since 1981.

21 Q. And what started you on the process of  
22 investigating suspicious burn injuries?

23 A. I was at the San Diego Police Department and I had  
24 completed patrol division or was promoted out of patrol  
25 division to juvenile. I asked to go to child abuse division.

1 Shortly after I got there, there was a case that came  
2 through, it was assigned to me. It was a three-year-old that  
3 had been put in scalding bath water, and I asked around to  
4 different people, and it was a difficult investigation.  
5 Nobody really had specifics as to what to go look for.

6 So we worked through it. It took us about four  
7 weeks which --

8 MS. HOLIDAY: I'm going to object as to the  
9 relevance of this case.

10 MS. JOBE: It's the foundation for him pursuing  
11 burns and burns investigation.

12 THE COURT: You may proceed. Overruled. You can  
13 proceed.

14 BY MS. JOBE:

15 Q. You said four weeks, Mr. Peltier?

16 A. I had 41 cases on my desk. After we finished the  
17 case, I took a years worth of my own time and did some  
18 research and sent out questionnaires to prosecution, defense,  
19 investigative teams, CPS, medical and asked if we only had  
20 one day at the house and the house was destroyed, what would  
21 you all want for all of your different disciplines?

22 A year later we gathered up all the information. I  
23 turned it into a one-page report rather than the five pages  
24 they all wanted. People started calling and asking me what  
25 did you find out and it branched out from San Diego County to

1 international request presentations, testimonies in Sidney  
2 Australia and it just went from there.

3 Q. Okay. So it sounds like it kind of developed or  
4 grew from your inquiry from 1981?

5 A. That's correct.

6 Q. And what types of things have you done to train or  
7 become familiar with burn injuries, burn patterns and those  
8 types of things?

9 A. The training involved -- or the training out there  
10 is essentially me. I've looked for specialized training.  
11 There really isn't any. Most of the training I've spoken to  
12 doctors and nurses, and they've told me about temperatures,  
13 there's been articles that I could read. When I've sought it  
14 out, it turns out that the presentations -- I am the  
15 presentation, with all due respect.

16 I've tried and it's not there. The experience has  
17 come from 35 years of receiving cases from all over the world  
18 and asking for help.

19 Q. Let me ask you this, you said part of your work  
20 these days is doing presentations, correct?

21 A. Yes, it is.

22 Q. Approximately, how frequently throughout one given  
23 year do you do presentations?

24 A. It varies. Probably six or eight times a year.

25 Q. And what is the general length of these

1 presentations or does it vary?

2 A. It varies. It can be anywhere from two hours to  
3 three days and it's within the United States or other  
4 countries.

5 Q. And where or to what groups have you made these  
6 presentations?

7 A. There's quite a few. We were -- we've been to  
8 England three or four times, the International Association of  
9 Forensic Nurses in Montreal, Canada. That was the keynote  
10 presentation to start the conference, and it was 750 nurses  
11 from around the world in the audience.

12 The San Diego Children's Hospital was probably the  
13 first international presentation and that's where my book was  
14 handed out to 41 representatives -- or 41 countries that were  
15 represented at that conference. Consulted with Bogota,  
16 Columbia, presented in Canada other times.

17 Q. Let me ask you this, Mr. Peltier; have you given  
18 presentations to physicians and pediatricians?

19 A. Yes. Plastic surgeons, physicians, nurses, medical  
20 personnel.

21 Q. Have you given presentations to investigators?

22 A. Yes.

23 Q. What types of investigators, sir?

24 A. Police officers, school police, college police, the  
25 International Association of Forensic Medical Examiners that

1 I do here in Las Vegas every other year or every three years,  
2 they invite several branches of local law enforcement along  
3 with the medical examiners, the coroners from around the  
4 world.

5 Most of the time, my audiences are the disciplines  
6 that you would expect to be involved with CPS, nursing,  
7 medical, defense attorneys, prosecutors and every level of  
8 law enforcement that gets involved in child protection.

9 Q. All right. Now you said you started -- this  
10 started when you were at the police department -- or sorry,  
11 the DA's Office in San Diego, correct?

12 A. It started at the San Diego Police Department. I  
13 was there from '74 to '87, and I went to the District  
14 Attorney's Office in 1987.

15 Q. I apologize for getting that wrong, sir. And how  
16 long did you stay with the District Attorney's Office in San  
17 Diego?

18 A. In San Diego, until 2000, and then I finished  
19 officially two-and-a-half years later with the Butte County  
20 DA's Office, which is about an hour-and-a-half north of  
21 Sacramento, California.

22 Q. And were you developing and doing these types of  
23 presentations and this type of work throughout that entire  
24 time?

25 A. Yes. Even during other assignments to undercover

1 bank robberies with the FBI, homicide assignments, cold case  
2 investigations with the DA. I was always being sent and  
3 continuing in my own personal education in burn injuries.

4 Q. Now, have you -- you mentioned being published, a  
5 book being distributed. Are you published?

6 A. I'm published four times, personally.

7 Q. Okay. And what are those four publications?

8 A. The Department of Justice was burn injuries in  
9 children. I forget was the title. It was back in the early  
10 '90s. It's a lime green --

11 Q. Sure.

12 A. -- 25 or 30 pages. The American Bar Association,  
13 the International Association of Post Directors and the  
14 other, I forget the acronym, but I published -- I co-authored  
15 with Dr. Asser (phonetic). And the other publications are  
16 medical journals where I've given permission from my evidence  
17 worksheet and my information to be published by doctors in  
18 their personal medical journals.

19 Q. Okay. You referred to the lime green thing. That  
20 was with the Department of Justice?

21 A. Yes.

22 Q. And has that been republished on multiplications?

23 A. Several times. I co-authored with Dr. Gary Purdue  
24 out of Dallas/Ft. Worth with that.

25 Q. All right. Now, you talked about investigative

1 checklists. What do you mean by investigative checklists?

2 A. When I got back all of the information, the point  
3 was we didn't want to stumble for four weeks through an  
4 investigation asking and asking. We don't have that amount  
5 of time, when we were averaging 35 or 40 victims on each of  
6 our desks. And so we put it all together and it ended up  
7 originally it was called the Emersion Burn Evidence  
8 Collection Worksheet.

9 Q. Okay.

10 A. And it's -- it's the same title, essentially, it's  
11 just gotten in different formats because of the computer have  
12 gotten better and we didn't have to hand type it anymore.

13 Q. And so is that still in use as far as you know  
14 around the country or around the world?

15 A. I know that it is because when I get requests from  
16 other jurisdictions, including other countries, they send  
17 that along, e-mail or mail it to me with CDs or thumb drives,  
18 whatever.

19 Q. All right. Now, you -- do you have any training or  
20 experience specifically investigating or looking at burn  
21 patterns?

22 A. Yes, I do.

23 Q. And how did you develop your knowledge or your  
24 expertise in looking and evaluating burn patterns?

25 A. Through the cases that I was being assigned, cases

1 that were being sent to me, visiting with the doctors at the  
2 UCSD burn center in San Diego and basically, they would do --  
3 the extent of the training that I could find were like  
4 lunchtime briefings for the nursing and medical personnel  
5 that I asked if I could be invited in. And we would look at  
6 different patterns.

7           It's come from the ones that I didn't get in that  
8 kind of training is cases that were being sent to me, then.  
9 We would sit down and analyze and recreate and figure out  
10 what happened, the position of the child, accidental,  
11 non-accidental, et cetera.

12           Q. And how would you recreate those situations?

13           A. It depends on the burn, if it's dry contact or wet  
14 contact. If it was, for example, wet contact with cigarette  
15 lighters, ovens, microwaves, things that produce heat. Car  
16 hoods in Las Vegas, we use dry ink and recreate impressions  
17 that were made. In liquid contact, which is much more  
18 frequent except for cigarette lighters, I came up with an  
19 idea to use Rit, the company Rit navy blue clothing dye. We  
20 tried Easter egg dye. It wasn't dark enough especially on  
21 the different pigments of skin. And we couldn't use red so  
22 we came up with navy blue and we've been using that probably  
23 since the middle '80s.

24           Q. And that's why you're the blue dye guy?

25           A. Thanks to the doctors at Children's Hospital in



1 Sidney Australia I have that Nickname now, yes.

2 Q. Now I mean no disrespect, sir, but are you a  
3 medical professional?

4 A. I am not.

5 Q. All right. So your training and your experience is  
6 based from allowed in on observing these injuries and at  
7 least talking to nurses and doctors, correct?

8 A. That's correct.

9 Q. But just so the whole -- the jury's clear and  
10 everyone in the court is clear, you don't treat burn  
11 injuries, correct?

12 A. No, I do not.

13 Q. You simply investigate?

14 A. Correct.

15 Q. Not that it's simple, but that's your speciality  
16 and your expertise, correct?

17 A. That's correct.

18 Q. All right. Now, this blue dye that you developed,  
19 do you use that yourself? Has it been disseminated as far as  
20 the procedure and the practice?

21 A. I use it myself. I know that it's in dozens of  
22 burn centers around the world. They've called and asked me  
23 what it was. What kind of bottle to store it in. I had a  
24 bottle for -- well, until 9/11 I had the same bottle and now  
25 I have to purchase it wherever I go because I can't bring the

1 powder or the liquid on the plane for obvious reasons. So I  
2 have cases of it at home and when I go teach, I bring it with  
3 me if it's local, or I purchase it or have somebody purchase  
4 it when I get there. And most of the time, I explain over  
5 the phone, if they have not been to my class, I'll tell them  
6 to go purchase it and I explain how they can do their own  
7 recreations.

8 Q. Now, we've talked about your training and you  
9 training other individuals as well as investigation, but have  
10 you ever been consulted on burn cases specifically outside  
11 your work as an investigator for either police or your work  
12 at the San Diego District Attorney's Office?

13 A. I'm not sure I understand.

14 Q. After your career in law enforcement --

15 A. Yes.

16 Q. -- have you ever been consulted on burn cases or  
17 burn injuries for your opinions?

18 A. Oh, yes, frequently.

19 Q. Okay. And you said you -- your career with the San  
20 Diego PD and then you went to, was it Butte County?

21 A. I went to the San Diego County District Attorney's  
22 Office in January of '87. I left there in October of 2000,  
23 and I retired in March from 2003 from the Butte County  
24 District Attorney.

25 Q. Since March of 2003 up until today, how many cases

1 have -- how many burn injury cases have you consulted on, if  
2 you can guesstimate?

3 A. More than 200.

4 Q. Okay. And has your consultation always been to the  
5 same level? So today you're here testifying. Do you always  
6 testify in every case you're asked to consult on?

7 A. Very rare that I have to testify.

8 Q. All right. And when you are consulted who or what  
9 types of individuals ask you to consult?

10 A. It usually starts off with law enforcement, CPS,  
11 occasionally a plastic surgeon or a doctor from a attending  
12 ER, defense counsel, prosecutors, forensic nurses. Just  
13 about everybody. I --

14 Q. Now, when law enforcement or CPS contact you to  
15 consult, do you charge them for that consult?

16 A. If I have to write a report, put it in discovery or  
17 if I have to testify, I charge. Up until then I've donated  
18 my time for the 35 years. So, for example, in Australia it  
19 was 121 hours, and we didn't take payment for that. The  
20 testimony was video and over the phone. So since I've  
21 retired, maybe four or five testimonies where I've accepted  
22 payment. The other time it's donated.

23 So I would say 98, 99 percent of my time is  
24 donated.

25 Q. And what's the criteria for donating your time?

1 A. I'm not sure about --

2 Q. If there is any.

3 A. I'm not sure about the -- oh, how does it work?

4 Q. Yes. How do you make the judgment call for  
5 donating your time versus not donating your time?

6 A. If I have to put something into discovery, if I  
7 have to leave home to testify. If I have to send a videotape  
8 recreation, which would be in discovery. Most of the time  
9 it's on the phone, they're getting help, they're getting  
10 advice. Sometimes it lasts several months. Sometimes it's  
11 20 minutes, I never hear from them again.

12 Q. Now, you also testified that you are sometimes  
13 consulted by defense; is that correct?

14 A. Oh, yes.

15 Q. Okay. And as far as when you're consulted by  
16 defense, do you have -- are you trying to recreate something  
17 or are you just offering your opinion as to what you see and  
18 what's produced?

19 A. It's the same with everybody. They call and they  
20 ask for -- depending on the help that they're asking for.

21 Q. Sure.

22 A. Oftentimes, when it's the defense, they're not  
23 looking for the initial investigation. They're -- they're  
24 already putting their case together, and so we decide how far  
25 I should go and how many hours I should work on what they

1 want, and then I call them back before I prepare any reports  
2 and ask if I should go further.

3 Q. Sure. Now, as far as your defense work is  
4 concerned, have you ever refused a consult or refused to take  
5 a case simply because it was from the defense?

6 A. No..

7 Q. As far as when you have to put something into  
8 discovery and come and testify, travel, those types of  
9 things, do have you a standard rate schedule?

10 A. I do.

11 Q. And do you modify that rate schedule at all?

12 A. Modify from year to year or depending on who it is?

13 Q. I apologize. Depending on who it is, do you ever  
14 modify or come down off your rates based on who is retaining  
15 you or who's requesting your services?

16 A. No. Same for everybody.

17 Q. All right. As between State or defense or whoever  
18 it may be, same rates?

19 A. Yes. It's whoever calls first and that's who I'm  
20 working with.

21 Q. Okay. Now, as far as burn patterns, what are the  
22 different types of burn patterns that you may see from say a  
23 hot liquid?

24 A. The most frequent we see, which is usually in a  
25 bathtub or a larger container, is an emersion burn and it

1 usually involves the buttocks, the genitalia, the upper leg,  
2 lower back, et cetera. We have -- anything can be immersed,  
3 and that simply means lowered down into whether carefully or  
4 violently into a hot liquid, so hands, feet, face.

5 We see splash burns, spill burns, pour,  
6 self-inflicted where the pan or the container of water is in  
7 the hand of the victim, which ends up being any one of those,  
8 splash, spill or pour.

9 Q. Okay.

10 A. And it depends on the edges and what we're looking  
11 at, clothing, not clothing, et cetera. There's so many  
12 factors to consider.

13 Q. Sure. Let's talk about an emersion burn. You -- I  
14 saw you gesture with your left hand. You kind of were  
15 holding your wrist as if you were putting it somewhere, fair?

16 A. If this was the container of water at the edge of  
17 the bench.

18 Q. Okay.

19 A. So to lower it down in, and if the water is stable,  
20 then it would be as if -- especially because of the Navy blue  
21 dye, it would be as if the line here up would be the healthy  
22 skin --

23 Q. Sure.

24 A. -- and everything below would be, in this case,  
25 Navy blue or burned tissue if the water was stable and very

1 calm and the hand was held very still.

2 Q. Okay. Now, talking about emersion burn and based  
3 on your demonstration, it looks like the whole hand would be  
4 placed in. So both sides of the hands would be affected; is  
5 that fair?

6 A. In this particular case, the hand is open and both  
7 sides would be affected, yes.

8 Q. Now, you talked about splash burns. What's a  
9 splash burn pattern?

10 A. The easiest way to explain it, if I had a cup of  
11 blue dye and I threw it into somebody's face, it would be a  
12 splash. It would explode and -- not fire explode, but it  
13 would explode and leave fingers everywhere or -- and as you  
14 would imagine, if you dropped it from a high level, the  
15 fingers of blue dye would go everywhere and --

16 Q. And you mentioned a pour burn as well. What types  
17 of criteria or what things do you look at that indicate to  
18 you something is a pour burn?

19 A. The same example, if the cup is filled with blue  
20 dye and I pour it over somebody's forehead, it traditionally  
21 starts wide and then it -- or what we call an arrow down  
22 pattern, depending on how fast it's poured, it can start  
23 narrow. If it's poured very slow and flare out based on the  
24 tomography of the face. If the whole cup is poured  
25 violently, then it can fan out and it arrows down because the

1 liquid -- the volume runs out, it reduces and it trickles  
2 down usually to a point depending on how gravity is affecting  
3 the flow or the viscosity of the liquid.

4 Q. Okay. Now, you talked about self-inflicted.  
5 What's your definition of self-inflicted?

6 A. I've had several cases where the child was able to  
7 get to the liquid. We were able to determine how much there  
8 was in the -- how much liquid there was, how much the vessel  
9 weighed and then we went and asked their pediatrician are  
10 they capable of lifting this amount from this area, whether  
11 it was from the floor, over their head, wherever it was.

12 And a particular slide in my presentation that we  
13 start with, there are different types of emersion or  
14 different types of liquid burns on the body and it turns out  
15 as you bend the elbow where it starts, the liquid in the pan  
16 ended up on top of the shoulder, and at the same time, while  
17 they were doing that, the crease of the elbow here where the  
18 liquid came here and here, the crease of the liquid -- crease  
19 of the elbow, which is the popliteal fossa did not get burned  
20 because the way the elbow was closed, the crease was closed,  
21 the liquid could not penetrate this V pattern, this crease  
22 here.

23 Q. So if I understand what you're saying, Mr. Peltier,  
24 what you're talking about with the self-inflicted, when the  
25 child closes the arm like that, it kind of creates a barrier,



1 shall we say, where the water can't go or the liquid can't  
2 go?

3 A. It does. Frequently, it's a diamond shape. It  
4 depends on how much it was closed. They're most frequently  
5 seen behind the knees because the child is kneeling down in  
6 the tub of hot water.

7 Q. I see.

8 A. And they can sit all the way back. So the further  
9 they sit back, when you open it up this way, the larger the  
10 spared area. If they were just leaning back -- if this was  
11 my knee, I can't lean back that far anymore, but if this was  
12 my knee and I just barely leaned back a little bit, then we  
13 would expect just a sliver of sparing or tissue that was not  
14 affected when this is burned and this -- or this is Navy  
15 blue, this is Navy blue.

16 Q. Okay. And --

17 A. So it -- then we can then put them in the exact  
18 position because we touch the lower limb to the upper limb,  
19 the burn injury, so we're closing off just until the spared  
20 area is no longer revealed, and that's how we put a child  
21 even decades later in the exact kneeling or leaning forward  
22 position that they were in no matter where they were.

23 Q. Okay. Now, you talked about the spared area where  
24 there would be no blue dye for when you're doing experiments,  
25 but fair to say no injury or no burn pattern, correct?

1 A. Correct.

2 Q. And that would be whatever their skin normally  
3 looked like would be what the spared area appeared, correct?

4 A. That's correct.

5 Q. Okay. Now, when you are analyzing a case, what  
6 types of things do you need to perform your -- not talking  
7 about your experiments with the blue dye, but asked to give  
8 your opinion about burn patterns and those types of things.  
9 What do you need to look at or review or know in order to  
10 form your opinion?

11 A. Well, I think it's important to point out that I  
12 tell my students when I hand out my number at my conferences,  
13 sessions, whatever, that I caution them not to give me a lot  
14 of things and when they call me up saying, it was the guy  
15 next door and he held him like this, and I'm -- and -- I  
16 don't want all that.

17 Q. And why don't you --

18 A. So I caution them.

19 Q. -- want all that?

20 A. Excuse me.

21 Q. Why don't you want all that?

22 A. I don't want to be prejudiced in any way. I want  
23 to tell them if I can possibly figure out what happened,  
24 determine temperatures, body positions, accidental,  
25 non-accidental. I want to do it from photos. So I ask for

1 four or five photos to start. One perspective photo, the  
2 whole -- the entire child and sometimes an adult. Mostly  
3 child. Then I ask for the injuries. I ask if the child has  
4 any mental or physical handicaps.

5 I ask for the age of the child. I ask dead or  
6 alive. And I ask them if they're in a hurry --

7 Q. Okay.

8 A. -- because I'm retired. So I want to know what  
9 their timeline is. Frequently it's a cold case and -- and I  
10 might drop what I'm doing and find out it's five years old.  
11 they went to my class and I've ignited some kind of new idea  
12 with them.

13 Q. Sure. So when you were trying to make your -- when  
14 you've been asked to consult, you said you look at photos.  
15 You have some basic information about the victim or the  
16 individual who's been burned --

17 A. Correct.

18 Q. -- is that fair?

19 A. Yes.

20 Q. And you intentionally don't find out any other  
21 information about what's been said of what happened?

22 A. Not at first, no.

23 Q. Okay. Now, when you're looking at the photographs  
24 and the information that you have, do you consider the  
25 severity of the burns in rendering your opinions and forming

1 your conclusions?

2 A. I do.

3 Q. What significance does burn severity have for you  
4 in your occupation?

5 A. The burn formula that -- as I define it, my  
6 definition of the burn formula is the temperature of the  
7 source, obviously, the degree of the burn, the skin  
8 sensitivity and therefore, the time of exposure of the heat  
9 to that. So burns, as we learned them, were first and  
10 second, third degree. First being like a sunburn. Second  
11 being maybe some bleeding and blistering. And third degree  
12 destroyed tissue that has to be replaced through surgery.

13 Now we call it -- because it's easier to remember.  
14 People were forgetting which was worst, first or third. So  
15 now it's defined as superficial, partial, deep partial and  
16 full thickness because you -- there's no misdefining full  
17 thickness.

18 Q. Sure.

19 A. So that would be same as third degree. And the  
20 only disadvantage I'm at, if it's close, I'll ask to see a  
21 medical report because I'm using a 30-inch monitor so I don't  
22 get to be at the burn center during the debride or a dressing  
23 change where I can examine -- and I'm not a doctor as we've  
24 defined, but after all the cases, I get it pretty close.

25 Q. Sure. So burn severity is part of your three-step

1 formula that you've developed, correct?

2 A. Yes, because it involves the temperature of the  
3 water, which can also be affected by the time of exposure to  
4 that temperature. All of them have to fit.

5 Q. And you've kind of led to my next question is  
6 you've said you're not a medical doctor, but you said you get  
7 it pretty close in looking at the photographs, correct?

8 A. Yes. I remember one time the victim was nine weeks  
9 old and I asked if that was new --

10 MS. KIERNY: I'm going to object to any case  
11 studies that aren't this case.

12 THE COURT: Yeah, I'm not -- I'm not sure it's  
13 responsive.

14 MS. JOBE: I'll move on, Your Honor.

15 BY MS. JOBE:

16 Q. Now, fair to -- in your training and experience,  
17 we've talked a little about hot liquids and you've also  
18 mentioned you've done some work on implement burns. Is there  
19 a difference, I guess, in the material that's doing the  
20 burning and what you would expect to see in the burn  
21 patterns?

22 MS. KIERNY: I'm going to object as to cumulative.  
23 Doctor Cetl already went over this.

24 THE COURT: Overruled. You can answer.

25 THE WITNESS: Yes.

1 BY MS. JOBE:

2 Q. For instance, we talked about hot liquids, correct?

3 A. Yes.

4 Q. And would it be fair to say that hot liquids leave  
5 a different pattern than say if someone spills really hot  
6 macaroni and cheese on them?

7 A. Yes.

8 Q. Describe that for us, please.

9 A. Macaroni and cheese, mashed potatoes, refried beans  
10 very common. They -- they are usually consistent with edge  
11 to edge. And because they hold the heat, you don't see a  
12 reduction in damage to the tissue. Going back to the example  
13 of on the shoulder, if it started at full thickness, by the  
14 time it goes to the waist in the normal environment of 65 or  
15 75 degrees, it may only be superficial in just a few inches.

16 Q. And are you talking about liquid or hot liquid --

17 A. In liquids that are moving.

18 Q. Okay.

19 A. If it's a solid substance and we're not talking  
20 about stoves or lighters yet, if it's a solid substance like  
21 refried beans and mashed potatoes, things I've experienced,  
22 macaroni and cheese, it stays there. And it's -- it's almost  
23 identical to a dry contact like a steam iron because usually  
24 the injury is -- is consistent from edge to edge. There is  
25 no change in temperature because like a steam iron, it's that

1 high temperature from the point to the base to the sides,  
2 where water's affected by air depending on temperature  
3 outside or inside.

4 Q. Now, in doing your analysis of burn patterns, when  
5 you're being consulted, does the amount of skin or amount of  
6 area on the individual that's been burnt, does that affect or  
7 have something to do with your opinion? Do you take that  
8 into consideration?

9 A. I'm not sure I understand.

10 Q. Fair point. When you're consulting on cases --

11 A. Yes.

12 Q. -- do you look at the amount of skin or the amount  
13 of area that's been burned?

14 A. Correct.

15 Q. And does that have -- do you take that into  
16 consideration in rendering your opinions?

17 A. Yes, I do.

18 Q. And what significance does the amount of area  
19 that's been burned, what does that mean to you or how does --  
20 how is that part of your thought process in forming your  
21 conclusions?

22 A. Well, like in an emersion burn, the emersion can be  
23 just the center of the gluteal muscles or the buttocks cheeks  
24 or it can involve up to the middle of the thoracic area, the  
25 middle of the back, the backs of the knees, the feet, the

1 shoulders, the hands, the neck. I need to determine how much  
2 of that person was in that liquid, if we're talking about an  
3 emersion burn.

4 Q. Sure.

5 A. If in the case where you mentioned both sides of  
6 the hands being burned, if they made a fist resisting when  
7 they went in the hot liquid, then the fingertips are usually  
8 spared of injury and so are each one of the knuckle joints,  
9 which are almost like the popliteal creases behind the knees  
10 and elbows, but very tiny. And most of the palm of the hand  
11 is then spared.

12 So I know that the whole hand was in because of the  
13 circumferential line of demarcation, the burn goes all the  
14 way around the wrist, but when you open up the hand and only  
15 one side is burned, that's very significant to me.

16 Q. Let's be more specific about this case,  
17 Mr. Peltier. Did you have a chance to review photographs in  
18 the case involving a child by the name of Chance Jacksper?

19 A. I did.

20 Q. And were you initially asked to consult by a  
21 Detective DePalma on or about January 5th or 6th of 2016?

22 A. Yes.

23 Q. And when -- fair to say you had communications with  
24 Detective DePalma during the course of his investigation and  
25 then up until last week you were officially retained by the



1 State to testify; is that correct?

2 A. That's correct.

3 Q. All right. And you received materials from the  
4 State in advance of today; is that correct?

5 A. It is.

6 Q. Okay. And you had a chance to review those?

7 A. Yes.

8 (Pause in the proceedings)

9 MS. JOBE: May I approach the witness, Your Honor?

10 THE COURT: You may.

11 BY MS. JOBE:

12 Q. If you'll review those, please.

13 A. Yes.

14 Q. Do you recognize those, Mr. Peltier?

15 A. I do.

16 Q. Okay. And do these appear to be the photos you  
17 were asked to review and consult on for this case?

18 A. They do.

19 Q. I'm going to show you what's been -- give me a  
20 minute to find this -- I'm going to show you what's been  
21 admitted as State's 8. Looking at State's 8, what, if  
22 anything, is significant to you about the burn patterns in  
23 State's 8?

24 A. Well, the first thing I noticed that the wrist is  
25 spared. So the burn seems to initiate just below the wrist

1 near the thumb.

2 Q. Okay. And I think if you point on your screen it  
3 should show up, where you touch your screen.

4 A. Really?

5 Q. It should. Not always, but it should. Did it do  
6 it?

7 A. I'm touching the screen.

8 Q. Okay. Well, where that arrow is, Mr. Peltier?

9 A. Oh, there it is. That's -- that's where the --  
10 that's where the initial contact occurs and then it flows  
11 towards the knuckles and it involves, at least from this  
12 picture, there's some blistering in the last knuckle joint  
13 before it joins the dorsal or backside of the hand. There's  
14 also a small little island just below the arrow. If I touch  
15 it again, do I get another arrow?

16 Q. Yes. We'll get to that island in a moment.

17 A. Oh, okay.

18 Q. All right. Mr. Peltier, you said it appeared to  
19 flow in the direction from the arrow towards the knuckles; is  
20 that correct?

21 A. That is correct.

22 Q. And what about this burn pattern tells you that?

23 A. If it started towards the knuckles, it would not --  
24 in the position of the hand, it doesn't lose volume and start  
25 at a rounded area. It would start there and flow downward so

1 the hand would be slightly tilted in a down position and  
2 dragged the majority of the volume of the water towards the  
3 knuckles and then down through the fingers.

4 Q. Okay. So is that why -- and I apologize if I'm  
5 simplifying this too much. Correct me if, I do, but is that  
6 why this area appears to be smaller and then it widens in  
7 that direction?

8 A. That's correct. It starts at the -- where the  
9 arrow is near the wrist and then it flows, the volume of the  
10 water, a small amount of it then flows down over the fingers  
11 and I can't tell if the thumb is involved in that particular  
12 photo.

13 Q. Fair enough. And you talked about the knuckles; is  
14 that correct?

15 A. Right. And it appears to involve at least -- and  
16 if I can number. In the right hand and fingerprinting, the  
17 thumb on the right hand is number one.

18 Q. Okay.

19 A. And then on the left hand it starts six, seven,  
20 eight, nine, ten.

21 Q. Sure.

22 A. So in this case, from this photo anyway, it looks  
23 like it involves at least the last knuckle before it joins  
24 the dorsal side of the hand. It looks like it involves the  
25 index finger or finger number two, then three, four and five.

1 IN THE SUPREME COURT OF THE STATE OF NEVADA

2  
3 DONOVINE MATHEWS, ) No. 72701  
4 Appellant, )  
5 vi. )  
6 THE STATE OF NEVADA, )  
7 Respondent. )  
8 )  
9 )

10 APPELLANT'S APPENDIX VOLUME V PAGES 1001-1250

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18 I hereby certify that this document was filed electronically with the Nevada  
19 Supreme Court on the 20<sup>th</sup> day of Oct, 2017. Electronic Service of the  
20 foregoing document shall be made in accordance with the Master Service List as follows:

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