

**No. 83944**

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IN THE NEVADA SUPREME COURT

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May 03 2022 07:20 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

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**Deshaun Lewis,**

Appellant,

**v.**

**State of Nevada,**

Respondent.

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Appeal from a Denial of Post-Conviction Habeas  
Eighth Judicial District Court  
Honorable Monica Trujillo, District Court Judge  
District Court Case No. A-21-838960-W  
Honorable William Kephart, District Court Judge  
District Court Case No. C-17-325725-1

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**Appellant's Appendix Volume 1 of 1 Volume**

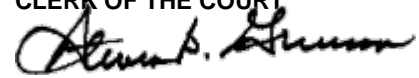
JoNell Thomas  
Special Public Defender  
Nevada State Bar No. 4771  
Julian Gregory  
Deputy Special Public Defender  
Nevada State Bar No. 11978  
330 S. 3<sup>rd</sup> St., Suite 800  
Las Vegas, Nevada 89155  
(702) 455-6265  
(702) 455-6273 (fax)  
Julian.Gregory@ClarkCountyNV.gov  
Counsel for Deshaun Lewis

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<sup>1</sup>As of the date of filing the Petition for Writ of Habeas Corpus (Post Conviction), the case number changes from criminal (C-17-325725-1) to a civil case (A-21-838960-W).



CASE NO. C-17-325725-1

DEPT. NO. 5

IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP  
COUNTY OF CLARK, STATE OF NEVADA

THE STATE OF NEVADA,	)	
	)	
Plaintiff,	)	PRELIMINARY HEARING
	)	
vs.	)	Case No.
	)	16F16528X
DESHAUN LEWIS,	)	
	)	
	)	
Defendant.	)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE CYNTHIA CRUZ  
JUSTICE OF THE PEACE

TAKEN ON TUESDAY, AUGUST 15, 2017  
AT 9:00 A.M.

APPEARANCES:

For the State: Dena Rinetti, Esq.  
Chief Deputy District Attorney

For the Defendant: Lester Paredes, Esq.  
Las Vegas, Nevada

REPORTED BY: ROBERT A. CANGEMI, CCR No. 888

000001

## I N D E X

## WITNESSES :

D C RD RC

SANDRA CETL

5 52 64 65

CHERYL KEGLEY

67 74

1 LAS VEGAS, NEVADA, TUESDAY, AUGUST 15,  
2 2017

3 \* \* \* \* \*

4 THE COURT: This is the time and date set  
5 for the preliminary hearing of Deshaun Lewis.

6 He is present this morning. Good morning,  
7 Mr. Lewis.

8 THE DEFENDANT: Good morning.

9 THE COURT: Before we get going on things,  
10 is there any matters to put on the record?

11 MS. RINETTI: Judge, just the offer in this  
12 case was 2 counts of felony child abuse, 1 to 6.

13 That offer has been rejected, and therefore  
14 will not be re-offered.

15 THE COURT: I just want to make sure,  
16 Mr. Lewis, I tell everybody, you are under no  
17 obligation to accept the offer, but I just want to  
18 make sure you had an opportunity to discuss this  
19 offer with your attorney.

20 THE WITNESS: Yes, ma'am.

21 THE COURT: And so at this point any other  
22 motions to make?

23 MR. PAREDES: Just to invoke the exclusionary  
24 rule.

25 THE COURT: Mr. Lewis, grab a seat.

1           The defense has invoked the exclusionary  
2 rule.

3           Any and all witnesses, even if you could be  
4 a potential witness on this case, please step  
5 outside the courtroom.

6           I want to make sure that I have got no one  
7 that's going to be a witness.

8           I don't want it to be that people sit in  
9 here and later on everybody wants to call them, we  
10 can't.

11           MS. RINETTI: The 2 people that are here are  
12 medical students. They weren't involved with this  
13 case.

14           MR. PAREDES: My client has a close friend  
15 that's here for moral support. He is not a witness.  
16 He may be a character witness.

17           THE COURT: Just in an overabundance of  
18 caution, the last thing we want is that you want to  
19 call him as a witness, and he stays in the  
20 courtroom, and the State will start objecting, and  
21 then he is barred from being a witness.

22           Ask him to step outside the courtroom for a  
23 few minutes.

24           With that, State, call your first witness,  
25 please.

1 MS. RINETTI: Dr. Sandra Cetl.

2  
3 SANDRA CETL,

4  
5 who, being first duly sworn to tell the truth, the  
6 whole truth, and nothing but the truth, was examined  
7 and testified as follows:

8  
9 THE CLERK: Please be seated.

10 State your first and last name and spell it  
11 for the record.

12 THE WITNESS: Sandra Cetl, S-a-n-d-r-a  
13 C-e-t-l.

14 THE COURT: Your witness.

15 MS. RINETTI: Thank you.

16  
17 DIRECT EXAMINATION

18  
19 BY MS. RINETTI:

20 Q. How are you employed?

21 A. I work as a pediatrician at Sunrise  
22 Children's Hospital, as well as the Southern Nevada  
23 Children's Assessment Center that evaluate concerns  
24 of child-abuse and/or negligent.

25 I additionally work part-time in the

1 pediatric emergency department as an ER physician.

2 Q. Can you briefly describe your educational  
3 training and background that enables you to be a  
4 physician here in the State of Nevada?

5 A. I earned my Bachelor's in Neuroscience at  
6 UCLA.

7 I then went on to the University of Vermont  
8 to earn my medical degree, after which I attended a  
9 specialty residency in pediatrics.

10 And I continued on in an apprenticeship in  
11 child abuse pediatrics with a child-abuse pedestrian  
12 here in town.

13 I additionally undergo continuing medical  
14 education yearly through conferences and teaching,  
15 and various other peer reviews processes.

16 Q. Are you a licensed physician here in the  
17 State of Nevada?

18 A. Yes.

19 Q. Are you Board Certified?

20 A. Yes.

21 Q. What are you Board Certified in?

22 A. In pediatrics.

23 Q. And have you testified in the area of  
24 pediatrics in the Eighth Judicial District Court  
25 previously?



1 A. Yes.

2 Q. Approximately how many times?

3 A. It has been over 100.

4 Q. Okay.

5 Prior to your testimony here today, did you  
6 have a chance to review the medical records  
7 involving a 5-year-old child by the name of Marscel  
8 Carroll, with a date of birth of March 26, 2011?

9 A. Yes, I did.

10 Q. Based upon your review of the medical  
11 records from University Medical Center --

12 A. Yes.

13 Q. -- the child was admitted on October 2,  
14 2016?

15 A. Correct.

16 Q. Did this child have any internal injuries?

17 A. Yes. The main internal injury that was  
18 treated at UMC was a pancreas injury.

19 He also had a fracture of the left leg.

20 And then there was a contusion or a bleeding  
21 bruise of the lung.

22 I think those were the 3 kind of major  
23 internal injuries.

24 Q. I am going to go in the order in which you  
25 have described these internal.

1           First with the pancreas, what type of injury  
2 did this child sustain to his pancreas, and also  
3 tell us what the pancreas is.

4           A.    Sure.

5           The pancreas lays kind of just below the rib  
6 cage, kind of at the beginning of the intestinal  
7 system, and helps us regulate the sugars that we  
8 eat, as well as it breaks down -- it uses enzymes to  
9 breakdown the foods we eat to help us digest.

10          That's the main function. So it is near the  
11 stomach area. And the pancreas with Marscel, what  
12 happened is initially they got a CAT scan of his  
13 belly.

14          It was looking like it was getting bigger.  
15 There was concern there might be some injury. The  
16 CAT scan showed a lot of fluid that shouldn't be  
17 there that indicated to the surgeons and the care  
18 team that we need to look at this.

19          What they did is what's called an  
20 exploratory laparotomy, essentially it just to open  
21 up the belly and try to figure out what is causing  
22 all of this fluid buildup, and what they found was  
23 injury to one area of the pancreas called the head  
24 of the pancreas.

25          There's a head and tail, and so that

1 appeared to be a blunt force trauma type injury.

2 Q. Now --

3 MR. PAREDES: Your Honor, I would object to  
4 that as lacking foundation, that last part as to the  
5 what caused the injury, and what it looked like.

6 THE COURT: All right.

7 Her testimony was they did an exploratory  
8 laparotomy to determine the cause of the swelling  
9 and the fluid that was developed on the CAT scan,  
10 and they found injury to the head of pancreas, based  
11 upon her review of the medical records, so she's  
12 just talking about what the medical records noted  
13 was that it was as a result of blunt force trauma,  
14 but I don't have a causation.

15 MR. PAREDES: As to what caused, I guess.

16 THE COURT: You are saying that --

17 MR. PAREDES: blunt force trauma sounds like  
18 a cause to me.

19 THE COURT: I think it is more of a  
20 diagnosis, and not a causation.

21 MS. RINETTI: It can be both.

22 THE COURT: But it is not -- she hasn't  
23 gotten to be where I have a direct causation yet.

24 But I think -- why don't we do this, why  
25 don't we get a little bit more information as to how

1 you can have blunt force trauma going on to the  
2 pancreas.

3 Q. So where was this injury. You said it was  
4 the head of the pancreas. Where was it exactly on  
5 the pancreas, was it on the front part or the back  
6 part of the pancreas?

7 A. I believe it would be towards the front part  
8 of the pancreas, yes.

9 Q. And is an injury to the pancreas something  
10 that is serious?

11 A. Yes.

12 Q. You mentioned there was fluid in this  
13 child's abdomen, did that stem from trauma to the  
14 child's pancreas?

15 A. Yes.

16 Q. And how does that get there?

17 A. There is a couple of different ways, one of  
18 which that it could be just be frank blood.

19 If something gets injured, it bleeds, and  
20 then it builds up there.

21 Also, if you have any injury to this area in  
22 general, you can have a buildup of fluid that comes  
23 out of the vascular system.

24 We call that ascites. It is just extra  
25 fluid. It is kind of if you hit your knee and you

1 get swelling from all of the internal fluid in the  
2 joint, so those are kind of a process of the injury  
3 that we see.

4 It has nowhere to go, so it hangs out in  
5 that abnormal cavity.

6 Q. In Marscel's case, what kind of fluid was  
7 it.

8 A. There was an evolution to it, but there was  
9 blood, as well as ascites.

10 MR. PAREDES: Your Honor, I am going to just  
11 object.

12 Is this something she observed, or something  
13 she's relying on something that somebody else told  
14 her.

15 THE COURT: Neither.

16 She did a view of the medical records from  
17 UMC, so everything that she is testifying on is  
18 based upon her review of the medical records from  
19 UMC.

20 There is no conclusions. It is just what  
21 her record review is, and I am taking it just for  
22 what her review of the records are, not for the  
23 truth of the matter asserted.

24 MR. PAREDES: Okay.

25 Q. Now, this child was 5 years old. In noting

1 that this child sustained a significant injury to  
2 the head of his pancreas, how does a child of 5  
3 years old potentially get injured in such a way?

4 MR. PAREDES: I am going to object to that  
5 as speculation.

6 MS. RINETTI: It was very open ended.

7 THE COURT: Correct. Try to --

8 MS. RINETTI: Pursuant to the expert  
9 statute, 51.385, she is allowed to a hypothetical.

10 THE COURT: She can, but you were kind of  
11 really broad on that.

12 Do you want to try to tighten up your  
13 question a little bit?

14 Q. How can a child, a 5-year-old sustain an  
15 injury like Marscel sustained, that the surgeons saw  
16 in Marscel's case to his pancreas?

17 MR. PAREDES: I am going to object to that as  
18 vague.

19 Speculation.

20 THE COURT: Overruled on that.

21 Let's answer the question.

22 A. Okay.

23 So the type of injury that was seen on  
24 Marscel would be a traumatic injury.

25 It can be from an accident.

1           It could be from an intentional act of  
2 someone injuring the child.

3           Those would be the major types.

4           There was no signs of any infectious cause  
5 to it. There were no signs of cancer, or metabolic  
6 problems, nothing organic.

7           This was simply something injured the  
8 pancreas through contact.

9           Q. So some type of contact, either accidental  
10 or some type of traumatic or potentially abusive  
11 contact?

12          A. Yes.

13          Q. What kind of accidental mechanisms would  
14 cause this injury?

15          A. So blunt force trauma, meaning that it is  
16 not a penetrating trauma, not like getting stabbed.

17               This is something where a person would have  
18 a significant force applied to the abdomen in the  
19 general area where the pancreas is.

20               Examples that I have seen of organ injury  
21 such as this in organs that lay in the same area of  
22 the pancreas could be a motor vehicle crash.

23               We have seen them with animals who had hit  
24 or ram into children if they are up against  
25 something hard.

1 I have seen it from taking a very fast  
2 baseball that has a lot of force added to it.

3 Q. You mentioned that it requires a significant  
4 amount of force.

5 A. Yes.

6 Q. As far as a traumatic or an abusive type of  
7 contact of this child, would the injury that was  
8 seen on Marscel's pancreas, the head of his  
9 pancreas, be consistent with someone striking this  
10 child, for instance punching this child?

11 A. Yes.

12 Q. Would this injury also be consistent with  
13 someone striking this child with some type of  
14 object.

15 A. Yes.

16 Q. Would this injury be consistent with someone  
17 causing this child to strike some type of object as  
18 well?

19 A. Yes, potentially.

20 Q. This would require a significant amount of  
21 force?

22 A. Yes.

23 Q. Doctor, would this type of injury be caused  
24 by some type of playful contact with the child from  
25 a care-giver jostling around?



1 A. No, no, no.

2 Q. Why do you say that?

3 A. The abdomen is soft. It has a lot of place  
4 to play and move around.

5 So if something makes contact with the  
6 abdomen, it can dissipate the forces pretty easy,  
7 and so one would expect it to be more than playful.

8 Someone would know this is too much, and the  
9 kid would cry out in pain. There would be a painful  
10 type of contact.

11 It wouldn't be just a normal developmental  
12 play or normal developmental interactions with the  
13 child, no.

14 Q. What are the symptoms that are related to  
15 this type of injury?

16 A. So some of this symptoms can be, like I  
17 said, pain.

18 Also if you are having difficulty with your  
19 pancreas because of an injury, you may not be able  
20 to process foods correctly, so you may have nausea.

21 Vomiting.

22 Not wanting to eat.

23 Diarrhea.

24 Things in the nature of food going in and  
25 food going out, not necessarily being processed

1 correctly.

2           There could be an increase in the belly  
3 being harder, bigger.

4           So it can vary between those, but pain would  
5 be probably the first and foremost.

6           Q. Is there anyway to distinguish when this  
7 event occurred to cause the injury to Marscel?

8           A. There are a couple of clues. So when  
9 looking at the evolution of how the injury occurs,  
10 the severity of the injury would indicate that he  
11 would not have been able to sustain as well as he  
12 was, had it happened remotely.

13           So, one being that he wouldn't be able to  
14 process food well. He Wouldn't be able to eat.  
15 There would be a lot of pain. It would evolve and  
16 get worse and worse as time would go on.

17           So it speaks to it being more acute or more  
18 towards the time of admission.

19           The second clue is we look at enzymes. Any  
20 time that your pancreas or liver, or anything around  
21 the abdomen gets injured, those cells break open,  
22 and they release the certain types of enzymes.

23           And we can follow the trend of those  
24 enzymes. They start off low, at the initial time of  
25 injury, and they go higher and higher, and higher.

1 His were relatively low at the time he came  
2 to the hospital, meaning that this was closer to the  
3 time of injury, versus much later, where we would  
4 anticipate a higher peak.

5 Those are some clues to say they were within  
6 some time frame prior to admission.

7 Q. You mentioned that based upon his enzyme  
8 levels that the injury in and of itself is an acute  
9 injury, or close in time to the admission of October  
10 2, 2016.

11 Can you give us a time frame as to when it  
12 would have occurred?

13 A. Another clue would be historical, so when  
14 someone started symptoms, and unfortunately, we  
15 didn't have a great time frame for that.

16 So putting it together, it would probably be  
17 within a day or 2. I couldn't pinpoint less broad  
18 than that.

19 MR. PAREDES: I am going to object to that as  
20 lacking foundation.

21 THE COURT: Overruled.

22 Her testimony has been based upon the fact  
23 that there was especially the enzymes, they were  
24 lower numbers, and based upon the discussion as to  
25 the enzymes and the level of pain, she can't

1 pinpoint to an exact date.

2 She's giving her medical opinion as to the  
3 time zone.

4 It will stand.

5 Q. Another internal injury that you mentioned  
6 was an injury or bleeding contusion to the child's  
7 lung.

8 A. Correct.

9 Q. Was this the lung on the same side as the  
10 pancreas, or on the opposite side?

11 A. Side being front-back, not left-right.

12 Q. Correct. I apologize.

13 A. It was on the opposite side. It was towards  
14 the back of the lung, versus the front, where the  
15 pancreas is a little bit.

16 Q. And can you describe the injury that was  
17 seen on Marscel's lung?

18 A. This was described as kind of a contusion or  
19 a hematoma, basically blood in the air spaces of the  
20 base of the lung where blood shouldn't be.

21 Q. And how does a 5-year-old get a contusion on  
22 their lung at that bottom area?

23 A. That too would be the result of some type of  
24 traumatic injury.

25 Q. Would the contusion to this child's lung be

1 consistent with someone striking this child?

2 A. Yes.

3 Q. Would it be consistent with someone punching  
4 this child?

5 A. Potentially, yes.

6 Q. Would it be consistent with someone  
7 potentially striking this child with an object?

8 A. Yes.

9 Q. Or potentially striking this child or  
10 causing this child to strike some type of object?

11 A. Potentially, yes.

12 Q. What are the kinds of -- is this a  
13 significant injury?

14 A. It is a significant injury.

15 Q. And why is it a significant injury?

16 A. You need your lungs to breathe. That's the  
17 main stay of survival.

18 So having anything that's not air or  
19 occupying space there can be very dangerous.

20 So that's significant as well, and the lungs  
21 are protected by the rib cage, and so you have ways  
22 of protecting the lungs, so it would speak to again  
23 force.

24 Q. Speaking towards force, would a significant  
25 amount of force need to be applied to this child in

1 order to cause this type of injury?

2 A. Yes.

3 Q. And then this injury could compromise the  
4 child's breathing?

5 A. Yes.

6 Q. At some point during the course of this  
7 hospital admission, was this child intubated?

8 A. Yes.

9 Q. Lastly, you indicated that this child also  
10 had an injury to his leg.

11 A. Correct.

12 Q. What kind of injury was it?

13 A. So on the left lower leg, the bone called  
14 the tibia, that is the bone that -- it is your shin  
15 bone, there was what is called a comminuted angular  
16 fracture about in kind of the middle, towards the  
17 ankle.

18 Comminuted means that it is in pieces, it is  
19 a little more complicated.

20 Angulated means that instead of breaking it  
21 is remaining straight, but it is out, so the broken  
22 pieces jet out in one direction or another.

23 And then X-rays also found that the fibula,  
24 which is the bone next to the tibia also had a  
25 fracture, but it was described as non-specific at

1 that time.

2 Q. Is this a significant injury?

3 A. Yes.

4 Q. And what type of symptoms are associated  
5 with this type of fracture -- fractures you are  
6 seeing on Marscel?

7 A. Pain would be probably the most significant,  
8 and decreased ability to use or bear weight and  
9 movement.

10 Q. When you say decreased movement, would you  
11 expect a child who sustains this injury to be able  
12 to sustain his or her own weight for any great  
13 length of time?

14 A. Not for any great length of time, no.

15 Q. Based upon the radiology, was radiology  
16 performed regarding this leg injury?

17 A. Yes.

18 Q. Are you able to time the leg injury based  
19 upon radiology?

20 A. To some extent, yes.

21 Q. How are you able to at least come up with a  
22 time frame for an injury based upon radiology,  
23 particularly the fracture?

24 A. So our bones, especially our long bones,  
25 when they heal, they develop basically calcium and

1 various deposits, and they form kind of a protective  
2 layer around that as they heal, and mold back into  
3 place.

4 We start seeing that healing process on  
5 x-rays at about 4 to 7 days from the time of injury.

6 There was no healing present. So the timing  
7 would be less than that 4 to 7 day period.

8 Q. The injury to Marscel's leg, could it be  
9 consistent with non-accidental abusive trauma?

10 A. It could be.

11 Q. What kind of the mechanisms could be used to  
12 cause this type of injury?

13 MR. PAREDES: Objection.

14 It calls for a narrative.

15 THE COURT: So the discussion was could it  
16 be a non-accidental type of injury and a mechanism  
17 for doing that.

18 I don't think that's really going to be a  
19 narrative. Let's see if it starts going on very  
20 long, then I will interrupt her myself.

21 You can answer.

22 A. Okay.

23 A bone straight. in order to make it  
24 angulated there would be some kind of pressure to  
25 snap the bone.



1 Q. Could this be consistent with someone  
2 striking a child?

3 A. Could be.

4 Q. Applying pressure to this child's leg?

5 A. Yes.

6 Q. Could it be consistent with someone grabbing  
7 this child and throwing child against an object?

8 A. Yes.

9 Q. Can a child sustain this particular injury  
10 focusing just on the leg injury by accidental means?

11 A. Potentially.

12 Q. Would you expect a child who is 5 years old  
13 playing soccer in the park to sustain a comminuted  
14 angulated tibia fracture with an accompanying fibula  
15 fracture?

16 MR. PAREDES: I am going to object to  
17 foundation again, Your Honor.

18 THE COURT: It is foundation, so are you  
19 saying is there a way -- is your question; can a  
20 5-year-old get it playing soccer?

21 MS. RINETTI: Exactly.

22 THE COURT: I think that is a yes or no.

23 A. Yes, potentially.

24 Q. Would you expect this child be able to walk  
25 off the field and walk home after sustaining this

1 type of injury?

2 A. No.

3 Q. Why not.

4 A. Again, as an ER physician, we see a lot of  
5 tibia-fibula fractures. It is pretty common.

6 They are of a different nature, as kids  
7 bones tend to be more bendier, as kids do things as  
8 they grow.

9 And with those we see sometimes limping, but  
10 often still will have a lot of pain in association  
11 with it.

12 A comminuted fracture is an extra level of  
13 severity, and it is fairly uncommon, so I would not  
14 anticipate, because the bones are actually moved,  
15 and they don't support the weight of the child would  
16 cause a lot of pain, blood, swelling, muscle spasms  
17 be able to have that child walk normally or at all  
18 for any distance.

19 Q. And, Doctor, I forget to ask 2 questions.  
20 Let's back up just a moment.

21 When we talked about the lung injury, or the  
22 contusion to the base of the lung, was that  
23 considered an acute injury?

24 A. That's more difficult to time. There aren't  
25 those signals like bones healing, whatnot to say

1 anything.

2 It would be based more on clinical history,  
3 which was not very clear.

4 But due to him not having a terrible time  
5 breathing for the days prior to coming in was my  
6 understanding, I would anticipate it was acute, but  
7 I wouldn't be able to time it better than that.

8 Q. Now, in addition to the internal injuries,  
9 did this child also sustain external injuries?

10 A. Yes.

11 MS. RINETTI: May I approach?

12 THE COURT: You may.

13 Q. Showing you State's Proposed Exhibit 1  
14 through 11, have you previously had an opportunity  
15 to review these photographs?

16 A. Yes, I have.

17 Q. Do these photographs depict some of the  
18 external injuries to this child?

19 A. Yes.

20 MR. PAREDES: objection.

21 Lacks foundation.

22 THE COURT: Okay.

23 She's working on the foundation right now,  
24 so overruled.

25 Go on.

1 MS. RINETTI: I am not admitting them  
2 through this witness.

3 Q. Based upon a review of the pictures, as well  
4 as the medical records, can you describe to us what  
5 kind of external injuries were seen on this child?

6 MR. PAREDES: Your Honor, object as to the  
7 best evidence rule.

8 Describing what is in the contents of the  
9 photos without admitting the photos is improper.

10 THE COURT: Overruled.

11 That's not a statement of what the best  
12 evidence rule is.

13 Go on, Ms. Rinetti.

14 Q. What kind of --

15 THE COURT: Turn it all the way off.

16 Q. -- what kind of the external injuries are  
17 seen on Marscel?

18 A. So the 2 major types of injuries were what  
19 we call lacerations, or a break of the skin due to  
20 blunt trauma, not sharp trauma.

21 And then he also had abrasions in addition  
22 to those lacerations.

23 Those were 2 major types we saw. The second  
24 type were bruises, and so essentially lacerations,  
25 but right under the skin, where you have purpling

1 and redness coming from bleeding right underneath  
2 the skin.

3 Q. Can you describe the difference -- explain  
4 the difference between a contusion, a laceration and  
5 a bruise?

6 A. A contusion and a bruise are pretty much the  
7 same thing.

8 You bump the skin, and there is enough force  
9 for whatever reason, whether it is how it was hit,  
10 or where it was hit that the little blood vessels  
11 underneath break open and spill out all of the  
12 blood, and we start seeing that right underneath the  
13 skin.

14 A laceration is when there is blunt trauma,  
15 so not sharp trauma, but blunt trauma that injures  
16 the skin and also disrupts the integrity of the  
17 skin, so it opens up.

18 Q. Where were these contusions, lacerations and  
19 bruises on Marscel's body?

20 A. He had them on multiple areas of his body,  
21 including arms, legs, his abdomen, chest, his head.

22 So it was on multiple planes of his body,  
23 and in multiple areas, including protected areas  
24 like between his legs.

25 Q. The number of contusions and bruises as well

1 as the number of planes that these injuries  
2 were seen on Marscel, are those concerning  
3 for abusive injury?

4 A. Very.

5 Q. Was there any pattern to these  
6 bruises or contusions or lacerations?

7 A. So the injuries had linear, as well  
8 looped quality to them.

9 They were very distinct marks and  
10 patterns that are recognizable. They appear  
11 to be secondary to either an extension cord a  
12 or a belt.

13 MR. PAREDES: Objection, Your Honor.  
14 This Lacks foundation.

15 THE COURT: So she's talked about  
16 that the injuries are linear, or presented  
17 with a linear or a looped quality to them  
18 That are secondary to based upon causation.

19 I am not sure where you are going  
20 with foundation on this one.

21 MR. PAREDES: She's a medical doctor.  
22 She's testifying to what has caused these.

23 She's about so say that it is  
24 consistent with an extension cord, and I  
25 don't know what part of medical school that

1 was taught in, or what foundation she has to draw  
2 that conclusion without having observed what  
3 happened.

4 THE COURT: So based upon her prior  
5 qualifications that she gave as to what areas of the  
6 hospital she specifically works in, in addition to  
7 being an ER doctor and a pediatrician, and how long  
8 she worked there.

9 I will overrule it.

10 Go on.

11 Q. Do you need me to ask the question again?

12 A. Yes.

13 Q. These contusions or abrasions or  
14 lacerations, do they have a pattern to them, and  
15 what type of pattern?

16 A. The pattern is looped as well as linear, and  
17 what has historically been seen from textbooks to  
18 personal experience with them, they appear to be  
19 consistent with some type implement, possibly a belt  
20 or an extension cord, something of that nature.

21 Q. Let's break these down, kind of a loop mark,  
22 what do you mean by a loop mark and things of that  
23 sort?

24 A. Let me grab a picture.

25 So one example is on the inner thigh of

1 Marscel's right leg, a loop would be essentially 2  
2 parallel lines, and then they come to a looped  
3 ending.

4 Q. Okay.

5 I want to walk you through all of the  
6 injuries that are seen on some of these photographs.

7 Help me kind of describe what you are seeing  
8 in these photographs.

9 In State's Proposed Exhibit Number 1, what  
10 kind of injuries are you seeing in this photograph?

11 MR. PAREDES: Your Honor, I am going to  
12 object to this as a violation of the best evidence  
13 rule, which is contained in NRS 52.325, which reads;  
14 in order to prove the content --

15 THE COURT: Give me one second.

16 MR. PAREDES: 52.235.

17 In order to prove the content of a writing,  
18 recording or photograph, the original writing,  
19 recording or photograph is required, except as  
20 otherwise provided in this title.

21 What that speaks to, Your Honor, is that has  
22 to be admitted into evidence prior to them talking  
23 about what is in the photograph?

24 THE COURT: That's not what it says. It  
25 just means in order to -- are you saying the



1 contents in that picture are at issue because that's  
2 what it means.

3 Are you saying that the contents -- that's  
4 what your objection has to be -- are you saying that  
5 the contents that are depicted in that picture are  
6 at issue?

7 MR. PAREDES: They haven't been admitted into  
8 evidence.

9 THE COURT: If you are going to use the best  
10 evidence rule, I have got the case law right here.

11 It says that you have to cite the best  
12 evidence rule. You have to claim that the contents  
13 of the document, or in this case the picture, are at  
14 dispute.

15 So are you telling me that the contents of  
16 the picture are at dispute?

17 MR. PAREDES: Yes. Everything is a dispute,  
18 Your Honor, because we have not heard from any  
19 custodian.

20 We don't know who took the photographs. We  
21 don't know how they have altered or not altered.

22 And they are using secondary evidence to  
23 prove the content of that writing.

24 THE COURT: I think you are miss-applying  
25 the best evidence rule.

1           There is case law on it, so what your  
2 argument is, is that we would have to on the day in  
3 question bring the child before the Court for the  
4 Court to examine the child on the day exactly when  
5 the injuries are seen for there to not be a  
6 violation of the best evidence rule.

7           That is your argument.

8           MR. PAREDES: No, ma'am.

9           THE COURT: That's what the best evidence  
10 rule is. If you want to say that this isn't the  
11 best evidence, that this is a violation of the best  
12 evidence rule, your articulation is to me that  
13 immediately upon the time of taking the pictures of  
14 this particular issue, the child would have to be  
15 brought immediately before the Court to present to  
16 the Court, to memorialize the Court to make a record  
17 or another -- it would have to be a body of a fact  
18 finder as to the actual injuries that are  
19 photographed.

20           That's what the best evidence rule is. The  
21 best evidence rule says; you must present to the  
22 Court, which is the original, and so that would be  
23 the child on the day that the child is being  
24 photographed for a fact finder to lay a record as to  
25 all of the injuries.

1           So if you want to say that she can't look at  
2 the pictures and that based upon the fact that the  
3 pictures haven't been admitted, and if somebody is  
4 bringing in the person that took the pictures,  
5 that's a different one.

6           But for best evidence, the best evidence  
7 would be the actual child on the date that they took  
8 the pictures.

9           MR. PAREDES: That's not our position, Your  
10 Honor.

11           Our position is that when the statute talks  
12 about a photograph, that they don't mean -- that the  
13 original is the photograph, not the person that's  
14 being photographed.

15           Our objection is that she's trying to prove  
16 the contents of the photograph without having first  
17 admitted the photograph into evidence, which is my  
18 understanding.

19           THE COURT: That's not the best evidence  
20 rule.

21           MR. PAREDES: We are probably going to have a  
22 disagreement that it is not.

23           The best evidence rule requires the subject  
24 of the photograph, otherwise there would be no  
25 photograph every admitted into evidence.

1           THE COURT: I admitted the photographs based  
2 upon her review of what she sees in the photograph,  
3 if you want.

4           I think we are just trying to get Dr. Cetl  
5 out of here, but if you need for me to have Dr. Cetl  
6 step down momentarily to bring in- do you have the  
7 person who took the photographs?

8           MS. RINETTI: I have the detective who saw  
9 the child at the hospital on that day.

10          THE COURT: I can do that.

11          MR. PAREDES: I think that is the proper way.

12          THE COURT: Dr. Cetl, step down.

13          Don't discuss your testimony with anybody.

14          Give me second.

15          State, call that witness in and get the  
16 foundation for the photographs, and we'll go from  
17 there.

18          MS. RINETTI: I am going to do just that, to  
19 get Dr. Cetl out of here.

20          THE COURT: All I want to do is because  
21 Dr. Cetl, I am just trying to be cognizant of her  
22 schedule, bring that person in out of order just for  
23 that issue, and then we will be recall that person.

24          Mr. Paredes, you will be able to voir dire  
25 this person regarding everything going on with these

1 photographs, which will not be cross-examination.

2           You will get to voir dire, and then we will  
3 deal with that, and then we will bring her back.

4  
5                           CHERYL KEGLEY,

6  
7 who, being first duly sworn to tell the truth, the  
8 whole truth, and nothing but the truth, was examined  
9 and testified as follows:

10  
11           THE CLERK: Please be seated.

12           State your first and last name and spell it  
13 for the record.

14           THE WITNESS: Cheryl Kegley, C-h-e-r-y-l  
15 K-e-g-l-e-y.

16  
17                           VOIR DIRE EXAMINATION

18  
19           BY MS. RINETTI:

20           Q. How are you employed?

21           A. I am employed as an abuse specialist with  
22 the Las Vegas Metropolitan Police Department.

23           Q. How long have you been so employed?

24           A. I have been with the department almost 23  
25 years.

1 Q. How long have you been with abuse and  
2 neglect?

3 A. 12 years.

4 Q. What kind of crimes does abuse and neglect  
5 investigate?

6 A. We investigate child-abuse.

7 Dependent person abuse neglect.

8 Murder by child abuse.

9 Q. On October 2, 2016, were you tasked with  
10 investigating an incident involving 5-year-old child  
11 named Marscel Carroll, date of birth, March 26,  
12 2011?

13 A. I was.

14 Q. And was that child admitted to UMC Hospital  
15 or University Medical Center?

16 A. Yes.

17 Q. Did you have an opportunity to go to  
18 University Medical Center on that date?

19 A. I did.

20 Q. And did you have an opportunity to see  
21 Marscel?

22 A. Yes.

23 MS. RINETTI: May I approach?

24 THE COURT: You may.

25 Q. Showing you State's Proposed Exhibits number

1 1 through 10, go ahead and take a look at those.

2 MR. PAREDES: May I voir dire, Your Honor?

3 THE COURT: Let's have her look quickly, and  
4 then you can voir dire.

5 I want her to flip through everything.

6 MR. PAREDES: Certainly.

7 MS. RINETTI: It is 1 through 11.

8 I am sorry.

9 THE COURT: He is going to voir dire  
10 quickly.

11  
12 VOIR DIRE EXAMINATION

13  
14 BY MR. PAREDES:

15 Q. Ma'am, you didn't take those photos, did  
16 you?

17 A. No.

18 Q. You don't know who took those photos?

19 A. Yes, I do.

20 Q. You don't know if those are the original  
21 photos?

22 A. I do.

23 Q. Did you printout those photos?

24 A. I did not.

25 Q. Do you know what kind of camera was used to

1 take those photos?

2 A. I do not.

3 Q. Do you know whether of any image editing  
4 that was done on those photos?

5 A. I do not.

6 Q. And did you say you do or don't know whether  
7 those are the originals?

8 A. I have reviewed the photos that were taken  
9 by the crime scene analyst, and these appear to be  
10 the exact photos?

11 Q. And when did you do that?

12 A. Yesterday. I am sorry, this morning.

13 Q. Was that in Court today?

14 A. No, that was at my office.

15 Q. Was the crime scene analyst there with you?

16 A. No.

17 Q. Did you print those out in your office?

18 A. No.

19 Q. Who was there?

20 A. Me.

21 Q. And you can't tell for certain whether those  
22 are the originals.

23 Fair to say?

24 A. I was present when the photos were taken,  
25 and these appear to be the original photos that I



1 not only reviewed after they were taken, but  
2 reviewed this morning prior to Court.

3 Q. You reviewed them on her camera?

4 A. I reviewed them on her camera, and then the  
5 following day, after they had been uploaded into our  
6 system.

7 Q. Okay.

8 Like you said, you don't know whether they  
9 have been altered in anyway?

10 A. I do not.

11 MR. PAREDES: I pass the witness.

12  
13 CONTINUED VOIR DIRE EXAMINATION

14  
15 BY MS. RINETTI:

16 Q. Are State's Proposed Exhibits 1 through 11,  
17 the photographs taken of Marscel on October 2, 2016?

18 A. They do.

19 MR. PAREDES: I am going to object, Your  
20 Honor.

21 Asked and answered, in terms of she already  
22 testified she doesn't know whether they have been  
23 altered.

24 THE COURT: Overruled.

25 It hasn't been asked and answered.

1           Go ahead.

2           Q.   You may answer the question.

3           A.   They appear to be the original photos to me.

4           Q.   When we say the originals, they appear to be  
5 an accurate photograph copy of the photographs  
6 taken?

7           A.   Yes.

8           MS. RINETTI:   At this time the State asks  
9 for the admission of Proposed State's 1 through 11.

10          MR. PAREDES: Object.

11                 She doesn't know whether they have been  
12 altered.   That is the one of the key elements of  
13 foundation.

14          THE COURT:   I am going to go under a few  
15 things, one NRS 52.245, Archanian v. State, 122  
16 Nevada 1019, I am allowing the admission of the  
17 documents, the State's admission of 1 through 11 for  
18 purposes of the preliminary hearing only.

19                 So I think with that, detective you may step  
20 down, and get Dr. Cetl back in.

21          MR. PAREDES:   Your Honor, may I quickly run  
22 to the restroom, 10 seconds.

23          THE COURT:   You may.

24  
25                         (Recess taken.)

1  
2 THE COURT: Dr. Cetl, you are still under  
3 oath.

4 Take a seat. So State, I will allow you to  
5 proceed forward. We were talking about the photos.  
6 With that, proceed.

7 MS. RINETTI: Thank you.  
8

9 CONTINUED DIRECT EXAMINATION  
10

11 BY MS. RINETTI:

12 Q. Because we don't have any TV screens to  
13 project the image, I will hold them up and ask you  
14 to explain kind of what we are seeing in State's  
15 admitted 1, what is this a photograph of?

16 A. That's Marscel when he was admitted to the  
17 hospital.

18 You can see that he has a neck collar and  
19 other medical devices around him.

20 Q. Do you see any injuries in this photograph,  
21 injury to Marscel?

22 A. On his lips there is a little bit of small  
23 lesions, and basically little cuts and whatnot, and  
24 then also an abrasion to part of the skin. The top  
25 layer of the skin is removed from the left top of

1 his forehead.

2 Q. Showing you State's Exhibit Number 2, what's  
3 that a photograph of?

4 A. That's a more close and focused picture of  
5 that left forehead, which shows an abrasion to the  
6 top layer of skin removed.

7 Q. All right.

8 Showing you State's admitted Number 3,  
9 what's that a photograph of?

10 A. He is intubated. You can see the  
11 endotracheal tube that the machine uses to ventilate  
12 him.

13 Additionally underneath his chin there  
14 appears to be injury as well.

15 Q. What kind of injury do you see?

16 A. It appears to be a laceration.

17 Q. Was there some evidence -- or in a review of  
18 the medical records that this child may have fallen  
19 in a bathtub?

20 A. That was the history reported from the  
21 emergency department.

22 Q. And that the child landed on his chin?

23 A. Yes.

24 Q. Is it consistent with someone hitting their  
25 chin on the bathtub?

1 A. Yes.

2 Q. What about the other injuries, could all of  
3 those injuries be caused by a fall in the bathtub?

4 A. With one fall that wouldn't be consistent.

5 Q. Why?

6 A. The injury severity one speaks to not  
7 necessarily a fall from just a standard child  
8 height, 5-year-old height.

9 Additionally there are multiple planes of  
10 the body. So, again, a simple fall doesn't injury  
11 all the areas of front back, left right, all of  
12 that.

13 Another factor is the patterns that we see  
14 again don't fit the pattern of a fall in the  
15 bathtub.

16 Kids fall in bathtubs all of the time.  
17 There is fairly good recorded history of the natural  
18 course of a fall in the bathtub.

19 Again, it is not at all consistent with a  
20 fall in the bathtub?

21 Q. Showing you State's admitted Number 4,  
22 what's that a photograph of?

23 A. So this is Marscel's upper left arm, just  
24 below the shoulder.

25 As well you can see the kind of left side of

1 his chest, and the chest right underneath his  
2 armpit, or axilla, and those areas have what we  
3 talked about before, injuries that have a very  
4 straight lines to them appear to have pattern  
5 injury.

6 Q. Would these injuries to the child's left  
7 upper arm, would they be consistent with some type  
8 of instrument, whether it be an electrical cord or a  
9 belt?

10 A. Potentially.

11 Q. Then showing you State's admitted Number 5,  
12 what's that a photograph of?

13 A. This is his chest. We are again looking at  
14 it from the perspective of the left side, so you can  
15 see that injury we saw in Exhibit 4 of the chest.

16 And then furthermore on the chest you can  
17 see more linear pattern injuries, bruising as well  
18 as some of the medical intervention, the EKG leads  
19 that he has.

20 Q. The injuries with the linear marks, are they  
21 consistent with a belt?

22 A. They could be.

23 Q. From an electrical cord?

24 A. Yes.

25 Q. Is it abusive in nature?

1 A. Yes.

2 MR. PAREDES: Objection. That's lacks  
3 foundation.

4 THE COURT: And I am going to sustain that  
5 one.

6 We had some testimony that took that into  
7 consideration. Kind of delve into that a little  
8 more.

9 I will sustain that.

10 Q. When diagnosing the child, looking at  
11 injuries and such, is there a diagnosis of child-  
12 abuse?

13 A. Yes.

14 Q. Is that recognized in the medical community  
15 as a valid medical diagnosis?

16 A. Yes.

17 Q. And when rendering that diagnosis, do you  
18 look at the injuries you have to a child?

19 A. Yes.

20 Q. Do you look at what the injuries look like?

21 A. Yes.

22 Q. And particularly the patterns of the  
23 injuries?

24 A. Yes.

25 Q. And taking all of that into consideration

1 and determining whether or not it is consistent with  
2 non-accidental trauma?

3 A. Yes.

4 Q. And in looking at State's admitted Number 5,  
5 the injuries depicted in this photograph do they  
6 appear to be injuries of a non-accidental nature?

7 A. Yes.

8 MR. PAREDES: I am going to object to that as  
9 lacking foundation.

10 And it sounds like we are going for a legal  
11 conclusion.

12 THE COURT: She said do they appear. It was  
13 qualified as does it appear to be a non-accidental.

14 So we are still not reaching to the legal  
15 conclusion that I sustained earlier.

16 I will allow that. I will caution you,  
17 Ms. Rinetti, don't step over the line.

18 Q. Is it fair to say that there is also  
19 multiple linear marks on this child's chest?

20 A. Yes.

21 Q. Is that consistent with a belt or an  
22 electrical cord?

23 A. Yes.

24 Q. Showing you State's admitted Number 6, what  
25 are we seeing in this photograph?



1       A.   So again we are seeing kind of his chest and  
2 coming down to the abdomen, the top part of the  
3 abdomen where we continue to see similar marks and  
4 some of the same ones we saw in the other pictures.

5       Q.   Are we seeing the same similar abrasions,  
6 contusions and lacerations of a linear nature or of  
7 a pattern nature?

8       A.   Yes.

9       Q.   Would it be consistent with an object such  
10 as a belt or an electrical cord striking the child's  
11 chest?

12      A.   Yes.

13      Q.   Is it fair to say there's multiple pattern  
14 injuries depicted in this photograph?

15      A.   Yes.

16      Q.   Now the injuries that we see in 5 and 6 that  
17 are on the child's chest, these linear pattern  
18 marks, could these be from medical intervention?

19      A.   There aren't any.   The only ones we see  
20 typically with medical intervention would be the  
21 pads that we use for shocking a child, sometimes  
22 those can injure the skin around.

23           That is not consistent with that.   The EKG  
24 leads are already there, so there doesn't appear to  
25 be any medical intervention.

1       Q.   Showing you State's admitted Number 7,  
2 what's is that a photograph of?

3       A.   That is now looking at Marscel from the  
4 right side, at the -- all the way to the right is  
5 his abdomen.

6           And then going up through the chest, you can  
7 see the top where the armpit is over by the ruler  
8 section.

9           Additionally we have now again lacerations.  
10 We have a breakdown of the skin itself, and they are  
11 of a linear and a curved pattern that we can see.

12          And he has a small scar on his chest near  
13 the top of the ruler.

14       Q.   Are these linear marks consistent with a  
15 belt or an electrical cord striking this child?

16       A.   Potentially, yes.

17       Q.   Showing you State's admitted 8, what's this  
18 a photograph of?

19       A.   So the right side of his upper chest, under  
20 his armpit area, as well as his upper right arm.

21          And then additionally there are some curved  
22 linear, as well as curved bruises and marks.

23       Q.   Are these injuries consistent with an object  
24 such as a belt or an electrical cord striking this  
25 child?

1       A.   Potentially, yes.

2       Q.   Showing you State's admitted Number 9,  
3 what's that a photograph of?

4       A.   I think we are on his left chest and upper  
5 abdomen area.

6               So that too shows one on the far left is  
7 more of an abrasive type injury.

8               There is a layer of skin that's been  
9 removed, and that's why it has that pink, lighter  
10 appearance than his normal pigmentation.

11              Then additionally there is a looped  
12 laceration kind of above that with a surrounding  
13 contusion that appears linear in nature.

14       Q.   The injures depicted in State's 9, are they  
15 consistent with an object such as an electrical cord  
16 or a belt striking this child?

17       A.   Yes.

18       Q.   Showing State's admitted Number 10, what is  
19 this a photograph of?

20       A.   That's the inner thigh of Marscel's right  
21 leg.

22              Again it shows that there is a curved  
23 laceration with further damage of the skin below  
24 that, and then some faint marks closer towards the  
25 knee that appear linear in nature.

1 Q. Consistent with a belt or an electrical cord  
2 striking this child?

3 A. Yes.

4 Q. Showing you State's admitted Number 11, what  
5 is this a photograph of?

6 A. This is his torso, his abdomen, his chest,  
7 and we can see his upper legs as well as his  
8 shoulders.

9 What happened when he was admitted and the  
10 abdominal injury concern is that you continue to  
11 have swelling and can have some major compromise of  
12 the organ systems.

13 So what was done is he was opened up by the  
14 surgeons, and all of the intestines and the area  
15 the pancreas organs were explored.

16 And then the actual surgery site was left  
17 open to accommodate for the severity of the injury.

18 So that kind of plastic and purplish look to  
19 it, that's the operative site that's left open, and  
20 just protected with that kind of material in order  
21 for the environment not to cause infection, or cause  
22 any further problems.

23 Q. Now, when we looked at State's admitted 1  
24 through 10, you mentioned a bunch of linear type  
25 patterns, abrasions, lacerations, consistent with a

1 belt or an electrical cord, is it fair to say these  
2 injuries were over multiple planes of the body?

3 A. Yes.

4 Q. What does that mean?

5 A. We are not 2 dimensional, we are 3  
6 dimensional. We have a front, a back, and we have  
7 in between legs, in between arms. We have right  
8 side, left side.

9 And even if you looked at your arm, it is  
10 curved, so this can coming around to the other side  
11 would be a different plane. Essentially it is just  
12 a different surface of the body.

13 Q. So looking at the totality of the injuries  
14 to Marscel's external part, is it fair to say this  
15 child was struck more than once with some type of  
16 object?

17 A. Yes.

18 Q. Is there anyway to date a bruise, a  
19 laceration or an abrasion?

20 A. Not with any narrow dating technique, no.

21 Q. Okay.

22 So is it fair to say that these bruises  
23 could be a day old or weeks old?

24 A. Probably not weeks old. The way injuries  
25 form, when you have break in the skin, and then we

1 have scabs, there is a variety of things of that  
2 happen in a certain pattern.

3 Then finally we have maybe a scar, healing  
4 of the tissue. The fact that lot of it was still in  
5 the stages of developing scabs or still kind of  
6 oozing, and in that healing process, it would  
7 probably be less than several weeks old.

8 At that point I would anticipate a lot more  
9 healing.

10 MS. RINETTI: Okay.

11 Thank you so much.

12 I will pass the witness at this time.

13 THE COURT: Cross.

14  
15 CROSS-EXAMINATION

16  
17 BY MR. PAREDES:

18 Q. It is important when you make a diagnosis to  
19 interview the patient.

20 Is that fair to say?

21 A. Most of my patients aren't verbal, so not  
22 necessarily, no.

23 Q. Most of your patients are not verbal?

24 A. They are children.

25 Q. Because they are children, one of the steps

1 you might do is ask them what happened.

2 Right?

3 A. For some children I suppose, but it is not a  
4 major factor, no.

5 Q. In the course of reviewing the medical  
6 records, did you see anybody reporting they asked  
7 the child what happened?

8 A. I don't believe so. I am not sure.

9 Q. So you don't believe so, you don't believe  
10 that anybody asked the child what happened?

11 A. I don't recall seeing it in the medical  
12 records, a documentation of that.

13 Q. So if the child said --

14 MS. RINETTI: Objection.

15 Speculation.

16 I guess I apologize. I will let her answer  
17 the question.

18 THE COURT: What?

19 MS. RINETTI: I will withdraw the question.

20 Q. Giving an hypothetical, I imagine you are  
21 reviewing the medical records and you see if the  
22 child said I had been abused, wouldn't that stand  
23 out in your mind when you are making a determination  
24 about abuse?

25 A. Absolutely.

1 Q. In this case that doesn't stand out in your  
2 mind, fair to say?

3 A. Yes.

4 Q. You said some of these injuries are  
5 consistent with -- well, strike that.

6 The leg injury you said was potentially  
7 consistent with playing soccer or injuring yourself  
8 playing soccer.

9 Is that fair to say?

10 A. It could be, yes.

11 Q. When someone breaks a leg, the fibula in  
12 this case, when they say it is a nonspecific  
13 fracture, what does that mean?

14 A. You probably have to ask that radiologist  
15 what that person means.

16 Most radiologists would specify. In this  
17 situation, having reviewed the films, it appears --  
18 kids bones are bendy, they are malleable, so they  
19 can have these fractures, which we don't  
20 traditionally consider as like broken edges.

21 It appears, yes, a fracture has occurred  
22 here, but I can say if it was longitudinal or  
23 transverse.

24 That's what I believe that that means after  
25 looking at the films as well.



1 Q. So it is fair to say when a child breaks  
2 their leg, that might look different than when an  
3 adult breaks their leg?

4 A. Absolutely.

5 Q. On a child's break, is it fair to say -- is  
6 it possible that a child can break their leg, and  
7 keep playing on it and injury it further?

8 A. It depends on the fracture. There are some  
9 fractures that that can happen, adults, a child  
10 anybody.

11 In injuring it further, not necessarily. It  
12 may have further steps down the road of the  
13 evolution of the injury, so more swelling  
14 potentially, but create more pieces of the bone, and  
15 things like that.

16 That's not that they -- that wouldn't be  
17 really possible.

18 Q. Like for instance, say is it possible that  
19 the tibia in this case had a nonspecific fracture?

20 A. Perhaps.

21 Q. That became a big specific fracture after a  
22 secondary injury?

23 A. No.

24 Q. The first injury that created this problem  
25 or weakness, then a second injury that really

1 shattered it.

2 Is that possible?

3 A. Not in the nature of this type of fracture.

4 Q. So you would agree with me that science is  
5 based on observation, right?

6 A. I guess in a broad sense, fair enough.

7 Q. That's how way knows things, right?

8 A. Sure.

9 Q. So we come up with a hypothesis of how  
10 things work and use tests to see if we can observe  
11 that phenomena.

12 Right?

13 A. Many times, yes.

14 Q. And you testified to some things that you  
15 didn't observe in this case.

16 Is that fair to say?

17 A. Yes.

18 Q. And, so, for instance, I think you said one  
19 of the injuries was consistent with an injury from  
20 an extension cord?

21 A. An implement such as an extension cord or a  
22 belt, but an implement.

23 Q. I doubt that you have seen an extension cord  
24 strike a child and watched the injury appear, is  
25 that fair to say?

1       A. I have seen nanny-cam videos, and I  
2 have seen actual injuries occur and have seen  
3 the aftermath of it, so I guess it is not  
4 fair to say.

5       Q. You are aware of something called  
6 confirmation bias, right?

7       A. What do you mean, research or in  
8 observation?

9       Q. In research or observation, would you  
10 agree with that?

11      A. Yes.

12      Q. Wouldn't you agree with that?

13      A. Yes.

14      Q. So in something that looks like an  
15 extension cord to you, because you have had  
16 that nanny-cam experience, it might just be a  
17 scratch, is that fair to say?

18      A. No.

19           MR. PAREDES: Can I have State's  
20 Exhibit Number 7?

21           THE COURT: Yes.

22      Q. You are aware of the shaken baby  
23 syndrome?

24      A. Yes.

25      Q. This isn't a shaking case?

1           THE COURT: I understand where he is going.  
2 I will give you latitude.

3           Go on.

4           Q. You are aware that that's been called in  
5 question, right?

6           A. It has to be more specific. If there are  
7 photographs that come up.

8           Q. Nobody has ever seen a baby get shaken and  
9 exhibit those injuries.

10          Right?

11          A. That is an argument that some people make.

12          Q. The other argument is that even though  
13 doctors and physicians have come up with this  
14 theory, it doesn't comport with how the baby's neck  
15 works.

16          Is that fair to say?

17          A. Not based on responsible literature that I  
18 have reviewed.

19          Q. You would agree with me that there are some  
20 convictions that are coming into question because of  
21 this science.

22          Fair?

23          MS. RINETTI: I object.

24          Relevance.

25          THE COURT: That I will sustain.

1           Go on.

2           Q.   Sometimes doctors come up with an hypothesis  
3 of the mechanisms of injuries, and they are wrong,  
4 is that right?

5           A.   Yes.

6           Q.   And shaken baby is a controversy one now?

7           A.   Yes, in the legal arena.

8           Q.   In order to cause the shaken baby syndrome  
9 that you see in a car accident, you would also have  
10 to some neck injury to the baby, is that argument?

11          A.   That is an argument.

12          Q.   I am going to show you State's Exhibit 7,  
13 and you identified that.

14               What I believe the State asked you is if  
15 that is consistent with an extension cord.

16          A.   The way I understood the question was an  
17 object such as an extension cord or a belt, I said,  
18 yes, potentially.

19          Q.   Isn't that also consistent with a scratch?

20          A.   It could be potentially, just that one, yes.

21          Q.   Which one?

22          A.   This linear one, potentially some.

23          Q.   Pretty much all of them.

24               Fair to say?

25          A.   No, the nature of some of these injuries are

1 more internal, not scratching.

2 Q. I guess I will point you to these 4, the one  
3 on the child's right arm, or is that the left?

4 A. That's the right arm, Yes.

5 Q. I will point you to this one.

6 A. Yes.

7 Q. The right arm, I believe?

8 A. Yes.

9 Q. This one which is the left center chest?

10 A. Yes.

11 Q. These 2 that are on the lower right  
12 abdomen --

13 A. Um-hum.

14 Q. -- all of those are consistent with  
15 scratching, fair to say?

16 A. I do see scab formation on these 2 lower  
17 ones, but not on these 2.

18 So I am not sure that would be fair to say  
19 for all of them, no.

20 Q. You don't see scab formation?

21 A. I said on these 2 I do.

22 THE COURT: So, for the record on the marks  
23 that are depicted in the lower abdomen area on  
24 State's Exhibit 1, those are the areas that Dr. Cetl  
25 has been identifying as there is some scab

1 formation, but the marks that are in the upper  
2 abdomen and arm portion of State's Exhibit 1, she's  
3 noting that she does not see any scabbing formation.

4 Q. The ones that you don't see scabbing  
5 formation, we identified have those are consistent  
6 with scratches.

7 True?

8 A. A scratch by definite would have interrupted  
9 the surface of the skin.

10 Q. True or false?

11 A. I was asked to tell the truth, not true or  
12 false.

13 Q. You can say I don't know.

14 A. False.

15 Q. Because a scratch doesn't have to break the  
16 skin, is that true?

17 A. I guess grossly looking at it potentially,  
18 no, it doesn't have to break the skin.

19 Q. So therefore these are possibly scratches,  
20 right?

21 A. Low possibility, but yes.

22 Q. Okay.

23 Did you ever have an opportunity to  
24 interview Marscel in this case?

25 A. I did not.

1 Q. Is everything that you are testifying from  
2 the medical records?

3 A. The medical records.

4 Imaging.

5 The laboratory.

6 As well as the photo documentation.

7 Q. Did you ever read any of the police reports  
8 in this case?

9 A. I don't recall. I may have. I did talk to  
10 law enforcement and CPS to understand histories that  
11 were given. I don't recall if I looked at a police  
12 report.

13 Q. When did you talk to law enforcement in this  
14 case?

15 A. I don't recall the exact date.

16 Q. Do you remember when you became involved in  
17 this case?

18 A. It would have been in around the October  
19 time frame.

20 Q. Now, some of the conclusions you have made,  
21 you didn't seem totally sure, is that fair to say.

22 Maybe I should be more specific. The  
23 question about the enzymes and getting a timeline,  
24 you sounded like you had some existing questions  
25 that you wanted to answer before you could come to a



1 full conclusion.

2 Is that fair to say?

3 A. No.

4 Q. For instance, my note doesn't -- are you  
5 saying they did a full panel of enzymes, and you can  
6 tell what the time frame was for the injury to the  
7 pancreas?

8 A. Okay.

9 They did a full panel. I feel comfortable  
10 with the evaluation done.

11 I have no further questions, but the science  
12 behind the exact timing, based on enzymes is not to  
13 a standard that I would be able to narrow down the  
14 timing.

15 That's where the question comes into play.

16 Q. There is questions about the underlying  
17 science, is that a fair restatement of what you  
18 said?

19 A. No.

20 MS. RINETTI: Objection.

21 THE COURT: She answered.

22 Q. I was asking.

23 If I am wrong, tell me.

24 A. You are wrong.

25 Q. I am not a doctor.

1       A.   The science is not in question.

2               Everybody is different.  It is very  
3 individual how they arise.  We know generally  
4 trends.

5       Q.   Isn't that one of the principles of medicine  
6 that everybody is an individual?

7       A.   Yes.

8       Q.   Some children have a higher tolerance for  
9 pain?

10      A.   Some may, yes.

11      Q.   Some children may not exhibit classic signs  
12 of this pancreas injury right away.

13               Right?

14      A.   Fair.

15               MR. PAREDES:  I pass the witness, Your Honor.

16               THE COURT:  Any redirect?

17               MS. RINETTI:  Briefly.

18               Can I have the photographs?

19  
20                       REDIRECT EXAMINATION

21  
22       BY MS. RINETTI:

23      Q.   Mr. Paredes asked you about liver enzymes.

24               THE COURT:  Pancreas.

25      A.   It is both.

1 Q. Pancreas.

2 You mentioned that as far as the time frame  
3 of when you look at enzymes, you look at the  
4 different test results that there is a, let's say a  
5 potential time frame, but you can't narrow it down  
6 to an exact date.

7 Is that fair to say?

8 A. Fair.

9 Q. And showing you 4, 5, 6, 7, 8, 9, is it fair  
10 to say there is numerous abrasions, contusions and  
11 lacerations?

12 A. Yes.

13 Q. And that a majority of these injuries  
14 depicted in these photographs are inconsistent with  
15 a simple scratch mark?

16 A. Yes.

17 MS. RINETTI: Thank you.

18 Nothing further.

19 MR. PAREDES: Can you leave those?

20 MS. RINETTI: Yes.

21  
22 RECROSS-EXAMINATION

23  
24 BY MR. PAREDES:

25 Q. All right.

1           She asked you if a majority of these were  
2 inconsistent with a simple scratch mark; do you  
3 remember that question?

4           A.    Yes.

5           Q.    You obviously didn't count them, right?

6           A.    Not at this moment.

7           Q.    So you don't know if a majority were scratch  
8 marks.

9           Right?

10          A.    I think I can estimate majority, minority.  
11 It is based on size.

12          Q.    Based on size.

13                For instance on Exhibit 6, we are looking at  
14 the -- is that a different angle of the photo we  
15 were looking at earlier?

16          A.    Yeah, we are looking at now the left side of  
17 the body, the left nipple, armpit and neck here.

18          Q.    Some of these marks are consistent with  
19 scratch marks.

20          Right?

21          A.    Potentially.

22                MR. PAREDES: I pass the witness, Your  
23 Honor.

24                THE COURT: Anything further?

25                MS. RINETTI: No.

1           THE COURT: Thank you very much for your  
2 time and your testimony.

3           You may step down and be excused.

4           Don't discuss your testimony with anyone  
5 during the pendency of the case, unless it is a of  
6 representative of Mr. Mueller's firm or from the  
7 District Attorneys office.

8           They will identify themselves appropriately.

9           Thank you for your time.

10          You are excused.

11          State, call your next witness.

12          MS. RINETTI: The final witness is Specialist  
13 Cheryl Kegley again.

14          THE COURT: You are still under oath.

15          You can take the stand.

16  
17                                 DIRECT EXAMINATION

18  
19          BY MS. RINETTI:

20          Q. You are back testifying here.

21                 I just want to foundationally indicate that  
22 in October 2, 2016, you were tasked about  
23 investigating injuries to a child by the name of  
24 Marscel Carroll?

25          A. Yes.

1 Q. That you went to University Medical Center?

2 A. Yes.

3 Q. Did have you an opportunity to interview an  
4 individual named Deshaun Lewis?

5 A. I did.

6 Q. Do you see that individual in the courtroom  
7 here today?

8 A. I do.

9 Q. Can you please point to him and describe  
10 something he is wearing?

11 A. A very shiny bow tie.

12 MS. RINETTI: May the record reflect the  
13 identification of the Defendant?

14 THE COURT: It will.

15 Q. Did you have an opportunity to interview the  
16 Defendant twice in regards to this matter?

17 A. I did.

18 Q. And your first interview, where did it take  
19 place?

20 A. At UMC Hospital.

21 Q. On October 2, 2016?

22 A. Yes.

23 Q. And was the Defendant given his Miranda  
24 rights?

25 A. Yes.

1 Q. And was he actually free to go after the  
2 interview?

3 A. Yes.

4 Q. Did Mr. Lewis, the Defendant, indicate that  
5 he lived at 8301 West Charleston, Apartment 2053?

6 A. Yes.

7 Q. Is that located here in Las Vegas, Clark  
8 County, Nevada?

9 A. Yes.

10 Q. Did he mention that he was taking care of  
11 Marscel Carroll for a period of?

12 A. Time, yes.

13 Q. Did he indicate to you at what point he  
14 started to take care of Marscel Carroll?

15 A. He advised it had been since 2015. I  
16 believe it was November 2015.

17 But he actually didn't get any legal  
18 documentation of caring for the child until 2016.

19 Q. Prior to your interview with the Defendant,  
20 have you consulted medical personnel?

21 A. Yes.

22 Q. Were you aware of the injuries prior to  
23 interviewing the Defendant?

24 A. Some of them, yes.

25 Q. And I want to first state in terms of the

1 external injuries to this child, the bruising to  
2 this child, did you have an opportunity to see the  
3 bruising to this child?

4 A. I did.

5 Q. Did have you an opportunity to speak to the  
6 Defendant regarding the bruises that were on Marscel  
7 Carroll's body?

8 A. I did.

9 Q. And what did the Defendant say?

10 A. He advised that he had caused the injuries.

11 Q. Did he indicate how he caused these  
12 injuries?

13 A. He advise that he used a belt to whoop the  
14 victim.

15 Q. In the course of the first interview, did  
16 the Defendant indicate that as a form of discipline  
17 he would whoop the child with a belt?

18 A. Yes.

19 Q. And that the number of times he would strike  
20 the child with the belt would depend on what  
21 happened, or why the child was in trouble?

22 A. He initially stated that he would strike him  
23 10 times. Then later he stated 7 or 10 times.

24 Q. Did he indicate where on the child's body he  
25 would strike the child with the belt?



1       A.   He told me he would aim for the buttocks,  
2 but that the child would move around.

3       Q.   Is it fair to say in the course of the  
4 interview he indicated that all of the bruising that  
5 was seen by medical personnel that he caused by belt  
6 marks?

7       A.   Yes.

8       Q.   From a belt?

9       A.   Yes.

10      Q.   Did he also talk regarding the internal  
11 injuries to Marscel Carroll?

12      A.   Yes.

13      Q.   Did the Defendant ever indicate that he had  
14 struck the child?

15      A.   Yes.

16      Q.   And what did the Defendant say?

17      A.   He advised that he would punch him in the  
18 chest.

19      Q.   And did he indicate to you how many times he  
20 would punch the child had in his chest?

21      A.   He estimated 2 to 3 times.

22      Q.   And did he indicate potentially when the  
23 last time he punched the child?

24      A.   Initially he said it had been 2 weeks prior,  
25 a week prior, and then ultimately he advised he had

1 struck him either the Monday or Tuesday prior to  
2 October 2.

3 Q. Did you also talk about the child's leg  
4 injury with the Defendant?

5 A. Yes.

6 Q. And did the Defendant give you any history  
7 as to how this leg injury could have occurred?

8 A. He advised the victim had been hurt at the  
9 park while he was at work, while Mr. Lewis was at  
10 work, and the child was playing soccer in the park.

11 Q. And did the Defendant indicate when this  
12 occurred, the soccer game or soccer play?

13 A. The previous day, Saturday October 1.

14 Q. Did the Defendant indicate that he was not  
15 present during this event?

16 A. Yes.

17 Q. And did the Defendant indicate that after  
18 the child had been injured playing soccer, the child  
19 was able to walk?

20 A. He advised that when he got home from work,  
21 and had contact with the child, the child was asleep  
22 in bed, and that he did not realize the child was  
23 injured until a much later time.

24 Q. Can you explain a little bit how the  
25 Defendant became aware the child was injured?

1       A.   He advised that at approximately 3:00 a.m.  
2 That the victim was grunting, and so Mr. Lewis drew  
3 him a bath, and was going to have him sit in the  
4 bathtub, and when he told him to get out of bed to  
5 go to the bathtub, he was hopping.

6       Q.   And the did Defendant indicate to you that  
7 at some point those early morning hours he took the  
8 child to UMC?

9       A.   Yes.

10      Q.   Then did you also have an opportunity to  
11 interview the Defendant for a second time?

12      A.   Yes.

13      Q.   And when did that occur?

14      A.   That occurred a couple of later to a few  
15 hours later at LVMPD headquarters.

16      Q.   Was the Defendant Mirandized?

17      A.   Yes.

18      Q.   Did the Defendant admit to punching the  
19 child in the chest?

20      A.   Yes.

21      Q.   Did he admit again about causing the bruises  
22 or the marks to the child's body?

23      A.   He admitted to whooping him.

24      Q.   Whooping him with a belt?

25      A.   Yes.

1 MS. RINETTI: Nothing further.

2 I will pass the witness.

3 THE COURT: Cross.

4  
5 CROSS-EXAMINATION

6  
7 BY MR. PAREDES:

8 Q. Detective, what have you reviewed prior to  
9 coming to testify?

10 A. The arrest report.

11 The photos.

12 And the interviews with Mr. Lewis.

13 Q. Did you interview the child ever in this  
14 case?

15 A. I attempted to interview the child when he  
16 became responsive again, and he was very difficult.

17 Q. When you say difficult, what do you mean?

18 A. He referred to me with profanities and would  
19 not answer questions. He refused to answer  
20 questions.

21 Q. Was that on or about October 2?

22 A. No. He did not become responsive again for  
23 several days.

24 Q. Have you tried since that time to interview  
25 him?

1 A. No.

2 Q. Did you interview any other lay witnesses in  
3 this case?

4 A. I interviewed the victim's mother biological  
5 mother, and interviewed I want to say her roommate,  
6 but I am not quite sure if she was her roommate.

7 She was a friend that had contact with the  
8 victim approximately a week prior to this incident.

9 Q. And you are aware that Marscel was -- that  
10 other people had access to Marscel.

11 Correct?

12 A. Yes.

13 Q. You have never interviewed those other  
14 people, true?

15 A. No. I actually asked those other people to  
16 interview with me, the people that had contact with  
17 Marscel the previous day, and they advised they did  
18 not want to interview, because they didn't have any  
19 information to provide to me.

20 Q. Did you tape those interactions in anyway?

21 A. No.

22 Q. Did you make any notes of those interactions  
23 in anyway?

24 A. I am not sure.

25 I know I wrote their names and vital

1 information down, such as date of birth, Social  
2 Security number, contact information.

3 Q. And is everything you are saying that  
4 Deshaun Lewis said to you contained within the  
5 interviews that were taped?

6 A. Yes.

7 Q. So I want to ask you about this punching  
8 stuff.

9 Can you describe -- did Deshaun show you how  
10 you punched the child?

11 A. Yes. He demonstrated a punching motion like  
12 this.

13 Q. Like this?

14 A. Yes.

15 Q. That he had a forward straight right hand  
16 with the hand supinated?

17 A. I am not sure if it was his right-side or  
18 his left-hand, but I recall in my initial interview  
19 he demonstrated a forward punching motion.

20 Q. And is it your testimony under oath that he  
21 didn't demonstrate a back-handed motion?

22 A. I don't recall him demonstrating a  
23 back-handed motion.

24 I specifically said to him a punching  
25 motion, you are demonstrating a punching motion, and

1 he said yes.

2 Q. You used the term punching motion, right,  
3 not him?

4 A. I believe I initially did, yes, because he  
5 was demonstrating with his hand when he was -- when  
6 we were discussing it.

7 Q. And so how long have you been a detective?

8 A. I have been and abuse neglect specialist for  
9 almost 12 years.

10 Q. You have taken a number of classes on  
11 interrogations, right?

12 A. Not a lot.

13 Q. How many would you estimate, if you had to?

14 A. Probably 2.

15 Q. And one of those was with the Reid  
16 technique?

17 A. Yes. I have been trained in the Reid  
18 technique.

19 Q. That's a technique that gets people to  
20 confess, isn't it?

21 A. Yes.

22 Q. And innocent people confess using that,  
23 isn't that true?

24 MS. RINETTI: Objection.

25 Relevance.

1 THE COURT: Sustained.

2 Q. Isn't it true that technique has been called  
3 into question?

4 THE COURT: Be careful on that line.

5 Ask your next question.

6 Q. The Reid technique is a controversial  
7 technique, isn't that true?

8 A. I understand it can be, yes. I don't use  
9 the Reid technique.

10 Q. And so, is it correct that October 2 was a  
11 Sunday?

12 Q. And is it also correct that Deshaun said  
13 some of these injuries happened on Monday or  
14 Tuesday?

15 A. He didn't tell me when the injuries  
16 happened. He told me when he struck the victim.

17 Q. Which would have been a Monday or Tuesday,  
18 right?

19 A. Yes. He couldn't remember which date.

20 Q. You would agree with me that if he made a  
21 back-handed motion, that's not a punch.

22 Correct?

23 A. Correct.

24 Q. If we pulled up the video and it showed a  
25 back-handed motion, that wouldn't be a punch?



1       A.   There is no video to the first interview.  
2   There is only video to the second interview.

3           The first interview as at the point where we  
4   were still at UMC Hospital.  He was demonstrating  
5   the punching motion.

6       Q.   Do you know why there is no video to the  
7   first interview?

8       A.   I just explained it to you.

9       Q.   Why?

10      A.   Because it was at UMC Hospital.  I don't  
11   have a video camera at UMC Hospital.

12           The second interview was video taped.  It  
13   was conducted at my office, where there is video.

14      Q.   And you would agree with me that he was  
15   cooperative?

16      A.   Absolutely.

17      Q.   He was amazingly cooperative?

18      A.   Absolutely.

19      Q.   Did you ever try and interview anybody that  
20   might have seen the soccer accident?

21      A.   No.  I didn't charge him with the soccer  
22   incident.

23           I didn't charge him for the tibia fracture.

24      Q.   That was because you found what he said to  
25   be correct?

1 A. I believed him, yes.

2 Q. And you spoke with the doctors, right?

3 A. Yes.

4 Q. So the doctors said that was consistent,  
5 right?

6 A. I didn't ask the doctors about the tibia  
7 fracture.

8 Q. You told him you were going to ask the  
9 doctor about the tibia fracture.

10 Right?

11 A. I did.

12 Q. If it checked out, he would be okay.

13 Right?

14 A. I don't recall saying that, but I may have.

15 Q. Are you the only detective working on the  
16 case?

17 A. Myself.

18 Detective Enrique Hernandez.

19 And Sergeant Troyce Crew were involved in  
20 the investigation.

21 Q. Are you aware whether they interviewed  
22 Marscel?

23 A. I know they have not.

24 Q. Do you know whether they interviewed any of  
25 the other roommates in this case?

1       A. I know they spoke with other roommates when  
2 we were present at the residence on the date of  
3 October 12.

4       Q. Is it fair to say that you are not aware of  
5 whether or not there is any documentation about  
6 those interactions?

7       A. I am pretty certain there is not any  
8 documentation from them.

9               I was the lead investigator on the case. So  
10 had they had any documentation regarding those  
11 interactions, they would have provided that to me  
12 for my case file.

13              I do not have any documentation from them.

14       Q. And to be clear, is it your testimony that  
15 Deshaun is saying he used a belt on the behind of  
16 the child?

17       A. I believe said he aims for the buttocks, but  
18 the child moves.

19       Q. That's not illegal, right?

20              MS. RINETTI: Objection to the legal  
21 conclusion.

22              THE COURT: Sustained.

23       Q. People are allowed to discipline their  
24 children, isn't that true?

25       A. That's correct.

1 Q. They are allowed to do it with a belt?

2 A. It doesn't specifically say that in the NRS.

3 Q. It doesn't say either way, correct?

4 A. Right.

5 Q. So it is possible that what Deshaun is  
6 saying is true, isn't that true?

7 MS. RINETTI: Objection.

8 Speculation, the whole gambit.

9 THE COURT: Sustained.

10 Q. You haven't ruled out what he is saying is  
11 true, right?

12 MS. RINETTI: Objection.

13 Clarification.

14 Vague.

15 Ambiguous.

16 THE COURT: Sustained.

17 Q. Did you ever take any steps to see if  
18 Deshaun was telling the truth as part of your  
19 investigation?

20 A. I believed him when he admitted that he  
21 caused the injuries.

22 I believed him.

23 Q. Did you ever take any -- he didn't admit  
24 that he caused the pancreas injury.

25 Right?

1       A. I asked him if he believed he had caused the  
2 injury in his second interview, in the video and  
3 audio-taped interview, and he said yes.

4       Q. But you didn't take any steps to investigate  
5 the possibility that the child was injured on the  
6 soccer field.

7             Right?

8       A. No, I didn't.

9       Q. And you didn't any more steps other than  
10 asking the other potential witnesses, you didn't  
11 take any or steps to find out if possibly they  
12 caused those injuries to the child.

13            Right?

14       A. I asked them to interview, and they said  
15 they didn't know anything about the child's  
16 injuries.

17            They were asleep when the child was injured,  
18 and they did not care to interview with me.

19       Q. Those are the only -- you didn't take any  
20 other steps other than asking those questions,  
21 right?

22       A. Asking which questions?

23       Q. Asking the questions of the other potential  
24 witnesses that you just testified to.

25       A. Yes. I asked them to interview with me, and

1 they said they did not know anything about how the  
2 child was injured.

3 Q. Did you ever talk to the doctors about the  
4 timeline in this case?

5 A. I talked to Dr. Bernette about the injuries,  
6 the internal injuries, and he advised that he  
7 believed they were acute, that the child would not  
8 have been able to withstand --

9 MR. PAREDES: I object to this as  
10 non-responsive, Your Honor.

11 Q. Did you ever talk to the doctors --

12 THE COURT: She just answered your question.  
13 She told you which doctor she talked to, and the  
14 doctor said they felt they were acute.

15 That is literally a timeline. It is acute,  
16 and she was answering your question.

17 MR. PAREDES: I wasn't asking for any  
18 statements from the doctors is what I am objecting  
19 to.

20 THE COURT: Well, you asked the question --

21 MR. PAREDES: Which was did you talk to them.  
22 Not what did they say.

23 THE COURT: If you are going to ask the  
24 question, you have got to know that you opened the  
25 door to an answer, so I am not going to strike it.

1           Ask your next question.

2           Q.   Isn't it true that the child was admitted on  
3 Sunday, October 2.

4           Right?

5           A.   Yes.

6           Q.   And you believed Deshaun when he said that  
7 this striking motion happened on the prior Monday or  
8 Tuesday, correct?

9           MS. RINETTI: Objection about believing the  
10 Defendant's vouching.

11          THE COURT:   You can't do the witness  
12 vouching questions.

13          Mr. Paredes, you know this.   You know you  
14 can't ask the witness vouching questions.

15          Ask another question.

16          Q.   The alleged strike to the child happened on  
17 Monday or Tuesday.

18          Right?

19          A.   According to Mr. Lewis, yes.

20          Q.   And that would be inconsistent with a  
21 pancreas injury.   Isn't that true per your  
22 conversations with the doctor?

23          MS. RINETTI:   Objection.

24          Foundation.

25          Asking her what can cause the injuries.

1 She's not a medical doctor.

2 THE COURT: Are you asking based upon the  
3 timeline.

4 Maybe rephrase the question.

5 I think I know what you are trying to ask.  
6 I don't think it is really articulated well.  
7 Rephrase.

8 Q. That would be inconsistent with a pancreas  
9 injury per your conversation and the timeline you  
10 received from the doctor.

11 Isn't that true?

12 A. Are you talking about the Monday, Tuesday  
13 timeline or when the child became symptomatic?

14 Q. The Monday, Tuesday timeline.

15 A. I can't say for certain.

16 I didn't get a specific amount of time as  
17 far as what days or hours it would take for the  
18 victim to become symptomatic.

19 Q. So you are unaware as to whether the child  
20 would become immediately symptomatic from such an  
21 injury to his pancreas.

22 Is that true?

23 MS. RINETTI: Objection.

24 THE COURT: Overruled.

25 She can answer.



1 A. I am so sorry, can you repeat the question?

2 Q. You are unaware as to whether the child  
3 would become immediately symptomatic with such an  
4 injury to his pancreas.

5 Isn't that true?

6 A. In my experience of abdominal injuries, I  
7 have been advised by medical staff that a child  
8 would usually become symptomatic within 12 hours of  
9 receiving an abdominal injury as significant as what  
10 Marscel's was.

11 Q. There were also other children that lived  
12 with Marscel.

13 Isn't that true?

14 A. Yes.

15 Q. Did you make any attempts to interview those  
16 children?

17 A. They were too young to be interviewed.

18 Q. Wasn't one of them 7 years old?

19 A. That child didn't live there. They only  
20 visited on the weekends.

21 The children that lived there I believe were  
22 10 months and 2 years old.

23 Q. The child that lived there on the weekends,  
24 did you make any attempt to interview that child?

25 A. No.

1 MR. PAREDES: I pass the witness, Your  
2 Honor.

3 THE COURT: Any redirect?

4 MS. RINETTI: No.

5 THE COURT: Thank you for your time and  
6 testimony.

7 You step down.

8 You may be excused.

9 Don't discuss your testimony with anybody  
10 during the pendency of the case unless it is  
11 somebody from the District Attorneys office or  
12 Mr. Mueller's office.

13 Thank you for your time.

14 You are excused.

15 Thank you.

16 State, any further witnesses?

17 MS. RINETTI: No.

18 THE COURT: The State rests?

19 MS. RINETTI: Yes.

20 THE COURT: So, any witnesses or evidence on  
21 behalf of defense today?

22 MR. PAREDES: No, Your Honor.

23 THE COURT: You had a discussion with  
24 Mr. Lewis about his right to testify, and he is  
25 following your advice?

1 MR. PAREDES: We have.

2 THE COURT: Is that correct, Mr. Lewis?

3 THE DEFENDANT: Yes.

4 THE COURT: The defense rests?

5 MR. PAREDES: Yes.

6 THE COURT: State.

7 THE DEFENDANT: Reserve for rebuttal.

8 THE COURT: You are up for argument,  
9 defense.

10 MR. PAREDES: Well, Your Honor, I think,  
11 although the burden, that these are really slight  
12 call hearings, there is probable needed, but I think  
13 they still need to tie the injuries of child in a  
14 consistent manner with my client.

15 And the timeline that the doctor said to the  
16 symptoms for the pancreas don't match up with what  
17 my client allegedly said to the detective.

18 Given that, and given the doctor's admission  
19 that at least the leg certainly could have been  
20 caused by a soccer injury, and I think on cross-  
21 examination it became clear that the doctor doesn't  
22 really know whether those are belt marks or  
23 scratches.

24 So, I don't think State has met their burden  
25 on those points.

1 THE COURT: State.

2 MS. RINETTI: Judge, just for the record,  
3 counsel wanted to, regarding the pancreas injury, as  
4 well as the lung injury, Count 3 and 4, deal with  
5 the bruising.

6 The belt marks, and the whoop marks that  
7 were on the photographs, the State submits that  
8 there is more than slight or marginal evidence that  
9 the Defendant caused these injuries.

10 The Defendant wants to minimize this and say  
11 that this happened on Monday or Tuesday, and we have  
12 the confession that he punched the child 2 or 3  
13 times, and he admits that all of the bruising on  
14 this child was caused by himself.

15 He admitted to the mechanism, by whooping  
16 this child with a belt up to 7 to 10 times each time  
17 he disciplined the child.

18 I think there's more than sufficient  
19 evidence to bind the Defendant on up on all 4  
20 counts.

21 THE COURT: I do find that the State has met  
22 their burden of proof that a crime occurred, and you  
23 may have been the person that committed it.

24 There are factual issues going on, but there  
25 is sufficient proof to bind it over to the Eighth

1 Judicial District Court.

2 For those reasons, I will hold you to answer  
3 in the Eighth Judicial District Court on the charges  
4 of child-abuse, neglect or endangerment with  
5 substantial bodily harm.

6 And child-abuse, neglect or endangerment.  
7 You will appear with your attorney in the lower  
8 level Arraignment Court on the following date and  
9 time.

10 THE CLERK: August 24, 10:00 a.m., lower  
11 level District Court Arraignment.

12 THE COURT: Good luck to you.

13  
14 (Proceedings concluded.)  
15  
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19  
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23  
24  
25

## 1 REPORTER'S CERTIFICATE

2  
3 STATE OF NEVADA )

4 ) ss.

5 CLARK COUNTY )  
6  
7

8 I, Robert A. Cangemi, a certified court  
9 reporter in and for the State of Nevada, hereby  
10 certify that pursuant to NRS 239B.030 I have not  
11 included the Social Security number of any person  
12 within this document.

13 I further certify that I am not a relative  
14 or employee of any party involved in said action,  
15 nor a person financially interested in said action.  
16  
17

18 (signed) /s/ Robert A. Cangemi  
19 \_\_\_\_\_

20 ROBERT A. CANGEMI, CCR NO. 888  
21  
22  
23  
24  
25

## C E R T I F I C A T E

STATE OF NEVADA )

) ss.

CLARK COUNTY )

I, Robert A. Cangemi, CCR 888, do hereby  
certify that I reported the foregoing proceedings,  
and that the same is true and accurate as reflected  
by my original machine shorthand notes taken at said  
time and place.

(signed) /s/ Robert A. Cangemi

-----  
Robert A. Cangemi, CCR 888

Certified Court Reporter

Las Vegas, Nevada

/s/

articulated

<p>/</p> <p>/s/ (92:18)(93:16)</p> <p><b>A</b></p> <p><b>abdomen</b> (10:13)(13:18)(15:3)(15:6)(16:21)(27:21) (47:2)(47:3)(48:5)(49:5)(50:6)(60:12)(60:23)(61:2)</p> <p><b>abdominal</b> (50:10)(87:6)(87:9)</p> <p><b>ability</b> (21:8)</p> <p><b>able</b> (15:19)(16:11)(16:13)(16:14)(21:11)(21:18) (21:21)(23:24)(24:17)(25:7)(34:24)(63:13)(72:19)(84:8)</p> <p><b>abnormal</b> (11:5)</p> <p><b>above</b> (49:12)</p> <p><b>abrasion</b> (41:23)(42:5)(51:19)</p> <p><b>abrasions</b> (26:21)(29:13)(47:5)(50:25)(65:10)</p> <p><b>abrasive</b> (49:7)</p> <p><b>absolutely</b> (53:25)(55:4)(79:16)(79:18)</p> <p><b>abuse</b> (3:12)(6:11)(35:21)(36:1)(36:4)(36:7)(36:8) (53:24)(77:8)</p> <p><b>abused</b> (53:22)</p> <p><b>abusive</b> (13:10)(14:6)(22:9)(28:3)(44:25)</p> <p><b>accept</b> (3:17)</p> <p><b>access</b> (75:10)</p> <p><b>accident</b> (12:25)(59:9)(79:20)</p> <p><b>accidental</b> (13:9)(13:13)(23:10)</p> <p><b>accommodate</b> (50:17)</p> <p><b>accompanying</b> (23:14)</p> <p><b>according</b> (85:19)</p> <p><b>accurate</b> (40:5)(93:11)</p> <p><b>act</b> (13:1)</p> <p><b>action</b> (92:14)(92:15)</p> <p><b>actual</b> (32:18)(33:7)(50:16)(57:2)</p> <p><b>actually</b> (24:14)(69:1)(69:17)(75:15)</p> <p><b>acute</b> (16:17)(17:8)(24:23)(25:6)(84:7)(84:14)(84:15) added (14:2)</p> <p><b>addition</b> (25:8)(26:21)(29:6)</p> <p><b>additionally</b> (5:25)(6:13)(42:13)(43:9)(48:9)(48:21) (49:11)</p> <p><b>admission</b> (16:18)(17:6)(17:9)(20:7)(40:9)(40:16) (40:17)(89:18)</p> <p><b>admit</b> (73:18)(73:21)(82:23)</p> <p><b>admits</b> (90:13)</p> <p><b>admitted</b> (7:13)(30:22)(31:7)(33:3)(33:17)(33:25) (34:1)(36:14)(41:14)(41:15)(42:8)(43:21)(44:11)(46:4) (46:24)(48:1)(48:17)(49:2)(49:18)(50:4)(50:9)(50:23) (73:23)(82:20)(85:2)(90:15)</p> <p><b>admitting</b> (26:1)(26:9)</p> <p><b>adult</b> (55:3)</p> <p><b>adults</b> (55:9)</p> <p><b>advice</b> (88:25)</p> <p><b>advise</b> (70:13)</p> <p><b>advised</b> (69:15)(70:10)(71:17)(71:25)(72:8)(72:20) (73:1)(75:17)(84:6)(87:7)</p> 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(81:13)(82:17)(82:23)(83:4)(83:9)(83:11)(83:19)(84:17) (87:15)(87:24)(88:3)(88:16)(88:20)(92:11)(92:14)</p> <p><b>anybody</b> (34:13)(53:6)(53:10)(55:10)(79:19)(88:9)</p> <p><b>anyone</b> (67:4)</p> <p><b>anything</b> (16:20)(19:18)(25:1)(66:24)(83:15)(84:1)</p> <p><b>anyway</b> (16:6)(39:9)(51:18)(75:20)(75:23)</p> <p><b>apartment</b> (69:5)</p> <p><b>apologize</b> (18:12)(53:16)</p> <p><b>appear</b> (28:10)(29:18)(38:9)(38:25)(40:3)(40:4)(44:4) (46:6)(46:12)(46:13)(47:24)(49:25)(56:24)(91:7)</p> <p><b>appearance</b> (49:10)</p> <p><b>appearances</b> (1:18)</p> <p><b>appeared</b> (9:1)</p> <p><b>appears</b> (42:14)(42:16)(49:13)(54:17)(54:21)</p> <p><b>applied</b> (13:18)(19:25)</p> <p><b>applying</b> (23:4)</p> <p><b>apprenticeship</b> (6:10)</p> <p><b>approach</b> (25:11)(36:23)</p> <p><b>appropriately</b> (67:8)</p> <p><b>approximately</b> (7:2)(73:1)(75:8)</p> <p><b>archanian</b> (40:15)</p> <p><b>are</b> (3:16)(4:11)(5:20)(6:16)(6:19)(6:21)(9:16)(11:2) 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## articulation

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<b>W</b>	<b>X</b>
<b>walk</b> (23:24)(23:25)(24:17)(30:5)(72:19) <b>want</b> (3:15)(3:17)(4:6)(4:8)(4:18)(12:12)(30:5)(32:10)(33:1)(34:3)(34:20)(37:5)(67:21)(69:25)(75:5)(75:18)(76:7) <b>wanted</b> (62:25)(90:3) <b>wanting</b> (15:22) <b>wants</b> (4:9)(90:10) <b>was</b> (3:12)(5:6)(7:13)(7:17)(7:18)(7:20)(8:14)(8:15)(8:22)(9:7)(9:9)(9:13)(10:3)(10:4)(10:5)(10:12)(11:6)(11:8)(11:25)(12:6)(12:23)(13:4)(13:7)(14:7)(16:12)(17:2)(17:23)(18:6)(18:9)(18:13)(18:16)(18:18)(20:7)(20:12)(20:15)(20:25)(21:15)(22:6)(22:15)(24:22)(25:3)(25:5)(25:6)(27:9)(27:10)(27:22)(28:5)(29:1)(35:8)(36:13)(36:14)(37:25)(38:4)(38:13)(38:14)(38:15)(38:19)(38:24)(41:15)(42:17)(42:20)(46:12)(50:9)(50:13)(50:16)(51:15)(52:4)(54:6)(54:22)(56:19)(59:16)(61:11)(63:6)(63:22)(68:23)(69:1)(69:10)(69:16)(70:21)(71:5)(72:9)(72:10)(72:14)(72:19)(72:21)(72:22)(72:25)(73:2)(73:3)(73:5)(73:16)(74:16)(74:21)(75:6)(75:7)(75:9)(76:17)(77:5)(77:15)(78:10)(79:4)(79:10)(79:12)(79:13)(79:14)(79:17)(79:24)(80:4)(81:9)(82:18)(83:5)(83:17)(84:2)(84:16)(84:21)(85:2)(87:10)(90:14) <b>wasn't</b> (84:17)(87:18) <b>watched</b> (56:24) <b>way</b> (12:3)(23:19)(26:15)(34:11)(48:4)(51:24)(56:7)(59:16)(82:3) <b>ways</b> (10:17)(19:21) <b>weakness</b> (55:25) <b>wearing</b> (68:10) <b>week</b> (71:25)(75:8) <b>weekends</b> (87:20)(87:23) <b>weeks</b> (51:23)(51:24)(52:7)(71:24) <b>weight</b> (21:8)(21:12)(24:15) <b>well</b> (5:22)(8:8)(11:9)(14:18)(16:11)(16:14)(19:20)(26:3)(27:25)(28:7)(29:16)(42:14)(43:25)(44:17)(48:20)(48:22)(50:7)(54:5)(54:25)(62:6)(84:20)(86:6)(89:10)(90:4) <b>we'll</b> (34:16) <b>went</b> (6:7)(68:1) <b>were</b> (7:22)(12:10)(13:5)(17:1)(17:5)(17:23)(26:5)(26:18)(26:23)(26:24)(27:18)(28:2)(28:9)(36:9)(38:8)(38:24)(39:1)(41:4)(50:15)(51:2)(62:11)(66:1)(66:7)(66:15)(67:22)(69:22)(70:6)(76:5)(77:6)(79:4)(80:8)(80:19)(81:2)(83:17)(84:7)(84:14)(87:11)(87:17)(87:21)(90:7) <b>weren't</b> (4:12) <b>west</b> (69:5) <b>what</b> (6:21)(8:1)(8:3)(8:11)(8:19)(8:21)(8:22)(9:5)(9:12)(9:15)(11:6)(11:20)(11:22)(13:13)(15:14)(19:12)(20:12)(20:15)(21:4)(22:11)(26:4)(26:8)(26:11)(26:14)(26:16)(26:18)(28:22)(28:25)(29:1)(29:2)(29:5)(29:15)(29:17)(29:22)(30:7)(30:9)(30:21)(30:23)(30:24)(31:2)(31:4)(32:1)(32:9)(32:20)(34:2)(36:4)(37:25)(41:13)(41:14)(42:15)(43:2)(44:2)(45:20)(46:24)(49:18)(50:4)(50:9)(50:13)(51:4)(53:1)(53:7)(53:10)(53:18)(54:13)(54:15)(54:24)(57:7)(59:14)(63:6)(63:17)(69:13)(70:9)(70:20)(71:16)(74:8)(74:17)(79:24)(82:5)(82:10)(84:18)(84:22)(85:25)(86:5)(86:17)(87:9)(89:16) <b>whatever</b> (27:9) <b>whatnot</b> (24:25)(41:22) <b>what's</b> (8:19)(42:2)(42:9)(43:22)(44:12)(48:2)(48:17)(49:3) <b>when</b> (16:6)(16:8)(17:11)(17:13)(21:10)(21:25)(24:21)(27:14)(32:4)(33:11)(38:11)(38:24)(40:4)(41:15)(45:10)(45:17)(50:9)(50:23)(51:25)(52:18)(53:23)(54:11)(54:12)(55:1)(55:2)(62:13)(62:16)(65:3)(71:22)(72:11)(72:20)(73:4)(73:13)(74:15)(74:17)(77:5)(78:15)(78:16)(81:1)(82:20)(83:17)(85:6)(86:13) <b>where</b> (9:23)(10:3)(10:4)(13:17)(13:19)(17:3)(18:14)(18:20)(26:25)(27:10)(27:18)(28:19)(47:3)(48:7)(58:1)(63:15)(68:18)(70:24)(79:3)(79:13)	<b>x-rays</b> (20:23)(22:5) <b>Y</b>
	<b>yeah</b> (66:16) <b>yearly</b> (6:14) <b>years</b> (11:25)(12:3)(23:12)(35:25)(36:3)(77:9)(87:18)(87:22) <b>yes</b> (3:20)(6:18)(6:20)(7:1)(7:9)(7:12)(7:17)(10:8)(10:11)(10:15)(13:12)(14:5)(14:11)(14:15)(14:19)(14:22)(19:2)(19:5)(19:8)(19:11)(20:2)(20:5)(20:8)(21:3)(21:17)(21:20)(23:5)(23:8)(23:22)(23:23)(25:10)(25:16)(25:19)(29:12)(31:17)(36:16)(36:22)(37:19)(40:7)(42:23)(43:1)(44:24)(45:1)(45:13)(45:16)(45:19)(45:21)(45:24)(46:3)(46:7)(46:20)(46:23)(47:8)(47:12)

yesterday

zone

(47:15)(48:16)(49:1)(49:17)(50:3)(51:3)(51:17)(54:3)  
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 (60:10)(61:21)(64:7)(64:10)(65:12)(65:16)(65:20)(66:4)  
 (67:25)(68:2)(68:22)(68:25)(69:3)(69:6)(69:9)(69:12)  
 (69:21)(69:24)(70:18)(71:7)(71:9)(71:12)(71:15)(72:5)  
 (72:16)(73:9)(73:12)(73:17)(73:20)(73:25)(75:12)(76:6)  
 (76:11)(76:14)(77:1)(77:4)(77:17)(77:21)(78:8)(78:19)  
 (80:1)(80:3)(83:3)(83:25)(85:5)(85:19)(87:14)(88:19)  
 (89:3)(89:5)

**yesterday** (38:12)

**yet** (9:23)

**you** (3:16)(3:18)(4:3)(4:18)(5:15)(5:20)(6:2)(6:3)  
 (6:16)(6:19)(6:21)(6:23)(7:5)(7:24)(9:16)(10:1)(10:3)  
 (10:12)(10:21)(10:22)(10:25)(12:10)(12:12)(14:3)(15:2)  
 (15:18)(15:19)(15:20)(17:7)(17:11)(18:5)(18:16)(19:16)  
 (19:21)(20:9)(21:5)(21:10)(21:18)(21:21)(22:21)(23:12)  
 (23:18)(23:24)(25:12)(25:13)(25:14)(26:4)(26:25)(27:3)  
 (27:8)(28:19)(29:11)(29:22)(30:5)(30:7)(30:10)(30:25)  
 (31:3)(31:4)(31:9)(31:11)(31:12)(31:15)(31:24)(32:10)  
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 (37:15)(37:16)(37:18)(37:20)(37:23)(37:25)(38:3)(38:6)  
 (38:11)(38:15)(38:17)(38:21)(39:3)(39:8)(40:2)(40:19)  
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 (52:18)(53:1)(53:6)(53:9)(53:20)(53:21)(53:23)(54:4)  
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 (57:9)(57:12)(57:15)(57:22)(58:2)(58:4)(58:19)(59:9)  
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 (62:25)(63:4)(63:5)(63:17)(63:24)(64:23)(65:2)(65:3)  
 (65:5)(65:9)(65:17)(65:19)(66:1)(66:2)(66:5)(66:7)  
 (67:1)(67:3)(67:9)(67:10)(67:14)(67:15)(67:20)(67:22)  
 (68:1)(68:3)(68:6)(68:9)(68:15)(69:13)(69:20)(69:22)  
 (70:2)(70:5)(71:19)(72:3)(72:6)(72:24)(73:6)(73:10)  
 (74:8)(74:13)(74:17)(74:24)(75:2)(75:9)(75:13)(75:20)  
 (75:22)(76:3)(76:4)(76:7)(76:9)(76:10)(76:25)(77:2)  
 (77:7)(77:10)(77:13)(78:20)(79:6)(79:8)(79:14)(79:19)  
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 (84:11)(84:13)(84:20)(84:21)(84:23)(84:24)(85:6)  
 (85:11)(85:13)(86:2)(86:5)(86:9)(86:12)(86:19)(87:1)  
 (87:2)(87:15)(87:24)(88:5)(88:7)(88:8)(88:13)(88:14)  
 (88:15)(88:23)(89:8)(90:22)(91:2)(91:7)(91:12)

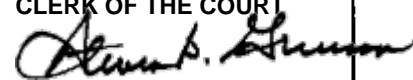
**young** (87:17)

**your** (3:19)(4:24)(5:10)(5:14)(6:2)(7:5)(7:10)(9:3)  
 (10:25)(11:10)(12:12)(15:18)(16:20)(19:16)(20:14)  
 (23:17)(23:19)(26:6)(28:13)(30:11)(30:21)(31:4)(31:18)  
 (32:1)(32:7)(32:12)(33:9)(34:13)(35:12)(37:2)(38:17)  
 (39:19)(40:21)(51:9)(52:23)(53:23)(54:1)(64:15)(66:22)  
 (67:1)(67:2)(67:4)(67:9)(67:11)(68:18)(69:19)(76:20)  
 (78:5)(81:14)(82:18)(84:10)(84:12)(84:16)(85:1)(85:21)  
 (86:9)(88:1)(88:5)(88:9)(88:13)(88:22)(88:25)(89:10)  
 (91:7)

**yourself** (54:7)

**Z**

**zone** (18:3)



INFM  
STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
DENA RINETTI  
Chief Deputy District Attorney  
Nevada Bar #9897  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

I.A. 8/24/17  
10:00 AM  
L. PAREDES

THE STATE OF NEVADA,  
Plaintiff,

CASE NO: C-17-325725-1

-vs-

DEPT NO: XIX

DESHAUN JAMES LEWIS,  
#7036167

Defendant.

INFORMATION

STATE OF NEVADA }  
COUNTY OF CLARK } ss.

STEVEN B. WOLFSON, District Attorney within and for the County of Clark, State of Nevada, in the name and by the authority of the State of Nevada, informs the Court:

That DESHAUN JAMES LEWIS, the Defendant(s) above named, having committed the crimes of **CHILD ABUSE, NEGLECT, OR ENDANGERMENT WITH SUBSTANTIAL BODILY HARM (Category B Felony - NRS 200.508(1) - NOC 55222) and CHILD ABUSE, NEGLECT, OR ENDANGERMENT (Category B Felony - NRS 200.508(1) - NOC 55226)**, on or between November 1, 2015 and October 2, 2016, within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made and provided, and against the peace and dignity of the State of Nevada,

///

///

///



1 COUNT 1 - CHILD ABUSE, NEGLECT, OR ENDANGERMENT WITH SUBSTANTIAL  
2 BODILY HARM

3 did on or between November 1, 2015 and October 2, 2016, willfully, unlawfully, and  
4 feloniously cause a child under the age of 18 years, to-wit: M.C., being approximately 5 year(s)  
5 of age, to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect,  
6 to wit: physical injury of a non-accidental nature, and/or cause M.C. to be placed in a situation  
7 where he might have suffered unjustifiable physical pain or mental suffering as a result of  
8 abuse or neglect, to wit: physical injury of a non-accidental nature, by punching and/or striking  
9 the said M.C. in the body and/or chest and/or by manner and means unknown, resulting in  
10 substantial bodily harm or mental harm to M.C.

11 COUNT 2 - CHILD ABUSE, NEGLECT, OR ENDANGERMENT WITH SUBSTANTIAL  
12 BODILY HARM

13 did on or between September 28, 2016 and October 2, 2016, willfully, unlawfully, and  
14 feloniously cause a child under the age of 18 years, to-wit: M.C., being approximately 5 year(s)  
15 of age, to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect,  
16 to wit: physical injury of a non-accidental nature, and/or cause M.C. to be placed in a situation  
17 where he might have suffered unjustifiable physical pain or mental suffering as a result of  
18 abuse or neglect, to wit: physical injury of a non-accidental nature, by striking and/or punching  
19 and/or kicking the said M.C. and/or by causing the said M.C. to strike an unknown object  
20 and/or by manner and means unknown, resulting in substantial bodily harm or mental harm to  
21 M.C.

22 COUNT 3 - CHILD ABUSE, NEGLECT, OR ENDANGERMENT

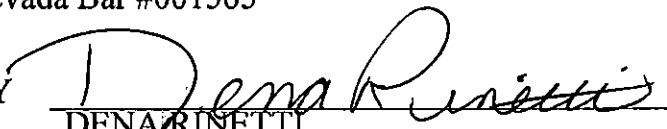
23 did willfully, unlawfully, and feloniously cause a child under the age of 18 years, to-  
24 wit: M.C., being approximately 5 year(s) of age, to suffer unjustifiable physical pain or mental  
25 suffering as a result of abuse or neglect, to wit: physical injury of a non-accidental nature,  
26 and/or cause M.C. to be placed in a situation where he might have suffered unjustifiable  
27 physical pain or mental suffering as a result of abuse or neglect, to wit: physical injury of a  
28 non-accidental nature, by striking the said M.C. about the head and/or body with a belt.

1 COUNT 4 - CHILD ABUSE, NEGLECT, OR ENDANGERMENT

2 did willfully, unlawfully, and feloniously cause a child under the age of 18 years, to-  
3 wit: M.C., being approximately 5 year(s) of age, to suffer unjustifiable physical pain or mental  
4 suffering as a result of abuse or neglect, to wit: physical injury of a non-accidental nature,  
5 and/or cause M.C. to be placed in a situation where he might have suffered unjustifiable  
6 physical pain or mental suffering as a result of abuse or neglect, to wit: physical injury of a  
7 non-accidental nature, by striking the said M.C. about the head and/or body with a belt.

8 STEVEN B. WOLFSON  
9 Clark County District Attorney  
Nevada Bar #001565

10 BY

  
11 DENA RINETTI  
12 Chief Deputy District Attorney  
Nevada Bar #9897

13  
14 Names of witnesses known to the District Attorney's Office at the time of filing this  
15 Information are as follows:

16 <u>NAME</u>	<u>ADDRESS</u>
17 BRUNETTE, KREG	UMC
18 CETL, DR SANDRA	UMC
19 HERNANDEZ, ENRIQUE	LVMPD #7567
20 KEGLEY, CHERYL	LVMPD #4812
21 KNEPP, ELAINE	CCDA
22 HALM, SAMANTHA	LVMPD #15289
23 M.C.	C/O CCDA
24 MCDONALD, JOSHUA	LVMPD #15323
25 MCTEAR, DEVA	CPS
26 PARENT/GUARDIAN of	C.M.

27 16F16528X /jm/SVU  
28 LVMPD EV#1610020736  
(TK5)

1 **GPA**  
2 **STEVEN B. WOLFSON**  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 **MICHELLE JOBE**  
6 Chief Deputy District Attorney  
7 Nevada Bar #010575  
8 200 Lewis Avenue  
9 Las Vegas, NV 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

ORIGINAL

**FILED IN OPEN COURT**  
**STEVEN D. GRIERSON**  
**CLERK OF THE COURT**

**NOV 13 2019**

BY:   
TIA EVERETT, DEPUTY

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

8 **THE STATE OF NEVADA,**  
9  
10 Plaintiff,

11 -vs-

12 **DESHAUN JAMES LEWIS,**  
13 **#7036167**

14 Defendant.

**CASE NO: C-17-325725-1**

**DEPT NO: XIX**

**GUILTY PLEA AGREEMENT**

15 I hereby agree to plead guilty to: **COUNT 1** – **CHILD ABUSE, NEGLECT, OR**  
16 **ENDANGERMENT RESULTING IN SUBSTANTIAL BODILY HARM (Category B**  
17 **Felony - NRS 200.508.1 - NOC 55222)** and **COUNT 2** – **CHILD ABUSE, NEGLECT, OR**  
18 **ENDANGERMENT (Category B Felony - NRS 200.508.1 - NOC 55226),** as more fully  
19 alleged in the charging document attached hereto as Exhibit "1".

20 My decision to plead guilty is based upon the plea agreement in this case which is as  
21 follows:

22 The State retains the right to argue at sentencing, but agrees not to argue for a maximum  
23 sentence of more than fifteen (15) years.

24 I agree to the forfeiture of any and all weapons or any interest in any weapons seized  
25 and/or impounded in connection with the instant case and/or any other case negotiated in  
26 whole or in part in conjunction with this plea agreement.

27 ///

C-17-325725-1  
GPA  
Guilty Plea Agreement  
4875957



1 I understand and agree that, if I fail to interview with the Department of Parole and  
2 Probation, fail to appear at any subsequent hearings in this case, or an independent magistrate,  
3 by affidavit review, confirms probable cause against me for new criminal charges including  
4 reckless driving or DUI, but excluding minor traffic violations, the State will have the  
5 unqualified right to argue for any legal sentence and term of confinement allowable for the  
6 crime(s) to which I am pleading guilty, including the use of any prior convictions I may have  
7 to increase my sentence as an habitual criminal to five (5) to twenty (20) years, life without  
8 the possibility of parole, life with the possibility of parole after ten (10) years, or a definite  
9 twenty-five (25) year term with the possibility of parole after ten (10) years.

10 Otherwise I am entitled to receive the benefits of these negotiations as stated in this  
11 plea agreement.

#### 12 CONSEQUENCES OF THE PLEA

13 I understand that by pleading guilty I admit the facts which support all the elements of  
14 the offenses to which I now plead as set forth in Exhibit "1".

15 As to COUNT 1 – I understand that as a consequence of my plea of guilty the Court  
16 must sentence me to imprisonment in the Nevada Department of Corrections for a minimum  
17 term of not less than TWO (2) years and a maximum term of not more than TWENTY (20)  
18 years. The minimum term of imprisonment may not exceed forty percent (40%) of the  
19 maximum term of imprisonment.

20 As to COUNT 2 – I understand that as a consequence of my plea of guilty the Court  
21 must sentence me to imprisonment in the Nevada Department of Corrections for a minimum  
22 term of not less than ONE (1) year and a maximum term of not more than SIX (6) years. The  
23 minimum term of imprisonment may not exceed forty percent (40%) of the maximum term of  
24 imprisonment.

25 I understand that the law requires me to pay an Administrative Assessment Fee.

26 I understand that, if appropriate, I will be ordered to make restitution to the victim of  
27 the offense(s) to which I am pleading guilty and to the victim of any related offense which is  
28

1 being dismissed or not prosecuted pursuant to this agreement. I will also be ordered to  
2 reimburse the State of Nevada for any expenses related to my extradition, if any.

3 I understand that I am not eligible for probation pursuant to NRS 176A.110 unless a  
4 psychologist licensed to practice in this State who is trained to conduct psychosexual  
5 evaluations or a psychiatrist licensed to practice medicine in this State who is certified by the  
6 American Board of Psychiatry and Neurology, Inc., and is trained to conduct psychosexual  
7 evaluations certifies in a written report to the court that I do not represent a high risk to reoffend  
8 based upon a currently accepted standard of assessment. I understand that, except as otherwise  
9 provided by statute, the question of whether I receive probation is in the discretion of the  
10 sentencing judge. I understand that my attorney is responsible for obtaining this psychological  
11 evaluation and providing it to the Court and the assigned Deputy District Attorney prior to my  
12 sentencing.

13 I understand that I must submit to blood and/or saliva tests under the Direction of the  
14 Division of Parole and Probation to determine genetic markers and/or secretor status.

15 I understand that if more than one sentence of imprisonment is imposed and I am  
16 eligible to serve the sentences concurrently, the sentencing judge has the discretion to order  
17 the sentences served concurrently or consecutively.

18 I understand that information regarding charges not filed, dismissed charges, or charges  
19 to be dismissed pursuant to this agreement may be considered by the judge at sentencing.

20 I have not been promised or guaranteed any particular sentence by anyone. I know that  
21 my sentence is to be determined by the Court within the limits prescribed by statute.

22 I understand that if my attorney or the State of Nevada or both recommend any specific  
23 punishment to the Court, the Court is not obligated to accept the recommendation.

24 I understand that if the offense(s) to which I am pleading guilty was committed while I  
25 was incarcerated on another charge or while I was on probation or parole that I am not eligible  
26 for credit for time served toward the instant offense(s).

27 ///

1 I understand that if I am not a United States citizen, any criminal conviction will likely  
2 result in serious negative immigration consequences including but not limited to:

- 3 1. The removal from the United States through deportation;
- 4 2. An inability to reenter the United States;
- 5 3. The inability to gain United States citizenship or legal residency;
- 6 4. An inability to renew and/or retain any legal residency status; and/or
- 7 5. An indeterminate term of confinement, with the United States Federal  
8 Government based on my conviction and immigration status.

9 Regardless of what I have been told by any attorney, no one can promise me that this  
10 conviction will not result in negative immigration consequences and/or impact my ability to  
11 become a United States citizen and/or a legal resident.

12 I understand that the Division of Parole and Probation will prepare a report for the  
13 sentencing judge prior to sentencing. This report will include matters relevant to the issue of  
14 sentencing, including my criminal history. This report may contain hearsay information  
15 regarding my background and criminal history. My attorney and I will each have the  
16 opportunity to comment on the information contained in the report at the time of sentencing.  
17 Unless the District Attorney has specifically agreed otherwise, the District Attorney may also  
18 comment on this report.

#### 19 WAIVER OF RIGHTS

20 By entering my plea of guilty, I understand that I am waiving and forever giving up the  
21 following rights and privileges:

- 22 1. The constitutional privilege against self-incrimination, including the right  
23 to refuse to testify at trial, in which event the prosecution would not be  
allowed to comment to the jury about my refusal to testify.
- 24 2. The constitutional right to a speedy and public trial by an impartial jury,  
25 free of excessive pretrial publicity prejudicial to the defense, at which  
trial I would be entitled to the assistance of an attorney, either appointed  
26 or retained. At trial the State would bear the burden of proving beyond  
a reasonable doubt each element of the offense(s) charged.
- 27 3. The constitutional right to confront and cross-examine any witnesses who  
28 would testify against me.

- 1                   4.     The constitutional right to subpoena witnesses to testify on my behalf.
- 2                   5.     The constitutional right to testify in my own defense.
- 3                   6.     The right to appeal the conviction with the assistance of an attorney,
- 4                   either appointed or retained, unless specifically reserved in writing and
- 5                   agreed upon as provided in NRS 174.035(3). I understand this means I
- 6                   am unconditionally waiving my right to a direct appeal of this conviction,
- 7                   including any challenge based upon reasonable constitutional,
- 8                   jurisdictional or other grounds that challenge the legality of the
- 9                   proceedings as stated in NRS 177.015(4). However, I remain free to
- 10                  challenge my conviction through other post-conviction remedies
- 11                  including a habeas corpus petition pursuant to NRS Chapter 34.

12                                   VOLUNTARINESS OF PLEA

13                  I have discussed the elements of all of the original charge(s) against me with my

14                  attorney and I understand the nature of the charge(s) against me.

15                  I understand that the State would have to prove each element of the charge(s) against

16                  me at trial.

17                  I have discussed with my attorney any possible defenses, defense strategies and

18                  circumstances which might be in my favor.

19                  All of the foregoing elements, consequences, rights, and waiver of rights have been

20                  thoroughly explained to me by my attorney.

21                  I believe that pleading guilty and accepting this plea bargain is in my best interest, and

22                  that a trial would be contrary to my best interest.

23                  I am signing this agreement voluntarily, after consultation with my attorney, and I am

24                  not acting under duress or coercion or by virtue of any promises of leniency, except for those

25                  set forth in this agreement.

26                  I am not now under the influence of any intoxicating liquor, a controlled substance or

27                  other drug which would in any manner impair my ability to comprehend or understand this

28                  agreement or the proceedings surrounding my entry of this plea.

29                  ///

30                  ///


31                  ///

1 My attorney has answered all my questions regarding this guilty plea agreement and its  
2 consequences to my satisfaction and I am satisfied with the services provided by my attorney.

3 DATED this 13<sup>th</sup> day of November, 2019.

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5   
6 DESHAUN JAMES LEWIS  
Defendant

7 AGREED TO BY:

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9 MICHELLE JOBE  
10 Chief Deputy District Attorney  
11 Nevada Bar #010575  
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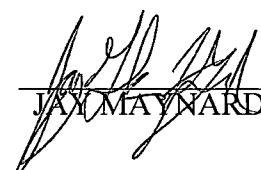


1 CERTIFICATE OF COUNSEL:

2 I, the undersigned, as the attorney for the Defendant named herein and as an officer of the court  
3 hereby certify that:

- 4 1. I have fully explained to the Defendant the allegations contained in the  
5 charge(s) to which guilty pleas are being entered.
- 6 2. I have advised the Defendant of the penalties for each charge and the restitution  
7 that the Defendant may be ordered to pay.
- 8 3. I have inquired of Defendant facts concerning Defendant's immigration status  
9 and explained to Defendant that if Defendant is not a United States citizen any  
10 criminal conviction will most likely result in serious negative immigration  
11 consequences including but not limited to:
  - 12 a. The removal from the United States through deportation;
  - 13 b. An inability to reenter the United States;
  - 14 c. The inability to gain United States citizenship or legal residency;
  - 15 d. An inability to renew and/or retain any legal residency status; and/or
  - 16 e. An indeterminate term of confinement, by with United States Federal  
17 Government based on the conviction and immigration status.
- 18 4. Moreover, I have explained that regardless of what Defendant may have been  
19 told by any attorney, no one can promise Defendant that this conviction will not  
20 result in negative immigration consequences and/or impact Defendant's ability  
21 to become a United States citizen and/or legal resident.
- 22 5. All pleas of guilty offered by the Defendant pursuant to this agreement are  
23 consistent with the facts known to me and are made with my advice to the  
24 Defendant.
- 25 6. To the best of my knowledge and belief, the Defendant:
  - 26 a. Is competent and understands the charges and the consequences of  
27 pleading guilty as provided in this agreement,
  - 28 b. Executed this agreement and will enter all guilty pleas pursuant hereto  
voluntarily, and
  - c. Was not under the influence of intoxicating liquor, a controlled  
substance or other drug at the time I consulted with the Defendant as  
certified in paragraphs 1 and 2 above.

29 Dated: This 13<sup>th</sup> day of November, 2019.

30   
31 JAY MAYNARD, ESQ.

1 **AINF**  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 MICHELLE JOBE  
6 Chief Deputy District Attorney  
7 Nevada Bar #010575  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

7 **DISTRICT COURT**  
8 **CLARK COUNTY, NEVADA**

9 THE STATE OF NEVADA,  
10 Plaintiff,

CASE NO. **C-17-325725-1**

11 -vs-

DEPT NO. **XIX**

12 **DESHAUN JAMES LEWIS,**  
13 **#7036167**

14 Defendant.

**A M E N D E D**  
**I N F O R M A T I O N**

15 STATE OF NEVADA }  
16 COUNTY OF CLARK } ss:

17 STEVEN B. WOLFSON, District Attorney within and for the County of Clark, State  
18 of Nevada, in the name and by the authority of the State of Nevada, informs the Court:

19 That **DESHAUN JAMES LEWIS**, the Defendant above named, having committed the  
20 crimes of **CHILD ABUSE, NEGLECT, OR ENDANGERMENT RESULTING IN**  
21 **SUBSTANTIAL BODILY HARM (Category B Felony - NRS 200.508.1 - NOC 55222),**  
22 and **CHILD ABUSE, NEGLECT, OR ENDANGERMENT (Category B Felony - NRS**  
23 **200.508.1 - NOC 55226),** on or about on or between November 1, 2015 and October 2, 2016,  
24 within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes  
25 in such cases made and provided, and against the peace and dignity of the State of Nevada,

26 ///

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**EXHIBIT** 1

1 COUNT 1 – CHILD ABUSE, NEGLECT, OR ENDANGERMENT RESULTING IN  
2 SUBSTANTIAL BODILY HARM

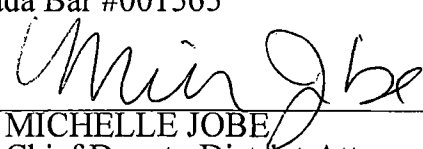
3 did willfully, unlawfully, and feloniously cause a child under the age of 18 years, to  
4 wit: M.C., being approximately 5 years of age, to suffer unjustifiable physical pain or mental  
5 suffering as a result of abuse or neglect, to wit: physical injury of a nonaccidental nature, by  
6 punching and/or striking M.C. in the body and/or chest and/or by kicking M.C. and/or by  
7 causing M.C. to strike an unknown object and/or manner and means unknown, resulting in  
8 substantial bodily harm to M.C.

9 COUNT 2 – CHILD ABUSE, NEGLECT, OR ENDANGERMENT

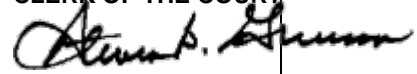
10 did willfully, unlawfully, and feloniously cause a child under the age of 18 years, to  
11 wit: M.C., being approximately 5 years of age, to suffer unjustifiable physical pain or mental  
12 suffering as a result of abuse or neglect, to wit: physical injury of a non-accidental nature, by  
13 striking M.C. about the head and/or body with a belt.

14 STEVEN B. WOLFSON  
15 Clark County District Attorney  
16 Nevada Bar #001565

17 BY

18   
19 MICHELLE JOBE  
20 Chief Deputy District Attorney  
21 Nevada Bar #010575

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(TK5)



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5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA  
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8 STATE OF NEVADA, ) CASE NO.: C-17-325725-1  
9 Plaintiff, ) DEPT. XIX  
10 vs. )  
11 DESHAUN LEWIS, )  
12 Defendant. )  
13

14 BEFORE THE HONORABLE WILLIAM D. KEPHART, DISTRICT COURT JUDGE  
15 WEDNESDAY, NOVEMBER 13, 2019

16 **RECORDER'S TRANSCRIPT OF HEARING RE:**  
17 **CALENDAR CALL**

18 APPEARANCES:

19 For the Plaintiff: CHARLES W. THOMAN, ESQ.  
20 Chief Deputy District Attorney

21 For the Defendant: JAY MAYNARD, ESQ.  
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25 RECORDED BY: BRITTANY AMOROSO, COURT RECORDER

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Las Vegas, Nevada; Wednesday, November 13, 2019

[Hearing commenced at 9:41 a.m.]

THE COURT: C325725. This is time set for calendar call.  
Mr. Lewis is out of custody represented by Mr. Mueller's office. Mr.  
Maynard is here on his behalf.

What are we doing?

MR. MAYNARD: This matter has been resolved, Your Honor.  
We do have a guilty plea agreement and an amended information here.

Permission to approach?

THE COURT: Sure.

All right. Mr. Lewis, I received a copy of an amended  
information in this matter. Have you received a copy of this?

THE DEFENDANT: Yes, sir.

THE COURT: Did you have an opportunity to read it?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand the charges contained in  
the amended information?

THE DEFENDANT: Yes, sir.

THE COURT: Do you want me to read it to you or you waive  
a formal reading of it at this time?

THE DEFENDANT: It's okay. You don't have to.

THE COURT: You waive --

THE DEFENDANT: Yes, sir.

THE COURT: Okay. Do you have any objection to it being

1 filed?

2 THE DEFENDANT: No, sir.

3 MR. MAYNARD: We don't.

4 THE COURT: Okay. What's the negotiations?

5 MR. MAYNARD: Your Honor, the negotiations is that Mr.

6 Lewis will be pleading to Count 1, child abuse, neglect, or endangerment  
7 resulting in substantial bodily harm, and Count 2, child abuse, neglect,  
8 or endangerment. The State will retain the right to argue but agrees not  
9 to argue for a maximum sentence of more than 15 years.

10 THE COURT: Is that correct?

11 MR. THOMAN: That is correct, Your Honor.

12 THE COURT: Did you hear those representations, Mr. Lewis?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Is that your understanding of the negotiations?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Is that what you want to do here today?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: All right. So, how do you plea to the amended  
19 information in Count 1, alleging that you committed the offense of child  
20 abuse, neglect, or endangerment resulting in substantial bodily harm, on  
21 or between November 1<sup>st</sup>, 2015 and October 2<sup>nd</sup>, 2016, while you were  
22 in Las Vegas, Clark County, Nevada, says you willfully and lawfully, and  
23 feloniously cause the child under the age of 18 -- M.C. are the initials for  
24 that child, being approximately 5 years of age to suffer unjustifiable  
25 physical pain or mental suffering as a result of abuse or neglect, to wit;

1 physical injury of a non-accidental nature by you punching or striking  
2 M.C. in the body and/or chest, or kicking M.C., and/or by causing M.C.  
3 to strike an unknown object and/or manner in means unknown, resulting  
4 in substantial bodily harm to M.C.

5 Do you understand that charge?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: How do you plead to it today?

8 THE DEFENDANT: Guilty.

9 THE COURT: As to Count 2, they allege that you committed  
10 the offense of child abuse, neglect, or endangerment on or between the  
11 same dates of November 1<sup>st</sup>, 2015 and October 2<sup>nd</sup>, 2015 while you  
12 were here in Las Vegas, Clark County, Nevada by willfully and lawfully,  
13 and feloniously causing a child under the age of 18, to wit; M.C., being  
14 approximately 5 years of age to suffer unjustifiable physical pain or  
15 mental suffering as a result of abuse or neglect, to wit; physical injury of  
16 a non-accidental nature by striking M.C. about the head or body with a  
17 belt.

18 Do you understand that charge?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: How do you plead to it today?

21 THE DEFENDANT: Guilty.

22 THE COURT: Sir, are you pleading guilty to these offenses  
23 because in truth and fact you are guilty?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Has anyone forced you to do this today?

1 THE DEFENDANT: No, sir.

2 THE COURT: Has anyone made any promises in order to get  
3 you to plead this way?

4 THE DEFENDANT: No, sir.

5 THE COURT: Do you believe that this is in your best interest  
6 to plead in this matter?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Are you asking the Court to accept your plea?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: You're not asking for a trial?

11 THE DEFENDANT: No, sir.

12 THE COURT: I have a copy of the guilty plea agreement  
13 here. It's dated November 13<sup>th</sup>, 2019. And on page 6 of that guilty plea  
14 agreement, there appears to be a signature above the name of Deshaun  
15 Lewis. Sir, did you sign this?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And before you signed it, did you read it?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: When you read through it, was your attorney  
20 available to answer any questions you may have had?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Do you believe you understand the contents of  
23 the guilty plea agreement?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Do you have any questions of your attorney



1 about the guilty plea agreement before we go any further?

2 THE DEFENDANT: No, sir.

3 THE COURT: Do you have any questions of the Court about  
4 the guilty plea before we go any further?

5 THE DEFENDANT: No, sir.

6 THE COURT: Do you understand that there's certain rights  
7 that you're waiving by entering in your plea here today?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: In the guilty plea agreement it tells you about  
10 those rights. All right. Do you need any further advisement as to those  
11 rights?

12 THE DEFENDANT: No, sir.

13 THE COURT: Do you believe you understand them?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All right. And you understand that if you're not  
16 a United States citizen, you could face deportation for this?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Do you understand that as a direct  
19 consequence of your plea to Count 1, you're facing a sentence in  
20 Nevada Department of Corrections for 2 years minimum, 20 years  
21 maximum. And as to Count 2, you're facing 1 year minimum, 6 years  
22 maximum. You could also be ordered to pay administrative  
23 assessments costs associated with this.

24 And you understand that you're not eligible for probation,  
25 pursuant to 176A.110 unless a psychologist licensed to practice in this

1 State, who's trained to conduct a psychosexual evaluation or a  
2 psychiatrist licensed to practice medicine in this State with Certified  
3 American Board of Psychiatry and Neurology is trained to conduct  
4 psychosexual evaluations, certifies in a written report to the Court that  
5 you do not represent a high risk to reoffend based upon a currently  
6 accepted standard of assessment. Do you understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Okay. You understand you must have an  
9 evaluation before I can sentence you?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: All right.

12 It's a danger evaluation, correct?

13 MR. THOMAN: Yes, Your Honor.

14 THE COURT: Yeah. Okay. So, you understand that the  
15 sentence recommendation by the parties is a mere recommendation and  
16 no one's in a position to offer you any type of special treatment,  
17 leniency, or probation, as sentencing is entirely up to me. Do you  
18 understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: With that being said, do you want to go forward  
21 with this today?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Can you tell me in your own words and what it  
24 is that you did, that causes you to plead guilty to Count 1, child abuse,  
25 neglect, or endangerment resulting in substantial bodily harm?

1 THE DEFENDANT: I disciplined Marcel with a belt too hard.

2 THE COURT: And you would agree that M.C. suffered  
3 substantial bodily harm based on that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Okay. As to Count 2, child abuse, neglect, or  
6 endangerment, is it still the position you're taking, is that you discipline  
7 too hard?

8 THE DEFENDANT: Yes.

9 THE COURT: And that resulted in injury?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And they were non-accidental injuries?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Anything further?

14 MR. THOMAN: No, Your Honor.

15 THE COURT: All right.

16 Mr. Lewis, I am going to accept your plea. I do believe they  
17 were freely and voluntarily entered into. I do believe you understand the  
18 nature of the consequences of your plea. Therefore, I am accepting  
19 your plea. I'm going to vacate the trial that's scheduled for November  
20 18<sup>th</sup>, 2019.

21 I'm going to refer this to the Department of Parole and  
22 Probation for preparation of a presentence investigation report and set a  
23 sentencing date. Here's the date.

24 THE COURT CLERK: March 9<sup>th</sup> at 8:30.

25 THE COURT: Mr. Lewis, keep in contact with your attorney

1 and I'll see you back then, okay?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right.

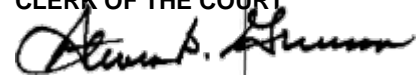
4 [Hearing concluded at 9:48 a.m.]

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

24 

25 Brittany Amoroso  
Court Recorder/Transcriber



JOCP

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DESHAUN JAMES LEWIS  
#7036167

Defendant.

CASE NO. C-17-325725-1

DEPT. NO. XIX

JUDGMENT OF CONVICTION

(PLEA OF GUILTY)

The Defendant previously appeared before the Court with counsel and entered a plea of guilty to the crimes of COUNT 1 – CHILD ABUSE, NEGLECT, OR ENDANGERMENT RESULTING IN SUBSTANTIAL BODILY HARM (Category B Felony) in violation of NRS 200.508.1; and COUNT 2 – CHILD ABUSE, NEGLECT, OR ENDANGERMENT (Category B Felony) in violation of NRS 200.508.1; thereafter, on the 10<sup>th</sup> day of August, 2020, the Defendant was present in court for sentencing with counsel JAY MAYNARD, Public Defender, and good cause appearing,

THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in addition to the \$25.00 Administrative Assessment Fee, and \$150.00 DNA Analysis Fee including testing to determine genetic markers plus \$3.00 DNA Collection Fee,

- |   |  |
|---|--|
| <input type="checkbox"/> Nolle Prosequi (before trial)                    | <input type="checkbox"/> Bench (Non-Jury) Trial                |
| <input type="checkbox"/> Dismissed (after diversion)                      | <input type="checkbox"/> Dismissed (during trial)              |
| <input type="checkbox"/> Dismissed (before trial)                         | <input type="checkbox"/> Acquittal                             |
| <input checked="" type="checkbox"/> Guilty Plea with Sent. (before trial) | <input type="checkbox"/> Guilty Plea with Sent. (during trial) |
| <input type="checkbox"/> Transferred (before/during trial)                | <input type="checkbox"/> Conviction                            |
| <input type="checkbox"/> Other Manner of Disposition                      |  |

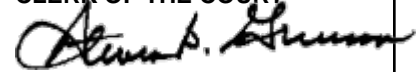
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1 the Defendant is sentenced to the Nevada Department of Corrections (NDC) as  
2 follows: **COUNT 1** – a MAXIMUM of ONE HUNDRED-EIGHTY (180) MONTHS with a  
3 MINIMUM Parole Eligibility of SIXTY (60) MONTHS; and **COUNT 2** – a MAXIMUM of  
4 SEVENTY-TWO (72) MONTHS with a MINIMUM Parole Eligibility of TWENTY-EIGHT  
5 (28) MONTHS, CONCURRENT with COUNT 1; with TWO (2) DAYS credit for time  
6 served.  
7

8 DATED this 11<sup>th</sup> day of August, 2020.  
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12 WILLIAM D. KEPHART  
13 DISTRICT COURT JUDGE  
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JULIAN GREGORY, ESQ.  
Nevada Bar No. 11978  
**LAW OFFICE OF JULIAN GREGORY, L.L.C.**  
411 South Sixth Street  
Las Vegas, NV 89101  
T: (702) 625-1183  
F: (702) 302-4286  
E: Julian@jglawlv.com  
Attorney for Deshaun Lewis

CASE NO: A-21-838960-W  
Department 26

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

DESHAUN JAMES LEWIS,

Petitioner,

vs.

CALVIN JOHNSON, WARDEN; AND THE STATE OF  
NEVADA,

Respondents.

Criminal Case No. C-17-325725-1  
Civil Case No.  
Dep't No. III

Hearing Requested

**PETITION FOR WRIT  
OF HABEAS CORPUS**

**(POST-CONVICTION)**

**PETITION**

- 1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty:** High Desert State Prison, Indian Springs, Clark County, Nevada.
- 2. Name and location of court which entered the judgment of conviction under attack:** Eighth Judicial District Court, Clark County, Nevada.
- 3. Date of judgment of conviction:** 8/11/2020.
- 4. Case number:** C-17-325725-1.
- 5.**
  - (a) Length of sentence:** Count 1: 60 months to 180 months; count 2: 28 months to 72 months, concurrent to count 1.
  - (b) If sentence is death, state any date upon which execution is scheduled:**  
N/A
- 6. Are you presently serving a sentence for a conviction other than the**

conviction under attack in this motion? No.

If “yes,” list crime, case number and sentence being served at this time: N/A

7. **Nature of offense involved in conviction being challenged:** Count 1: child abuse, neglect, or endangerment resulting in substantial bodily harm; count 2: child abuse, neglect, or endangerment.

8. **What was your plea?** Guilty.

9. **If you entered a plea of guilty or guilty but mentally ill to one count of an indictment or information, and a plea of not guilty to another count of an indictment or information, or if a plea of guilty or guilty but mentally ill was negotiated, give details:** N/A

10. **If you were found guilty or guilty but mentally ill after a plea of not guilty, was the finding made by a jury or a judge without a jury?** N/A

11. **Did you testify at the trial?** N/A

12. **Did you appeal from the judgment of conviction?** No.

13. **If you did appeal, answer the following:**

(a) **Name of court:**

(b) **Case number or citation:**

(c) **Result:**

(d) **Date of result:**

14. **If you did not appeal, briefly explain why you did not:** Claims of ineffective assistance of counsel cannot be raised on direct appeal. *Pellegrini v. State*, 118 Nev. 860, 882, 34 P.3d 519, 534 (2001), *abrogated on other grounds by Rippo v. State*, 134 Nev. 411, 423 n.12, 423 P.3d 1084, 1097 n.12 (2018). A post-sentence motion to withdraw guilty plea must take the form of a post-conviction petition for writ of habeas corpus. *Harris v. State*, 130 Nev. 435, 437, 329 P.3d 619, 621 (2014).

15. **Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any court, state or federal?** No.



**16.If your answer to No. 15 was “yes,” give the following information:**

**(a)(1) Name of court: N/A**

**(2) Nature of proceeding: N/A**

**(3) Grounds raised: N/A**

**(4) Did you receive an evidentiary hearing on your petition, application or motion?**

**(5) Result:**

**(6) Date of result:**

**(7) If known, citations of any written opinion or date of orders entered pursuant to such result:**

**(b) As to any second petition, application or motion, give the same information:**

**(1) Name of court:**

**(2) Nature of proceeding:**

**(3) Grounds raised:**

**(4) Did you receive an evidentiary hearing on your petition, application or motion?**

**(5) Result:**

**(6) Date of result:**

**(7) If known, citations of any written opinion or date of orders entered pursuant to such result:**

**(c) As to any third or subsequent additional applications or motions, give the same information as above, list them on a separate sheet and attach.**

**(d) Did you appeal to the highest state or federal court having jurisdiction, the result or action taken on any petition, application or motion?**

**Citation or date of decision:**

**(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not.**

17. Has any ground being raised in this petition been previously presented to this or any other court by way of petition for habeas corpus, motion, application or any other postconviction proceeding? If so, identify:

(a) Which of the grounds is the same:

(b) The proceedings in which these grounds were raised:

(c) Briefly explain why you are again raising these grounds.

18. If any of the grounds listed in Nos. 23(a), (b), (c) and (d), or listed on any additional pages you have attached, were not previously presented in any other court, state or federal, list briefly what grounds were not so presented, and give your reasons for not presenting them.

19. Are you filing this petition more than 1 year following the filing of the judgment of conviction or the filing of a decision on direct appeal? If so, state briefly the reasons for the delay. Filing within one year of filing of judgment of conviction.

20. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack? No.

If yes, state what court and the case number:

21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on direct appeal: Trial attorneys Craig Mueller and Jay Maynard.

22. Do you have any future sentences to serve after you complete the sentence imposed by the judgment under attack? No.

If yes, specify where and when it is to be served, if you know: N/A

23. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. If necessary you may attach pages stating additional grounds and facts supporting same.

///

1 **(a)Ground one: Mr. Lewis Was Denied His Right to the Effective Assistance of**  
2 **Counsel.**

3 Mr. Lewis was denied his right to the effective assistance of counsel when counsel as-  
4 sured Mr. Lewis that he had an “eighty-five percent chance” to get probation when that was  
5 obviously not the case. This implicated Mr. Lewis’s rights under the Sixth and Fourteenth  
6 Amendments to the United States Constitution, as well as his rights under Article I, sections  
7 three, six, and eight of the Nevada Constitution.

8 To establish a claim of ineffective assistance of counsel, the petitioner must show (1)  
9 that counsel’s performance was beneath “an objective standard of reasonableness,” and (2)  
10 that, but for counsel’s deficiency, a different result would have been had at trial. *Strickland*  
11 *v. Washington*, 466 U.S. 668, 688 (1984); *Rubio v. State*, 12 Nev. 1032, 1039-40, 194 P.3d  
12 1224, 1229 (2008). A reasonable probability is one that undermines confidence in the out-  
13 come. *Strickland*, 466 U.S. at 694. “Effectiveness” means performance “within the range of  
14 competence demanded of attorneys in criminal cases.” *Jackson v. Warden*, 91 Nev. 430, 432,  
15 537 P.2d 473, 474 (1975) (quoting *McMann v. Richardson*, 397 U.S. 759, 771 (1970)).

16 The right to effective assistance of counsel extends to the plea-bargaining process; the  
17 standard is the same as that outlined in *Strickland*. *Lafler v. Cooper*, 566 U.S. 156, 162–63  
18 (2012). A defendant must show that the outcome of the plea process would have been differ-  
19 ent had counsel been effective. *Missouri v. Frye*, 566 U.S. 134, 147 (2012); *Lafler*, 566 U.S.  
20 at 162–63. When a plea is accepted, the defendant must show that, but for counsel’s ineffec-  
21 tiveness, he would not have accepted the plea. *Hill v. Lockhart*, 474 U.S. 52, 56 (1985).

22 In this case, Mr. Lewis is prepared to testify that Mr. Mueller assured Mr. Lewis that  
23 he would receive probation when he entered into his guilty plea agreement. Without a full  
24 understanding of the range of consequences possible when entering into his plea, it cannot  
25 be said that Mr. Lewis received the effective assistance of counsel. Based on this, a writ should  
26 issue and Mr. Lewis’s conviction should be vacated. In the alternative, Mr. Lewis would re-  
27 quest an evidentiary hearing at which he can present testimony in support of this ground.  
28 *See Hargrove v. State*, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984).

**(b) Ground two: Mr. Lewis's Guilty Plea Was Not Knowingly, Intelligently, or Voluntarily Entered Into.**

Mr. Lewis's plea in this case runs afoul of his right to due process under the Fifth Amendment to the United States Constitution and Article I, section eight of the Nevada Constitution. When Mr. Lewis entered his guilty plea, he did so without a full understanding of the consequences thereof, as trial counsel overbore Mr. Lewis's free will vis-à-vis pressuring Mr. Lewis into accepting a negotiation that Mr. Lewis did not feel was in his best interests. For that reason, his plea is constitutionally infirm and his conviction must be vacated.

Although a guilty plea is presumptively valid, *Wilson v. State*, 99 Nev. 362, 373, 664 P.2d 328, 334 (1983) (quoting *Wynn v. State*, 96 Nev. 673, 675, 615 P.2d 946, 947 (1980)), a reviewing court must assess whether the plea was entered into "voluntarily, knowingly, and intelligently," *Rubio v. State*, 124 Nev. 1032, 1038, 194 P.3d 1224, 1228 (2008); *Molina v. State*, 120 Nev. 185, 191, 87 P.3d 533, 537 (2004); *see also Hill v. Lockhart*, 474 U.S. 52, 56 (1985); *McCarthy v. United States*, 394 U.S. 459, 466-67 (1969); *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938). The reviewing court must look at the totality of the circumstances in determining whether a guilty plea was so entered, and whether permitting the withdrawal of a guilty plea is necessary to prevent a manifest injustice. *Rubio*, 124 Nev. at 1038, 194 P.3d at 1228.

Mr. Lewis entered into a guilty plea agreement unknowingly, unintelligently, and involuntarily when he did so without a full understanding of what that plea entailed. Counsel overrode Mr. Lewis's intentions to go to trial and pressured Mr. Lewis into taking a deal in this matter. *See also infra* Ground one. Based on this, a writ should issue and Mr. Lewis's conviction should be vacated. In the alternative, Mr. Lewis would request an evidentiary hearing at which he could present testimony in support of this ground. *See Hargrove v. State*, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984).

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1           WHEREFORE, petitioner prays that the court grant petitioner relief to which peti-  
2 tioner may be entitled in this proceeding.

3  
4                                   DATED this 4th of August, 2021.

5                                   /s/ Julian Gregory

6                                   JULIAN GREGORY, ESQ.

7                                   **LAW OFFICE OF JULIAN GREGORY, L.L.C.**

8                                   Attorney for Deshaun Lewis  
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**VERIFICATION**

Under penalty of perjury, the undersigned declares that the undersigned is the attorney of record for the petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true and correct of the undersigned's own knowledge, except as to those matters stated on information and belief, and as to such matters the undersigned believes them to be true; and the petitioner has personally authorized the undersigned to commence this action.

DATED this 4th of August, 2021.

/s/ Julian Gregory  
JULIAN GREGORY, ESQ.  
**LAW OFFICE OF JULIAN GREGORY, L.L.C.**  
Attorney for Deshaun Lewis

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**CERTIFICATE OF SERVICE**

I hereby certify, pursuant to NRCP 5(b), that on the 4th of August, 2021, I mailed a true and correct copy of the foregoing **Petition for Writ of Habeas Corpus (Post-Conviction)** addressed to:

The State of Nevada  
c/o Attorney General Aaron D. Ford, Esq.  
Heroes' Memorial Building  
Capitol Complex  
Carson City, NV 89710

The State of Nevada  
c/o District Attorney Steven Wolfson, Esq.  
200 Lewis Ave.  
Las Vegas, NV 89155

Deshaun Lewis  
Petitioner  
c/o High Desert State Prison  
P.O. Box 650  
Indian Springs, Nevada 89070-0650

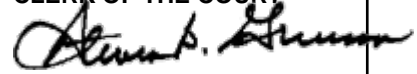
/s/ Tannia Garcia  
AN EMPLOYEE OF THE  
LAW OFFICE OF JULIAN GREGORY, L.L.C.

**AFFIRMATION**

Pursuant to NRS 239B.030, this document contains no social security numbers.

/s/ Julian Gregory  
Julian Gregory, Esq.

8-4-2021  
Date



**RSPN**  
STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
JONATHAN VANBOSKERCK  
Chief Deputy District Attorney  
Nevada Bar #006528  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,  
Plaintiff,

-vs-

**DESHAUN JAMES LEWIS,**  
**#7036167**

Defendant.

CASE NO: **A-21-838960-W**  
**C-17-325725-1**

DEPT NO: **III**

**STATE'S RESPONSE TO DEFENDANT'S PETITION FOR**  
**WRIT OF HABEAS CORPUS (POST-CONVICTION)**

DATE OF HEARING: **SEPTEMBER 20, 2021**  
TIME OF HEARING: **8:30 AM**

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through JONATHAN VANBOSKERCK, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in this State's Response to Defendant's Petition for Writ Of Habeas Corpus (Post-Conviction).

This response is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

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1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 Based on events occurring between November 1, 2015, and October 2, 2016, Deshaun  
4 James Lewis was charged via criminal complaint with two counts of child abuse, neglect, or  
5 endangerment resulting in substantial bodily harm (Category B Felony – NRS 200.508.1) and  
6 two counts of child abuse, neglect, or endangerment (Category B Felony – NRS 200.508.1).  
7 He was released on bail on October 3, 2016.

8 At his preliminary hearing on August 15, 2017, he was bound for arraignment in the  
9 district court.

10 Petitioner pled guilty on November 13, 2019, to one count of child abuse, neglect, or  
11 endangerment resulting in substantial bodily harm (Category B Felony – NRS 200.508.1) and  
12 one count of child abuse, neglect, or endangerment (Category B Felony – NRS 200.508.1).  
13 Two other charges were dropped and an amended information filed the same day.

14 Petitioner was sentenced on to 60-180 months in the Nevada Department of Corrections  
15 for Count One and 28-72 months for Count Two, to run concurrently. He received two days  
16 credit for time served. The Judgment of Conviction was filed on August 11, 2020. Petitioner  
17 did not file a direct appeal.

18 This Petition for Writ of Habeas Corpus and Motion for Appointment of Counsel  
19 followed on August 4, 2021.

20 **STATEMENT OF THE FACTS<sup>1</sup>**

21 On October 2, 2016, Petitioner Deshaun Lewis took a five-year-old child, referred to as  
22 M.C., to the hospital. M.C. suffered a comminuted fractured tibia, laceration on his chin,  
23 extensive bruising over his entire body, swelling on his forehead, blood in his lung, and fluid  
24 in his abdomen from a hematoma on his pancreas. His injuries were recent and consistent with  
25 abuse. M.C. was admitted to the pediatric intensive care unit and underwent surgery.

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28 <sup>1</sup> These facts are derived from the Presentence Investigation Report (“PSI”) prepared December 10, 2019, and the transcript of the preliminary hearing held August 17, 2017.

1 Petitioner initially told investigating officers that M.C. broke his leg playing soccer and  
2 cut his chin falling in the bathtub. He later admitted responsibility for the child's injuries,  
3 stating he habitually struck him a couple times a week for 7-10 times each. He had also  
4 punched M.C. 2-3 times and stated no one else was permitted to discipline the child.

### 5 ARGUMENT

6 A party seeking review bears the responsibility "to cogently argue, and present relevant  
7 authority" to support his assertions. Edwards v. Emperor's Garden Restaurant, 122 Nev. 317,  
8 330 n.38, 130 P.3d 1280, 1288 n.38 (2006); Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3,  
9 6 (1987) (an arguing party must support his arguments with relevant authority and cogent  
10 argument; "issues not so presented need not be addressed").

11 The Nevada Supreme Court has held "that a habeas corpus petitioner must prove the  
12 disputed factual allegations underlying his ineffective-assistance claim by a preponderance of  
13 the evidence." Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore,  
14 claims of ineffective assistance of counsel asserted in a petition for post-conviction relief must  
15 be supported with specific factual allegations, which if true, would entitle the petitioner to  
16 relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225. "Bare" and "naked"  
17 allegations are not sufficient, nor are those belied and repelled by the record. Id. NRS  
18 34.735(6) states in relevant part, "[Petitioner] must allege specific facts supporting the claims  
19 in the petition[.] . . . Failure to allege specific facts rather than just conclusions may cause your  
20 petition to be dismissed."

#### 21 **I. THIS COURT SHOULD DENY THE PETITION BECAUSE PETITIONER** 22 **ENTERED INTO HIS GUILTY PLEA KNOWINGLY AND VOLUNTARILY**

23 Petitioner argues he did not enter into his plea agreement with the State knowingly,  
24 intelligently, or voluntarily. Petition at 6. To the extent his claims are not conclusory or bare,  
25 they are belied by the record.

26 Pursuant to NRS 176.165, after sentencing, a defendant's guilty plea can only be  
27 withdrawn to correct "manifest injustice." See Baal v. State, 106 Nev. 69, 72, 787 P.2d 391,  
28 394 (1990). The law in Nevada establishes that a plea of guilty is presumptively valid, and the

1 burden is on a defendant to show that the plea was not voluntarily entered. Bryant v. State,  
2 102 Nev. 268, 272, 721 P.2d 364, 368 (1986) (citing Wingfield v. State, 91 Nev. 336, 337, 535  
3 P.2d 1295, 1295 (1975)). Manifest injustice does not exist if the defendant entered his plea  
4 voluntarily. Baal, 106 Nev. at 72, 787 P.2d at 394.

5 To determine whether a guilty plea was voluntarily entered, the Court will review the  
6 totality of the circumstances surrounding the defendant's plea. Bryant, 102 Nev. at 271, 721  
7 P.2d at 367. A proper plea canvass should reflect that:

8 [T]he defendant knowingly waived his privilege against self-  
9 incrimination, the right to trial by jury, and the right to confront his  
10 accusers; (2) the plea was voluntary, was not coerced, and was not the  
11 result of a promise of leniency; (3) the defendant understood the  
consequences of his plea and the range of punishments; and (4) the  
defendant understood the nature of the charge, i.e., the elements of the  
crime.

12 Wilson v. State, 99 Nev. 362, 367, 664 P.2d 328, 331 (1983) (citing Higby v. Sheriff, 86 Nev.  
13 774, 476 P.2d 950 (1970)). The presence and advice of counsel is a significant factor in  
14 determining the voluntariness of a plea of guilty. Patton v. Warden, 91 Nev. 1, 2, 530 P.2d  
15 107, 107 (1975). Petitioner is not, however, entitled to a particular relationship with counsel.  
16 Morris v. Slappy, 461 U.S. 1, 13-14, 103 S. Ct. 1610, 1616 (1983).

17 The court accepting the plea must personally address the defendant to determine  
18 whether he understands the nature of the charges to which he is pleading. Bryant, 102 Nev. at  
19 271, 721 P.2d at 367. A court may not rely simply on a written plea agreement without some  
20 verbal interaction with a defendant. Id. Thus, a "colloquy" is constitutionally mandated and a  
21 "colloquy" is but a conversation in a formal setting, such as that occurring between an official  
22 sitting in judgment of an accused at plea. Id. However, the court need not conduct a ritualistic  
23 oral canvass. State v. Freese, 116 Nev. 1097, 13 P.3d 442 (2000). The guidelines for  
24 voluntariness of guilty pleas "do not require the articulation of talismanic phrases," but only  
25 that the record demonstrates a defendant entered his guilty plea understandingly and  
26 voluntarily. Heffley v. Warden, 89 Nev. 573, 575, 516 P.2d 1403, 1404 (1973); see also Brady  
27 v. United States, 397 U.S. 742, 747-48, 90 S. Ct. 1463, 1470 (1970).

28 //

1 Nevada precedent reflects “that where a guilty plea is not coerced and the defendant  
2 [is] competently represented by counsel at the time it [is] entered, the subsequent conviction  
3 is not open to collateral attack and any errors are superseded by the plea of guilty.” Powell v.  
4 Sheriff, Clark County, 85 Nev. 684, 687, 462 P.2d 756, 758 (1969) (citing Hall v. Warden, 83  
5 Nev. 446, 434 P.2d 425 (1967)). In Woods v. State, the Nevada Supreme Court determined  
6 that a defendant lacked standing to challenge the validity of a plea agreement because he had  
7 “voluntarily entered into the plea agreement and accepted its attendant benefits.” 114 Nev.  
8 468, 477, 958 P.2d 91, 96 (1998).

9 Further, the Nevada Supreme Court has explained:

10 [A] guilty plea represents a break in the chain of events which has  
11 preceded it in the criminal process. When a criminal defendant has  
12 solemnly admitted in open court that he is in fact guilty of the offense  
13 with which he is charged, he may not thereafter raise independent  
claims relating to the deprivation of constitutional rights that occurred  
prior to the entry of the guilty plea.

14 Webb v. State, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975) (quoting Tollet v. Henderson, 411  
15 U.S. 258, 267, 93 S. Ct. 1602, 1608 (1973)). Indeed, entry of a guilty plea “waive[s] all  
16 constitutional claims based on events occurring prior to the entry of the plea[], except those  
17 involving voluntariness of the plea[] [itself].” Lyons, 100 Nev. at 431, 683 P.2d 505; see also,  
18 Kirksey, 112 Nev. at 999, 923 P.2d at 1114 (“Where the defendant has pleaded guilty, the only  
19 claims that may be raised thereafter are those involving the voluntariness of the plea itself and  
20 the effectiveness of counsel.”).

21 Habeas relief is unwarranted because Petitioner’s claims are belied by the Guilty Plea  
22 Agreement. Claims asserted in a petition for post-conviction relief must be supported with  
23 specific factual allegations, which if true, would entitle the petitioner to relief. Hargrove, 100  
24 Nev. at 502, 686 P.2d at 225. “Bare” and “naked” allegations are not sufficient to warrant post-  
25 conviction relief, nor are those belied and repelled by the record. Id. “A claim is ‘belied’ when  
26 it is contradicted or proven to be false by the record as it existed at the time the claim was  
27 made.” Mann v. State, 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002).

28 //

1 Here, the court canvassed Petitioner thoroughly. The court took pains to ensure he  
2 entered his plea knowingly, intelligently, and voluntarily. Petitioner now alleges his counsel  
3 overrode his intention to go to trial and pressured him into accepting a deal. He requests an  
4 evidentiary hearing to expand the record beyond the colloquy where he discussed his plea  
5 agreement with the court. Petition at 6.

6 As fully shown in the transcript of the proceeding and in the guilty plea itself,  
7 Petitioner's plea was knowing and intelligent. Petitioner's counsel stated the agreement would  
8 drop two other category B felonies but that the State retained the right to argue sentencing.

9 On November 13, 2019, Petitioner's defense counsel advised the Court that the matter  
10 had been resolved:

11 THE COURT: This is time set for calendar call. Mr. Lewis is  
12 out of custody . . . What are we doing?

13 MR. MAYNARD: This matter has been resolved, Your Honor. We  
14 do have a guilty plea agreement and an amended  
information.

15 Recorder's Transcript of Hearing re: Calendar Call ("Transcript") at 2.

16 Petitioner waived the formal reading of the new information and his attorney informed  
17 the court of the negotiations:

18 MR. MAYNARD: Your Honor, the negotiations is that Mr. Lewis  
19 will be pleading to Count 1, child abuse, neglect,  
20 or endangerment resulting in substantial bodily  
21 harm, and Count 2, child abuse, neglect, or  
endangerment. The State will retain the right to  
argue but agrees not to argue for a maximum  
sentence of more than 15 years.

22 THE COURT: Is that correct?

23 THE STATE: That is correct, Your Honor.

24 THE COURT: Did you hear those negotiations, Mr. Lewis?

25 DEFENDANT: Yes, sir.

26 THE COURT: Is that your understanding of the negotiations?

27 DEFENDANT: Yes, sir.

28 Transcript at 3.

1 The Guilty Plea Agreement (“GPA”) with the State contained these same negotiations;  
2 dropping two category B felonies but the State made no agreement on sentencing.

3 “My decision to plead guilty is based upon the plea agreement in this  
4 case which is as follows: The State retains the right to argue at  
5 sentencing, but agrees not to argue for a maximum sentence of more  
6 than fifteen (15) years.”

7 GPA at 1.

8 The GPA listed two of the four charges and an amended information was  
9 filed in open court. Petitioner indicated he understood the charges:

10 THE COURT: All right. Mr. Lewis, I received a copy of an  
11 amended information in this matter. Have you  
12 received a copy of this?

13 DEFENDANT: Yes, sir.

14 THE COURT: Did you have an opportunity to read it?

15 DEFENDANT: Yes, sir.

16 THE COURT: Do you understand the charges contained in the  
17 amended information?

18 DEFENDANT: Yes, sir.

19 Transcript at 2.

20 Petitioner knew that he was pleading guilty to crimes for which the State could argue  
21 for up to fifteen years in prison. He saw that if he went to trial, he would face all four of the  
22 original charges instead of only two.

23 The GPA explained the consequences of each charge. For Count One, “the Court must  
24 sentence me to imprisonment in the Nevada Department of Corrections for a minimum term  
25 of not less than TWO (2) years and a maximum term of not more than TWENTY (20) years.”  
26 For the second count, “the Court must sentence me to imprisonment in the Nevada Department  
27 of Corrections for a minimum term of not less than ONE (1) year and a maximum term of not  
28 more than SIX (6) years.” GPA at 2.

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1 At this point, Petitioner knew he faced up to twenty years in prison on only one of the  
2 four original felony charges. He was on notice that these were serious charges. The court  
3 confirmed his understanding.

4 THE COURT: Do you understand that as a direct consequence  
5 of your plea to Count 1, you're facing a sentence  
6 in the Nevada Department of Corrections for 2  
7 years minimum, 20 years maximum. And as to  
8 Count 2, you're facing 1 year minimum, 6 years  
9 maximum.

10 Transcript at 6. The court then said Petitioner could not be sentenced until he was examined  
11 by a psychiatrist to determine his risk of reoffending. Transcript at 6-7.

12 The court then made sure Petitioner knew that the court, not the attorneys, would  
13 determine his sentence.

14 THE COURT: So, you understand that the sentence  
15 recommendation by the parties is a mere  
16 recommendation and no one's in a position to  
17 offer you any type of special treatment, leniency,  
18 or probation, as sentencing is entirely up to me.  
19 Do you understand that?

20 DEFENDANT: Yes, sir.

21 The GPA affirmed that Petitioner needed to be evaluated by a psychiatrist before he  
22 would be sentenced. GPA at 3. The written and signed document then informed Petitioner that  
23 "the question of whether I receive probation is in the discretion of the sentencing judge." GPA  
24 at 3. Not only did Petitioner agree in writing that probation was entirely up to the judge, but  
25 he also agreed that his two convictions could run consecutively, not concurrently, at the  
26 judge's discretion. GPA at 3. In exercising his discretion, the judge could consider the charges  
27 that were dropped as well as the two to which he pled guilty. GPA at 3.

28 The GPA made the sentencing discretion very clear:

I have not been promised or guaranteed any particular sentence by  
anyone. I know that my sentence is to be determined by the Court  
within the limits prescribed by statute.

//

/

1 I understand that if my attorney or the State of Nevada or both  
2 recommend any specific punishment to the Court, the Court is not  
obligated to accept the recommendation.

3 GPA at 3.

4 Petitioner was alerted to the fact, if he did not know it before, that any alleged promises  
5 made by his attorney were null and void. He knew that the probation he claims his attorney  
6 promised him was not within the attorney's power to promise. At this point, Petitioner needed  
7 to correct the court and state he was only pleading guilty because he had a 85% chance of  
8 probation. Instead, Petitioner said, "Yes, sir."

9 The court then ensured that Petitioner knew he had to give up valuable rights to plead  
10 guilty. "

11 THE COURT: Do you understand that there's certain rights that  
12 you're waiving by entering in your plea here  
today?

13 DEFENDANT: Yes, sir.

14 THE COURT: In the guilty plea agreement it tells you about  
15 those rights. All right. Do you need any further  
advisement as to those rights?

16 DEFENDANT: No, sir.

17 Transcript at 6. The GPA highlighted the rights Petitioner gave up, including the right to trial,  
18 to require the State to prove each element of each charge, to confront witnesses, and the right  
19 to appeal. GPA at 4-5. Even with these caveats, Petitioner chose to plead guilty. Transcript at  
20 4.

21 Petitioner's plea was voluntary because the court asked Petitioner several times if he  
22 wished to take this deal.

23 THE COURT: Is that what you want to do here today?

24 DEFENDANT: Yes, sir.

25 ...

26 THE COURT: Sir, are you pleading guilty to these offenses  
because in truth and fact you are guilty?

27 DEFENDANT: Yes, sir.

28 THE COURT: Has anyone forced you to do this today?



1 DEFENDANT: No, sir.

2 THE COURT: Has anyone made any promises in order to get  
3 you to plead this way?

4 DEFENDANT: No, sir.

5 THE COURT: Do you believe that this is in your best interest to  
6 plead in this matter?

7 DEFENDANT: Yes, sir.

8 THE COURT: Are you asking the Court to accept your plea?

9 DEFENDANT: Yes, sir.

10 THE COURT: You're not asking for a trial?

11 DEFENDANT: No, sir.

12 Transcript at 3-5. Petitioner specifically and clearly informed the court that he did not want to  
13 go to trial on the four original felonies.

14 The court then asked Petitioner if he had read and understood the GPA. Transcript at 5.  
15 Petitioner affirmed that he understood. Transcript at 5.

16 The GPA also ensured Petitioner entered his plea voluntarily:

17 VOLUNTARINESS OF PLEA

18 I have discussed the elements of all the original charges against me  
19 with my attorney and I understand the nature of the charges against  
20 me.

21 I understand that the State would have to prove each element of the  
22 charges against me at trial.

23 I have discussed with my attorney any possible defenses, defense  
24 strategies and circumstances which might be in my favor.

25 All of the foregoing elements, consequences, rights, and waiver of  
26 rights have been thoroughly explained to me by my attorney.

27 I believe that pleading guilty and accepting this plea bargain is in my  
28 best interest, and that *trial would be contrary to my best interest.*

*I am signing this agreement voluntarily, after consultation with my  
attorney, and I am not acting under duress or coercion or by virtue of  
any promises of leniency except those set forth in this agreement.*

I am not now under the influence of any intoxicating liquor, a  
controlled substance or other drug which would in any manner impair  
my ability to comprehend or understand this agreement or the  
proceedings surrounding my entry of this plea.

1           *My attorney has answered all my questions regarding this plea*  
2           *agreement and its consequences to my satisfaction and I am satisfied*  
3           *with the services provided by my attorney.*

4 GPA at 5-6 (emphasis added).

5           Petitioner's counsel also informed the court that he had reviewed the agreement  
6 thoroughly with Petitioner. GPA at 7. This included a discussion on the penalties for each  
7 charge he faced. GPA at 7.

8           Petitioner states his plea was not voluntarily because he did not fully understand the  
9 consequences of his agreement with the State. As this allegation is clearly belied by the record,  
10 Petitioner has failed to carry his burden of proving his plea was invalid. His claims are bare  
11 and naked assertions suitable only for summary denial under Hargrove, 100 Nev. at 502, 686  
12 P.2d at 225. Petitioner affirmed multiple times he pled guilty freely and voluntarily. He was  
13 originally charged with two counts of child abuse resulting in substantial bodily harm, each  
14 with a potential sentence of 2-20 years in prison, and two counts of child abuse, each with a  
15 potential sentence of 1-6 years in prison. Each of these sentences could have run consecutively.  
16 Petitioner acknowledged the severe consequences he faced for the two counts he pled to.  
17 Transcript at 6. He never expressed a desire to go to trial. He never informed the court that he  
18 had been promised probation.

19           Petitioner asserted during his plea canvass that no promises were made other than those  
20 incorporated in the terms of the GPA. Transcript at 5. Petitioner may not now claim a promise  
21 outside the plea agreement is his due. Therefore, based on the totality of the circumstances,  
22 Petitioner's claim of pleading unknowingly and involuntarily is belied by the record.

23 **II. THIS COURT SHOULD DENY THE PETITION BECAUSE PETITIONER DID**  
24 **NOT SUFFER INEFFECTIVE ASSISTANCE OF COUNSEL**

25           Petitioner claims his counsel was ineffective for failing to ensure he knew the  
26 consequences of his plea. Petition at 5.

27           The Sixth Amendment to the United States Constitution provides that, "[i]n all criminal  
28 prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his  
defense." The United States Supreme Court has long recognized that "the right to counsel is

1 the right to the effective assistance of counsel.” Strickland v. Washington, 466 U.S. 668, 686,  
2 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323  
3 (1993).

4 To prevail on a claim of ineffective assistance of counsel, a Petitioner must prove she  
5 was denied “reasonably effective assistance” of counsel by satisfying the two-prong test of  
6 Strickland, 466 U.S. at 686-87, 104 S. Ct. at 2063-64. See also Love, 109 Nev. at 1138, 865  
7 P.2d at 323. Under the Strickland test, a Petitioner must show first that her counsel's  
8 representation fell below an objective standard of reasonableness, and second, that but for  
9 counsel's errors, there is a reasonable probability that the result of the proceedings would have  
10 been different. 466 U.S. at 687-88, 694, 104 S. Ct. at 2065, 2068; Warden, Nevada State  
11 Prison v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-  
12 part test). “[T]here is no reason for a court deciding an ineffective assistance claim to approach  
13 the inquiry in the same order or even to address both components of the inquiry if the defendant  
14 makes an insufficient showing on one.” Strickland, 466 U.S. at 697, 104 S. Ct. at 2069.

15 The Court begins with the presumption of effectiveness and then must determine  
16 whether the Petitioner has demonstrated by a preponderance of the evidence that counsel was  
17 ineffective. Means, 120 Nev. at 1011, 103 P.3d at 32. “Effective counsel does not mean  
18 errorless counsel, but rather counsel whose assistance is ‘[w]ithin the range of competence  
19 demanded of attorneys in criminal cases.’” Jackson v. Warden, 91 Nev. 430, 432, 537 P.2d  
20 473, 474 (1975) (quoting McMann v. Richardson, 397 U.S. 759, 771, 90 S.Ct. 1441, 1449  
21 (1970)).

22 There is a “strong presumption” that counsel’s attention to certain issues to the  
23 exclusion of others reflects tactics rather than “sheer neglect.” Harrington v. Richter, 131 S.  
24 Ct. 770, 788 (2011). Although courts may not indulge *post hoc* rationalization for counsel’s  
25 decision-making that contradicts the available evidence of counsel’s actions, neither may they  
26 insist counsel confirm every aspect of the strategic basis for his or her actions. Id.

27 //

28 //

1 In considering whether counsel has met this standard, the court should first determine  
2 whether counsel made a “sufficient inquiry into the information that is pertinent to his client's  
3 case.” Doleman v State, 112 Nev. 843, 846, 921 P.2d 278, 280 (1996); citing Strickland, 466  
4 U.S. at 690-691, 104 S.Ct. at 2066. Once such a reasonable inquiry has been made by counsel,  
5 the court should consider whether counsel made “a reasonable strategy decision on how to  
6 proceed with his client's case.” Doleman, 112 Nev. at 846, 921 P.2d at 280, citing Strickland,  
7 466 U.S. at 690-691, 104 S.Ct. at 2066. Finally, counsel's strategy is a “tactical” decision and  
8 will be “virtually unchallengeable absent extraordinary circumstances.” Doleman, 112 Nev. at  
9 846, 921 P.2d at 280; Howard v. State, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990);  
10 Strickland, 466 U.S. at 691, 104 S.Ct. at 2066.

11 The role of a Court in considering allegations of ineffective assistance of counsel is  
12 “not to pass upon the merits of the action not taken but to determine whether, under the  
13 particular facts and circumstances of the case, trial counsel failed to render reasonably  
14 effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978). This  
15 analysis does not mean that the Court should “second guess reasoned choices between trial  
16 tactics nor does it mean that defense counsel, to protect himself against allegations of  
17 inadequacy, must make every conceivable motion no matter how remote the possibilities are  
18 of success.” Id. To be effective, the constitution “does not require that counsel do what is  
19 impossible or unethical. If there is no bona fide defense to the charge, counsel cannot create  
20 one and may disserve the interests of his client by attempting a useless charade.” United States  
21 v. Cronin, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984).

22 “There are countless ways to provide effective assistance in any given case. Even the  
23 best criminal defense attorneys would not defend a particular client in the same way.”  
24 Strickland, 466 U.S. at 689, 104 S. Ct. at 689. “Strategic choices made by counsel after  
25 thoroughly investigating the plausible options are almost unchallengeable.” Dawson v. State,  
26 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784  
27 P.2d 951, 953 (1989). In essence, the Court must “judge the reasonableness of counsel's  
28 challenged conduct on the facts of the particular case, viewed as of the time of counsel's

1 conduct.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

2 Dismissal of a habeas petition is mandatory if “[t]he petitioner’s conviction was upon  
3 a plea of guilty or guilty but mentally ill and the petition is not based upon an allegation that  
4 the plea was involuntarily or unknowingly entered or that the plea was entered without  
5 effective assistance of counsel.” NRS 34.810(1)(a). The Nevada Court of Appeals recently  
6 considered the types of ineffective assistance of counsel claims that are permissible pursuant  
7 to this statute, and concluded that NRS 34.810 *only* permits claims of ineffective assistance of  
8 counsel that challenge the validity of the guilty plea. Gonzales v. State, 136 Nev. Adv. Op. 60  
9 (Nev. App. 2020).

10 “[A] petitioner must allege specific facts demonstrating both that counsel’s advice (or  
11 failure to give advice) regarding the guilty plea was objectively unreasonable and that the  
12 deficiency affected the outcome of the plea negotiation process.” Id. Further, when a  
13 conviction is the result of a guilty plea, to demonstrate prejudice, a petitioner “must show that  
14 there is a reasonable probability that, but for counsel’s errors, he would not have pleaded guilty  
15 and would have insisted on going to trial.” Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102,  
16 1107 (1996) (quoting Hill v. Lockhart, 474 U.S. 52, 59, 106 S. Ct. 366, 370 (1985)). “A  
17 reasonable probability is a probability sufficient to undermine confidence in the outcome.”  
18 McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing Strickland, 466  
19 U.S. at 687-89, 694, 104 S. Ct. at 2064-65, 2068).

20 Here, Petitioner alleges his lawyer told him there was an 85% chance he would be  
21 sentenced to probation. This claim is utterly unsupported by anything in the record. Petitioner  
22 also offers nothing to show that his attorney’s prediction, if actually made, was unreasonable  
23 to the point of deficient performance.

24 As an initial matter, even if Petitioner’s claim were true, he could not demonstrate  
25 prejudice. If he accepted the agreement believing he had an 85% chance of probation, he also  
26 accepted a 15% chance of a prison term. Even if the 15% possibility came to pass, this does  
27 not undermine the 85% chance he claims he was offered.

28 //

1           Petitioner cannot show prejudice because he cannot show that if his attorney had  
2           advised him otherwise, he would have taken his chances at trial rather than plead guilty.  
3           Petitioner faced four category B felonies for serious injuries he admitted causing. The victim,  
4           a five-year old unrelated to Petitioner, suffered broken bones and potentially life-threatening  
5           internal injuries. At trial, the jury would have heard in detail the extensive damage Petitioner  
6           inflicted on the child. By entering into his plea agreement, Petitioner reduced his felonies by  
7           half.

8           Further, his claim of an unfulfilled promise of probation is clearly belied by the record,  
9           as outlined above in Section I. The court also ensured Petitioner had no unanswered questions  
10          or concerns about his attorney's advice.

11                   THE COURT:       When you read through [the GPA], was your  
12                                       attorney available to answer any questions you  
  may have had?

13                   DEFENDANT:     Yes, sir.

14                   THE COURT:     Do you believe you understand the contents of  
15                                       the guilty plea agreement?

16                   DEFENDANT:     Yes, sir.

17                   THE COURT:     Do you have any questions of your attorney  
18                                       about the guilty plea agreement before we do any  
  further?

19                   DEFENDANT:     No, sir.

20                   THE COURT:     Do you have any questions of the Court about the  
  guilty plea agreement before we go any further?

21                   DEFENDANT:     No, sir.

22          Transcript at 5-6.

23           The court offered Petitioner an opportunity to ask questions. If he believed that he had  
24           been promised something other than what was memorialized in the GPA, this was his  
25           opportunity to ask. He affirmed in the GPA as well that all his questions were answered by his  
26           attorney: "My attorney has answered all my questions regarding this plea agreement and its  
27           consequences to my satisfaction and I am satisfied with the services provided by my attorney."  
28           GPA at 7. Further, Petitioner's written GPA said, "I have discussed the elements of all the

1 original charges against me with my attorney and I understand the nature of the charges against  
2 me.” GPA at 6. “I have discussed with my attorney any possible defenses, defense strategies,  
3 and circumstances which might be in my favor.” GPA at 6.

4 Petitioner asks for an opportunity to testify as to his attorney’s promises, despite the  
5 fact they are belied by the record. Petition at 5. No evidentiary hearing is needed to inquire  
6 into the subjective state of mind of Petitioner’s counsel. Strickland calls for an inquiry in the  
7 objective reasonableness of counsel’s performance, not counsel’s subjective state of mind. 466  
8 U.S. 668, 688, 104 S. Ct. 2052, 2065 (1994). This Court has before it all the evidence it needs  
9 to find the facts in this case. Petitioner’s attorney, as an officer of the court, affirmed to this  
10 Court that he reviewed the GPA with his client. GPA at 7. The GPA clearly states no promises  
11 made outside the GPA would be honored. GPA at 5-6. It also states Petitioner entered his  
12 agreement knowingly and voluntarily. GPA at 5-6. Petitioner’s claims to the contrary are  
13 belied by the record.

14 All the claims raised in the instant Petition are conclusory, bare, and naked assertions  
15 suitable only for summary denial pursuant to Hargrove and Maresca. He fails to show his plea  
16 was involuntarily or unknowingly entered or that the plea was entered without effective  
17 assistance of counsel under NRS 34.810. Petitioner also fails to show his counsel’s advice  
18 regarding his guilty plea was objectively unreasonable, resulting in a deficiency that affected  
19 the outcome of the plea negotiation process under Gonzales. Therefore his Petition should be  
20 denied.

### 21 **III. AN EVIDENTIARY HEARING IS NOT NECESSARY**

22 Petitioner argues in favor of a hearing so he can testify “that Mr. Mueller assured Mr.  
23 Lewis that he would receive probation when he entered into his plea agreement.” Petition at  
24 5-6.

25 It is improper to hold an evidentiary hearing simply to make a complete record. See  
26 State v. Eighth Judicial Dist. Court, 121 Nev. 225, 234, 112 P.3d 1070, 1076 (2005) (“The  
27 district court considered itself the ‘equivalent of . . . the trial judge’ and consequently wanted  
28 ‘to make as complete a record as possible.’ This is an incorrect basis for an evidentiary

1 hearing.”). The Nevada Supreme Court has held that if a petition can be resolved without  
2 expanding the record, then no evidentiary hearing is necessary. Marshall v. State, 110 Nev.  
3 1328, 885 P.2d 603 (1994); Mann, 118 Nev. at 356, 46 P.3d at 1231.

4 A defendant is entitled to an evidentiary hearing if his petition is supported by specific  
5 factual allegations, which, if true, would entitle him to relief unless the factual allegations are  
6 repelled by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; see also Hargrove, 100  
7 Nev. at 503, 686 P.2d at 225 (holding “[a] defendant seeking post-conviction relief is not  
8 entitled to an evidentiary hearing on factual allegations belied or repelled by the record”). “A  
9 claim is ‘belied’ when it is contradicted or proven to be false by the record as it existed at the  
10 time the claim was made.” Mann, 118 Nev. at 354, 46 P.3d at 1230 (2002).

11 The United States Supreme Court has held that an evidentiary hearing is not required  
12 simply because counsel’s actions are challenged as being unreasonable strategic decisions.  
13 Harrington v. Richter, 131 S. Ct. 770, 788 (2011). Although courts may not indulge post hoc  
14 rationalization for counsel’s decision-making that contradicts the available evidence of  
15 counsel’s actions, neither may they insist counsel confirm every aspect of the strategic basis  
16 for his or her actions. Id. There is a “strong presumption” that counsel’s attention to certain  
17 issues to the exclusion of others reflects trial tactics rather than “sheer neglect.” Id. (citing  
18 Yarborough v. Gentry, 540 U.S. 1, 124 S. Ct. 1 (2003)). Strickland calls for an inquiry in the  
19 objective reasonableness of counsel’s performance, not counsel’s subjective state of mind. 466  
20 U.S. 668, 688, 104 S. Ct. 2052, 2065 (1994).

21 Here, no evidentiary hearing is needed to question defense counsel’s thoughts about the  
22 likelihood of probation, as counsel’s subjective reasons are immaterial. Id. Petitioner’s claim  
23 can be resolved without expanding the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605.  
24 His assertions are belied by the record and subject to summary dismissal. Hargrove, 100 Nev.  
25 at 503, 686 P.2d at 225.

26 //

27 //

28 //



1 **CONCLUSION**

2 For the foregoing reasons, the State respectfully requests this Petition for Writ Of  
3 Habeas Corpus be DENIED.

4 DATED this 31<sup>st</sup> day of August, 2021.

5 Respectfully submitted,

6 STEVEN B. WOLFSON  
7 Clark County District Attorney  
8 Nevada Bar #001565

9 BY /s/ Jonathan VanBoskerck  
10 JONATHAN VANBOSKERCK  
11 Chief Deputy District Attorney  
12 Nevada Bar #006528  
13  
14  
15  
16

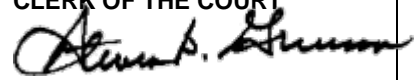
17 **CERTIFICATE OF SERVICE**

18 I hereby certify that service of the above and foregoing was made this 31st day of  
19 AUGUST 2021, to:

20 JULIAN GREGORY, ESQ.  
21 julian@jglawlv.com  
22

23 BY /s/ Howard Conrad  
24 Secretary for the District Attorney's Office  
25 Special Victims Unit  
26  
27

28 hjc/SVU



RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

\* \* \* \* \*

DESHAUN LEWIS,	)	
	)	CASE NO. A-21-838960-W
Plaintiff,	)	
	)	
vs.	)	DEPT. NO. III
	)	
CALVIN JOHNSON, WARDEN,	)	
	)	<b>Transcript of Proceedings</b>
Defendant.	)	
	)	

BEFORE THE HONORABLE MONICA TRUJILLO, DISTRICT COURT JUDGE

**PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)**

MONDAY, SEPTEMBER 27, 2021

APPEARANCES [ALL VIA VIDEO/TELEPHONE CONFERENCE]:

For the Plaintiff: JULIAN GREGORY, ESQ.

For the Defendant: MICHELLE Y. JOBE, ESQ.

RECORDED BY: REBECA GOMEZ, DISTRICT COURT  
TRANSCRIBED BY: KRISTEN LUNKWITZ

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

1 MONDAY, SEPTEMBER 27, 2021 AT 9:32 A.M.

2

3 THE COURT: *Deshaun Lewis versus Calvin Johnson.*

4 On behalf of the State, Ms. Thomas, --

5 MS. THOMAS: And, Your Honor, this is actually  
6 going to be Michelle Jobe from our office. She was here --

7 THE CLERK: She's on the line.

8 MS. THOMAS: She's on the line.

9 MS. JOBE: I'm here, via video, Your Honor.

10 THE COURT: All right. Ms. Jobe on behalf of the  
11 State. On behalf of Defendant?

12 MR. GREGORY: Julian Gregory on behalf of Deshaun  
13 Lewis.

14 THE COURT: Thank you. And he present in custody  
15 via BlueJeans, CCDC. This is on for his post-conviction  
16 Petition for Writ of Habeas Corpus. I've reviewed that  
17 Petition. I've also reviewed the State's response.  
18 Anything further, Mr. Gregory?

19 MR. GREGORY: Your Honor, I would just like to --  
20 I would submit it on the pleadings, with the exception that  
21 I would ask the Court, frankly, in these sorts of  
22 situations, what circumstances might allow for a -- for an  
23 evidentiary hearing. I mean, in the -- in these  
24 circumstances, we've got a plea that was taken before the  
25 prior District Court Judge. It's a situation where, you

1 know, frankly, we've got a rogue attorney going and  
2 essentially coercing a plea. Without that evidentiary  
3 hearing, I don't see how anybody can get any kind of  
4 relief. So, with that, I would submit it.

5 THE COURT: Okay. But how is this not summarily  
6 denied when, again, -- I mean, obviously, I know what  
7 you're saying, but there was ample opportunity in the  
8 questioning and the canvas with regard to knowing,  
9 voluntarily waiving his rights, and entering into the plea,  
10 and a discussion of no promises being made to him? So, how  
11 is it not belied by the record?

12 MR. GREGORY: Your Honor, the issue that I've got  
13 is we -- without subpoena power and without being able to  
14 take testimony from the prior counsel, I don't see how we  
15 can ever have a Plea Agreement that's ever going to be  
16 withdrawn.

17 THE COURT: Ms. Jobe?

18 MS. JOBE: Your Honor, the State's position is it  
19 should be summarily denied. I would note that in the  
20 Guilty Plea Agreement that he signed, the range -- what the  
21 State said it would limit its argument at the cap of 15  
22 years and he was sentenced under that range by the Court,  
23 not that the Court had to. The Court could have gone above  
24 that, or done whatever the Court wished, but I would note  
25 that the Court actually stayed within the parameters of

1 what the State could argue for and was contained in the  
2 Guilty Plea Agreement. So, the -- it just strengthens the  
3 State's position that there's really no basis for him to  
4 get out of the plea.

5 As far as the 85 percent guarantee, Your Honor,  
6 that's not a guarantee or a promise of probation and I --  
7 there's been simply zero showing that there has been any  
8 coercion, that there's been any ineffective or deficiency  
9 on the part of counsel at the time when the agreement was  
10 entered into, as well as the canvas, which was more  
11 thorough than most are about the Defendant's willing and  
12 desire that he not go to trial and that he be allowed to  
13 enter the plea. So, the State believes it can be summarily  
14 denied.

15 THE COURT: Any response, Mr. Gregory?

16 MR. GREGORY: Your Honor, I am prepared to submit  
17 it.

18 THE COURT: All right. So, the Court agrees it  
19 can be summarily denied. I don't see, obviously, other  
20 than just stating that it happened, I don't see any  
21 specific facts in the records that would indicate that  
22 anything was coerced and I think that the guilty plea  
23 canvas, as well as the Guilty Plea Agreement, belies any  
24 indication that that occurred with these specific questions  
25 about the potential sentencing ranges, the idea that

1 sentencing was solely up to the Court, and there could be  
2 no other promises. He answered all of those in the  
3 affirmative.

4 Even with the issue of 85 percent, the 85 percent  
5 promise of getting probation, whether or not that happened  
6 or not, I think it's appropriate for attorneys, based on  
7 their experience, to give indications of what they believe  
8 a judge will do, but, again, the fact that he was canvased  
9 on that whatever his attorney says or any other promises  
10 made outside of the agreement or discussion with the Court  
11 will not be followed. I don't think that it meets the  
12 *Strickland* standard and I don't think that there are  
13 specific acts, again, to indicate that this was  
14 involuntarily or unknowing.

15 So, the Court's going to deny the Petition. Ms.  
16 Jobe, please prepare the findings of facts and conclusions  
17 of law consistent with your position and submit it to the  
18 Court.

19 MS. JOBE: Yes, Your Honor.

20 THE COURT: Thank you.

21 MR. GREGORY: Understood, Your Honor. Thank you.

22 THE COURT: Thank you.

23  
24 PROCEEDING CONCLUDED 9:37 A.M.

25 \* \* \* \* \*

1 **CERTIFICATION**

2

3

4 I certify that the foregoing is a correct transcript from

5 the audio-visual recording of the proceedings in the

6 above-entitled matter.

7

8 **AFFIRMATION**

9

10 I affirm that this transcript does not contain the social

11 security or tax identification number of any person or

12 entity.

13

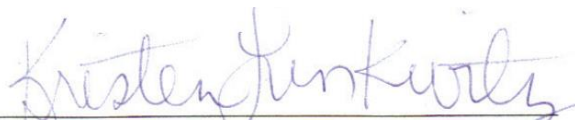
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20 KRISTEN LUNKWITZ

21 INDEPENDENT TRANSCRIBER

22

23

24

25

STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
MICHELLE JOBE  
Chief Deputy District Attorney  
Nevada Bar #010575  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

## DISTRICT COURT

## CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-VS-

CASE NO: **A-21-838960-W**  
**(C-17-325725-1)**

**DESHAUN JAMES LEWIS,  
#7036167**

DEPT NO: **III**

Defendant.

## **FINDINGS OF FACT, CONCLUSIONS OF**

## LAW AND ORDER

DATE OF HEARING: **SEPTEMBER 27, 2021**

TIME OF HEARING: 8:30 AM

THIS CAUSE having presented before the Honorable MONICA TRUJILLO, District Judge, on the 27th day of SEPTEMBER, 2021; Petitioner present in custody, represented by JULIAN GREGORY, ESQ.; Respondent represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through MICHELLE JOBE, Chief Deputy District Attorney; and having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, the Court makes the following Findings of Fact and Conclusions of Law:

//

//

//



## PROCEDURAL HISTORY

1  
2 1. Deshaun James Lewis was charged by way of Information with two counts of  
3 child abuse, neglect, or endangerment resulting in substantial bodily harm (Category B Felony  
4 – NRS 200.508.1) and two counts of child abuse, neglect, or endangerment (Category B  
5 Felony – NRS 200.508.1) for events occurring between November 1, 2015, and October 2,  
6 2016.

7 2. Petitioner pled guilty on November 13, 2019, to one count of child abuse,  
8 neglect, or endangerment resulting in substantial bodily harm (Category B Felony – NRS  
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10 200.508.1). Petitioner signed a Guilty Plea Agreement that was filed with the Court. The Court  
11 then canvassed Petitioner on the terms and consequences of his guilty plea, as well as his  
12 waiver of his right to trial and other Constitutional rights, and his desire to enter the plea.

13 3. The court offered Petitioner an opportunity to ask questions. He affirmed in the  
14 GPA as well that all his questions were answered by his attorney: “My attorney has answered  
15 all my questions regarding this plea agreement and its consequences to my satisfaction and I  
16 am satisfied with the services provided by my attorney.” GPA at <sup>6.</sup>~~7~~. Further, Petitioner’s written  
17 GPA said, “I have discussed the elements of all the original charges against me with my  
18 attorney and I understand the nature of the charges against me.” GPA at <sup>5.</sup>~~6~~. “I have discussed  
19 with my attorney any possible defenses, defense strategies, and circumstances which might be  
20 in my favor.” GPA at <sup>5.</sup>~~6~~.

21 4. Petitioner’s attorney, as an officer of the court, affirmed to the Court that he  
22 reviewed the GPA with his client. GPA at 7. The GPA clearly states no promises made outside  
23 the GPA would be honored. GPA at <sup>4.</sup>~~5-6~~. It also states Petitioner entered his agreement  
24 knowingly and voluntarily. GPA at 5-6. The Court revisited these points during the plea  
25 canvass. Pleas Canvass Transcript, pp. 2-~~7~~. 8.

26 5. During the canvass, Petitioner repeatedly stated he wished to enter into the  
27 negotiations with the State and that he did not want to go to trial. Plea Transcript, pp. 3-5.

28 //

1           6.       On August 10, 2020, Petitioner was sentenced to 60-180 months in the Nevada  
2 Department of Corrections for Count One and 28-72 months for Count Two, to run  
3 concurrently to Count 1. Petitioner received two days credit for time served. The Judgment of  
4 Conviction was filed on August 11, 2020. Petitioner did not file a direct appeal.

5           7.       This Petition for Writ of Habeas Corpus and Motion for Appointment of Counsel  
6 followed on August 4, 2021. Petitioner claims he was coerced into pleading guilty by his  
7 attorney. Petitioner alleges his lawyer told him there was an 85% chance he would be  
8 sentenced to probation. Petitioner alleges his lawyer was ineffective.

### 9                               **FINDINGS OF FACT**

10           1.       The Court, after reviewing the transcripts, the Guilty Plea Agreement,  
11 Petitioner's pleadings, and the argument of counsel, finds there were no facts presented to  
12 indicate Defendant's plea of guilty was coerced in any way.

13           2.       As to the claim about the statement quantifying Defendant's chances at  
14 probation, though there is no proof that such a statement was made, even if it were, the Court  
15 notes that it is appropriate for an attorney to provide advice as to what the Court may do based  
16 on the attorney's experience. The Court finds that in this instance, the alleged statement  
17 involving was not a promise or guarantee of probation.

18           3.       The Court further finds there is nothing in the record, pleadings, or argument, to  
19 indicate Defendant's plea was either unwilling, unknowing, or involuntary. The record reflects  
20 that during the plea canvass, Petitioner affirmatively asked the Court to accept his plea.

21           4.       Petitioner's claim can be resolved without expanding the record. Marshall, 110  
22 Nev. at 1331, 885 P.2d at 605. There is no factual basis before the Court to indicate the plea  
23 was coerced, or was unwilling or unknowingly entered into.

### 24                               **CONCLUSIONS OF LAW**

25           1.       All of the claims raised in the instant Petition are conclusory, bare, and naked  
26 assertions suitable for summary denial. Hargrove v. State, 100 Nev. 498, 686 P.2d 222;  
27 Maresca v. State, 103 Nev. 669, 748 P.2d 3 (1987). Defendant Petitioner failed to show that  
28 his plea was involuntarily or unknowingly entered or that the plea was entered without

1 effective assistance of counsel under NRS 34.810. Petitioner also failed to show his counsel's  
2 advice regarding his guilty plea or potential sentence was objectively unreasonable, resulting  
3 in a deficiency that affected the outcome of the plea negotiation process under Gonzales v.  
4 State, 136 Nev. Adv. Op. 60 (Nev. App. 2020).

5 2. There is no legal basis for granting an evidentiary hearing. State v. Eighth  
6 Judicial Dist. Court, 121 Nev. 225, 234, 112 P.3d 1070, 1076 (2005); Marshall v. State, 110  
7 Nev. 1328, 885 P.2d 603 (1994); Mann, 118 Nev. at 356, 46 P.3d at 1231.

8 3. Petitioner's claim regarding his attorney's purported "85%" statement goes to a  
9 subjective state of mind of defense counsel and was not a promise or guarantee of probation.  
10 Strickland v. Washington, 466 U.S. 668, 688, 104 S. Ct. 2052, 2065 (1994).

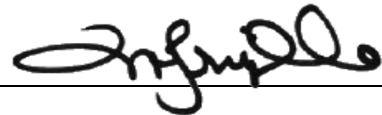
11 4. The absence of any facts to indicate the plea was coerced does not require an  
12 evidentiary hearing. Hargrove, 100 Nev. at 502.

13 5. The claims by Petitioner do not meet the Strickland standard for ineffective  
14 assistance of counsel. Petitioner cannot show prejudice because he cannot show that if his  
15 attorney had advised him otherwise, he would have taken his chances at trial rather than plead  
16 guilty. Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996); McNelson v. State,  
17 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999).

18 **ORDER**

19 **THEREFORE, IT IS HEREBY ORDERED** that the Petition for Post-Conviction  
20 Relief, and request for an evidentiary hearing, shall be, and is denied.


21 Dated this 16th day of November, 2021

22 

23 STEVEN B. WOLFSON  
24 Clark County District Attorney  
Nevada Bar #001565

F48 OCB DF82 92A1  
Monica Trujillo  
District Court Judge

25 BY

26   
MICHELLE JOBE  
27 Chief Deputy District Attorney  
Nevada Bar #010575

28 MYJ/hjc/SVU

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
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6 Deshaun Lewis, Plaintiff(s)

CASE NO: A-21-838960-W

7 vs.

DEPT. NO. Department 3

8 Calvin Johnson, Warden,  
9 Defendant(s)

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District  
13 Court. The foregoing Findings of Fact, Conclusions of Law and Order was served via the  
14 court's electronic eFile system to all recipients registered for e-Service on the above entitled  
case as listed below:

15 Service Date: 11/16/2021

16 DA SVU

DASVUTeam@clarkcountynv.com

17 Julian Gregory

julian@jglawlv.com



NEFF

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

DESHAUN LEWIS,

Petitioner,

vs.

CALVIN JOHNSON, WARDEN,

Respondent,

Case No: A-21-838960-W

Dept No: III

**NOTICE OF ENTRY OF FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER**

**PLEASE TAKE NOTICE** that on November 16, 2021, the court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed to you. This notice was mailed on November 17, 2021.

STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

**CERTIFICATE OF E-SERVICE / MAILING**

I hereby certify that on this 17 day of November 2021, I served a copy of this Notice of Entry on the following:

☒ By e-mail:

Clark County District Attorney's Office  
Attorney General's Office – Appellate Division-

☒ The United States mail addressed as follows:

Deshaun Lewis # 1236703	Julian Gregory, Esq.
P.O. Box 650	411 S. Sixth St.
Indian Springs, NV 89070	Las Vegas, NV 89101

/s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
MICHELLE JOBE  
Chief Deputy District Attorney  
Nevada Bar #010575  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

## DISTRICT COURT

**CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

-VS-

CASE NO: **A-21-838960-W**  
**(C-17-325725-1)**

**DESHAUN JAMES LEWIS,  
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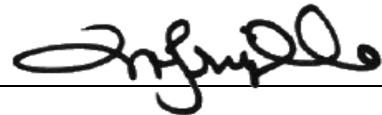
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17 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999).

### 18 ORDER

19 **THEREFORE, IT IS HEREBY ORDERED** that the Petition for Post-Conviction  
20 Relief, and request for an evidentiary hearing, shall be, and is denied.


21 Dated this 16th day of November, 2021

22 

23 STEVEN B. WOLFSON  
24 Clark County District Attorney  
Nevada Bar #001565

F48 0CB DF82 92A1  
Monica Trujillo  
District Court Judge

25 BY

26   
MICHELLE JOBE  
27 Chief Deputy District Attorney  
Nevada Bar #010575

28 MYJ/hjc/SVU

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Deshaun Lewis, Plaintiff(s)

CASE NO: A-21-838960-W

7 vs.

DEPT. NO. Department 3

8 Calvin Johnson, Warden,  
9 Defendant(s)

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12 This automated certificate of service was generated by the Eighth Judicial District  
13 Court. The foregoing Findings of Fact, Conclusions of Law and Order was served via the  
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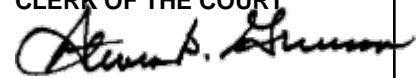
15 Service Date: 11/16/2021

16 DA SVU

DASVUTeam@clarkcountynv.com

17 Julian Gregory

julian@jglawlv.com



**NOASC**

JULIAN GREGORY, ESQ.  
Nevada Bar No. 11978

**LAW OFFICE OF JULIAN GREGORY, L.L.C.**

411 South Sixth Street

Las Vegas, NV 89101

T: (702) 625-1183

F: (702) 302-4286

E: Julian@jglawlv.com

Attorney for Deshaun Lewis

Electronically Filed  
Dec 20 2021 02:48 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

DESHAUN JAMES LEWIS,

Petitioner,

Case No.

A-21-838960-W

Dep't No.

III

*vs.*

CALVIN JOHNSON, WARDEN; and THE STATE OF NE-  
VADA,

Respondents.

**NOTICE OF APPEAL**

Notice is hereby given that Deshaun Lewis, by and through counsel Julian Gregory, appeals from the denial of the Petition for Writ of Habeas Corpus (Post-Conviction) in the above-entitled case.

DATED this 13 of December, 2021.

/s/ Julian Gregory

JULIAN GREGORY, ESQ.

**LAW OFFICE OF JULIAN GREGORY, L.L.C.**

Attorney for Deshaun Lewis

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**CERTIFICATE OF SERVICE**

I hereby certify that I am a person competent to serve papers, that I am not a party to the above-entitled action, and that on December 13, 2021, I served the foregoing document and all attachments on the parties or counsel listed below:

Steven B. Wolfson	Via e-mail
Clark County District Attorney's Office	motions@clarkcountyyda.com

/s/ Julian Gregory  
JULIAN GREGORY, ESQ.  
**LAW OFFICE OF JULIAN GREGORY, L.L.C.**  
Attorney for Deshaun Lewis

**AFFIRMATION**

Pursuant to NRS 239B.030, this document contains no social security numbers.

<u>/s/ Julian Gregory</u>	<u>12-13-21</u>
Julian Gregory, Esq.	Date

Felony/Gross Misdemeanor

COURT MINUTES

August 10, 2020

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C-17-325725-1      State of Nevada  
                                 vs  
                                 Deshaun Lewis

---

August 10, 2020      08:30 AM      Sentencing

HEARD BY:      Kephart, William D.      COURTROOM: RJC Courtroom 16B

COURT CLERK: Everett, Tia

RECORDER:      Erickson, Christine

REPORTER:

PARTIES PRESENT:

Deshaun James Lewis

Defendant

Jay Maynard

Attorney for Defendant

Michelle Y. Jobe

Attorney for Plaintiff

State of Nevada

Plaintiff

**JOURNAL ENTRIES**

DEFT. LEWIS ADJUDGED GUILTY of COUNT 1 - CHILD ABUSE, NEGLECT, OR ENDANGERMENT WITH SUBSTANTIAL BODILY HARM (F) and COUNT 2 - CHILD ABUSE, NEGLECT OR ENDANGERMENT (F). Matter argued and submitted. Statement by Defendant. COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee, a \$150.00 DNA Analysis fee including testing to determine genetic markers, and a \$3.00 DNA Collection fee; Deft. SENTENCED as to COUNT 1 - to a MINIMUM of SIXTY (60) MONTHS and a MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS in the Nevada Department of Corrections (NDC); as to COUNT 2 - to a MINIMUM of TWENTY-EIGHT (28) MONTHS and a MAXIMUM of SEVENTY-TWO (72) MONTHS in the Nevada Department of Corrections (NDC); COUNT 2 CONCURRENT with COUNT 1; with TWO (2) DAYS credit for time served; Defendant REMANDED INTO CUSTODY.

BOND EXONERATED.

NDC

## Writ of Habeas Corpus

## COURT MINUTES

September 27, 2021

A-21-838960-W      Deshaun Lewis, Plaintiff(s)  
vs.  
Calvin Johnson, Warden, Defendant(s)

September 27, 2021      08:30 AM      Petition for Writ of Habeas Corpus (Post-Conviction)

HEARD BY:      Trujillo, Monica      COURTROOM: RJC Courtroom 11C

COURT CLERK: Bracamontez-Munguia, Carina

RECORDER:      Gomez, Rebeca

REPORTER:

## PARTIES PRESENT:

Calvin Johnson, Warden	Defendant
Julian Gregory	Attorney for Plaintiff
Michelle Y. Jobe	Attorney for Defendant

## JOURNAL ENTRIES

Mr. Gregory indicated he would submit on the pleadings with the exception of inquiring in this situation what circumstances might allow for an Evidentiary Hearing as it was a plea taken by the prior District Court Judge and it was an rogue attorney essentially coercing a plea. Mr. Gregory stated that without an Evidentiary Hearing he didn't see how anyone could get any kind of relief. Upon Court's inquiry, Mr. Gregory indicated that without subpoena power and without being able to take testimony from prior counsel he didn't see how they could ever have a plea agreement withdrawn. Ms. Jobe argued the State's position was that it should be summarily denied as the Guilty Plea Agreement the Deft. signed indicated the State would limit its argument to a cap of 15 years and he was sentenced under that range by the Court; the Court could have gone above that but it stayed within the parameters of what the State could argue for and what was contained in Guilty Plea Agreement, therefore, that strengthens the State's position that there was no basis for him to get out of the plea. COURT FINDS there were no specific findings in the record that would indicated anything was coerced; the guilty plea canvass as well as the Guilty Plea Agreement belie any indication that occurred with the specific questions about the potential sentencing ranges, the idea that sentencing was solely up to the Court and that there could be no other promises. COURT FINDS in regards to the issue of the 85% promise of getting probation, whether or not that happened the Court believes it is appropriate for attorneys based on their experience to give indications of what they believe a Judge would do; the fact the Deft. was canvassed on whatever his attorney said and any other promises made outside the agreement or discussion with the Court would not be followed, it did not meet the Strickland standard. COURT FINDS there were no specific acts that could articulate this was an involuntary or unknowing plea, therefore, ORDERED petition DENIED. State DIRECTED to prepare the Findings of Fact and Conclusions of Law in line with their opposition.