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IN THE SUPREME COURT OF THE STATE OF NEVADA

DONOVINE MATHEWS, )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 THE STATE OF NEVADA, )  
 )  
 Respondent. )  
 )

No. 72701

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1 Q. Okay. And you said the dorsal side of the hand.  
2 For us lay people who aren't familiar with those terms, what  
3 does that mean?

4 A. Sorry.

5 Q. It's okay.

6 A. The backside of the hand.

7 Q. Okay. Now, you also made that mark at -- over  
8 here; is that correct?

9 A. Yes.

10 Q. Why is that significant to you?

11 A. You can see that there's a small island where the  
12 pink mark is and that island meaning an isolated area from  
13 the total burn itself, the majority of the burn. But if you  
14 look real close, there's a shaded area and these -- I'm only  
15 looking at --

16 Q. I'm going to zoom in Mr. Peltier so if you'll hold  
17 on a second.

18 A. (Speaking Spanish), I mean good.

19 Q. Okay. Go ahead. So this area right here --

20 A. The water settled for just a brief second, and but  
21 you can see that it was connected. You can see the dark  
22 shaded area connecting the large volume of the burn to that  
23 little area and it just tells me that there was -- that the  
24 hands were not held in a perfectly motionless motion. There  
25 had to be some little tiny bit of movement involved there.

1 There was freedom to move, which there are other things that  
2 helped me find that out also.

3 Q. Okay. So if I understand your testimony,  
4 Mr. Peltier, based on the burn patterns as you see them, the  
5 starting here and then the, I guess, I'll say the branching  
6 out towards the knuckles and then that little spot here,  
7 based on the burn patterns, you're able to tell that the hand  
8 had some freedom to move during these events?

9 A. Yes.

10 Q. Okay. What -- you said there were other things.  
11 What other things indicate to you there was some freedom of  
12 movement?

13 A. Well, when I don't see freedom of movement, when I  
14 have a crisp line or a very absolute line of demarcation,  
15 especially on a child and I believe, this child was 25 or 30  
16 days short of three years old.

17 Q. Okay.

18 A. Especially in a child this size. They have the  
19 ability to fight back and struggle.

20 Q. Sure.

21 A. And frequently in these cases, when the line is  
22 very crisp and there is absolutely no movement, there are  
23 associated signs of force and restraint like finger bruises,  
24 face slap bruises, bruises around the scapula, the shoulders,  
25 the back of the neck. And in a case if it was just involving

1 the hands, they would be on the biceps or usually on the  
2 lower arm, the ulna/radius, the forearm where somebody was  
3 holding them 100 percent motionless. And both things -- I  
4 don't see any signs of force or bruising in these  
5 photographs, and it doesn't indicate that I would be looking  
6 for that because the hand was free to move even though it was  
7 a little bit.

8 Q. Okay. Now I'm going to show you what's been  
9 admitted as State's 11. And that is the left hand of Chance  
10 Jacksper.

11 A. Um-h'm.

12 Q. And looking at this burn pattern what, if anything,  
13 is significant to you?

14 A. Well, first of all, there's a circumferential  
15 burning or at least appears to be a straight line of burning.  
16 You can't see the underside of the wrist, but it's a  
17 different type of pattern. It did not start as a dome and  
18 then flare out, as we're saying.

19 Q. So like --

20 A. It's horizontal at the wrist.

21 Q. Okay. So like the right hand, which has the dome  
22 and then flares out, right?

23 A. Yes.

24 Q. This has a different pattern; is that fair?

25 A. This did not. And in fact, this involves more of



1 the wrist, the back or dorsal side of the hand and in this  
2 case, which would be the index finger, so counting would be  
3 six and seven are not involved at all and it indicates to me  
4 that the hand was flat and maybe even lifted or at least the  
5 -- in this case, the fingers were touching or they were  
6 lifted up in the air because the water didn't go towards the  
7 fingers or the hot liquid. It either settled or settled at  
8 the wrist area. So they were in two completely different  
9 positions.

10 Q. Meaning the hands were in two completely different  
11 positions?

12 A. Correct. Right versus left.

13 Q. Okay. And so let's -- for those of us learning  
14 about dorsal numbers, this would be six, right?

15 A. Yes, the left hand starts with six --

16 Q. Six.

17 A. -- and counts to the little finger, six, seven,  
18 eight, nine and ten.

19 Q. Okay. And you said six -- at least six, seven and  
20 eight don't have any injuries, as you can see; is that  
21 correct?

22 A. They don't appear in this picture, no. You can see  
23 some blistering on what would be the ring finger, the left  
24 hand and the pinky finger or fingers nine and ten.

25 Q. Okay. Now, you indicated you can't see all the way

1 around the wrist in this case, on the left hand.

2 A. Um-h'm.

3 Q. So let me show you what's been admitted as State's  
4 12. A little different angle. What, if anything, is  
5 significant about the burn pattern on this portion of the  
6 hand?

7 A. So you can see that the burn continued around  
8 lateral. But you still can't say that it was  
9 circumferential, meaning that it burned all the way around --

10 Q. Sure.

11 A. -- as an emersion. Or if the water was held or  
12 poured. If there was a larger volume of water and the hand  
13 was tilted properly, as in this case if it seems to be  
14 leaning more towards the pinky finger, then the water can  
15 move around all the way and be circumferential, but you'd  
16 still have to see the complete underside.

17 I also see that there's island blister a few  
18 centimeters above what looks like the total burn. Can I  
19 touch the screen and do it or --

20 Q. Let -- I'll get to --

21 A. Okay.

22 Q. -- island blister in a second.

23 A. All right.

24 Q. So you're talking about circumferentialing being  
25 around the whole entire wrist, correct?

1           A.    Complete burn all the way around, top, sides and  
2 underneath.

3           Q.    Sure.  And you would expect to see circumferential  
4 if it was an emersion burn, so the whole hand put in,  
5 correct?

6           A.    Or if the hand was tilted and enough water was  
7 poured that instead of just going this way in a small amount  
8 of water, if they continued pouring here, if that zero  
9 gravity line say is the top of the bench or my hand, well, if  
10 it's here, it's only going to go to about halfway and fall  
11 off.

12          Q.    Okay.

13          A.    If you tilted the hand enough, then it's still  
14 going to go -- it's still all gravity.

15          Q     Sure.

16          A     -- it's still going to go to here, which would mean  
17 it could go circumferential or all the way around the wrist.

18          Q.    So if I understand your testimony, Mr. Peltier, the  
19 burn pattern not being circumferential tells you something at  
20 least about the amount of water that was used; is that fair?

21          A.    It does, yes.

22          Q.    Okay.  And so if it were a very large amount of  
23 water, you would expect to see a different pattern of  
24 injuries.  So does this suggest to you it was a small amount  
25 of water or a smaller amount of water?

1           A.    I think it was a small amount of water.  I don't  
2 think there was any significant puddling.  I don't think it  
3 was poured for any significant amount of time.  I think it  
4 touched the back of the hands.  Fortunately, for the victim  
5 it was gone almost instantly because of the -- the  
6 temperatures that I've been given, and it was very, very  
7 fast.  Had it come from like a gallon container, it will  
8 eventually find its way around, puddle, and even affect other  
9 parts of the body.

10           Q.    Okay.  Let's talk about puddling for a second.  
11 What is puddling for those of us who are not burn experts?

12           A.    If the hand is held on a flat surface, unless there  
13 is somebody forcing down so the contact points may be spared.

14           Q.    Okay.

15           A.    But if the person is free to move and in this case,  
16 when you're hand is burned, we all react.

17           Q.    Sure.

18           A.    And just the slightest little flinch or twitch of  
19 your hand, especially at extreme temperatures will cause  
20 severe burning or full thickness burning even on the other  
21 side, even if the source is being introduced from the top.  
22 It will find its way under.  If it's a very small amount and  
23 it runs off of the hand, there's really no chance for ounces,  
24 quarts or gallons to move around.  It's on the hand, gone and  
25 away from the victim.

1 Q. Okay. Let me make sure I understand that. So if  
2 it's a large amount of water, you said there's a twitch or a  
3 flick of the hand. So if it's a large amount of water used  
4 in the twitch or the flick of the hand, you'd expect some  
5 water to get on the palm side of the hand; is that fair?

6 A. That is correct.

7 Q. So you would expect to see some burn pattern on the  
8 palm side of the hand?

9 A. That's correct.

10 Q. All right. Now let's talk about this satellite  
11 burn that you see.

12 A. Okay.

13 Q. If you could please mark for the ladies and  
14 gentlemen of the jury where the satellite burn is. Okay.  
15 And what significance is that to you?

16 A. Well, again, it shows that there's movement of the  
17 hand. There's not -- there's not a caretaker who was holding  
18 or forcing the person to be motionless.

19 Q. Okay.

20 A. And it allowed that there was movement. And we  
21 react to pain, and in this case heat, and the hand moved  
22 because it was hot and it was being burned. If the person is  
23 being held 100 percent motionless, which is a frequent  
24 occurrence, then you don't see those satellite injuries, but  
25 you do see where they're being held, especially if they're an

1 older child.

2 Q. Okay. Now, it appears there's some pattern on the  
3 six digit around where the thumb connects to the wrist; is  
4 that fair?

5 A. Yes.

6 Q. Okay. What, if anything, does that tell you about  
7 the flow of the material or the way the burn occurred because  
8 we've talked about the wrist --

9 A. Yes.

10 Q. -- right, and then it appears there's some injury  
11 to the thumb or index. What does that tell you, sir?

12 A. I think it's free to flow. I don't think it's  
13 something moving like a thick gravy or something like that.  
14 I think if it was just for a second on the back of the hand,  
15 it wouldn't have time to move around and cause the same  
16 injury. Plus, the degree of injury, and again we're at the  
17 mercy of a photograph and not a medical exam, but the degree  
18 of injury appears to be slightly less --

19 Q. Okay.

20 A. -- less partial than what I see as partial to deep  
21 partial thickness injuries. And the water is cooling as it  
22 moves, even if it is just for a quarter or a half a second,  
23 it's already starting to lose some of its heat.

24 Q. Okay. Now you talked about it -- said something  
25 like it's not gravy. So is there something about the type of

1 material or the type of -- the way this burn occurred that  
2 you can tell if it was thin or thick material or something  
3 else?

4 A. It just does not appear to be slow moving. The  
5 lines vary in temperature. The lines are free to move. If  
6 you can imagine a very thick gravy and you barely twitched  
7 your hand, I with expect a trailer on a small island to move  
8 from this tiniest little blink of an eye when they reacted to  
9 the heat. The hand would have to be moved for significantly.  
10 And in cases where we've had a more viscous material, but  
11 still hot enough to burn, like a gravy or something being  
12 prepared on the stove, the lines are more crisp, they're more  
13 defined. They don't fade into the healthy tissue. There's  
14 burn and there's healthy.

15 Q. Okay. I'm going to show you what's been admitted  
16 as State's 7. That is the left palm of Chance. What, if  
17 any, significance of what you can see in this photo does that  
18 have for your opinion about the burn pattern?

19 A. Well, at least from this photo, it doesn't appear  
20 to be a circumferential burn unless there's a couple of shiny  
21 places here and you can't tell if that's flash photography,  
22 if there's a tiny little bit of superficial burn there, but  
23 the palm appears to be completely spared in this photo.

24 Q. I forgot to show you when I was asking about the  
25 right hand, but here is what's been admitted as State's 6,

1 the -- a picture of (inaudible) of the palm of the right  
2 hand. What, if anything, significance does that have as far  
3 as burn patterns are concerned in your opinions about the  
4 burn patterns in this case?

5 A. Again, I think the palm at least what we can see in  
6 this photo appears to be 100 percent spared and healthy  
7 tissue.

8 Q. Now, as far as the burn pattern that we see on the  
9 right hand, this is State's 8, in your experience, if this  
10 were an accidental spill or burn, what would you expect to  
11 see, or what, if anything, would be different about the burn  
12 pattern?

13 A. I wouldn't see the sharp line of demarcation. May  
14 I touch the screen?

15 Q. Sure.

16 A. Where it starts to flare out from the dome here.  
17 The line have very crisp separating the healthy and the burn  
18 tissue. There may be some heat because we're only looking at  
19 one day of these photos. We don't have seven or eight days  
20 of healing photos to compare where the skin may debride  
21 further back.

22 But if it's accidental, I'm expecting it to be more  
23 of a splash or -- or the water to be more active when it hits  
24 the hand. Where this appears to be a very careful slow,  
25 deliberate pour. The water is moving very slow and it's held



1 very close to the hand. It's not held at a distance, which  
2 again, when it hits, I think it's pretty obvious, if you hold  
3 it here and it hits, it's not going to make a smooth line.  
4 It's going to splash like this when it hits the surface.

5 Q. I'm showing you what's been admitted as State's 13,  
6 the left hand.

7 A. Um-h'm.

8 Q. Again, what would you expect to see if this were an  
9 -- as for as the burn pattern is concerned if this were an  
10 accidental spill to the left hand?

11 A. Using just this hand by itself?

12 Q. Yes.

13 A. Okay. Again, at the risk it's very -- it's not a  
14 crisp line where they were held perfectly still, but a very  
15 horizontal line of demarcation between the healthy tissue,  
16 even though there's a small lighter area just above where the  
17 burn seems to stop. There's no splash, there's no trailers.  
18 It doesn't involve the thumb, index and middle finger, at  
19 least what appears in this photo. It only involves to its --  
20 the hand is tilted in what appeared to be either tilted to  
21 the left so it would involve the last two fingers or the  
22 water was poured near that area, where it worked that way.

23 In an accidental, it's -- it's difficult, if not  
24 impossible, to not involve, you know, three-fifths of the  
25 hand, especially in a young child.

1 Q. Now, as part of your -- State's request in this  
2 case, you also had a chance to look at some measurements; is  
3 that correct, of the location where the injury --

4 A. That's correct.

5 Q. -- took place?

6 A. Yes.

7 Q. This has been admitted as State's 63. Do you  
8 recognize that, Mr. Peltier?

9 A. I do.

10 Q. All right. And this -- the State's 64, fair to say  
11 that just appears to be a close-up of what the actual height  
12 of the counter is; is that correct?

13 A. Yes.

14 Q. And you were provided with the information that the  
15 -- that Chance Jacksper was 37 inches or approximately 37  
16 inches high on the date of this event; is that correct?

17 A. I don't think I got his exact measurements.

18 Q. Okay. If you were told that Chance is 37 inches  
19 high on the date of these events --

20 MS. KIERNY: I'm going to object. This is -- this  
21 didn't go into his analysis. This isn't something he  
22 previously analyzed.

23 THE COURT: Well, clearly, but I don't -- there's  
24 nothing --

25 MS. JOBE: Your Honor.

1 THE COURT: -- that prevents you from asking him  
2 something based on information that's made known to him at  
3 the time of trial.

4 MS. JOBE: And this is foundational leading up to  
5 what burn patterns he would expect, Your Honor.

6 THE COURT: Sure. You can proceed.

7 BY MS. JOBE:

8 Q. That counter is 35 inches high, and the victim is  
9 approximately 2 inches taller than that counter. What type  
10 of burn patterns would you expect to see if the child pulled  
11 a mug off that counter full of hot water?

12 A. Depending on the material that it was in, I would  
13 expect to see burns on the fingers, having the knowledge that  
14 this was boiling water. But if they reached over their head,  
15 and they would if they were 37 inches tall to the top of the  
16 their head, 37 is not their reach. It's the top of the head;  
17 is that correct? Yes. I would expect them to reach up. I  
18 would expect the burns not to be on the backs of hands. I  
19 would be -- I'm surprised. It should be on the face, the  
20 chin, the top of the head. It should be down the front of  
21 the body. I would especially expect to see it on top of the  
22 feet.

23 Q. And why on top of the feet?

24 A. It's where the water is eventually going to go  
25 as it runs down the body depending on the amount of body. In

1 this case, I know the person had on a diaper and a t-shirt.

2 Q. Okay.

3 A. So there was not a lot of absorbency to stop the  
4 water going down. If there was a couple of ounces, I may not  
5 expected to see -- it could be interrupted on the way down.

6 Q. Sure.

7 A. But in a coffee cup or mug that I have a picture  
8 of, hold off reaching over your head, I would expect some of  
9 that to be actually not on the back of the hands at all, more  
10 in the palms, the face, the chin, the chest, and it really  
11 depends on where it came cough. If the person reacted, it  
12 went to the shoulder. But eventually, it's headed to the  
13 floor unless there is sufficient material to stop it and soak  
14 it up before it hits the bottom.

15 Q. Okay. And going back to State's 8, the burn  
16 patterns that you see on the hand, if a child is reaching at  
17 the time -- this child's reaching at the time the burn  
18 occurs, would you expect to see this burn pattern or a  
19 different pattern on the hand and the wrist, et cetera?

20 A. If somebody reaching for the mug and they pull it  
21 off the edge and it spills on themselves, I would never  
22 expect to see this and never have.

23 Q. And what about the left hand, as shown in State's  
24 11?

25 A. The answer is the same. It's -- it's on the wrong

1 side of the hand. It needs to be on the palm of the hand.  
2 It needs to be near the elbow. It needs to be running down  
3 the wrist affecting the shoulder, the face. This is only on  
4 the back, which is the exact opposite of what I expect to see  
5 when somebody has the vessel in their hand. And if it's hot  
6 enough, I expect to see burns, especially on three-year-old  
7 sensitive skin, I would highly expect to see the burns on the  
8 pads of their fingers.

9 Q. Now, if a child -- we're using a 35-inch counter  
10 and the 37-inch child.

11 A. Okay.

12 Q. The child's reaching up and for some reason the  
13 hands get burned by the liquid with the child's hands on the  
14 counter, placed on the counter, what burn patterns would you  
15 expect to see?

16 MS. KIERNY: I'm going to object to foundation.  
17 Factual foundation --

18 THE COURT: Overruled.

19 MS. KIERNY: -- for this.

20 THE COURT: You can answer.

21 THE WITNESS: The child's hands are up on the  
22 counter, and they're still standing on the floor.

23 BY MS. JOBE:

24 Q. Yes.

25 A. Then they're reaching up higher. I expect the

1 water to run away from the fingertips, down the forearms,  
2 possibly underneath the forearms, affect the elbow and then  
3 just depending, we'd have to do an exact mannequin  
4 recreation, but I certainly would expect it to run downhill  
5 and not stop at the --

6 MS. KIERNY: Your Honor, I'm going to object  
7 because he didn't do an exact mannequin recreation so he's  
8 speculating at this point.

9 MS. JOBE: And Your Honor, I don't believe he's  
10 speculating. He's offered his opinions based on his training  
11 and experience.

12 THE COURT: All right. Do you have to do this  
13 recreation to give this opinion you're rendering?

14 THE WITNESS: I do not, Your Honor.

15 THE COURT: Okay. You may proceed.

16 THE WITNESS: Thank you. I would expect the water  
17 to run downhill. In the case of the right hand, in fact, the  
18 water started at the wrist or below the wrist towards the  
19 fingers, if that's below on this side towards the fingers,  
20 and it moved towards the tips of the fingers.

21 If you're reaching up, that's not the way the water  
22 flows. If you're reaching up, it's coming back towards you.  
23 And it's completely inconsistent with that theory.

24 BY MS. JOBE:

25 Q. So if I understand your testimony, Mr. Peltier, as

1 far as the right hand is concerned, it sounds like, would the  
2 hand have to either be flat or turned down at the wrist, so  
3 bent at the wrist down instead of bent up, or up above the  
4 head?

5 A. That's correct. In this case, with the -- with the  
6 right hand the fingers would have to be tilted at some degree  
7 forward --

8 Q. Okay.

9 A. -- so the flesh or thumb part of the hand would  
10 have to be lifted off of the surface somehow to make the  
11 water flow away from the wrist.

12 Q. And when that -- would your opinion be the same or  
13 different as it relates to the left hand?

14 A. In this case, the left hand, it could be flat.

15 Q. Okay.

16 A. We notice that it did go lateral or to the side of  
17 the thumb slightly in one of your photos. There's no  
18 evidence to show that it got underneath, but they're two  
19 completely different patterns. And the vessel would have to  
20 be tipped over somehow equally in the middle, instead of one  
21 way or the other, and I don't know how that happens.

22 Q. Sure. Now, fair to say, Mr. Peltier, you don't  
23 know the implement or exactly where the hot liquid came from;  
24 is that correct?

25 A. I was given reports that there were statements it

1 was on the edge.

2 Q. But that's just as far as the mug is concerned?

3 A. Yes.

4 Q. But as for as your opinion as far as the -- what  
5 you can tell from the burn patterns in this case, fair to say  
6 you can't tell if that was actually water out of the mug,  
7 water out of the faucet or something else; is that fair?

8 A. That's correct.

9 Q. And would the burn patterns that you see be  
10 consistent with hands being put under hot water running out  
11 of a faucet?

12 A. Very consistent.

13 Q. And what about that makes it consistent for you?

14 MS. KIERNY: I'm going to objection to foundation.  
15 Assumes facts or facts that we don't have.

16 MS. JOBE: It's a hypothetical regarding  
17 consistency and burn pattern.

18 THE COURT: Overruled. You can answer.

19 THE WITNESS: If their hands are held under water  
20 and again, using these specific hands, it would be very brief  
21 contact, therefore, the water would be extremely hot. They  
22 were not held by force. There's no sign of bruising on the  
23 forearms, biceps, any part of the neck or body, and the hands  
24 were free to move. And if they were held under the faucet,  
25 they were held very close to the faucet. If they were held



1 just a half an inch away and it was turned on very slow, you  
2 could get that pattern. If they were held on close, if it  
3 was, I don't know the water pressure of the house --

4 BY MS. JOBE:

5 Q. Sure.

6 A. -- but the water did not come -- it did not explode  
7 out of the faucet and bounce off of the hands. It was slowly  
8 applied to the hands from a higher source or vessel.

9 Q. And you have said not being held, that the hands  
10 were free to move.

11 A. Correct.

12 Q. What do you mean by that specifically?

13 A. Again, hands are frequently forced into --

14 Q. Sure.

15 A. -- a scalding situation. So are bodies. And the  
16 line would be very crisp and clean between affected tissue  
17 and non-affected tissue. Burned and healthy tissue. In this  
18 case, the water was moving. In cases that we have where the  
19 hands are held perfectly still, the patterns are very crisp  
20 and clean and oftentimes very consistent from right to left  
21 and the little satellite injuries, the tiny little splash a  
22 few centimeters away on the left hand, the little trailer  
23 shows me that the hands were moving.

24 In an adult maybe there would be more movement  
25 because they have the strength to fight back. And they don't

1 -- I didn't talk to the pediatrician, I don't know  
2 percentiles, but in a three-year-old, in an instant touch  
3 like that, they're going to move their hands a little bit.  
4 But they don't require the same muscular strength to hold  
5 them still.

6 Q. So I just want to make sure I understand your  
7 testimony correctly. When you say his hands weren't forced,  
8 do you mean that his hands weren't made immovable by someone  
9 or something?

10 A. That's correct. They were -- they were forcefully  
11 pushed under, whatever the source is --

12 Q. Okay.

13 A. -- and held there, but they weren't held so tight  
14 that they couldn't move a little bit.

15 Q. Okay.

16 A. And there's no bruising to suggest that they were.

17 Q. Okay.

18 MS. JOBE: Court's indulgence. Pass the witness.

19 THE COURT: Cross-examination.

20 MS. KIERNY: Yes.

21 CROSS-EXAMINATION

22 BY MS. KIERNY:

23 Q. Mr. Peltier or Peltier?

24 A. Peltier, please.

25 Q. Peltier. Sorry about that.

1 A. No problem.

2 Q. You have a long history in law enforcement, right?

3 A. I do.

4 Q. And you worked for a District Attorney's Office  
5 most of your career?

6 A. Yes.

7 Q. Okay. And the focus when you were investigate --  
8 working for the DA's Office was in assisting attorneys to  
9 prosecute cases?

10 A. Yes.

11 Q. Okay. And through that background, as an  
12 investigator, as well as your police work, you've been able  
13 to develop these certain techniques to determine, you know,  
14 if a burn's intentionally inflicted, right?

15 A. Correct.

16 Q. Okay. And the techniques are based solely on your  
17 observations in other burn cases?

18 A. That's correct.

19 Q. And you have not performed experiments to validate  
20 these techniques?

21 A. In this case?

22 Q. In your -- in developing your methodology you were  
23 not able to perform experiments to develop this methodology?

24 A. Yes, I did.

25 Q. What type of experiments did you perform?

1           A.    So we used the blue dye in various types of  
2 emersion cases. We use cigarette lighters using ink pads.  
3 We use ink or spray paint or fingerprint powder on the inside  
4 of ovens and microwaves, on the hoods of trucks, on bottles  
5 found on the beach. Any time it -- and we didn't start  
6 thinking of things, but any time that a case came through  
7 that it could be that, we would use whatever we could make a  
8 visual, if it was the islets of a boot, the inside of a rice  
9 cooker for an infant bath. Whatever it was, we had to take  
10 that and see if we could visually compare it to like, for  
11 example, a Hibachi grill.

12           Q.    Okay.

13           A.    One time we wanted to count how many Hibachi grills  
14 were on the back of a victim so we imprinted it old  
15 fashioned. We put it on paper and we made Xerox copies with  
16 transparencies. Now you can put it on a flatbed scanner.

17                    And then we simply taped all of these  
18 transparencies over the back of this victim until we could  
19 count up to 38 separate injuries.

20           Q.    Okay. So you were kind of -- would it be fair to  
21 say you were doing recreations?

22           A.    Yes, um-h'm.

23           Q.    So you would have an injury and you would try to  
24 recreate it?

25           A.    Yes.

1 Q. You weren't doing experiments in a laboratory where  
2 you had a control, for example, this is an accidental burn,  
3 you would inflict something accidentally and then you would  
4 have a control where you would intentionally inflict it and  
5 then compare the results?

6 A. What we did was we tried to recreate the injury in  
7 the photograph and then we called you or somebody back and  
8 said here's what we found out, it's totally accidental, we're  
9 not sure, they could be strong enough to do it, there's no  
10 way or 100 percent non-accidental.

11 So we create what we see, meaning me --

12 Q. Sure.

13 A. -- I -- I don't get volunteers, I recreate what I  
14 see, I try to recreate exactly what I see in the photograph.

15 Q. Um-h'm.

16 A. Once I can do that or not do that, then I call back  
17 the person that's asking me to help.

18 Q. Okay. In a lot of scientific fields, people  
19 publish articles in scientific journals, correct?

20 A. Okay.

21 Q. Okay. And then they have them peer reviewed.

22 A. Okay.

23 Q. In your field, there are no other peers? You're  
24 the only one doing this burn type stuff.

25 A. As far as I know.

1 Q. Okay. And your background's not in physics,  
2 correct?

3 A. No.

4 Q. Or biomechanics?

5 A. No.

6 Q. So what you're testifying to is observing  
7 individuals that you believe to be intentionally burned and  
8 then learning from that?

9 A. No, I'm looking at pictures of people who have a  
10 burn injury and then I determine are they intentionally, not  
11 intentionally, or I don't know and my peer review would be  
12 the medical staff that's working on the case or medical  
13 colleagues that I can go to that are in the burn field, and  
14 there's several that I go to that they're not involved with a  
15 case in Wichita, but I'll call Seattle or Scotland Yard and  
16 -- and I'll tell them here's what I think, where are we in  
17 the same opinion?

18 So I don't try to prove intentional. I try to find  
19 out what happened.

20 Q. I understand. You call your -- or you said that  
21 you investigate suspicious burns, though?

22 A. Yes, um-h'm.

23 Q. That's what you're doing now. So by the time a  
24 case gets to you, somebody has already looked at it and  
25 determined there was some reason to be suspicious of it?

1 A. Correct.

2 Q. Some reason to be concerned?

3 A. Yes.

4 Q. And you are aware that some sort of abuse is  
5 suspected when you start reviewing a case?

6 A. I don't know in that's accurate. I think  
7 somebody's calling to say what is this, and I -- and I get  
8 that a lot especially from students that go to my class.

9 Q. Okay.

10 A. We had a case three years ago that we shelved. We  
11 don't know what it is. We thought it was a lady's belt  
12 buckle. And I did some work on it, and I found out not only  
13 was it a cigarette lighter, but the exact brand name of the  
14 cigarette lighter and they reopened their case.

15 So sometimes they don't even know if it's abuse or  
16 not. They're just curious, what is that mark on this adult  
17 or child --

18 Q. Okay.

19 A. -- and then we try to help.

20 Q. In this case, you knew that abuse was already --  
21 was suspected when Detective DePalma called you?

22 A. Well, I think because it was a detective, I might  
23 have inferred it. I don't know if he used any words. He  
24 just said can I send you some photos and -- and get your  
25 opinion. That's a pretty standard call.

1 Q. Okay. And right now you -- your business is  
2 consulting on these kind of burn cases? You don't do the DA  
3 investigator thing anymore?

4 A. No. It's just whoever calls.

5 Q. Okay. And you are paid by these district -- or  
6 whoever calls you to testify will pay you?

7 A. If it gets that far, yes, um-h'm.

8 Q. Okay. And in this case, you didn't donate your  
9 time to the District Attorney's Office?

10 A. Not eventually. Only the first -- since whenever  
11 they first called me, and then all of a sudden there's a  
12 subpoena on my e-mail and I don't know which Las Vegas case  
13 it is.

14 Q. Okay. So you expect to be paid for this case by  
15 them?

16 A. I do.

17 Q. And you charge a six-hour minimum, correct?

18 A. Correct.

19 Q. And that would be about at least \$2,100 for the  
20 testimony?

21 A. Okay.

22 Q. Oh, is that -- I'm going off of the --

23 A. I think --

24 Q. -- paperwork that you sent off. Is that --

25 A. I think that's the new --



1 Q. Is that accurate?

2 A. I think that's numbers, yes.

3 Q. Okay. Did you want to review your fee schedule to  
4 make sure that's accurate or --

5 A. I can do that.

6 Q. -- does that sound right?

7 A. Yeah, let's do that.

8 Q. All right.

9 A. Because it depends on if I'm on the stand or  
10 waiting in the hall and then --

11 Q. Of course.

12 MS. KIERNY: If I may approach?

13 THE COURT: You may.

14 MS. KIERNY: Thank you.

15 BY MS. KIERNY:

16 Q. There you are.

17 A. Thank you.

18 MS. KIERNY: And for the record, I've given him a  
19 copy of his fee schedule that was provided by the DA's  
20 Office.

21 THE WITNESS: There's different categories. Which  
22 question are we on?

23 BY MS. KIERNY:

24 Q. Oh, okay. Let me back to that.

25 A. Okay.

1 Q. So there's going -- in this case, there's a  
2 six-hour minimum for consultation, correct?

3 A. That's correct.

4 Q. An analysis. That would be at least \$2,100?

5 A. That is.

6 Q. And then additionally you charge \$400 an hour for  
7 testifying in court?

8 A. That's correct.

9 Q. Okay. You indicated that when you got this case  
10 from Detective DePalma, you knew he was a detective so you  
11 probably thought it was an abuse case?

12 A. Well, again, I think he was asking me if I could  
13 tell him what I see in the photographs. They don't call up  
14 and say -- I don't remember that he said somebody's in  
15 custody, you have 72 hours, hurry and get back to me. So  
16 again, the standard call, and I would have to say it's this  
17 one, because I have calls all the time, and most of them I  
18 work on the case for 30 minutes. I think in this case was  
19 pretty much the same. He said is it okay if I send you some  
20 photos and you give me your opinion? Like, when I was  
21 waiting to fly here this morning, I got a couple of calls.

22 Q. Sure. And at some point, he gave you Donovine  
23 Mathews' statement, correct?

24 A. Yes.

25 Q. Did he tell that to you orally or did he send you a

1 copy or how did that work?

2 A. There's a summation in an arrest report.

3 Q. Um-h'm.

4 A. And then I got a transcribed 43-page document of  
5 the interview.

6 Q. Okay. And that was from Detective DePalma, not the  
7 District Attorney's Office?

8 A. Well, I don't know whose name was on the envelope,  
9 but it came a few days ago.

10 Q. Well, let's do it this way. Was that -- that was  
11 back in January when you -- last year January when you first  
12 started consulting on this case with Detective DePalma, what  
13 did he give you?

14 A. My memory is I got what I usually ask for. I got a  
15 few photos, disabled yes or no, alive yes or no, age of the  
16 victim, and called back and said here's what I see.

17 Q. Okay.

18 A. I can't remember a year back specifically because  
19 there's so many phone calls.

20 Q. All right. Do you know if at the time of that  
21 initial consultation you knew what Donovine Mathews was  
22 saying had happened?

23 A. On the initial one I did not because I won't let  
24 them tell me.

25 Q. Okay. So you never -- Detective DePalma never

1 informed you what he -- what Donovine said happened?

2 A. If he did, it was in subsequent calls later when I  
3 called and said now tell me more, if you need more.

4 Q. Okay.

5 A. Most of the time, people say thank you very much,  
6 I had tell them just -- just tell me when it's done so I can  
7 get it off my desk and go play. And then so I may have  
8 called and said tell me more, I don't know. But in the  
9 initial one, I don't allow them to tell me more.

10 Q. Okay. And in this case, you just stated you look  
11 at -- you started by looking at photographs of Chance's  
12 injuries?

13 A. Yes, I did.

14 Q. And you didn't observe him personally?

15 A. No.

16 Q. In any investigation, obviously, it's preferable to  
17 look at the injuries in person as opposed to photographs?

18 A. Yes.

19 Q. Because as you -- you said a couple times, you're  
20 at the mercy of the photograph, right?

21 A. Always.

22 Q. You can't always see what's going on in the photos.  
23 So you have limited information from the photographs, And in  
24 this case, you did not meet Chance in person, correct?

25 A. No, I did not.

1 Q. You got that information from Detective DePalma and  
2 later the District Attorney's Office?

3 A. Correct.

4 Q. And you did not visit the scene?

5 A. I did not, no.

6 Q. So there's kind of a bunch of things that you have  
7 to look at when you're determining whether something is  
8 intentionally inflicted or accidental, right?

9 A. Yes. Yes, there is.

10 Q. Is that fair to say?

11 A. Yes.

12 Q. And one of the things that we keep hitting on is,  
13 is the explanation consistent with the injury, right?

14 A. Yes.

15 Q. All right. You know, you also would look at maybe  
16 if the child's age is compatible with the actions being  
17 described as, you know, what the child did?

18 A. A huge factor, yes.

19 Q. Okay.

20 A. Absolutely.

21 Q. So like, you know, could the child do what this  
22 explanation has them doing?

23 A. Correct, yes.

24 Q. You look for other abusive injuries to the child?

25 A. With the photos I had, I looked at what I had, but

1 I didn't ask for any other healing injuries or satellite  
2 injuries other than what I could see.

3 Q. Okay. Another thing that you sometime -- did you  
4 ever look to if there's a delay in seeking medical treatment  
5 in determining -- you know, your determination of accidental  
6 versus on purpose?

7 A. I do.

8 Q. Yeah. And then you look at those lines of  
9 demarcation, like you kind of talked about?

10 A. Very critical. It -- the key thing in my class  
11 when I'm teaching, to clarify, is and it's probably the most  
12 important slide, whether it's three hours or three days,  
13 sparing tell you more about the burn than the burn itself  
14 because it's key.

15 If it was in or -- especially if it's in, in this  
16 case, a liquid. If something is in the liquid, but only one  
17 side of it's burned, it's not just a problem. There has to  
18 be an explanation for that.

19 Q. Okay.

20 A. So I want to look what's burned and not burned in  
21 that area. If there's other burns on the body, different  
22 stages of healing. But did I ask for a history of a year-  
23 and-a-half ago, was there other reports or anything like  
24 that? No, they were not. I didn't ask for that.

25 Q. Sure. When I just indicated lines of demarcation

1 of one time of sparing; is that fair to say? Or show you  
2 sparing?

3 A. It separates the sparing. The line of demarcation,  
4 the line is -- the demarcation is there's the affected  
5 tissue, or in this case, burned tissue, and then there's the  
6 healthy tissue. In the case of a child that's immersed in a  
7 tub of water or sat in a tub of water, just about the  
8 tailbone there is a straight or slightly wavy line if they're  
9 held perfectly still.

10 The line of demarcation is very telling. If it's  
11 all over the back, they could have possibly fallen back like  
12 somebody might is suggested. If they say fell backwards in  
13 the water and they were all on their own for 20 seconds, but  
14 the line is drawn like a Sharpie marker across the third  
15 vertebrae, pretty sure they didn't fall backwards in a tub of  
16 blue dye. So that's why sparing tells you so much.

17 Q. Okay.

18 A. Um-h'm.

19 Q. Going back to, you know, looking at photographs  
20 isn't always the best because sometimes you can't tell  
21 exactly where that line of demarcation ends when you're  
22 looking at photographs of a newer injury, correct?

23 A. Correct, yes.

24 Q. You need some time lapse to see really, where that  
25 line is?

1 A. You do.

2 Q. And you didn't have that in this case?

3 A. This seems to be the same age of photos in all of  
4 these.

5 Q. All right.

6 A. Um-h'm.

7 Q. And either Detective DePalma or maybe the DA's  
8 Office provided you with some information about what Donovine  
9 said -- what Mr. Mathews said happened, correct?

10 A. Yes.

11 Q. All right. And the explanation was kind of that he  
12 assumed Chance pulled a mug down on himself?

13 A. I don't know if that was the word, but I remember  
14 words like on the edge. I remember he was in the other room  
15 changing a sibling's diaper.

16 Q. Okay.

17 A. I remember a 45-second away from the kitchen.

18 Q. Okay. So --

19 A. No --

20 Q. -- to be fair, he was not present when the injuries  
21 occurred and anything that he was -- any explanation of how  
22 it occurred was an assumption?

23 A. Not from what I've been told. He was not present  
24 in the kitchen.

25 Q. Okay. And you are certain that if, you know, if



1 that mug had been on the edge and Chance pull it toward him,  
2 there would be far more injuries to Chance?

3 A. Hundred percent.

4 Q. On his arms, on his feet?

5 A. Somewhere.

6 Q. Yes.

7 A. Yes.

8 Q. And if he actually grabbed the mug, there would be  
9 injuries on his fingertips, right?

10 A. Depending on what the temperature was, depending on  
11 the mug. I haven't touched the mug. I know that the word  
12 "boiling" was used. But I don't know if that means it was  
13 212 degrees. That was just a word. And I don't know how hot  
14 the water was in the mug, and I don't have anything. I  
15 didn't measure the temperature of the mug from the outside to  
16 see what the porcelain, ceramic or whatever it's made out of  
17 was -- I didn't do any of that testing, and I -- as for as I  
18 know, the word was boiling, but nobody ever said 212 degrees.

19 Q. So at any rate, it seems very unlikely that Chance  
20 -- impossible in your estimation that Chance grabbed the mug  
21 and spilled it on to himself given the burn injuries that you  
22 saw?

23 A. There's no pattern to indicate he pulled it down on  
24 the front of his body.

25 Q. Okay. There are other ways a cup can spill,

1 correct?

2 A. Sure, yes.

3 Q. It could fall backwards?

4 A. It could.

5 Q. It could be knocked from one side and then fall to  
6 the other side?

7 A. It could.

8 Q. Okay. And then it could also be knocked kind of  
9 from of bottom and fall the direction where it was knocked?

10 A. That one I'm not sure what you're saying.

11 Q. I apologize.

12 A. A demonstration would help.

13 Q. A demonstration would help?

14 A. Um-h'm.

15 Q. Okay. So obviously, a cup could be knocked  
16 backwards --

17 A. Yes.

18 Q. -- is the first?

19 A. Um-h'm.

20 Q. A cup could be knocked from one way and fall the  
21 other way?

22 A. Yes.

23 Q. And a cup could also be knocked from the bottom and  
24 fall over that way?

25 A. I suppose.

1 Q. Is that possible?

2 A. I think it's possible.

3 Q. All right.

4 A. Uh-huh.

5 Q. So when you were analyzing whether Donovine's  
6 explanation made sense, you were assuming a cup, a mug being  
7 grabbed by Chance and pulled upon him?

8 A. No, I just knew that from the statements the cup  
9 was, quote, "on the edge", based on the reports I got.

10 Q. Um-h'm.

11 A. I heard it contained boiling water to eventually  
12 make coffee, and the rest of it I just looked at the patterns  
13 and tried to figure out what happened.

14 Q. Of course. And you didn't consider at that  
15 perhaps, Chance had knocked the mug in a different direction  
16 than forward?

17 A. I did. I considered all of the possibilities.

18 Q. All right. And after you -- so if Chance had  
19 knocked a mug on its -- from the bottom and it had fallen  
20 this way --

21 A. Um-h'm.

22 Q. -- what would you expect to see?

23 A. Splash patterns.

24 Q. Okay. So the absence of splash patterns?

25 A. Not such a smooth line of demarcation. Not an

1 opposite direction of flow. One hand pointing down, one hand  
2 pointing up. Not a clean smooth line going from -- going  
3 from the top to the bottom or from the tip of the fingers  
4 back. I would expect much more irregularity in the line. I  
5 would expect more of a splash or trailing patterns.

6 I don't know that I would -- I don't think I would  
7 expect three of the fingers to be involved and two spared.  
8 It -- it -- it was just -- it was done very slow and very  
9 close to the hand. There was nothing tipping over. There  
10 was no direction of the motion, and the easiest way to  
11 describe that is -- is in blood spatter. If somebody's  
12 standing still and a blood drop falls, it's -- it's a  
13 complete radius like a sunburst versus if they're walking a  
14 certain direction, the fingers, as the blood hits the ground,  
15 reach in the direction they're walking.

16 There's no fingers or anything. This water was  
17 very slow, very deliberate, fairly stable and facial close to  
18 the hand and extremely hot and not much of it.

19 Q. Okay. And one of the hands was either -- the left  
20 hand was either flat or curled and the other hand would have  
21 had to be pointing down, the right hand, correct?

22 A. I don't know about the curling.

23 Q. Is that -- okay.

24 A. I don't know about -- I don't remember saying  
25 anything curling. There's -- there's a variety of reasons

1 why it could be spared. The biggest indicator in this is  
2 there is no indication of a splash, a splatter or a spill.  
3 It seems to be a very slow pour application. There -- if one  
4 finger might have been curled or maybe not, maybe it was  
5 tilted, maybe it was curled, maybe two fingers were touching,  
6 maybe they weren't. We'll never know.

7 Q. Right.

8 A. But what we do know is there's no indication of a  
9 standard spill or a splash or a splatter or any violent  
10 movement or something from a distance. It's -- it's very  
11 close to the hand, and poured slowly, and at a low volume and  
12 not very much of it fortunately.

13 Q. Those are your conclusions?

14 A. Yes.

15 Q. And you talked a little bit about this blue dye  
16 technique that you came up with and that's what you're known  
17 for?

18 A. Yeah. Yes.

19 Q. Or infamous for, if you will?

20 A. Well, no, but they called and they couldn't  
21 remember my name and the director of the children's hospital  
22 at Sidney who had been in my class said I can't remember his  
23 name, but I'm looking for the blue dye guy, and I haven't got  
24 rid of it sense. It's kind of insulting.

25 Q. And so basically, you put blue dye in water and

1 spill it to see the pattern that that water left?

2 A. Just a three dollar package of Rit, either liquid  
3 or powder, I stir it up. My students leave with blue hands,  
4 the doctors leave with blue hands because I make the  
5 students, the doctors, nurses, one time a judge; in my class,  
6 they have to make their hands look like the victims in the  
7 photos. So they do the blue dye on themselves when I do my  
8 training.

9 Q. All right. And you use this technique to  
10 determine, you know, if something -- if you -- how something  
11 was inflicted, correct?

12 A. Yes.

13 Q. It's a recreation?

14 A. Yes, it is.

15 Q. You didn't do that in this case?

16 A. No, I did not.

17 Q. The DA's Office didn't ask you to do that?

18 A. They did not.

19 Q. They didn't ask you to do any sort of recreation?

20 A. They did not.

21 Q. And that would have -- on your fee schedule that  
22 would have been an additional charge to do these recreations,  
23 correct?

24 A. I suppose, if it would have taken more time, yes.

25 Q. Correct?

1 A. Sure.

2 Q. And it seems like when you started studying these  
3 burns, you were just frustrated that there wasn't a lot of  
4 information out there; is that correct?

5 A. That's exactly right.

6 Q. And, you know, a lot of the practice at that time  
7 you were limited by what caretakers told you?

8 A. Yes.

9 Q. And obviously, there was more information that you  
10 wanted to have from the people who actually were either there  
11 for the burn or around when the burn happened?

12 A. Yes.

13 Q. And it was really important to you that you  
14 distinguish, you know, purposeful burns from, you know,  
15 innocent care -- accidental burns and innocent caretakers?

16 A. We wanted to know what happened, and it was  
17 important to know who to protect the victim from.

18 Q. And you also didn't want to unjustly accuse  
19 innocent caretakers?

20 A. Oh, no.

21 Q. Of course. And without being present when a burn  
22 occurs, obviously, you don't have all the information you'd  
23 like?

24 A. Correct, yes.

25 Q. And you can never be 100 percent sure of what

1 happened?

2 A. Oh, yes, I can.

3 Q. You can be certain?

4 A. 100 percent.

5 Q. Okay.

6 A. Yes.

7 Q. All right.

8 MS. KIERNY: Court's brief indulgence.

9 BY MS. KIERNY:

10 Q. Mr. Peltier, how is a pour different from a spill  
11 burn?

12 A. A pour is usually more deliberate.

13 Q. Okay.

14 A. It's -- it's slower. It can be poured from a  
15 height. There have been inflicted intentional non-accidental  
16 pours before.

17 Q. Um-h'm.

18 A. A lot of times it depends from how high. So but  
19 usually a pour is very close. If I wanted to demonstrate the  
20 difference, which I do in my class, the difference between a  
21 pour, I hold actually these cups. And I hold them very close  
22 to the hand and I pour and I show them. And the beauty of  
23 the blue dye, is you can see every single direction and where  
24 it goes even by twitching, moving.

25 And they can see how it moves. And then I take



1 another student and I do it from a higher level. And then I  
2 take and I throw it on somebody's hands. So there's -- and  
3 it always looks different. And the advantage is that that --  
4 and then I tell them in the class the advantage of this is,  
5 besides being inexpensive is \$3, anybody can use it, and  
6 medical, defense everybody's used it to recreate, is that it  
7 takes a couple days to come off so it can be videotaped, it  
8 can be photographed.

9           And it's just a lot easier because I know when I  
10 first got my case, and it was because I was the new person,  
11 people said why don't you just get a cup of water and do  
12 that? Well, it was clear and you can't see what you need to  
13 see, because as we found out later, you need to see a lot  
14 finer detail, not just it went downhill or it went side ways  
15 or it went all the way around. If you were to immerse  
16 somebody's hand in clear water, you'd never be able to prove  
17 that the fingertips were spared.

18           But when the caretaker said she reached in to pick  
19 up a red potato thinking it was one of her balls, you have to  
20 explain how you can reach into blue dye and not get the tips  
21 of your fingertips. So we came up with a color and it stays.

22           Q. Okay. All right. And you mentioned all these  
23 different types of burn, these splash burns, these spill  
24 burns, these pour burns.

25           A. Um-h'm, um-h'm.

1 Q. And all of these types could be self-inflicted?

2 A. Depending. I have victims that are three weeks  
3 old, but yes, most of the time -- and I do, I tell, again, as  
4 part of my class, and I'll tell the investigator eventually,  
5 don't talk to a pediatrician. It's very, very important. I  
6 want you to go talk to their pediatrician and see if they're  
7 capable of lifting this much water. I don't want to know  
8 from a study. I want to talk to that doctor. and so they're  
9 directed to talk to the specific child's doctor and of  
10 course, we don't do that when they're three or nine weeks  
11 old. But if they're one, two or three, yes, go talk to the  
12 pediatrician, see can they lift this much weight and we do  
13 the weight and the experiments before them.

14 Q. So your answer is basically, as long as, you know,  
15 the child is capable of making that motion, any of those  
16 types of burns could possibly be self-inflicted?

17 A. Well, they can. It doesn't mean they match the  
18 pattern, but yes, a child can spill, splash, spatter. They  
19 happen in domestic violence adult cases all the time. So --

20 Q. Just because it's a certain --

21 A. -- but the pattern has to match.

22 Q. Okay. Sorry to interrupt. Just because it's a  
23 certain type of burn doesn't mean that that's automatically  
24 accidental versus non-accidental, or it's automatically  
25 self-inflicted or automatically an accident -- or

1 automatically self-inflicted or automatically inflicted?

2 A. Well, it I could get a clarification, when you say  
3 that kind of burn. If we can talk about each individual one,  
4 maybe I could answer better.

5 Q. Okay. I'm just trying to reference when you said  
6 -- when you were talking about the different types of burns--

7 A. Um-h'm.

8 Q. -- with Ms. Jobe, you indicated that there were all  
9 these different types of burns, and then the final category  
10 was self-inflicted.

11 A. Um-h'm.

12 Q. And you said -- do you recall saying in any of the  
13 -- in self-inflicted, any of those could really be  
14 self-inflicted?

15 A. I think that's what I said, yes.

16 Q. Okay. So that's an accurate statement?

17 A. Yes, uh-huh.

18 Q. All right. Thank you.

19 MS. KIERNY: Court's brief indulgence. I'll pass  
20 the witness.

21 THE COURT: Redirect.

22 REDIRECT EXAMINATION

23 BY MS. JOBE:

24 Q. Mr. Peltier, as far as what Ms. Kierny was asking  
25 you about, she was talking to you essentially, detectives

1 come to you, tell you they're investigating a case and asking  
2 you for your opinions, correct?

3 A. Yes, um-h'm.

4 Q. Are you looking, always trying to make something be  
5 abuse or have your conclusion be abuse or deliberate pour or  
6 non-accidental?

7 A. Frequently, I call back and say it's accidental,  
8 and in a number of cases I've called back where the suspect  
9 was in custody and told them that he needs to not, or she  
10 needs to not be in custody because it's a hundred percent  
11 accidental. So I guess, you can say I've been blamed for  
12 letting people go, but I call them back, it's no big deal.

13 I -- I called one person one time during the  
14 recreation and I said, you're on speakerphone because my  
15 hands are in blue dye, and I've done this now eight or nine  
16 times and it's always accidental, just the opposite of why  
17 you've sent reports saying that he's in custody, and they put  
18 him in custody because of medical or something. So I've let  
19 people out -- well, I don't let them out, but --

20 Q. So --

21 A. -- been responsible.

22 Q. -- would it -- would it be fair to say as far as  
23 your looking at the burn patterns --

24 A. Um-h'm.

25 Q. -- and your conclusions, for you, you call it like

1 you see it; would that be a fair statement?

2 A. I call it --

3 Q. Like you see it.

4 A. Oh, yes, uh-huh, um-h'm.

5 Q. So would you be swayed by a doctor's opinion or a  
6 medical person's opinion in your determinations of what did  
7 or didn't happen with the burn patterns you see?

8 A. No, and frequently I'm arguing against the doctors.

9 Q. Now, Ms. Kierny asked you about the information you  
10 had about Mr. Mathews' statements of what may or may not have  
11 happened at the time these injuries were sustained to Chance.  
12 Do you recall her line of questioning?

13 A. Yes.

14 Q. Okay. Now, in reaching your conclusions and  
15 rendering your opinions, do you solely rely on the story  
16 provided by Mr. Mathews, mainly, he must have pulled the mug  
17 off the edge and it fell on to the floor, or do you consider  
18 other things or other possibilities of how the injuries may  
19 have occurred?

20 A. I consider all the possibilities I can come up  
21 with. If it was -- if it was poured, spilled, held in the  
22 hand, I try to come up with an explanation of how I think it  
23 happened. But I try to consider, well, if it was just right  
24 or if it was Murphy's law or if it was something, could they  
25 be possible?

1 those burn patterns?

2 A. No, I cannot.

3 Q. What if the cup happened to tip, as she said, hit  
4 the bottom, cup tips over, hands are down; is that a  
5 possibility?

6 A. No, the -- the patterns aren't consistent with a  
7 cup going sideways. I would expect the burns to be more  
8 lateral, going to the sides. I would expect not a very  
9 smooth regular line of demarcation. I would expect more  
10 identical patterns. I would expect in that case that if you  
11 put the hands side by side, you could show that it was one  
12 continuous pattern. But if you're reaching and if they're  
13 reaching up and it lands to side, even if it's just a few  
14 ounces of water with a standard -- I know that coffee was  
15 being made. So if it was an 8, 10, 12-ounce cup, I would  
16 expect then maybe it would miss the torso if he was reaching  
17 out, but the feet are at the bottom, and it's going to end up  
18 on the floor.

19 Even more tragic, if they're wearing socks because  
20 now it doesn't get to move away and cool. It's absorbed and  
21 held against the skin. So if it lands on the socks, the  
22 burns would have been tragic. If it lands on bare feet, it's  
23 fortunately not as bad.

24 Q. Okay. And fair to say if water's traveling  
25 approximately 35 inches by the time it gets to the feet, it

1 may not burn the feet at all, depending?

2 A. Depending on the original temperature. If it truly  
3 was 212, it will burn the feet.

4 Q. Okay. And you had talked -- you mentioned that  
5 when Ms. Kierny was asking you questions. What is the  
6 significance of the number 212 degrees Fahrenheit?

7 A. 212 is boiling.

8 Q. Okay. And as far as your training and experience,  
9 if you know, the point in time where you turn the burner off,  
10 boiling water, remove the pan from the burner, it starts to  
11 cool down immediately, doesn't it?

12 A. It does, depending on the pan.

13 Q. Okay. Now, Ms. Kierny asked you some questions and  
14 you talked about -- she specifically was asking you about  
15 inflicted -- self-inflicted versus, we'll say, not  
16 self-inflicted injuries.

17 A. Okay.

18 Q. Did you form an opinion in this case if the  
19 injuries to Chance Jacksper in any way could possibly have  
20 been self-inflicted by Chance himself?

21 A. I did.

22 Q. And what is your opinion, sir?

23 A. It did not. The -- the liquid was not in his  
24 hands. It wasn't tipped over by him. It was done by someone  
25 else.

1 Q. Now, the fact that Ms. Kierny asked you questions  
2 that at least according to Mr. Mathews' version of the  
3 events, he wasn't in the room, would it surprise you -- or in  
4 your training and experience, have you ever had a case where  
5 a child's been intentionally burned and the person who's done  
6 the burning does not themselves have any burns, marks on  
7 them?

8 MS. KIERNY: I'm going to object to talking about  
9 other cases. That's not relevant to what's happened here.

10 THE COURT: Overruled. You can answer.

11 THE WITNESS: Since I started doing this in 1981,  
12 there's never been an accidental spot, mark, oops, on one  
13 single caretaker, in any case, any of the countries, states,  
14 jurisdictions I've been in, not once.

15 BY MS. JOBE:

16 Q. And fair to say the cases you've worked on, at  
17 least some of them in your opinion had been intentional  
18 inflicted burns, correct?

19 A. Some of the cases that I've done it's been an  
20 intentional burn?

21 Q. Yes.

22 A. Oh, yes.

23 Q. And not one of those caretakers in your experience  
24 has themselves been burned?

25 A. Never, ever.



1 MS. JOBE: Pass the witness.

2 MS. KIERNY: No further questions.

3 THE COURT: No recross? Okay. Thank you very much  
4 for your testimony here today, sir.

5 THE WITNESS: Thank you, Your Honor.

6 THE COURT: You may step down. You're excused from  
7 your subpoena. Thank you very much for being here.

8 THE WITNESS: Thank you, Your Honor.

9 THE COURT: During this recess, you're admonished  
10 not to talk or converse amongst yourselves or with anyone  
11 else on any subject connected with this trial or read, watch  
12 or listen to any report of or commentary on the trial or any  
13 person connected with this trial by any medium of  
14 information, including without limitation, newspapers,  
15 television, the Internet or radio. Or form or express any  
16 opinion on any subject connected with this trial until the  
17 case is finally submitted to you. We'll be in recess for the  
18 next 15 minutes.

19 THE MARSHAL: Thank you. All rise for the exiting  
20 jury.

21 (Outside the presence of the jury).

22 THE COURT: Anything outside the presence?

23 MS. KIERNY: Yes, Your Honor --

24 THE COURT: Sure.

25 MS. KIERNY: -- just briefly. We would renew our

1 motion not to exclude Dutch's testimony. As you've heard  
2 from State's expert, Mr. Peltier -- Peltier, I keep getting  
3 this wrong -- he used -- he basically created scenarios and  
4 would try to eliminate, you know, and he saw the burn and  
5 worked backwards and tried to create that pattern from any  
6 means that he could; accidental, non-accidental, and then he  
7 -- that is how he developed his entire research.

8           That's essentially what Dutch did, except he didn't  
9 use the blue dye. Other than that, I mean, it seems to be  
10 very much the same exact method that Dutch employed in this  
11 case. And we would need Dutch's testimony at this point. I  
12 think that's the only way for us to establish our theory of  
13 the case that this was an accident, because the State's  
14 expert has indicated that there is no possible way that it  
15 could have spilled in the way that Dutch was able to recreate  
16 the spill.

17           He would expect the burns -- he said that he would  
18 expect the burns to be more lateral --

19           THE COURT: Based on the patterns, right?

20           MS. KIERNY: There were -- right. Based on --

21           THE COURT: Based on the patterns.

22           MS. KIERNY: -- burn patterns.

23           THE COURT: Right.

24           MS. KIERNY: He indicated that he doesn't see  
25 there's any way to, you know, recreate that injury in the

1 manner that I tried to describe. Dutch was actually able to  
2 run the ex -- run that recreation, I think is the best way to  
3 put it. Experiment is probably the wrong word. And to find  
4 those exact results that he said would be impossible to find.

5           So, I think there's no way else for us to present  
6 that. There are no witnesses that we can get that out of. I  
7 think we need to call Dutch Johnson in order to defend  
8 Mr. Mathews adequately.

9           MS. JOBE: Your Honor, the witness's testimony was  
10 based on his training and extensive experience with respect  
11 to burn patterns. And the question has always been for our  
12 witnesses is the burn pattern that Chance has consistent with  
13 these different scenarios?

14           And so based on their expertise and based on their  
15 testimony, the State's position is that's different and  
16 distinguishable from what their purposes of bringing in  
17 Dr. Johnson. Dr. Johnson's just trying to create some sort  
18 of mechanism, whether it be intentional or accidental, where  
19 this maybe possibly could have happened. I would just  
20 reiterate for the -- probably the fifth time at this point in  
21 time, the videos provided by Dutch Johnson do not show the  
22 cup being moved by the subject whose hands then get this pour  
23 that he claims to be the similar pattern of what's in this  
24 case.

25           And each every experiment that's been provided to

1 said. And that's that if the mug were to spill from the left  
2 to right, it would not create the kind of burn patterns that  
3 we see on Chance. But we know that's not true because we see  
4 the pictures.

5 The prosecutor's seen the pictures. I'm sure Your  
6 Honor has seen the pictures and --

7 THE COURT: You know what isn't true?

8 MS. HOLIDAY: -- in Mr. Johnson's Power Point.  
9 It's not true that it wouldn't match the pattern on Chance's  
10 hands because when Dr. Johnson tipped over the mug --

11 THE COURT: He's not competent to testify about  
12 burn patterns. He's a biomechanical expert. I mean, that's  
13 the difference. You have a burn expert testifying about burn  
14 patterns and then you have a biomechanical that wants to come  
15 in and testify about movements, correct?

16 MS. HOLIDAY: Movements and burn patterns.  
17 Dr. Johnson has experience with burns, as he testified, with  
18 liquids. And more importantly, he has medical training that  
19 Mr. Peltier does not have, to learn more in-depth knowledge  
20 about the skin, the different layers of the skin, the way  
21 that the skin reacts with the things around it. That's what  
22 biomechanics is. The way the human body interacts with  
23 things around it.

24 So burns, and burns on skin are squarely within  
25 Dr. Johnson's field. But it's so interesting that

1 Dr. Johnson was able to show that the exact pattern that we  
2 see on Chance could result from a mug spilling from left to  
3 right. We can see it. Mr. Peltier just testified that it  
4 would not create that pattern, but we can all see that it  
5 would create that pattern because we have the pictures of  
6 Dr. Johnson experiments.

7           So we all know that what Mr. Peltier just said is  
8 not accurate because Dr. Johnson was able to show that it's  
9 not accurate. But guess who won't be able to know that what  
10 he said is not accurate? The jury.

11           And more importantly, that's our theory of defense,  
12 that's what he has a constitutional right to present to the  
13 jury, and we can't present that in direct rebuttal to what  
14 the State's expert testified to.

15           I mean, obviously, since the beginning of this  
16 case, we have said that not allowing our expert to testify  
17 would cripple our defense for many reasons. Obviously, I  
18 thoroughly briefed it. But Your Honor, the more testimony we  
19 hear from the State's experts, the more it becomes clear that  
20 Dr. Johnson can provide an exact rebuttal to their testimony.  
21 That's something that we can't provide because we're not  
22 medical experts, and we can't testify. And this is all stuff  
23 that the jury will not get the benefit of hearing. That  
24 deprives Mr. Mathews of his constitutional right to present  
25 adequate defense.

1           And again, the State now, if Dr. Olson comes to  
2 testify, the State will have three experts testifying in this  
3 case, three. And we will have zero. Although, we have  
4 presented an expert with adequate qualifications that will  
5 testify to things squarely within his knowledge that answer  
6 questions in this case that the jury will have and that  
7 directly rebut what State's experts have testified to.  
8 That's why we're renewing our motion yet again, Your Honor.

9           MS. JOBE: If I could, Your Honor, because she  
10 added some things I didn't address.

11           THE COURT: Sure.

12           MS. JOBE: A, the State takes issue with her  
13 representing that State actually believes Dr. Johnson with  
14 recreate some scenario that would explain these injuries and  
15 explain this situation. I'm not going to repeat the videos  
16 and what I've seen, but my prior argument about the fact that  
17 that cup moves itself in each and every experiment he does is  
18 absolute evidence he cannot do that.

19           Notwithstanding that, Dr. Johnson does not possess  
20 the requisite qualifications or experience to discuss burn  
21 patterns, to discuss how they -- anything about burn patterns  
22 that Dr. Cetl and Mr. Peltier have discussed. They've  
23 repeatedly tried to bootstrap Dr. Johnson's experience as a  
24 -- in the Army or the Marine Corps, I forget which  
25 specifically in treating first -- in first aid, for first aid

1 preparing people to try to keep them alive to go to the  
2 hospital. They try to bootstrap that repeatedly. And he  
3 testified that there -- he didn't have any specific training,  
4 no specific experience with respect to burn patterns and burn  
5 injuries. And so for all those reasons, he's not qualified,  
6 it's not helpful to the jury, and the State does not believe  
7 what Ms. Holiday represented that we knew, which is that  
8 Dr. Johnson can provide something that replicates this case.

9 THE COURT: Okay. At this time, the motion's  
10 denied.

11 MS. HOLIDAY: Thank you, Your Honor.

12 THE COURT: Thank you.

13 (Court recessed at 3:28 p.m. until 3:48 p.m.)

14 (Outside the presence of the jury)

15 MS. JOBE: Before we bring the jury back, can we  
16 have a conversation?

17 THE COURT: Sure. Are we on? Okay.

18 (Pause in the proceedings)

19 THE COURT: Okay. The record will reflect the  
20 hearing's taking place outside the presence of the jury  
21 panel.

22 MS. JOBE: Two things, Your Honor. First, we have  
23 a scheduling -- this is becoming our scheduling nightmare.  
24 So we have detective DePalma here to testify, based on  
25 playing the defendant's statement and the reenactment video,

1 we don't anticipate getting through DePalma before the end of  
2 the day. But we've ordered Cetl back at 10:30, and I know  
3 Cetl has a very tight schedule tomorrow because she has to  
4 see patients at the Southern Nevada Children's Assessment  
5 Center, and she's been gracious enough to get coverage for  
6 those appointments tomorrow, but that's kind of where things  
7 stand. So --

8 THE COURT: And I was planning on being dark  
9 Friday, but I don't know how that's going to affect us. So I  
10 was going to try to see how today and tomorrow went.

11 MS. JOBE: Okay. I mean, the alternate for DePalma  
12 is to stay until he gets done today.

13 THE COURT: Oh, you just want to stay until --  
14 okay. I don't care.

15 MS. JOBE: I don't know what everybody's schedule  
16 is that --

17 THE COURT: Well, it's not at 9:00 o'clock at  
18 night, right?

19 MS. JOBE: No, it won't be -- no, it won't be 9:00.

20 THE COURT: Okay.

21 MS. KIERNY: Well, I mean, the thing is it's -- we  
22 have his statement and the recreation to play --

23 MS. JOBE: Sure.

24 MS. KIERNY: -- through him, which is probably  
25 about an hour-and-a-half?



1 MS. JOBE: No.

2 MR. BURTON: Between the two of them?

3 MS. KIERNY: Between the two?

4 THE COURT: If you want to try to power through and  
5 get the detective done, that's fine. Let's go.

6 MS. JOBE: Okay, here's the other issue before we  
7 get to tomorrow, which is --

8 THE COURT: Okay.

9 MS. JOBE: -- in Jasmin's testimony --

10 THE COURT: Yeah, because we got to get to that  
11 doctor right at 10:30.

12 MS. JOBE: Right.

13 THE COURT: I see. Okay.

14 MS. JOBE: And during Jasmin's testimony, Your  
15 Honor, they --

16 THE COURT: Uh-huh.

17 MS. JOBE: -- elicited testimony from her about  
18 this miraculous find of coffee in the residence and that Ms.  
19 Joanna Westmoreland was present, and it was at her direction  
20 when all this happened. Mr. Burton and I did argue diligence  
21 and phoned Ms. Westmoreland over the lunch hour, and we  
22 believe her version of events is going to differ in some  
23 material respects from Jasmin's testimony.

24 Now, this involves case CPS unity notes from that  
25 day, and it involves a witness we had decided not to call

1 based on -- we weren't anticipating to call based on our  
2 pretrial and our information, but when they elicited that  
3 through Ms. Holiday's leading questions, obviously, this  
4 becomes a concern for State and --

5 THE COURT: Did you want to bring her in to testify  
6 that that -- that's not what happened?

7 MS. JOBE: We will also -- it will also she'll have  
8 to look at her specific case note to make sure her testimony  
9 -- she has a memory of it, she did not review her case note  
10 before our phone call.

11 THE COURT: Okay.

12 MS. JOBE: We kind of just called her on the fly,  
13 and she has a specific memory of that event.

14 THE COURT: And that's different from what Jasmin  
15 testified?

16 MS. JOBE: In some material respects, yes.

17 THE COURT: Like what? Like how material, if you  
18 want to bring her?

19 MS. JOBE: Like Jasmin came to her with the coffee  
20 and that the amount of coffee wasn't even the amount of  
21 coffee that could have made a cup of coffee. That it was in  
22 a napkin-ish type of a thing, and that it was days after the  
23 event.

24 MS. HOLIDAY: I would ask if they plan to call her  
25 that --

1 THE COURT: You guys did it.

2 MS. HOLIDAY: Right.

3 THE COURT: I knew you were opening up something  
4 with that coffee find.

5 MS. HOLIDAY: If they plan to call her, that we get  
6 the notes pertaining to what she's going to testify to. So if  
7 she's only going to testify about this day in particular, we  
8 would like the notes that she has from that day. If she plans  
9 on testifying about anything else regarding Jasmin's CPS case  
10 or CPS at all, then we want, you know, the CPA records that  
11 pertain to her testimony.

12 THE COURT: Do you want to bring her in for anything  
13 other than that?

14 MS. JOBE: No, Your Honor.

15 THE COURT: And she had a specific recollection of  
16 it not even having to go to the notes and review them?

17 MS. JOBE: That's correct. We called her blindly at  
18 lunch on her cell phone.

19 THE COURT: And does she believe that she documented  
20 it in her notes?

21 MS. JOBE: She would, it's her practice.

22 THE COURT: Okay. Will you make sure you get those  
23 notes?

24 MS. JOBE: I will. If I have five minutes to send  
25 an e-mail?

1 THE COURT: Sure, sure. You can send the e-mail.

2 MS. JOBE: And --

3 THE COURT: You're probably going to have to provide  
4 those notes to the Court and then I can --

5 MS. JOBE: I absolutely will.

6 THE COURT: -- turn them over to defense counsel.

7 MS. HOLIDAY: And we'll need a little time to review  
8 them, of course. Obviously.

9 THE COURT: Of course. I was hoping maybe they  
10 could get them today so we could give them to you.

11 MS. JOBE: Could we go off the record for this,  
12 please?

13 THE COURT: Sure.

14 MS. JOBE: And can we approach?

15 THE COURT: Yeah.

16 MS. KIERNY: If it's that easy to get all of them,  
17 let's just get all of them. The judge had already ordered all  
18 of them.

19 MS. JOBE: Are we back on the record, Your Honor?

20 THE COURT RECORDER: It's going to take just one  
21 moment because my computer's taking forever today. Sorry,  
22 Your Honor. We're on the record now.

23 THE COURT: Okay. The hearing is continuing to take  
24 place outside the presence of the jury panel. Is there  
25 anything you want to add?

1 MS. HOLIDAY: Oh, for our side, Your Honor?

2 THE COURT: Uh-huh.

3 MS. HOLIDAY: We would just, as I stated, request  
4 any notes that pertain to whatever the State is going to  
5 present in the testimony of the witness. However, if it turns  
6 out that finding the one note that pertains to this very  
7 specific topic involves sorting through all the CPS records  
8 pertaining to this case, which we've already requested and the  
9 Court has already ordered, then I would ask, why not just get  
10 all the records? It's something that the Court previously  
11 ordered. It's something I think we're entitled to. It's  
12 something that we shouldn't have had to hunt down.

13 I mean, I understand part of the issue we've been  
14 talking about with these CPS records is that, you know, the  
15 defense didn't say --

16 THE COURT: You know, let me just say, did I --  
17 because generally what my practice is with CPS records,  
18 because I do this a lot, is not just automatically order you  
19 get them. I order that the District Attorney provide them to  
20 me. I do an in camera review, and then I decide. I don't  
21 always just give all the CPS records.

22 I listen to with a you have to say and then I look  
23 for exculpatory information or anything that I think could be  
24 Brady material, but I don't just turn those CPS records over.  
25 You're not entitled to them.

1 MS. HOLIDAY: Right, and I --

2 THE COURT: So I don't think that was my court  
3 order.

4 MS. HOLIDAY: I agree --

5 THE COURT: So now you're saying that I -- that's  
6 not what I generally do. I don't just say, order the CPS  
7 records;

8 MS. HOLIDAY: And I -- to clarify, Judge, I don't --  
9 I certainly didn't think you ordered the records to be  
10 produced to all parties. I --

11 THE COURT: Okay.

12 MS. HOLIDAY: It was my understanding that Your  
13 Honor ordered the records just as you stated, to be produced  
14 to you to review in camera --

15 THE COURT: And I told you I didn't get any records.

16 MS. HOLIDAY: That's correct, Your Honor. And the  
17 point I'm making is, you know, we've mentioned that this is  
18 something that we could have asked about at calendar call if  
19 we still didn't have them, we could have brought it up and  
20 asked about it. But I believe that it is the District  
21 Attorney's or the State in general, the State's responsibility  
22 if they're --

23 THE COURT: Why are we going through this again  
24 because I said if you want a continuance, you really want me  
25 to review those records, because, you know, that -- with that

1 -- reviewing CPS records is not a walk in the park either,  
2 You know, you've got to sit down and you have to, you know,  
3 have you to have blocks of time and you have to really review  
4 them. I don't know the significance of these CPS records. I  
5 don't know that I could just review them in a -- you know, I  
6 get boxes sometimes, boxes. So, I don't know.

7           Based on what I heard, I mean, if this was her only  
8 CPS contact, I wouldn't expect them to be in boxes, but I  
9 don't know. Was this her only CPS contact?

10           MS. JOBE: No, Your Honor, based on the testimony --

11           THE COURT: Okay.

12           MS. JOBE: -- and the argument we had the other day,  
13 it is not.

14           THE COURT: Okay. So then it probably would come  
15 over in boxes then.

16           MS. HOLIDAY: Pertaining to this case, I think was  
17 the Judge's order, that the CPS records were only ordered to  
18 be produced to the judge pertaining to this case, no the her  
19 other cases, from my understanding.

20           THE COURT: I know, but the bottom line is I don't  
21 -- I mean, it sounds like you want me to stop the case so you  
22 can get these CPS records. I mean, I think if they're going  
23 to bring that witness in, you're entitled to see those records  
24 from that day, no doubt about it.

25           So I'm going to order that. But I don't know, are

1 you asking me to stop the trial and order CPS to come here  
2 with all these records and then give me an opportunity to  
3 review them? Because I'm never -- you're never going to get  
4 me to just turn over CPS records. I don't think that -- I  
5 don't think I can. That's not the law.

6 MS. HOLIDAY: No, I agree. I agree. I think -- I  
7 think it would be appropriate for Your Honor to review them in  
8 camera first. My point is just that someone's going to have  
9 to go through the CPS records to find the specific note. If  
10 it's going to take time to do that, then perhaps, Your Honor  
11 does have time to review them.

12 Someone else is going to be reviewing them to find  
13 this note. Maybe in this case Your Honor would have time to  
14 review them, too.

15 MS. JOBE: It is going to be -- I'm doing by best,  
16 Your Honor.

17 THE COURT: Okay.

18 MS. JOBE: The fact of the matter is we've had this  
19 discussion. They chose to go forward with this trial having  
20 met with me in my office on Friday before we started trial,  
21 knowing the DFS records had not been attained and turned over  
22 to Your Honor, which I have apologized for on behalf of State.  
23 I am sorry that that happened.

24 They made the strategic decision to push forward  
25 with this court trial without those records. The only reason



1 we are getting into this witness and getting into this  
2 information is because they chose to open the door. So  
3 clearly, they had some information relating to Child  
4 Protective Services investigation and what happened with this  
5 investigator that the State was unaware of, because State does  
6 not have those records in its possession, because they are  
7 protected records, they have to be obtained by court order.

8           And the fact of the matter is, the fact that Ms.  
9 Holiday is standing here trying to make a change in this case,  
10 or why don't we just get all these records because I have  
11 contacts and I'm trying to expedite this for the Court is so  
12 beyond offensive to me at this point in time. I have no words  
13 to go with how offensive it is that she's now trying to  
14 exploit the fact that the State's doing its best to comply  
15 with the court order for something they opened the door to  
16 today.

17           So I'm not going to explain the process to Ms.  
18 Holiday of how that works and what they have to go through and  
19 what the system looks like. If Your Honor wishes me to, I'll  
20 be happy to do so. But the fact of the matter is, it will not  
21 be a criminal deputy going through these records. It will be  
22 someone who directly represents the Department of Family  
23 Services. I will be happy to get that note.

24           THE COURT: I know what -- I know what the process  
25 because I get them all the time.

1 MS. JOBE: -- and turn it over to you.

2 THE COURT: And I know -- I know how they -- I know  
3 how they arrive so I know what has to be done. If these  
4 records come to the courthouse I'll review them. Okay?  
5 That's what I can tell you. I'm not going to stop the trial  
6 and order a bunch of records be delivered.

7 But if that witness is going to testify, at least  
8 the records from that day have to be turned over to the  
9 defense.

10 MS. JOBE: I agree.

11 THE COURT: Is your witness here?

12 MS. JOBE: He is, Your Honor.

13 THE COURT: Okay. We can start.

14 MS. JOBE: Can I send this e-mail really quick,  
15 please?

16 THE COURT: Oh, yeah. Sure, go ahead.

17 (Pause in the proceedings)

18 THE MARSHAL: Judge, how late are we going to go?

19 THE COURT: I don't know.

20 THE MARSHAL: Because --

21 THE COURT: Until we get our witness done.

22 THE MARSHAL: Well, it's just because if we're going  
23 to be here after 6:00, I have to get special tickets for the  
24 garage to open up.

25 THE COURT: Well, can I let you know at 5:30? Thank

1 you for thinking of that. Usually at 5:30 I'll be able to  
2 tell if you guys are go to be done.

3 (Pause in the proceedings).

4 MS. JOBE: Okay, Your Honor.

5 THE COURT: We can bring -- did you get that e-mail  
6 off?

7 MS. JOBE: I did.

8 THE COURT: Okay. All right, we can bring them in.

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

11 (In the presence of the jury).

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

14 MS. JOBE: Yes, Your Honor.

15 THE COURT: Defense?

16 THE MARSHAL: Thank you, please be seated.

17 MS. HOLIDAY: Yes, Your Honor.

18 THE COURT: You may call your next witness.

19 MS. JOBE: State calls Phil DePalma.

20 THE MARSHAL: I'm sorry?

21 MS. JOBE: Phil DePalma.

22 PHILIP DEPALMA, STATES WITNESS, SWORN

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

25 THE WITNESS: Philip DePalma, P-h-i-l-i-p. DePalma,

1 D-e-p-a-l-m-a..

2 THE CLERK: Thank you.

3 MS. JOBE: May I proceed, Your Honor.

4 THE COURT: You may.

5 DIRECT EXAMINATION

6 BY MS. JOBE:

7 Q. Mr. DePalma, what is your occupation?

8 A. I'm a police officer with the Las Vegas Metropolitan  
9 Police Department.

10 Q. How long have you been employed by the Las Vegas  
11 Metropolitan Police Department?

12 A. 20-and-a-half years..

13 Q. What is your current assignment, sir?

14 A. I'm a detective with the Abuse and Neglect Detail.

15 Q. How long have you been in that detail?

16 A. Total about three years.

17 Q. What training and experience do you have to be on  
18 the Abuse and Neglect Detail?

19 A. Extensive. Interview, interrogation classes, death  
20 investigation classes, forensic interviewing classes, along  
21 with search warrant execution, search and seizure classes, so  
22 on and so forth.

23 Q. Prior to becoming a abuse and neglect detective,  
24 what was your assignment with Metro?

25 A. I was also a detective with the robbery detail for

1 about a year-and-a-half. A detective with the violent crimes  
2 section for about a year-and-a-half. I was a narcotics  
3 detective for three years, and I also did about 30 days in  
4 homicide and 60 days in missing persons.

5 Q. Now, as part of your training and experience as an  
6 abuse and neglect detective, do you go to conferences and  
7 trainings with respect to injuries to children?

8 A. Yes, I do.

9 Q. And do they also train you about how to investigate  
10 injuries to children to make the appropriate determinations  
11 for purposes of police investigation?

12 A. Yes, they do.

13 Q. And generally speaking, what are your duties and  
14 responsibilities as a abuse and neglect detective?

15 A. Respond to not only child, but elderly abuse,  
16 neglect, endangerment cases. All child deaths. Especially we  
17 respond immediately to a substantial bodily injury to elder  
18 and to children if it's suspicious in nature. Suicides  
19 involving children as well.

20 Q. So fair to say you're called to respond to all those  
21 different type scenarios and then have you to conduct an  
22 investigation to kind of figure out what's going on; is that  
23 fair?

24 A. Correct.

25 Q. Approximately, how many investigations have you done

1 as an abuse neglect detective?

2 A. We average close to a hundred cases per year per  
3 detective. And so I would assume close to 300 cases that I've  
4 handled or at least that came across my desk, whether they're  
5 closed or there -- an or was made is a different story, but  
6 close to 300 that I've laid my eyes on, maybe more.

7 Q. And that takes me to my next question, Detective.  
8 Do you -- do the cases you investigate, do they always result  
9 in criminal proceedings?

10 A. No, they don't.

11 Q. And is part of your duties and responsibilities for  
12 investigative purposes, at least to make a determination if  
13 the matter should be submitted to the District Attorney's  
14 Office to determine if criminal proceedings should be filed?

15 A. That's correct.

16 Q. And do you submit to the District Attorney's Office  
17 once your investigation's complete; would that be fair?

18 A. Yes, that's accurate.

19 Q. And what types of -- specifically with respect to  
20 cases involving child abuse or neglect, what types of things  
21 do you look for or do as part of your investigation?

22 A. Well, having kids myself and knowing -- knowing or  
23 learning and seeing and reading a lot of cases that come  
24 across, we understand there's a lot of accidents that happened  
25 in the home, outside of the home. Some things may be even

1 neglectful in nature, however it doesn't rise to a criminal  
2 charge, so to speak. So there are times when -- when we  
3 strike up a report that was filed or an allegation that was  
4 made as an either accident or just never happened.

5 Q. And who do you speak with or what are the steps of  
6 your investigative process to reach your investigative  
7 conclusions?

8 A. On each investigation we conduct interviews, first  
9 and foremost. We speak with the caretakers of the person,  
10 whether it's a child or whether it's an elder. If it's -- if  
11 the elder does not have a family member caring for them, we --  
12 we speak with the person that's -- that is in the complete  
13 control and care of that elder. Same with the -- the child.

14 Sometimes it's difficult to talk to a child because  
15 they're too young and they don't communicate. And when  
16 they're too young and they can't communicate, that's when we  
17 have to rely on the people that are caring for that child. We  
18 have to conduct interviews. So that's first and foremost.

19 Q. So would it be fair to say when you're dealing with  
20 a case with a child who can't communicate or at least relay to  
21 you the events in what happened, is it your duty to  
22 investigate all the surrounding facts and circumstances and  
23 kind of figure out what happened as best as you can?

24 A. Yes, it is. From interviews to the medical  
25 professionals, we often deal with medical professionals as

1 well.

2 Q. And is there a protocol for age range of kids as far  
3 as being interviewed or relaying information or obtaining  
4 information from them?

5 A. There's not a particular age. It's basically, the  
6 level of competence for that child, what level they are as far  
7 as being able to communicate, understanding the difference  
8 between right and wrong, good and bad. And that's why you get  
9 forensically trained. But normally, it's around the  
10 three-year-old range in a child. Three and under are very  
11 difficult to talk -- to talk to. Sometimes even goes up to  
12 four-and-a-half years of age, depending on that person's  
13 level.

14 Q. Okay. And have you received at least some training  
15 and experience with respect to -- in reviewing children and  
16 kind of making that assessment of you can even interview a  
17 child about what happened?

18 A. Yes, I was.

19 Q. Now, on January 5th of 2016, were you assigned as a  
20 lead detective to investigate a concern related to burns on a  
21 child under Las Vegas Metropolitan Police Department event  
22 number 160105-1552?

23 A. Yes I was.

24 Q. And if you could tell the ladies and gentlemen of  
25 the jury who was the named victim at least that you were



1 investigating?

2 A. It was a Chance Jacksper was the little boy.

3 Q. And how did this call come in, at least as far as  
4 you're aware?

5 A. We received a phone call at our office from the  
6 patrol officers that were responded to Sunrise Hospital. They  
7 were there to make a report for a child abuse neglect report,  
8 and the explanation of the injuries they felt -- the staff  
9 felt it didn't match. So in return, our patrol officers  
10 aren't to investigate further. They're to contact us. So we  
11 were at our office, and what they call it when you're working  
12 is a same-day response.

13 And I was next up, out of all the detectives and  
14 investigators in my unit, I was the next person up to take  
15 lead on a case during a same-day.

16 Q. Now, just because you're the lead detective, are you  
17 the only detective who responds and participates in the  
18 investigation?

19 A. No, they don't.

20 Q. All right. And as far as this process that you have  
21 described with the patrol officer calling your detail and  
22 providing information, is that standard for these calls?

23 A. Yes, it's standard.

24 Q. And then fair to say the detective who takes the  
25 call from patrol essentially makes the determination to go out

1 and continue investigating or wait until another day or  
2 something else?

3 A. Yes. It all depends on the -- the severity of the  
4 -- the incident. The severity of the injury to the child,  
5 whether or not it's going to fit our criteria for a same-day  
6 response or if it's something that we can follow up the next  
7 day.

8 Q. And I believe you testified that in this case it was  
9 considered what you call a same-day?

10 A. That's correct.

11 Q. So when the call comes in, it's determined to be a  
12 same-day, what happens?

13 A. So myself, my partner, who is my secondary,  
14 Detective, I believe, it was Detective Grivas, and my sergeant  
15 responded to Sunrise Hospital, along with another detective  
16 because he was new in the unit. And he's the one who actually  
17 took the phone call because he's what they call a bucket  
18 person. That's the individual, the detective -- and it gets  
19 passed around each day -- who actually takes -- fields calls  
20 from patrol officers and from the public who have questions or  
21 want to make a report for assistance.

22 He took the call, and he got all -- gathered all the  
23 information and presented that to myself and the sergeant. So  
24 it was actually three detectives and a sergeant that went out  
25 to the hospital that day.

1 Q. And this detective bucket, would that have been  
2 Detective Santarossa?

3 A. That's correct.

4 Q. All right. So you all go out to Sunrise Hospital,  
5 correct?

6 A. Yes.

7 Q. And what do you do when you first arrive?

8 A. The first thing we do is we get to -- we -- I go to  
9 the nurse's station or try to make contact with the doctor.  
10 If that individual's too busy or if they're making rounds, I  
11 find out which room the victim is in and I like to go see the  
12 victim.

13 In this case, I did get a chance to see Chance. I  
14 forgot which room it was in, but it was all the way to the  
15 back and left. And I don't know which number it was, but it  
16 was right by the double doors and Chance was sit not guilty  
17 there with his mother, Jasmin, and he was very upset. And I  
18 believe, Donovine Mathews was standing right outside the door  
19 when we first arrived.

20 Q. Did you have any contact with Officer Bethard, when  
21 you arrived at the hospital?

22 A. Yes, briefly we did. Yes.

23 Q. And what is the purpose of that interaction with  
24 Officer Bethard?

25 A. To basically get any statements that were -- were

1 given to him when he responded to see if -- if the victim  
2 would make any statements, if the parents made any statements,  
3 what he gathered as a preliminary investigation and oftentimes  
4 the patrol officer, if they don't know, they may look to us  
5 for guidance as far as what type of report they want to list  
6 in the incident.

7 Q. Now, as far as this specific incident and your  
8 conversation with Bethard, without telling me what Officer  
9 Bethard said, did you obtain any information from Officer  
10 Bethard, that he had spoken with the victim about what had  
11 happened?

12 A. The victim, he wasn't able to speak with.

13 Q. And in this specific case, did you try to speak with  
14 Chance to find out what happened from Chance's perspective?

15 A. I did.

16 Q. How did you engage Chance?

17 A. Well, on site from him seeing me, he immediately  
18 started to cry. He was -- he was very upset and scared. His  
19 mother immediately told me that he's just scared of other  
20 people.

21 Q. Okay. And were you able to engage Chance in any  
22 other respects?

23 A. I -- I tried to -- to calm him down with my charm  
24 and -- and -- but it really didn't work. He was pretty upset.

25 Q. Okay. So did you ever have a chance to speak -- an

1 opportunity -- since his name is Chance -- to speak with  
2 Chance about what happened?

3 A. I had a second opportunity when I -- I saw Chance at  
4 a doctor's appointment at UMC. Again, he wasn't very  
5 talkative. He was playing and doing his own thing. I tried  
6 -- I tried making small talk with him to see if I can engage  
7 in conversation, and it -- it wasn't -- it wasn't happening.

8 Q. Fair to say you're not going to take a two, almost  
9 three-year-old child into a room and force them to try to have  
10 a conversation with you?

11 A. That's correct.

12 Q. All right. Now, you indicated Jasmin, the child's  
13 mother, was in the room, correct?

14 A. Yes.

15 Q. And an individual, Donovine Mathews, was outside the  
16 room?

17 A. Yes.

18 Q. Okay. Do you see Donovine Mathews in court?

19 A. I do.

20 Q. Would you please identify him and something that  
21 sets him apart from everybody else?

22 A. He's sitting at this time in between two female  
23 attorneys wearing a white shirt and a blue tie.

24 MS. JOBE: For the record, identifying the  
25 defendant.

1 THE COURT: So reflected.

2 BY MS. JOBE:

3 Q. Now, you said there were four of you at Sunrise  
4 Hospital, correct?

5 A. Yes.

6 Q. So as far as the tasks of the investigation are  
7 concerned, it was kind of a division of labor?

8 A. Yes, you can say that.

9 Q. And what was everybody's responsibility?

10 A. The lead detective's responsibility is to take lead  
11 with the investigation and direct who they want sitting in the  
12 interview with myself, and who I want to interview, who I  
13 choose that -- to interview, and I direct the other two to  
14 interview the other people. Or if there are anybody else --

15 Q. In this case --

16 A. -- that's my job.

17 Q. Sorry, Officer -- or Detective. In this case, who  
18 did you interview?

19 A. So I interviewed Donovine Mathews with myself and  
20 Detective Santarossa, I took him with me.

21 Q. And where did you interview him?

22 A. It's called a quiet room in Sunrise. It's a small  
23 little room, very tiny with a -- a few chairs in it.

24 Q. And if you know, what were Detective Grivas and  
25 Sergeant -- the Sergeant doing while you were speaking with

1 the defendant?

2 A. They were interviewing the mother, Jasmin, in the  
3 same room where Chance was.

4 Q. Okay. So it sounds like Jasmin and the defendant  
5 were kept separate for purposes of their interviews; is that  
6 fair?

7 A. That is fair.

8 Q. All right. And as far as your interview with the  
9 defendant, you said it was in the quiet room, correct?

10 A. Yes.

11 Q. Was he detained?

12 A. No.

13 Q. Was he free to leave?

14 A. Yes.

15 Q. Did he have to go with you for that interview?

16 A. No.

17 Q. Did he go willingly to the quiet room?

18 A. Yes, he did.

19 Q. Did you explain he's free to leave, he's not under  
20 arrest --

21 A. Yes, I did.

22 Q. -- all these things? And at the point in time where  
23 you're speaking with the defendant, what's the purpose of this  
24 interview?

25 A. I was in a fact-finding mode. I was strictly there

1 to find out what happened to this little boy.

2 Q. At that point in time, when you're in fact-finding  
3 mode, had you had an opportunity to observe the injuries to  
4 Chance?

5 A. I did. He -- when I first walked in, he had gauze  
6 dressing on both his hands. And they were -- they were trying  
7 to change them -- change the -- the -- the gauze. And we did  
8 have ID respond, and I'm not quite positive if they responded  
9 exactly when we showed up, but I believe it was shortly after.

10 So I was able to see some of the injuries on Chance  
11 with the gauze around it, and when they were taking the  
12 bandages off, as hysterical as he was, I was able to see the  
13 injuries on -- on his hands.

14 Q. Showing you what's been admitted as State's 3, do  
15 you recognize the individual in that picture?

16 A. Yes, I do.

17 Q. Who do you recognize that to be?

18 A. That's Chance Jacksper.

19 Q. And was -- as far as you know, was this a photograph  
20 that was taken at Sunrise Hospital on January 5th of 2016?

21 A. Yes, it was.

22 Q. Okay. And it appears -- fair to say it appears his  
23 hands are wrapped with gauze?

24 A. Yes.

25 Q. Is that what you were discussing about he had gauze



1 Q. And what's a P number?

2 A. P5297D. That's how we sign our -- for our -- our  
3 personnel number --

4 Q. Okay, so --

5 A. -- and our initials.

6 Q. -- every Metro employee has a unique personnel  
7 number assigned to them?

8 A. That's correct.

9 Q. And that's yours?

10 A. Yes, it is.

11 Q. All right. And the date is 1/9/17; is that  
12 accurate?

13 A. Yes, it is.

14 Q. Okay. And you -- did you sign that after you  
15 listened to the entire recording?

16 A. Yes.

17 Q. Okay. And as far as you listened to this recording,  
18 was that the interview we're speaking of that you had with the  
19 defendant on January 5th of 2016?

20 A. Yes.

21 MS. JOBE: I'd move for the admission of State's  
22 Proposed 1.

23 MS. HOLIDAY: No objection.

24 THE COURT: It's admitted.

25 (State's Exhibit 1 admitted)

1 MS. JOBE: And Your Honor, the State moves to  
2 publish this.

3 THE COURT: You may.

4 MS. JOBE: For the record, we've prepared  
5 transcripts to hand out to the members of the jury only while  
6 it is being played.

7 THE COURT: Okay. Officer Hawkes will hand the  
8 transcripts to the members of the jury.

9 MS. JOBE: I'm probably going to need Officer  
10 Hawkes' assistance with my computer as well.

11 THE COURT: And do you have a copy for the Court?  
12 Well, I'll have it marked.

13 MS. JOBE: May I approach, Your Honor?

14 THE COURT: Sure. Thank you. It will be mashed as  
15 next in line, Number 5.

16 THE CLERK: 5.

17 (Pause in the proceedings)

18 MS. JOBE: Thank you, Officer Hawkes.

19 (Recorded Interview played).

20 BY MS. JOBE:

21 Q. So Detective DePalma, that interview finishes and  
22 what happens?

23 A. He walks out of the room, and I meet up with my  
24 Sergeant and Detective Grivas at the nurse's station.

25 Q. While you were still at Sunrise Hospital, did you

1 have the chance to speak with the treating physician,  
2 Dr. Olson?

3 A. Yes, briefly.

4 Q. And I believe, based on your earlier testimony,  
5 that's kind of part of your protocol when investigating a  
6 child abuse case; is that fair?

7 A. Yes.

8 Q. And without telling me what Dr. Olson said, your  
9 conversation with Dr. Olson, did that kind of influence your  
10 next steps in the direction of your investigation?

11 A. In a way, yes.

12 Q. Okay. And as far as you know, the report and the  
13 fact you were even at the hospital conducting that  
14 investigation was a result of a call generated from the  
15 hospital; is that correct?

16 A. Yes.

17 Q. Okay. Now, after you complete this interview, speak  
18 with the doctor, what's the next step of your investigation?

19 A. I asked Donovine if he would be willing to do a,  
20 what we call a reenactment, going through the motions on video  
21 inside the apartment to show exactly how Chance got burned.

22 Q. And did he, in fact, agree to do that?

23 A. Yes, he did.

24 Q. Okay. And was that done the same day?

25 A. Yes, it was.

1 Q. How did he get back to the residence?

2 A. I drove him.

3 Q. Why did you drive him?

4 A. He didn't have transportation. I'm not going to let  
5 him walk.

6 Q. Fair to say he wasn't under arrest?

7 A. That -- that's correct, he was not under arrest.

8 Q. And you went back to the residence because he was  
9 willing to go?

10 A. Yes.

11 Q. All right. And was that 1029 Lisbon Avenue,  
12 Apartment 5, Las Vegas, Clark County, Nevada?

13 A. Yes, it was.

14 Q. How -- when you went -- when the defendant went back  
15 with you willingly, how did you gain access to the inside of  
16 the apartment?

17 A. By way of key.

18 Q. Was that key from either Donovine or Jasmin?

19 A. That was from Jasmin.

20 Q. And as far as you knew during your investigation,  
21 had the apartment been closed and unaccessed from the time  
22 they left to go to the hospital that morning until you went  
23 back for that reenactment?

24 A. We were under the impression that it was locked  
25 because they were at the hospital the entire time, and there

1 was no other roommates or anyone that had access to that  
2 apartment per Jasmin.

3 Q. And when you went in with Donovine, did he make any  
4 statements or expressions like oh, my gosh, someone's been  
5 here or if anything had been amiss?

6 A. No, he did not.

7 Q. Now, when you -- before you came to court today, you  
8 had the chance to look through the State's Exhibits 1 through  
9 76; is that accurate?

10 A. Yes.

11 Q. And those appear to be fair and accurate copies of  
12 the photographs in this case, correct?

13 A. Yes.

14 Q. All right. And some of the photographs are from the  
15 residence; is that fair?

16 A. That's correct.

17 Q. Showing you 32, State's 32. What is that?

18 A. That's the number of the apartment.

19 Q. So it's the outside --

20 A. Placard.

21 Q. -- the number of the apartment?

22 A. Yes, the outside of the apartment.

23 Q. All right. Now, as far as the investigative steps  
24 go, you said you went back to the residence to do a  
25 reenactment, and a reenactment was done; is that accurate?

1 A. Yes.

2 Q. And obviously, we have photographs from the  
3 residence. Who took the photographs as far as you know?

4 A. Our CSA investigators.

5 Q. All right. And as far as you know, or as far as you  
6 recall, were the photographs by the CSA done before the  
7 reenactment?

8 A. I believe they were done before the reenactment,  
9 yes.

10 Q. And is that the practice, to kind of preserve it and  
11 make sure nothing's changed when the photographs are taken?

12 A. Correct. We -- we don't want to disturb. We want  
13 to photograph the scene as it was before we start moving  
14 things around and searching the residence or having the  
15 opportunity in a reenactment for someone to move something.

16 Q. And though you had permission to be at the 1029  
17 Lisbon Avenue, No. 5 address, did you or someone within your  
18 unit that you were working with, obtain a search warrant for  
19 the residence for January 5th, 2016?

20 A. Yes, we did obtain a search warrant. It was  
21 Detective Santarossa that was the author of the search  
22 warrant, and he got authorization for that telephonic search  
23 warrant of the residence.

24 Q. Now showing you what's been admitted as State's 33.  
25 What is that?

1           A.    That's the view of the kitchen.  After you walk in,  
2 the door is on the left.  As you walk in, you turn left, and  
3 that's what you see.

4           Q.    Okay.  And if you could mark for the ladies and the  
5 gentlemen of the jury where the door is.  If you mark your  
6 screen, it will show up.  And so do you walk into the kitchen  
7 or do you walk into the living?

8           A.    You actually walk into the living room.  It's  
9 carpeted where you walk in.

10          Q.    All right.  And do you -- or what was the type of  
11 flooring that was in the kitchen?

12          A.    Linoleum.

13          Q.    You a chance to walk on the linoleum, correct?

14          A.    Yes.

15          Q.    As far as you could tell, was it a hard surface, a  
16 soft surface or something else?

17          A.    It's somewhat hard.

18          Q.    And your testimony is that when the pictures were  
19 taken, nothing had been disturbed in the apartment; is that  
20 fair?

21          A.    Right there, no, nothing was disturbed.

22          Q.    Now showing you State's 34.  Is that just a close-up  
23 of the -- at least a closer photograph of the stove and the  
24 counter?

25          A.    That's correct.

1 Q. And some of these things come up during the  
2 reenactment, is that fair?

3 A. Yes.

4 Q. All right. And we'll get to that. 35, it's the  
5 sink, correct?

6 A. That's correct.

7 Q. And is there anything significant about the sink  
8 that came up during your investigation or any contents of the  
9 sink?

10 A. Just the black mug on the left part of the two-tier  
11 sink or two double sink, double-sided.

12 Q. If you could please mark for the ladies and the  
13 gentlemen of the jury. So that black mug came up?

14 A. That's correct.

15 Q. And what was the significance of that black mug?

16 A. Mr. Mathews stated that that was the mug that he  
17 used to start preparing his coffee.

18 Q. Okay. And as we heard in the interview, it was the  
19 boiling of the water and he poured the hot water in a mug; is  
20 that correct?

21 A. That's correct.

22 Q. And so that's the mug he identified he put the water  
23 in?

24 A. Yes.

25 Q. Showing you State's 40. I'm sorry, I forgot I



1 zoomed in. Is that just a closer picture of the mug as it was  
2 found in the sink?

3 A. Yes.

4 Q. And then showing you State's 41. At some point, did  
5 the CSA take the mug out of the sink to photograph it?

6 A. Yes, they did.

7 Q. And did you ever find out what the -- it looks like  
8 there's some debris on the cup. Is that fair?

9 A. Yes. I asked about that.

10 Q. And did Mr. Mathews explain to you what that was  
11 from?

12 A. Yes. He said it was a spread that he makes.

13 Q. Okay. And how does he make the spread?

14 A. They usually make a spread with -- with hot water,  
15 and they crush up food particles to make a spread.

16 Q. Okay. Showing you State's 42. What is that a  
17 photograph of?

18 A. That's the inside of the mug from top looking down.

19 Q. The same mug we've been looking at?

20 A. Same mug.

21 Q. All right. And in the reenactment video, did -- or  
22 at least when you were at the residence, did Donovine tell you  
23 where the pot was that he had been boiling the water in?

24 A. Yes, he did.

25 Q. And where was that?

1 A. It was located on the stove.

2 Q. Okay. Correct me if I'm wrong, Detective, in the  
3 interview didn't he say it was located in the sink?

4 A. Yes, he did.

5 Q. Okay. But your testimony is at least when you went  
6 to the residence, he indicated it was on the stove?

7 A. Yes.

8 Q. Okay. And do you see the pot that he indicated he  
9 boiled water in on the stove --

10 A. Yes.

11 Q. -- in that photo?

12 A. Yes, I do.

13 Q. Would you please point it out for the ladies and  
14 gentlemen of the jury? When you saw the pot on the stove,  
15 when you all went in, were there any contents in that pot?

16 A. No, there was not.

17 Q. Showing you State's 45. Is that just a closer  
18 picture of the inside of that pot?

19 A. Yes, it is.

20 Q. Okay. And is it -- when these photographs were  
21 taken, had anything been poured into or dumped out of the pot  
22 at this point in time?

23 A. No.

24 Q. Showing you State's 46. What is that?

25 A. That's a picture of the counter where he said he

1 placed the mug.

2 Q. And did he, in fact, at any point in time, show you  
3 where on the counter -- approximately, where on the counter he  
4 placed the mug?

5 A. During the reenactment, yes.

6 Q. It would be fair to say it was approximately there?

7 A. Exactly.

8 Q. Now, there was a series of photographs of the  
9 cupboards in the apartment; is that fair?

10 A. Yes.

11 Q. Showing you State's 47. That appears to be an  
12 overall of the cupboards above the stove; is that fair?

13 A. Yes, it is.

14 Q. And then it looks like individual photographs were  
15 taken of the cupboards; is that correct?

16 A. Yes.

17 Q. Why was that?

18 A. Just to show -- we normally, when we have a search  
19 warrant involving a child, we open up all the cabinets, and  
20 the refrigerator, the freezer, to show if there's food in the  
21 residence, if -- if there's anything that's -- maybe that can  
22 endanger a child, and of course, in this instant -- this  
23 incident, we want to see if there was any coffee in the  
24 cupboards as well.

25 Q. Now, in Mr. Mathews' interview we just listened to,

1 he -- did he give you a specific description of the coffee or  
2 what the coffee was contained in?

3 A. He said it was Folgers or Folgers with a -- he  
4 described the color being green, a green cap possibly.

5 Q. All right. And showing you State's 53, is that a  
6 picture of the cupboard over the sink area?

7 A. Yes. That looks like the cupboard to the left of  
8 the sink.

9 Q. Okay. And it appears there are some cups or  
10 contents in this cupboard; is that fair?

11 A. Yes.

12 Q. And I hate to be so detailed with the questions, but  
13 were any of these cups added or removed or disturbed before  
14 this picture was taken?

15 A. No.

16 Q. And then up here is showing you State's 54, are also  
17 photographs taken of the -- 55, items below the stove below  
18 the counter; is that correct?

19 A. Yes.

20 Q. Okay. 56. And then you also indicated the freezer,  
21 correct, and the fridge?

22 A. That's correct.

23 Q. Showing you 57. And then fair to say there's a  
24 series of close-up photos of the contents of the fridge and  
25 the freezer; is that correct?

1 A. Yes.

2 Q. When you were there -- well, let me ask you this,  
3 when you first walked into the apartment, when it had just  
4 been opened up, did you -- were there any distinct smells that  
5 you recall?

6 A. No.

7 Q. Any smell of a dirty diaper or anything like that  
8 near the door?

9 A. No.

10 Q. And you indicated you have children, correct?

11 A. I do.

12 Q. So are you familiar with the smell of a dirty  
13 diaper?

14 A. Unfortunately, I am, and because of this job, I've  
15 gone -- go in numerous residences, so I'm familiar with the  
16 smell.

17 Q. All right. Now, after you get done in the kitchen,  
18 do you go to a different location in the residence or with the  
19 CSA to continue taking pictures?

20 A. Yes, the bathroom and the other bedrooms.

21 Q. And in the -- showing you State's 67. Is that the  
22 bathroom, Detective?

23 A. Yes, it is.

24 Q. And then fair to say there are other close-ups of  
25 the different portions of the bathroom; is that correct?

1 A. Yes.

2 Q. Okay. At some point in time, did you -- while you  
3 were at the residence, did you locate any of the clothing that  
4 Chance was wearing during the events?

5 A. Yes, I did.

6 Q. Where was that located in the residence?

7 A. I located the shirt that he said he took off in the  
8 bathroom. It was in the -- in the bedroom. I believe it was  
9 Jasmin's bedroom.

10 Q. Okay. Let me make sure I understand. You said the  
11 shirt that he said he took off. Who said he took off?

12 A. Donovine said he stripped Chance of all the -- all  
13 of his clothes, and he was wearing a black super hero t-shirt.

14 Q. Okay. And did the defendant tell you where in the  
15 household he stripped Chance of his clothes?

16 A. He said the bathroom.

17 Q. Okay. And you said that a shirt was found in a  
18 bedroom?

19 A. It was found in the -- Jasmin's bedroom.

20 Q. Okay. Showing you State's 73. What's in that  
21 photo?

22 A. That's the t-shirt inside out on top of a plastic  
23 three-tier bin.

24 Q. Okay. Is that the condition and the location of the  
25 t-shirt where it was found?

1 A. Yes.

2 Q. Okay. And showing you State's 75, is that  
3 essentially the t-shirt was turned inside out to see what it  
4 was?

5 A. Yes.

6 Q. All right. But was that t-shirt selected because  
7 you were directed to it and told that was what Chance had been  
8 wearing?

9 A. They -- they said it was a super hero -- black super  
10 hero shirt and when we located it, yes, we assumed that it was  
11 that. And then we asked Donovine if that was the shirt and he  
12 said yes.

13 Q. Okay. So he confirmed that was the shirt?

14 A. Yes.

15 Q. Now, during the course of the CSA being present,  
16 were measurements taken of the counter?

17 A. Yes.

18 Q. Okay. Showing you State's 63. Why were  
19 measurements taken of the counter?

20 A. We wanted to see how high the counter was in  
21 relation to how tall Chance was.

22 Q. Fair to say you still had some additional  
23 investigation to do after this day; is that fair?

24 A. Absolutely.

25 Q. Did you have a chance to watch the reenactment video

1 before coming to court today?

2 A. Yes, I did.

3 Q. And as with the interview we just listened to, when  
4 you were done listening to it or watching it, did you have the  
5 chance to sign, put your initials and the date?

6 A. Yes, I did.

7 MS. JOBE: Showing defense counsel State's Proposed  
8 2. May I approach, Your Honor?

9 THE COURT: You may.

10 BY MR. BURTON:

11 Q. Detective, do you recognize State's Proposed 2?

12 A. Yes, I do.

13 Q. What do you recognize that to be?

14 A. The reenactment video on a CD with my initials, with  
15 my P number, personnel number, and the date, 1/9 of '17.

16 Q. And is that your signature and -- or your initials  
17 and the date from when you watched this reenactment video?

18 A. Yes.

19 Q. And when you watched it, was that a fair and  
20 accurate copy of the reenactment done with the defendant at  
21 1029 Lisbon on January 5th of 2016?

22 A. Yes, it was.

23 Q. Now, what is the purpose of a reenactment video?

24 A. Basically, to get a -- we often do it to get a  
25 better feel of the incident that took place. We hope to get



1 the person that was there witnessing it or the person involved  
2 in the incident work at regular speed. And oftentimes we --  
3 we take that video and we show our medical professionals.

4 Often in broken bones or burns or any kind of  
5 co-sleeps where there's some death to a child, we'll do a  
6 reenactment just to show the medical professionals what they  
7 said happened, and if that explanation would match the injury  
8 to that child.

9 Q. And so when you're doing a reenactment video with  
10 someone, is this still part of the fact-finding investigation?

11 A. Yes.

12 Q. And when the reenactment video is done, I guess,  
13 what's the process? Do you kind of ask them questions as this  
14 goes or do you let them explain it to you and then ask  
15 questions? What's the procedure?

16 A. Sure, yes, we inform them that they're going to be  
17 going on tape. I go on tape. Usually, the lead detective  
18 goes on tape. There's a cameraman, he's usually another  
19 detective. And we talk into the camera basically giving the  
20 date and the time or where we're at and what we're going to  
21 do. We explain it so -- so they can -- everybody can  
22 understand why we're there and what we're there for basically  
23 and -- and if there's any questions that may arise during that  
24 reenactment, we can use that as a taped statement, so to  
25 speak.

1 MS. JOBE: I'd move for the admission of State's  
2 Proposed 2.

3 MS. KIERNY: No exhibit.

4 THE COURT: It's admitted.

5 (State's Exhibit 2 admitted).

6 MS. KIERNY: I mean, no -- no objection. But Your  
7 Honor, may we approach briefly?

8 THE COURT: Sure.

9 (Bench conference begins).

10 MS. KIERNY: I know earlier we indicated we could  
11 probably get through the detective's entire testimony, but  
12 then we remembered that they had said they wanted to get into  
13 some jail calls. We got those jail calls Friday and we  
14 unfortunately, have not had a chance to listen to them.

15 So we're probably not going to be able to finish him  
16 today or get into the jail calls --

17 THE COURT: Oh, we're going to finish him. We're  
18 going to keep going.

19 MS. KIERNY: We haven't had a chance to review those  
20 jail calls.

21 THE COURT: And you knew this witness would --  
22 you're not prepared for this witness?

23 MS. KIERNY: Well, we didn't know until today that  
24 the jail calls were coming in, that they were going to seek to  
25 admit them. We didn't know that he was going to complete his

1 testimony today.

2 MS. JOBE: We're not seeking to admit the jail  
3 calls. The statement made when we provided the jail calls on  
4 Friday was we don't plan on admitting them unless something  
5 comes up, and of course, everything that's come up (inaudible)  
6 the cross-examination of Jasmin Cathcart.

7 MS. HOLIDAY: The one last thing I would add is that  
8 we requested the jail calls when we filed our original  
9 discovery motion. Do I believe that was one of the items that  
10 the Court ordered, and they weren't produced to us until  
11 Friday. So I would say that they should not be allowed in,  
12 also, as the result of late discovery.

13 THE COURT: Well, it's because we're not prepared to  
14 go to trial because you -- I mean, basically, you're telling  
15 me you're not prepared to cross this witness? You're tying my  
16 hands. What am I supposed to do, say keep going? If you're  
17 not prepared to cross this witness, I'm not going to keep  
18 going.

19 MS. HOLIDAY: First, when we announced ready at  
20 calendar call, we didn't have any jail calls. The jail calls  
21 were provided to us Friday, but the information at that  
22 point --

23 THE COURT: And today's Wednesday.

24 MS. HOLIDAY: -- is that we weren't going to be  
25 using the jail calls. We didn't know that until today.

1 MS. JOBE: Again, Your Honor, I mean, all of this  
2 has only come up because of their cross-examination of Jasmin  
3 Cathcart.

4 MS. HOLIDAY: I would disagree with that.

5 THE COURT: Okay. I'm not going to proceed with  
6 this type of record.

7 MS. HOLIDAY: I appreciate that, Your Honor.

8 THE COURT: They're not prepared to cross this  
9 witness. I'm not going to force them to --

10 MS. HOLIDAY: That's --

11 THE COURT: -- proceed.

12 MS. JOBE: But this -- can I at least play the  
13 reenactment video since that's where I'm at and call it good  
14 for the night?

15 MS. HOLIDAY: We're fine with that.

16 THE COURT: Oh, yeah, you can go and it can start --  
17 well, I guess, you can't -- you can't pass the witness. Yeah.

18 MR. BURTON: Right.

19 MS. JOBE: Right.

20 THE COURT: Yeah. Do everything --

21 MR. BURTON: But.

22 THE COURT: -- up to that, yeah.

23 MS. JOBE: Okay. No problem.

24 THE COURT: Okay.

25 MR. BURTON: Thank you, Your Honor.

1 (Bench conference concluded).

2 MS. JOBE: I apologize. Exhibit 2 was admitted; is  
3 that correct?

4 THE COURT: Yeah, there's no objection, right?

5 MS. HOLIDAY: That's correct, no objection.

6 THE COURT: It's admitted.

7 MS. JOBE: Thank you. Permission to publish?

8 THE COURT: You may.

9 (State's Exhibit No. 2. Reenactment Video played).

10 BY MS. JOBE:

11 Q. In that reenactment, he filled up that pot; is that  
12 correct?

13 A. Yes.

14 Q. And do you recall exactly how much water he put in  
15 that pot?

16 A. I can't be for certain how many ounces --

17 Q. Sure.

18 A. -- but it was -- it was more -- it appeared to be  
19 more than a cup full.

20 Q. Okay. And in -- showing you State's 45. In the  
21 reenactment video he referred to a line on the pot where you  
22 could see and that that's how far he filled it up; do you  
23 recall that statement?

24 A. That's what he said, yes.

25 Q. Okay. And do you see that line in this picture?

1 A. Yes.

2 Q. Can you please mark for the ladies and gentlemen of  
3 the jury?

4 A. (Indicating).

5 Q. Okay. Now, your testimony was that this photograph  
6 was taken before the reenactment where you would have put  
7 water in it and all of that, correct?

8 A. Yes.

9 Q. Okay. In observing the pot and obviously, you had a  
10 better chance to do this at the residence, was there anything  
11 that you noticed about the contents of the pot or what we can  
12 see in the pot in this picture in State's 45?

13 A. Just that it appeared that it was bone dry. There  
14 was no water in it.

15 Q. Okay. And as far as were you able to determine or  
16 at least see what this different colored stuff is on the  
17 bottom of the pot?

18 A. Yeah. It looked like some sort of stains. I wasn't  
19 sure if it was, excuse me, food stains or if it was stains  
20 inside the -- the metal.

21 Q. Now, when the defendant was doing the reenactment  
22 video, it appears he was looking for said coffee, correct?

23 A. That's correct.

24 Q. And I believe, and correct me if I'm wrong,  
25 Detective, in his statement at Sunrise Hospital, he described

1 it as having a green cap; is that fair?

2 A. Yes.

3 Q. Now, he appeared to go through multiple cupboards  
4 when looking for the coffee; is that fair?

5 A. Yes.

6 Q. Did you ever stop him from looking for this coffee?

7 A. No.

8 Q. Did you ever tell him, hey, time's up, you only have  
9 50 seconds to find the coffee?

10 A. No, I did not.

11 Q. And even after the reenactment video was done, could  
12 he have gone back and looked for this coffee?

13 A. Absolutely.

14 Q. And it appears from the video, he looked through a  
15 number of the cupboards; is that fair?

16 A. Yes.

17 Q. Okay. And then -- sorry, one second. Let me find  
18 the picture. And more specifically -- well, which cupboard is  
19 this, Detective?

20 A. That looks like the cupboard just to the left of the  
21 stove.

22 Q. So would that have been above the counter where he  
23 said he put the mug?

24 A. Correct.

25 Q. Okay. And in the video, correct me if I'm wrong,

1 but he came back to this cupboard a couple of times; is that  
2 fair?

3 A. Yes, he did.

4 Q. And it looks like there's some Pop Tarts and stuff  
5 on the bottom of this photograph?

6 A. Yes.

7 Q. Do you know, did he have a chance to pull those  
8 things back in a way and look at the contents in that  
9 cupboard?

10 A. I heard him going through some of the items. I was  
11 behind him, and he was rather large, so he did block the --  
12 the cabinet. So I don't know exactly what items he touched  
13 inside there, but he was going through some items with his  
14 hands.

15 Q. All right.

16 MS. JOBE: Your Honor, I'm about to switch topics.  
17 I don't know if the Court wants me to continue.

18 THE COURT: Do you have more you can -- I mean, I  
19 thought we would go all the way up until --

20 MS. JOBE: Sure.

21 BY MS. JOBE:

22 Q. All right. Now, after you do the reenactment --  
23 well, let me tell you this. Did you have the opportunity to  
24 make some observations while you were at the apartment doing  
25 the photos and doing the reenactment video?



1 A. Sure.

2 Q. And as far as your observations go, did you have a  
3 chance to see if there were any tables or step stools or  
4 something that a kid could climb up on?

5 A. Yes, I -- I looked around to see if there was any  
6 step stools, any kitchen tables.

7 Q. Were there?

8 A. They were -- they were none.

9 Q. After the reenactment video was done, did you and  
10 your fellow detectives have an opportunity to look through the  
11 trash a bit and look through the contents of the residence?

12 A. I was looking for that -- I was curious about that  
13 -- the missing handle to the -- to the mug.

14 Q. Why were you curious about that?

15 A. Well, if -- if he had the coffee mug up there, and  
16 he wasn't sure if it was broken, he didn't say anything  
17 about --

18 MS. HOLIDAY: Objection. Speculation.

19 THE COURT: Overruled. You may continue.

20 THE WITNESS: Okay.

21 THE COURT: You may continue.

22 THE WITNESS: So, I was curious to see if the broken  
23 handle had -- maybe it was thrown away or it fell under a  
24 counter or the stove or something like that or if it was in  
25 the sink for that matter. So, I did look through the trash,

1 yes, and I looked through the sink.

2 BY MS. JOBE:

3 Q. Did you have ever find --

4 A. Or in the sink.

5 Q. Did you ever find a -- the handle that had broken  
6 off?

7 A. No, I did not.

8 Q. All right. And as far as you know from your  
9 investigation, do you even know if that handle broke off that  
10 day or if it was already broken off?

11 A. I wouldn't be able to tell.

12 Q. Sure. And now when you were looking around the  
13 residence, did you see any bathtubs out that looked like they  
14 had been used or anything like that laying about the  
15 residence?

16 A. There was one bath towel that I saw, and it was in  
17 the -- the bathroom and that truck was on top of that bath  
18 towel.

19 Q. Okay. And as far as the reenactment video is  
20 concerned, did the defendant make any statements as to whether  
21 or not that truck and bath towel over there prior to you --  
22 showing you State's 70. Do you make any statements as if that  
23 truck and bath towel were already there and had been there  
24 throughout the day?

25 A. Yes, I asked him specifically in that interview if

1 that truck was there when Chance received his burns, and he  
2 said yes, it was there.

3 Q. Now, after you concluded your investigation at the  
4 residence, did you secure the residence and leave with your  
5 fellow detectives?

6 A. Yes.

7 Q. And did you complete any additional investigation in  
8 this matter?

9 A. Yes.

10 Q. What additional investigation did you do?

11 A. I got the water temps of the faucets, both faucets  
12 in the residence.

13 Q. What was the purpose of that?

14 A. We wanted to see how hot the -- the temperatures got  
15 on both faucets, the hottest it could get by just running the  
16 hot water.

17 Q. Okay. And did you get a search warrant? Did you  
18 consent to search or something else?

19 A. No, I did not. I got consent from Jasmin to go back  
20 into the residence at a later date.

21 Q. Showing you State's 76. Do you recognize that?

22 A. Yes, I do.

23 Q. Okay. And what is that?

24 A. That's a consent to search form where Jasmin signed  
25 it, I witnessed it, and it was dated on the 8th of January.

1 Q. Okay. And this is your signature and your P number?

2 A. Yes, it is.

3 Q. All right. And did you go in on the 8th or did you  
4 go on a different day?

5 A. I went on a different day.

6 Q. Why did you have to go on a different day?

7 A. Jasmin didn't want to go back to the apartment with  
8 me, and she asked if I can have her father go.

9 Q. Did you make those arrangements to meet her father?

10 A. I did.

11 Q. All right. And when you went back to the apartment,  
12 if you recall, Detective, was there much that was different  
13 about that apartment?

14 A. Not really, no.

15 Q. All right. And when you went with her father to  
16 test the water temperatures, did you test the water  
17 temperatures or did you call someone out?

18 A. Our CSAs went out there with the temperatures and --  
19 and they did their own report.

20 Q. Okay. And was that a Ms. Robbie Dahn?

21 A. Yes.

22 Q. Okay. And while they were doing the testing of the  
23 temperature of the water, did you have the opportunity to time  
24 how long it took for the water to heat up?

25 A. Yes, I did.

1 Q. And do you recall how long it took for the water  
2 coming out of the kitchen sink to heat up?

3 A. To be exact, I'd have to refer back to the -- my  
4 report. It was a couple minutes, I believe, two minutes.

5 Q. Okay. And do you recall how long it took for the  
6 bath water to heat up out of the tub?

7 A. Again, to be exact, I'd have to refer to my report,  
8 but I believe it was five minutes we ran that temperature,  
9 just the hot for five minutes.

10 MS. JOBE: May I approach the witness, Your Honor?

11 THE COURT: You may.

12 BY MS. JOBE:

13 Q. First and foremost, do you recognize that,  
14 Detective?

15 A. Yes.

16 Q. What do you recognize that to be?

17 A. My arrest report.

18 Q. Okay. If you would review that for purposes of the  
19 question pending about the faucets.

20 A. Yes, I --

21 Q. Does that --

22 A. -- I was correct.

23 Q. So does that refresh your memory?

24 A. Yes, it does.

25 Q. You said you were correct about, approximately, two

1 minutes for the kitchen sink to heat up and five minutes for  
2 the bathtub; is that correct?

3 A. Correct.

4 Q. Now, we've learned that the sink in the bathroom was  
5 not -- the water temperature in the sink in the bathroom was  
6 not tested; that is correct?

7 A. That's correct.

8 Q. Why not?

9 A. He stated that the child went into the bathroom, and  
10 there was water when we got there in the bathtub, so we knew  
11 that -- or we -- we believed that he was in the bathtub at one  
12 point. So we tested that water coming out of the faucet --

13 Q. All right.

14 A. -- as he was -- because he was supposedly in the  
15 bathtub.

16 Q. Did you take any -- well, let me ask you this; when  
17 you were at the residence with Jasmin's dad, did you become  
18 aware of him doing anything with the contents of the residence  
19 or the contents of the kitchen?

20 A. Yes.

21 Q. And what did you learn?

22 A. He was going to take some food back with him to his  
23 residence where Jasmin was staying.

24 Q. All right. Now, as far as your investigation goes,  
25 fair to say you did even more follow-up; is that correct?

1 A. Yes.

2 Q. And what additional follow-up did you do?

3 A. I contacted a specialist that deals in burns, a burn  
4 specialist.

5 Q. Is that Phylip Peltier?

6 A. That's correct.

7 Q. And how did you contact him?

8 A. I contacted him via e-mail initially and asked to  
9 review a case of mine.

10 Q. Did he agree?

11 A. Yes.

12 Q. All right. And without telling me what was  
13 discussed, why did you reach out to Mr. Peltier?

14 A. I was in several conferences here in Las Vegas where  
15 Mr. Peltier, who's known as the "blue dye guy", he comes out  
16 here and he does his burn classes. And he's considered -- I  
17 heard he was an expert in burns. And I reached out to him  
18 because in order to -- in order to make a -- a proper decision  
19 on going forward if it's going to go criminal or an accidental  
20 case, I wanted to be a hundred percent confident in my  
21 feelings on how -- what I thought happened. I wanted to back  
22 it up by -- by an expert and that's why I contacted him.

23 Q. Did you tell Mr. Peltier, hey, I need this result,  
24 this is what I want to do?

25 A. No.

1 Q. All right.

2 A. In fact, he -- he told me not to ask him about the  
3 case or not to tell him about the case --

4 Q. So --

5 A. -- initially.

6 Q. -- just provide pictures, no details?

7 A. Correct.

8 Q. Did you also consult Dr. Sandra Cetl?

9 A. Yes, I did.

10 Q. Why did you do that?

11 A. We have a working relationship, our unit, with  
12 Dr. Cetl. She is our pediatric intensivist here in Clark  
13 County. So she works on all the child abuse cases here in Las  
14 Vegas.

15 Q. Have you ever consulted with Dr. Cetl and she's told  
16 you, no, I just -- it's accidental, this isn't abusive?

17 A. Numerous times, yes.

18 Q. And so you consulted with her on this case, correct?

19 A. Yes, I did.

20 Q. And do you -- I believe early on in your testimony  
21 you mentioned going to UMC and following up there as well; is  
22 that correct?

23 A. Yes, I did.

24 Q. And what was the purpose of following up at UMC?

25 A. I -- I had heard there were additional pictures out.



1 there, and Mr. Peltier wanted some pictures that were not just  
2 of that day. He wanted the healing pictures as well. So I  
3 sought out to get some pictures in the healing process of  
4 Chance.

5 Q. Now, after you did all those steps, did you  
6 eventually book the defendant on a charge related to this  
7 case?

8 A. Yes.

9 THE COURT: Are you're done? Okay.

10 MS. JOBE: Up to this point, yes.

11 THE COURT: All right. At this time, we're going to  
12 stop for the evening. During this recess, you're admonished  
13 not to talk or converse amongst yourselves or with anyone else  
14 on 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 information,  
17 including without limitation, newspapers, television, the  
18 Internet or radio. Or form or express any opinion on any  
19 subject connected with this trial until the case is finally  
20 submitted to you.

21 We'll be in recess until tomorrow morning at 10:30  
22 thank you very much. You are excused.

23 THE MARSHAL: You'll rise for the exiting jurors,  
24 please.

25 THE COURT: Detective, if you'll just stay a minute

1 so I can --

2 THE WITNESS: Okay.

3 THE COURT: -- determine when we --

4 THE WITNESS: Wait until everybody leaves, okay.

5 THE COURT: -- want you to come back.

6 THE WITNESS: Okay.

7 THE COURT: Because we're probably going to have to  
8 split your testimony up. Sorry. I wanted to get done  
9 tonight.

10 THE WITNESS: It happens. I know. I understand.

11 (Outside the presence of the jury).

12 THE COURT: What time do you want the detective back  
13 tomorrow, because I know we have the doctor and I don't want  
14 to -- I just don't want to have him --

15 MS. JOBE: Absolutely.

16 THE COURT: -- here all day --

17 MS. JOBE: I appreciate --

18 THE COURT: -- tomorrow.

19 MS. JOBE: Your Honor, the State's going to ask  
20 based on the estimate by Ms. Holiday of her cross-examination  
21 of Dr. Cetl, we're going to ask the detective to come back at  
22 1:30.

23 THE COURT: Okay. Is that good?

24 THE WITNESS: Yes.

25 MS. JOBE: And if that changes, if we're running way

1 ahead or I'll be in touch with him.

2 THE COURT: Sure. Okay. Thank you.

3 THE WITNESS: You're welcome.

4 THE MARSHAL: Thank you, everyone. See you  
5 tomorrow.

6 THE COURT: See you tomorrow, Hawkes.

7 THE MARSHAL: Yes, ma'am.

8 THE COURT: Thank you.

9 (Pause in the proceedings)

10 (Off the record at 5:31 p.m. until 5:31 p.m.)

11 (Outside the presence of the jury).

12 (Pause in the proceedings)

13 THE COURT: Did you tell them specifically which  
14 phone calls so that they know which phone calls that they need  
15 to review?

16 MS. JOBE: I think. We can.

17 THE COURT: Okay.

18 MS. JOBE: Yeah.

19 MS. HOLIDAY: Your Honor, we have one final  
20 matter.

21 MS. KIERNY: I think Michelle had something first.

22 MS. HOLIDAY: Oh, I'm sorry.

23 THE COURT: We're just -- we're just --

24 MS. KIERNY: We're waiting for the record.

25 THE COURT: The thing is still spinning.

1 THE COURT RECORDER: Yeah, we're waiting. One  
2 second. It should come back on.

3 MS. JOBE: I am so sorry. I should have been more--  
4 (Pause in the proceedings)

5 THE COURT: The record will reflect the hearing is  
6 taking place outside the presence of the jury panel. Go  
7 ahead.

8 MS. JOBE: No, Your Honor, while we were listening  
9 to Mr. Mathews' recorded statement from Sunrise Hospital, I  
10 was trying to discretely have communications with --

11 THE COURT: Oh, wait, what happened to Mr. Mathews?

12 MS. JOBE: He's gone.

13 THE COURT: Oh, my gosh.

14 MS. HOLIDAY: Oh, yeah, they took him.

15 THE COURT: Are you okay?

16 MS. KIERNY: We can -- is this regarding --

17 THE COURT: I didn't even realize --

18 MS. KIERNY: -- the CPS --

19 THE COURT: -- that he had gotten out of the  
20 courtroom.

21 MS. KIERNY: And then ours is just regarding  
22 clerical. I think we can waive his presence for this.

23 MS. HOLIDAY: Yeah, that's fine.

24 MS. KIERNY: Are you okay with that? Okay.

25 THE COURT: Okay.

1 MS. KIERNY: Yeah.

2 MS. JOBE: I received minimal notes from Ms. Dohrman  
3 (phonetic), and she reviewed the notes that they had so I'm  
4 going to forward those to the Court before I go home tonight.  
5 It will be as soon as I can get back to my office.

6 THE COURT: Okay.

7 MS. JOBE: (Inaudible) I believe it might be ten  
8 pages at best. It's probably more like five or six, and  
9 not --

10 THE COURT: Okay.

11 MS. JOBE: -- a whole lot of information is my  
12 understanding. We're going to --

13 THE COURT: Will you make sure it goes to Pam?

14 MS. JOBE: Yes, ma'am.

15 THE COURT: Okay.

16 MS. JOBE: Your Honor, sorry.

17 THE COURT: Thank you. That's okay.

18 MS. JOBE: Secondly, it appears they still have the  
19 transcripts from the defendant's interview so we're asking to  
20 have those collected --

21 THE COURT: Okay.

22 MS. JOBE: -- so they don't keep them and refer to  
23 them.

24 THE COURT: Sure. Thank you for reminding me.  
25 Anything else?

1 MS. JOBÉ: Not from the State.

2 MS. HOLIDAY: Just one quick thing. As Your Honor  
3 knows, earlier we requested a stay so we could file an  
4 extraordinary writ to the Supreme Court. We'd like to just  
5 request a transcript -- an expedited transcript from today so  
6 that we have that to make the record, if we have an order  
7 prepared, if the Court --

8 THE COURT: Sure.

9 MS. HOLIDAY: -- would be interested in signing it.

10 THE COURT: How fast -- how expedited do you want  
11 it?

12 MS. HOLIDAY: I don't know, I guess --

13 THE COURT: Well, I'm just --

14 MS. HOLIDAY: -- as quickly as possible.

15 THE COURT RECORDER: What does that mean?

16 MS. HOLIDAY: Obviously, we'd prefer to file our  
17 writ first thing in the morning. I assume that's not going to  
18 be possible.

19 THE COURT: You'd better prepare for  
20 cross-examination.

21 MS. HOLIDAY: We certainly will.

22 THE COURT: Okay.

23 MS. HOLIDAY: Absolutely, Your Honor.

24 THE COURT: So somebody else is doing the writ  
25 tonight. Who owes doing cross?

1 MS. KIERNY: I can do cross.

2 THE COURT: Okay.

3 MS. KIERNY: I can do that.

4 THE COURT: You've got to listen to those phone  
5 calls.

6 MS. KIERNY: She can prepare the writ so I can --

7 THE COURT: Okay.

8 MS. KIERNY: -- listen to those phone calls.

9 MS. HOLIDAY: That's it.

10 THE COURT: I mean, because, you know Kris has to be  
11 in here. I'm happy to sign this so you can get your  
12 transcript whenever you want, but I don't know if it will be  
13 tomorrow.

14 MS. HOLIDAY: That's okay. I mean, I guess, as soon  
15 as possible. I don't know if there's a process by which  
16 somebody else prepares it if she's still in trial. I have no  
17 idea how it works.

18 THE COURT: It would be -- that would be nice.

19 THE COURT RECORDER: It depends on how fast you need  
20 it.

21 MS. HOLIDAY: Well --

22 THE COURT: See, and it just says expedited, that's  
23 why I asked.

24 MS. KIERNY: The thing is we need to obviously have  
25 that to the Supreme Court as soon as possible because once the

1 jury deliberates, returns a verdict, a writ of -- you know,  
2 the writ is no longer useful, valid. You know, they'll just  
3 decline it for that. So I don't know if we anticipate closing  
4 tomorrow and settling instructions and discharging the jury.  
5 If that's the case, then we need it by the morning to attach  
6 to our motion that we're writing tonight.

7 THE COURT: There's no way.

8 MS. KIERNY: If we anticipate --

9 THE COURT: I'm not -- I'm not keeping the court  
10 reporter here all night to --

11 MS. KIERNY: Shoe, I understand. And I understand  
12 that.

13 THE COURT: Sorry.

14 MS. KIERNY: I know there's -- I -- I don't want --

15 THE COURT: I'll give you a CD. I'll give you a CD  
16 of the hearing.

17 MS. KIERNY: Is that possible? Well -- Mr. Burton,  
18 I know you have more experience with the Supreme Court. Will  
19 they accept a CD, do you think?

20 THE COURT: Oh, okay. No, the Supreme Court's not  
21 going to accept that.

22 MS. KIERNY: I didn't think so.

23 THE COURT: Yeah.

24 MS. KIERNY: Well, I guess, that --

25 THE COURT: No, they're not.



1 MS. KIERNY: -- at least we could make reference to  
2 -- we can't really make reference to something in the CD.

3 MS. HOLIDAY: I don't each know how you do this.

4 MS. KIERNY: Yeah. This is new to us. As soon as  
5 possible, I guess, would be our request. So --

6 THE COURT: Okay.

7 MS. KIERNY: -- if that's morning or if that's by  
8 noon or, you know, just as soon as possible. As soon as --

9 THE COURT: It's Probably not going to be tomorrow,  
10 I'm telling you.

11 MS. KIERNY: There's no way tomorrow.

12 THE COURT: I mean, because my court recorder has to  
13 be in here with me.

14 MS. KIERNY: It sounds like she --

15 THE COURT: So we'll make a request for somebody  
16 else --

17 MS. KIERNY: Okay.

18 THE COURT: -- to transcribe it.

19 MS. KIERNY: That would be great. That would be  
20 great. And I know there's like a rough draft versus a final  
21 draft.

22 THE COURT: Sure.

23 MS. KIERNY: And a rough draft is absolutely fine,  
24 whatever we can get. I -- I know there's a distinction there,  
25 but --

1 THE COURT: Okay.

2 THE COURT RECORDER: And how -- what exactly, how  
3 long is it going to --

4 MS. KIERNY: Right.

5 THE COURT RECORDER: -- depend, too, how long it's  
6 going to be.

7 MS. KIERNY: What is -- what is it that we need?

8 THE COURT: She's -- and it said the proceedings for  
9 today. It's an entire -- it's an entire day.

10 MS. HOLIDAY: To make our argument, I think the ones  
11 we really need are just the experts because that's, you know,  
12 where the focus of our argument would be is what the experts  
13 testified to. So if it helps to limit to just having, you  
14 know, the expert testimony, I think that would be fine.

15 THE COURT RECORDER: That's up to you, Your Honor,  
16 you know. I mean if they're wanting a daily for like hours  
17 of --

18 THE COURT: Well, no, I told them there's no way  
19 it's going to be done tomorrow.

20 THE COURT RECORDER: Yeah. I mean, I will do it,  
21 you know. I'll have --

22 THE COURT: No, I'm not going to require someone to  
23 stay here at --

24 THE COURT RECORDER: No, no, no, no.

25 THE COURT: -- all night and --

1 THE COURT RECORDER: I know that.

2 THE COURT: -- transcribe.

3 THE COURT RECORDER: I'm just saying whatever you  
4 want me to ask Lara to have them do, I will do, you know.

5 THE COURT: Okay. I can ask.

6 MS. HOLIDAY: Okay.

7 THE COURT: I can ask for it to be done tomorrow. I  
8 just don't know if that will happen.

9 MS. HOLIDAY: That's okay. As I said, we're just  
10 cool with as soon as possible.

11 THE COURT: Okay.

12 MS. HOLIDAY: So we'd prefer, obviously --

13 THE COURT: But you only want the testimony of the  
14 two experts today?

15 MS. HOLIDAY: I think that would be enough to at  
16 least draft our --

17 MS. KIERNY: Well, I mean, we probably need our  
18 record -- the record that we made regarding that, and we're  
19 going to need our hearing, too.

20 MS. HOLIDAY: From yesterday?

21 THE COURT RECORDER: Can we go off the record or?

22 MS. KIERNY: Oh, yeah, that's fine.

23 THE COURT: I don't care.

24 (Court recessed at 5:37 P.M., until Thursday,  
25 January 12, 2017, at 10:53 A.M.)

\* \* \* \* \*

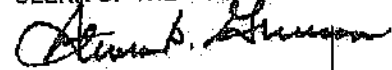
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ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual proceedings in the above-entitled case to the best of my ability.

*Julie Lord*

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JULIE LORD, INDEPENDENT TRANSCRIBER.



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 4

THURSDAY, JANUARY 12, 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:

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Proceedings recorded by audio-visual recording, transcript produced by transcription service.

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EXHIBITS

(No exhibits admitted)

1 LAS VEGAS, NEVADA, THURSDAY, JANUARY 12, 2017, 10:53 A.M.

2 (Outside the presence of the jury)

3 (Pause in the proceedings)

4 THE MARSHAL: Please come to order. Court is now  
5 in session.

6 THE COURT: Okay. The record will reflect that the  
7 hearing is taking place outside the presence of the jury  
8 panel. The defendant is present with his attorneys.

9 MS. JOBE: Your Honor, before we get started, I  
10 believe, any proposed witnesses need to be outside of the  
11 courtroom.

12 THE COURT: Okay. Are there any witnesses in the  
13 courtroom?

14 MS. JOBE: And --

15 MS. HOLIDAY: Good morning, Your Honor.

16 THE COURT: Morning.

17 MS. HOLIDAY: So we just have a quick issue we want  
18 to talk about. You may have noticed my mom sitting in the  
19 courtroom throughout the trial. She's not here right now.

20 THE COURT: Let's see, I have -- where's your mom?

21 MS. HOLIDAY: But anyway --

22 THE COURT: Okay.

23 MS. HOLIDAY: She's outside right now --

24 THE COURT: Okay.

25 MS. HOLIDAY: -- but she's been sitting here

1 throughout the trial.

2 THE COURT: Okay.

3 MS. HOLIDAY: She's here from out of state visiting  
4 and to watch the trial and to help me with my son. Anyway,  
5 this morning she was waiting outside the courtroom to come in  
6 and --

7 THE COURT: Oh, no.

8 MS. HOLIDAY: -- and there were a couple of other  
9 witnesses outside the courtroom also, I believe, Dr. Olson  
10 and Detective DePalma.

11 THE COURT: Okay.

12 MS. HOLIDAY: I think she overheard them talking to  
13 each other. She obviously, can't remember exact wording, but  
14 it sounded to her like maybe Dr. Olson was asking about why  
15 did the defense ask the female doctor if -- why she didn't  
16 treat the -- something like that.

17 THE COURT: Like what, something like what?

18 MS. HOLIDAY: Something --

19 THE COURT: You have to tell me something.

20 MS. HOLIDAY: -- why didn't she treat the -- why  
21 didn't the defense attorney -- or why did the defense  
22 attorney say the female doctor didn't treat the child or  
23 something like that. Obviously, this would be a concern to  
24 the defense because we, certainly in the middle of trial,  
25 don't want two witnesses discussing testimony or certainly



1 not discussing --

2 THE COURT: Okay.

3 MS. HOLIDAY: -- prior -- somebody else's testimony  
4 that's already happened when the exclusionary rule is  
5 invoked.

6 I certainly, at this point, don't want to accuse  
7 two professionals of having an improper conversation. So  
8 perhaps the Court would entertain a very brief hearing to  
9 find out what was actually said.

10 THE COURT: Okay.

11 MS. JOBE: To say that Dr. Olson doesn't want to be  
12 here might be one of the greatest understatements of 2016 and  
13 2017 combined. In the State's attempts to -- Dr. Olson is  
14 the treating physician --

15 THE COURT: Right.

16 MS. JOBE: -- the first physician with eyes and  
17 hands --

18 THE COURT: Sure.

19 MS. JOBE: -- on the child. The Sunrise records  
20 that the State received only makes reference to Dr. Olson.  
21 Doctor Olson filled out that SCAN report that Dr. Cetl has  
22 testified about, the -- not the contents of this case  
23 specifically, but what is SCAN report is when Mr. Burton was  
24 asking her questions.

25 And since we're outside the presence of the jury,

1 in that SCAN report, Dr. Olson checks off definite abuse and  
2 his signature is the one on the page, which is why the State  
3 has brought him in. He has contended that Dr. Cetl somehow  
4 had something to do with the child's visit at Sunrise  
5 pediatrics. I've specifically asked him, I'm like she's not  
6 mentioned in any of this child's records. She's not  
7 mentioned -- she hasn't done a consult report. She hasn't  
8 done anything. We need you to come in because you are the  
9 physician whose name is on this report.

10 I appreciate that Dr. Cetl was consulted about this  
11 case.

12 THE COURT: I was wondering why he has to be here  
13 if Dr. Cetl testifies.

14 MS. JOBE: Very angry. And so it's State's  
15 understanding that the detectives may have challenged  
16 Dr. Olson considering this burn to be an emersion burn  
17 because that's what's checked off in the SCAN report, based  
18 on the detective's training and experience. And that  
19 challenge, and then going to Dr. Cetl for information, is  
20 apparently a hot topic or at least a hot source of  
21 contention. Dr. --

22 THE COURT: Oh, so Dr. Olson is irritated that the  
23 detectives got a consult from Cetl?

24 MS. JOBE: Yes, that's State's understanding. And  
25 Dr. Olson --

1 THE COURT: Who cares?

2 MS. JOBE: If I may. I apologize.

3 THE COURT: Okay.

4 MS. JOBE: He came in here -- I've never met the  
5 man in person. I've talked to him on the phone. He came in  
6 here very hostile to me, and told me what he's going to be  
7 testifying to, and he's going to be testifying that Dr. Ceti  
8 saw this child and whatever. So that is what has transpired  
9 this morning.

10 THE COURT: Okay. So he --

11 MS. JOBE: He also --

12 THE COURT: -- he's going to testify to something  
13 that he doesn't know?

14 MS. JOBE: Well --

15 MS. KIERNY: I would ask to strike Dr. Olson --

16 MS. JOBE: No.

17 MS. KIERNY: -- at this point.

18 MS. JOBE: No. What he --

19 THE COURT: He's not going to testify to anything  
20 that you don't ask him.

21 MS. JOBE: Sure.

22 THE COURT: I can tell you that or that the defense  
23 doesn't ask him.

24 MS. JOBE: And I'm not asking leading questions.  
25 I'm relying on the information --

1 THE COURT: Sure.

2 MS. JOBE: -- in the medical records that have his  
3 name and his signature on these documents. As far as the  
4 exchange in the hallway, we heard about it so we pulled  
5 DePalma in without Dr. Olson, what happened.

6 THE COURT: Okay.

7 MS. JOBE: Detective DePalma informed us that  
8 Dr. Olson essentially came up to him in much the same manner  
9 that Dr. Olson approached us, and Dr. Olson was challenging  
10 Detective DePalma, because Detective DePalma was the one at  
11 the hospital, and isn't it true that this, that or the other?  
12 And Detective DePalma knows not to engage, knows not to talk  
13 about statements or his testimony. I don't know exactly what  
14 words were spoken, but Detective Olson (sic) said something  
15 to the effect of, you had Dr. Cetl, whatever, and that's what  
16 I'm going to testify to. And the detective was like, testify  
17 to whatever you want to testify to.

18 THE COURT: Okay. So what is the defense concerned  
19 about? That Dr. Olson is talking to the detective?

20 MS. HOLIDAY: Partially.

21 THE COURT: Okay, do you want --

22 MS. HOLIDAY: Now explaining to the detective who  
23 hasn't finished testifying what Dr. Olson's going to testify  
24 to. But also --

25 THE COURT: He doesn't have any idea what he's

1 going to testify to because he hasn't been called as a  
2 witness.

3 MS. HOLIDAY: Well, it sounds like he does. But,  
4 Your Honor --

5 THE COURT: I'll be happy to tell him.

6 MS. HOLIDAY: -- more concerning is we're just --  
7 we want to know where Dr. Olson got the information about  
8 what Dr. Cetl testified to or maybe he doesn't know what  
9 Dr. Cetl testified to, and that's just what it sounded like  
10 is --

11 THE COURT: You want me to bring Dr. Olson in and  
12 find out what the conversation was about and tell him stop  
13 talking to other witnesses?

14 MS. JOBE: To be clear, I have specifically told  
15 Dr. Olson that -- I have not told Dr. Olson anything about  
16 what Cetl testified to. He and I had a discussion prior to  
17 trial even starting about Dr. Cetl's role in this case, and I  
18 said she will also be called to testify as an abuse expert.

19 When he came in here this morning and very upset,  
20 he said something like, to the effect of whether Cetl's  
21 testifying or not. I said, she's also testifying, but you  
22 need to be here because you are the first physician. That's  
23 the extent of the conversation.

24 THE COURT: Okay. I'm happy to bring Dr. Olson in.  
25 Officer Hawkes, can you get Dr. Olson?

1 THE MARSHAL: Yes, ma'am.

2 THE COURT: What's Dr. Olson's full name?

3 MS. JOBE: That I'm actually not sure of.

4 THE COURT: And we have the other doctor out that  
5 we're supposed to have on at 10:30?

6 MS. JOBE: She is not. She had a medical procedure  
7 this morning so I've had her come back after lunch.  
8 Detective DePalma's outside. Dr. Cetl has not been here this  
9 morning.

10 (Dr. Olson is present)

11 THE COURT: Okay. If you'll just stand right there  
12 at the podium. And if you'll just state your true and full  
13 name for the record.

14 DR. OLSON: Elis Olson.

15 THE COURT: Okay. And it's my understanding that  
16 you have been called here, even subpoenaed here today by the  
17 State of Nevada, correct?

18 DR. OLSON: Yes.

19 THE COURT: And when you came up, did you have a --  
20 when you came up to the courtroom, did you have a  
21 conversation outside of the courtroom with one of the  
22 detectives?

23 DR. OLSON: Yes, sure did.

24 THE COURT: Can you tell me the substance of that  
25 conversation?

1 DR. OLSON: I asked him if he was aware that  
2 Dr. Cetl had seen this child in the Emergency Room, and he  
3 said yes.

4 THE COURT: He was aware that Dr. Cetl saw this  
5 child in the Emergency Room?

6 DR. OLSON: Yes.

7 THE COURT: Okay.

8 DR. OLSON: And I asked him, I said, well, do you  
9 remember that you disputed my findings on the case, and he  
10 said, no. And I said, well, that's why you asked Dr. Cetl to  
11 come to the Emergency Room to see the kid.

12 THE COURT: Okay. And that was the substance? And  
13 you think that that has transpired? You think --

14 DR. OLSON: What's transpired?

15 THE COURT: -- that -- you think that Dr. Cetl came  
16 to the ER and examined this child?

17 DR. OLSON: Yes.

18 THE COURT: Did you see that?

19 DR. OLSON: Yep.

20 THE COURT: You saw her come to the ER and examine  
21 this child?

22 DR. OLSON: Um-h'm.

23 THE COURT: With your eyes?

24 DR. OLSON: I saw her in the Emergency Room.

25 THE COURT: Did you see her examining this child?

1 DR. OLSON: No, I didn't go into the room and see  
2 her in the room.

3 THE COURT: Okay. So why do you think that she  
4 examined this child?

5 DR. OLSON: Because she told the detective that she  
6 agreed that these were child abuse burns.

7 THE COURT: How do you -- I'm just wondering how do  
8 you know all this?

9 DR. OLSON: Because I was there. I overheard it.

10 THE COURT: Okay. So you heard her talking to the  
11 detective on the day this child was in there?

12 DR. OLSON: Yes.

13 THE COURT: And you observed her treating this  
14 child?

15 DR. OLSON: I observed her making that statement.  
16 I did not see her going into the room.

17 THE COURT: Making what statement?

18 DR. OLSON: That she agreed that these were child  
19 abuse burns.

20 THE COURT: Okay. Anything else that you talked  
21 to --

22 DR. OLSON: That's it.

23 THE COURT: Okay. I just want to inform the  
24 exclusionary rule has been invoked, and therefore, the  
25 witnesses that have testified -- the detective is not done



1 testifying --

2 DR. OLSON: Okay.

3 THE COURT: -- so the people that have testified  
4 and the people that are still to testify are not permitted to  
5 have any discussions with anyone --

6 DR. OLSON: Um-h'm.

7 THE COURT: -- about the testimony that they will  
8 give, about the facts and circumstances of this case with  
9 anyone other than the attorneys that subpoenaed you here  
10 today. It's my understanding you had a conversation with the  
11 State. They subpoenaed you here today. That's appropriate.  
12 It's just not appropriate to talk about the case with other  
13 witnesses.

14 And I'm -- you've been called to testify before,  
15 right?

16 DR. OLSON: Yes.

17 THE COURT: Okay. Do you understand the  
18 exclusionary rule?

19 DR. OLSON: No.

20 THE COURT: Okay. That's why I'm just informing  
21 you. I'm not sure if anyone told you. It has been invoked,  
22 so you're not permitted to have any communications with  
23 anyone except the attorney that subpoenaed you here today.  
24 So you can't have any communication with the detective about  
25 the facts and circumstances in this case or any of the

1 testimony that has been --

2 DR. OLSON: Sure.

3 THE COURT: -- had in this matter. Do you have any  
4 questions?

5 DR. OLSON: Nope.

6 THE COURT: Does either side have any questions  
7 before I allow the doctor to step out?

8 MS. HOLIDAY: Court's brief indulgence.

9 THE COURT: Sure.

10 MS. JOBE: State does not.

11 THE COURT: Okay.

12 MS. HOLIDAY: Court's previous indulgence. I do  
13 have just a couple questions, Doctor?

14 THE COURT: You can direct it to the Court. What  
15 is it that you want to know?

16 MS. HOLIDAY: Sure. I would like to ask Dr. Olson  
17 if he has heard any information about Dr. Cetl's testimony in  
18 this case so far?

19 THE COURT: Okay. Have you heard any -- has anyone  
20 told you about what Dr. Cetl has testified to?

21 DR. OLSON: Yes.

22 THE COURT: Who?

23 DR. OLSON: The attorney.

24 THE COURT: Okay. The State -- you've had  
25 conversations with the attorney?

1 DR. OLSON: Yes.

2 THE COURT: Before trial?

3 DR. OLSON: Yep.

4 THE COURT: Okay. So before trial?

5 DR. OLSON: Yes.

6 THE COURT: So you don't know what -- has anyone  
7 called you after the doctor testified to tell you what she  
8 testified to?

9 DR. OLSON: No.

10 THE COURT: Okay.

11 MS. HOLIDAY: Court's indulgence.

12 THE COURT: Anything else?

13 MS. HOLIDAY: I would ask him if these were  
14 conversations about what she testified to in previous  
15 hearings?

16 THE COURT: Did you have any -- what, who cares?  
17 That's not relevant to what I'm doing here today. All right.  
18 But your conversations were with the District Attorney before  
19 trial about what Dr. Cetl would testify to; is that correct?

20 DR. OLSON: Yes.

21 THE COURT: Or what she may have testified to at  
22 previous hearings?

23 DR. OLSON: I specifically asked the attorney  
24 whether Dr. Cetl had been involved in any hearings on this  
25 case, and she --

1 THE COURT: Okay.

2 DR. OLSON: -- flat out said no.

3 THE COURT: Okay. All right. Anything else?

4 MS. HOLIDAY: Court's indulgence. No. Thank you.

5 MS. JOBE: And if I could direct my questions to

6 the Court, Your Honor?

7 THE COURT: Okay.

8 MS. JOBE: To the extent any conversations were had  
9 with Dr. Olson about what Dr. Cetl would be called for was --  
10 if you could ask him if it was clarified she'd be called as  
11 abuse or neglect specialist, and that he was the first hands-  
12 on physician with the child at the hospital?

13 THE COURT: So you understand that --

14 DR. OLSON: Can I --

15 THE COURT: -- because that's --

16 DR. OLSON: Can I clarify something?

17 THE COURT: Sure.

18 DR. OLSON: I specifically asked the District  
19 Attorney if Dr. Cetl had been involved in this case at all,  
20 and she said no, except that she reviewed the pictures the  
21 next --

22 THE COURT: Okay.

23 DR. OLSON: -- day or whenever. She didn't say  
24 exactly when.

25 THE COURT: Okay. And that was before trial?

1 DR. OLSON: Yes.

2 THE COURT: Okay. And you asked if Dr. Cetl had  
3 testified in any previous hearings?

4 DR. OLSON: And she just said no.

5 THE COURT: Okay. And anything else that you had  
6 to discussions about?

7 DR. OLSON: Nope, that's it.

8 THE COURT: Okay. And I mean, you understand why  
9 you've been subpoenaed here today, right?

10 DR. OLSON: Absolutely.

11 THE COURT: Okay. All right. Thank you. And  
12 Dr. Olson, we're going to try to bring you in as soon as  
13 possible. I just want to thank you very much for your  
14 willingness to be here --

15 DR. OLSON: Sure.

16 THE COURT: -- and to provide testimony to this  
17 jury. And just remember it's -- you just can't talk about  
18 anything with -- it's just better if you just don't talk to  
19 anybody. Then we don't have to worry.

20 DR. OLSON: Absolutely. So am I going on the stand  
21 because I'm supposed to be in the Emergency Room. This was  
22 scheduled at 10:30 so.

23 THE COURT: Thank you very much for being here.

24 DR. OLSON: Okay.

25 THE COURT: We'll let you know when we need you.

1 (Dr. Olson is not present)

2 THE COURT: Okay, the record will reflect that  
3 Dr. Olson has left the courtroom. Is the defense satisfied?

4 MS. HOLIDAY: Court's indulgence.

5 (Pause in the proceedings)

6 MS. HOLIDAY: Okay.

7 THE COURT: Dr. Cetl did not come to the ER and  
8 treat this child, correct, or did she?

9 MS. KIERNY: We don't know, weren't there.

10 MS. JOBE: The State's understanding is that  
11 Dr. Cetl was not the treating physician for this child.  
12 Ordinary practice, if she treats this child and does an  
13 actual consult on the child, she fills out her own report  
14 that is contained within the medical records.

15 There are times, because her office is at the ER,  
16 where she pops in or the detectives see her in the hallway  
17 and they'll run some facts by her and she'll provide her  
18 opinions and go from there and then they usually follow up  
19 with her.

20 THE COURT: Okay. Because I just want to -- I  
21 mean, she's not noted anywhere in the medical records,  
22 correct?

23 MS. JOBE: No.

24 THE COURT: All right.

25 MS. JOBE: I assure you, if I could have called her

1 as the treating physician without calling Dr. Olson, I would  
2 have.

3 THE COURT: Okay. All right.

4 MS. KIERNY: I know Dr. Olson is really anxious to  
5 hit the stand. I do have before Detective DePalma testifies  
6 regarding jail calls, I do have a record to make regarding  
7 that. Do you want to wait until that happens or do you want  
8 to --

9 THE COURT: Who are we going to call first?

10 MS. JOBE: Dr. Olson.

11 THE COURT: So we're going to break up the  
12 detective's testimony again?

13 MS. JOBE: Yes, Your Honor.

14 THE COURT: Okay. Before I bring the jury in, the  
15 District Attorney did e-mail some documents to me. I have  
16 reviewed those. I'm going to provide them to the defense.

17 MS. HOLIDAY: Oh, okay.

18 THE COURT: They're not -- I've reviewed them.  
19 They're narrative notes. I'm going to mark a copy it as  
20 court's exhibit next in line, however, it will be sealed.  
21 Exhibit 6?

22 THE CLERK: Yes, Your Honor.

23 THE COURT: And Exhibit 6 will be sealed. And the  
24 defense and State can approach and you can -- does -- the  
25 State has a copy, correct? The defense, I'm going to give

1 you a copy of the records.

2 MS. HOLIDAY: May I approach?

3 THE COURT: Of course. My review of the notes does  
4 not indicate that there's any notation -- I mean, I encourage  
5 you to read them, of course, yourself, but I reviewed them  
6 last night. And I -- I'm going to give them to you, but out  
7 of an abundance of caution, however, my review did not  
8 indicate that there was any notation of an event where the  
9 mother and the CPS worker were together and she found coffee.

10 MS. HOLIDAY: Okay.

11 THE COURT: There's no corroboration for that event  
12 in the CPS notes, that I could find. But again, I encourage  
13 you to review them yourself.

14 MS. HOLIDAY: Could Your Honor tell if there were  
15 any notes --

16 THE COURT: There's notes about coffee.

17 MS. HOLIDAY: In this -- regarding the specific day  
18 that this meeting would have taken place.

19 THE COURT: Not that I can tell.

20 MS. HOLIDAY: Okay.

21 MS. JOBE: And as a matter of record, after  
22 Detective DePalma's testimony and watching the reenactment  
23 video in court, Mr. Burton and I had a conversation last  
24 night after court and decided we're just not going to call  
25 Joanna Westmoreland. I still believe it's -- obviously, we



1 turned over the records to the Court and they should have  
2 them to do what they wish with about that issue because we  
3 raised it, but the State's not going to be called her to  
4 testify.

5 THE COURT: Okay. All right. I think we can bring  
6 them in. And then we're going to bring in Dr. Olson first.

7 MS. KIERNY: And then take a break --

8 THE COURT: Who's going to --

9 MS. KIERNY: -- and then make a record of jail  
10 calls?

11 THE COURT: We're going to finish Dr. Olson and get  
12 him out of here.

13 MS. KIERNY: Of course, yes.

14 THE COURT: Yeah.

15 MS. JOBE: I will be questioning, Your Honor.

16 THE COURT: I was just going to ask, who's going to  
17 do cross?

18 MS. HOLIDAY: I will, for Dr. Olson.

19 THE COURT: Okay.

20 (Pause in the proceedings)

21 THE MARSHAL: All rise for the entering jury,  
22 please.

23 (In the presence of the jury).

24 THE MARSHAL: Thank you, everyone. Please be  
25 seated.

1 THE COURT: Does the State stipulate to the  
2 presence of the jury panel?

3 MS. JOBE: Yes, Your Honor.

4 THE COURT: The defense?

5 MS. HOLIDAY: Yes, Your Honor.

6 THE COURT: Good morning, ladies and gentlemen.  
7 Thank you for being here. We're going to -- we were with the  
8 detective yesterday at the end of the day. We're going to --  
9 apologize for this, but we're going to break in his testimony  
10 now and State's going to call another witness out of order.  
11 State may call Dr. Olson.

12 MS. JOBE: Yes, Your Honor, the State calls  
13 Dr. Olson.

14 DR. ELIS OLSON, STATE'S WITNESS, SWORN

15 THE CLERK: Thank you please be seated. Could you  
16 please state and spell your name for the record.

17 THE WITNESS: Elis Olson, E-l-i-s, O-l-s-o-n.

18 THE CLERK: Thank you.

19 MS. JOBE: If you could just set those to the side,  
20 Doctor.

21 DIRECT EXAMINATION

22 BY MS. JOBE:

23 Q. What is your occupation?

24 A. I'm a pediatric ER physician.

25 Q. How long have you been so employed?

1 A. 1989.

2 Q. And what is your training and experience to be a  
3 pediatric physician?

4 A. I've trained in pediatric emergency medicine.

5 Q. Do you also have degrees, Doctor?

6 A. Yes, I do.

7 Q. And what did you get your degrees?

8 A. 1986, 1989.

9 Q. And where were they from?

10 A. Emory.

11 Q. And what were your degrees in, Doctor?

12 A. Pediatrics and pediatric emergency medicine.

13 Q. Fair to say as a physician, you have to have  
14 continuing education; is that correct?

15 A. Yes.

16 Q. Obviously, you've maintained your license over those  
17 years?

18 A. Yes.

19 Q. So you've been completing your continuing education,  
20 correct?

21 A. Yes.

22 Q. All right. And do you sometimes do shifts and work  
23 at Sunrise Children's Hospital?

24 A. Yes.

25 Q. How frequently?

1 A. Ten days a month.

2 Q. I'm sorry?

3 A. Ten days a month.

4 Q. Thank you, Doctor. You're not an employee of  
5 Sunrise Hospital; is that --

6 A. No.

7 Q. As -- when you work in the Sunrise Children's  
8 Hospital Emergency Department, generally speaking, what are  
9 your duties and responsibilities?

10 A. Take care of sick children.

11 Q. When you're taking care of a sick child, do you get  
12 a history or complaint of why they're presenting to you, what  
13 you may need to address?

14 A. Yes.

15 Q. Is that usually taken from the parents or whoever  
16 accompanies the child into the Emergency Department?

17 A. Parent, nurses, paramedics.

18 Q. Is that information provided to you always accurate?

19 A. I'm not -- I don't get the question.

20 Q. Sure. So let's say, whatever the caregiver or the  
21 person with the child, whatever information they provided as  
22 to what they thought happened to the child, is that  
23 information documented in the medical records?

24 A. Yes.

25 Q. And is that information always accurate by the time

1 you've gone through your assessments, seen the child and made  
2 a determination?

3 A. Yes.

4 Q. So, for instance, if a parent complains that a child  
5 has a fever, they run a test and the child's temperature is  
6 normal, do you say their information is still accurate?

7 A. What do you mean by that?

8 Q. If a parent comes in with a child or a caregiver,  
9 says the child's running a fever, but the time the child's in  
10 the hospital, the temperature is taken, and that temperature  
11 for the child is normal, is that information still accurate?

12 A. It can be.

13 Q. Are you a mandated reporter as far as being a  
14 physician in an Emergency Department?

15 A. What do you mean by that?

16 Q. If you see or suspect child abuse, are you required  
17 by law to report that?

18 A. Yes.

19 Q. And did you make a report on January 5th, 2016 for a  
20 child you were seeing in the Sunrise Emergency Department?

21 A. Yes.

22 Q. Fair to say when you make that report, it just means  
23 more investigation needs to be done, but from what you've  
24 seen you have concerns, correct?

25 A. Yes.

1 Q. And that triggers your responsibility to call?

2 A. Yes.

3 Q. And fair to say, Doctor, you don't call. You direct  
4 someone else to call with information; is that fair?

5 A. Yes.

6 Q. All right. Now, were you treating a patient on  
7 January 5th of 2016; were you treating a patient by the name  
8 of Chance Jacksper with a date of birth of January 30th,  
9 2013?

10 A. Yes.

11 Q. And what were you treating the child for?

12 A. Burns.

13 Q. Were you able to observe the burns?

14 A. Yes.

15 Q. And as part of treatment, do you treat the -- do you  
16 have to treat any pain for those burns?

17 A. Yes.

18 Q. And did you provide or order any pain medication to  
19 be provided to the child?

20 A. I don't know. I'd have to look at the records.

21 Q. Sure. One moment, please. Generally speaking, when  
22 you're treating a child for burns or any kind of pain, would  
23 you order pain medication?

24 A. Most of the time, yes.

25 Q. Okay. I apologize, Doctor. I should have kept.

1 better tabs on my records. I'll get back to that in a  
2 minute. What do you do to treat the -- what did you do to  
3 treat the child for his burns?

4 A. What did I do?

5 Q. Yes.

6 A. I'd have to look at the record.

7 Q. Would that refresh your memory, Doctor?

8 A. Sure.

9 THE COURT: Would that refresh your recollection if  
10 we showed you the medical records?

11 THE WITNESS: Sure.

12 THE COURT: Okay.

13 MS. JOBE: May I approach, Your Honor?

14 THE COURT: You may.

15 BY MS. JOBE:

16 Q. And while you're looking through, Doctor, if you  
17 could see if you prescribed any pain medication, please.

18 A. Go ahead.

19 Q. Okay. Does that refresh your memory, Doctor?

20 A. Um-h'm.

21 Q. And I apologize --

22 THE COURT: Is that a yes?

23 THE WITNESS: Yes.

24 THE COURT: Thank you.

25 BY MS. JOBE:

1 Q. I apologize. We're not allowed to leave that up  
2 there because -- what type of treatment did you do or have  
3 done for the child's burns?

4 A. The wound was cleansed with saline and Bacitracin  
5 ointment was applied. He received Hydrocodone for pain  
6 medication.

7 Q. For those of us not familiar with the medical  
8 profession, what is Hydrocodone?

9 A. It's a narcotic.

10 Q. Obviously, not something you can get over the  
11 counter; is that correct?

12 A. Not to my knowledge.

13 Q. All right. And did you diagnose this child's burns?

14 A. Yes.

15 Q. And to what degree were the burns?

16 A. They were a combination of first degree burns and  
17 partial thickness burns, which are second degree burns.

18 Q. Did you have any follow-up orders for this child?

19 A. Transfer to the UMC Burn Center.

20 Q. Why would you transfer the patient to the UMC burn  
21 center?

22 A. Because these are second degree hand burns that need  
23 frequent debridement and do have potential for being  
24 disabling down the road.

25 Q. Okay. And do burns kind of develop over time?



1 A. It can progress, yes.

2 Q. Okay. And what happens when they progress or what  
3 can happen as far as progression?

4 A. They can become deeper and more extensive.

5 Q. I'm going to approach and show you some pictures,  
6 Doctor.

7 MS. JOBE: May I approach the witness, Your Honor?

8 THE COURT: You may.

9 BY MS. JOBE:

10 Q. If you'd just look through those for me.

11 A. Okay.

12 Q. Do you recognize those, Doctor?

13 A. They're burns.

14 Q. Okay. And do you recognize whether or not this is  
15 the patient you treated on January 5th of 2016?

16 A. There's no way I can verify that.

17 Q. Okay. But can you verify that you did, in fact,  
18 treat a patient by the name of Chance Jacksper with a date of  
19 birth of 1/30/2013 at Sunrise Hospital on January 5th of  
20 2016?

21 A. Yes, I can.

22 Q. Now, did you also -- well, we talked about the  
23 complaint when the patient comes in and the caregiver or  
24 person with them provides the complaint, correct?

25 A. Yes.

1 Q. Okay. And is that contained in what's called an  
2 HPI?

3 A. Um-h'm.

4 Q. Is that a yes?

5 A. Yes.

6 Q. I apologize. She's typing everything down so --

7 A. Yes.

8 Q. Thank you. And as far as you are aware, what was  
9 the complaint in this case?

10 A. I'd have to look at the record.

11 Q. Would that refresh your memory, Doctor?

12 A. Yes.

13 MS. JOBE: May I approach the witness?

14 THE COURT: You may.

15 THE WITNESS: There was a hot --

16 BY MS. JOBE:

17 Q. If you could just -- I'm sorry, Doctor. If you  
18 could read that to yourself and then when you're done, I'll  
19 ask a question. (Witness reviewing document). Thank you,  
20 Doctor. Does that refresh your memory?

21 A. Yes.

22 Q. And based on your refreshed memory, what was the  
23 complaint?

24 A. The boyfriend -- according to the boyfriend, he  
25 grabbed the hot water off the counter and --

1 Q. Did you end up instructing someone at the hospital  
2 to contact Las Vegas Metropolitan Police Department --

3 A. Yes.

4 Q. -- for this case? And why did you do that?

5 A. Because the burns were suspicious for abuse.

6 Q. And what about them was suspicious?

7 A. On one picture there's a clear demarcation line,  
8 which is consistent with an abusive burn.

9 Q. Did you fill out what's called a SCAN Physical Abuse  
10 and Neglect Form?

11 A. Yes.

12 Q. And is that required when there are concerns or  
13 suspicions of abuse?

14 A. Yes.

15 Q. And in that SCAN report, did you mark or write down  
16 what your concerns were or your findings that were  
17 suspicious?

18 A. Yes.

19 Q. Okay. And do you recall what you documented,  
20 Doctor?

21 A. Definitive for abuse.

22 Q. Okay. And was that because you observed at least  
23 what's in the findings, suspicious for abuse and neglect  
24 emersion burn or matching or symmetric burns?

25 A. Yes.

1 Q. Now, fair to say once the patient is discharged from  
2 Sunrise Hospital, your contact with that patient is over  
3 with, correct?

4 A. Yes.

5 MS. JOBE: Court's indulgence.

6 BY MS. JOBE:

7 Q. And Doctor, in reviewing the records, you talked  
8 about the burns on the hand. Did the child have any other  
9 injuries to any other area of his body?

10 A. Not to my knowledge.

11 Q. And I'm just going to ask a couple of follow-up  
12 questions on that issue. Did you have the chance to do a  
13 physical examination of the child?

14 A. Yes.

15 Q. And in your physical examination, did you see any  
16 marks or concerns on the child's abdomen or stomach?

17 A. None.

18 MS. JOBE: Pass the witness.

19 THE COURT: Cross-examination.

20 CROSS-EXAMINATION

21 BY MS. HOLIDAY:

22 Q. Morning, Doctor.

23 A. Good morning.

24 Q. Doctor, did you originally think this was an  
25 emersion burn?

1 A. Originally? What do you mean? When I first saw the  
2 burn?

3 Q. Yes.

4 A. Yes.

5 Q. Did you ever change your mind about that conclusion?

6 A. No.

7 Q. Dr. Olson, the information you had was that the  
8 mother's boyfriend said Chance had grabbed the hot water off  
9 the counter.

10 A. Yes. That's all he said.

11 MS. HOLIDAY: Your Honor, may I approach the  
12 witness?

13 THE COURT: Sure.

14 BY MS. HOLIDAY:

15 Q. Doctor, I'm giving you a three-page document. Can  
16 you tell me what we're looking at in this document?

17 A. A history and physical.

18 Q. Can you tell us a little bit about when a history  
19 physical is generated?

20 A. At the time of the exam.

21 Q. Who generates it?

22 A. A scribe.

23 Q. And the scribe generates it based on something that  
24 somebody says out loud?

25 A. That's correct.

1 Q. Who would have been talking out loud?

2 A. Me.

3 Q. Do you recognize this as things that you would have  
4 said out loud that someone later would have turned into  
5 writing?

6 A. Yes.

7 Q. Okay.

8 MS. HOLIDAY: Your Honor, I would move to admit  
9 this three-page document of medical records.

10 THE COURT: Hearsay. What --

11 MS. JOBE: Well, State's objection is hearsay.

12 BY MS. HOLIDAY:

13 Q. Doctor, let me ask you this. On the second page of  
14 that document --

15 A. Um-h'm.

16 Q. -- there's a section that talks about skin.

17 A. Um-h'm.

18 Q. Where did the information come from that is in that  
19 section?

20 A. Where did it come from? From the physician.

21 Q. And that would be you?

22 A. Yes.

23 Q. You would have said the information out loud and  
24 someone later would have transcribed it?

25 A. Yes.

1 Q. Okay. Can you read that section and what it says?

2 A. Which one?

3 Q. The section entitled "skin".

4 A. "Right hand second degree burns over the dorsum of  
5 the hand down to the knuckles, stops at the wrist. Small  
6 amount of redness below the left wrist. Left hand, mild  
7 second degree burn, with linear blisters over the wrist,  
8 circumferential burns around the wrist, burns to the palms of  
9 the hand and index finger".

10 Q. Do you recall saying that out loud?

11 A. I can't remember that.

12 Q. Do you recall that there were burns to the palm of  
13 hand and index finger on this child?

14 A. I can't recall that.

15 Q. Would you have been saying these words out loud as  
16 you were staring at the injury or later as you were  
17 remembering the injury?

18 A. As I was remembering the injury.

19 Q. Okay. Thank you, Doctor. You noticed clear  
20 demarcation lines on this injury?

21 A. Yes.

22 Q. And that's why it was consistent with abuse?

23 A. Yes. And it was bilateral.

24 Q. Are there any instances where you would see a  
25 demarcation line that is not consistent with abuse?

1 A. I don't know. Like what?

2 Q. In other words, does a demarcation line always  
3 indicate abuse?

4 A. It's always suspicious for abuse.

5 Q. In your mind, does a demarcation line by itself  
6 prove abuse?

7 A. Not necessarily.

8 MS. HOLIDAY: Court's indulgence.

9 BY MS. HOLIDAY:

10 Q. Dr. Olson, you saw Dr. Cetl. Dr. Cetl is a  
11 colleague of yours, correct?

12 A. Yes.

13 Q. You saw Dr. Cetl in the Emergency Department around  
14 the time Chance was being treated?

15 A. Yes.

16 Q. Is it your understanding that Dr. Cetl treated  
17 Chance?

18 MS. JOBE: Objection. Foundation.

19 THE COURT: Sustained.

20 BY MS. HOLIDAY:

21 Q. Where particularly in the Emergency Department did  
22 you see Dr. Cetl?

23 A. Somewhere close to the room that the child was in.

24 Q. Based on that, was it your understanding that  
25 Dr. Cetl --



1 MS. JOBE: Objection. Foundation and speculation.

2 THE COURT: Sustained.

3 BY MS. HOLIDAY:

4 Q. At some point, were you aware of an opinion that  
5 Dr. Cetl gave regarding Chance and his injuries?

6 A. Yes.

7 Q. How were you aware of that?

8 A. I overheard it.

9 Q. You overheard it -- this was a discussion you  
10 overheard?

11 A. Yes.

12 Q. Who were the two participants or more participants  
13 in the discussion?

14 A. The detective. There may have been more  
15 participants that I'm not aware of, but that's who I  
16 remember.

17 Q. A detective and --

18 A. Dr. Cetl.

19 Q. Dr. Cetl? Okay. Where did you overhear this  
20 conversation?

21 A. In an area close to the room.

22 Q. And she was making conclusions or opinions about  
23 Chance's injuries?

24 A. I assume.

25 Q. Why do you assume so?

1 A. Because I overheard her say that the burns were --

2 MS. JOBE: I'm going to object to --

3 THE COURT: Sustained.

4 MS. JOBE: -- hearsay and speculation based on his  
5 testimony.

6 BY MS. HOLIDAY:

7 Q. You know based on what you heard that they were  
8 discussing Chance's injuries?

9 MS. JOBE: Objection, speculation.

10 THE COURT: Sustained.

11 MS. JOBE: He said he assumed.

12 BY MS. HOLIDAY:

13 Q. What did you hear Dr. Cetl say?

14 THE COURT: How is that not the same thing?

15 MS. JOBE: It's hearsay, Your Honor.

16 MS. HOLIDAY: Your Honor --

17 THE COURT: You're asking the same thing.

18 MS. HOLIDAY: -- I would say it's not hearsay  
19 because it doesn't go to the truth of the matter asserted.  
20 It goes to the effect on the listener.

21 MS. JOBE: It doesn't --

22 THE COURT: Then it's not relevant.

23 BY MS. HOLIDAY:

24 Q. Dr. Olson, are you upset that you have to testify  
25 today?

1 MS. JOBE: Your Honor, may we approach?

2 THE WITNESS: Am I upset?

3 THE COURT: Yeah. Okay, don't answer that. Don't  
4 answer that.

5 THE WITNESS: Okay.

6 (Bench conference begins)

7 THE COURT: Why are you going into this?

8 MS. HOLIDAY: I'm trying to --

9 THE COURT: I mean, he's been doing good.

10 MS. HOLIDAY: The fact that Dr. Olson has a  
11 different recollection than Dr. Cetl, I think could be pretty  
12 significant in this case.

13 MS. JOBE: I think the fact that when he was being  
14 questioned by the Court and changed some of his answers as  
15 far as the details he is sure of, and those he assumed, it's  
16 speculative about -- it's more evident of what he does or  
17 doesn't remember.

18 THE COURT: Okay. But the question is do you want  
19 to be here? Who cares. I don't care. Do you think that  
20 goes to bias or?

21 MS. HOLIDAY: Because the follow-up question would  
22 be, you know, you're upset because you think Dr. Cetl could  
23 have provided all the information --

24 MS. JOBE: That's not relevant.

25 THE COURT: Yeah, but it's not --

1 MS. HOLIDAY: -- that you could testify to.

2 THE COURT: It's not really relevant except to  
3 embarrass him.

4 MS. HOLIDAY: Okay.

5 THE COURT: You know? I don't think there's any  
6 reason to embarrass him in front of the jury.

7 MS. HOLIDAY: How about the -- the -- the fact that  
8 Dr. Cetl disagreed with his diagnosis.

9 THE COURT: And what's the relevance?

10 MS. HOLIDAY: If another doctor --

11 THE COURT: I mean, we -- he can't even tell me  
12 whether he knows. He's saw Dr. Cetl in the ER. Okay. He  
13 doesn't know. He doesn't know. He doesn't even know whether  
14 she treat the him. The lack of medical records is pretty  
15 significant to me. Hospitals make medical records. That's a  
16 serious thing.

17 MS. HOLIDAY: That's true.

18 THE COURT: Okay. I believe that Cetl didn't treat  
19 him in the ER because there would have been a medical record.  
20 It would be outrageous for there to be a lack of medical  
21 record especially in a case like this.

22 MS. HOLIDAY: I think Dr. Olson obviously is upset  
23 about a discrepancy between either his conclusion, Dr. Cetl's  
24 conclusion, or the detective's understanding of their two  
25 conclusions, and that would be important in this case that

1 two doctors are disagreeing about --

2 THE COURT: Well, I'm not sure that he is. I  
3 guess, if you want to -- I'm not sure he knows any opinions  
4 she's given because --

5 MS. KIERNY: I think he does from the what the DA  
6 told him.

7 THE COURT: No, the DA talked to him before she had  
8 given any testimony.

9 MS. JOBE: Since this keeps coming --

10 MS. KIERNY: She gave testimony at prelim.

11 MS. JOBE: Since this keeps coming up, he (A) never  
12 got a copy of the Preliminary Hearing transcript. And the  
13 only thing discussed as to what she literally testified to is  
14 whether or not she thought the injuries were abusive  
15 (inaudible) details and say what her opinions were and say  
16 what her conclusions were. And his response is essentially  
17 then --

18 THE COURT: He --

19 MS. JOBE: -- why the hell --

20 UNIDENTIFIED SPEAKER: (Inaudible).

21 MS. JOBE: I apologize. Can I finish?

22 UNIDENTIFIED SPEAKER: Yes.

23 MS. JOBE: My response to him was saying -- his  
24 response to me is essentially then why the hell do I need to  
25 be involved.

1 THE COURT: Right. He appears to be upset because  
2 he thinks the State could have gotten all this information  
3 through Dr. Cetl, and therefore, he was called here  
4 needlessly. Okay? I'm not sure that you have to embarrass  
5 him in front of the jury by having him acknowledge that he's  
6 pissed off he's here.

7 MS. KIERNY: I think he has a different medical  
8 opinion than Dr. Cetl, and I think we're entitled to bring  
9 that out.

10 THE COURT: Yeah, you're entitled to bring out his  
11 opinion.

12 MS. KIERNY: Okay.

13 THE COURT: But he's already testified to what his  
14 opinions are.

15 MS. HOLIDAY: Good enough.

16 THE COURT: And then if you think they're  
17 different --

18 MS. KIERNY: (Inaudible). Okay.

19 MS. HOLIDAY: Okay, that's fine.

20 THE COURT: Okay.

21 MS. HOLIDAY: Thank you.

22 (Bench conference concluded)

23 MS. HOLIDAY: Dr. Olson, thank you. I have no  
24 further questions.

25 THE COURT: Any redirect?

1 MS. JOBE: Just quickly, Your Honor.

2 THE COURT: Almost, Dr. Olson.

3 THE WITNESS: I have all the time in the world.

4 REDIRECT EXAMINATION

5 BY MS. JOBE:

6 Q. And I do apologize, Doctor. Showing you what's been  
7 admitted as State's 6 and 7. If you could look at those for  
8 me briefly.

9 A. Yes.

10 Q. In those photographs, Doctor, do you see any burns  
11 on the palms of the hand?

12 A. I see some redness.

13 Q. Okay. Let's talk about that real quick. Showing  
14 you 6. Is it up on your screen, Doctor?

15 A. Yes.

16 Q. Where's the redness that you see? You can mark on  
17 your screen, Doctor, if you touch it.

18 A. Oh, wow, that's great. In this over here.

19 Q. Okay. All right. And showing you State's 7. Where  
20 is the redness that you observed?

21 A. You see that over there.

22 Q. Okay.

23 A. And I think there's something maybe over there.

24 Q. Okay.

25 A. And maybe -- and right -- see that there?

1 Q. I do. Thank you, Doctor.

2 A. Can I interject something?

3 THE COURT: There's not a question pending.

4 THE WITNESS: Okay. All right.

5 THE COURT: If the State wants you to add

6 something --

7 BY MS. JOBE:

8 Q. Did you have any additional opinions about the  
9 burns, Doctor?

10 A. No additional opinions.

11 Q. Okay. Thank you.

12 A. Um-h'm.

13 THE COURT: Any recross?

14 MS. HOLIDAY: Court's indulgence.

15 RECCROSS-EXAMINATION

16 BY MS. HOLIDAY:

17 Q. Doctor, is there any opinions that you wanted to add  
18 about the burns to the palms?

19 A. No.

20 Q. Doctor, you didn't take these pictures, correct?

21 A. No.

22 MS. HOLIDAY: No further questions.

23 THE COURT: Dr. Olson, thank you very much for your  
24 testimony --

25 THE WITNESS: Thank you.



1 THE COURT: -- here today, your willingness to be  
2 here and the testimony you've provided to this jury. You are  
3 excused.

4 THE WITNESS: Thank you.

5 THE COURT: All right. Are we going to call the  
6 detective back now?

7 MS. JOBE: Yes, Your Honor.

8 THE COURT: Okay. All right. We're going to take  
9 a short recess. During this recess, you're admonished not to  
10 talk or converse amongst yourselves with anyone else on any  
11 subject connected to this trial or read, watch or listen to  
12 any report over commentary on the trial or any person  
13 connected with this trial by any medium of information,  
14 including without limitation, newspapers, television, the  
15 Internet or radio or form or express any opinion on any  
16 subject connected with this trial until the case is finally  
17 submitted to you. We'll be in recess for the next probably  
18 ten minutes.

19 THE MARSHAL: Thank you. All rise for the exiting  
20 jury.

21 (Outside the presence of the jury).

22 THE COURT: The record will reflect that the  
23 hearing is taking place outside --

24 THE MARSHAL: Thank you, everyone.

25 THE COURT: -- the presents of the jury panel.

1 Okay.

2 MS. KIERNY: Thank you, Your Honor. My  
3 understanding is at this point we're going to get into some  
4 jail calls that Detective DePalma intercepted between Jasmin  
5 and Mr. Mathews. Just to make a record, we requested any and  
6 all jail calls in August. All these calls were made in  
7 March. We received them on Friday before the trial. The  
8 State indicated that they would not play them unless we  
9 opened the door. We got eight calls.

10 THE COURT: Okay.

11 MS. KIERNY: The State indicated earlier there may  
12 be one or -- two or three that they wanted to call. It turns  
13 out there's eight. They indicated that we opened the door  
14 when Jasmin said that she had custody and that we opened the  
15 door by asking if they were a big happy family. We never  
16 used those words. We just asked if they were a family unit?  
17 A family would be, you know, mother, father, children. It  
18 does not necessarily mean happy.

19 THE COURT: Okay. I already said that the State  
20 could get into this information. If you have objections to  
21 some of the phone calls --

22 MS. KIERNY: Okay.

23 THE COURT: -- can we get to those?

24 MS. KIERNY: Well, I don't think I got to make a  
25 complete record about that because I wasn't sure what was

1 going to be introduced, and I was waiting for that time.

2 MS. JOBE: Again, for the record, we're not  
3 specifically introducing the actual content of the jail  
4 calls. We're bringing in information from the jail calls  
5 through the detective. We're not playing any jail calls.  
6 And it was specifically based on the line of questions to  
7 Jasmin about Donovan's relationship and how great he is with  
8 Jordyn.

9 MS. KIERNY: And if I could respond to that. I  
10 believe, the State opened the door to this exact subject by  
11 asking if they're still together, if they have plans for the  
12 future together. So that's how they started it, and then we  
13 just followed up with, you are still a family.

14 So I don't believe that we opened the door. And  
15 the State then straightened out the custody issue, obviously,  
16 as you saw, and Jasmin did admit she did not have custody of  
17 Chance.

18 I don't think that there is anything probative of  
19 the issue to the charges that we're here with of accident  
20 versus intentional burns whether CPS told Jasmin that she was  
21 not to talk to Donovan and she still did. Obviously, she  
22 isn't on trial for being a bad mom. He's on trial for  
23 whether these burns are accidental or intentional.

24 THE COURT: Well, I think the State's bringing it  
25 in to impeach her testimony.

1 MS. JOBE: And --

2 MS. KIERNY: Which -- and what I'm getting -- when  
3 I've listened to these jail calls, I don't think that there's  
4 anything that impeaches. She was never asked, did you talk  
5 to Donovan? She was never asked were you told by CPS not to  
6 talk Donovan and you still did it? I think ultimately there  
7 is an extreme prejudice to Mr. Mathews of the --

8 THE COURT: She testified in here that she was told  
9 not to have contact with him and she did anyways.

10 MS. KIERNY: Right. And so she's answered --

11 THE COURT: Okay?

12 MS. KIERNY: -- the question. There is nothing  
13 left to impeach her with. She said yes, I did.

14 THE COURT: Well, first she said she didn't have  
15 contact with him.

16 MS. KIERNY: And but she has said I was -- I still  
17 did. So the exact thing that the State is trying to  
18 introduce through these jail calls has already been admitted  
19 to by Jasmin. So I don't think that there's any purpose for  
20 them coming in. There's an extreme prejudice to him by the  
21 jury learning that he was in custody months after the  
22 incident.

23 I understand that people understand -- that juries  
24 understand that someone's arrested immediately, but, you  
25 know, two, three months down the road that has other

1 implications. If the -- and then I have a concern with the  
2 format that they're going to be introduced in.

3           So if Detective DePalma is just going to kind of  
4 pick and choose what parts of these fairly long phone calls  
5 to highlight, I don't -- it's hard to put them into context  
6 obviously. This jury won't have the complete story. Also,  
7 these jail calls, they're somewhat lengthy. It's hard for me  
8 to identify exactly what the State wanted to get out of them.

9           Donovine is a very low speaker. I couldn't  
10 understand a majority of what he said. These jail calls  
11 aren't the greatest quality so it's hard to see. We don't  
12 have any transcripts of them. So if he's just testifying,  
13 I'm not going to be able to correct, you know, if he's  
14 mischaracterizing what is being said here because I don't  
15 have a transcript. I didn't have time, obviously, to get  
16 them transcribed from Friday.

17           Finally, my understanding is that the State is  
18 introducing all eight of these calls just to show that Jasmin  
19 continued to talk --

20           THE COURT: Not introducing the calls.

21           MS. KIERNY: Oh, is --

22           THE COURT: They want to get into the --

23           MS. KIERNY: -- talking about these --

24           THE COURT: -- substance of the calls.

25           MS. KIERNY: -- jail calls and the substance of

1 these jail calls to indicate that Jasmin continued to talk to  
2 Donovine after being told by CPS not to.

3 First of all, like I said, I think Jasmin has  
4 already admitted that she did this, so this is unnecessary.  
5 And second of all, I believe that the calls -- this amount of  
6 calls being -- or this amount of calls being spoken about is  
7 cumulative and doesn't add anything additional.

8 THE COURT: Okay.

9 MS. JOBE: To be fair, the State intends on  
10 limiting or narrowing its questions to make this part as  
11 brief as possible, but the fact of the matter remains, when  
12 Jasmin was on the stand, she specifically stated she  
13 maintained contact with the defendant through his family and  
14 these calls directly rebut or impeach that testimony.

15 She was also specifically asked if she'd ever --  
16 because after Ms. Holiday went into Donovine's treatment and  
17 relationship with Jordyn at length and how great he was and  
18 how fantastic he was and how he never said anything mean to  
19 her or did anything bad, Mr. Burton specifically asked Jasmin  
20 if the defendant had ever yelled at Jordyn, ever become  
21 frustrated with her or ever said anything to Jasmin about  
22 Jordyn. In one of the jail calls she -- which we provided to  
23 counsel, and was included in the e-mails last night, you can  
24 hear Jordyn in the background crying, screaming. One of the  
25 callers identifies that it is, in fact, Jordyn they're

1 speaking about. And the defendant says something to the  
2 effect of, "Shut her ass up," referring to Jordyn. That  
3 directly impeaches Jasmin's testimony.

4 MS. KIERNY: But it's impeachment on a collateral  
5 matter. We're not allowed to bring extrinsic evidence of  
6 that in.

7 THE COURT: It's a prior inconsistent statement,  
8 right?

9 MS. KIERNY: Right, but it has nothing to do with  
10 these charges.

11 THE COURT: She was confronted with the statement.  
12 She -- it goes to impeachment. She denied making the  
13 statement.

14 MS. KIERNY: It's not a statement. She never --  
15 they didn't confront her with an actual statement and say,  
16 did you make this statement. They asked if she continued to  
17 talk to Donovine, knowing that CPS would -- or are we  
18 discussing the --

19 MS. JOBE: I apologize.

20 THE COURT: Here's the deal.

21 MS. JOBE: I lost track.

22 THE COURT: It's the defendant's statement. So  
23 you're upset because they're going to talk about the  
24 defendant's statement, "Shut her ass up?"

25 MS. KIERNY: Well, I mean, I think they're going to

1 -- with that specific call, I think they're going to lose a  
2 lot of the context in hearing that Jordyn's upset and that he  
3 -- him instructing, you know, to take care of the child.

4 THE COURT: The District Attorney has told me that  
5 your client's statement was, "Tell her to shut her ass up.  
6 And Jasmin was specifically asked if defendant had ever said  
7 that, she said, no.

8 MS. KIERNY: But he didn't say that to Jordyn.

9 THE COURT: I understand that.

10 MS. KIERNY: He said that to Jasmin. So it's not  
11 directed at Jordyn.

12 MS. JOBE: And the -- I'm sorry.

13 MS. KIERNY: So it's not like Jordyn would have  
14 been the recipient of hearing this language. He didn't  
15 actually --

16 THE COURT: Okay.

17 MS. KIERNY: -- speak harshly to Jordyn.

18 THE COURT: Okay. I understand that, but what's  
19 the objection.

20 MS. KIERNY: The objection is that it's -- it's not  
21 relevant. It's a collateral matter, and it's not actually  
22 impeachment.

23 THE COURT: Okay.

24 MS. JOBE: It's relevant because of the testimony  
25 elicited by the defense about how Donovine is with Jordyn and



1 other children. It is impeachment to Jasmin to the extent  
2 she was specifically asked quotes about that conversation and  
3 what was going on, and she denied on the stand. And it's the  
4 defendant's statement, period, and the State can bring in the  
5 defendant's statement to the extent he said that, and in the  
6 same call he told Jasmin she needs to testify for him.

7 THE COURT: Okay. Anything else?

8 MS. KIERNY: I think our -- overall, this is --  
9 I've made my record on that.

10 THE COURT: Okay.

11 MS. KIERNY: I think this is a discovery violation  
12 that we got these Friday. That they should be excluded for  
13 that reason alone, but then there's a myriad of other reasons  
14 that they should be excluded.

15 THE COURT: Okay. The objection's noted. The  
16 State's going -- they're not going to be able to -- they're  
17 not going to put the phone calls in the record, but  
18 apparently, the detective's going to be questioned upon the  
19 substance.

20 MS. JOBE: Yes, Your Honor.

21 THE COURT: Okay.

22 MS. KIERNY: So if he misstates them, I don't know  
23 how I'm allowed to correct that without a transcript.

24 MS. JOBE: Then you listen to the jail call and you  
25 ask for a break and you play the recording for the detective.

1 MS. KIERNY: I don't remember them all in my head.  
2 I'm expected to remember 88 minutes of jail calls in my head  
3 exactly what he said? Do you want me to be listening to them  
4 at the same time? If I had a transcript, I can go over and  
5 make sure he's not mischaracterizing it. But without a  
6 transcript, I cannot go into my memory bank and remember 88  
7 minutes of phone calls.

8 THE COURT: Okay. So you're saying you don't have  
9 a transcript, therefore, you can't make the appropriate  
10 objections?

11 MS. KIERNY: Well, if they're going --

12 THE COURT: Because I suggest to you if he  
13 misrepresents a call, object.

14 MS. KIERNY: How am I going to know that? I don't  
15 have a transcript to follow along with, Judge. I'm not  
16 trying to be difficult. It's just that there's --

17 THE COURT: So the objection is you don't have a  
18 transcript of the phone calls?

19 MS. KIERNY: I'm saying, if he is going to  
20 introduce it in this manner, I understand that they're -- I  
21 understand if they're playing the phone calls back, then I  
22 would know that that's an accurate representation of them.  
23 But if they're just -- if he's just going to paraphrase them  
24 or summarize them or say what they say, if I don't have a  
25 transcript, I don't know if he's saying something accurate.

1 THE COURT: Okay. I don't know what to say that.

2 MS. JOBE: For the record, State doesn't have a  
3 transcript either.

4 THE COURT: Okay. I think we can bring the jury  
5 back in now.

6 (Pause in the proceedings)

7 THE MARSHAL: All rise for the entering jury,  
8 please.

9 (In the presence of the jury)

10 THE COURT: Does the State stipulate to the  
11 presence of the jury panel?

12 MS. JOBE: Yes, Your Honor.

13 THE COURT: The defense?

14 MS. HOLIDAY: Yes, Your Honor.

15 THE COURT: Okay.

16 THE MARSHAL: Thank you, everyone. Please be  
17 seated.

18 THE COURT: At this time, we're going to bring the  
19 detective back in, and the State will continue with their  
20 examination,

21 DETECTIVE PHILIP DePALMA, STATE'S WITNESS, SWORN

22 THE CLERK: Thank you. Please be seated.

23 THE WITNESS: Thank you.

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

1 THE WITNESS: Philip DePalma, P-h-i-l-i-p  
2 D-e-P-a-l-m-a.

3 THE CLERK: Thank you.

4 THE WITNESS: You're well.

5 THE COURT: You may proceed.

6 MS. JOBE: Thank you, Your Honor.

7 DIRECT EXAMINATION (RESUMED)

8 BY MS. JOBE:

9 Q. Good afternoon. I don't know what time it is  
10 exactly. Detective DePalma, we ended yesterday's testimony  
11 talking about -- a little bit about the reenactment video and  
12 some things you observed in the apartment. And you had  
13 indicated you did additional investigation after the  
14 reenactment video by consulting Dr. Cetl, Peltier and et  
15 cetera; is that correct?

16 A. Correct.

17 Q. I'm going to go backwards just a second. When you  
18 were at Sunrise Hospital -- actually, strike that. As far as  
19 your investigation, did you also have the opportunity to  
20 listen to recorded calls between the defendant and Jasmin?

21 A. Yes, I have.

22 Q. And are you familiar with the defendant's voice?

23 A. Yes, I am.

24 Q. And in the calls you listened to, did you recognize  
25 the defendant as the individual who was speaking?

1 A. Yes, I did.

2 Q. Were you also familiar with Jasmin's voice?

3 A. Yes, I was.

4 Q. Fair to say during your investigation as you  
5 discussed yesterday, you had opportunities to meet with her  
6 and talk to her; is that correct?

7 A. Yes.

8 Q. And in the calls that you listened to, were you able  
9 to identify Jasmin's voice as well?

10 A. Yes, I was.

11 Q. I just have a few specific questions, Detective.  
12 During any of those calls, did -- were those calls, as best  
13 you could tell, directly between the defendant and Jasmin?

14 A. Yes, they were.

15 Q. And were these calls after your investigation?

16 A. Yes, it was.

17 Q. And did Jasmin make any statements in those calls  
18 about any concerns or any possible consequences of her having  
19 direct contact with the defendant?

20 A. Yes, she did.

21 Q. And what were those concerns?

22 A. Concerns of losing her -- or her children to CPS if  
23 she kept contact with Donovine.

24 Q. Okay. And as far as your listening to the recorded  
25 calls, did she continue to maintain direct contact with

1 Donovan?

2 A. Yes, she did.

3 Q. All right. Now, during the calls did you also  
4 listen to a call where there was an exchange regarding a baby  
5 between the defendant and Jasmin?

6 A. Oftentimes I heard children in the background on the  
7 calls, yes.

8 Q. Was there one in particular where there were  
9 statements made about a baby crying or something like that?

10 A. Yes, there was.

11 Q. And on that call did you recognize the defendant's  
12 voice?

13 A. Yes, I did.

14 Q. And did you also recognize Jasmin's voice?

15 A. Yes, I did.

16 Q. And could you -- what could you hear in the  
17 background?

18 A. I heard a baby pretty close to the -- to the phone.  
19 Sometimes you can -- you can tell when there's background  
20 noise and then when it gets closer. This one was like the  
21 child was right there on mom's lap or near the phone  
22 receiver.

23 Q. And did anyone on the call identify what baby or  
24 what child that was?

25 A. Yes, Donovan asked Jasmin if it was Jordyn.

1 Q. And did Jasmin confirm it was, in fact, Jordyn?

2 A. She did not. She -- Donovine asked and made a  
3 statement.

4 Q. Oh, so what statement did Donovine make when he  
5 asked if that was Jordyn?

6 A. He -- he was irritated and he said, "Is that Jordyn?  
7 Tell her to shut her ass up, fuck." That's exactly  
8 quote/unquote, or the words that I heard.

9 Q. And that was Donovine?

10 A. Yes, it was.

11 MS. JOBE: Pass the witness.

12 THE COURT: Cross-examination.

13 MS. KIERNY: Court's brief indulgence. Thank you.

14 CROSS-EXAMINATION

15 BY MS. KIERNY:

16 Q. Detective DePalma, obviously, it was you who  
17 interviewed Donovine here?

18 A. Yes.

19 Q. And he indicated to you that he wasn't in the room  
20 when Chance was burned?

21 A. Correct.

22 Q. And he heard a yell or a cry and went in to the  
23 room?

24 A. Correct.

25 Q. And then he assumed that Chance had pulled the mug

1 on himself?

2 A. Correct.

3 Q. Okay. And he couldn't ever explain to you how  
4 Chance was burned?

5 A. That's correct.

6 Q. Because he -- and he indicated he wasn't there?

7 A. That's what he said, yes.

8 Q. All right. And so was it you that spoke with  
9 Dr. Cetl and gave that account to her?

10 A. I know I spoke with Dr. Cetl. I'm not sure if any  
11 of my other detectives have or not, but she was given an  
12 explanation, yes.

13 Q. All right. And the explanation that I just  
14 summarized, is that the explanation given to her?

15 A. It's possible that it was told that way, yes.

16 Q. Okay. And you didn't necessarily give her a copy of  
17 Donovine's statement?

18 A. No.

19 Q. That wouldn't be typical in a case like this?

20 A. Normally, not. More of a reenactment would.

21 Q. All right. Did you give her a copy of the  
22 reenactment?

23 A. I can't recall if I -- if she actually saw the  
24 reenactment or not. I believe she did.

25 Q. Okay.



1 A. But I'm not for sure.

2 Q. Okay. So, you believe that she was told by you or  
3 maybe a fellow detective that Donovine was out of the room  
4 and Chance pulled a mug on himself?

5 A. Yes.

6 Q. Okay. And it was also you who decided to consult  
7 Dr. -- or sorry, Mr. Peltier?

8 A. Correct.

9 Q. And you sent him some materials?

10 A. Photos.

11 Q. And was that through e-mail or --

12 A. Yes, it was.

13 Q. -- mail?

14 A. Yes.

15 Q. And the first thing you sent him was the  
16 photographs? That's what he wanted?

17 A. Correct.

18 Q. And then he asked for additional photographs from  
19 you?

20 A. Yeah. Yes, he wanted -- I believe he asked for  
21 photographs that were in the healing phase.

22 Q. Okay. Did you send those photographs to him?

23 A. I believe, I did.

24 Q. Yes? Do you know if he received them? Did he ever,  
25 you know, e-mail back or tell you that he got them?

1           A.    He didn't -- I don't believe he confirmed that he  
2 got him, but it may -- I would have to look back in my  
3 e-mails to see if there was some correspondence that I --  
4 that I typed back that he actually received those photos.  
5 But I know that he responded back to me with his conclusion,  
6 yes.

7           Q.    Okay. Do you have those e-mails with you?

8           A.    I don't.

9           Q.    Okay. And you don't have anything with you today  
10 that -- to review at that would refresh your recollection  
11 whether he knew -- confirmed he got --

12          A.    No, I don't.

13          Q.    And you sent Dr. Peltier Donovanine's statement or did  
14 you summarize it to him?

15          A.    I summarized his -- his explanation of what  
16 happened.

17          Q.    Okay. And that would be that he was out of the room  
18 and Chance brought the mug -- or pulled the mug down on  
19 himself?

20          A.    Yes.

21          Q.    Okay. At some point, you initially asked Jasmin to  
22 do the recreation, correct?

23          A.    I asked her if she -- well, I wanted Donovanine to do  
24 the reenactment, but I asked Jasmin to go back to the  
25 apartment with us, since it was her apartment.

1 Q. All right. And so you weren't going to have her  
2 show you anything become there?

3 A. No, because she allegedly was not in the apartment  
4 when this -- when Chance got burned.

5 Q. When you say allegedly, that's what she told you?

6 A. Correct.

7 Q. And Jasmin didn't want to leave Chance at the  
8 hospital?

9 A. Correct.

10 Q. But Donovine did agree to do the reenactment?

11 A. Yes, he did.

12 Q. Okay. And he went to the apartment with you  
13 willingly?

14 A. Yes.

15 Q. And he had -- but at that point, your information  
16 was he told you he wasn't in the room when it happened?

17 A. Yes.

18 Q. So some of the things that he says in the  
19 reenactment include, "I guess", or "probably", correct?

20 A. Yes.

21 Q. And during that recreation and I'm sorry, actually  
22 you testified you did the -- you took pictures before you do  
23 the recreation, correct?

24 A. Correct.

25 Q. And you were there for when the CSAs were taking the

1 pictures?

2 A. Yes.

3 Q. And then you were there during the recreation?

4 A. Yes.

5 Q. And then did you stay in the apartment much longer  
6 after the recreation?

7 A. A little after that, yes.

8 Q. Okay. At any point, did you go through the  
9 cupboards of food to look for certain items?

10 A. Yes.

11 Q. You did?

12 A. Yes.

13 Q. Okay. And you also looked for that broken handle of  
14 mug?

15 A. Yes.

16 Q. And isn't it true that Donovan had told you that  
17 the mug maybe had broken sometime ago?

18 A. He didn't remember.

19 Q. Okay.

20 A. At all.

21 Q. Did he ever tell you that it -- that he -- he  
22 thought it was a long -- it was a -- it was a few days ago?

23 A. I don't remember him saying anything about days or a  
24 long time ago. He just said that he doesn't remember. He  
25 thought it was broken that day in particular.

1 Q. But nothing he told you would indicate that the mug  
2 handle -- he didn't tell you that mug handle would be in the  
3 garbage?

4 A. Correct, he didn't say that.

5 Q. He didn't tell you, you know, where the mug handle  
6 would be?

7 A. Correct.

8 Q. He just didn't know?

9 A. Correct.

10 Q. Okay. That reenactment video we saw ended at about  
11 5:08 p.m.?

12 A. Yes.

13 Q. And you were aware that Chance and Jasmin and  
14 Donovine and Jordyn had arrived at the hospital around 9:53  
15 a.m.?

16 A. Yes.

17 Q. So that reenactment video took place about seven to  
18 eight hours later?

19 A. Yes.

20 Q. And they had been at the hospital that entire time?

21 A. Correct.

22 Q. Regarding the calls that you just testified to,  
23 these were called that Donovine placed to Jasmin, correct?

24 A. Yes.

25 Q. Yes. And in several of the calls it's -- Donovine

1 was frustrated that she wasn't talking to him, that Jasmin  
2 wasn't talking to him more?

3 A. Yes.

4 Q. Is that fair? Is that a fair characterization?

5 A. That's fair.

6 Q. Okay. And Jasmin would explain that she wasn't  
7 talking to him because she didn't want to mess things up with  
8 her kid through CPS?

9 A. There were conversations about that initially, yes.

10 Q. Okay. And that call regarding the baby, because we  
11 didn't hear it, I'm just going to ask you a couple questions.  
12 -- or because the jury didn't get to hear it, I'm just going  
13 to ask you a couple of questions.

14 So when you listened to that call, the baby was, you  
15 assumed in Jasmin's lap?

16 A. Close to the receiver.

17 Q. Okay. Close to the receiver. So it was --

18 A. Yes.

19 Q. -- a very loud cry?

20 A. Yes.

21 Q. Hard to hear what Jasmin was saying?

22 A. It -- it didn't appear that it was hard to hear her.  
23 It was fading in and out the -- or the -- the baby's cries  
24 were sporadic --

25 Q. Okay.

1 A. -- so to speak.

2 Q. They were fairly loud cries?

3 A. At -- at a couple points they were loud.

4 Q. And he didn't say -- at no point did he say to  
5 Jordyn shut your ass up?

6 A. Oh, no.

7 Q. That was to Jasmin to shut the baby up?

8 A. To tell her to shut her ass up, yes.

9 Q. Okay. I just wanted to make sure I got that  
10 characterized correctly.

11 MS. KIERNY: Court's brief indulgence.

12 BY MS. KIERNY:

13 Q. So when you were looking through the cupboards when  
14 you were at the apartment on, I believe, that would be the  
15 5th.

16 A. Yes.

17 Q. You looked at the cupboards but you didn't move any  
18 items around?

19 A. I -- I moved some items around. I just didn't  
20 remove any items. I just --

21 Q. You didn't remove any items?

22 A. Correct.

23 Q. Okay. So you moved items around but didn't pick  
24 anything up (inaudible)?

25 A. Right.

1 Q. And there were other -- there were two other  
2 detectives there and a sergeant; is that accurate?

3 A. Yes.

4 Q. Do you know if any of them went through the  
5 cupboard, moved items?

6 A. I couldn't recall for sure.

7 Q. Okay.

8 A. You'd have to ask them.

9 Q. Okay. Well, you were aware of what they were doing?

10 A. I was the lead detective in -- in that case. I was  
11 closest to the counters. They were more in the background.

12 Q. Right.

13 A. So if I had turned my back or went into another  
14 room, if they looked, that would be their testimony to --

15 Q. But you don't have any information from them that  
16 they did that?

17 A. Correct.

18 Q. Thank you.

19 MS. JOBE: Just a couple of questions, Your Honor.

20 THE COURT: Are you done?

21 MS. KIERNY: Oh, yes.

22 THE COURT: Okay.

23 MS. KIERNY: Thank you.

24 THE COURT: Any redirect?

25 MS. JOBE: Just a couple, Your Honor.



## REDIRECT EXAMINATION

1  
2 BY MS. JOBE:

3 Q. Detective DePalma, in you going through the  
4 cupboards or any of your fellow detectives or your sergeant  
5 going through the cupboards, did anyone say they had found  
6 any coffee?

7 A. No, they did not.

8 Q. And as far as those calls that you listened to,  
9 Counsel had asked you; there were times in those calls where  
10 Donovine was frustrated because Jasmin wasn't talking as much  
11 as he wanted to her, and your testimony was that was because  
12 she had some concerns about CPS; is that correct?

13 A. At -- at some times there were some concerns, but  
14 more or less in the beginning of the phone calls, yes.

15 Q. Okay. Was there ever a time where the -- in those  
16 calls that you listened to where the defendant gave  
17 directions to Jasmin about what she needed to do or not do as  
18 far as court proceedings are concerned?

19 A. Yes.

20 Q. And what did he say to Jasmin?

21 A. There were -- as far as there were conversations  
22 about letters, sending letters, and --

23 Q. I'm sorry, Detective, the question was just  
24 specifically did --

25 A. About --

1 Q. -- Donovine say anything specifically to Jasmin  
2 about what she needed to do or not do with respect to court  
3 proceedings?

4 A. I don't recall.

5 Q. Okay.

6 MS. JOBE: No further questions.

7 THE COURT: Any recross?

8 MS. KIERNY: No, Your Honor.

9 THE COURT: Detective, thank you very much for your  
10 testimony here today.

11 THE WITNESS: You're welcome.

12 THE COURT: You may step down. You are excused  
13 from your subpoena.

14 THE WITNESS: Thank you.

15 THE COURT: We have to break for lunch, right?

16 MS. JOBE: Yes, Your Honor.

17 THE COURT: All right. All right. At this time,  
18 we're going to recess for lunch. During this recess, you're  
19 admonished not to talk or converse amongst yourselves or with  
20 anyone else on any subject connected with this trial or read,  
21 watch or listen to any report over commentary on the trial or  
22 any person connected with this trial by any medium of  
23 information, including, without limitation, newspapers,  
24 television, the Internet or radio or form or express any  
25 opinion on any subject connected with this trial until the

1 case is finally submitted to you.

2 We'll be in recess until 1:30. Thank you.

3 THE MARSHAL: Thank you. All rise for the exiting  
4 jury, please.

5 (Outside the presence of the jury)

6 THE COURT: Anything outside the presence?

7 MS. JOBE: I believe, we might, Your Honor.

8 THE COURT: Okay. The record will reflect that  
9 this hearing is taking place outside the presence of the jury  
10 panel.

11 THE MARSHAL: I have to go get his name (inaudible)  
12 name and badge number on it (inaudible).

13 (Pause in the proceedings)

14 THE COURT: Okay.

15 MS. HOLIDAY: I believe, that was Kevin --

16 MS. JOBE: It was, I believe Mr. Terry.

17 MS. HOLIDAY: Kevin Terry.

18 MS. JOBE: There we go.

19 THE COURT: I guess, I'm assuming he must be --  
20 this must be a question for the detective, but --

21 THE MARSHAL: That was Juror No. 6. He's right  
22 outside.

23 THE COURT: Okay. So, it's Juror No. 6. It will  
24 be marked as court's exhibit next in line, which is --

25 THE CLERK: Seven.

1 THE COURT: It says, "Can we see the coffee cup?"  
2 I'm assuming that was a question for the detective, but I  
3 don't think we have to bring the detective back to ask the  
4 question.

5 MS. JOBE: I would just note that there are  
6 multiple pictures in the exhibits of the coffee cup and it's  
7 also in the reenactment video.

8 MS. KIERNY: Was it impounded?

9 MS. JOBE: No. They didn't take any items.

10 MS. KIERNY: I don't know if Jasmin still has that  
11 cup.

12 THE COURT: I mean, I don't know if either side  
13 wants to ask a witness about it and the fact that it was not  
14 impounded. That's fine. But I don't think I need to bring  
15 the detective back to --

16 MS. KIERNY: No.

17 THE COURT: -- ask this question. So the juror can  
18 go to lunch.

19 THE MARSHAL: Yes, ma'am.

20 MS. HOLIDAY: If we're able to get ahold of the  
21 cup, would Your Honor entertain letting the jury see the cup?

22 MS. JOBE: No. Your Honor, State would object  
23 simply because so much time has passed and the fact of the  
24 matter is the --

25 THE COURT: But how would you get past chain of

1 custody and all of that.

2 MS. JOBE: Right.

3 THE COURT: I mean, I don't know, I'll consider  
4 whatever. If you bring it, I'll consider it, but you know,  
5 you'd have to establish a chain of custody, right?

6 MS. HOLIDAY: Okay. Thank you, Your Honor.

7 MS. JOBE: For the record, Your Honor, we've  
8 received defense's proposed instructions. We're going to  
9 review them over lunch. They have ours.

10 MS. KIERNY: Yes.

11 THE COURT: Do I have any of them?

12 MS. JOBE: They've all been sent to Pam.

13 THE COURT: Oh, okay. Okay.

14 MS. HOLIDAY: Do you want to settle -- settle after  
15 Cetl?

16 MS. JOBE: Oh, Cetl's going to be here at 1:30.

17 THE COURT: Is she the last witness?

18 MS. JOBE: She's the last witness for the State,  
19 Your Honor. We'll need to be patient with her and might need  
20 to make some accommodations while she's testifying, but I'll  
21 talk to counsel about that off the record.

22 THE COURT: Sure.

23 MS. KIERNY: And then I think Ms. -- just really  
24 briefly. I'm sorry, I know we don't want to do this before  
25 the jurors. Ms. Holiday wanted to use a demonstrative --

1 explain this.

2 MS. HOLIDAY: That's correct, Your Honor. What I  
3 was going to ask before Dr. Cetl testifies, I brought over, I  
4 guess, a big, huge, white notepad that you would write on and  
5 an --

6 THE COURT: Sure.

7 MS. HOLIDAY: -- easel. And so I was just  
8 wondering if during Dr. Cetl's testimony I could write a few  
9 things down?

10 THE COURT: Sure.

11 MS. HOLIDAY: Okay.

12 THE COURT: No problem.

13 MS. HOLIDAY: Great. Thank you, Your Honor.

14 THE COURT: No problem.

15 THE MARSHAL: Thank you. Court will be in recess.

16 (Court recessed at 12:20 p.m. until 1:32 p.m.)

17 (In the presence of the jury)

18 THE MARSHAL: Thank you, everyone. Please be  
19 seated.

20 (Pause in the proceedings)

21 THE MARSHAL: Please come to order. Court is now  
22 back in session.

23 THE COURT: Does the State stipulate to the  
24 presence of the jury panel?

25 MS. JOBE: Yes, Your Honor.

1 THE COURT: The defense?

2 MS. HOLIDAY: Yes, Your Honor.

3 THE COURT: Okay. Dr. Cetl, you can take the stand  
4 again. And if you'll please remain standing and raise your  
5 right hand so you can be sworn.

6 DR. SANDRA CETL, STATE'S WITNESS, SWORN

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

9 THE WITNESS: Yes. Dr. Sandra, S-a-n-d-r-a, Cetl,  
10 C-e-t-l.

11 THE CLERK: Thank you.

12 THE COURT: And cross-examination.

13 MS. HOLIDAY: Thank you, Your Honor.

14 THE COURT: Um-h'm.

15 CROSS-EXAMINATION

16 BY MS. HOLIDAY:

17 Q. Good afternoon, Dr. Cetl.

18 A. Good afternoon.

19 Q. Yesterday, you explained that your job is to  
20 evaluate children's injuries, correct?

21 A. Yes.

22 Q. Okay. Yesterday you also explained that you like to  
23 have as much information as you can have when coming to a  
24 conclusion?

25 A. Or as necessary to make a conclusion.

1 Q. Okay. You were present near Chance's hospital room  
2 after the accident, right?

3 A. I believe, I was working in the office that day.

4 Q. When you say, in the office, what do you mean?

5 A. I have an office in -- in the hospital on labor and  
6 delivery.

7 Q. Okay. Is labor and delivery on the same floor as  
8 the Emergency Department?

9 A. Yes.

10 Q. How close is it to the Emergency Department?

11 A. It's a three-and-a-half minute walk. I don't know  
12 exactly.

13 Q. Do you mean being present outside of Chance's room  
14 in the Emergency Department on the day of the accident?

15 MR. BURTON: Your Honor, at this time, I'm going to  
16 object as to the term "accident". Assumes facts not in  
17 evidence.

18 THE COURT: Why don't you just ask if she was there  
19 on the date of the incident.

20 BY MS. HOLIDAY:

21 Q. On the date of the incident.

22 A. I believe that I was. I think I -- I had heard  
23 from, I think, nursing staff that there may have been a  
24 concern of abuse, and I kind of poked my head into the room,  
25 but he was already wrapped up, and so I wasn't able to do an



1 actual examination.

2 Q. Okay. So you did poke your head into the room?

3 A. I looked --

4 Q. Chance's room?

5 A. I just -- I looked from the hallway to see if he'd  
6 be able to be examined, and he wasn't, unfortunately, by that  
7 time.

8 Q. Okay. So you did not examine him?

9 A. Correct.

10 Q. Doctor, you went through an analysis to come to your  
11 conclusions in this case, right?

12 A. Yes.

13 Q. I'd like it talk to you a little bit about your  
14 method of analysis. "Analysis" is a word we use a lot. We  
15 kind of talk about it all the time. Wouldn't you say that an  
16 analysis is just the process of breaking a topic down into  
17 smaller parts so that you can examine it to learn more about  
18 the topic?

19 A. That's one definition, sure.

20 Q. When you're analyzing something, you are using the  
21 information that you already know from your training and  
22 experience, right?

23 A. For an evaluation, yes.

24 Q. For an evaluation. Any kind of analysis you do,  
25 really? You use the information you already have in your

1 mind, right?

2 A. Well, I definitely use that. That's a part of it,  
3 yeah.

4 Q. As a basis or a background of your analysis?

5 A. Sure.

6 Q. Okay. And specifically, as a medical doctor, you're  
7 going to use your training and expertise in medicine as part  
8 of your analysis?

9 A. Yes.

10 Q. You specifically analyze injuries to the human body?

11 A. Correct.

12 Q. Fair to say these are injuries you did not  
13 personally observe happen usually?

14 A. Correct, because I'm in a medical facility where  
15 people bring the injured.

16 Q. Absolutely. So when you're making an analysis about  
17 an injury that occurred to the human body, is it fair to say  
18 that you have to kind of picture what could have happened to  
19 create the injury in your mind?

20 A. That's a part of it, yes.

21 Q. And you're creating that picture in your mind using  
22 the information that you have about the injury?

23 A. Yes.

24 Q. And the specific knowledge and expertise that you  
25 already have through your training and experience?

1 A. That's fair.

2 Q. You're a scientist, right?

3 A. In a matter of speaking.

4 Q. Okay. Do you use the scientific method in your  
5 analysis?

6 A. Because we're not researching a topic with a null  
7 hypothesis and to go through methods and whatnot to produce  
8 some type of literature, I wouldn't say that. I use more of  
9 a method of differential diagnoses and a medical evaluation  
10 type of structure.

11 Q. How is a medical evaluation different than this  
12 scientific method, for example?

13 A. So the way we go about things is pretty conservative  
14 in terms of we look at there's a subjective, kind of an  
15 objective, an assessment and a plan. Whereas, when -- and  
16 yes, the scientific method is a part of that accessing  
17 literature, looking at, well, okay, there is certain things  
18 that this might be and kind of going through that process.

19 The scientific method itself is more, I think,  
20 adaptable when we're talking about the medical field to  
21 looking at peer research type of assessments.

22 Q. Okay. So backing you up a little bit. You said you  
23 start with an objective and a --

24 A. No, we call it kind of a SOAP. That's kind of just  
25 in general how we organize it as medical, you know,

1 practitioners. Subjective, kind of understanding, okay, why  
2 did someone come in, what's their history, and then  
3 objective, so what are the findings, physical exam, if  
4 they're, you know, photo documentation, vital signs,  
5 whatever, labs. Next would be kind of an assessment of, you  
6 know, what are we looking at and then a plan dependent on  
7 what role we play in the management of that child or patient.

8 Q. So fair to say the subjective would be the specific  
9 facts that you have on the child or the person that you're  
10 looking at? The case that you're looking at?

11 A. I wouldn't call them facts because it is subjective.  
12 I would say that that is a history that is provided either by  
13 a caregiver or even, you know, like a social history, medical  
14 history, whatnot, that, you know, for intents and purposes I  
15 would take as truth, but in and of itself, it's not a fact  
16 because I'm not either looking at a lab value, for instance,  
17 something that is objective.

18 Q. Okay. So it's information that you have regarding  
19 the specific case?

20 A. Yes.

21 Q. Okay. And then you said you assess -- you do an  
22 assessment with that information?

23 A. Yes. So it's all of the information put together.

24 Q. Okay. Can you walk me through the process of your  
25 assessment? Is that -- does that relate to the scientific

1 method in any way?

2 MR. BURTON: Objection, Your Honor. At this time,  
3 relevance.

4 THE COURT: Yeah, I'm kind of wondering what the  
5 relevance is.

6 MS. HOLIDAY: Well, she's providing medical  
7 testimony. She did an analysis to reach a conclusion in this  
8 case.

9 THE COURT: Sure.

10 MS. HOLIDAY: And I think we should explore the  
11 analysis and the information, the process by which she came  
12 to that conclusion so we can understand it.

13 THE COURT: I think you can do that, but I'm not  
14 sure that this question does that. The objection's  
15 sustained.

16 BY MS. HOLIDAY:

17 Q. When you're analyzing a case, fair to say, you have  
18 information or data that you start with?

19 A. In general, yes.

20 Q. Okay. Would you then start imagining scenarios in  
21 your mind that could have happened to create the injury  
22 you're looking at?

23 A. I don't know if that's where I start. I mean,  
24 oftentimes I'll get a history. Okay, there's a patient  
25 presented with such and such chief complaint, here are the

1 physical exam findings, so a photo documentation or exams or  
2 videos or whatever it is. Here is the history of how this is  
3 reported to have occurred. And then go through kind of,  
4 okay, you know, is this the way that this could occur? Well,  
5 how could this occur and, you know, what do I know about  
6 these types of injuries that could offer support to the  
7 mechanism.

8 Q. Absolutely. So how could this occur? So that with  
9 be a question you would start with?

10 A. Again, I don't -- I don't -- I start. I don't know,  
11 it's a part of the overall evaluation.

12 Q. That's a question that you would ask as part of your  
13 overall evaluation? How could this --

14 A. Fair.

15 Q. -- have happened?

16 A. Fair.

17 Q. And in answering that question, you use the  
18 information that you have available about the case?

19 A. Yes.

20 Q. And in answering that question, how could this have  
21 happened, you have to start with a guess in your mind or an  
22 assumption or maybe a hypothesis?

23 MR. BURTON: Objection, Your Honor.

24 THE COURT: Sustained.

25 BY MS. HOLIDAY:

1 Q. When trying to answer the question how could this  
2 have happened, is the answer usually immediately apparent to  
3 you or do you have to think about it, break it into different  
4 parts in your mind to determine the conclusion that you  
5 ultimately want to reach?

6 MR. BURTON: Your Honor, may we approach?

7 THE COURT: Sure.

8 (Bench conference begins)

9 THE COURT: I don't know what you're doing. You  
10 got her here on cross-examination. Cross-examine her.

11 MS. HOLIDAY: So, Judge, obviously, we don't have a  
12 scientific expert testifying. We've offered one, we don't  
13 have one. Sciencey and stuff is hard, and I would like to  
14 try to present my best challenge to her medical and  
15 scientific testimony that I can present. In order to do  
16 that --

17 THE COURT: You've been doing that.

18 MS. HOLIDAY: -- I think I would like to ask her  
19 questions about her analysis. Obviously, I want to ask her  
20 questions about her analysis of this case in particular.

21 THE COURT: Okay.

22 MS. HOLIDAY: That would certainly be my goal. To  
23 understand how she analyzed this case in particular, I need  
24 to understand her process or method of analysis that she goes  
25 through. If we can follow the process or method of analysis,

1 then we can find out how she used that, implemented that in  
2 this case.

3 THE COURT: Well, that would be nice if that's what  
4 you were doing. I mean, I'll allow you to do that. But I'm  
5 not going to allow you to pretend like you have Dr. Johnson  
6 up on the stand. I mean, because that's what it appears that  
7 you're trying to do, is get her to testify that she can  
8 create some sort of scenario in which this is --

9 MS. HOLIDAY: I don't -- I don't think that's --  
10 I'm certainly not saying that she created a scenario. I'm  
11 saying to -- I'm actually not saying anything because I -- I  
12 don't know her process of analysis and I think her process of  
13 analysis --

14 THE COURT: Well, she's told you.

15 MS. HOLIDAY: -- is important, right?

16 THE COURT: Okay. I -- everything I -- you're  
17 saying, I think you can do, I just don't think you're doing  
18 that through your questioning.

19 MS. HOLIDAY: Okay.

20 THE COURT: So the objection's sustained, but  
21 everything you said, I think you're permitted to do. You're  
22 permitted to challenge her, but she's here, not somebody  
23 else.

24 MS. HOLIDAY: Okay.

25 THE COURT: Okay. Thank you.



1 MR. BURTON: Thank you, Your Honor.

2 (Bench conference concluded).

3 BY MS. HOLIDAY:

4 Q. Doctor, in this case, in particular --

5 A. Um-h'm.

6 Q. -- you started off with some information?

7 A. Yes.

8 Q. Some of facts that you had were that the child's  
9 mother's boyfriend told police a statement about what  
10 happened?

11 A. Yes.

12 Q. Your understanding of that statement is that he put  
13 a mug full of hot water on the countertop, right?

14 A. Yes.

15 Q. And then he left the room?

16 A. Yes.

17 Q. When he came back into the room, the mug full of  
18 water was now on the floor?

19 A. I believe so, yes.

20 Q. Another fact you knew in this case was the child's  
21 age?

22 A. Yes.

23 Q. Did you know the child's height?

24 A. I don't know if that's in the beginning or if it was  
25 overall. I did eventually know the child's height, yes.

1 Q. Did you know the countertop height?

2 A. Again, eventually. I always ask for as much  
3 measurement, especially when dealing with access and  
4 developmental milestones, you know, in toddlers.

5 Q. You asked for more measurements?

6 A. Yeah, I don't remember if in this particular, if I  
7 already had that because, you know, I -- it's kind of known  
8 that I'm going to want measurements and what, you know, what  
9 everything looked like and does it -- you know, is it  
10 consistent with the mechanism that is given or, you know, the  
11 development of the child and whatnot. So I did know at some  
12 point in my evaluation, both the countertop height as well as  
13 the child's height.

14 Q. Did you know the child's wing span or arm reach?

15 A. Specifically, I don't think I did, no.

16 Q. Did you know the size of the child's hands?

17 A. No, I don't think that was measured out. Well, yes,  
18 I did, actually. That's not true, it was measured out  
19 because we had the scale with the burn images, so yes, about  
20 the size of the child's hands, I did -- I did have an  
21 understanding of that.

22 Q. Would the child's arm length or wing span be present  
23 in the medical records?

24 A. No.

25 Q. That's not something you usually measure?

1 A. No, not in the ER. No.

2 Q. Did you know how far specifically Chance could reach  
3 up onto a countertop?

4 A. No. That was more of a supposition being fairly  
5 average size, two, two-and-a-half-year-old.

6 Q. Okay. A supposition, can you explain that?

7 A. Based on his height and about an average size, you  
8 know, what a hand might be able to -- to reach. And what we  
9 see just day-to-day what toddlers can do within their  
10 development.

11 Q. Did you ever create a model or anything where you  
12 had a model of what the child's height would be compared to  
13 what the countertop would be, compared to how far the child  
14 could reach under the countertop?

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

16 THE COURT: I'll allow her to answer this.

17 THE WITNESS: No, did I not create a physical  
18 model.

19 BY MS. HOLIDAY:

20 Q. So when you're talking about a -- you said a  
21 supposition?

22 A. Yes.

23 Q. Is that an assumption?

24 A. Sure, yes.

25 Q. Same idea? Okay. So your assumption of the child's

1 reach on to the countertop is not something you tested out  
2 through a model, but something you kind of imagined or kind  
3 of tested in your mind?

4 A. Based on medical literature, my training,  
5 experience, it wasn't just a, you know, a guess.

6 Q. Right. Right. Like we talked about, when you are  
7 making an analysis, you use the expertise that you already  
8 have?

9 A. Correct.

10 Q. Okay. Do you -- did you know in this case exactly  
11 where the mug was placed on the countertop?

12 A. No, I was told through images as well as a history  
13 about where the caregiver thought that the mug was.

14 Q. What image did you rely on for that information?

15 A. There was images of the counter and there was also  
16 an image of the mug in the sink itself. So it was just kind  
17 of saying set up this is about where he explained that the  
18 mug would be. So it would be photo documentation from, I  
19 believe, Metro's ID team.

20 Q. Was it an image of Mr. Mathews specifically pointing  
21 at a spot on the countertop or was it a detective pointing at  
22 a spot on the countertop or how --

23 A. I believe, it was the detective kind of pointing --

24 Q. A detective pointing --

25 A. -- that -- yeah.

1 Q. Okay. Did you know in this case how the mug spilled  
2 or tipped or fell off the countertop?

3 A. No.

4 Q. Did you know in this case the angle that the mug  
5 would have fallen or tipped or spilled?

6 A. The mug was in the sink so it wasn't even on the  
7 floor in any of the scene pictures that I looked at so I have  
8 no idea, no.

9 Q. Do you know as part of your background or training  
10 and experience the force that it requires to get a mug to  
11 spill or tip?

12 A. More of a generalization or estimation. Physics,  
13 you know, is a part of kind of mechanisms of -- of how  
14 injuries happen. But a specific number, no, I don't.

15 Q. Okay. You probably took a physics class as part of  
16 your medical training, your general education and medical  
17 training?

18 MR. BURTON: Objection, Your Honor.

19 THE COURT: Sustained.

20 MS. HOLIDAY: Your Honor, she testified that she  
21 was using --

22 THE COURT: We're not going to --

23 MS. HOLIDAY: -- knowledge of physics.

24 THE COURT: -- ask her what classes she took.

25 BY MS. HOLIDAY:

1 Q. Where does your knowledge of physics come from?

2 MR. BURTON: Objection, Your Honor.

3 THE COURT: Sustained.

4 BY MS. HOLIDAY:

5 Q. So you used the knowledge much physics that you  
6 have --

7 A. Yes.

8 Q. -- to estimate or assume the amount of force that  
9 would be required to tip or spill the mug or for it to fall  
10 off the countertop?

11 A. Generally speaking, yes.

12 Q. Okay. Do you know how much -- do you know if there  
13 was water spilled on the floor or on the countertop?

14 A. My understanding from a report of the scene is that  
15 there was no water on the countertop or the floor or anywhere  
16 that was maybe cleaner than other areas that would indicate  
17 that. So I don't know how much or where water was.

18 Q. Okay. Did somebody tell you specifically that there  
19 was no water on the countertop?

20 A. Yes, I believe it was law enforcement and child  
21 protective service staffing that we had, from one or the  
22 other. I don't recall who told me that.

23 Q. Do you know in this case what the flow -- the  
24 direction of the flow of the water was?

25 MR. BURTON: Your Honor, at this time, objection.

1 This is outside of her field of expertise.

2 THE COURT: Sustained.

3 BY MS. HOLIDAY:

4 Q. Were you provided information in this case about the  
5 direction the water had spilled?

6 A. There was no water so the assumption would be that  
7 no, that information was not provided.

8 Q. Were you provided information in this case about  
9 what Chance was trying to do?

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

11 THE COURT: Yeah, why don't you approach for just a  
12 moment.

13 (Bench conference begins)

14 THE COURT: She was provided information about what  
15 he said. She was not provided information that this -- she's  
16 -- I mean, so if you want to ask her based upon what she --  
17 your client never provided information that the cup fell off  
18 the counter, that the child was reaching on the counter, none  
19 of that.

20 MS. HOLIDAY: Correct. So she doesn't have any of  
21 that information. So --

22 THE COURT: Because she doesn't think that's what  
23 happened.

24 MS. HOLIDAY: Right. So --

25 THE COURT: So what are you getting at?

1 MS. HOLIDAY: So what I'm getting at is all the  
2 information that she doesn't have, right? The question that  
3 we were just talking about was did anybody tell --

4 THE COURT: You don't have to have information  
5 about stuff that's not relevant. You can ask her if that  
6 would be relevant to her analysis, but for her -- you're  
7 asking her to basically to presume that something happened a  
8 certain way.

9 MS. HOLIDAY: No, Your Honor.

10 THE COURT: You already asked her what direction  
11 the water was flowing from when the cup fell over.

12 MS. HOLIDAY: I asked her if she -- I asked her if  
13 she knew what direction the water was flowing. She doesn't.

14 THE COURT: Then --

15 MS. HOLIDAY: And that's the point I'm trying to  
16 get at.

17 THE COURT: -- you're asking her to assume that  
18 that happened.

19 MS. HOLIDAY: No, of course not. I'm asking her if  
20 she --

21 THE COURT: Then it's not relevant. So that's  
22 easy.

23 MS. HOLIDAY: Okay. So is Your Honor saying that I  
24 can ask her if knowledge of what Chance was trying to do  
25 would have influenced her analysis?



1 THE COURT: So in other words, if she had been  
2 there and saw it? I mean, because your own client says he  
3 didn't see what happened.

4 MS. HOLIDAY: And I think that's the important --

5 THE COURT: I mean, and maybe you're not  
6 understanding the difference. You wanted to bring in an  
7 expert to put together a scenario, a complete scenario, based  
8 on nothing, based on no facts, except that your client left  
9 the room and this is what could have happened.

10 Where you have experts that are saying these are  
11 the burn patterns and they're of a non-accidental nature.  
12 They had to have been done intentionally and they wouldn't  
13 have been done this way because that's not how a burn pattern  
14 would be.

15 MS. HOLIDAY: And they testified on direct  
16 examination, Dr. Cetl, specifically, that she based part of  
17 her analysis on the facts that she was given --

18 THE COURT: Sure.

19 MS. HOLIDAY: -- and that -- you know, the story  
20 that a mug was placed on the countertop and why it wouldn't  
21 be possible for the water to have spilled on Chance only  
22 creating burns to the back of his hands.

23 THE COURT: Um-h'm.

24 MS. HOLIDAY: And so she was given certain  
25 information, right? Like I just said, a mug on a countertop,

1 mug eventually ends up on the floor.

2 THE COURT: Um-h'm.

3 MS. HOLIDAY: I think what's also important to her  
4 analysis is information she didn't have. Nobody could tell  
5 her what Chance's objective was or what Chance was trying to  
6 do. You're right, because nobody saw it. So obviously, that  
7 didn't go into her analysis. I think the information that  
8 didn't go into her analysis is just as important as the  
9 information that did go into her analysis.

10 If she didn't know what Chance was going for, I'm  
11 asking her if she did. She didn't, probably, so I'm pointing  
12 that out.

13 MR. BURTON: Your Honor, this all goes towards  
14 argument.

15 THE COURT: Right. I mean --

16 MR. BURTON: This witness has clearly stated what  
17 information and facts she knew and what information she had.  
18 If she wants to stand up in front of the jury and say well,  
19 look at all the stuff she didn't have, that's fine.

20 THE COURT: I think that's fine, too. I just don't  
21 think it's appropriate on cross-examination.

22 MS. HOLIDAY: Okay.

23 THE COURT: You need to cross-examine her on her  
24 testimony, not based on somebody that's not here.

25 MS. HOLIDAY: One thing that we heard in the

1 recorded statement, Donovine's recorded statement, is that he  
2 said I don't know, maybe he was thirsty or something to that  
3 effect. He was thirsty. That was -- that was a guess,  
4 obviously. But point being, nobody told her that, right?  
5 Or --

6 THE COURT: What, that the child was thirsty?

7 MS. HOLIDAY: Yeah.

8 MR. BURTON: Again, that's argument to be made to  
9 the jury no closing.

10 MS. HOLIDAY: It's not.

11 MR. BURTON: It's not relevant to cross-  
12 examination.

13 THE COURT: What does that have to do with the burn  
14 patterns on this child, whether he was thirsty?

15 MS. HOLIDAY: Because it matters what information  
16 she put into her analysis. If she was thinking about, you  
17 know, that the child was thirsty, that might have changed her  
18 analysis. If she was thinking that the child was reaching  
19 for a cup --

20 MR. BURTON: You can ask her that. You can ask  
21 her --

22 MS. HOLIDAY: Okay.

23 MR. BURTON: -- if you would have known the child  
24 was thirsty --

25 THE COURT: I guess if you want to ask her that.  
26 The objection at this point is sustained. I just ask that

1 you cross-examine her -- cross-examine her based on what she  
2 has testified to.

3 MS. HOLIDAY: But to get at what she knows, it's  
4 also important to understand what she doesn't know. Am I  
5 allowed to her questions --

6 THE COURT: Okay. You cannot ask --

7 MS. HOLIDAY: -- about what she doesn't know.

8 THE COURT: -- her what direction was the water  
9 flowing from the cup. You're asking her to assume that there  
10 was water in the cup and that the water tipped over, right?

11 MS. HOLIDAY: Well, she analyzed --

12 THE COURT: Because do you understand how that  
13 doesn't make sense?

14 MS. HOLIDAY: She analyzed -- she started with a  
15 preposition, right, that Donovine's statement was that there  
16 was water in the cup and it tipped over. And she analyzed  
17 that. She was wondering or --

18 THE COURT: Well, you can ask her that.

19 MS. HOLIDAY: -- explaining --

20 THE COURT: That if she assumed that. If she  
21 assumed that was all true, you can ask her that. I just --

22 MS. HOLIDAY: I don't --

23 THE COURT: You can't ask her what direction was  
24 the water flowing.

25 MS. HOLIDAY: Well, I -- to be fair, Judge,  
26 respectfully, I didn't ask her what direction was the water

1 flowing. I know she doesn't know that. What I said was --

2 THE COURT: Yeah, you did.

3 MS. HOLIDAY: -- nobody -- you know, you don't  
4 know, think is what I said, or did you know what direction  
5 the water -- is that information that you have? The point  
6 is, did she know what direction the water's flowing? She did  
7 not have that information. Nobody told her what direction  
8 the water was flowing. That's not a fact that she has is the  
9 point.

10 MS. JOBE: Because no one -- because no one  
11 supposedly observed this.

12 MS. HOLIDAY: Absolutely. That's part of my point.

13 THE COURT: Okay. Then that's something you can  
14 argue in closing argument..

15 MS. HOLIDAY: Okay.

16 (Bench conference concluded).

17 THE COURT: Go ahead.

18 BY MS. HOLIDAY:

19 Q. Doctor, would it make a difference to your analysis  
20 and your opinion if you had information that Chance was  
21 thirsty?

22 A. Not necessarily, no.

23 Q. Would it make a difference to your analysis and  
24 opinion if you had information that Chance wanted to grab a  
25 mug?

26 A. I guess, in a matter of speaking, because when kids

1 grab mugs off of counters and spill them on themselves and  
2 they have these accidental burns that are very stereotypical  
3 in face, torso. So I mean, if that's what, you know, his  
4 intention was, then I guess, it makes sense, you know, to  
5 further my assessment and evaluation in this case.

6 Q. So what Chance's objective was or what Chance was  
7 reaching for would be important to your analysis?

8 MR. BURTON: Objection. Misstates the testimony,  
9 Your Honor.

10 THE COURT: Sustained.

11 BY MS. HOLIDAY:

12 Q. Why would it be important for you to know if Chance  
13 was reaching for the mug?

14 A. I mean, I don't think it's something that needs to  
15 be known. Again, two-year-olds are, again, very kind of  
16 stereotyped conservative in development and be especially if  
17 someone has normal development. So if he was reaching for a  
18 mug, which is the classic scenario for an accidental type of  
19 burn, then I think that's important to kind of understand  
20 that just to solidify that he has -- he's a normal toddler  
21 like every other two-year-old.

22 But being a fact that I would need to have in order  
23 to make this assessment, I -- I don't think so.

24 Q. It would be helpful to your opinion analysis,  
25 though?

26 A. It's something I would use, sure.

1 Q. Okay. Another fact that you had in this case were  
2 the pictures of the injury?

3 A. Correct.

4 Q. And medical records?

5 A. Yes.

6 Q. You reviewed the medical records from Sunrise  
7 Hospital?

8 A. Yes.

9 Q. You reviewed the description of the injuries that  
10 Dr. Olson had provided?

11 A. Yes, I did.

12 Q. You reviewed the description that there were burns  
13 to the palm and fingertip of Chance's hands?

14 A. I did see that he documented that, yes.

15 Q. Okay. So part of your analysis, a fact that you  
16 knew, was that Dr. Olson had observed a burn to the palm of  
17 Chance's hand and the fingertip of Chance's hand?

18 A. What I know is that the scribe that he worked with,  
19 did document that in the documentation. Upon later talking  
20 to him, he indicated to me it was still the dorsum of the  
21 hands so I -- I was a bit confused about that. So I'm not  
22 sure that I would say that that was a fact, but that was  
23 information that I looked at.

24 Q. So Dr. Olson indicated to you that there were burns  
25 to the backs of the hands?

26 A. Um-h'm.

1 Q. Did he specifically state there were not burns to  
2 the palm of the hand or the fingertip of the hands?

3 MR. BURTON: Objection, Your Honor. At this point,  
4 hearsay.

5 THE COURT: Can you rephrase it?

6 BY MS. HOLIDAY:

7 Q. You testified that you're not sure the burn -- the  
8 note about the burn to the palm and fingertip was a fact  
9 because of a conversation that you had with Dr. Olson?

10 A. Correct.

11 Q. And in that conversation with Dr. Olson, he said  
12 that there were burns to the back of the hands?

13 A. Yes.

14 Q. But he did not say that there were burns to the palm  
15 and fingertip of the hands?

16 A. I don't recall that he did because in our discussion  
17 we talked about the features of why this would be an abusive  
18 injury and that I agreed with his overall assessment in this  
19 case.

20 Q. Did you agree with his assessment that this was an  
21 emersion burn?

22 A. I guess, I -- I don't know how he's using that  
23 terminology. An emersion would be more to be put inside  
24 something versus a liquid burn. So I'm not sure how he means  
25 that. I would agree that it's a liquid burn, but I don't  
26 know that I'd agree with the usage of that word.



1 Q. You testified that you helped to develop the SCAN  
2 form that doctors use in a situation like this?

3 A. Yes.

4 Q. Is it true that on the SCAN form there are bubbles  
5 and descriptions of burns or burn patterns and you can mark  
6 the type of burn pattern that you see, for example, emersion  
7 is one of them?

8 A. Yes.

9 Q. Okay. What does that description of emersion on  
10 that form mean to you?

11 A. To me it means what we would look with the burn  
12 literature both, you know, from abusive or accidental  
13 mechanisms happening where something gets completely dipped  
14 inside of a liquid or a hot source.

15 Q. Okay, Doctor, so going back to the information that  
16 you did have about a mug on a countertop.

17 A. Yep.

18 Q. You knew that there was a mug on the countertop?

19 A. I was told that there was a mug at some point on the  
20 countertop.

21 Q. And in forming your analysis and opinion, you  
22 determined whether it was reasonable for the mug falling off  
23 the countertop onto Chance to cause the type of injuries that  
24 Chance had?

25 A. Yes.

26 Q. And you determined that wasn't a reasonable

1 possibility?

2 A. Correct.

3 Q. Because if the mug fell off the countertop towards  
4 Chance, it would create more injuries?

5 A. Not necessarily more injuries, but the important of  
6 a mug higher on a counters falling anywhere around the child  
7 towards or otherwise, that water would create the accidental  
8 type of patterns that we see, not the bilateral, symmetrical,  
9 well demarcated type that he had.

10 Q. And those types of patterns you're talking about you  
11 would say would be like a splash pattern, for example?

12 A. That's one component.

13 Q. What else? What other components would you see?

14 A. So asymmetry. So not symmetrical, not on, you know,  
15 meaning both sides of the same part of the body. You would  
16 typically not see a fairly smooth pattern. You would see  
17 more jagged edges. You would see gravity's effect of  
18 cooling. You have hot at the first place that it contacts,  
19 cooler, cooler. And then also, as gravity brings any kind of  
20 liquid down, it usually forms these kind of, almost an upside  
21 down triangle or upside down arrow type of look to it.

22 So all of that together, including the areas that  
23 were injured, you know, not being an exploratory area, these  
24 -- these are the things that we would see on a accidental  
25 type of spill.

1 Q. So one component would be an upside down triangle?

2 A. Yes.

3 Q. So one of the conclusions you reached was that if  
4 the mug of hot water would have fallen off the countertop  
5 towards Chance, there would be some sort of upside down  
6 triangle pattern, whether on his hands, or on some part of  
7 his body or on his body overall?

8 A. It depends on how the liquid lands or if there's  
9 clothing and what's in the way. But that is a representative  
10 accidental type of burn. So, I wouldn't necessarily expect  
11 that there had to be a triangle or an inverted triangle, but  
12 that's something that, again, of the 35,000 patients I've  
13 seen just in the last six years for, you know, general  
14 medicine and abuse and whatnot, yes, an upside down kind of  
15 inverted triangle would be a typical accidental spill.

16 Q. I believe that on direct examination the District  
17 Attorney asked you if you had considered the possibility of  
18 the mug falling different directions, correct?

19 A. Yes.

20 Q. So if we have a mug on a countertop, the basic idea  
21 is that it could fall in -- it could fall towards the  
22 person --

23 A. Sure.

24 Q. -- it could fall away from the person, it could fall  
25 from left to right or from right to left?

1 A. Yeah, possibly.

2 Q. Or any combination of those?

3 A. Correct.

4 Q. A great variety of ways the cup could fall, correct?

5 A. Sure, yes.

6 Q. Okay. And possibly, the direction the cup would  
7 fall would depend on the force that was applied to the cup?

8 A. A direction of the force that was applied to the  
9 cup.

10 Q. A direction of the force and maybe the amount of  
11 force, correct?

12 MR. BURTON: At this point, Your Honor, objection.  
13 Outside of her scope of expertise.

14 THE COURT: Can you answer these questions?

15 THE WITNESS: I guess, in a general sense, I could.

16 THE COURT: I'm going to allow her to answer.

17 BY MS. HOLIDAY:

18 Q. In fact, on direct examination, the District  
19 Attorney asked you your opinion on the possibility of a mug  
20 falling in different directions --

21 A. Um-h'm,

22 Q. -- right? So that's something you analyzed?

23 A. Again, you know, people who write literature for us  
24 to look at and practice medicine, that would be an analysis.  
25 We as a physician would do an assessment or an evaluation.

1 Slightly different type of approach. So I'm not sure exactly  
2 how you mean by analysis.

3 Q. So assessment is what you would call it?

4 A. Yes.

5 Q. You would do an assessment? Okay. So the District  
6 Attorney asked you your opinion on a mug falling in different  
7 directions?

8 A. Yes.

9 Q. And you did an assessment on what would happen if a  
10 mug fell (inaudible), right?

11 A. Yeah, we talked about my opinion on, you know, kind  
12 of what would we expect in that situation.

13 Q. Okay. And so as you're assessing that type of  
14 situation, you have to take into account the type of force,  
15 the amount of force and the direction of the force that might  
16 have been applied to the mug, correct?

17 A. Yes.

18 Q. Okay. And so we can agree that the way the mug is  
19 going to fall depends on the type of force and the direction  
20 of the force?

21 A. Yes.

22 Q. Okay. If a mug is placed on the countertop and it  
23 falls from left to right, or from right to left, are you  
24 familiar with the type of patterns that the water would make?

25 MR. BURTON: Objection, Your Honor.

1 THE COURT: Where? I mean, it -- the question  
2 doesn't make sense.

3 BY MS. HOLIDAY:

4 Q. And if this is not within the scope of your  
5 expertise, that's okay, Doctor.

6 A. Um-h'm.

7 Q. But if you can answer, are you familiar with the  
8 pattern on the countertop that water would make if it spilled  
9 from a cup on to the countertop?

10 A. Not necessarily. As a liquid spills, I don't --  
11 that's not what I'm looking at. I'm looking at the effect, I  
12 guess, of hot water on a body, not so much on the countertop.

13 Q. Okay. So then let's go with that -- or that  
14 assessment.

15 A. Um-h'm.

16 Q. Would you be familiar with the pattern that the  
17 water would make on the human body if it spilled from left to  
18 right over the human body instead of the countertop?

19 A. I mean, I'd have an expectation of -- of what it  
20 might look like and, I guess, I'm trying to think of  
21 scenarios where if something has spilled towards somebody and  
22 they receive something, so yeah, I would be familiar with in  
23 general, how that might look like.

24 Q. What would you expect that to look like?

25 A. You know, more often than not, something splash

1 marks, you know, again, whatever body part is closer to that  
2 hottest water, that hottest part of the water to have a worst  
3 burn, things that are further as cooled off so it will have  
4 lesser burns, potentially, same kind of gravitational, the  
5 pooling, depending on how that body part is positioned and,  
6 you know, is it water, is it something greasy, I guess, you  
7 know, are we expecting droplets or a line where the water is,  
8 I don't know.

9 Q. You talked about an inverted triangle earlier.  
10 Would it still create an inverted triangle type pattern?

11 A. So, what body -- I mean, are we specifically talking  
12 about hands on a countertop?

13 Q. Sure. Absolutely.

14 A. You know, potentially if one obeys the basic  
15 pathophysiology of your body, your reflexes, and they move  
16 away from something, because you know, even someone, trained  
17 masters would have a very difficult time keeping hands as  
18 their flesh is burning at second, you know, third degree  
19 burns and keeping them there solid and letting them stay  
20 there so that the water settles. So I would anticipate  
21 movement and having potentially that triangular pattern.

22 Q. Okay. A triangular pattern maybe.

23 A. Potentially.

24 Q. But signs of movement certainly?

25 A. Yes.

1 Q. Okay.

2 A. For the most part, yeah.

3 Q. When you analyze the burns to the back of Chance's  
4 hands, do you see signs of movement?

5 A. There is -- well, it's hard because there is one  
6 area that looks like a little bit of a splash mark. Is that  
7 the water itself moving or is that him moving? So I see very  
8 little signs of him actually moving, but potentially that one  
9 little splash mark.

10 MS. HOLIDAY: Court's indulgence.

11 BY MS. HOLIDAY:

12 Q. Do you think it looks like, according to the burn  
13 pattern, that there was -- the hands had freedom of movement?

14 A. No. I don't -- I don't think so.

15 Q. Does the burn pattern indicate to you that the hands  
16 were perfectly still?

17 A. For the most part. They -- I mean, they appear that  
18 the edges of the burns were fairly smooth. They stop at kind  
19 of similar places. There's sparing in some key areas. And  
20 so they would be more consistent with lack of movement.

21 Q. Let's talk about sparing for a minute, Doctor. You  
22 said you noticed sparing on both of the palms of the hands in  
23 this case, correct?

24 A. Correct.

25 Q. And again, you said that that could be a cause -- or



1 as a result of hands either being placed on a surface or of  
2 hands being curled into a fist?

3 A. Potentially.

4 Q. Okay.

5 MS. HOLIDAY: Court's indulgence.

6 BY MS. HOLIDAY:

7 Q. Doctor --

8 THE COURT: Mr. Cheng, do you need a break? Do you  
9 need a break? Are you okay? I just want to make sure you're  
10 okay. If you need a break, I'm happy to take auto break.  
11 You're okay? All right.

12 BY MS. HOLIDAY:

13 Q. You testified that you think the burn depth is  
14 consistent throughout the injuries?

15 A. The majority of it is consistent. Could there be  
16 some areas that are little lighter burn? Yes, but overall  
17 they appear fairly uniform.

18 Q. So that would be the burn depth (inaudible)?

19 A. Yes.

20 Q. And the degree of the burn?

21 A. Same thing.

22 Q. Okay. If I could ask you about a couple of the  
23 pictures.

24 A. Sure.

25 Q. I'm going to refer specifically to State's Exhibit

1 22 first.

2 A. Okay.

3 Q. Now, this is the spot where you indicated it looks  
4 like there might be a little splash mark, correct?

5 A. Correct.

6 Q. Does it look to you, Doctor, like there was not much  
7 water on the very right side of Chance's right hand?

8 A. I don't think I understand what you mean.

9 Q. So the area that looks not burned --

10 A. Okay.

11 Q. -- you believe that's because there was no water in  
12 that area?

13 A. Correct.

14 Q. And so fair to say this is Chance's right hand,  
15 correct?

16 A. Yes.

17 Q. The area that's not burned looks to be the very  
18 right most side of his hand?

19 A. Yes. Towards his thumb.

20 Q. Does it look like the edge of his pinky is burned  
21 from what you can tell in this picture?

22 A. From this -- it doesn't appear to be, no. It seems  
23 just more the surface, that dorsal surface.

24 Q. Okay. In looking at State's Exhibit 21, this is  
25 still the right hand?

1 A. Yes.

2 Q. And does it look to you from this pattern like  
3 Chance was burned by water on the left most part of his right  
4 hand?

5 A. By left do you mean pinky, because it's not a  
6 medical reference of location, so I'm not really sure where  
7 you mean. Towards the thumb or towards the pinky?

8 Q. Towards the thumb. So if you're looking at his  
9 hand --

10 A. Okay.

11 Q. -- it would be like the left side of the picture.

12 A. Okay, of the picture.

13 Q. Or left of his hand towards the thumb.

14 A. And what was the question?

15 Q. It looks like that's where the water burned him,  
16 correct?

17 A. Wherever there's burns, that's where water  
18 contacted.

19 Q. Okay. From these two pictures, the one that's up  
20 there now of his right hand --

21 A. Uh-huh.

22 Q. -- towards his thumb area and his left hand towards  
23 his -- I mean, his right hand towards his --

24 A. Okay.

25 Q. -- pinky area, is it fair to say that there was more

1 water towards the thumb area of his right hand than there was  
2 towards the pinky area of his right hand?

3 A. I think -- and, no. I think what's the problem here  
4 is that his hand's curled like this and so it gives a little  
5 bit of different kind of spatial awareness of where the burns  
6 are. Flattening it out, it appears to be kind of on that  
7 same plane. So, I mean, I -- and I couldn't really speak to  
8 how much water was what area. It was still hot water, fairly  
9 uniform over that area or hot liquid.

10 Q. So do you think if his hand wasn't in this position,  
11 we might see more burns on that outer side of his pinky  
12 finger or does it appear to you --

13 A. No.

14 Q. -- that there's a line on his pinky finger of where  
15 the burn starts and stops?

16 A. Right. There's a line of demarcation on both sides.

17 Q. Okay. And this is Chance's left hand, correct?

18 A. Yes.

19 Q. How much does it appear to you that the burn  
20 extends?

21 A. That appears to extend almost to the -- the border  
22 of the palm.

23 MS. HOLIDAY: Court's indulgence.

24 BY MS. HOLIDAY:

25 Q. When making your assessments to come to your

1 conclusions and opinions in this case --

2 A. Um-h'm.

3 Q. -- were there certain assumptions you had to make?

4 A. About what?

5 Q. First, the assumption that mug -- or that the  
6 statement was that the mug fell towards Chance.

7 A. No, that wasn't an assumption that was made. The  
8 only facts that -- or, I guess, history that I was given was  
9 that there was a mug with hot water and that it was on the  
10 floor and nobody had actually witnessed what had happened.  
11 So I don't think towards Chance or away from him was an  
12 assumption.

13 Q. But your assessment was that there would be a  
14 different injury --

15 A. Right.

16 Q. -- the water fell towards Chance?

17 A. Fair enough. Common things being common, and  
18 clinically relevant scenarios, such as this, yes, I guess, it  
19 would be towards him.

20 Q. Okay. Are you familiar with the concept of  
21 confirmation bias?

22 A. Yes.

23 Q. Can you explain what that means?

24 A. Again, when someone's conducting research, I  
25 peripherally have done with multi-center groups. But again,

1 this is not clinical research. This is more like in a lab  
2 with rats and, you know, things like that or -- or, you know,  
3 even with clinical, it's kind of circular reasoning, my  
4 understanding of confirmation bias where you're looking for  
5 something so that's what you choose, and then that confirms  
6 that you found what you're looking for.

7 Q. So you're given an idea or a suggestion, you might  
8 be more inclined to agree with that idea or suggestion?

9 MR. BURTON: Your Honor, at this time, objection.  
10 Relevance. We're talking about labs.

11 THE COURT: What's the relevance?

12 MS. HOLIDAY: I think we can --

13 THE COURT: This isn't --

14 MS. HOLIDAY: -- cross-examine the witness on bias.

15 THE COURT: But there are --

16 MR. BURTON: She testified --

17 THE COURT: We don't have that situation here.

18 MR. BURTON: Right. It's a lab. This is a  
19 clinical situation.

20 THE COURT: Sustained.

21 BY MS. HOLIDAY:

22 Q. It's fair to say, Doctor, that the concept of  
23 confirmation bias is that someone is given an idea or a  
24 suggestion, whether it be in a lab or in an everyday setting,  
25 and the idea is that our brains are a little bit more

1 inclined to agree with that idea or suggestion?

2 A. I believe in poorly conducted analysis, assessments  
3 and evaluation, a non-objective observer may fall into that  
4 definition of confirmation bias.

5 Q. Because you know about confirmation bias, you can  
6 take steps to try to avoid it, right?

7 A. If one day I conduct clinical research, absolutely.

8 Q. So are you saying that confirmation bias only  
9 applies in the field of research?

10 A. I mean, I guess, in layman's terms, like a  
11 self-fulfilling prophecy would be just kind of the general  
12 talks. So no, I mean, there are -- unfortunately, there are  
13 people who would be subjective in these types of evaluations, so  
14 no, that's not just existing in clinical are much.

15 Q. There would be people who are susceptible --

16 A. Um-h'm.

17 Q. -- to this kind of confirmation bias?

18 A. Absolutely.

19 Q. But not everybody is susceptible to confirmation  
20 bias?

21 A. I don't believe so, no.

22 Q. Why would some people be susceptible to confirmation  
23 bias and not other people?

24 MR. BURTON: Objection. Relevance.

25 THE COURT: Sustained.

1 MR. BURTON: Speculation.

2 MS. HOLIDAY: I'll move on.

3 BY MS. HOLIDAY:

4 Q. When you make your assessment, if you rely on  
5 incorrect information, you will come to the wrong conclusion,  
6 correct?

7 A. Are you -- I guess, what are you referring to with  
8 incorrect information?

9 Q. In general, if you use incorrect facts to come to a  
10 conclusion, there's a possibility that that conclusion will  
11 therefore be incorrect, too?

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

13 THE COURT: Can you answer this? Do you understand  
14 the question?

15 THE WITNESS: Not -- not in the context of how I  
16 would conduct an evaluation.

17 THE COURT: Okay. Do you want to rephrase the  
18 question?

19 BY MS. HOLIDAY:

20 Q. When you conduct an actual situation --

21 A. Um-h'm.

22 Q. -- like kind of what you talked about earlier, you  
23 start with facts or information that you're given?

24 A. Information, subjective. Maybe facts, maybe not.

25 Q. Okay. Information. Could be true, could be not.



1 true?

2 A. Fair.

3 Q. Okay. You then make an assessment and reach a  
4 conclusion?

5 A. With objective data in there and that kind of global  
6 assessment of everything, yes.

7 Q. You're going to have objective data?

8 A. Yes.

9 Q. That you know to be correct?

10 A. Correct.

11 Q. And you're going to have subjective data that may or  
12 may not be correct?

13 A. Correct.

14 Q. And if you have some incorrect subjective data, the  
15 conclusion that you ultimately reach might be flawed, right?

16

17 A. I understand what you're trying to ask. So in the  
18 event of a child abuse assessment, for instance, there's a  
19 differential. There's an accident, there's a medical  
20 condition, there's a abuse, something in between or a  
21 combination of them. Okay?

22 So I come into that assessment and I'm given a  
23 history, which may or may not be correct. That wouldn't lead  
24 me necessarily to say these injuries are abusive. It would  
25 be a component of that. Objectively, the injuries say, okay,

1 this fracture, yeah, this needs a history. If it doesn't  
2 have a history, I potentially am concerned or this history  
3 doesn't match.

4 So I think it's kind of a chicken and egg of how  
5 that subjective data is used to support what an objective  
6 mechanism or how that injury actually looks, I guess, would  
7 be more how I would explain that.

8 Q. Sometimes when you're evaluating injuries, you run  
9 reconstructions or experiments with water; is that correct?

10 A. Um, sometimes, yeah.

11 Q. Okay. Can you explain how you would do that?

12 MR. BURTON: Objection. Relevance.

13 THE COURT: Sustained. If you want to narrow it,

14 BY MS. HOLIDAY:

15 Q. Specifically, if you're evaluating a child burn  
16 injury in the past or sometimes you run experiments or  
17 recreations with water to give you an idea of how the burn  
18 may have occurred?

19 A. Yeah, sometimes.

20 Q. Okay. Did you do that in this case?

21 A. No, I did not.

22 Q. Did anybody ask you to do that in this case?

23 A. No, I believe -- no.

24 Q. How do you see where that water in those experiments  
25 ends up? Do you use like blue dye or anything like that.

1 MR. BURTON: Objection, Your Honor. Outside the  
2 realm.

3 THE COURT: Can you answer that?

4 THE WITNESS: Yeah, I can answer that.

5 THE COURT: I'm going to allow her to answer.

6 THE WITNESS: Yeah, so Mr. Peltier who is that blue  
7 dye guy, he is -- is class that I took on burn analysis, and  
8 I thought he had a pretty ingenious way of demonstrating  
9 burns without burning myself or anybody else. And so I tend  
10 to use a -- a clothing dye. I don't use blue necessarily,  
11 but that is one way that I've kind of just kind of looked at  
12 patterns to see how unusual burns may have occurred.

13 BY MS. HOLIDAY:

14 Q. Would running one of those recreations have helped  
15 you in forming an opinion or conclusion in this case?

16 A. No.

17 MS. HOLIDAY: Court's indulgence.

18 BY MS. HOLIDAY:

19 Q. Dr. Cetl, in the pictures or medical records that  
20 you examined --

21 A. Um-h'm.

22 Q. -- were there any signs of bruises --

23 A. No.

24 Q. -- on Chance?

25 A. No.

1 Q. Or any other physical signs that force would have  
2 been applied to his hands or any other part of his body?

3 A. I don't necessarily always expect to have bruises  
4 with force. I was held down in a dental chair for three  
5 hours today, and I don't have anything but -- not that's  
6 neither here nor there, but you know, I think that it depends  
7 if somebody has blunt force trauma applied to them, they may  
8 have some bruising. And if somebody is being held down, that  
9 force is just to keep them stable and not necessarily cause  
10 capillaries to burst and bruises and whatnot. So no, I  
11 didn't see, but I didn't really expect to.

12 Q. In your opinion, do you think the pattern of burns  
13 in this case is consistent with Chance's hands being held  
14 under running water?

15 A. More than likely, yes.

16 Q. And can you tell me why the pattern of burns in this  
17 case leads you to that conclusion?

18 A. Because we talked about with emersion burns, it did  
19 not appear that you would have a amount of water or body of  
20 water where his hands were placed in there. It would be a  
21 very awkward and unusual way to do that. So more than likely  
22 there -- it appeared to be more of a pour or running of water  
23 in a very specific kind of area.

24 Q. Can you tell from the pattern of burns or do you  
25 have an opinion whether the water would have come from.

1 further away or closer to Chance's hands?

2 A. I mean, I guess, what do you mean by further or  
3 closer?

4 Q. For example, would you expect to see splash marks if  
5 the water was poured from higher above?

6 A. Potentially, yes.

7 Q. Okay. Do you think that the burn pattern injury on  
8 Chance's hands is consistent with the water being poured  
9 closer to his hands, not from further away?

10 A. Potentially, sure.

11 Q. From the pictures that you examined and the medical  
12 records, can you tell what direction the water was would have  
13 been poured from?

14 MR. BURTON: Objection, Your Honor. We talked  
15 about this. Relevance.

16 THE COURT: Sustained.

17 BY MS. HOLIDAY:

18 Q. Do you have -- from looking at -- let's take this  
19 picture, for example. You're an expert in burn patterns,  
20 correct?

21 A. Expert in child abuse, burn patterns being a part of  
22 that.

23 Q. Does this burn pattern indicate to you what  
24 direction the water flow would have been coming from?

25 A. Not necessarily, no.

1 Q. No. Does this burn pattern indicate to you what  
2 direction the water flow would have been coming from?

3 A. No, not necessarily.

4 Q. Does this burn pattern indicate to you what  
5 direction the water flow would have been coming from?

6 A. Other than from up above, no. I don't know, I mean,  
7 left, right, that kind of thing, no.

8 Q. Certainly, from above his hands?

9 A. Yes.

10 Q. But you can't tell if it would have been a flow from  
11 left to right or right to left?

12 A. No.

13 Q. From these burn patterns, can you tell what angle  
14 Chance's hands would have had to have been at to create this  
15 kind of burn pattern?

16 A. More than likely, because of the sparing we have on  
17 our palms, you know, if they were on -- on something colder,  
18 they would have been more in a horizontal or a near  
19 horizontal way because there's sparing there. But if his  
20 hands were, you know, in fists as well, also horizontal  
21 because again, you know, if they were up above, we would  
22 expect them, you know, some flow of the water. If they were  
23 on any other direction, you would see burns and a little bit  
24 different.

25 But specifically exactly what angle, no. I mean, I

