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IN THE SUPREME COURT OF THE STATE OF NEVADA

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

No. 72701

Electronically Filed  
Oct 20 2017 01:33 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

APPELLANT'S APPENDIX VOLUME VII PAGES 1501-1686

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1 couldn't tell you.

2 Q. Okay.

3 MS. HOLIDAY: Court's indulgence.

4 BY MS. HOLIDAY:

5 Q. Can you tell from these burn patterns the speed at  
6 which the water would have been applied?

7 MR. BURTON: Objection.

8 BY MS. HOLIDAY:

9 Q. For example --

10 MR. BURTON: Relevance.

11 THE COURT: Can you answer that?

12 THE WITNESS: No, I couldn't tell.

13 THE COURT: Okay.

14 BY MS. HOLIDAY:

15 Q. You couldn't tell if it would be a slow pour or a  
16 quick pour?

17 A. No, I don't think I could.

18 MS. HOLIDAY: No further questions. Thank you.

19 THE COURT: Any redirect?

20 MR. BURTON: Yes, Your Honor. Thank you. May I  
21 approach the Clerk?

22 THE COURT: You may. Is everyone okay to continue?

23 UNIDENTIFIED JUROR: Yes.

24 THE COURT: All right. Go ahead.

25 MR. BURTON: Thank you.

## 1 REDIRECT EXAMINATION

2 BY MR. BURTON:

3 Q. Dr. Cetl, I'll be brief.

4 A. Okay.

5 Q. You testified that you need to have as much  
6 information as necessary to reach a conclusion; do you  
7 remember that?

8 A. As necessary, yes.

9 Q. Did you have the necessary information in this case  
10 to reach a conclusion?

11 A. Yes.

12 Q. I wanted to show you -- it's been admitted now --  
13 State's Exhibit 8. Do you recognize this as a photograph of  
14 Chance's hand?

15 A. Yes.

16 Q. Specifically, his right hand, correct?

17 A. Correct.

18 Q. Do we see an inverted triangle pattern of the injury  
19 in this photograph?20 A. Again, the problem is that his hand's all squished  
21 together instead of, you know, being held flat. So it's a  
22 little bit difficult to completely see that, but it doesn't  
23 appear to have any flow patterns like that.24 Q. Is that consistent with your opinion that this is a  
25 non-accidental injury?

1 A. Yes.

2 Q. You testified that you have the method for clinical  
3 treatment, you referred to it by the acronym SOAP, correct?

4 A. Correct.

5 Q. And the S of the soap is subjective. That's the  
6 information coming to you from the caretaker, correct?

7 A. Yes.

8 Q. The O is the objective. That's the labs, the  
9 photographs, the way the injury appears to be?

10 A. Correct.

11 Q. When the -- fair to say sometimes the subjective  
12 information you're getting and the objective facts that you  
13 have in front of you are inconsistent?

14 A. Absolutely.

15 Q. And when that happens, what do you do as part of  
16 your assessment?

17 A. If they're inconsistent, I try to get as much  
18 information about the scenario. For instance, if in this  
19 home, tipping water and this injury doesn't really fit. And  
20 so, you know, could there be another source of water that he  
21 could have gotten into? Is there something else that would  
22 happen? Are there measurements or, you know, further  
23 information that would, you know, give credence a history of  
24 this being accidental?

25 So it would just be to further look into that.



1 Additionally, when these things are inconsistent or they're  
2 concerning for abuse, I also turn to literature. I look at,  
3 you know, research that is done by, you know, burns,  
4 different textbooks, again, for abusive injuries and kind of  
5 just further my knowledge and -- in this assessment.

6 Q. Fair to say the objective facts that appear in front  
7 of you, those don't change, correct?

8 A. No, correct.

9 Q. The lab results, the photographs, they stay the  
10 same, correct?

11 A. Correct.

12 Q. And if they're not matching with the subjective,  
13 maybe you try and get more subjective information, correct?

14 A. Yes.

15 Q. To explain what you're seeing, the objective facts,  
16 correct?

17 A. Yes.

18 Q. In this case, what are the objective facts that you  
19 looked at?

20 A. That we have a two -- a fairly normal -- normally  
21 developed two-year-old child with burns to the backs of both  
22 of his hands and to some extent on his fingers up to the --  
23 kind of the middle knuckle without an adequate explanation of  
24 how they occurred.

25 Q. Do those objective facts inform your opinion as to

1 whether this is non-accidental or accidental?

2 A. Yes, they do.

3 Q. And that opinion is that these are non-accidental  
4 burns?

5 A. Correct.

6 Q. And you're relying on the facts, the information  
7 you're getting and the facts you're getting only, correct?

8 A. Yes.

9 Q. Is it your opinion, Doctor, that when you look at  
10 Chance's injuries, are those consistent with Chance being  
11 thirsty, reaching above his shoulder for a mug containing hot  
12 liquid and pulling it down?

13 A. No.

14 Q. Let's talk about Chance's palms. Do you remember  
15 testifying about that in cross-examination?

16 A. Yes.

17 Q. You looked at photographs of Chance's palms?

18 A. Yes.

19 Q. You'll agree that they're not laid out flat like  
20 we're talking about? They're a little curled up, correct?

21 A. Yes.

22 Q. And you said that you saw in the medical records  
23 that there was a notation by a scribe that there was some  
24 either burn or redness to Chance's palms, correct?

25 A. Yes, correct.

1 Q. Did you see any of that in the photographs?

2 A. No.

3 Q. And this is State's Exhibit now 7. Likewise, do you  
4 see any redness or burns to Chance's left palm?

5 A. Not to the palm. No, not at all.

6 Q. And you testified that when you spoke with  
7 Dr. Olson, he said that it was burns to the dorsum?

8 A. Of the backs of the hands, yes.

9 Q. So dorsum meaning backs of hands?

10 A. Correct.

11 Q. The SCAN report, you testified that there's an  
12 emersion burn bubble, correct?

13 A. Yes.

14 Q. Is there also a burns to the back of hands bubble?

15 A. No.

16 Q. Would looking at the SCAN report --

17 A. I believe so.

18 Q. -- refresh your recollection?

19 A. Yeah. Yes, it would. There might be, I don't --  
20 yeah, sorry.

21 Q. So you're not quite sure?

22 A. No, I haven't looked all of bubbles in a while.

23 Q. Would looking at the SCAN report refresh --

24 A. Yes, it would.

25 MR. BURTON: Counsel, may I approach?

1 THE COURT: You may.

2 THE WITNESS: Sorry.

3 BY MR. BURTON:

4 Q: Do you recognize this as the SCAN report from this  
5 case?

6 A. Yes.

7 Q. Turning your attention to --

8 A. Oh, yeah, um-h'm.

9 Q. -- page of that document. If you could look at that  
10 and then look up at me when you're done reviewing it.

11 A. Yes.

12 Q. Okay.

13 A. Okay.

14 Q. Does that refresh your recollection?

15 A. Yes, it does.

16 Q. Is there a burns-to-back-of-hands bubble on the SCAN  
17 report?

18 A. Yes, there is.

19 Q. And was that completed in this case?

20 A. No.

21 Q. Was it filled in by Dr. Olson?

22 A. No.

23 Q. Did you then look at the medical records and the  
24 photographs in determining your opinion?

25 A. Yes.

1 Q. Is it your medical opinion that there were, fact,  
2 burns to the back of Chance's hands?

3 A. Absolutely.

4 Q. You testified that in a spill scenario or an  
5 accidental scenario, you would expect to see a whole list of  
6 things. Do you remember testifying about that --

7 A. Yes.

8 Q. -- on cross-examination? Did you see any of those  
9 things in this case? Well, let me --

10 A. All right, yeah.

11 Q. -- be more specific. When we're looking at -- this  
12 is -- oops -- let's turn this around. This is Chance,  
13 correct?

14 A. Yes.

15 Q. Did you see any burns to the exploratory areas, the  
16 fronts of his body?

17 A. No, not at all.

18 Q. Did you see more than minimal splash marks around  
19 the injury itself?

20 A. No, did I not.

21 Q. Did you see gravity effects as water goes down  
22 towards the ground?

23 A. No, I did not.

24 Q. Did you see any hint of the injuries that reflexes  
25 could get when pulled away from the heat source?

1 A. No, there were not.

2 Q. Did you see any asymmetrical marks to his body?

3 A. No.

4 Q. Did you see any reduction in the degree of injury as  
5 it went across his skin?

6 A. Not significantly, no.

7 Q. You testified that what you're doing is you're  
8 looking at the effect of hot water on the body, correct?

9 A. Correct.

10 Q. Specifically, the skin in this case, correct?

11 A. Yes.

12 Q. And that's an organ of the body?

13 A. Yes.

14 Q. When you looked at the photographs of Chance's  
15 injuries -- and I apologize, I should have asked this before.  
16 This is, again, Chance's right hand, correct?

17 A. Correct.

18 Q. And this is State's Exhibit 9, for the record.  
19 There's a little piece of something right here. What is  
20 that?

21 A. It's skin. We call it devitalized. It doesn't have  
22 blood flow or anything. It's dying or dead.

23 Q. And as you looked at these photographs, you  
24 testified that you saw very little signs of movement; do you  
25 remember that?

1 A. Yes.

2 Q. Was the lack of movement that you saw in the  
3 injuries to Chance consistent with it being non-accidental?

4 A. Yes.

5 Q. You testified that you wouldn't expect necessarily  
6 to see bruising if the child was restrained in this case?

7 A. Correct.

8 Q. If you were told that the sole caregiver described  
9 seeing redness on the child's stomach at the time he observed  
10 the burns, would that be consistent with or potentially  
11 consistent with holding or restraining the child against an  
12 object?

13 A. Potentially.

14 MR. BURTON: Brief indulgence, Your Honor. Nothing  
15 further, Your Honor.

16 THE COURT: Any recross?

17 RE-CROSS-EXAMINATION

18 BY MS. HOLIDAY:

19 Q. Would redness on the child's stomach also be  
20 consistent with a possible burn on the child's stomach?

21 A. Potentially, a first degree burn, sure.

22 Q. Is it your opinion that the burns were consistent in  
23 degree?

24 A. They're fairly uniform across.

25 Q. Is it your opinion that Chance had a combination of

1 first and second degree burns or just second degree burns?

2 A. With the exception of that little splash mark we  
3 saw, they were second degree burns. And then that first one  
4 -- that, excuse me, that little splash mark around it, I  
5 couldn't tell based on the photographs. It could have been a  
6 first degree, but based on the medical history from the burn  
7 unit and the professionals in burns, they considered it  
8 consistently uniform.

9 Q. Based on the photograph you couldn't tell?

10 A. On that one little splash mark area.

11 Q. And you testified that when you evaluate a child,  
12 you want as much information as you can get?

13 A. As much information as necessary to be able to make  
14 my opinion.

15 Q. So yesterday when the District Attorney --

16 A. Um-h'm.

17 Q. -- questioned you, you did not say you want as much  
18 information as you can get. You said you want as much  
19 information as you need.

20 A. I don't recall the exact wording.

21 Q. You did not evaluate Chance in person?

22 A. Not in person, no.

23 MS. HOLIDAY: No further questions.

24 THE COURT: Anything else?

25 MR. BURTON: Very briefly, Your Honor.



1 THE COURT: Sure.

2 MR. BURTON: Thank you.

3 REDIRECT EXAMINATION

4 BY MR. BURTON:

5 Q. Two questions, Doctor. Did you see any notes in the  
6 medical records or any hint in the photographs that Chance  
7 suffered a first degree burn on his stomach?

8 A. No, I did not.

9 Q. This splash that potentially is a first degree burn,  
10 the little splash on the wrist, does that change your opinion  
11 as to whether this was accidental or non-accidental?

12 A. No, sir.

13 MR. BURTON: Nothing further, Your Honor.

14 THE COURT: Anything else?

15 FURTHER RECROSS-EXAMINATION

16 BY MS. HOLIDAY:

17 Q. Did you notice in your review of the medical records  
18 in this case --

19 A. Um-h'm.

20 Q. -- that there was any indication of a bruise on  
21 Chance's stomach?

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

23 THE COURT: You can answer.

24 THE WITNESS: No, I didn't.

25 MS. HOLIDAY: No further questions.

1 THE COURT: Okay. Thank you very much for your  
2 testimony here today. You may step down. Thank you for  
3 coming back today. You are excused from your subpoena.  
4 We're going to take a recess.

5 During this recess, you're admonished not to talk  
6 or converse among yourselves or with anyone else on any  
7 subject connected with this trial or read, watch or listen to  
8 any report or commentary on the trial or any person  
9 connected with this trial by any medium of information,  
10 including without limitation, newspapers, television, the  
11 Internet or radio, or form or express any opinion any on any  
12 subject connected with this trial until the case is finally  
13 submitted to you. Thank you.

14 THE MARSHAL: All rise for the exiting jury,  
15 please.

16 (Outside the presence of the jury)

17 THE COURT: The record will reflect --

18 THE MARSHAL: Thank you. You may be seated,  
19 please.

20 THE COURT: -- that the hearing is taking place  
21 outside the presence of the jury panel. Is the State  
22 resting?

23 MS. JOBE: If I could check that all 82 exhibits  
24 have been admitted, I believe.

25 THE CLERK: Yes.

1 MS. JOBÉ: Okay. Then yes, State rests.

2 THE COURT: Okay. Mr. Mathews, you understand that  
3 you -- can you stand up, please? That you have heard all of  
4 the evidence that will be introduced against you by State of  
5 Nevada?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: And you understand under the  
8 Constitution of the United States and under the Constitution  
9 of the State of Nevada you cannot be compelled to testify in  
10 this case; do you understand that?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: You may at your own request give up  
13 this right and take the witness stand and testify. If you  
14 do, you'll be subject to cross-examination by the Deputy  
15 District Attorney, and anything that you may say be it on  
16 direct or cross-examination will be the subject of fair  
17 comment when the deputy District Attorney speaks to the jury  
18 in his or her final argument; do you understand that?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: If you choose not to testify, I will  
21 not permit the deputy District Attorneys to make any comments  
22 to the jury because you have not testified; do you understand  
23 that?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: If you elect not to testify, I will

1 instruct the jury, but only if your attorney specifically  
2 requests as follows: The law does not compel a defendant in  
3 a criminal case to take the stand and testify. No  
4 presumption may be raised, no inference of any kind may be  
5 drawn from the failure of a defendant to testify. Do you  
6 understand that?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: You're further advised that if you have  
9 a felony conviction and more than ten years has not elapsed  
10 from the date that you've been convicted or discharged from  
11 prison, parole or probation, whichever is later, the defense  
12 has not sought to preclude that from coming before the jury  
13 and you elect to take the stand and testify, the Deputy  
14 District Attorney in the presence of the jury will be  
15 permitted to ask you the following: Have you been convicted  
16 of a felony? What was it? When did it happen? However, no  
17 details may be gone into. Do you understand that?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: Have you had a chance to discuss with  
20 your lawyers whether you're going to testify or not?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: And have you made a decision as to  
23 whether you're going to testify or not?

24 THE DEFENDANT: Yes.

25 THE COURT: And what is your decision?

1 THE DEFENDANT: I'm not testifying.

2 THE COURT: Okay. Does the defense have any  
3 witnesses they're going to call?

4 MS. HOLIDAY: No, Your Honor.

5 THE COURT: Okay. So we can settle instructions  
6 and then you're ready to close today, right?

7 MS. HOLIDAY: I would prefer not to, Your Honor.  
8 I'm prepared to close, if we need to close.

9 THE COURT: Okay.

10 MS. HOLIDAY: But I would like the opportunity to  
11 incorporate the Jury Instructions that we agree on into my  
12 closing as well as the information that we got from Dr. Cetl.

13 THE COURT: We're going to go back in just a few --  
14 let me go back and make copies of the instructions for  
15 everyone, and then we can informally settle and then come out  
16 here and formally settle them.

17 THE MARSHAL: Thank you. Court will be in recess.

18 (Court recessed at 2:52 p.m. until 3:27 p.m.)

19 (Outside the presence of the jury).

20 THE COURT: Okay. The record will reflect the  
21 hearing is taking place outside the presence of the jury  
22 panel. Is the State familiar with Court's Proposed 1 through  
23 23 Jury Instructions? Is the State familiar with 1 through  
24 23?

25 MS. JOBE: Yes, Your Honor.

1 THE COURT: Any objection?

2 MS. JOBE: No, Your Honor.

3 THE COURT: Any additional instructions you'd like  
4 to propose at this time?

5 MS. JOBE: No, Your Honor.

6 THE COURT: Any objection to the verdict form?

7 MS. JOBE: No, Your Honor.

8 THE COURT: Is the defense familiar with Court's  
9 Proposed 1 through 23?

10 MS. KIERNY: Yes, Your Honor.

11 THE COURT: Do you have any objections?

12 MS. KIERNY: Regarding Instruction No. 14 that was  
13 given --

14 THE COURT: Okay.

15 MS. KIERNY: -- we just objected that we didn't  
16 think that there were any other people that, you know, could  
17 have any sort of bad act, and we didn't think that this was  
18 necessary. The court overruled that objection and it is in  
19 the packet to be given.

20 THE COURT: Okay. Does State want to add anything?

21 MR. BURTON: Yes, Your Honor. This instruction  
22 focuses specifically on Jasmin and whatever it was that she  
23 was doing in this case.

24 THE COURT: Okay. Any other objections?

25 MS. KIERNY: Do you want me to put on the record

1 the objections that I had regarding our instructions at this  
2 point or just --

3 THE COURT: No, those are proposed instructions.

4 MS. KIERNY: Okay.

5 THE COURT: Any objection to the instructions --

6 MS. KIERNY: No.

7 THE COURT: -- that will be given?

8 MS. KIERNY: No.

9 THE COURT: Okay. And does the defense have  
10 further instructions they would like to propose?

11 MS. KIERNY: Yes, Your Honor.

12 THE COURT: Okay. They've been marked Court's  
13 Exhibit No. 8.

14 MS. KIERNY: They have been given to your Clerk and  
15 submitted as separate court exhibits. There should be four  
16 of them, correct?

17 THE COURT: Uh-huh.

18 MS. KIERNY: And the first instruction would be  
19 the reasonable doubt instruction. That is still good law,  
20 and I think in this case it would -- each fact needs to be  
21 proven to a subjective state near (indecipherable). I think  
22 that would be an appropriate statement of the law, especially  
23 in this case when there are facts in dispute like this. So I  
24 would have asked for that to be given.

25 I understand that the Court is not going to give

1 this instruction.

2 THE COURT: Okay. Does the State want to add  
3 anything?

4 MR. BURTON: Your Honor, under our view, this would  
5 be improper to give under NRS 175.211(2).

6 THE COURT: And I'm not going to give it. The jury  
7 will be instructed appropriately on the reasonable doubt  
8 standard. Court's Exhibit No. 9.

9 MS. HOLIDAY: I believe the next two instructions  
10 are -- so 9 and 10 I'm going to address in tandem.

11 THE COURT: Sure.

12 MS. HOLIDAY: Number one is that is from the Bales  
13 case (phonetic), and the cites are all in my -- in the cases  
14 that are being filed as exhibits so.

15 THE COURT: Sure.

16 MS. KIERNY: They're both from the Bales case,  
17 just two different versions of that. So, you know, the State  
18 had two options. The Court indicated it was not going to  
19 give it. I think in this case where there are facts and two  
20 possible interpretations of the facts, one of which points to  
21 his guilt, which would be intentional, one of which points to  
22 his innocence, which would be accident, I think this would be  
23 particularly probative. I know other District Courts have  
24 given this instruction. I know the Supreme Court has  
25 reviewed this on an emergency writ and found it was.



1 acceptable to give this instruction.

2 It is still good law, and I think that it would be  
3 appropriate here.

4 THE COURT: Does the State wish to add anything?

5 MR. BURTON: Yes, Your Honor. The case law that  
6 I'm looking at, and I think the case law that defense counsel  
7 is referring to specifically the emergency writ is just for  
8 the record Supranovich, S-u-p-r-a-n-o-v-i-c-h.

9 MS. KIERNY: That's correct.

10 MS. JOBE: State would like to note that according  
11 to that unpublished decision, the instructions that were  
12 provided or proffered by the defense are incomplete. I would  
13 also like to note that there is published and unpublished  
14 case law on this before and after Supranovich that states  
15 this is not error to give or not give these instructions so  
16 long as there is instruction on reasonable doubt and  
17 circumstantial evidence.

18 THE COURT: All right.

19 MR. BURTON: Specifically, the difference and  
20 non-difference between direct and circumstantial evidence.

21 THE COURT: Sure. And I indicated I was not going  
22 to give 9 and 10. Court's Exhibit No. 11.

23 MS. KIERNY: I think that's an appropriate  
24 statement of the law. It was given in a first degree murder  
25 case. Unfortunately, there are not published Nevada Supreme

1 Court cases involving, you know, this type of charge --

2 THE COURT: Sure.

3 MS. KIERNY: -- on these accident situations. So  
4 this was as close as counsel could get, and I believe it  
5 should be an accurate statement of the law and that's why I  
6 tendered it --

7 THE COURT: Does the defense --

8 MS. KIERNY: -- and requested it.

9 THE COURT: -- want to -- I'm sorry, does the State  
10 want to respond?

11 MR. BURTON: The State's objection to this  
12 proffered instruction is that in this case the evidence of  
13 the defense theory is that the defendant did not do any act,  
14 let alone an act by accident or with the intention. The jury  
15 is informed as to what the intent is that needs to be with  
16 the action taken. So the jury will be properly instructed as  
17 to the need to have an intent to willful cause the injuries  
18 to Chance and this instruction is improper.

19 THE COURT: All right. And the Court indicated I  
20 would not be giving Number 11. Does the defense have any  
21 further instructions they would like to proffer?

22 MS. KIERNY: No, Your Honor.

23 THE COURT: And did you see the verdict form?

24 MS. KIERNY: Yes.

25 THE COURT: Any objection?

1 MS. KIERNY: No.

2 THE COURT: Okay. Are you ready to start?

3 MS. HOLIDAY: Actually, Your Honor, before we  
4 formally rest --

5 THE COURT: I don't think the State's rested. So  
6 when the jury comes in, I'll have the State rest, then you'll  
7 rest.

8 MS. HOLIDAY: Oh, okay. This is something --

9 THE COURT: Okay.

10 MS. HOLIDAY: -- I need to do outside the presence  
11 of the jury, however.

12 THE COURT: Oh, sure, go ahead.

13 MS. HOLIDAY: So, Your Honor, I would like to for  
14 the final time, renew our request to let our expert testify  
15 in our case. I will obviously submit my request on the  
16 arguments that have come before. I don't think I have to go  
17 through all of them again. The only new thing I would add is  
18 that according to Dr. Cetl's testimony, we once again, got  
19 into, you know, the pattern of burns and what the pattern of  
20 burns might have looked like if the cup was spilled from left  
21 to right. That's something that the State talked to Dr. Cetl  
22 about on her direct examination, just like Dr. Peltier.

23 Again, that's kind of the defense theory of the  
24 case, obviously. It's a theory that we didn't come up with  
25 before we had Dr. Johnson. Dr. Johnson, through his testing,

1 presented this theory. And so without proposing  
2 Dr. Johnson's testimony as an expert, this theory never would  
3 have been presented to the State. They wouldn't have had the  
4 opportunity to question their experts about this theory.

5 So it's another reason that our theory of defense  
6 is just prejudiced and kind of obliterated by our expert not  
7 being able to testify. Same objection that we've had this  
8 whole time. We believe it violates Mr. Mathews'  
9 constitutional right to a fair trial and present witness in  
10 his own defense.

11 I would offer a final offer of proof. We basically  
12 prepared kind of a document that has the substance of what  
13 Dr. Johnson would have testified to if he were allowed to  
14 testify just to make it part of the record.

15 THE COURT: Sure.

16 MS. HOLIDAY: I'm giving State a copy and if I can  
17 just file it in open court.

18 THE COURT: You may.

19 MS. HOLIDAY: I would also like to attach two  
20 photos, one of which the State already has a copy and then  
21 I'm giving the State a copy -- although, it's the same photo  
22 that they -- they've had just blown up in a different manner.

23 THE COURT: Is this already in evidence?

24 MS. HOLIDAY: What was that?

25 MS. JOBE: No, Your Honor.

1 THE COURT: Is this already --

2 MS. JOBE: This is a whole new pleading and this is  
3 whole new exhibit attached by them.

4 MS. HOLIDAY: This isn't a proposed exhibit for the  
5 jury. This is, as part of our offer of proof as to what our  
6 expert would have testified to.

7 THE COURT: Okay. But the photographs you want to  
8 propose, are they already admitted into evidence?

9 MS. HOLIDAY: No, Your Honor. I don't -- I would  
10 not like them to be admitted into evidence. I would like to  
11 just be admitted as part of our offer of proof.

12 THE COURT: Okay. Okay.

13 MS. HOLIDAY: It certainly would never go to the  
14 jury as our expert's testimony is --

15 THE COURT: Okay.

16 MS. HOLIDAY: -- not allowed. Just an offer of  
17 proof for the Court. This is a photo that our expert had  
18 prepared. Obviously, it's just a compilation of two photos  
19 that were provided by the State, the child's hands next to  
20 each other.

21 This is a photo that is a result of our expert's  
22 tests and recreations in this case. Obviously, this is a  
23 situation where he doesn't use blue dye like the blue dye  
24 guy. I think his process was to put flour on this child's  
25 hands and then let the water wash over it so that it becomes

1 a little more clear where the lines of the water are.

2 Obviously, it's still not very clear. But I  
3 believe for the record in this photo you can see that the  
4 water line splashes on the left of this child's -- on his  
5 left and his left arm, his left wrist, specifically, it's not  
6 a straight line, but it's almost a straight line, how it goes  
7 across the bottom of his wrist.

8 And then on his right hand, there appears to be a  
9 line that goes at an angle from the bottom of, I guess, the  
10 base of his hand where it turns into his wrist and it goes  
11 upward as a angle towards his pinky finger. Obviously, we  
12 believe this pattern is incredibly similar to the pattern of  
13 actual burns. And we believe that Dr. Cetl's testimony that  
14 came out in direct examination and cross-examination was  
15 that, you know, she didn't know what kind of pattern the  
16 water would create if it fell in this manner or that she knew  
17 it would create splash marks inconsistent with the burns.

18 And here we can see that Dr. Johnson actually tried  
19 to find out what kind of pattern would be created if we  
20 spilled water from a mug from left to right. We can see that  
21 that pattern almost exactly matches the pattern on Chance's  
22 hands, and so that's another reason why this was our theory  
23 of defense.

24 It's incredibly difficult to present it now. But  
25 not only has Dr. Johnson not been allowed to testify, but the

1 State's experts have been allowed to analyze this theory and  
2 explain why they don't think it's possible.

3 So I just will file this in open court, if that's  
4 okay, and attach these as exhibits, and --

5 THE COURT: You may.

6 MS. HOLIDAY: -- we will rest our objection on  
7 that.

8 THE COURT: Thank you.

9 MS. HOLIDAY: Should I approach Your Honor or  
10 just --

11 THE COURT: Sure.

12 MS. HOLIDAY: -- file it --

13 THE COURT: The Clerk -- the Clerk will file it in  
14 open court, I guess.

15 THE CLERK: Yes, Your Honor.

16 THE COURT: Just file it in open court, I don't  
17 know if the State wants to add anything.

18 MS. JOBE: I do, Your Honor.

19 THE COURT: If you do, I --

20 MS. JOBE: I mean, to be fair, I was just handed  
21 this when she started other argument, and I've gotten to page  
22 7 of 21 so far reviewing the offer of proof, but that's okay.

23 The fact that Counsel will stand up and say that  
24 we're -- State essentially isn't smart enough to think of all  
25 the potential ways that unobserved accident could have

1 occurred to ask hypos to our experts is insulting.

2 She stood here and said that we only thought to ask  
3 our experts these questions based on what their defense  
4 expert. Absolutely, unbelievably insulting and misrepresents  
5 the record State made with all its hypotheticals because the  
6 State went far beyond how that mug could have spilled on the  
7 counter.

8 We went to the faucets, went to the sinks, and any  
9 other source of hot water in that residence with our experts  
10 and their hypotheticals. So with all due respect to Ms.  
11 Holiday, we're not as dumb as she takes us for.

12 Secondly, as far as the part of the offer of proof  
13 I've gotten through, in the photograph that Ms. Holiday  
14 presents as evidence that their expert recreated something  
15 that relates to this case -- I'll get to the details in that  
16 photograph in a minute because that photograph exactly shows  
17 the State's position that he had no business testifying in  
18 this case and that that experiment was based on assumptions  
19 and far beyond his scope of expertise.

20 But the fact of the matter is, we'll first talk  
21 about a few of the assumptions that are contained in that  
22 offer of proof. First and foremost, they selected a two-and-  
23 a-half-year-old child who's a 50th percentile male, which is  
24 on page 3, line 21, where they also say in the same line that  
25 it's the same height as Chance, 35 inches. There's been



1 repeated testimony that in the medical records Chance was 37  
2 inches. That the counter was 35 inches tall. So we're  
3 starting with 2 inches wrong, and 2 inches matters when a  
4 child's reaching up on the counter.

5           Second, there is no information about Chance's  
6 reach, how far on that counter he could reach or anything  
7 like that. The biomechanics expert offered by the defense  
8 had to make a number of assumptions in his recreations and  
9 his spills, including that anything regarding a mug actually  
10 spilled. He had to make assumptions about how the child was  
11 placed, how the child's hands were positioned. I note that  
12 in the part that I was able to skim, if you go to page 7,  
13 lines 8 through 10, it articulates why they had to use a  
14 child older than Chance. Because you couldn't get a two-and-  
15 a-half-year-old to sit there long enough for this experiment  
16 to occur.

17           So that also shows that the experiment was based on  
18 assumptions, and erroneous assumptions and the erroneous use  
19 of an older child. Again, as the State has said multiple  
20 times, Dutch Johnson did not have the requisite foundation to  
21 even get to his experiments. His training with burns is not  
22 as a burn expert. It's not as to burn patterns. His  
23 training is first aid medical care on the field in the midst  
24 of battle in getting people who have burns to hospitals to  
25 try to save their life and treating those burns.

1           That's not what he was asked to testify for by the  
2 defense. They asked him to testify to burn patterns. There  
3 was absolutely nothing in his testimony, in his CV or  
4 anything that the Court has heard or that State has any  
5 knowledge of to show that Dutch Johnson actually had  
6 experience with burn patterns to analyze any burn patterns.

7           And I think this exhibit actually exemplifies the  
8 State's point because hard to see, totally hard to see where  
9 the water goes, but if you look closely, Your Honor, all of  
10 this child's digits are covered in water, to the extent and  
11 the end of the fingertips covered in the water, the water  
12 splash is beyond the scope of this child's hands. This is  
13 absolutely not the pattern of burns that were on Chance  
14 Jacksper's hands when he was burned and injured.

15           So I don't count digits like doctors do, but if  
16 you're looking at the left hand of this child in this  
17 photograph, between the pinky finger, the ring finger and the  
18 middle finger, you can see the movement of water to the tips  
19 of those fingers and that is absolutely inconsistent with  
20 Chance's fingers that only had blisters up to the knuckle  
21 line on his fingers.

22           Additionally, in each and every experiment, as I  
23 stated throughout the course of these objections and these  
24 requests by the defense, this cup that's partially pictured  
25 in this photograph was not tipped over by the child during

1 the experiments in their reconstruction. It was the video of  
2 all the experts' experiments was attached to the State's  
3 original Motion to Strike. So I draw the Court's attention  
4 to that.

5 In each and every one, the child sat there with  
6 their hands already positioned when some lever or some  
7 contraption built tipped that cup over without the child's  
8 interference, without the child's influence.

9 So based on -- so that's not an appropriate  
10 experiment. It's not replicating the defense theory of the  
11 case that Chance accidentally did something. I would note  
12 that Dutch Johnson came and testified that he was able to  
13 come up with an experiment where the child, and he  
14 demonstrates, kind of hits the top of his hand on the corner  
15 and then gets his hands down, but that's not what his  
16 experiments show.

17 He had three separate things. He had a picture of  
18 his replica child, the surrogate, able to touch the top of  
19 that cup. And then he had these videos where the child had  
20 no contact with that cup. You can't bootstrap two different  
21 things together and say it's an experiment and say that it  
22 proves the defense's theory of the case because it doesn't.

23 So based on all of those things, Your Honor, and  
24 the ambush that just occurred with this Second Supplemental  
25 to the Defense's Opposition to the State's Motion in Limine

1 to Strike or Limit the Testimony of Defendant's Expert and  
2 Defense Request for an Evidentiary Hearing, the State is  
3 asking Your Honor to maintain its decision that Dr. Lindsay  
4 Dutch Johnson should not be allowed to testify. Because of  
5 the Hallmark standard, he fails at each and every step. He's  
6 not qualified and his experiments are not even remotely  
7 relevant or related to the actual facts that we know in this  
8 case.

9 THE COURT: Okay. The Court's going to maintain  
10 its decision, and I think we can bring the jury in now.

11 THE MARSHAL: Yes, Your Honor.

12 MS. HOLIDAY: Your Honor, before we bring the jury  
13 in, are we going to move forward with closings? Is it the  
14 Court's --

15 THE COURT: Sure.

16 MS. HOLIDAY: -- prerogative to move forward with  
17 closings this afternoon? So, Your Honor, I would request  
18 that we not do closings today. As I indicated, I am prepared  
19 if I have to be, but my request is -- certainly, I respect  
20 the jury's time. I'm absolutely certain that it's  
21 inconvenient for them to be here in the first place,  
22 inconvenient for them to have to come back another day. Not  
23 only inconvenient to them, but inconvenient to everybody in  
24 this courtroom.

25 However, as everybody knows, things in this case

1 have changed very quickly. It wasn't until Tuesday afternoon  
2 that we even knew whether or not our expert was going to  
3 testify. Things have come into this case that with didn't  
4 expect to come in, for example, some of the testimony that  
5 Detective DePalma had about the jail calls. And today, we  
6 were also expecting some testimony from Joanna Westmoreland,  
7 the CPS worker, that ended up not happening.

8 In addition to the decisions we just made about the  
9 Jury Instructions, one of the instructions that I really  
10 wanted to talk about in my closing is the one about two  
11 reasonable interpretations of the evidence. I understand and  
12 respect the Court's decision that we're not going to have  
13 that Jury Instruction, but that was something that I really  
14 wanted to highlight in my closing. I'm going to have to  
15 rework it a little bit now what I was planning to say to  
16 incorporate that as well as incorporate what we heard from  
17 Dr. Cetl in the cross-examination.

18 Your Honor knows that a lot of things in this case  
19 have changed in a short amount of time. There's a lot at  
20 stake here for Mr. Mathews. And certainly, our theory of  
21 defense, as I've said before, was kind of gutted in the last  
22 couple of days. And so I would just respectfully request the  
23 Court that we do our closings on another day so that I have  
24 some additional time to prepare.

25 THE COURT: Okay. I'm prepared to go forward with

1 the case. So I'm -- does State want to add anything?

2 MS. JOBE: I would --

3 THE COURT: We're going to proceed.

4 MS. JOBE: I'm fine with proceeding. I don't know  
5 if she wanted like 15, 20 minutes to sit down and work with  
6 it about ever we get started. The State would be fine with  
7 that.

8 THE COURT: I'm happy to do that.

9 MS. HOLIDAY: Absolutely.

10 THE COURT: Okay.

11 MS. HOLIDAY: Any time would be great, Your Honor.

12 THE COURT: All right. I'll give you 15 minutes.

13 (Court recessed at 3:47 p.m. until 4:06 p.m.)

14 (Outside the presence of the jury)

15 THE MARSHAL: Come to order. Court is now back in  
16 session.

17 THE COURT: Okay you want to bring the jury panel  
18 in?

19 THE MARSHAL: Yes, ma'am.

20 MR. BURTON: Your Honor, at this time, Ms. Jobe is  
21 just using the facilities.

22 THE COURT: Sure. Maybe you can get them rounded  
23 up.

24 THE COURT RECORDER: Right now, we are on record.  
25 Do you want to be off record?

1 MR. BURTON: No, no.

2 THE COURT RECORDER: I'm sorry?

3 MR. BURTON: I'd like to be on the record.

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

5 MR. BURTON: I just wanted to, while we're waiting,  
6 make a record really quick that when we were settling Jury  
7 instructions in the back, one of the discussions we had was  
8 the verdict form in this case. And the defense stated that  
9 they did not wish to ask for a lesser included offense of  
10 child abuse neglect or endangerment without substantial  
11 bodily harm.

12 And it's my understanding they did that --

13 THE COURT: That's correct.

14 MR. BURTON: -- with their -- the consent of their  
15 client, Mr. Mathews.

16 THE COURT: And it's a strategy. And that's  
17 correct, right, Ms. Holiday?

18 MS. HOLIDAY: That's correct, Your Honor.

19 THE COURT: Okay.

20 MR. BURTON: I just wanted to make a record of  
21 that, Your Honor.

22 THE COURT: Thank you.

23 (Pause in the proceedings)

24 THE MARSHAL: All rise for the entering jury,  
25 please.

1 (In the presence of the jury).

2 THE COURT: Does the State of Nevada stipulate --

3 THE MARSHAL: Thank you. Please be seated.

4 THE COURT: -- to the presence -- does the State of  
5 Nevada stipulate to the presence of the jury panel?

6 MS. JOBE: Yes, Your Honor.

7 THE COURT: The defense?

8 MS. HOLIDAY: Yes, Your Honor.

9 THE COURT: Okay. Does the defense have any  
10 further witnesses that they intend to call?

11 MS. HOLIDAY: No, Your Honor.

12 THE COURT: I'm sorry, does the State have any --  
13 my apologies. Does the State have any further witnesses they  
14 intend to call?

15 MS. JOBE: No, Your Honor. The State rests.

16 THE COURT: Does the defense have any witnesses  
17 they intend to call?

18 MS. HOLIDAY: No, Your Honor. We'll rest on our  
19 previous record and we will rest.

20 THE COURT: Thank you. At this time, ladies and  
21 gentlemen, you have heard all of the evidence that will be  
22 introduced at the time of trial. You have been provided with  
23 Jury Instructions. I am required to read them to you by law.  
24 There's -- does the jury have Jury Instructions?

25 THE MARSHAL: They will in just one second, Ma'am.



1 THE COURT: Okay. They're going to be handed out  
2 to you. There's 23 instructions. I'm required by law to is  
3 read the instructions to you. You can follow along. You  
4 will also be permitted to take these Jury Instructions with  
5 you when you go back to deliberate upon your verdict.

6 Okay. The record will reflect that the court  
7 Marshal has handed the jury panel their Jury Instructions.

8 (COURT READ JURY INSTRUCTIONS 1 THROUGH 23)

9 THE COURT: The State of Nevada may open and close  
10 the arguments.

11 MR. BURTON: Thank you, Your Honor.

12 STATE'S CLOSING ARGUMENT

13 MR. BURTON: Good afternoon, ladies and gentlemen.

14 UNIDENTIFIED JUROR: Good afternoon.

15 MR. BURTON: I'm going to try and be brief. I know  
16 there's a rumor that attorneys get paid by the word. I know  
17 this has been a long week. I know it's been a long day. And  
18 I'm going to try and be brief because in this case it really  
19 boils down to two very simple facts. The first simple fact  
20 is that the defendant was alone with Chance at the time he  
21 was the sole caretaker of Chance, at the time of Chance's  
22 burns.

23 And the second simple fact is that science and  
24 common sense tell us that the burns to Chance's hands are  
25 intentional, not accidental. That's what the evidence in

1 this case shows. Before we talk about the evidence, I want  
2 to talk about this instruction that you just heard from Judge  
3 Leavitt. You're going to have a copy of these instructions  
4 as they are sitting on your lap when you're back in the  
5 deliberation room.

6           And you're going to have instruction, and it tells  
7 you about different types of evidence. It tells you about  
8 direct and circumstantial evidence. And to help kind of  
9 describe this, I think an example is appropriate. So let's  
10 say you're out, you're either walking or you're in your car,  
11 and you start to feel water on your face or feel water as  
12 it's falling on your head, or if you're in your car, you hear  
13 it on the rooftop, you see it on your car windows. And you  
14 say to yourself, it's raining. You have direct evidence that  
15 it's raining.

16           Now, a different scenario. Let's say that you're  
17 here in court, and as you have been, you're very focused on  
18 the testimony, you're listening to the evidence, your taking  
19 notes, your looking at the photographs, you're considering  
20 the evidence. When you go out for a break, you walk out to  
21 that hallway and you see those big windows and you see water  
22 on the window. Water wasn't there when you came in to court  
23 to hear some testimony, to hear some evidence. And you look  
24 down on the ground and even from the 14th floor you can tell  
25 the ground is wet. It's not raining right now, but you look

1 up, you see an overcast sky, maybe you even hear some  
2 thunder. You could say to yourself based on these  
3 circumstances, it must have rained while I was in court.

4           We do this every day, direct and circumstantial  
5 evidence, to come to certain conclusions. And what's  
6 important is to understand that the law makes no distinction  
7 between the two. There's no distinction between direct  
8 evidence and circumstantial evidence. There's only evidence.  
9 That's what you are to consider when you're thinking about  
10 this case. What does the evidence show?

11           So what does the evidence show? Let's talk about  
12 the science in this case. You received testimony from three  
13 different people that relate to science; Dr. Elis Olson,  
14 Dr. Sandra Cetl and Phil Peltier. Let's start with Dr. Elis  
15 Olson. You remember he testified this morning? He was the  
16 first person to see Chance. The first person, the first  
17 medical doctor to see the injuries to Chance. What  
18 conclusion, what scientific medical conclusion did he decide,  
19 diagnose? Definite child abuse.

20           What does he do as a result? He reports, as  
21 required by law enforcement -- or excuse me, he reports as  
22 required by law. It's based on the nature of the injuries  
23 and the inconsistency with how these injuries were supposed  
24 to have occurred. Essentially, he looks at those injuries  
25 and he says this is just not accidental. I need to call

1 Metro.

2           Dr. Sandra Cetl. You heard about her. She's a  
3 pediatrician specializing in child abuse. She's reviewed  
4 thousands of cases. And she's come to differing conclusions  
5 based on what she has in front of her. The objective facts  
6 that don't change. Sometimes she deems that something's  
7 accidental, sometimes she deems it's some mental -- or excuse  
8 me, medical diagnosis, and sometimes she deems that it's  
9 intentional and it's child abuse.

10           She's examined and treats numerous burn cases. You  
11 heard her testify that when she's working her shift, it's  
12 about every other shift she sees at least one burn. She's  
13 seen accidental burns. She's seen intentional burns. She  
14 knows exactly what those look like. And in her estimation,  
15 intentional and abusive.

16           Why does she come to that conclusion? She  
17 determines that it's intentional, she determines that it's  
18 abusive, because it's not on the exploratory area. And in  
19 fact, those areas are spared. So when we look at Chance's  
20 palms, when we look at his face, when doctors look at his  
21 chest, his abdomen, his legs that are not covered by anything  
22 more than a diaper, there's no burns to any of those  
23 injuries. In fact, they're spared. It's as if they've been  
24 covered, right?

25           As if, for example, on his hands, the tops of his

1 hands are burned and it's as if he's curled his fingers into  
2 a ball to protect his palms or had them laying on a flat  
3 surface.

4           There's no gravitational pulling. And you remember  
5 she talked about that kind of in two ways, right? She talked  
6 about gravity, it always goes down. That's the simple rule  
7 of gravity. It doesn't matter if it's water, if it's some  
8 kind of liquid, it's going to go down. She doesn't see  
9 anything like that, right? We don't have any gravitational  
10 pulling, as Chance is reaching up, down his arms. It's flat  
11 or actually, even down -- we'll talk about that with Peltier  
12 -- towards his fingers.

13           So it's not down his arms, it's not down his chest.  
14 She doesn't see this. She doesn't see a reduction in the  
15 type of burn. It's not going from second to first. It's not  
16 going in kind of this way that you would expect it to do as  
17 gravity takes hold and the heat cools from that hot water.

18           The other way she talked about this is the movement  
19 of the child, right? Reflexes. She talked about that. She  
20 talked about how the neurons that tell your body that it's  
21 being burned, they fire so fast that you don't even realize  
22 at the time that those reflexes happen, that you're actually  
23 being burned. And some of us have had that experience. We  
24 touch something that's hot, we pull our hand away, and as  
25 we're pulling our hand away, we realize I burned myself. So

1 we've had that experience.

2           And when you have a hot liquid like water or some  
3 other type of, you know, thin liquid like we see in this  
4 case, that's going to affect the way that the water moves.  
5 And that's going to affect the way that the injury looks. So  
6 there's no gravitational pulling going down, and there's no  
7 gravitational pulling from what she would expect to see, the  
8 movement of the hands as a result of natural reflexes, things  
9 that Chance can't control, things that nobody can control,  
10 that's why they're called reflexes. She doesn't see that in  
11 this case.

12           And that tells her that this is not an accident  
13 because the only way to stop those reflexes from doing to the  
14 injury what they should be doing to the injury is for Chance  
15 to be restrained in some way. To be held in some way.

16           Minimal splash and clear lines of demarcation. In  
17 other words, there's a clear line. You don't see this  
18 irregular kind of asymmetrical splash pattern or fingers of  
19 water, right, as we might see on our way home from the court  
20 today. These fingers of water that we see as they drip down.  
21 You don't see any of that on young Chance's hands.

22           What you see is a clear line where the water stops.  
23 And she determines that that is inconsistent with an  
24 accident, especially an accident where he would have to be  
25 reaching over his head. Water doesn't just stop. It goes

1 the way gravity commands it to go.

2           So we look at the injuries to Chance, and when we  
3 listened to Dr. Cetl, and the injuries are consistent with  
4 child abuse and non-accidental injuries, and she reaches that  
5 conclusion in her expert opinion.

6           Here we have even after the debridement and some  
7 time, we have still the same smooth lines, not this  
8 asymmetrical fingers or splash patterns that you see in  
9 accidental cases.

10           She tells you that the reflexes make the accident  
11 impossible -- or excuse me, reflexes make this scenario of it  
12 being an accident impossible. And she tells you that it's  
13 actually inconsistent with various accidental scenarios.  
14 You'll remember that I -- we went through this with her in  
15 her testimony. What if -- is this consistent with him  
16 reaching into a pot? Is this consistent with him reaching  
17 into some type of standing liquid, like we see in the  
18 bathtub?

19           No, this doesn't look like what she called an  
20 emersion burn. Why not? Well, because if you're reaching,  
21 you don't reach with your knuckles. You reach with your  
22 fingers and there's no burns to his fingers. Well, what  
23 about the faucet? Well, the reflexes still make that  
24 impossible, because never mind the fact he's got to turn that  
25 sink on full hot, somehow access it. Never mind the fact

1 that what we know is that the sink in the kitchen takes two  
2 minutes to reach 155 degrees, which is what is necessary to  
3 produce the burn injuries we see. And it takes five minutes  
4 to reach that temperature in the bathtub, and the defendant  
5 tells you that he's only away from Chance for 45 seconds.

6 Put all of that aside, the reflexes, the science  
7 tells you there's no way that that scenario happens as an  
8 accident. There's no way Chance turns that water on full  
9 hot, waits for it to get 145 degrees in the bathtub or 155  
10 degrees in the kitchen and then somehow puts both hands in at  
11 the same time and controls his reflexes. It doesn't happen.

12 Phil Peltier testified that he's been involved in  
13 investigating burns and burn patterns since 1981. That he's  
14 reviewed hundreds of cases and determined burn patterns in  
15 those. And told you as well, based on his training and  
16 experience, based on his years and years of looking at this  
17 and learning about it, reading literature, publishing,  
18 teaching, examining, consulting, sometimes he determines it's  
19 accidental, sometimes it's intentional.

20 And what does he say? He says, whenever I get a  
21 case, I only want the photos first. Don't tell me what he  
22 said. Don't tell me what you think happened. Don't tell me  
23 any details. Don't give me any information. Give me  
24 objective facts, because those can't change. Facts are  
25 stubborn things. The photographs can't change.



1 He doesn't want to have some self-fulfilling  
2 prophecy where oh, that's what you told me happened, guess  
3 what, that's what I see kind of happened to. He looks at the  
4 photographs, he determines on his own, independent of anybody  
5 else, as to what type of burn pattern he's looking at.

6 So what did he -- what conclusion did he come to?  
7 Intentional. These are intentional burns. Why did he say  
8 that? No burn pattern anywhere else. Where would he expect  
9 it? You remember your testimony was well, I would expect it  
10 to some of the same areas that Dr. Cetl talked about. But he  
11 was specifically focused on the tops of the feet. If  
12 somebody's reaching up, they're pulling something down, maybe  
13 they get lucky enough that it doesn't get all over here. But  
14 they can't miss the feet.

15 And socks or no socks, you're going to get burned  
16 if you have whatever boiling water is, put on those feet.  
17 And so that was very concerning to him. And that was what  
18 led to his opinion and helped form his opinion based on the  
19 burn pattern these were intentional.

20 And he specifically said sparing, and he said this  
21 is one of the most important principles that he's understood  
22 and applies in cases. Sparing tells you more about the  
23 nature of the burn than the burn itself. What isn't burned  
24 tells you what type of burn you're dealing with. So we look  
25 at what's been spared.

1           And, thank goodness, right? Thank goodness that  
2 more of this child was not burned. But it's important to  
3 determine what type of burn we're looking at. So we have the  
4 face completely spared, the chest, the abdomen, the fronts of  
5 the legs, the tops of the feet and the palms of the hands  
6 completely spared. We have the backs of the hands, wrists on  
7 up to shoulder in a short-sleeved shirt completely spared.  
8 And that tells you that there's no way this was an accident.  
9 There's no way that this child reached up and tipped that cup  
10 over.

11           He says, specifically, it could not happen with his  
12 hands lifted up above his shoulders, which we know has to be  
13 the case with Chance. He's 37 inches tall, the counter's 35  
14 inches tall. He has to reach above his shoulders. And he  
15 specifically comes to that conclusion because the right  
16 fingers are pointed down. How does he tell? How can he tell  
17 that? He looks at the right hands, he says, right here is  
18 the source of the watering, in his training and experience.  
19 In his expert opinion, that's where the water started for  
20 that right wrist.

21           And then what did it do? Well, water obeys the  
22 laws of gravity. So it spread out from there. And we know,  
23 again, because gravity exists, that must be down. The start  
24 of the water must be higher than where the water ends up.  
25 And there's no way that a child reaches up just to reach

1 down.

2 He comes to the expert opinion that it's a quick,  
3 close pour. Why, close? Well, because there's less --  
4 there's no splash pattern. He doesn't see any splashes and  
5 he doesn't see any fingers. This is controlled. Why quick?  
6 Because the natures of the injuries it had to be on and off  
7 by another person. It's focused and the child had some  
8 movement.

9 You remember there's been some discussion, there's  
10 been some evidence about what type of movement do you see in  
11 this burn pattern? What time of movement do you see in these  
12 injuries. And both Dr. Ceti and Phil Peltier came to the  
13 same conclusion that they had some range of movement because  
14 the patterns are a little bit different, right? One's a  
15 little bit more flat, the left wrist, and one's a little bit  
16 more angled with the fingers down.

17 But both of them came to the same conclusion that  
18 they don't have completely free range of movement because  
19 reflexes exist, and when reflexes exist, and they have  
20 complete free range of movement, the injuries look different,  
21 the burn pattern looks different.

22 So, that's the science. Now, what does common  
23 sense tell us about this case? Because you're told in this  
24 instruction that you do not check your common sense at the  
25 door. You're here, you all have experience with water, some

1 of you have experience with burns, some of you might even  
2 have experience with burns with hot liquid. And what you're  
3 told is that you're to bring your everyday common sense and  
4 judgment as reasonable men and women to the facts of this  
5 case when you're deliberating.

6           And what common sense tells us about this case is  
7 that the defendant's story doesn't add up. And let me be  
8 clear. I'm not talking about the, I wasn't in the room so  
9 I'm not really sure, but here's kind of what I think might  
10 have happened, part of the defendant's story. I'm talking  
11 about the stuff that he should know. The stuff that he was  
12 there for. The stuff that he did. The stuff that he  
13 observed. That doesn't add up either.

14           Specifically, there's no coffee in the cupboards.  
15 You saw this during the reenactment. You saw him saying oh,  
16 I put the boiling water in the cup and then I'm going to make  
17 my coffee, and the detectives say, okay, well, where's the  
18 coffee? He says oh, it's right here. Oh, no, wait, wait,  
19 it's right here. No, wait, it's over here. He looks high,  
20 he looks low, he looks left, he looks right. He looks in  
21 every single cupboard that he can find in that kitchen for  
22 the coffee.

23           And specifically looks in one cupboard that I want  
24 to talk about, that one right there. Because you'll remember  
25 Jasmin came in and she testified with this cupboard, which is

1 just above the counter where this cup was allegedly placed  
2 right next to the stove that the coffee is right behind that  
3 Pop Tarts box. That's where she found it a few days after  
4 the burn.

5           And you'll see in the reenactment video that the  
6 defendant goes to that cupboard and he moves that Pop Tart  
7 box looking for the coffee, and he doesn't find it. And he  
8 goes and he looks somewhere else. And he comes back to that  
9 cupboard, and he again moves that Pop Tart box and he doesn't  
10 find it. And he goes somewhere else and he looks. And he  
11 comes back a third time and looks in that cupboard and  
12 doesn't find the coffee.

13           Now, Jasmin comes and testifies that she found the  
14 coffee in a baggy a few days after the burn. Never mind that  
15 the defendant describes that he drinks Folgers with the green  
16 cap. Jasmin behinds it in a baggy. Jasmin, who loves the  
17 defendant. Who has a family with the defendant. Who has  
18 plans for the future with the defendant. And she's so  
19 excited to find this coffee, that she doesn't tell any police  
20 officers. She doesn't tell the investigating detectives.  
21 She doesn't tell any medical doctors. She doesn't tell  
22 anyone from the District Attorney's Office in her testimony  
23 at a prior hearing.

24           She waits until over a year later to let us all  
25 know that there was coffee in that cupboard all along.

1 MS. HOLIDAY: Objection. Misstates the evidence.

2 THE COURT: Overruled. You can proceed.

3 MR. BURTON: The second thing that doesn't add up  
4 is that there's clean cups in the cupboards. This is the cup  
5 that the defendant told the detectives he used to make coffee  
6 on the morning of January 5th, this cup that is covered in  
7 food debris. And when the detectives ask him, or say well,  
8 this is covered in food, he says, oh, yeah, I use that to  
9 kind of pound chips to make a spread with hot water.

10 So this is the cup that he uses to make coffee with  
11 a handle that he's not really sure if it's missing or not  
12 missing. When just a few feet away we have a cupboard with  
13 at least six coffee mugs with -- with handles clearly  
14 attached for him to use to pour boiling hot water in for his  
15 coffee.

16 The disappearing handle. Detectives ask him, okay,  
17 the handle's missing, do you know where it is? Do you know  
18 if it's broken today or -- I noticed it was broken today. I  
19 don't know if it actually broke today or if it broke some  
20 other time. I can't remember.

21 And the detectives look. They look under the  
22 stove. They're good detectives. They look in the sink, they  
23 look in the trash, they're looking for this handle. They're  
24 trying to find out if the defendant is telling them about the  
25 correct cup that at the claims he used for coffee and they

1 don't find it.

2           Disappearing water. The detective -- or excuse me,  
3 the defendant says this is the pot that's left on the back  
4 burner of the stove, it's on the back burner because the  
5 front burners don't work, that he used to boil his water.  
6 And he fills it up and he says, you can see where I filled it  
7 up to, you can see the line. And you can, indeed, in this  
8 picture, see the line. It's about halfway up the pot that he  
9 uses.

10           And he fills it up for the detectives in the  
11 reenactment video, and we can all tell from just that line or  
12 even in the reenactment video, and as the detective  
13 testified, it's way more water than is going to fit in that  
14 cup. Certainly, if he only claims that he filled it up about  
15 three-quarters of the way up the cup. Bone dry when they get  
16 there.

17           No explanation as to well, I poured the extra water  
18 away. It just didn't add up. He cools the water before the  
19 brew. Now, the detectives ask him about this in his  
20 statement. I'm sorry, I don't understand, you filled up  
21 boiling water and then you didn't put coffee in it. Well,  
22 it's too hot for me to drink. That's his -- it's his -- that  
23 is -- statement, his response.

24           But they're not talking about drinking. They're  
25 talking about brewing. Who waits for water that they're

1 going to use for coffee to cool before they add the coffee?  
2 We get it all day that you don't want to drink hot coffee,  
3 but why are you waiting to brew cold coffee?

4 Well, because he needs to change the diaper. Well,  
5 he doesn't need to change the diaper because Jordyn's not  
6 crying and Jasmin testified that she had changed the diaper  
7 just maybe 30 minutes ago at most. But he needs to go change  
8 that diaper. And he changes it at a record setting pace of  
9 45 seconds. And we know he changes it or at least he claims  
10 he changes it because in the reenactment video he says, as  
11 he's coming back, that he has the diaper and he tosses the  
12 diaper.

13 So, we know we actually changed Jordyn's diaper, or  
14 at least he claims he changed Jordyn's diaper in 45 seconds.  
15 It wasn't like he was interrupted. Why does he come back?  
16 Well, Chance is crying, not screaming. Never mind that  
17 Dr. Cetl said that second degree burns are the most painful  
18 types of burns, and that the child is inconsolable at the  
19 hospital even after they're giving him pain medication, and  
20 that they have to actually give him anesthesia to do  
21 procedures on him. That he's just crying like he wants  
22 something.

23 He never says that he heard the cup drop. There's  
24 no, I heard a commotion, I heard a shattering, I heard water  
25 fall. No, what he hears and all he hears is Chance crying



1 like he wants something. It doesn't add up.

2 Takes clothe off in the bathroom. That's what he  
3 says during the statement. Then during the reenactment he  
4 takes clothes off in the hallway, Chance's clothes. Then the  
5 clothes are in the bedroom.

6 MS. HOLIDAY: Objection. Misstates the evidence.

7 THE COURT: Overruled. You can proceed.

8 MR. BURTON: You can listen to the reenactment in  
9 the back and determine for yourselves that the defendant says  
10 that he took the clothes off in the hallway before he put  
11 Chance in the tub. Meanwhile, Chance's shirt is in the  
12 bedroom. And Jasmin testifies that Chance is wearing the  
13 same shirt when she comes back around 9:23 as when she left  
14 the apartment at 8:59 and that no one changed him until she  
15 did to go to the hospital.

16 He never points to what he uses to clean up water.  
17 He doesn't say well, this is the rag I used, here's the paper  
18 towels in the trash. And the detectives look in the trash  
19 and they look around, they don't see anything that looks like  
20 it has water that's been used to clean up water.

21 MS. HOLIDAY: Objection. Misstates the testimony.

22 THE COURT: Overruled. The jury can determine what  
23 the testimony is.

24 MR. BURTON: Defendant says that he puts Chance in  
25 the tub until Jasmin gets home. He's having him put his ands

1 in the water and then he uses that opportunity to clean up.  
2 And he puts that -- Chance in the tub until Jasmin gets home.  
3 Meanwhile, Jasmin states that when she gets home, Chance  
4 isn't in the tub. Chance has the same clothes on that he was  
5 wearing when she left, and he's sitting on the couch with the  
6 defendant. It doesn't add up.

7           Very little water and it's only on the floor. The  
8 defendant says that while Chance is in the tub, he cleans up  
9 the water. Where do you clean up the water from? The floor.  
10 There's no mention on water on a counter. There's no mention  
11 of water on the bathroom floor. We're talking the kitchen  
12 floor. There's no mention of spilled water anywhere else but  
13 that floor.

14           And he tells the detectives, yeah, you're right, I  
15 don't know what happened because I wasn't there. But common  
16 sense says well, the cup was on the floor, water on the  
17 floor, cup was on the counter when I left. Chance must have  
18 pulled that cup off when I left.

19           But if science tells us that the injuries that were  
20 caused to Chance could not have occurred as a result of that  
21 scenario, then what does common sense tell us as to what the  
22 defendant's story is?

23           The defendant also mentions that he has issues with  
24 Chance and Chance's father. That when they get Chance back,  
25 he's got behavioral issues, right? Everything is mine. And

1 very aggressive. He's aggressive with his sister. They talk  
2 about when he hits his sister. He's aggressive with his  
3 cousins. He's aggressive with adults. He curses his mom.  
4 He's hyper. This is actually one of the few times in the  
5 defendant's statement where he gets a little more than just  
6 this calm demeanor, right? They ask him, what's Chance like  
7 as a child? Phew, that's his first response. He bad.

8           And then they start talking about something else.  
9 They start talking about well, okay, let's talk about the cup  
10 falling again. And then they say look, is there anything  
11 else that you want to add? And what is his response? You  
12 just got to teach them. This isn't in response to any kind  
13 of what type of discipline do you -- in fact, this is what  
14 leads to the detectives to ask about well, what do you mean  
15 by teach him? What kind of discipline do you do for Chance?

16           This is completely voluntary on the defendant's  
17 part when he's asked, is there anything else you want to add?  
18 You just got to teach them. So they start asking him about  
19 discipline. What does he say? The first thing he says is we  
20 physically discipline Chance sometimes. When he hits his  
21 sister, we take him, we go, boom, slap on the back of the  
22 hand and that's it.

23           Then when they get more specific, so you take him  
24 -- no, no, I don't. Jasmin, Jasmin does all of that. She's  
25 the one who physically punishes. And then Jasmin comes and

1 testifies that the defendant had her permission to physically  
2 discipline Chance and to do so on the backs of his hands.  
3 The physical discipline to Chance occurs to the back of his  
4 hands.

5           Now, can all of these inconsistencies or things  
6 that just don't add up be explained? Maybe, maybe. And I'm  
7 sure Ms. Holiday's going to come up here and give it her best  
8 shot. But here's the rub. You see, it doesn't really matter  
9 what I say about this case. And it doesn't really matter  
10 what Ms. Holiday says.

11           It matters what the evidence says. That's what  
12 you're to consider. And what the evidence says is that  
13 common sense, the defendant's story just doesn't add up. So  
14 science, plus common sense, shows that these burns are  
15 intentional. But how exactly did it happen? Right? It's  
16 human nature. We want to know, where was Chance when he got  
17 burned? Where was the defendant? Why was he being burned?  
18 And unfortunately, we can't answer all of those questions.  
19 This is something that occurred in what we call a closed  
20 universe. This isn't out in the open for everybody to see.  
21 There's only three people in that home and two of them cannot  
22 describe what happened.

23           But we do know some things. We know that it was a  
24 slow pour or a faucet. That's based on the injuries. That's  
25 based on the burn pattern. We know that it was very quick.

1 That it happened very quick. And we know that Chance was  
2 restrained. And that his hands were close together, but in  
3 different positions. Slightly different pattern.

4 And when we look at what exactly the defendant is  
5 charged with and what the State has to prove, the facts or  
6 sometimes we all them elements of the offense, we have to  
7 show you that the defendant willfully caused Chance to suffer  
8 physical injury of a non-accidental nature, specifically, a  
9 hot liquid burn that resulted in substantial bodily harm.  
10 That's what we have to prove.

11 And willfully is defined as purpose or willingness  
12 to commit the act in question. It doesn't mean that you have  
13 a willful desire to violate the law or a willful desire to  
14 cause the specific injuries that you did in this case or that  
15 the defendant did in this case. It's not required for us to  
16 show the defendant did this to cause second degree burns to  
17 Chance. What we have to show is that the defendant  
18 intentionally poured hot liquid on Chance's hands.

19 So this really isn't the question. The actual  
20 question is did the defendant intentionally pour hot liquid  
21 on Chance? And the answer to that question is, absolutely,  
22 because even though Chance cannot tell the officers that  
23 respond to the hospital what happened, his injuries speak  
24 volumes and answer this question resoundingly that the  
25 defendant is guilty of intentionally pouring hot water or hot

1 liquid on Chance.

2           Now, substantial bodily harm. In order to show  
3 physical injury, we have to show that there's a permanent or  
4 temporary disfigurement or impairment of an organ. And  
5 you've heard Dr. Cetl say that skin is an organ. So do we  
6 have temporary disfigurement or impairment of skin in this  
7 case? Absolutely.

8           We have the loss of pigmentation. We have the fact  
9 that it took months for this to fully heal. And we have the  
10 debridement where they were actually removing parts of that  
11 organ, layers of skin.

12           Substantial bodily harm is defined as two possible  
13 things, either one, you have a bodily injury which creates  
14 some substantial risk of death or serious permanent  
15 disfigurement or protracted loss or impairment of an organ or  
16 prolonged physical pain.

17           Now, we already talked about the physical pain. We  
18 talked about the impairment of the function of Chance's skin.  
19 Let's talk about prolonged physical pain. Let's talk about  
20 Dr. Cetl's testimony that second degree burns are the most  
21 painful, because at least with third degree burns you have  
22 destroyed nerve endings, so you're not able to feel the pain  
23 that's ravaging your body.

24           Let's talk about the fact that this was completely  
25 consistent. We don't have any first degree burns, except for

1 a little splash that was noted by Dr. Cettl, that this is  
2 pinky to thumb, to knuckle, second knuckle pain. Here on the  
3 right wrist, same thing. Wrist to knuckles, thumb to finger.  
4 Substantial pain.

5           And we heard testimony about that. He's prescribed  
6 medication, morphine in the hospital. When he's discharged  
7 from the hospital and he does that debridement, he's  
8 prescribed more prescription medication, prescription  
9 medication that Jasmin did not fill. He has to then be  
10 admitted into the hospital again, and he has another  
11 operation. And both of these require sedation between these  
12 two procedures. And he's again given more prescription pain  
13 medication in which Jasmin does fill the prescription for,  
14 uses all of it, and continues to give him over-the-counter  
15 pain medication.

16           And that he had doctor visits into March 2016, as  
17 he dealt with these injuries.

18           Ladies and gentlemen, this case comes down to two  
19 very simple facts. Defendant was the sole caretaker in the  
20 home when Chance received the burns to his hands. And  
21 science and common sense tell us the burns were intentional,  
22 not accidental. Thank you.

23           THE COURT: Thank you. The defense may address the  
24 jury panel.

25           THE MARSHAL: Oh, I thought you were going to use

1 the other podium. I'm sorry.

2 MS. HOLIDAY: That's okay.

3 DEFENDANT'S CLOSING ARGUMENT

4 MS. HOLIDAY: May it please the Court, counsel.  
5 Donovine did not intentionally burn Chance. This was an  
6 accident that the State wants to turn into a crime because of  
7 faulty assumptions and analysis by State's experts. I want  
8 to talk to you a little bit about reasonable doubt and the  
9 presumption of innocence.

10 Because Mr. Mathews has the presumption of  
11 innocence, he starts off in the "not guilty" section. He  
12 does not start off in the middle. This is not a situation  
13 where he starts in the middle and then the State and the  
14 defense have to present evidence to bring you to one side or  
15 the other.

16 Mr. Mathews starts off squarely in the "not guilty"  
17 section. He's innocent until the State proves him guilty.  
18 Until the State brings Donovine all the way over here from  
19 not guilty to guilty. The Jury Instructions tell you that  
20 reasonable doubt is one based on reason. The Jury  
21 Instructions tell you that you must feel an abiding  
22 conviction of the truth of the charge. An abiding  
23 conviction, or else there is fought reasonable doubt.

24 Here are some reasons that you can doubt the  
25 State's case. First, Dr. Olson had a note created that there



1 were burns to the palm and fingertip of Chance's hand.  
2 Dr. Cetl and Mr. Peltier were clear that they did not believe  
3 there were any burns on the palms or fingertips of Chance.  
4 They said that the palms -- at one point they said that the  
5 palms were 100 percent spared.

6           They also said that sparing can tell you more than  
7 where the actual burns are. Sparing was important to them in  
8 their analysis or their assessment. And yet, Dr. Olson  
9 noticed a burn to the palm and fingertip. They did not take  
10 that into consideration in their analysis; probably because  
11 they did not see Chance in person. Neither of them observed  
12 the injuries in person. They relied on pictures.

13           Even though Dr. Cetl actually was close enough to  
14 peek her head into Chance's room. And even though Dr. Cetl  
15 at one time testified that she likes to get as much  
16 information as she can get, she did not examine Chance in  
17 person. Her and Mr. Peltier relied on photographs. And  
18 that's probably the reason that they missed that Chance had a  
19 burn to the palm and fingertip. That's probably the reason  
20 they focused so much on the sparing and that's probably the  
21 reason that they got their conclusion wrong.

22           What's important about the burn to the palm and the  
23 fingertip is that that would be an exploratory burn or  
24 exploratory evidence is what Dr. Cetl mentioned. If there  
25 are burns in exploratory areas, that might show that it's an

1 accident. That might show an accidental burn or provide  
2 evidence of an accidental burn.

3           Again, because Dr. Cetl and Mr. Peltier did not  
4 factor that into their analysis, their analysis is based on a  
5 false assumption, and their analysis, therefore, cannot be  
6 trusted to be a correct opinion. That's reasonable doubt.

7           The disagreement among the experts is reasonable  
8 doubt. You heard Dr. Peltier say that there was a lot of  
9 movement. You heard Dr. Cetl say that there was very little  
10 movement. They have very different opinions on the amount of  
11 movement that was allowed during the accident.

12           There was a very specific picture, if you'll  
13 recall, that Mr. Peltier used to point out the movement. It  
14 was to the side of one of Chance's hands where you could see  
15 different bubbles or blisters. He pointed it out very  
16 clearly. He said that is evidence that there was movement  
17 when the burns occurred.

18           Doctor Cetl thought there was no movement. The  
19 consistency of the movement is not something that the experts  
20 could agree on. You heard Mr. Peltier say that the pattern  
21 or the depth of the burns was different throughout. It was  
22 not consistent. You heard Dr. Cetl say that's one of the  
23 facts that she relied onto come to her conclusion, that the  
24 burns were so consistent.

25           The experts can't agree because it's not clear. If

1 it's not clear, that's reasonable doubt. More reasonable  
2 doubt is found where the detective did not provide enough  
3 information to answer the necessary questions of this case.  
4 The detective testified that there were two other detectives  
5 and his sergeant present when they did the reenactment video.  
6 So that's three detectives and a sergeant. Yet, they did not  
7 take all the food out of the cupboards to look for the  
8 coffee.

9           You saw the pictures of the cupboards in this  
10 house. How long would it have taken three detectives and one  
11 sergeant to take the food out of the cupboard to verify that  
12 there was no coffee? The State of Nevada wants you to find  
13 Donovine guilty of burning that child on purpose beyond a  
14 reasonable doubt. And yet, the three detectives and one  
15 sergeant couldn't take the -- or couldn't take the items out  
16 of the cupboard to look for the coffee. That's reasonable  
17 doubt.

18           The detective did not indicate that any  
19 fingerprints were taken from the countertop or from the mug  
20 in this case. It might have been helpful to know if Chance's  
21 fingerprints were on the mug. It might have been helpful to  
22 know if Chance's fingerprints were on the countertop. But  
23 the detective didn't provide any testimony that they even  
24 tried to get fingerprints, not to mention, any kind of DNA or  
25 other physical evidence.

1           Speaking of the mug, the detective in this case did  
2 not testify that he impounded the mug in this case, so that  
3 he could have it as evidence in this case. The detective did  
4 not impound the mug so that it could be used as evidence in  
5 this case. That's reasonable doubt.

6           The detective did not testify that he checked for  
7 water between the countertop and the stove. You can see from  
8 the pictures that the counter where the mug was set directly  
9 abuts that stove. There's a gap between the countertop and  
10 the stove, as you can also see in the pictures. Did the  
11 detective -- did the three detectives and the sergeant look  
12 for any water between the countertop and the stove? There  
13 might be water there if the mug had fallen on the side. But  
14 they didn't even look.

15           The detective did not testify that he ever  
16 attempted to measure Chance's arm length or to get an idea of  
17 how far he could reach. Again, the State of Nevada wants you  
18 to convict Mr. Mathews of intentionally burning this child  
19 and the detective in this case did not measure Chance's arms  
20 to see how far he could reach on to the countertop to further  
21 analyze whether this was an accident or not. That's a fact  
22 we would want to know in this case; how far can Chance reach  
23 on to the countertop? The detective did not look into that.

24           Further reasonable doubt is found in the faulty  
25 analysis or assessment of the experts based on assumptions.

1 We've already talked about the fact that the experts missed  
2 the burns to the palms and pinky finger -- or I'm sorry, and  
3 fingertip. That makes their analysis or their assessment  
4 faulty. Both experts in this case testified that they  
5 sometimes use either blue dye or maybe not, in Dr. Cetl's  
6 case, but both doctors testified that sometimes they attempt  
7 to understand an injury by recreating the situation and  
8 testing how the water might have splashed or poured or  
9 spilled.

10 Both experts do this. But neither of them did this  
11 in this case. Mr. Peltier, the blue dye guy, did not provide  
12 any blue dyed water to help us understand this case.  
13 Wouldn't that be something that would help us understand what  
14 happened, if the State of Nevada wants you to convict  
15 Donovine of burning Chance on purpose?

16 If either Dr. Cetl or Mr. Peltier would have used  
17 water to recreate a scenario, maybe they would have found  
18 something different. We don't know because they did not do  
19 that. Neither Dr. Cetl nor Mr. Peltier had any information  
20 about Chance's reach, like I said, because the detective  
21 didn't provide that information.

22 Neither Dr. Cetl more Mr. Peltier knows how far  
23 Chance could reach up on to that countertop. Dr. Cetl  
24 testified that the typical scenario she sees is when liquid  
25 is pulled down onto a child. So, Dr. Cetl analyzed whether

1 that's something that could have happened in this case, or  
2 assessed whether that's something that could have happened in  
3 this case.

4 Dr. Olson specifically started out with an  
5 incorrect assumption. Dr. Olson testified that the  
6 information he was given was that mom's boyfriend said that  
7 Chance grabbed the mug and spilled it onto -- spilled the  
8 water on to himself, but that is not the information that  
9 Donovine provided. Donovine never said that Chance grabbed  
10 the mug. Donovine made a guess, you'll hear in his recorded  
11 statement, that Chance may have grabbed the mug and that's  
12 how it would go from the countertop to the floor. But that  
13 was a guess.

14 He never said he saw Chance grab the mug with his  
15 hands. But this was the information that Dr. Olson was  
16 given. Dr. Olson's conclusion was certainly based on a false  
17 assumption.

18 But I think that's where Mr. Peltier and Dr. Ceti  
19 focused, too. They testified that they thought the injuries  
20 would have been maybe to Chance's face or his torso or his  
21 arms or even his feet. They testified that they would have  
22 expected to see tendrils of water, maybe, going down Chance's  
23 arms indicating gravity pulling the water from the countertop  
24 down to the floor down towards Chance.

25 Donovine agrees with the State's expert. The

1 defense agrees with the State's experts that it is not  
2 reasonable to believe that Chance could have grabbed the mug  
3 from above his shoulders on a countertop, spilling it on to  
4 himself creating burns to the back of his hands. We  
5 absolutely agree that that is not a reasonable scenario.  
6 That's probably not what happened in this case.

7           But what we don't know is whether the experts  
8 thoroughly analyzed the possibility that the water could have  
9 spilled on to the countertop and over Chance's hands. Like  
10 we talked about briefly in cross-examination, if a mug is  
11 placed on a countertop, it could spill in one of maybe four  
12 directions, obviously, more. It could spill towards Chance.  
13 In this particular case, the mug could spill in the direction  
14 of Chance, it could spill away from Chance, it could spill  
15 from left to right or right to left or anywhere in between.

16           In this particular case, if Chance could reach up  
17 onto the countertop and place his hands flat on the  
18 countertop, and if the mug could spill from left to right  
19 pouring water over his hands, you would expect, like Dr. Cetl  
20 said, that the bottom of his hands might be spared. Remember  
21 Dr. Cetl said that one thing -- one reason that we might see  
22 sparing is if your palms are on surface.

23           Obviously, if this were the case, we wouldn't  
24 expect to see gravity pulling water down on to Chance. If  
25 Chance's hands were flat on the countertop and the water

1 spilled from left to right, we wouldn't expect to see burns  
2 on his face, on his torso, on his arms or on his feet. But  
3 the experts in this case focused their analysis or assessment  
4 on the idea that water couldn't spill on to Chance or go  
5 towards Chance.

6           The fact that they focused their analysis there  
7 shows that they were operating under incorrect assumptions.  
8 Again, Dr. Cetl and Mr. Peltier did not meet Chance. They  
9 did not look at Chance's injuries themselves. They based  
10 their analysis and their conclusion on incomplete  
11 information. The experts in this case did not know the force  
12 that would be required to tip over the mug, if Chance were to  
13 tip it over accidentally, and they don't know the angle that  
14 would have been required to tip over the mug, if Chance would  
15 have tipped it over accidentally.

16           And they don't know how far Chance could reach on  
17 to the countertop to accidentally tip over the mug. Their  
18 analysis was based on incomplete information, and that's  
19 reasonable doubt.

20           The Jury Instructions tell you that motive is not  
21 an element of the crime. That's true. But that you can  
22 consider motive. The timeline of this case is important.  
23 Jasmin testified that she left the apartment very shortly  
24 before 9:00, maybe a minute or two, I believe, before 9:00.  
25 We know for sure that she got the call from Donovine at 9:19



1 saying that there had been an accident and asking her to come  
2 home.

3           So Jasmin was gone for approximately, anywhere  
4 between 19 and let's say 25 minutes, that she had left her  
5 house maybe 5 minutes before her appointment. Somewhere  
6 between 19 and 25 minutes, the State wants you to believe  
7 that Donovine decided to burn Chance intentionally.

8           In 19 to 25 minutes, it is not reasonable to assume  
9 that someone could get so frustrated with a child or lose  
10 their temper so quickly that they want to run hot water long  
11 enough, as it would take in the faucets or the bathtub of  
12 that house, to run some hot water long enough for it to get  
13 hot enough to create these burns or to boil some hot water  
14 and wait for it to heat up so that he could create these  
15 burns.

16           The State wants you to believe that in 19 to 28  
17 minutes, Donovine got so mad or so frustrated at Chance that  
18 he burned him intentionally after waiting for water to heat  
19 up. That 19 to 25 minutes also includes the time that  
20 Donovine put Chance in the bathtub, put Neosporin on his  
21 hands before he called Jasmin.

22           Maybe the State's theory is that Donovine just  
23 couldn't wait to get a child alone to burn them  
24 intentionally. So the minute Jasmin left the apartment, he  
25 started implementing his plan to heat up some water and burn

1 a little child. If the State of Nevada wants you to find  
2 Donovine guilty beyond a reasonable doubt of intentionally  
3 burning a two-year-old child, they better have some pretty  
4 good evidence, especially considering the fact that it  
5 happened in 19 to 25 minutes, and there's no evidence of  
6 motive in this case.

7           What, because a two-year-old child had some  
8 behavioral problems? Because a two-year-old child was a  
9 little naughty? That's the motivation in 19 to 25 minutes  
10 for Donovine to intentionally cause him this much pain? The  
11 State mentions the fact that Donovine maybe was not a big fan  
12 of Chance's father. Jordyn and Chance share the same father.  
13 Jordyn and Donovine have spent time alone together, as you  
14 heard Jasmin testify; a lot of time alone together.

15           And yet again, the State is asking you to convict  
16 Donovine beyond a reasonable doubt when they cannot even  
17 explain to you why he would do something like this. No  
18 motive is reasonable doubt.

19           MS. JOBE: Objection.

20           THE COURT: Sustained.

21           MS. JOBE: Move to strike.

22           THE COURT: Granted.

23           MS. HOLIDAY: The concept of reasonable doubt means  
24 that each of you can have a different reasonable doubt. You  
25 don't all have to share the same reasonable doubt. And you

1 only have to have one reasonable doubt.

2           The treatment of the burns is reasonable doubt.  
3 Again, the State of Nevada is asking you to convict Donovine  
4 of burning Chance intentionally, yet, there's very clear  
5 evidence that Donovine, as soon as Chance was burned placed  
6 him in a bathtub with cold water, put Neosporin on the injury  
7 and also tried to treat it with a ice pack; not to mention  
8 that he called his mother right away and then they went to  
9 the Emergency Room.

10           Donovine treated Chance in a myriad of ways, cold  
11 water, Neosporin, an ice pack, an Emergency Room visit, and  
12 yet, the State is asking you to convict him beyond a  
13 reasonable doubt of burning Chance intentionally.

14           The State explained that this was a closed  
15 universe. When you have a situation of a closed universe,  
16 you don't always have all facts. That's what they said and  
17 that's true. But that doesn't change the fact that the State  
18 still has to prove their case beyond a reasonable doubt.  
19 When the State is alleging that a crime occurred in a closed  
20 universe, they still have to come forward with enough  
21 evidence to prove that the person is guilty beyond a  
22 reasonable doubt.

23           Of course, it's not the State's fault that this was  
24 a closed universe. What the State had control of is the way  
25 that they collected the evidence. What the State has control

1 of is the evidence that they put before the jury. The State  
2 always has the burden to bring forward adequate evidence to  
3 show proof beyond a reasonable doubt, whether this occurs in  
4 a closed universe or not.

5 As I said, there are many, many reasons for  
6 reasonable doubt. You don't all have to agree on the same  
7 one. And there might be reasonable doubts that you all have  
8 that I certainly didn't point out or identify.

9 If you can't find that the State has proven their  
10 case beyond a reasonable doubt, you must find Donovine not  
11 guilty.

12 Let's talk about what's not reasonable doubt.  
13 Donovine wanting to make coffee in a dirty cup is not proof  
14 beyond a reasonable doubt. A dirty cup is not proof beyond a  
15 reasonable doubt. The line on a pot is not proof beyond a  
16 reasonable doubt. That line could have been created from any  
17 time they boiled water in that pot or boiled something else  
18 in that pot. The fact that there was a water line in a pot  
19 certainly doesn't indicate how much water was in it only on  
20 that morning.

21 Just because Donovine identified how much he filled  
22 the pot up doesn't mean that some water didn't evaporate in  
23 the process of boiling. A water line in a pot is not proof  
24 beyond a reasonable doubt. The fact that Donovine couldn't  
25 find coffee in the cupboard is not proof beyond a reasonable

1 doubt.

2           You heard Jasmin explain the reason behind that,  
3 Jasmin's father used instant coffee that came in a canteen.  
4 A canteen would have a lid on it. We can use our common  
5 sense to figure that out. You heard Donovan's statement  
6 that he was looking for something with a green lid. The  
7 coffee was kept in a green -- something with a green lid.

8           Donovine was looking for the canteen where the  
9 coffee used to be kept. You heard Jasmin testify that when  
10 her father moved out, she took some grounds out of that  
11 canteen and put them in a baggy. Donovine didn't know that  
12 he was looking for a baggy. He was looking for a canteen.  
13 That's probably why he had trouble finding it.

14           But you also heard Jasmin say where the coffee  
15 actually was and of where you would expect it to be, near the  
16 hot chocolate that you mix with hot water, near the Kool-Aid  
17 packets that you mix with water.

18           Jasmin was able to find it right away because she  
19 put it there. Donovine couldn't find it, but that is not  
20 proof beyond a reasonable doubt. And Jasmin shouldn't be  
21 blamed for not bringing this up sooner. When Jasmin was  
22 interviewed by detectives, it was before the detectives took  
23 Donovine back to the apartment for the reenactment video,  
24 before Donovine couldn't find the coffee.

25           So of course, Jasmin wouldn't each know that coffee

1 would be an issue. Of course, Jasmin wouldn't bring it up to  
2 detectives at that time. Jasmin can't be faulted for not  
3 bringing up during the Preliminary Hearing because during the  
4 Preliminary Hearing Jasmin was not allowed to ask any  
5 questions. That's not the way that it works.

6           Donovine's attorney did not ask Jasmin where the  
7 coffee was or if she knew about the coffee. And the State of  
8 Nevada during the Preliminary Hearing did not ask Jasmin if  
9 there was coffee in her house. The State of Nevada certainly  
10 knew that coffee was an issue in this case. The State of  
11 Nevada knew that Jasmin lived in the house, that it was her  
12 apartment, in fact.

13           The State of Nevada did not ask Jasmin during the  
14 Preliminary Hearing about the coffee. In fact, the State of  
15 Nevada did not ask Jasmin during their direct examination  
16 about the coffee in her house. Did it not occur to the State  
17 of Nevada that Jasmin living in the apartment might know  
18 whether there was coffee or not?

19           Again, and yet they're asking you to prove Donovanine  
20 did this beyond a reasonable doubt. They're asking you to  
21 convict him beyond a reasonable doubt.

22           The diaper change at 8:45 is not proof beyond a  
23 reasonable doubt. You heard -- strike that. If a child sits  
24 in a dirty diaper too long, they can get a diaper rash.  
25 That's common sense. If a child has soiled themselves, you

1 need to change their diaper right away to avoid diaper rash,  
2 to avoid a problem with their skin.

3           And yet, the State of Nevada wants you to believe  
4 that Donovine burned Chance intentionally based on the fact  
5 that Donovine was diligent in changing the baby's diaper.  
6 When Jasmin changed the baby's diaper at 8:45, she probably  
7 didn't know that the baby would poop 15 minutes later or 30  
8 minutes later.

9           So why is it proof beyond a reasonable doubt that  
10 the diaper was changed at 8:45 and Donovine had to change it  
11 again? It's not proof beyond a reasonable doubt. A child  
12 misbehaving is not proof beyond a reasonable doubt. Children  
13 do that. We already talked about the fact that that doesn't  
14 create motive, that it also is not proof beyond a reasonable  
15 doubt.

16           Donovine having trouble hearing Jasmin on the phone  
17 and saying, shut her ass up is not polite, but it is not  
18 proof beyond a reasonable doubt that he would burn a  
19 two-year-old child intentionally. The State's first point  
20 was that the defendant was alone with Chance when this  
21 occurred. That is not proof beyond a reasonable doubt that  
22 Donovine intentionally burned a two-year-old child.

23           Going back one more time what is proof beyond a  
24 reasonable doubt. This was an accident. The State can't see  
25 that because they made false assumptions, because they had

1 faulty analyses. This was an accident where Donovine left a  
2 hot cup of coffee on the countertop. A mug -- we don't know  
3 what happened, Donovine doesn't know what happened because he  
4 wasn't there.

5           The State's experts don't know what happened  
6 because they weren't there. The detective doesn't know what  
7 happened because he wasn't there. The reasonable doubt is  
8 that Chance could have reached up on to the counter, put his  
9 palms flat down on the counter with the mug spilling over his  
10 hands, spilling the water over his hands causing those  
11 injuries.

12           You saw pictures of the injuries. You saw how on  
13 Chance's right hand the water falls at an angle. You saw the  
14 pictures. You saw that there seems to be a great deal of  
15 burns on Chance's left pinky hand -- left hand near the pinky  
16 area. You saw the pictures. You saw that there does not  
17 appear to be much burn on Chance's right hand below the pinky  
18 area.

19           In fact, there appears to be a splash mark, as  
20 State's experts pointed out on that right hand. If the water  
21 -- if the cup had tipped and the water had fallen or flowed  
22 over Chance's hands, perhaps, you would see more burns on the  
23 left side of Chance's hand near the pinky and perhaps you  
24 would see fewer burns further away. And that's supported by  
25 the expert testimony, too, because at one point Mr. Peltier



1 said that it looked like the water was -- had made contact  
2 with the hand closer on that side of the left near the pinky  
3 because there was a little bit different burn.

4 The accident that happened that Donovine talked  
5 about is a reasonable doubt.

6 (Ms. Holiday/Clerk conferring)

7 MS. HOLIDAY: Dr. Cetl testified that it might make  
8 is difference to her opinion or conclusion if she had  
9 information, for example, that Chance had been thirsty.  
10 Tonight the State of Nevada is asking you to convict Donovine  
11 of burning Chance on purpose, beyond a reasonable doubt, and  
12 yet, not once during their entire case, including during  
13 their closing argument did the State of Nevada mention the  
14 cookies and the candy that are on the countertop right behind  
15 where Donovine placed the mug.

16 Not once did they point out the cookies and the  
17 candy or mention it. Did they not notice it, or did they not  
18 want to point it out to you? And yet, they're asking you to  
19 convict Donovine of burning a child intentionally beyond a  
20 reasonable doubt.

21 If Chance would have been reaching for cookies and  
22 candy and not a hot mug of water, he probably wouldn't have  
23 grabbed the mug of water. He probably would have tried to  
24 reach past it, possibly accidentally spilling it. Who knows  
25 how it could have happened because Donovine wasn't there, but

1 perhaps, Chance's hands could have bumped the mug spilling it  
2 over his hands or perhaps, Chance could have been trying to  
3 reach the cookies and brought his hands downward with a force  
4 on the very rim of the mug.

5 MS. JOBE: I'm just going to object to facts not in  
6 evidence.

7 THE COURT: Sustained.

8 MS. JOBE: Move to strike. Ask the jury --

9 THE COURT: Granted.

10 MS. JOBE: -- to disregard it.

11 THE COURT: You need to stick to the facts that are  
12 in evidence and argue the facts.

13 MS. HOLIDAY: There are no facts presented in this  
14 case that anybody saw Chance reaching for cookies or candy or  
15 that anybody saw Chance grabbing a mug or that anybody saw  
16 Donovine intentionally burning Chance.

17 However, in a closed universe where we don't have  
18 all the information, we have to imagine if there's reasonable  
19 doubt about what State is asking you to do.

20 MS. JOBE: Objection. Misstates the law.

21 THE COURT: Sustained.

22 MS. HOLIDAY: If Chance would have been reefing for  
23 cookies and candy he could have tipped the mug over. He  
24 could have accidentally spilled the water and the mug could  
25 have then rolled to the floor. That's reasonable doubt.

1           The Jury Instructions say that if the State has not  
2 convinced you beyond a reasonable doubt that Donovine  
3 intentionally burned Chance, that you must find I'm not  
4 guilty, and that's what we're asking you to do because  
5 Donovine did not intentionally hurt that little boy. Thank  
6 you.

7           THE COURT: Thank you. The State may begin their  
8 rebuttal.

9           MS. JOBE: If I could collect a few items before I  
10 do, Your Honor. Sorry, ladies and gentlemen, one moment.  
11 Just let me get my stuff.

12                           STATE'S REBUTTAL CLOSING ARGUMENT

13           MS. JOBE: Okay. I know I'm the one doing the  
14 arguing, but if any of you see me about to trip on this wire,  
15 like I said during voir dire, just warn me, interrupt me,  
16 it's fine. Better to be interrupted than to end up on my  
17 face.

18           All right. State gets the last word because State  
19 has the burden. So, I'm sure you all are tired of sitting  
20 here listening to arguments. I'm going to try to get through  
21 it as fast as I can, but I do believe there are some  
22 important things to point out between the evidence and the  
23 law, and what we actually know in this case.

24           As Mr. Burton told you, he expected Ms. Holiday to  
25 get up here and do her best to explain all the

1 inconsistencies, and she did. And I'm not going to take the  
2 time to go through each and every one of you (sic). You all  
3 have common sense. You've been listening to the evidence.  
4 But I'm going to point out some things as we go along.

5           So your duty, it's contained in your Jury  
6 Instructions. It's on the bottom of Instruction No. 3. It's  
7 your duty as the members of the jury to apply the rules of  
8 law to the facts of this case. That's your job. The rules  
9 of the law to the facts of this case.

10           You have all the rules of law, don't need to read  
11 through them. The Judge did it for you. You can refer to it  
12 when you go back. But that is your duty. It's not to guess,  
13 it's not to speculate. It's not do experiments. It's to  
14 apply the law to the facts.

15           So what does the State actually have to prove?  
16 Based on Ms. Holiday's argument, you think the State would  
17 have to essentially provide a video of everything that  
18 happened in that apartment when Chance got his hands burned.  
19 But that is not the State's burden at all. The State's  
20 burden is to prove the elements of what the defendant has  
21 been charged with. And this is what the defendant has been  
22 charged with: Willful, unlawfully and feloniously causing a  
23 child under the age of 18 years, to wit: C.J. -- we all can  
24 agree that's Chance Jacksper -- being approximately two years  
25 of age to suffer unjustifiable physical pain or mental

1 suffering as a result of abuse or neglect to wit: Physical  
2 injury of a non-accidental nature by burning the said C.J.'s  
3 hands with hot water and/or hot liquid resulting in  
4 substantial bodily harm.

5           So we have to prove physical injury. You all got  
6 the definition Mr. Burton went over it. We have to prove  
7 that the injury was non-accidental. He got the injury in a  
8 non-accidental manner. We have to prove that it was done  
9 with a hot water or a hot liquid and that it resulted in  
10 substantial bodily harm.

11           Those are the elements. That is what the State has  
12 to prove beyond a reasonable doubt. We don't have to prove  
13 Donovine's story about coffee one way or the other. Frankly,  
14 we'll get to it in a minute. It doesn't matter other than to  
15 show you how true or not true the rest of his statements to  
16 the police are.

17           Whether there was coffee or hot, couldn't care  
18 less. It doesn't matter for what the State has to prove.  
19 It's just another fact for you all to consider in piecing  
20 together the information and the facts in this case.

21           This is Chance Jacksper. Obviously, those are his  
22 hands under gauze. You have all the pictures back with you.  
23 You have all the recordings back with you for ya'll to refer  
24 to in case you wish to, but I just have some of them in my  
25 Power Point.

1           He's not quite three years old. He's two years old  
2 and this is him at the hospital getting treatment for his  
3 injuries that the defendant inflicted. So what's the proof?  
4 Two types of evidence, direct and circumstantial. Mr. Burton  
5 provided you with an example of the rain outside.

6           I know you all have been in the hallway a little bit  
7 today so you've had an opportunity to see the windows. But  
8 if you've been locked in this room all day and be never  
9 allowed to take a break and you went outside and you saw the  
10 water on the roof, the water on the streets, clouds in the  
11 sky, you can kind of smell that the smell of the air changes  
12 when it's been raining, you collect all these circumstantial  
13 evidence of rain, you can come to the conclusion beyond a  
14 reasonable doubt that it rained, without anyone ever telling  
15 you, without an eyewitness on the corner who stood in the  
16 rain all day telling you, hey, I was outside and it rained.  
17 You can be confident in that conclusion, even though there's  
18 no eyewitness to talk to you, because you've pieced together  
19 the circumstantial evidence, and that is what the State is  
20 asking you to do.

21           And as your instructions say, the law makes  
22 absolutely no distinction between direct evidence and  
23 circumstantial evidence. You all decide how much weight to  
24 give to the evidence. The law makes no distinction.

25           So you are to consider all the evidence in the

1 case, including circumstantial evidence in arriving at your  
2 verdict. So what does the State not have to prove?  
3 Notwithstanding what Ms. Holiday said, the State absolutely  
4 does not have to prove motive. It's in your instructions.  
5 Instruction No. 18. You can consider it. The State has no  
6 obligation to prove it.

7 In that same instruction, it talks about intent.  
8 The State has to prove that the defendant intended the action  
9 that caused the child abuse with substantial bodily harm.  
10 Intend to pour that hot liquid or hot water on that child's  
11 hands. That's what we have to prove.

12 I submit to you there's been evidence of motive in  
13 this case. There's been evidence about the defendant's  
14 impatience with children and how quickly he gets impatient  
15 with children. But even so, we didn't have to present any of  
16 that. We also don't have to prove to you exactly how it  
17 happened. We just have to establish beyond a reasonable  
18 doubt that in that closed universe the defendant burned  
19 Chance's hands with a hot liquid resulting in substantial  
20 bodily harm.

21 State's burden, reasonable doubt, Ms. Holiday made  
22 her own suggestions as to what is or isn't --

23 MS. KIERNY: Objection. Disparaging the defense at  
24 this point.

25 MS. JOBE: I'm just referring to her argument.

1 THE COURT: Okay. You can proceed.

2 MS. JOBE: Ms. Holiday made a suggestion about what  
3 she believed may be evidence or not evidence of reasonable  
4 doubt, but whether or not there's reasonable doubt is  
5 actually up to you all. It's in Instruction No. 13. It's a  
6 whole long instruction, but this is at least a portion of it.  
7 Reasonable doubt is one based on reason. It is not mere  
8 possible doubt, but is such a doubt as would govern or  
9 control a person in the more weighty affairs of life. More  
10 importantly, doubt to be reasonable must be actual, not mere  
11 possibility or speculation. It's not assumptions. It's not  
12 guesses. It's not what if's. It must be actual, it must be  
13 not -- it has to be possible, not merely possible, sorry, and  
14 not based on speculation.

15 So you have to have something more than just  
16 assumptions. Common sense is Instruction No. 19. You must  
17 bring to consideration in these facts and in this evidence  
18 your common sense. There's been a lot of discussion about  
19 common sense. To be honest, common sense has been a catch  
20 phrase that's been in this case since the very start. And  
21 actually, the defendant in his statement that you all heard  
22 yesterday used common sense, as it's common sense what  
23 happened.

24 But you must bring your common sense to the facts  
25 and the evidence of this case. And you can draw reasonable



1 inferences from the evidence which you feel are justified in  
2 the light of common experience, keeping in mind such  
3 inferences should not be based on speculation or guess.  
4 Again, can't base things on speculation or guess, but you can  
5 make reasonable inferences.

6           So what's the defense? It was an accident. Chance  
7 did it while he was unsupervised by the defendant for 45 to  
8 50 seconds. And they want you to believe that though -- that  
9 the defendant's version of the story that he must have pulled  
10 the mug off the counter is absolutely wrong. He totally got  
11 it wrong because he was guessing, but definitely believe  
12 everything else he said. Believe he put him in the bathtub.  
13 Believe he changed the baby's diaper. Believe all these  
14 other things, just don't believe the one part because he was  
15 guessing, and he guessed wrong. That's the defense that  
16 they've presented.

17           And again, if defendant's statement he said it's  
18 common sense. As Mr. Burton said -- pointed out to ya'll, it  
19 is common sense, but not in the way the defense would have  
20 you to think. So, the defense -- the defendant's statement  
21 is that he was boiling water, that he put it in this mug,  
22 which has all the debris on it, which I suggest to you,  
23 ladies and gentlemen, is similar to all the debris in that  
24 sink, boiled water, put it in the mug and then put it on the  
25 counter.

1           Now, Ms. Holiday brings up the fact that State  
2 didn't mention the cookies or the candy. It doesn't matter.  
3 It absolutely doesn't matter, because as you heard from  
4 State's witnesses, Peltier, Olson, and Cetti, under no  
5 circumstances did those burns happen from that child pulling  
6 something off that counter. So whether it was the mug,  
7 whether it was the cookies, whether it was the Skittles,  
8 doesn't really matter. Call it what you want, Chance was not  
9 going to this counter to get anything and disrupting a mug of  
10 hot water himself that caused those burns.

11           So, coffee. Ms. Holiday talked to you all about  
12 the whole coffee in the cabinet thing. I've taken clips from  
13 the video reenactment that you all have access to watch.  
14 Frankly, who cares about the coffee? It doesn't really  
15 matter because -- but I would point out as far as what makes  
16 sense and what doesn't make sense and credibility and  
17 believability of witnesses, in the reenactment video, the  
18 defendant goes into this cupboard multiple times. This same  
19 cupboard where Jasmin says that little napkin-ish -- I forget  
20 if she says it was a napkin or plastic bag. Refer to your  
21 notes as to what she said the coffee was in. But that little  
22 hidden gem of coffee that no one could find and she just  
23 magically found after detectives had been there, after her  
24 apartment had been left unsupervised by any officers, she  
25 just happened to find this bit of coffee that no one else

1 found.

2 Ladies and gentlemen, if you remember Jasmin's  
3 testimony, she said she doesn't drink coffee. She wasn't the  
4 coffee drinker in the house. Donovine was. And Donovine  
5 knew what he was looking for. He told detectives, he's  
6 looking for a Folgers instant coffee with the green cap. And  
7 he goes back to this cupboard, this specific cupboard  
8 multiple times. And if you watch the video -- I'm not savvy  
9 enough to loop video in a Power Point -- but if you watch the  
10 video, you can see him look in that, and you can see him pull  
11 back the boxes and the Pop Tarts and everything else that  
12 Jasmin said was hiding this coffee that apparently is the  
13 magical -- that didn't happen.

14 Again, that's the second clip. The first one's  
15 about 4:35 in the video and the other one's at 4:53. But  
16 ladies and gentlemen, coffee or no coffee, that's not what  
17 happened. The story of coffee leaving it on the counter is  
18 not what happened.

19 The defense also said there was a disagreement of  
20 doctors. Not really. If you recall the evidence, every  
21 single doctor, Dr. Olson, Dr. Cetl is our two doctors and  
22 then our other expert Mr. Peltier, they all agree, abusive  
23 inflicted injuries.

24 Dr. Olson got the whole investigation rolling. He  
25 had the defendant's version of events, he saw the burns on

1 Chance, and he instructed someone to call Metro to come out  
2 and investigate because he suspected abuse from these  
3 injuries. Dr. Cetl's reviewed the records. She's reviewed  
4 the photos. Abusive, inflicted injury. It wasn't an  
5 accident.

6 Peltier reviewed the burn patterns and all he knows  
7 about how water flows and everything he's done in his  
8 training and experience -- I can't do math -- in  
9 approximately, 35, 37 years. There's no disagreement. Ms.  
10 Holiday brought up the -- some of the burns that Olson  
11 pointed out. And if you remember on the photographs, I had  
12 Dr. Olson highlight where he thought there was some redness  
13 that may have been those first degree burns or something like  
14 that.

15 But let's be clear, Dr. Olson said he didn't even  
16 remember the pictures when I showed them to him. He's like I  
17 don't remember. But in looking at the pictures, he said he  
18 thought he saw some redness on the side and on the thumb.  
19 And that's not a disagreement with Peltier or Cetl. That  
20 absolutely fits together because remember, if there's a  
21 second degree burn as the water and gravity are taking  
22 effect, as it keeps going, it's going to be a less severe  
23 burn and it's going to be red. That's not a disagreement.  
24 So there's no disagreement.

25 What about the movement of the kid? A little, a

1 lot. It's all relative, right? It depends on who's talking.  
2 Whether a little or a lot actually means something.  
3 Peltier's position when he testified was that there wasn't  
4 anyone holding the kid down to the point that the child had  
5 absolutely no movement in his hands. So to Peltier, that  
6 child had a lot of movement because he was able to move. He  
7 says this hand was up a little and these fingers must have  
8 been up in order to get the burn patterns that you see.

9           Cetl said there didn't appear to be much movement.  
10 Well, there doesn't appear to be much movement when a child's  
11 pinned in a position in order to pour hot water on the hands.  
12 So is that a disagreement? Is that a problem between the  
13 evidence? No.

14           What about the severity of the burn? Olson,  
15 Dr. Cetl and Mr. Peltier all described the uniform  
16 consistency of second degree burns. They never said the  
17 uniformity was that it was the same exact thickness of the  
18 burn, but that it was second degree burns, bilateral, both  
19 hands. That indicates it's non-accidental. It's  
20 intentional. It's inflicted. To have both hands sitting  
21 here and get hot water on them from an accident, as they sat  
22 here and testified, no conceivable way.

23           So the severity of burn is not a disagreement and  
24 it's not a point of contention between any of the doctors.

25           We didn't get any DNA physical evidence. Shame on

1 Metro for not getting DNA or physical evidence. If the State  
2 walked in and said, you know what, we took fingerprints from  
3 that mug and Chance's fingerprints were on it and Donovine's  
4 fingerprints are on it and heck, even Jasmin's fingerprints  
5 are on it. Who cares? They're all people who live in the  
6 house. You'd expect to see some of their fingerprints on  
7 stuff in the house.

8 Or if we had DNA, they left behind some DNA, I  
9 don't know, on the counter. Kind of ignores the fact that  
10 water would wash away DNA and dilute it; but if we had DNA  
11 that said Chance has been in the house, he's been in this  
12 area, who cares? The kid lives there. It's not the type of  
13 evidence we're looking for in this case. And Ms. Holiday  
14 criticized the experts for not doing an experiment. They all  
15 testified based on their training and experience.

16 The only expert who actually does the experiments  
17 with the blue dye is Peltier. Cetl says she does it  
18 sometimes, but that's Peltier's -- that's what he does. He  
19 does experiments when he's trying to recreate things. And he  
20 talked to you about, you know, ten-year-old cases and you  
21 have pictures of where burns are, he does experiments to  
22 recreate those types of things.

23 It wasn't necessary in this case. He was able to  
24 look at the photographs, look at the type of burns and draw  
25 his opinions and conclusions that it was an intentional

1 non-accidental incident. So that doesn't matter.

2           How far Chance can reach. This kind of goes to the  
3 cookies, Skittles point. It doesn't matter. It absolutely  
4 doesn't matter because as Cettl, Olson, not so specifically,  
5 but Olson said the story that the child pulled the mug off  
6 the counter wasn't consistent with the injuries. Dr. Cettl  
7 and Peltier were more specific. This child's hands was not  
8 above its head when that hot water was put on his hands.

9           If the child's hands were above his head, the water  
10 would have run down past the demarcations that you see. So  
11 whether he was reaching for cookies, reaching for Skittles or  
12 how far he could actually reach up on the counter, it didn't  
13 matter, because under no circumstances was that injury  
14 inflicted with that child's hands on the counter.

15           Ms. Holiday also talked about Chance, and whether  
16 or not the defendant could be that upset with Chance in such  
17 a short amount of time. Chance isn't that bad. Go back,  
18 listen to the defendant's statement, because when he starts  
19 talking about Chance and his behavior and how terrible he is,  
20 Chance -- I'm going to try not to swear. Chance uses the "F"  
21 word, we'll put it that way in talking to his mom and other  
22 people in the house. He's not that bad. He's super  
23 rambunctious. He's not been acting right since he got back  
24 with his dad. It's frustrating, especially to someone who  
25 doesn't have his own child. Especially to someone dealing

1 with some other man's child and you don't like that other  
2 man.

3           But don't worry, Chance isn't that bad. He  
4 wouldn't have done it because Chance isn't that bad. They  
5 also said there wasn't enough time, and it was kind of in two  
6 different ways that they put it. Not enough time for the  
7 defendant -- he doesn't get that mad that quickly. Well, we  
8 heard evidence that the detective -- that Detective DePalma  
9 heard a call between Jasmin and the defendant. Jordyn's  
10 crying on the phone, and the defendant gets irritated real  
11 quick. Shut her ass up, fuck. Sorry for swearing, but  
12 that's what he said.

13           He's that irritated with a kid who's crying in that  
14 short amount of time on a phone call. He has the potential  
15 to get that upset. The potential to get that mad. Ms.  
16 Holiday also says there wasn't enough time for him to boil  
17 the water, and State's theory's going to be he just wanted to  
18 get that kid alone, boil up some water or turn on the hot  
19 faucets and burn that kid's hands. That's not the State's  
20 theory. It's not State's theory at all.

21           The State's theory is that it was essentially an  
22 opportunity. Chance annoys him. Chance gets super  
23 irritating. Donovine can't handle it. Maybe he did boil  
24 coffee that day. Maybe he did put the hot water in that mug.  
25 Chance gets super irritating, he takes that small amount of



1 water. Remember Peltier said it was a small amount of water?  
2 Chance gets super irritating, pins him, dumps the water on  
3 Chance that he was going to use for coffee. That quick.  
4 That quick, ladies and gentlemen. Irritated, crime of  
5 opportunity, hot water's already there ready to go, pours it  
6 on his hands. That could have been it.

7           Maybe he put his hands under the faucet and heated  
8 up the water. Two minutes in the kitchen, five minutes in  
9 the bathtub, that's more than enough time between the time  
10 Jasmin left at 8:59 and the time Donovine placed the call at  
11 9:19.

12           None of these suggestions, none of this speculation  
13 by the defense, none of that fits together with all the facts  
14 in the case. You can't just cherry pick one individual item  
15 and look at this or look at that. You have to look at all  
16 the evidence together.

17           So let's look at what the defendant did. His first  
18 call to Jasmin was not specific. His statement when you  
19 listen to it, he says he calls Jasmin and says Chance burned  
20 his hands, come home. There's no explanation. Let's think,  
21 ladies and gentlemen, Chance burns his hands, all of a sudden  
22 the defendant has a giant problem on him -- giant problem on  
23 his own hands.

24           How's he going to explain that chance got his hands  
25 burnt to his mother while she was out of the house? Because

1 the defendant was the only adult in the house, and from the  
2 evidence we've all heard, it was not an accident. So the  
3 defendant has to come up with an explanation. He doesn't  
4 have one when he first calls Jasmin. Chance's hands are  
5 burned, come home.

6 By the time he eventually talks to Jasmin, he's  
7 come up with a story about the -- it must have been the mug,  
8 must have grabbed it off the counter. We all know that's not  
9 true from the evidence you've heard over the last few days.

10 In the defendant's reenactment video he says, as  
11 he's looking through the cupboards and he can't find the  
12 coffee, the detectives challenge him, so where's the coffee  
13 you were making, and he's looking through the cupboards,  
14 can't find it, he goes, I don't have a reason to lie.  
15 Really? Because a non-accidental injury to a two-year-old  
16 that you're babysitting and your, as he refers to her, baby  
17 mama's coming home in a few minutes. That's not reason to  
18 make something up? That's not reason to come up with a story  
19 to try to get out of trouble?

20 It is, ladies and gentlemen, and he had to come up  
21 with a story, so he did. And that story doesn't match any of  
22 the evidence that we've seen. So what do we know? Chance  
23 didn't have injuries when Jasmin left for her 9:00 a.m.  
24 meeting. Donovine had exclusive care and control of Chance  
25 from 9:00 to approximately 9:25 a.m., when the injuries

1 happened.

2           And Chance's hands were burned, like I said, when  
3 Donovan had exclusive care and control of Chance. So here's  
4 our closed little universe. I used this in openings. I'll  
5 use it in closing. Donovan, Chance and Jordyn. And what  
6 are the hot water sources, as I said in opening, the mug if,  
7 he really boiled water and poured it in a mug, the sinks and  
8 the tub. That's it. Those are the options for the hot  
9 water. Those are all the possibilities where the -- from  
10 where the hot water could have come for the injury to occur.

11           So what else do we know? As Jasmin testified,  
12 Chance was wearing the same exact t-shirt as when -- Chance  
13 had the same t-shirt on when she got home as when she left.  
14 So he was still wearing that super hero t-shirt, short  
15 sleeves. Jasmin is the one who actually took it off of him.  
16 There you go. That's where they found it in the bedroom once  
17 they pulled it off the top of the plastic and turned it right  
18 side so you could see what was on it.

19           So what else do we know? Chance needed medical  
20 treatment for his injuries. Obviously. He had medical  
21 treatments for months for his injuries. And Chance didn't  
22 have water all over him. The defendant said that. Jasmin  
23 made no mention about Chance being soaked or his shirt being  
24 super wet. He didn't have water all over him. That suggests  
25 and tells you it wasn't an accident. This isn't a kid

1 playing in the tub getting water everywhere and then just  
2 happens to burn his hands, or playing in the sink and getting  
3 water everywhere and happening to burn his hands.

4           And remember, ladies and gentlemen, as far as at  
5 least the kitchen sink is concerned, there was nothing in the  
6 household for that child to climb up onto get access to the  
7 kitchen sink. We'll come to the lack of ability to climb in  
8 a minute.

9           We also know Jasmin didn't clean up before they  
10 went to the hospital. She didn't mop up any water. She  
11 didn't wipe anything down. She didn't do anything. She got  
12 her kid ready, go to the hospital. She knew her child needed  
13 treatment.

14           What else do we know? Chance had second degree  
15 burns on the tops of his hands. He didn't have any other  
16 injuries. There have been some questions about the redness  
17 on Chance's stomach. Dr. Olson didn't see any redness,  
18 didn't document any redness on Chance's stomach. The only  
19 time redness on Chance's stomach is mentioned is when the  
20 defendant is talking to the police.

21           So we don't really know if it was there or not.  
22 It's just some other thing the defendant said. But we're  
23 sure he didn't have any other injuries to his body. As  
24 Peltier said, there would have been burns on his feet. There  
25 were no burns on his feet. There were no burns on his face,

1 his arms, his chest, his legs, nothing. Just the tops of his  
2 hands.

3           So what are the options? You all are left with two  
4 options to figure out what happened; either it was an  
5 accident or it was intentional. The sources of hot water, as  
6 I said, the kitchen sink, the bathtub, the bathroom sink  
7 maybe, and the mug, pot. When you all are deliberating, if  
8 you go back through the photographs, you can see everything  
9 that was around the kitchen sink at the time, everything in  
10 the bathtub, all the stuff on the bathroom sink. If you look  
11 at the bathroom sink, there's actually a lot of stuff on the  
12 sink and in the sink bowl, which I suggest to you means it  
13 definitely didn't happen in the bathroom sink. Or there's  
14 the infamous mug and pot.

15           Based on the evidence, ladies and gentlemen, it  
16 wasn't accidental, it was intentional. So how do we know  
17 they are not accidental burns? The location of the burn. He  
18 wasn't reaching up. Ms. Holiday sat here and did some  
19 discussions about what could or couldn't have been. But one  
20 of the things is, I think -- I forget if it was Ceti or  
21 Peltier talked about it, the fact that he has the lines here  
22 on his wrists, that's how we know wasn't reaching up because  
23 the water would have come down. So his hands for all intents  
24 and purposes would have to had to have been relatively flat.

25           And based -- you know, the whole movement, he can

1 move his hand down because that's why you see the shape of  
2 the water on the -- the burn on the top of his hand and then  
3 Peltier said that these fingers must have been up because  
4 there was no burn on those fingers but that it probably ran  
5 off.

6 But for all intents and purposes, his hands either  
7 had to be flat or some sort of angle to keep the water from  
8 going down his arms, where they would expect to see if it was  
9 an accident.

10 So how would Chance's hands be flat? How would his  
11 arms be either straight or out at angle if this is an  
12 accident? They wouldn't be. But if Chance is being held  
13 down or held in place with his hands forced on the counter or  
14 forced on the floor, his hands are going to be like this or  
15 his hands are going to be flat, and he's going to have that  
16 red mark from being held against something so Donovine can  
17 hold the child and pour the hot liquid on him all at the same  
18 time..

19 Two-year-olds, three-year-olds can be a little  
20 wiggly, especially if they're going to get burned. So you  
21 have to be able to use your body, use your hands, common  
22 sense tells you this, to keep them in one spot to pour that  
23 hot water or run that hot water over their hands.

24 Uniformity of burns on both hands, I've talked  
25 about this. Everybody's talked about this. Not going to

1 bore you with it anymore. And where there are no burns, the  
2 sparing. Again, go back to the photographs. Dr. Olson never  
3 pointed out any burns on the palm of the hands when he marked  
4 pictures. He marked here and he marked here, which are very  
5 close to where the second degree burns were. He also marked  
6 no injuries on the palm of either hand. It was just on the  
7 sides.

8           And we also can see from the pictures, ladies and  
9 gentlemen, whether or not there were burns on the fingertips.  
10 But either way, again, the experts agree, every single expert  
11 says this was intentional. It was not accidental. It was  
12 abusive.

13           So how else do we know the burns are not  
14 accidental? The burn patterns and injuries. Remember, Cetl  
15 as well as Peltier, but more specifically Peltier, was what  
16 would you expect to see? What would the water have done if  
17 this was an accident? He said it wasn't an accident, and he  
18 knew it wasn't an accident because there's no splash pattern  
19 of burns. There's no splatter. There's no spill. There's  
20 no indication of distance.

21           Remember, Peltier said there's no indication of  
22 distance because the further the water gets from where it's  
23 going to hit, the more of a splash, the more of a spill, the  
24 more of a splatter you're going to see, and that's not what's  
25 seen here on the burn patterns and the burn injuries. What's

1 seen is as Peltier described, a slow, deliberate pour that  
2 had to be very close to the hands. That's how we know it's  
3 not an accident.

4           So the burns are intentional based on the patterns  
5 and the injury. The burns are at the top of the hands only.  
6 The clean, smooth lines that you can see in those  
7 photographs, the number of fingers involved, the fact that  
8 it's not all ten. It's not like a flood of water came  
9 rushing over his hands. Peltier said it was a small amount  
10 of water, and that's why you see the burn patterns that you  
11 do.

12           That's why you don't have the whole circumferential  
13 around the wrist because it was a small amount of water. The  
14 sparing and the uniformity. The second fact that both hands  
15 are second degree burns.

16           This is the picture. Again, remember, there were  
17 no injuries pointed out on the palm. That's the top of the  
18 right hand where you can see that the skin has come off it.  
19 It's at the edge right there. And then the defendant, same  
20 way he described it as his hands looked dirty. Chance's  
21 hands looked dirty and he was picking at it. That was the  
22 skin burning off.

23           This is not accidental. This is intentional. See  
24 Peltier described how the water could have flowed this way a  
25 little bit to get some of the burn that you see right here,



1 which is very close to where Olson said he saw some of that  
2 redness on the hand.

3           The burn patterns say something. That the water  
4 was poured very slow. That it was close to the hand, that it  
5 was deliberate, and it was extremely hot water or a hot  
6 liquid, and that not much water was used.

7           Now, Counsel argued that the -- that Dr. Cetl  
8 didn't consider everything and that the State's experts came  
9 to the wrong conclusions because of faulty assumptions. That  
10 wasn't what Cetl testified to. Cetl testified she reviewed  
11 the Sunrise records. She saw Olson's reference to the palms,  
12 but that in the photographs they didn't exist. That she  
13 considered it, but based on the photographic evidence that  
14 preserved what was going on with that child's hands on  
15 January 5th of 2016, she was able to make her opinions.

16           And Counsel also suggested they reached the wrong  
17 conclusion because they had a faulty assumption. That they  
18 all -- Donovine's story is what they based their  
19 determination on. That is not at all what they testified to.  
20 In fact, they would have never reached the conclusion that it  
21 was abusive, that it was intentional if they thought that  
22 Donovine's story was actually plausible.

23           So if his story's not plausible, then they reached  
24 abusive. But that, as Peltier said, he considered all the  
25 other things. There was just to way -- no accidental option

1 based on the burn patterns and based on his training and  
2 experience.

3           So let's talk about the defendant's statement  
4 really quick. Mr. Burton referred to some of these things.  
5 Unsolicited and non-responsive to any question pending other  
6 than is there anything else you want to tell us? Donovine  
7 says to the detectives, "You just got to teach them." He  
8 also says, and he's asked, well, if you burned him -- well,  
9 if he was to be burnt intentionally it wouldn't be on his  
10 hand. And then he realizes where this questioning is  
11 starting to go and you can kind of see him hesitate and back  
12 off that line of questioning in his interview.

13           And he -- Donovine's pressed, "You weren't actually  
14 there, you didn't actually see it?" And Donovine counters.  
15 Listen to his tone in that recorded interview. He counter  
16 with, "Well, just like you can't tell if I burned him on  
17 purpose or, you know what I'm saying?" That's a challenge.  
18 The defendant's challenging the detectives. You weren't  
19 there. No one else saw it. The only people in that house  
20 other than Donovine cannot explain what happened. Jordyn's  
21 less than a-year-old. Chance is a little under three years  
22 old. They cannot explain what happened.

23           There's no one to tell on Donovine and he knows it,  
24 and so he challenges the detectives. Ladies and gentlemen,  
25 the evidence presented to you, the evidence independent of

1 defendant's statement, independent of Jasmin's testimony, the  
2 evidence presented to you, the science, the medicine, the  
3 training, the experience, it all comes down to the fact; this  
4 was an intentional act. This that resulted in the procedure,  
5 the debridement, the taking off of the skin of Chance's hand,  
6 the fact that he needed pain meds for a significant amount of  
7 time, and once he ran out of his opiate pain meds or his  
8 Tylenol with codeine, then he needed Children's Tylenol to  
9 help him with the pain.

10           The law tells you substantial bodily harm is pain  
11 that lasts more than just the intentional act. So the fact  
12 that Chance had pain far beyond the intentional spilling, the  
13 intentional pouring of water, is substantial bodily harm.

14           Ladies and gentlemen, the defendant's challenge to  
15 the detectives, essentially, you weren't there, you can't  
16 prove it, there's no eyewitness. If the defense --  
17 defendant's statement is taken to its extreme, that means any  
18 child abused without an eyewitness, that we could never prove  
19 it, that we would never know it. More specifically, because  
20 Chance doesn't have a voice for himself, because Chance can't  
21 tell the detectives what happened, that we should somehow not  
22 find him guilty of child abuse and neglect with substantial  
23 bodily harm?

24           Ladies and gentlemen of the jury, Chance had a  
25 voice. That voice was Dr. Olson. That voice was Dr. Cetl.

1 That voice was Peltier. Sadly, it wasn't even his mother's  
2 voice. Olson, Cetyl, Peltier. Chance's voice came from the  
3 injuries, came from the burn patterns, came from all the  
4 objective evidence that these people evaluated and these  
5 people looked at, and took into consideration the defendant's  
6 made up story and rejected it, because it doesn't make sense.

7 Apply the facts, apply the evidence, and do what  
8 Dr. Olson, Dr. Cetyl and Mr. Peltier did. They understood  
9 this was intentional. They understood the amount of pain  
10 this child suffered. Find the defendant guilty of child  
11 abuse, neglect or endangerment with substantial bodily harm.  
12 Thank you for your time.

13 THE COURT: At this time, the Clerk will swear the  
14 officers of the court who will take charge of the jury panel.

15 THE CLERK: Yes, Your Honor.

16 (CLERK SWEARS OFFICERS OF THE COURT TO TAKE CHARGE  
17 OF THE JURY)

18 THE COURT: At this time, ladies and gentlemen, I  
19 am going to excuse you to deliberate upon your verdict.  
20 Before I do, Mr. Thomas Gaytan and Heather Warren, you've  
21 been selected to be our alternate jurors, which means that  
22 you don't -- I'm going to allow you to leave the courthouse.  
23 I'm not going to discharge you from your duty yet. I'm going  
24 to ask you to see the Clerk, at which time she'll take charge  
25 of your notebook and your badges. She's also going to take

1 your phone number down, so if there's any reason we need you  
2 to come back to the courthouse and deliberate, we'll call you  
3 and ask you to come back.

4 Also, when you are discharged, we'll give you a  
5 phone call so that you know that you have been discharged. I  
6 just ask that you don't go more than 45 minutes from the  
7 courthouse, so if we do need to have you come back, we can  
8 get you back quickly.

9 So, Mr. Gaytan and Ms. Warren, you may step down.  
10 And Susan's going to see you on the way out. If I don't see  
11 either of you again, I want to thank you very much for your  
12 service to the Court and thank you for being here.

13 At this time, ladies and gentlemen, you can take  
14 your notebooks, all your notes. You're excused to deliberate  
15 upon your verdict.

16 THE MARSHAL: Thank you. All rise for the exiting  
17 jury, please.

18 (Jury retires to deliberate at 6:14 p.m.)

19 (Court recessed at 6:15 P.M., until Friday,  
20 January 13, 2017, at 11:38 A.M.)

21 \* \* \* \* \*

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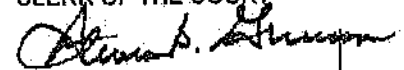
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ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual proceedings in the above-entitled case to the best of my ability.

*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 5

FRIDAY, JANUARY 13, 2017

FOR THE PLAINTIFF:	CHRISTOPHER F. BURTON, ESQ. MICHELLE Y. JOBE, ESQ. <i>Deputy District Attorneys</i>
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FOR THE DEFENDANT:	KRISTY S. HOLIDAY, ESQ. CARLI L. KIERNY, ESQ. <i>Deputy Public Defenders</i>
--------------------	--

<u>COURT RECORDER:</u>	<u>TRANSCRIPTION BY:</u>
KRISTINE SANTI District Court	VERBATIM DIGITAL REPORTING, LLC Englewood, CO 80110 (303) 798-0890

Proceedings recorded by audio-visual recording, transcript produced by transcription service.

1 LAS VEGAS, NEVADA, FRIDAY, JANUARY 13, 2017, 11:38 A.M.

2 (Inside the presence of the jury)

3 THE MARSHAL: Be seated, please.

4 THE COURT: Good morning. Do the parties stipulate  
5 to the presence of the jury panel?

6 MS. JOBE: Yes, Your Honor.

7 MS. HOLIDAY: Yes, Your Honor.

8 THE COURT: Okay. Mr. Boren, have you been  
9 selected to be the foreperson?

10 JUROR NO. 11: Yes, Your Honor.

11 THE COURT: Has the jury reached a Verdict?

12 JUROR NO. 11: Yes, Your Honor.

13 THE COURT: Can you hand the Verdict form to  
14 Officer Hawkes?

15 Okay. The Clerk will read the Verdict form out  
16 loud.

17 VERDICT

18 THE CLERK: Yes, Your Honor. District Court, Clark  
19 County, Nevada. State of Nevada, plaintiff, versus Donovine  
20 Mathews, in Case No. C-16-313047 in Department 12.

21 We, the jury in the above-entitled case, find the  
22 defendant, Donovine Mathews, as follows:

23 Count 1, child abuse, neglect or endangerment with  
24 substantial bodily harm; guilty of child neglect, abuse,  
25 endangerment with substantial bodily harm.



1 Dated the 13th day of January, 2017.

2 Ladies and gentlemen of the jury, is this your  
3 Verdict as read, so say you one so say you all?

4 THE JURY: Yes.

5 THE COURT: Does State of Nevada wish to have the  
6 jury panel polled?

7 MS. JOBE: No, Your Honor.

8 THE COURT: Does the defense wish to have the jury  
9 panel polled?

10 MS. HOLIDAY: Yes, Your Honor.

11 THE COURT: Yes? At this time, ladies and  
12 gentlemen, the Clerk is going to ask you a question. I just  
13 ask that you respond "yes" or "no".

14 THE CLERK: Juror No. 1, is your Verdict as read?

15 JUROR NO. 1: Yes.

16 THE CLERK: Juror No. 2, is this your Verdict as  
17 read?

18 JUROR NO. 2: Yes.

19 THE CLERK: Juror No. 3, is this your Verdict as  
20 read?

21 JUROR NO. 3: Yes.

22 THE CLERK: Juror No. 4, is this your Verdict as  
23 read?

24 JUROR NO. 4: Yes.

25 THE CLERK: Juror No. 5, is this your Verdict as

1 read?

2 JUROR NO. 5: Yes.

3 THE CLERK: Juror No. 6, is this your Verdict as

4 read?

5 JUROR NO. 6: Yes.

6 THE CLERK: Juror No. 7, is this your Verdict as

7 read?

8 JUROR NO. 7: Yes.

9 THE CLERK: Juror No. 8, is this your Verdict as

10 read?

11 JUROR NO. 8: Yes.

12 THE CLERK: Juror No. 9, is this your Verdict as

13 read?

14 JUROR NO. 9: Yes.

15 THE CLERK: Juror No. 10, is this your Verdict as

16 read?

17 JUROR NO. 10: Yes.

18 THE CLERK: Juror No. 11, is this your Verdict as

19 read?

20 JUROR NO. 11: Yes.

21 THE CLERK: Juror No. 12, is this your Verdict as

22 read?

23 JUROR NO. 12: Yes.

24 THE COURT: Okay. At this time, the Clerk will

25 record the Verdict in the official record of the court. And

1 at this time, ladies and gentlemen, I am going to discharge  
2 you from your duty as jurors. You'll be excused to go back  
3 in the jury deliberation room at which time you'll be given  
4 further instructions. You are no longer are under the  
5 admonition to not discuss the case with anyone. You're free  
6 to discuss the case. You're free to discuss your  
7 deliberations, but you're under no obligation to discuss it  
8 with anyone.

9 I do give the attorneys for both sides the right to  
10 speak to members of the jury, but only if you want to speak  
11 to the attorneys. I think it's always good practice for them  
12 to the opportunity to speak to the ladies and gentlemen of  
13 the jury, but again, remember, it's up to you whether you  
14 want to speak to any of us.

15 Before I do excuse you, I just want to thank you  
16 very much for your willingness to be here. You were here all  
17 week. I know you had -- you stayed here late last night and  
18 were back early this morning. I appreciate your willingness  
19 to be here and your service to the Court. At this time, you  
20 are discharged as jurors.

21 THE MARSHAL: All rise for the exiting jury,  
22 please.

23 (Jury excused at 11:41 a.m.)

24 THE MARSHAL: Thank you, everyone. Please be  
25 seated.

1 THE COURT: Okay. The record will reflect that the  
2 hearing is taking place outside the presence of the jury  
3 panel. The matter will be referred to Parole & Probation.  
4 It will be set for Sentencing. Does either side wish to be  
5 heard?

6 MS. JOBE: Yes, Your Honor. The State's asking to  
7 have the defendant remanded without bail.

8 THE COURT: Okay. It's my understanding he's  
9 already in -- serving a sentence in Nevada Department of  
10 Corrections.

11 MS. JOBE: Sure, but if between now and the date of  
12 sentencing he comes up for parole or something happens, State  
13 wants to make sure he's remand without bail in this case.

14 THE COURT: Okay.

15 MS. HOLIDAY: He's not eligible for parole for many  
16 months, Your Honor, so that's fine with us.

17 THE COURT: Okay. He's remanded without bail  
18 pending sentencing.

19 THE CLERK: The Sentencing date will be March 7th,  
20 9:00 a.m.

21 THE COURT: At 8:30.

22 THE CLERK: 8:30 a.m., excuse me.

23 THE COURT: March 7th at 8:30. Do both sides want  
24 the opportunity to speak to the jury panel?

25 MS. JOBE: If -- if they want to, yes, please.

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MS. HOLIDAY: Yes, Your Honor.

THE COURT: Okay. All right. Thank you very much.  
We're in recess.

MR. BURTON: Thank you.

THE MARSHAL: Court is adjourned.

\* \* \* \* \*

(Court adjourned at 11:43 A.M.)

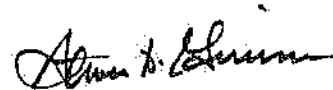
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ATTEST: I hereby certify that I have truly and correctly  
transcribed the audio/visual proceedings in the above-entitled  
case to the best of my ability.

*Julie Lord*

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JULIE LORD, INDEPENDENT TRANSCRIBER



CLERK OF THE COURT

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DISTRICT COURT

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CLARK COUNTY, NEVADA

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THE STATE OF NEVADA,

)

CASE NO. C-16-313047-1

7

Plaintiff,

)

DEPT. XII

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vs.

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9

DONOVINE MATHEWS,

)

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Defendant.

)

11

BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE

12

TUESDAY, MARCH 7, 2017

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**RECORDER'S TRANSCRIPT RE:  
SENTENCING**

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17

APPEARANCES:  
For the Plaintiff:

MICHELLE Y. JOBE, ESQ.  
Chief Deputy District Attorney

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For the Defendant:

KRISTY HOLIDAY, ESQ.  
Deputy Public Defender

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RECORDED BY: KRISTINE SANTI, COURT RECORDER

1 TUESDAY, MARCH 7, 2017, 8:23 A.M.

2 \* \* \* \* \*

3 THE COURT: State versus Mathews, C313047. He's present. He's in  
4 custody. This is on for sentencing.

5 Does this not require an evaluation?

6 MS. JOBE: No. It only requires an evaluation if he's going to get  
7 probation.

8 MS. HOLIDAY: That's correct, Your Honor. We agree, and we're not  
9 asking for probation.

10 THE COURT: Okay. All right, sir, today is the date and time set for entry  
11 of judgment and imposition of sentencing. Any legal cause or reason why  
12 judgment should not be pronounced against you at this time?

13 THE DEFENDANT: No, ma'am.

14 THE COURT: By virtue of the verdict returned in this matter, I hereby  
15 adjudicate you guilty of Child Abuse, Neglect or Endangerment with Substantial  
16 Bodily Harm.

17 Does the State wish to address the Court?

18 MS. JOBE: Yes, Your Honor.

19 As Your Honor is aware, there was a very generous offer made  
20 before trial that the Defendant rejected. And I just want the Court to know that  
21 that offer was made due to circumstances and that all along the State has  
22 originally felt this case was worth consecutive time to the case he's in on for  
23 the home invasion. The reason being is the fact that, as Your Honor heard, this  
24 Defendant – there's absolutely no way this child accidentally spilled a hot liquid  
25 on his hands, absolutely no way. And Your Honor heard the testimony of Mr.

1 Peltier, of Dr. Cetle and the other individuals in this case. You saw the burns to  
2 this child's hand and this child underwent multiple, excruciatingly painful  
3 procedures in order to have hands that are mostly recovered at this point in  
4 time, but there was a period of months in this child's life where he suffered  
5 pain. He suffered damage to his skin because of what the Defendant did.

6 And I know, Your Honor, we argued at length at trial about this  
7 purported defense expert and what he was going to testify to. If you go back  
8 and look at the videos, the expert they were going to bring in only ever was  
9 able to establish in his videos, in his reenactment that any liquid had to have  
10 been poured from the side and in no videos and no proof that the defense  
11 expert had was the child's hands ever up on the counter. They were always  
12 flat, like this [demonstrating], and the cup always tipped over by a mechanism  
13 other than the child, unless that expert was going to testify that the child or  
14 water somehow defied laws of physics and gravity.

15 Your Honor, this is atrocious. This is abysmal. It is only because of  
16 doctors taking care of this child that he's in the state he is. It's not because of  
17 the good mothering that he received, based on Jasmin's testimony, and it's not  
18 because the Defendant cared one bit about what happened to this child. The  
19 Defendant has always and only ever cared about himself and the consequences  
20 to himself, which was reflected on jail calls even after trial and after the verdict.  
21 To spare time, I won't elaborate on those, but the fact of the matter is the  
22 Defendant has absolutely no remorse and no understanding of his culpability.

23 P&P recommended 3 to 10 years consecutive to his home invasion.  
24 I was going to ask for a 4 to 10. It was what I had in mind before I came to  
25 court, but I'll stand on P&P's recommendation based on the PSI, with zero



1 days' credit for time served.

2 THE COURT: Sir, do you want to say anything?

3 THE DEFENDANT: No, ma'am.

4 THE COURT: Okay.

5 MS. HOLIDAY: Thank you, Your Honor. Your Honor, as the Court  
6 knows, Mr. Mathews maintained his innocence and he still does; although we  
7 do respect the jury's verdict. We believe that there are some issues in this case  
8 for appeal, so I have advised my client this morning not to talk about the facts  
9 of the case and I'm going to be mostly avoiding the facts of the case for that  
10 reason too, Your Honor. With the exception of I want -- I do want to talk about  
11 some of the things that happened after the child was injured.

12 You could see from the video that was played at trial, the  
13 reenactment video, that there was Neosporin on the counter in the kitchen.  
14 There was an ice pack on the counter in the kitchen. There was cold water in  
15 the bathtub, which Mr. Mathews said he used to cool the child's hands down,  
16 to run cold water over the child's hands. And, in fact, there was medical  
17 testimony that sometimes skin will bubble up after cold water is run over it  
18 after a burn.

19 So that does provide some evidence that Mr. Mathews was correct  
20 when he said he ran cold water over the child's hands after the incident. That,  
21 in addition to the ice pack, in addition to the Neosporin and in addition to the  
22 fact that Mr. Mathews did call the child's mother right away and have her come  
23 back to the home so that they could take him to the hospital, I think does show  
24 some mitigating action on his part after the injury, however the injury did occur.

25 Your Honor, the other thing I would point out, according to the

1 Presentence Investigation Report, he has a very minimal, if any, violent history.  
2 The only thing I found in the Presentence Investigation Report that could  
3 possibly count as violent is a charge for affray or fighting when he was a  
4 teenager. I don't know the facts of that case. It's possible that this was a  
5 mutual affray or a mutual fight, but, in any event, Your Honor, in his history,  
6 even as a juvenile, this is the only circumstance where he is accused of doing  
7 something violent or acting physical.

8           Your Honor, the other thing I would point out is that in this case the  
9 State did offer, as Ms. Jobe said, a 2 to 5 before trial, and that was to run  
10 concurrent, if we were to accept that. So I would just point out that the State  
11 did view this case to be worth at some point 2 to 5 years concurrent with the  
12 time that he's already doing.

13           Your Honor, there was some evidence at trial and some evidence in  
14 the record from the preliminary hearing and from Jasmin's statements before  
15 trial that Mr. Mathews does have extensive experience with children and  
16 extensive experience babysitting children, being around children and taking care  
17 of children. I personally was able to speak with Jasmin and with Donovine's  
18 mother and with Donovine's aunt about his experience with children. He  
19 babysat for his cousins quite often. He has a lot of cousins very young and his  
20 aunt told me that he babysat for them quite often and there was never a  
21 problem. His aunt and his mother felt that he was very good with children.

22           And that's the same information that Jasmin gave us about how he  
23 was with her daughter and how he was with her nieces and nephews. Jasmin  
24 also has a great amount of nieces and nephews. They spent a lot of time  
25 around those nieces and nephews. Mr. Mathews in particular spent a lot of

1 time, again, babysitting those children with Jasmin.

2 So, Your Honor, the record supports the facts that he's had a lot of  
3 experience with children and not one single allegation of any wrongdoing with  
4 those children before this incident.

5 The last point I would make, Your Honor, is that Mr. Mathews has  
6 been in custody for almost 14 months now. He was arrested in January of  
7 2016. I spoke with his probation officer early last year as we were leading up  
8 to having a revocation in his other case. His probation officer told me that he  
9 would not be seeking to revoke Mr. Mathews if it were not but for this new  
10 case. I think he did have some other technical violations of his probation in that  
11 case. For example, he was possibly staying at Jasmin's house a few nights of  
12 the week without getting permission from his probation officer. However, his  
13 probation officer did tell me that that conduct would not have caused him to  
14 seek to revocation. If it weren't for this case, the probation officer wouldn't  
15 have been seeking revocation.

16 So Mr. Mathews has already been in custody for the past 14,  
17 almost 14 months based on these allegations, and he will not be getting credit.  
18 As Your Honor well knows, he will not be getting credit for one day of that time  
19 that he spent. His credit will start today.

20 So, Your Honor, we're asking that you sentence him to 2 to 5 years  
21 consecutive to the time he's already doing. I think that that's fair. It's close to  
22 what the Department of Parole and Probation recommends and it's even more  
23 than the State was asking us to plead guilty to before trial. So, Your Honor,  
24 we're asking for that 2 to 5.

25 THE COURT: Thank you.

1 MS. JOBE: And, Your Honor, can –

2 THE COURT: In accordance –

3 MS. JOBE: I apologize. But I just want to point out that his juvenile  
4 history includes being arrested for things related to firearms –

5 THE COURT: Right.

6 MS. JOBE: – and resisting a public officer with firearms and multiple  
7 burglaries.

8 THE COURT: Yeah. I reviewed that.

9 In accordance with the laws of the State of Nevada, this Court does  
10 now sentence you as follows: In addition to \$25 administrative assessment,  
11 \$150 DNA fee, order you submit to genetic marker testing, impose a \$3 DNA  
12 collection fee. At this time the Court's going to sentence you to 36 to 120  
13 months in Nevada Department of Corrections to run consecutive to C304254.  
14 He has zero days' credit for time served.

15 MS. JOBE: Your Honor, I believe the 150 should be waived based on him  
16 being incarcerated on another case.

17 THE COURT: If it's already – obviously, if it's already been submitted,  
18 then it will be waived.

19 MS. HOLIDAY: It has, Your Honor. Thank you.

20 THE COURT: Okay, then it's waived.

21 MS. HOLIDAY: Thank you, Your Honor.

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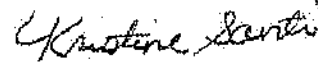
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THE COURT: Thank you.

[Proceedings concluded at 8:33 a.m.]

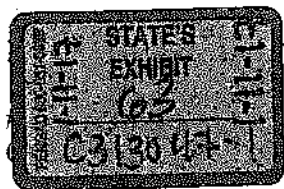
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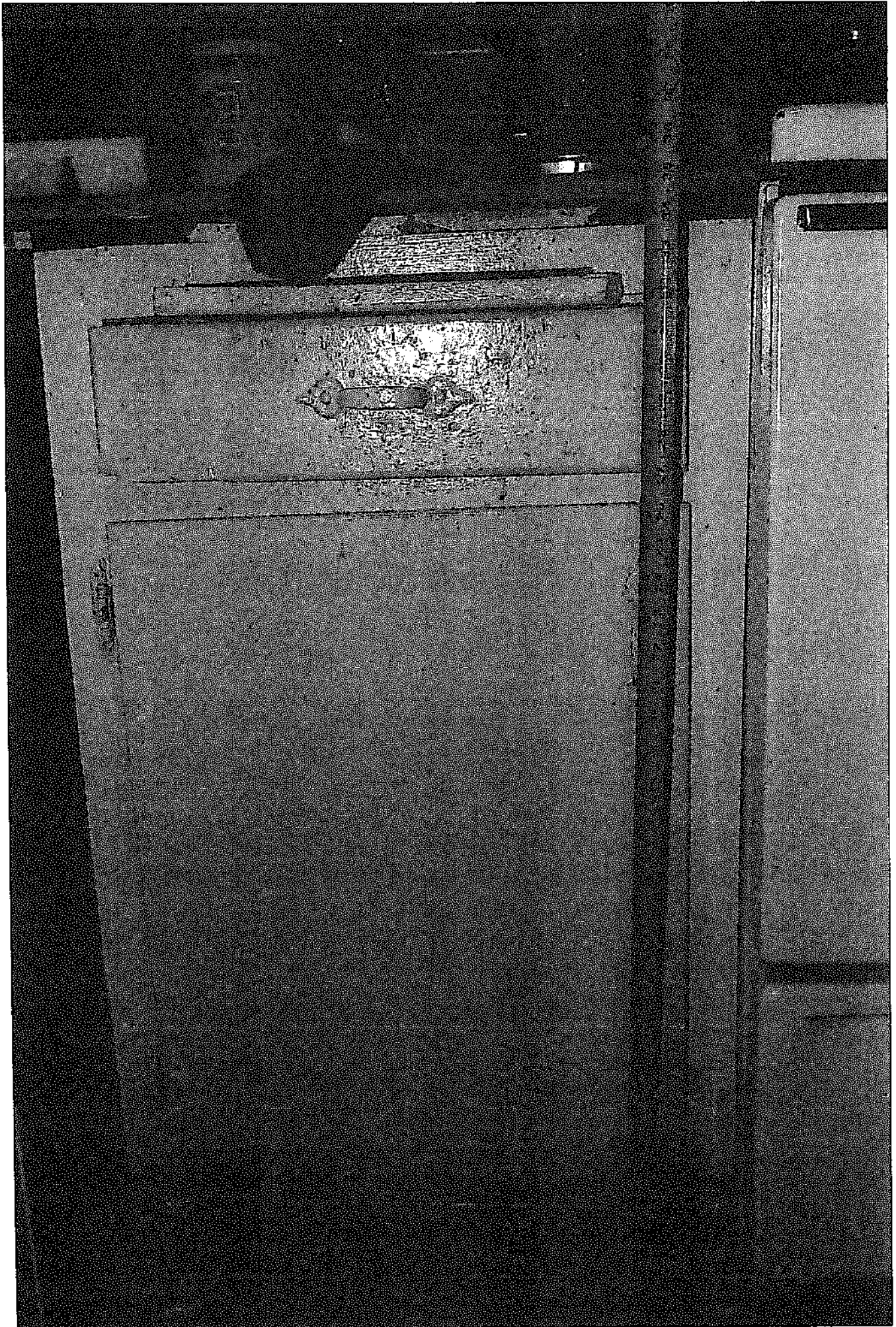


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KRISTINE SANTI  
Court Recorder



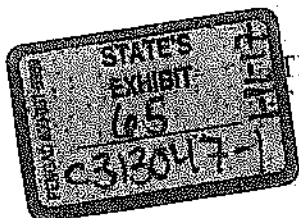
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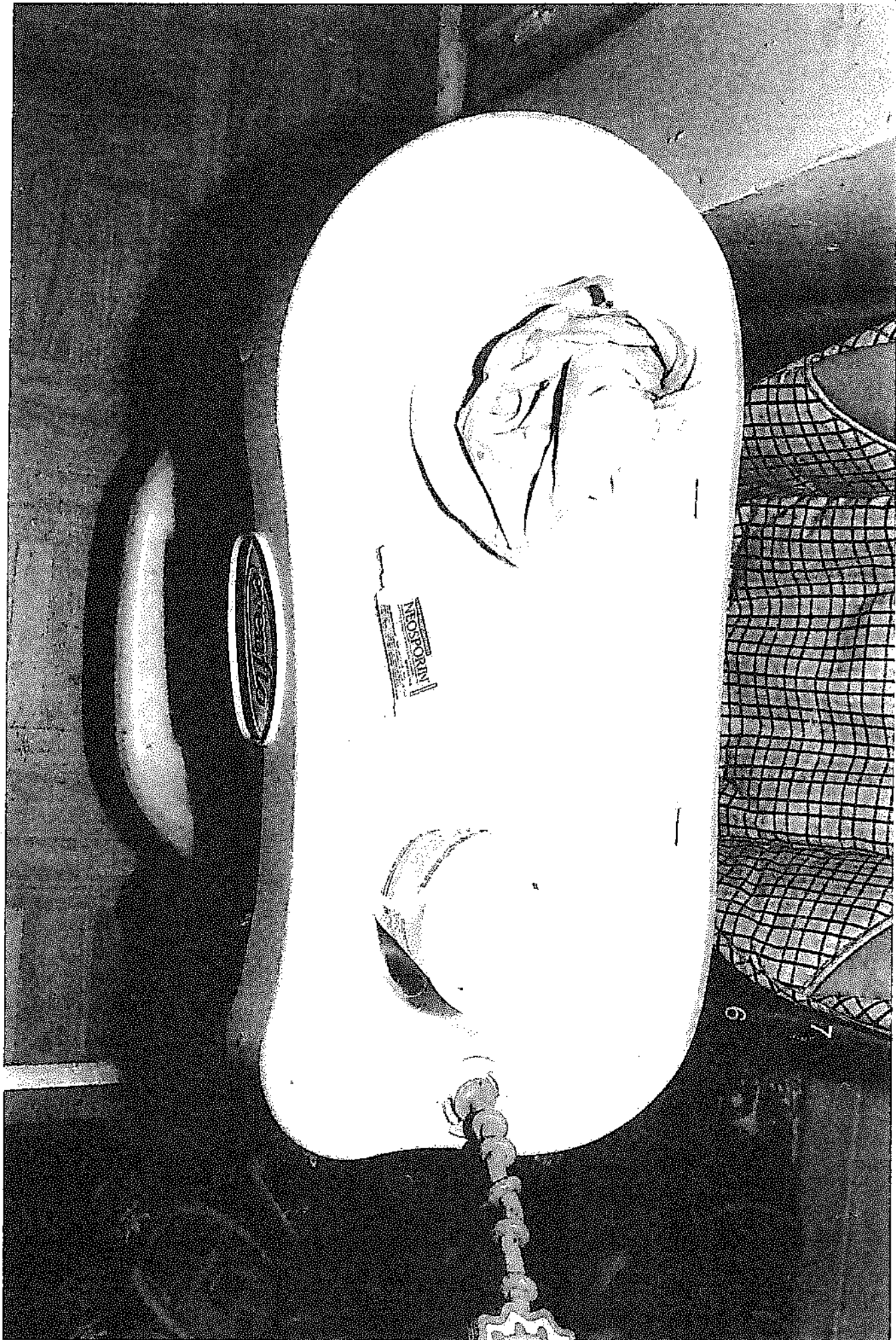
STATE'S IDENTIFICATION  
EXHIBIT  
46  
C313047-1







IDENTIFICATION



STATE'S  
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C313047-

IFICATION

Case No.

PAIN RELIEF OINTMENT

**NEOSPORIN**

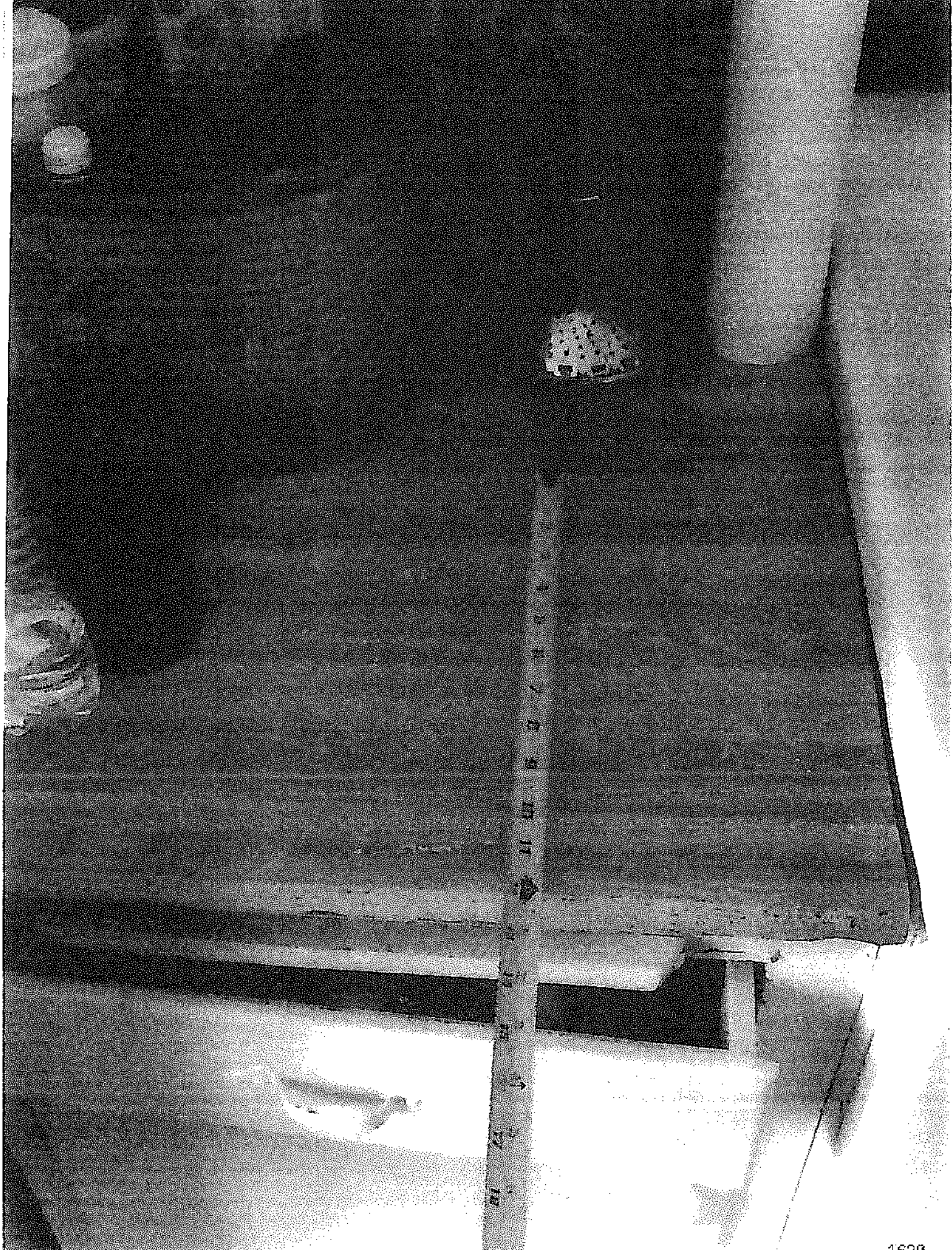
Neosporin Zinc-Nerisporin Salicylic-Polymyxin B and 4-aminocaine 10%  
FIRST AID ANTIBIOTIC/PAIN RELIEVING OINTMENT

NET WT 1.5oz (42.7g)

NEOSPORIN is a registered trademark of Wyeth.  
Neosporin is a registered trademark of Wyeth.  
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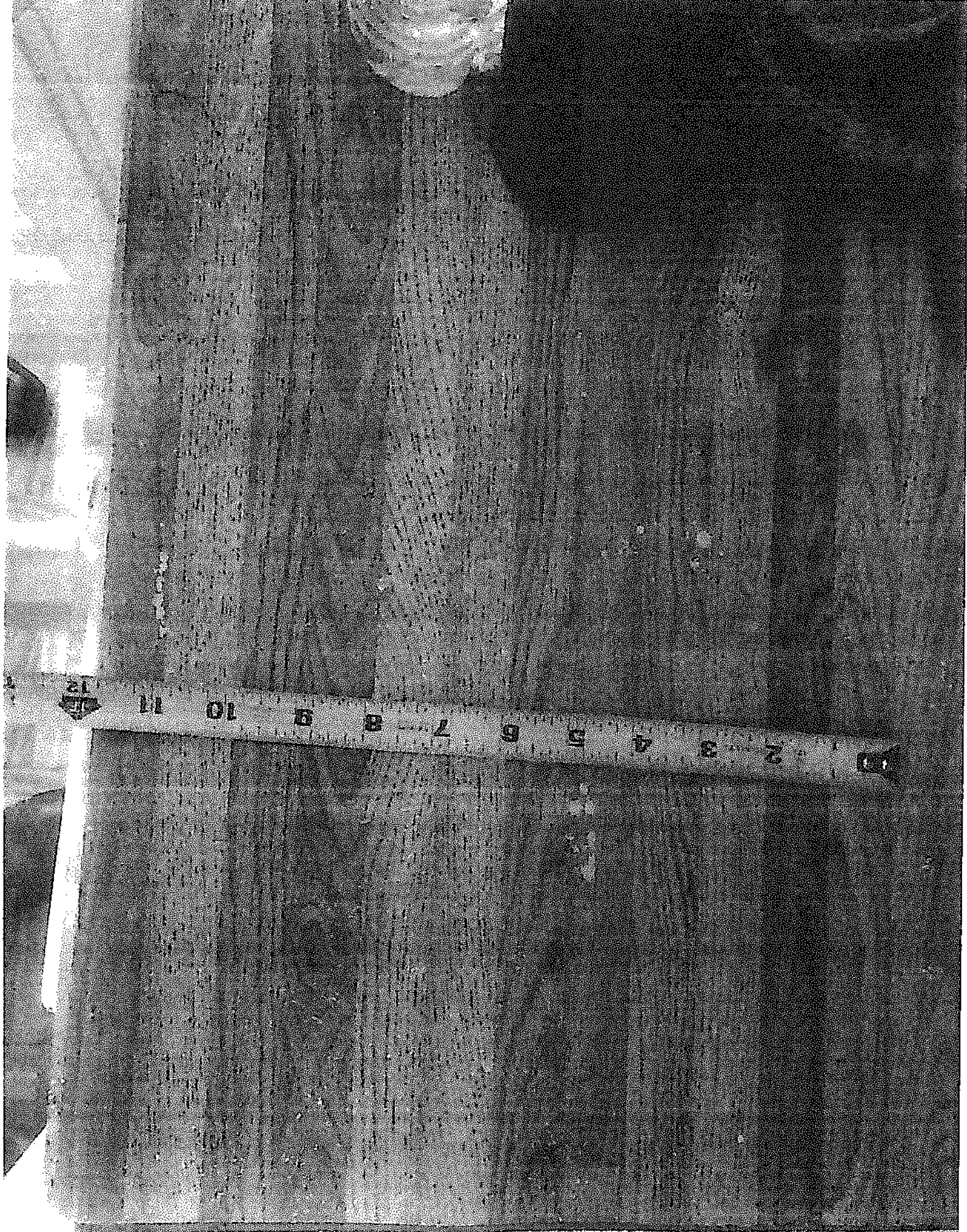
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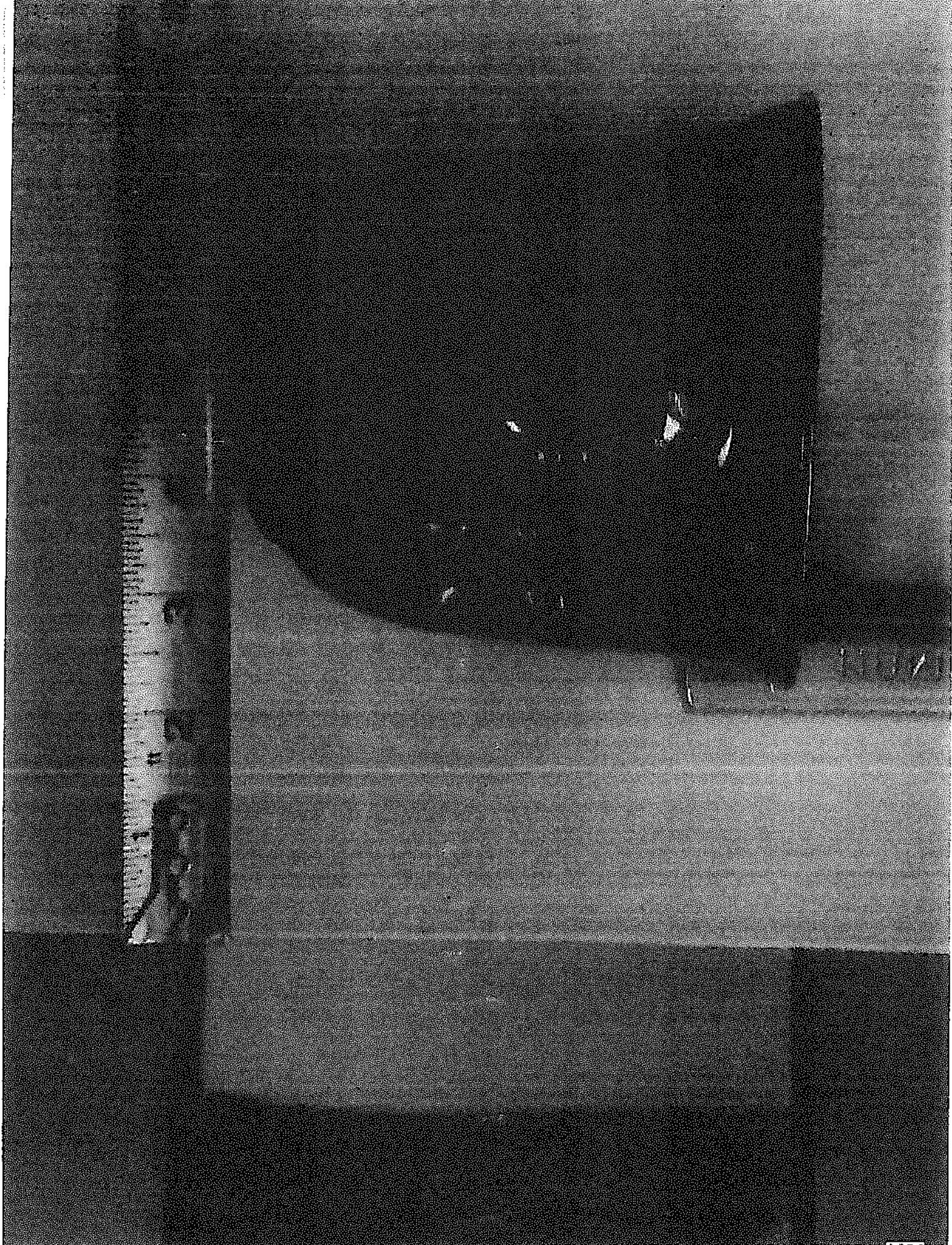




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C313047			9

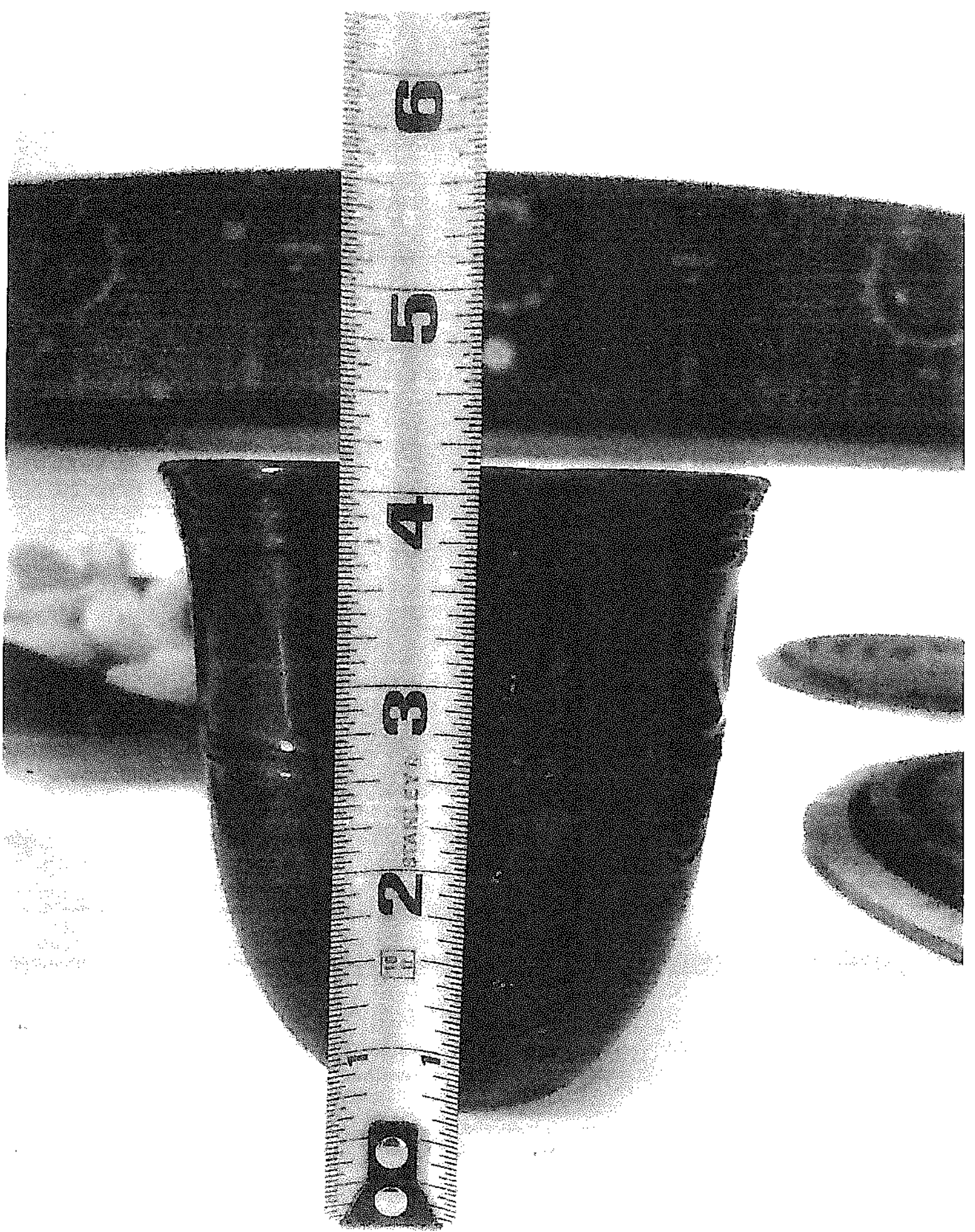
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Case No



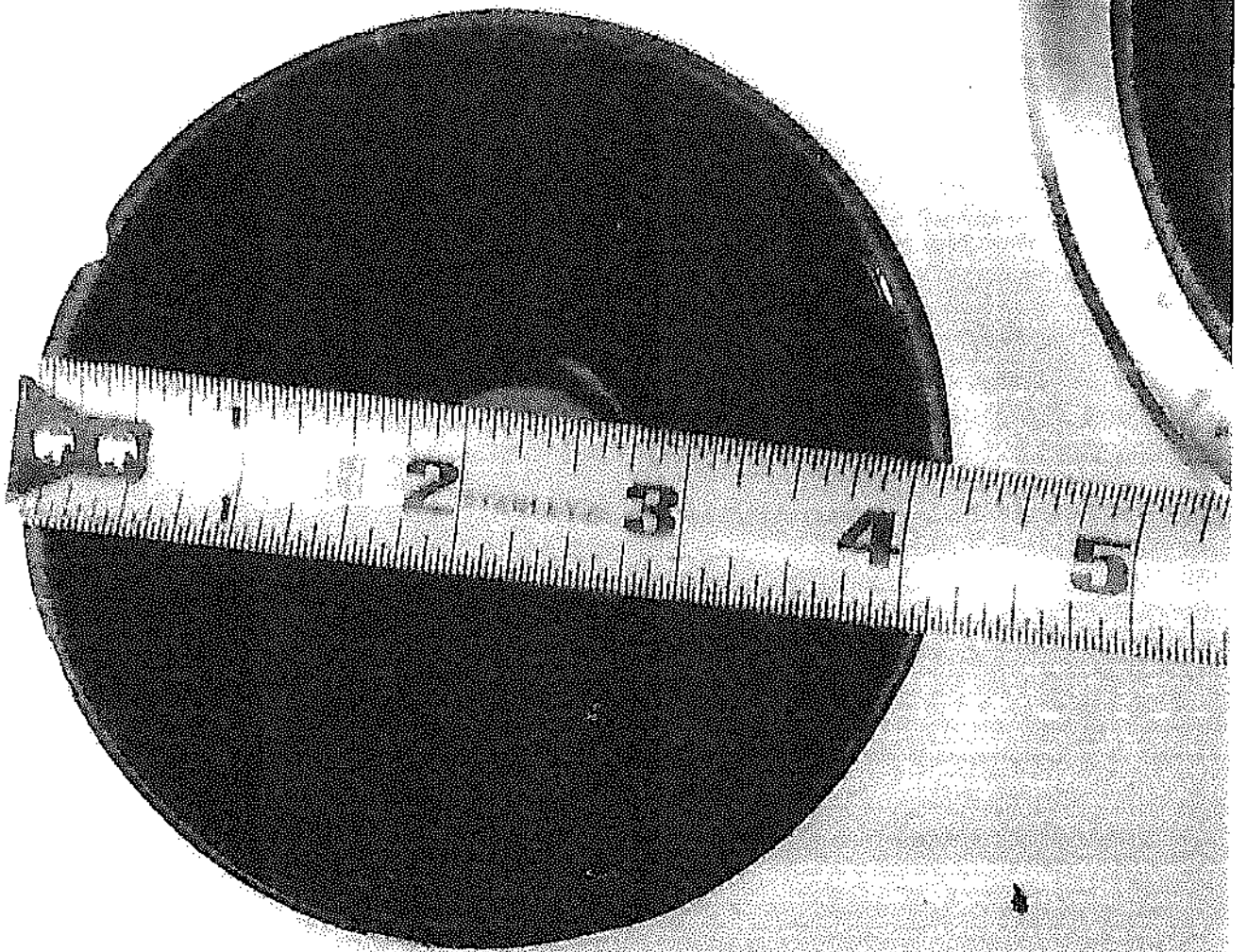
ON



M  
P  
#  
C

STATE'S EXHIBIT  
S1  
C313047-1

COMMUNICATION  
B1



M  
P  
#  
C

STATE'S  
EXHIBIT  
82  
0313047-1

CONFIRMATION





Case Review

R/Hand - 2° start @ <sup>Dorsal</sup> WRIST near THUMB,  
ARROW DOWN & OVER FINGERS

L/Hand - 2° starts just above Dorsal wrist,  
a bit of an arc but mostly STRAIGHT LINE & then  
over fingers - looks like fingers & did  
blistered, maybe not 6, 7, 8

? photo of Blue Ceramic Cup, no handles ?

Counter is 35" high

? R/Palm not Burned  
? L/Palm not Burned

ARIZ REPORT - Donovan Matthews  
Crime Occ date 1-5-16 0400  
Blm 20yrs 4/3 240

✓ Chance JACKSTER 1-30-13 (1) almost (3)  
BROT TO ER BY MOM

A is MOM'S Boy FR.



(INITIAL HISTORY) BY MOM & Δ

\* ✓ Grabbed a cup at Railway with Emma  
COUNTESS & it spilled on BSM hands -

\* Dr Olson, Treating Physician Does NOT agree

- Δ Says he boiled wire in a pot & made coffee  
• he putted wire in a mug & left on edge of counter  
• Left Room to change SIB Diaper -  
• Gone 45 seconds - heard ✓ screaming -

MOM - Doesn't believe cup was glass because  
if ✓ felt "hot" he would know what to GRAB

//  
K SINK 155.5 @ 2 minutes } 8930  
TUR 142.5 @ 5 min } 1-13-16

# Thoughts -

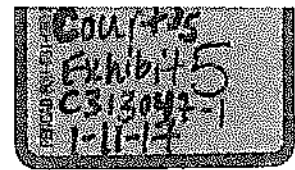
- Looks like a pour or from faucet
- WTR Very HOT or there would be more involvement from longer exposure
- Why no other parts burned (only T shirt & Drape)
- 16" handed on box, Burns plus absorption
- Cauterize 35" but no charring or streaks in K -

## STATEMENTS

- P 15  
P 19  
P 28
- he grabbed the cup & the cup dropped
  - " didn't know his son
  - when poured in the cup it was Boiling

**VOLUNTARY STATEMENT**

PAGE 1



EVENT #: 160105-1552

**SPECIFIC CRIME:** CHILD ABUSE WITH SUBSTANTIAL BODILY HARM

**DATE OCCURRED:**

**TIME OCCURRED:**

**LOCATION OF OCCURRENCE:**

CITY OF LAS VEGAS

CLARK COUNTY

**NAME OF PERSON GIVING STATEMENT:** DONOVINE MATHEWS

**DOB:**

**SOCIAL SECURITY #:**

**RACE:**

**SEX:**

**HEIGHT:**

**WEIGHT:**

**HAIR:**

**EYES:**

**HOME ADDRESS:**

**PHONE 1:**

**WORK ADDRESS:**

**PHONE 2:**

The following is the transcription of a tape-recorded interview conducted by DETECTIVE P. DePALMA, P#5297, LVMPD ABUSE & NEGELCT SECTION, on January 5, 2016 at 1424 hours.

Also present Detective B. Santarossa, P#6930, LVMPD Abuse & Neglect Section.

Q: Operator, this is Detective P. DePalma, P# 5297, conducting a interview under Event 160105-1552. Today's date is the 5th of January, 2016. The time is 1424 hours. Uh, we're currently located at Sunrise, uh, Pediatric, uh...

?: Excuse me.

Q: ...Hospital. Uh, in the interview room we have Detective Santarossa, P# 6930.

The person being interviewed is a Donovan -- D-O-N-O-V-A-N -- Matthews -- M-

**VOLUNTARY STATEMENT**

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EVENT #: 160105-1552

STATEMENT OF: DONOVINE MATHEWS

A-T-H-E-W-S, uh, date of birth 03-18 of '96, Social of 530-93-4280, and has an address of 1496 North Christy Lane in Las Vegas, 89110. He has a phone number of 702 472-0789. Donovan, everything I said about you, your information: Is that true and accurate?

A: Um, my name is spelled differently. It's D-O-N-O-V-I-N-E.

Q: V-I-N-E. So...

A: Yes sir.

Q: Donovine, D-O-N-O-V-I-N-E. That - thank you for that correction. Everything else okay?

A: Yes sir.

Q: Okay. Do you understand this is, uh, just a in- fact-finding interview? You're not under arrest. We're just trying to get to the bottom of what happened to, uh, the boy you were watching today. Uh, we were called here from the hospital that, uh, a child sustained some burns on...

A: Mm-hm.

Q: ...- on the top of their, uh, hand, uh, on his hand. And, uh, his name is, uh, Chase. Is that correct?

A: Chance.

Q: Or, Chance. I'm sorry? Chance.

A: Yes sir.

Q: Okay. So it's, uh, do you know his last name?

**VOLUNTARY STATEMENT**

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EVENT #: 160105-1552

STATEMENT OF: DONOVINE MATHEWS

A: Jaxper.

Q: Okay. And, uh, do you understand that this is - this is being recorded, this conversation?

A: Yes sir.

Q: Okay. And you're okay with it?

A: Mm-hm. Yes sir.

Q: Okay. And you understand you're not under arrest?

A: Yes sir.

Q: Okay. Free to go. And if you ever want to stop this interview, uh, just let me know. Okay?

A: Mm-hm.

Q: And you can go outside the room.

A: Yes sir.

Q: Um, okay. So, how do you know Chance Jaxper?

A: Well, my girlfriend, she's soon to have my baby. And that's her son.

Q: Okay. And who is your girlfriend?

A: Jasmine -- Jasmine Cathcart.

Q: Cavcart?

A: Yeah, C-A-T-H-C-A-R-T.

Q: Okay. Cathcart.

A: Yes.

**VOLUNTARY STATEMENT**

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EVENT #: 160105-1552

STATEMENT OF: DONOVINE MATHEWS

Q: Okay. And, uh, how long have you known Jasmine for?

A: When - we went to school together in nine grade year. We dated back then. It didn't work out. And then we just went our separate ways. Then now we've been talking for like eight months now.

Q: Okay.

A: Almost a year.

Q: Okay. And you have a - you're going to have a baby with her?

A: Yes sir.

Q: Okay. And how long - how old...

A: How far along...

Q: How far...

A: ...is she?

Q: ...along is she?

A: She, um, five months I believe.

Q: Okay. And where do you - you live at the Christy address right now?

A: Yes sir.

Q: So you're not currently living with Jasmine?

A: No.

Q: And where does Jasmine live?

A: She lives at 1029 Lisbon Avenue.

Q: Okay.



**VOLUNTARY STATEMENT**

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STATEMENT OF: DONOVINE MATHEWS

A: See, we can't live together because it's subsidized housing. It's not - yeah, I don't think it's...

Q: Oh.

A: ...no males allowed. So, every night I'll go home. Some nights I spend the night. You know.

Q: Right. How often do you spend the night there?

A: Mmm, four days out of the week maybe. But sometimes she comes in m- my house...

Q: Okay.

A: ...and spends the night too.

Q: With the kids and everything?

A: Yes sir.

Q: And that's at Christy?

A: Yes sir.

Q: Is - who else lives with you at Christy?

A: My grandma and my grandpa.

Q: Okay.

A: And sometimes my, uh, my little cousins, which one is 8 years old and then one is 5. They're there because my grandma takes them to and from school.

Q: And what is Grandma's name?

A: Sharylen Bogner.

**VOLUNTARY STATEMENT**

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STATEMENT OF: DONOVINE MATHEWS

Q: Sharylen?

A: Yeah.

Q: Spell that.

A: Oh, I'm not sure how you spell it. But S-H-E-R-L-Y-N maybe.

Q: Oh, Sharylen?

A: Yeah, Sharylen Bogner, B-O-G-N-E-R.

Q: Okay. And she's your grandma?

A: Yes sir.

Q: Do you know about how old she is?

A: Sixty-nine, 70 I believe.

Q: Okay. And who else?

A: My grandpa.

Q: What's his name?

A: Richard Bogner.

Q: And he...

A: Seventy-three I believe.

Q: And he lives there too. Right?

A: Yes sir.

Q: And you work currently right now?

A: No. I was just recently working at Chipotle, but because of the whole E. coli thing...

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
**VOLUNTARY STATEMENT**  
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EVENT #: 160105-1552  
STATEMENT OF: DONOVINE MATHEWS

Q: Oh.

A: Have you heard about it? It..

Q: Sure.

A: It slowed down the Chipotle. So they - they didn't lay me off for that. You know. I'm s- I'm just like they weren't giving me enough hours. So I'm just like (unintelligible).

Q: Gotcha. Okay. So, today what, um, you nor- do you normally watch, um, little Chance?

A: Not normally because we're both always there. But we had just recently gotten back from his real father.

Q: What do you mean by getting him back?

A: Like he - like I think it was five or six months ago, he took him to California and was supposed to bring him back because I guess Chance's real father was telling Jasmine, saying, you know - saying, "Just let him come down here for a weekend and whatnot. And then I'll bring him back." And she didn't agree with it, but -- you know what I'm saying? -- basically did it anyways. And then he - he took him and never came back. And she would message him on Facebook saying, "Oh, can you please bring Chance back?" And he would say, "Oh, you're never going to have my son around a - a dude who usually has a booty call" and - you know what I'm saying?

Q: Right.

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STATEMENT OF: DONOVINE MATHEWS

A: He just talked stuff. And then, uh, his dad got tired of his stuff, whatever he was doing out there, and kicked him out. So he had to come back out here. And then...

Q: He kicked a 2-year-old out?

A: No. He kicked the father, which...

Q: Oh.

A: And he was with the 2-year - so....

Q: Gotcha.

A: And then he came back out here. As far as I'm concerned, he has nowhere to live. So he's staying with his girlfriend. His mama don't even want him living with him. So, then, uh, I guess Jasmine's sister was talking to Tyriece -- you know what I'm saying? -- messaging him. And, uh, he was pretty much saying, "Maybe we could act civil" and th- you know what I'm saying? He was willing to just give us Chance and stuff. But we heard from her - Chance's father's friend. He told his friend that he was planning to get cool with Jasmine so he could take both the kids. You know? So once, uh, he gave us Chance, they were having a little party for Chance's cousins, the twins -- they're like 2 years old -- for Jasmine's sister's. It's her - they're her nephews. At her party, he gave us Chance. And he was expecting Jordan back. Well we just - and then, uh, it take - it took too long to take Jordan back. So then he started leaving us voice mails saying, "Oh, um, I'm going to beat you and Jasmine up," even though she's

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STATEMENT OF: DONOVINE MATHEWS

pregnant, and stuff like that, just saying stuff like that. And then we're just like, "Okay. Since you want to threaten us, whatever, you can't keep the baby." We didn't tell him that. But we're just like, "Okay."

Q: All right. So basically you've had Chance and Jordan. Uh, she's - they've been living in that house with, uh, Jasmine for some time now.

A: Jordan has. Chance, we...

Q: Jordan and...

A: ...just...

Q: Chance, you just got...

A: ...got him...

Q: ...how long ago?

A: No more than a week.

Q: You only had him about a week now?

A: About a week.

Q: Okay. So you really haven't watched...

A: Mm-mm.

Q: ...him...

A: No.

Q: ...on your own...

A: No, Jordan I did...

Q: ...at all?

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STATEMENT OF: DONOVINE MATHEWS

A: Yeah. Like Jordan, I used to take her home and stuff. She'd...

Q: Okay.

A: She could spend the night with me. But Chance we just recently got back.

Q: Okay. Have you had any, uh, contact with CPS ever?

A: Um, she has, not me. She has because they were always trying to get Jordan, like but all the...

Q: Okay.

A: All the CPS guys were (unintelligible)...

Q: No injuries or anything like that?

A: No.

Q: ...to any of the kids?

A: No.

Q: Okay. So, you've been watching them about - or you've been involved in Chance's life for about a week. Um, and today: What - what happened today, uh, how he got burned and how he made it here to the, uh...

A: Um, well...

Q: ...hospital?

A: I was boiling water so I can have a little coffee and stuff, poured the coffee in the cup, was going to let it cool down for a little bit. Then I went to go tend to Jordan -- you know what I'm saying? -- change her diaper real fast. And then when I come back, he's screaming. I'm just like, you know, "What happened?" Like, "It

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hot. My hand, my hand." I'm like, "Wow." And I called Jasmine real fast. I'm like c- you know what I'm saying? "I know you got your appointment," because she had a appointment (unintelligible) her apartment. I'm like, "Just come back." You know what I'm saying? "He burned himself." She said, "Okay. I'm on my way," and then came back and started crying. Like, "Okay. Come on. Let's go to the hospital." And then we took him here.

Q: Okay. Did you - when h- when - when he first burned himself, what did you do to his hand? Did you do anything?

A: Oh, no. I put him in the tub. And then, uh, and then I went and called his mom. Then I come back. He's picking at it. I'm like, "Chance, you can't do that." He's like, "It - it c- it's hot. It's hot." You know. I'm like, "Just put it in the cold water. Put it in the cold water." His mom got there. We got him dressed, took him to the hospital.

Q: Okay. Was he screaming? Or was he, um...

A: Um, yeah. He...

Q: ...hysterical?

A: ...screamed. He screamed...

Q: He was screaming pretty loud?

A: Yeah. Not pretty loud. But he just started crying. He - because he called me "Daddy." And he's like, "Daddy, Daddy," you know, "My hand. It's hot." I looked at it. It wasn't that bad. And then he started picking at it. It was like his right - I

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don't know which hand it is. But it's little. But it was like that. And then he started picking at it.

Q: So when you were making coffee, how did you - how did you start this process of making coffee?

A: Boiled the water.

Q: Where - how - what did you boil it in?

A: On the stove.

Q: I know. But what - what did...

A: It was like a...

Q: ...you use?

A: ...little pot.

Q: A r- like a saucepot or a coffeepot?

A: I wouldn't know the difference. It wasn't no coffeepot. We don't got a coffeepot.

Q: Like a regular pot that you would like boil pasta...

A: Hotdogs...

Q: ...in or - or hotdogs...

A: Yeah.

Q: ...in?

A: Mm-hm.

Q: Okay. So you just sat. Uh, and then you poured the water into where?

A: A mu- it was a black mug.



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STATEMENT OF: DONOVINE MATHEWS

Q: Black mug?

A: Uh-huh.

Q: Okay. And where did you put that mug?

A: On the counter.

Q: Okay. High how - how high is the counter?

A: Mmm, I'm going to say maybe that little doorknob right there.

Q: Okay.

A: Maybe a little bit higher. I'm not sure.

Q: So, too high for him to grab. Right?

A: No. He tall. He like almost to my waist. And he's only 3...

Q: Stand up for me, would you? Yeah. You're pretty tall though. So, he's up to -  
okay. So it - the cou- that's how high the counter is?

A: Yeah about that, maybe a little bit.

Q: Okay. Any idea as to how tall he is?

A: He's - from right here, he probably like maybe right here.

Q: Okay. So, how do you think he burned himself?

A: He had to grab the cup and the cup dropped. He must have been thirsty. I'm not  
really sure. I went to tend to Jordan and then came back. And that's what  
happened...

Q: So where was Jordan?

A: In the room playing.

**VOLUNTARY STATEMENT**

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Q: In the other room?

A: There's a - there's a kid room with a bunch of toys. And that's where she was at.

Q: Okay. What made you go in to her, to attend to her?

A: She was just talking to herself in there. I'm like, "Did you poop?" And then she - she can't talk. So she was just blabbering. And I checked her diaper and then that's what happened.

Q: Okay.

A: I - I would let the water cool off. So it's not like I'm just going to just sit there, and stand there, and watch the water. So...

Q: Right.

A: I went to go check on Jordan, came back, and that's what happened.

Q: Okay. And, uh, was the coffee, uh, towards the edge where he can grab it easily? Or did he have to climb on anything?

A: No. He didn't have to climb on anything. It was - it was - I guess rea- you could say reachable. But because of the way it is, it's a small counter next to the refrigerator. Then it's the stove. But on the small counter, it's like cookies. So...

Q: Right.

A: I'm not going to put it on top of the cookies. And then there's like other stuff right there on the counter. So I just sat it on the counter. I wasn't thinking about it.

Q: Right. Right. Right. Do you put anything else on it other than water or...

A: No.

**VOLUNTARY STATEMENT**

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Q: ...put him in the bathtub? Do you put his whole body in the bathtub?

A: Yeah. I put him in the bathtub. And I said, "Shoot your hands." He was shooting with his hands in the water. And then, uh, he like, "It's hot." I'm just like, "You got to put it in cold water." Got him out the shower. I put Neosporin on it, got the Neosporin in my pocket. I put Neosporin on it. And then we took him to the hospital.

Q: Okay. Where did you get the Neosporin from?

A: Um, my grandma. Grandma had it at her house. And then I just got it.

Q: So, your grandma was at her house on Christy?

A: Nah. I ha- we had - we've been had this. Like I don't know how long ago we got it. It could have been a couple of months. We just had...

Q: Oh, so you had it at the house...

A: Yeah.

Q: ...on, uh, on, uh...

A: Lisbon.

Q: On Lisbon?

A: Yeah.

Q: Oh, okay. All right. Um, did he get any other burns, um...

A: No. The doctors checked him. He didn't get no other burn. He might have been on...

Q: Where...

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STATEMENT OF: DONOVINE MATHEWS

A: His stomach was, uh, a little bit red. That was it.

Q: It was?

A: Mm-hm.

Q: Okay. And where was - when you heard him crying, or screaming, you ran back...

A: Mm-hm.

Q: ...to him?

A: I wouldn't say "ran."

Q: It...

A: I walked back because it...

Q: You walked back?

A: Because the kid was just crying. I thought he wanted something.

Q: Okay. And what did you see?

A: And I seen he was like, "It's hot." I'm like, "Let me see." I'm like, "Damn." And I hurried, threw him in the tub, called his mom.

Q: Okay. But, where was the mug at?

A: The mug was on the floor.

Q: Okay. So there was water all over the floor?

A: I wouldn't say all over the floor because it was just the mug, like maybe this. I mean it was a m- it was water on the floor.

Q: Was it empty though? I mean it - did...

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STATEMENT OF: DONOVINE MATHEWS

A: Yeah. It - yeah.

Q: ...it sp- it fall?

A: Mm-hm.

Q: Okay. Did he have any shoes on?

A: Um...

Q: That you remember?

A: Socks.

Q: He had socks on?

A: Mm-hm.

Q: Okay. Was his socks wet?

A: Mmm, yeah. I'm not sure.

Q: Did he burn his...

A: It had to be.

Q: Did he burn his socks at all...

A: No, he didn't...

Q: ...or his feet?

A: No. He didn't burn his feet. So...

Q: Okay. So he had no...

A: But I would assume they were wet because the water spilled. But he didn't burn his feet. So I guess not.

Q: Okay. But you would have known if it - or...

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A: Yeah.

Q: They're - they're wet...

A: Yeah. I would have.

Q: Because you said you put him in the tub. Right?

A: Yeah. He would have been walking weird if his feet burned.

Q: Okay. Did you - did he burn - or did you put him in the bathtub clothed? Or did you take his clothes off?

A: I took his clothes off.

Q: All of them?

A: Mm-hm.

Q: All...

A: Because only his hands were burned. So then I just took his clothes. I put him in the shower. I'm like (unintelligible)...

Q: So you...

A: ...(unintelligible)...

Q: So you were able to take his - his socks off? You would have known if they were wet?

A: Yeah.

Q: Do you remember if they were wet?

A: Mmm, no. I don't remember.

Q: You don't remember?

**VOLUNTARY STATEMENT**

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STATEMENT OF: DONOVINE MATHEWS

A: There was so much going on. His hand was just (unintelligible) bad. I wasn't worried about it.

Q: Okay. Well what about the ba- the, um...

A: The palms...

Q: ...the palms?

A: No. They weren't - I didn't really look at that. I just seen the - this part. But this part is the part that looks bad, if you go look at it, it looks bad...

Q: Right.

A: ...right here. I wasn't - people - you know how people react out of their impulse.

Q: Okay. So he didn't - and - and he had - whatever clothes he has on right now, that's what he had on when he got burned?

A: No.

Q: No? There was a change of clothes?

A: Yes.

Q: And where is that clothes right now?

A: What clothes?

Q: The clothes that he had on when he got burned.

A: (Unintelligible) at the house.

Q: Okay. So where is the mug right now?

A: The mug? In the sink.

Q: It's in the sink?

**VOLUNTARY STATEMENT**

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STATEMENT OF: DONOVINE MATHEWS

A: Mm-hm.

Q: Okay. And the pot of water?

A: The pot of water in the sink.

Q: Okay. So after you called the mom, Jasmine, uh, how long did it take her to get up to the...

A: Maybe three to five minutes.

Q: Okay.

A: She on- she was only in the apartments with the appointment. She had to...

Q: Right. She was in the...

A: ...go sign...

Q: ...complex.

A: ...some papers. Yeah.

Q: Okay. So when she got up, then what did you guys do?

A: Nothing. She - she looked at her son. She's like, "Okay. We got to go to the hospital." I'm like, "Yeah. I know. Let's go."

Q: Okay.

A: Yeah.

Q: And who drove?

A: Nobody drove. It's right - the house w- like literally right here maybe seven minutes, five minutes away.

Q: So you guys walked up?



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A: Yeah.

Q: Okay. You walked - all four of you walked?

A: Mm-hm.

Q: Okay.

A: We had a stroller for her. But I was carrying him.

Q: You were carrying him?

A: Mm-hm.

Q: Okay. Uh, do you remember what time this happened?

A: The, um, the nurse said we w- excuse me. The nurse said we got here at like 9:53 or s- whatnot. I'm assuming maybe 15 minutes before that.

Q: Okay. So it only took you seven minutes to get here on foot?

A: About that.

Q: Okay.

Q1: I just want to clarify. What was in the actual cup? Was it just water, or was it coffee?

A: It was water.

Q1: It was water.

A: Mm-hm.

Q1: So you're saying you were making some good coffee?

A: I wouldn't say good coffee. Uh, it was boiling water. I poured it in the cup...

Q1: Okay.

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A: ...to make the water cool off. Then I was going to put the - the creamer and stuff  
in.

Q1: Okay. Where - where was the coffee though?

A: Where was the coffee?

Q1: Yeah.

A: I haven't put it in there yet.

Q1: What kind of coffee were you using?

A: It's like this little Folger type...

Q1: Folger coffee?

A: ...with a green cap.

Q1: Okay. Do you normally put the water in first...

A: Instant coffee...

Q1: ...then the coffee?

A: No. It was instant coffee.

Q1: No?

A: That's what I just do. That's how I was...

Q1: Okay.

A: ...- like my - my mom do that too.

Q1: Describe the - the mug.

A: The mug?

Q1: Because when we say "mug," it means different things. What's - what's it made

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STATEMENT OF: DONOVINE MATHEWS

out of?

A: Like, I won't say glass, because glass is clear. So I don't know what to describe it.

Q1: Was it plastic or...

A: No.

Q1: ...glass?

A: It wasn't plastic.

Q1: It was a glass?

A: I guess you could say glass because...

Q1: Breakable?

A: Um, if you slam it hard enough, yeah, you could break.

Q1: Okay. Was it broken when it hit the - when it was on the floor?

A: I'm not sure.

Q1: You're not sure it was broken?

A: No sir.

Q1: Okay. Does it have a handle on it?

A: Yeah. It has a handle.

Q1: Has a handle on it?

A: Mm-hm.

Q1: Like a small like you can put your finger in it, or like a big handle where you can grab it with your whole hand?

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A: Well my hand is big. But I can probably fit like three fingers in it.

Q1: Okay. What was, uh, what was Chance doing before this happened?

A: Mmm, probably laying down watching TV because the - the way the t- living room is set up, it's the bed...

Q1: Mm-hm.

A: You step out in the living room and that - so we put the bed in the living room. And then we had cartoons on. That's all we watch -- cartoons -- because the kids. And then I went to go tend to Jordan. That's when he must have (unintelligible).

Q1: Was he running around, hyper, just...

A: Mm-mm. He's...

Q1: ...jumping around?

A: ...hyper. But he wasn't running around.

Q1: Okay. And did he - I'm - let me kind of back up for a second. And you said you just - you just got hi- you just got him back?

A: Yes sir.

Q1: So how many times would you say you watched him before today?

A: I wa- I didn't. I haven't watched him.

Q1: Because like the first time watching him?

A: Yeah.

Q1: Okay. Um...

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A: I wouldn't say that because I've been - I was, uh, me and Jasmine were both there and he was there, so if you consider that watching him. But as far as (unintelligible)...

Q1: Okay. Well how many times have you been around him be- before today?

A: We - since I got him back, I've been around him ever since we got him back (unintelligible).

Q1: That's a week?

A: Mmm, about...

Q1: You said?

A: ...that.

Q1: Okay. How full was it? Did you fill it halfway, to the brim? How full was it?

A: Seventy-five percent.

Q1: What does that mean? I'm - I - I suck at math.

A: Like the cup is 100%.

Q1: Yeah.

A: So maybe like between halfway full then the - all the way full.

Q1: Okay. Um, how long - so you pour the cup on the counter. How long from the time you did that to the time you heard the screaming and went back in?

A: Pssh, maybe 45 seconds.

Q1: Forty-five seconds?

A: Mm-hm.

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Q1: H- what did his hand actually look like?

A: His hand?

Q1: Mm-hm.

A: I can't describe it.

Q1: Like what did - I'm sorry. What did it look like when you first saw it? Not...

A: It just looked - they burned...

Q1: ...now.

A: His skin, like - it was like - I want to say black skin, looked like dirty skin was peeled off. Then I'm like, "Whoa, need to put you in the tub, cool it down, put Neosporin it." But then when I got back he was picking at it. I'm like, "Chance, you can't do that."

Q1: Okay.

A: And then that's when his mom came in.

Q1: And just to make sure: When you poured it in the cup, it was boiling?

A: What do you mean?

Q1: When you poured the water in that cup, it was boiling?

A: Yeah.

Q1: Okay. So do me a favor. Take me step-by-step with everything you can - so you - you hear the scream.

A: Mm-hm.

Q1: You r- you walk in. What do you see first?

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A: I see him. He's telling me, "It's hot."

Q1: Okay. Where is he standing?

A: He's standing in the kitchen.

Q1: Okay. Um, d- is the kitchen like a - how big is the kitchen?

A: It's not that - about as big as this room.

Q1: Okay. Um, then what do you do next?

A: Take him to the tub.

Q1: To the tub?

A: Mm-hm.

Q1: So w- the tub is where?

A: Um, you walk and then go through the hallway, which is right there.

Q1: Okay. So it's not in the back of the bedroom. It's in the - part of the apartment?

A: Um, it's...

Q1: Excuse me.

A: The apartment is small. There's only two bedroom, one bath. And then...

Q1: Okay.

A: The - the kids' bedroom where Jordan plays, where they both play, is right next to the bathroom, when I put him in.

Q1: Okay. So you put him in the tub. What do you do after you put him in the tub?

A: I called the mother.

Q1: Okay. Um, do you do anything while he was in the tub -- turn the water on, did

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you...

A: I cleaned the water up.

Q1: I'm sorry?

A: I cleaned the water up and stuff...

Q1: Okay. But do - did you turn the water on in the tub?

A: Yeah.

Q1: Okay. Um, so you cleaned the water up. And then what did you do with the cup?

A: Put it in the sink.

Q1: And you didn't know if it was cracked or broken?

A: Mm-mm.

Q1: Okay.

A: I wasn't paying attention.

Q1: Okay. Um, then what happened after that?

A: After that I just (unintelligible).

Q1: I'm sorry?

A: His mom got there.

Q1: Okay. And then what do you - what happened after she got there?

A: We got him dressed, took him to the hospital.

Q1: Okay.

Q: Do you remember what temperature the - the bathtub was?



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A: I...

Q: I mean was it cold water you put him in? Or...

A: Yeah. I put in the n- or not all the way cold. But it was like cold and a little bit of hot.

Q: So you let it run a little bit...

A: Yeah.

Q: ...before you put him in?

A: Yeah. I let it run, took his clothes off, put him in and...

Q1: Did you plug it?

A: Did I plug it?

Q1: Did you plug the tub?

A: Mm-hm. And...

Q1: So...

A: I let him sit there until his mama got there.

Q1: With his clothes on?

A: No. His clothes were off.

Q1: So you took his clothes off...

A: Mm-hm.

Q1: ...and put him in the tub. What was he wearing?

A: What was he wearing? He had a diaper on, socks, and just a shirt.

Q1: What - what color? What - what type of shirt?

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A: It was like a black with superheroes on it.

Q1: How is he - how was he, uh, I know you said you never actually watched him until today. Is he a hyper kid? Does he listen and...

A: Yeah. He's a hyper (unintelligible)...

Q1: Uh, he's 2.

A: "Woo."

Q1: So he's probably in trouble, probably...

A: And when we got him back...

Q1: ...a pain in the butt.

A: It w- it was terrible. Like he told his mom, "Fuck you." And I'm like, "Chance, you can't say that." He like, "Okay." I'm like, "Chance, you got to be good." Like he would just be bad. It was just bad on - because when we were - when we were calling her - his father to meet up, she was like, "Does he still cuss? Does he still do that?" He was like, "Just a little bit." Woo, but it was bad when we got him. She was like, "Wow." Like, "This is crazy." Like, "He wasn't like this when he left." So - but he was just bad. You know? My whole family tried to teach him like, "Chance, you can't do that. Be good." And even like when we got him back, he was playing with my little cousins, the one that - that's - that my grandma take to school. And they were like, "Freeze. You're under arrest." And he got onto grandpa's hand behind his back. We're like...

Q1: So he's a handful?

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A: Yeah. Uh-huh.

Q1: He can be - he can be frustrating at times?

A: Yeah. We're trying to, um, yeah, we were going to take him to a hospital to try to see if they could give him Ritalin or something to calm him down.

Q1: Okay. Um, I got another question. This is just curiosity. I'm not a coffee drinker, so you gotta forgive my ignorance. Um, you pour the water -- boiling water -- in the cup...

A: Right.

Q1: Why not - why - why don't you, uh, because instant coffee is you have to put the instant coffee in there and then put the water on top of it so it sits there...

A: Some people...

Q1: ...and brews?

A: ...do it that way. I just - I pour it. I didn't have no creamer. So I - I was just going to use milk and coffee, stir it up...

Q1: Okay.

A: ...put a little bit of sugar in there.

Q1: And then the second part of that question is why - why let it cool down? Don't you want...

A: Too - too hot.

Q1: ...it hot? Too...

A: I want it hot. But I can't drink - my - my...

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Q1: Okay.

A: Because I got fillings all in my mouth. So it's like really...

Q1: Okay.

A: ...(unintelligible).

Q1: Okay.

Q: And when - I mean you pour the water in there, and then you just walk away. Why not just make your whole coffee if she wasn't screaming? She was just talking to herself.

Q1: Yeah I know. But I wanted to see what she was doing.

Q: But would you - do you think that like putting a - a coffeepot - cup towards the, uh, towards the...

A: Edge?

Q: ...- the edge, you know, that - that Chance can get a hold of it?

A: I wouldn't think he would want to get a hold of it. But...

Q: Does he know that - that it's the - this - has he been around when you made coffee before?

A: No.

Q: ...or hot...

A: He just...

Q: Has he been around...

A: ...got here.

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Q: ...hot water?

A: I mean I don't know. We just got him back, so I can't tell if he was around water...

Q: Okay.

A: ...or not. But I didn't think nothing of it. I put the cup down thinking he's still going to be doing whatever he's doing. I went to go check Jordan, come back, (unintelligible)...

Q: And he - where was he when you were...

A: He was in the...

Q: ...making the coffee?

A: ...living room. I'm not sure if he was watching TV, playing with a toy.

Q1: Uh, describe - you saw - you said his hands were like peeling off, like dirty skin.

A: Yeah.

Q1: Describe where he was wet on his body.

A: He wasn't really wet on his body.

Q1: So there's no - no other water was (unintelligible)...

A: Not really. Maybe at the bottom of his shirt a little bit. But other than that, no.

Q1: Bottom of his shirt?

Q: Okay.

Q1: So...

Q: Okay.

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Q1: I'm sorry.

Q: Go ahead.

Q1: What was he - I'm - I'm sorry. What was he doing - while you were making coffee, what was he doing?

A: In the other s- in the living room.

Q1: Watch - he was doing what? You said watching TV or...

A: Yeah I guess. I don't m- my back was turned to him.

Q1: Was the TV on?

A: Yeah.

Q1: Okay.

A: TV probably still on.

Q1: Okay.

Q: So...

A: I don't know how...

Q: Does he normally grab cups...

A: He'll grab whatever...

Q: ...and stuff like that?

A: ...he wants to grab. He bad. And we were trying to...

Q: He's trying to (unintelligible)...

A: Yeah. We're trying to break the habit.

Q: Right.

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A: But, he usually just grabs whatever he want. And everything he grabs is, "Mine."

But if you go back in the room...

Q: Right.

A: ...and you want to tell him, "My car," he'll be, "My car" or "My teddy bear" that they gave him. "My teddy bear." You know what I'm saying?

Q: Right.

A: Whatever he grabs, it's like, "Mine." It's like he went to play with my cousins, their toys all "My toys." You know?

Q: So he knows how to hold a cup and drink...

A: Yeah.

Q: ...from a cup. Right?

A: Yeah. He's not (unintelligible)...

Q: How do you think - or how do you think it happened when he grabbed the cup?

A: I don't know. I think he was reaching for it. Then he probably - because he was probably - if - if he was standing on his tippy-toes, he probably grabbed it. And it probably maybe hit the edge on his way down or something. I'm not sure.

Q1: Would he have to stand on his tippy-toes?

A: I'm really not - I can't tell.

Q1: Okay.

A: I wasn't really there. I was...

Q1: Okay.

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A: ...there, but I was in the other room.

Q1: Okay.

Q: All right.

Q1: And his mom was you said in the office?

Q: Mm-hm.

Q1: Okay.

Q: Okay.

Q1: Anything you think is important that we didn't ask you about?

A: Um, I can't think of something right now. If you guys have a card, maybe I can call you.

Q: Sure.

Q1: Yeah.

Q: Absolutely. I'll...

Q1: Okay.

Q: ...give you a card. Are there any concerns o- uh, that you have that you want to talk about?

A: Um, not really. But, uh, I can't think of any right now. Just...

Q: Okay.

A: You just got to teach them.

Q1: What happened - what happens when Chance gets in trouble?

A: What happened when Chance gets in trouble?



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Q1: Mm-hm.

A: When I tell him, "Chance come here," um, he would say, "Yes." And we've gotten, "Chance, you can't do that. You got to be good." He'll say, "Okay." And I'll say, "Go play." And he go play. And if he's really bad, like if he hits his sister, like, "Let me see your hand." Boom. And then that's it.

Q: So you - you - you guys had to discipline him in the week that you had him (unintelligible)...

A: I don't discipline. She disciplines.

Q: She had to discipline him at least in the week that you saw. Because you - this is the first time you've s- seen Chance? Or did you see him before when he...

A: I've seen before...

Q: ...was down there?

A: I went - I went to go meet up with his father to get Chance. Because we were at her mom's house.

Q: Right.

A: And then he was just - he - he - mm-mm. His dad wasn't - his - his dad 18. So he really don't know how to raise a kid. I'm not in no - any better position. But, you know, I was raised different.

Q: Okay.

A: Like his mama don't even want him staying with him. You know? Because he does stuff like drugs and...

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Q: So when he...

A: ...stuff like that.

Q: ...does something really bad, he gets disciplined physically but - whether either slapped on the hand or he goes in time out? Is...

A: No. He wasn't...

Q: ...that what (unintelligible)?

A: I wouldn't say physically. But most...

Q: Well a slap...

A: ...of the time...

Q: ...on the hand.

A: It's not even that. Sometimes we don't even do that. It's, "Chance, come here. Don't do that." "Okay." "Be good." "Okay." Then, "Go play."

Q: Okay. Have you ever gotten frustrated with him...

A: Mm-hm.

Q: ...uh, in the week that you've seen him or today, uh, did you get frustrated with him at all and, uh, burn him intentionally...

A: Nah.

Q: ...uh, to - because he's a handful?

A: Nah. I w- if - if he was to be burnt intentionally, it wouldn't be on his hand. That's...

Q: Where would it be?

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A: It wouldn't be nowhere. I wouldn't do that. If you - if you ask my family member,  
I'm good with kids. I always wanted kids. Never - I would never...

Q1: Let me ask you this: Did you burn him by accident? Like you were pissed...

A: No.

Q1: ...or something? You got pissed. You threw the cup and water got on him?

A: No sir.

Q1: Okay.

Q: So you're telling me that exactly what you told us now is true and accurate?

One...

A: To the best...

Q: ...hundred percent (unintelligible)...

A: ...of my knowledge.

Q: To the best of...

A: Yes sir.

Q: ...your knowledge?

A: Yes sir.

Q: Because your other - th- that's what you assume that happened, that he went  
and grabbed the cup. Is that what you're...

A: Yes sir.

Q: ...saying?

A: No. That's what had to happen because how else could he - the cup have

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been...

Q1: Well...

A: ...on the floor?

Q1: You w- you weren't there to see it. Right? So...

A: Correct.

Q1: Anything you're saying has to be an assumption.

A: Correct.

Q1: So.

A: Correct.

Q1: Yeah.

A: I guess you could say that. But it's - that's just common sense. The cup on the floor...

Q1: No. I...

A: ...(unintelligible)...

Q1: ...understand. But - I understand it is common sense. But the reality is it's an assumption because you wouldn't see it. You can't say, "I know for sure that happened."

A: Yes sir.

Q1: Just like we can't say that ourselves because we...

A: Yes sir.

Q1: ...weren't...

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A: Just like you can't tell if I burnt him on purpose or - you know...

Q1: No.

A: ...what I'm saying?

Q1: Right.

Q: Okay. So do you have your clothes, any mail that go to that apartment right now or is...

A: No. We were just...

Q: Or you're just staying at the Christy...

A: I'm staying...

Q: ...Lane?

A: ...at Christy Lane (unintelligible)...

Q1: You have no property at - at that apartment?

A: Uh, maybe a couple of outfits. That's my baby mama house. You know?

Q: Okay.

A: A couple of outfits, a couple of shoes. Now I'm staying with my grandma.

Q1: Okay.

Q: And you said it's a one-bedroom?

A: Two bedroom, one bath.

Q: Two bedroom, one bath. Okay. All right. Uh, I don't have anything else. Uh, you? Do you have anything else for us?

A: No. Just a c- I need your card...

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STATEMENT OF: DONOVINE MATHEWS

Q: Sure. I'll get you...

A: ...(unintelligible)...

Q: ...that for a second. Um, operator, this is the end of the interview. Uh, time is 1451 hours. Same people are present.

**THIS VOLUNTARY STATEMENT WAS COMPLETED AT SUNRISE PEDIATRIC HOSPITAL ON THE 5<sup>TH</sup> DAY OF JANUARY, 2016 AT 1451 HOURS.**

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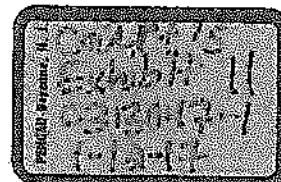
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INSTRUCTION NO. \_\_\_\_\_

A person who committed an act or made the omission charged, through misfortune or accident, when it appears that there was no evil design, intention or culpable negligence, must be found not guilty of the charge. <sup>4</sup>

*January 12, 2017*  
*Revised*  
*Herbert Quinlan*



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<sup>4</sup> McCraney v. State, 110 Nev. 250, 254 (1994).

