IN THE DISTRICT COURT IN AND FOR WAGONER COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA,	)	
	)	
Plaintiff,	)	
	)	
VS.	)	Case No. CF-2018-553
	)	
WILLIAM WOOLLEY, III	)	
	)	
Defendant.	)	

STATE OF OKLAHOMA,	)	
	)	
Plaintiff,	)	
	)	
VS.	)	Case No. CF-2018-554
	)	
LISA K. WOOLLEY,	)	
	)	
Defendant.	)	

TRANSCRIPT OF PRELIMINARY HEARING
HAD ON THE
29th DAY OF MARCH, 2019
BEFORE THE
HONORABLE JOHN DAVID LUTON

Reported by:
MICHELE VEST, CSR #1739

A P P E A R A N C E S

MR. GREGORY COPELAND, Attorney at Law, 800 South Butternut Avenue, Broken Arrow, OK 74012, appearing on behalf of the Defendant, Lisa K. Woolley.

MR. ALLEN SMALLWOOD, Attorney at Law, 1310 South Denver, Tulsa, OK 74119, appearing on behalf of the Defendant, William Woolley, III.

MR. ERIC M. JORDAN, Assistant District Attorney, 213 W. Delaware, Tahlequah, OK 74464, appearing on behalf of the State.

MR. JOHN P. BENNETT, Attorney at Law, Mauldin & Bennett, PLLC, 320 S. Boston Avenue, Suite 1026, Tulsa, OK 74103, appearing on behalf of the State.

MS. HALEY ROBINSON, Assistant District Attorney, 307 E. Cherokee Street, Room 3, Wagoner, OK 74467, appearing on behalf of the State.

I N D E X

E X H I B I T S

THE COURT: We are on the record in CF-2018-554, the State of Oklahoma versus Lisa Woolley, and CF-2018-553, the State versus William Woolley, III.

Mrs. Woolley is here with her attorney, Mr. Greg Copeland. And Mr. Woolley is here with Allen Smallwood. The State's represented by Eric Jordan, John Bennett and Haley Robinson.

We ended on Tuesday with the State calling the witnesses. Does the State have any further witnesses to call at this time?

MR. JORDAN: No, Your Honor, with the submission -- or stipulation by counsel for both parties as to the transcript from the previous cases that we've stated, the State has no further witnesses.

THE COURT: Does the State rest?

MR. JORDAN: The State rests.

THE COURT: Based upon the previous ruling of the Court, the Court has allowed testimony from Dr. Schmidt before the decision -- yes, sir?

MR. SMALLWOOD: And we would just like to reserve the right to be enter demur after all the testimony today.

THE COURT: Of course. Yes, sir.

MR. COPELAND: Your Honor, at this time on behalf of Lisa Woolley we would ask that the Court allow the testimony from Playtime Plus representative as we discussed in chambers with regards to -- just probably a six-minute direct testimony on the issue of how many visits Elijah Woolley had to Playtime Plus. We feel that it directly rebuts, as discussed in chambers, the issue of whether this child had been sexually abused.

Also, there's going to be macrophage iron testing that was going to be discussed with Dr. Schmidt. It will be contextualized for the Court, we believe. And if the Court would allow that testimony as well, it would be very short.

THE COURT: Okay. Call your witness.

MR. COPELAND: Thank you. And she will have to tell you the last name, because I cannot pronounce it.

THE COURT: Okay.

(WHEREUPON, the witness was sworn.)

THE COURT: All right. Please, have a seat.

DIRECT EXAMINATION

BY MR. COPELAND:

Q Ma'am, would you state your name for the record and

spell the last name for the court reporter, please.
A Robin Woldtvedt, W-o-l-d-t-v-e-d-t.
Q Is it Mrs. Woldtvedt?
A Yes.
Q Okay. Mrs. Woldtvedt, could you tell the Court what it is that you do for a living?
A I own a daycare center called Playtime Plus.
Q And how long have you owned it?
A 26 years.
Q And where is it located?
A I have three locations. 101st and -- no, we moved. 193rd and 71st in Broken Arrow, 51st and Memorial in Tulsa, and 21st and 145th in Tulsa.
Q So is there a location that's on Kenosha next to Life Church area over there?
A Yes.
Q In Broken Arrow?
A That's the Broken Arrow location.
Q What is the business? How does it operate? What is the purpose of the business?
A We are -- we kind of cater to the needs of the parents. We accept drop-ins. We accept full-time, part-time, before and aftercare.
Q Okay. And what child ranges do you see?
A Age four months to 12 years.

Q And so parents I guess sign up somehow with you. And do they pay monthly? How does it work?
A They fill out the enrollment packet. And once they're enrolled, then they can come hourly -- pay hourly or -- we're a pay daily facility. So they either pay in advance or they pay daily.
Q And did you bring a packet of what you -- your records on Elijah Woolley by chance today?
A I did not.

MR. COPELAND: Can I approach, Your Honor?

THE COURT: Yes.

MR. COPELAND: Your Honor, may I have this marked as Defendant's Exhibit 2?

THE COURT: It will be No. 2.

(WHEREUPON, Exhibit No. 2 was marked for identification purposes.)

MR. COPELAND: Let the record reflect, I'm handing the witness Defendant's Exhibit No. 2.

Q (By Mr. Copeland) Can you identify that for the Court, please?
A Yes. This is a letter to you from our director, Tamara Bollig.
Q What's underneath that letter? Are those your records for your business?
A Yes.

Q Can you identify who those records are regarding?
A Elijah Woolley.
Q And can you look at the specific -- the last two pages of that stapled document.
A Okay.
Q Can you tell the Court what those last two pages are?
A This is his enrollment, the days that he was at Playtime.

MR. COPELAND: Your Honor, does the Court need to look at this right now? I think I've got a copy for her to look at.

THE COURT: Unless you're moving for its admission, not at this time.

Q (By Mr. Copeland) Now, can you tell me -- first of all, peruse through that real quick for the Court. And just tell us -- are all of those pages related to your business and look like they're an accurate representation of what your business produces in the ordinary course of business?
A Yes.
Q Okay. And specifically as it relates to the two pages that I had you look at in the back --
A Uh-huh.
Q First of all, have you had a chance to review these records before today?

A Yes.
Q All right. Are you familiar with when Elijah Woolley became enrolled or began coming and visiting your place of business?
A It would be May 4th, 2017.
Q May 4th, 2017?
A Uh-huh.
Q And would you look at the very last page?
A Okay.
Q What date does it indicate that he was last seen?
A March 22nd of 2018.
Q And from May 4, 2017, through March 22, 2018, are you able to count up how many visits he had with your establishment?
A Did you say May of '17?
Q All the visits. Just count all of the visits.
A Oh, all of the visits. 25.
Q 25?
A Yes.
Q That's what I got too. Okay. And so if you look at the page just -- two pages preceding this history, do you see where it says "Cub room rules"?
A Yes.
Q Is this basically a policy about -- it has other things in it, but it also indicates -- do you have a

highlighted version down there?
A I do.
Q Can you read that, please?
A "Diapers must be checked and documented every hour and changed as needed. Diapers should be changed at least every other check. Be sure time on daily sheet reflects time changed."
Q Now, that's the policy; is that correct?
A Yes.
Q And do you enforce that policy?
A Yes.
Q And all of your employees that work on your behalf, they're trained in that policy?
A Yes.
Q And as it relates to Elijah Woolley having visited your establishment 25 times, did you ever have the need or concern from any of your employees to report any concerns about child abuse or sexual abuse on Elijah Woolley?
A No.
Q And as it relates to changing the diapers, that's done every hour; is that right?
A They're checked every hour. If they're soiled at all, they have to be changed. If they're not soiled, they can wait another hour. But if on the second

hour even if they're dried out, they're changed.
Q Would it be true and a fair practice for your establishment that you change the diaper at least once for an infant prior to returning the child to the parents?
A If he's there longer than two hours, yes.
Q Okay. Well, are you able to tell from your indication here if there was any situation where he was there for more than two hours, Elijah Woolley?
A It should say timing.
Q Start with May 4th. Is it true that it's more than two hours, correct?
A Let me find that page.
Q The second to last page.
A Okay.
Q You'll see there in the middle of the column.
A Yes. He was there --
Q From 5:08, check out 7:20; is that true?
A Yes.
Q So that would be more than two hours. He would have gotten his diaper changed back on May 4, 2017, correct?
A Yes.
Q Also, in July of 2017, July 19th would be exact?
A Uh-huh.

Q 9:40 to 12:00. That would be in excess of two hours. Would he have gotten his diaper changed then as well?
A Yes.
Q How about from -- on September 18th 6:29 to 8:57 p.m., that would be more than two hours as well, correct?
A Yes.
Q And ma'am, you can peruse that, but I can look back -- just glance at it. Most of these stops were all more than two hours. Would you agree?
A Yes, it looks like it.
Q All right.

MR. COPELAND: Your Honer, we'll stand on the record for that. We would move Defendants' Exhibit 2 into evidence, please.

THE COURT: Any objection?

MR. JORDAN: Judge, I would like to reserve my objection till I have such time to cross-examine this witness as to the relevancy of this.

THE COURT: Okay.

MR. COPELAND: Your Honor, we pass the witness.

THE COURT: Very good.

CROSS-EXAMINATION

BY MR. JORDAN:

Q Is it Ms. Woldbedt?

A Woldbedt.

Q I'm sorry, I -- I -- wanted to make sure I had it right. Do you -- you don't employee any medical professionals at your day cares, do you?

A No, I don't.

Q In fact, are most of your employees young people in their twenties or thereabouts?

A Twenties or thirties.

Q Twenties or thirties, okay.

A We have a few older, but typically twenties, thirties.

Q And so your employees aren't trained to document everything about a diaper change or to do a physical examination of a child or anything like that? They're just changing the diaper, true?

A No. They're trained to -- if a child comes in with any bruise or marks, we document it. But if it's significant and we feel like child welfare should need to know, we contact them.

Q Okay. And you're talking about external injuries?

A Yes.

Q All right. And if -- so who makes the determination

as to whether a bruise is significant?
A Either I do or my director does.
Q Did you personally ever change the diaper of Elijah Woolley?
A I did not.
Q And you guys, do you document such things as a child has constipation or child is sick or the substance of the child's stool whether it's watery, whether it's hard? Do you make any of those kinds of documentations?
A If a child has, like, say they have a runny stool and they're like three in one hour, we call the child's home, and we document it because they can't come back for 24 hours.
Q Okay.
A Something like that.
Q So if any of these 25 visits Elijah had been sick or had some sort of issue that needed to be documented, where would that be in these records?
A That would be in his -- in the computer under notes. And I don't think there was any, but I can ask my director. I mean, I think she would have printed that if it was there.
Q I'm just asking if -- so if in the records that counsel has been provided, if there were medical

issues that were documented, I don't see any in here. And so what I wanted to make sure is if there were any, if they would be in these records or if they would be someplace else. And you're saying you think they would be in someplace else?

A I think they would be -- in the system it has -- like, the attendance has all of this and it has a column -- it has a notes' section. And I don't know -- I don't know if that's printable, but it's in the system.

Q Okay. So are there other records that exist with regard to Elijah Woolley that your organization has --

A No.

Q -- that we don't have in this packet?

A It's just a screen. It's like -- I mean, it's in the computer, and I would just have to call and see if they had any notes. It's just notes, like, can't return for 24 hours, had diarrhea, or something like that. But I don't believe there was or she would have put it in here.

Q Well, but we don't know unless we look at your computer for sure, true?

A True.

Q All right.

MR. JORDAN: Judge, that's all I have for this witness.

THE COURT: Okay. Mr. Smallwood?

MR. SMALLWOOD: No questions, Your Honor.

MR. COPELAND: I just need a brief second.

THE COURT: Sure.

REDIRECT EXAMINATION

BY MR. COPELAND:

Q I'm going to go with "Ma'am" on you with this one, okay?

A Okay.

Q Could you look at page 2 of your documents there. Now, what's the title of the page 2 document?

A Medication permission.

Q And whose form is that?

A For Elijah Woolley.

Q Well, let me ask you: Who drafted that form? Would it be Oklahoma Department of Human Services?

A Yes, DHS.

Q And you have those types of forms that you utilize to keep records of children; is that true?

A Yes.

Q And could you tell us -- tell the Court what the instructions were for Elijah Woolley?

A It looks like he had a rash but -- and it says just

to apply to his bottom when changing.
Q And who would have informed your office or your business establishment of the need to apply rash medication?
A Who brought him in.
Q The person --
A The person that checked him in.
Q So if the parents of the child brought Elijah Woolley in, they would have given that instruction?
A Yes. We can't apply diaper ointment without documenting.
Q Right. And so I guess what I'm getting at also is if it had been an issue where -- you guys responded to a subpoena; isn't that true?
A Yes.
Q And that subpoena asked for every document?
A Yes.
Q Correct?
A Uh-huh.
Q All right. So would there be any reason why your director who printed this off for you would have left out even a screenshot?
A No.
MR. JORDAN: Objection; that calls for speculation.

THE COURT: Sustained. Any recross?
MR. JORDAN: Pardon me?
THE COURT: Any recross?
MR. JORDAN: No.
THE COURT: Mr. Smallwood?
MR. SMALLWOOD: No.
THE COURT: Any objection to Defendant's Lisa Woolley's Exhibit No. 2?
MR. JORDAN: Well, my only objection is if there are additional records then -- which this witness has indicated there are on the computer, they may be screenshots, et cetera, I would rather have all the records. I just don't think that this is relevant, but I don't have an overwhelming screaming objection, so.
THE COURT: Okay.
MR. JORDAN: If the Court would like to admit it, I guess basically what I'm saying with the caveat is if she will go back to her director and print off a copy of every screenshot or every additional record that Playtime has with regard to Elijah Woolley, then I have no objection to that. And if those records can be submitted with these in existence.
MR. COPELAND: Your Honor, I have no

objection to that instruction, but we'd ask that they be admitted so we can supplement those either before trial or to --

THE COURT: For preliminary hearing purposes, I'm going to go ahead and admit Lisa Woolley's Exhibit No. 2.

Mr. Copeland, the next witness.

MR. COPELAND: You're excused, I think.

THE COURT: Oh, I'm sorry. Yeah. I'm glad you said that. I was moving ahead. Thank you for being here, ma'am.

MR. COPELAND: Your Honor, it would be Dr. Carl Schmidt from Michigan.

THE COURT: Okay.

(WHEREUPON, the witness was sworn.)

THE WITNESS: Thank you. Have a seat.

THE COURT: Now, before you begin your direct examination, Mr. Copeland, of course, I don't know what the nature totally is of the examination that's about to take place nor do I know what evidence potentially might be offered or presented as for the doctor to review.

It's my understanding there may be photographic evidence that you want the doctor to testify about that may be quite graphic in nature.

Is that the case?

MR. COPELAND: That is true, Your Honor. And it may be -- if anyone does not want to see or maybe we can turn it this way a little bit. If they can set on this corner here, they definitely won't be able to see.

THE COURT: If we could angle it, that would be good, but I will also make a general admonition. Anybody sitting in the audience that -- and again, I haven't seen the pictures, photographs, or whatever it is that's going to be offered, but it may be quite graphic. It may be, you know, very difficult for members of the audience to view. So if you have an issue with it, I would ask you to go ahead and leave at this time.

If you find yourself in the course of the questioning unable to view it, I certainly understand. You're not going to upset me, but please exit the courtroom as you need to.

If there's any way to angle that any more or is that -- can you see it?

MR. COPELAND: I need to be able to --

THE COURT: Okay. All right.

MR. COPELAND: I'm trying to -- there is a

whole slot over here that has about four spots that people wouldn't be able to see it if they wanted to.

THE COURT: Thank you, ladies and gentlemen. Go ahead, Mr. Copeland.

MR. COPELAND: Thank you. May it please the Court.

DIRECT EXAMINATION

BY MR. COPELAND:

Q State your name for the record and spell it for the court reporter, please.

A My name is Carl Schmidt, C-a-r-l and S-c-h-m-i-d-t.

Q And it's doctor, is it not?

A Right.

Q And Dr. Schmidt, what are you a doctorate of?

A I'm a physician licensed to practice medicine in Ohio and Michigan. I have specialty training in anatomic and clinical pathology and subspecialty training in forensic pathology.

Q And what year did you graduate medical school?

A 1981.

Q Is it fair to say you're a spring chicken in your field right now?

A Something like that.

Q And where are you currently practicing or what do you

currently do?
A I am a professor at the University of Michigan, and we do forensic services for Wayne and Monroe Counties in Michigan under contract. And I have the appointment of chief medical examiner for Wayne and for Monroe Counties. Another way of stating that is that we investigate the cases that fall under the medical examiner's statutes in Michigan.
Q And how many cases would you review a year in your field of pathology?
A Well, our case load is approximately 34- to 3,600 cases a year. And we do about 2,500 autopsies in the office every year.
Q 2,000 --
A 500.
Q And how many would you perform yourself on the average year?
A Lately I've been doing about 300, 350.
Q A year?
A Yes.
Q That's almost as many days as there are in the year. How do you manage that?
A We have assistants who help us with some of the more tedious labor intensive parts of the process.
Q What's the average time it takes to do an autopsy?

A It depends. A typical death takes about 30 to 40 minutes. And a child abuse case can take -- when you include everything we do for a child abuse case, probably a total of maybe 20 hours.
Q Now, how long have you been as chief medical examiner -- did you say that yet? -- at this location?
A I have been chief medical examiner since 2003.
Q And that's for the Wayne County, is that what you said?
A For Wayne county.
Q What's the population of that are? Are you familiar with that?
A Currently, about 1.8 million.
Q Now, could you tell the Court a little bit about any specialties that you have?
A Well, to be a forensic pathologist you have to do a specialty training in anatomic pathology. I have training in anatomic and clinical pathology. And I am board certified in anatomic and clinical pathology. And then you can do a subspecialty in pathology -- in forensic pathology, which is recognized by the American Board of Pathology as a subspecialty. And I'm also board certified in forensic pathology.
Q Have you authored any medical journal articles that

have been published?
A I have over 40 publications, peer review publications, which I have mostly coauthored. And I have published book chapters and provided case reports, for example, in Atlas of Child Abuse that --
Q I'm sorry? I couldn't hear the name.
A In Atlas of Child Abuse.
Q Atlas of Child Abuse?
A Child Abuse. That is used by people who investigate child abuse.
Q And would that include sexual child abuse aspects?
A No. 99 percent of sexual child abuse is actually done by child abuse pediatricians because the child abuse fatality that includes sexual abuse is extraordinary rare.
Q So you're talking about child abuse that has a sexual component or there's a death in it?
A Child abuse that has a sexual component that results in the death of a child is very rare.
Q And you're talking about where -- can you clarify that for the Court as it relates to what you're saying here. Are you saying that the act of sex is occurring at the time of death?
A Correct. That we can identify that sexual abuse occurred at the time of death is actually very rare.

Q Okay. And as it relates to the testimony -- you've been contacted by my office and I think Mr. Smallwood's office; would that be true?
A Correct.
Q And it has to do with an individual by the name of Elijah Woolley. Are you familiar?
A Yes.
Q Okay. Did you receive -- what did you receive from Mr. Smallwood's office? If I remember correctly, he sent you --
A I received the autopsy report, the toxicology report, including, the primary blood work. I got -- I've seen pictures. There are actually two different sets of pictures taken. I saw the autopsy pictures, the -- excuse me, the autopsy report and the microscopic slides.
Q Now, as it relates to your expertise in the field that you're here to testify here about today, is there anything about that little slither of the 99 percent of these types of cases that occur dealing with a different type of expert on sexual abuse during death, is there anything about this case that would prevent you from giving an accurate opinion on the pathologies today that we're going to present?
A No.

Q Now, did you bring with you -- okay. You said -- did you say that you received some slides from -- or did you mention that yet?
A I did.
Q Okay. And did you bring slides with you as well as photos --
A I did.
Q -- that you reviewed?
MR. COPELAND: Your Honor, may I approach?
THE COURT: Yes, sir.
Q (By Mr. Copeland) Let's see those photos that you have.
A I gave -- oh. Well, here are the two CDs. One of them were the x-rays. I forgot to mention the x-rays.
Q Okay.
A And then here is the thumb drive with the pictures. And here is the autopsy report and toxicology report.
MR. COPELAND: And Your Honor, I've got an agreement with the State that we're going to stipulate to these photos. Do you want to look at these that he has here or do you just want to -- in other words, I can pull that up over here and see what he's reviewed.
MR. JORDAN: No, no, I know that. I'm not

concerned about that. I'm not going to stipulate to anything. I just want you to continue your examination if you can.

MR. COPELAND: Okay. All right. You're not going to stipulate to the photos?

MR. JORDAN: No, I have no problem with you using them for purposes of this witness because I know what photos they are.

MR. COPELAND: Okay.

MR. JORDAN: But I didn't think you were offering disks at this time.

MR. COPELAND: No, I'm not offering them at this time, but I wanted to start presenting them.

MR. JORDAN: Sure.

MR. COPELAND: One moment, Your Honor.

Q (By Mr. Copeland) Doctor, if we could back up a little bit on your expertise and how you got your training. You attended your undergraduate work where?

A Mexico City.

Q Mexico City?

A Right.

Q And then you went from there straight to law -- to medical school?

A Yes.

Q And did you do any fellowships when you went to -- when you got out of medical school?
A Yes. After medical school you do specialty training.
Q And what would -- okay. So are you a D.O. or an M.D.?
A M.D.
Q So that would be a doctor of osteopathy?
A No, a doctor of medicine.
Q Oh, you're -- I'm sorry. You said an M.D. I'm sorry. I got that wrong. Now, what -- tell the Court what a doctor of medicine does?
A A doctor of medicine is an individual who is licensed by each individual state to look at patients, diagnose their diseases, and provide them with treatment.
Q And in utilizing that training, where did you go immediately out of your medical school for your next training?
A Well, I actually did two years of general surgery after medical school.
Q And what kind of surgery was that?
A General surgery.
Q And what -- what hospital was that?
A That was in New Jersey.
Q Are then what did you do?

A And then I did those three years of general surgery, and then I went to graduate school where I had started a Ph.D. in neurobiology at the University of Connecticut.
Q And what does that discipline in neurobiology, what is that?
A That is the study of the structure and function of the nervous system at the basic science level.
Q The study of the nervous system at the basic science level?
A Correct.
Q And what was the purpose of seeking that degree for you?
A I wanted to get away from clinical medicine for a while in the process of getting a Ph.D. I have it a year and -- but after two years, after living on a graduate student stipend, I decided I could regain my license to practice medicine. And I didn't want to see my patients, so I went in to pathology.
Q Okay. Doctor, let's move forward to your current practice in Wayne County. How many baby autopsies have you performed over the last say ten years?
A Well, we do about 200 pediatric autopsies a year of which about 50 to 60 are under the age of one. And currently because we are three pathologists that do

30 percent of that, so. Last year I did about -- I don't know -- 15, 20 sudden infant death autopsies. I actually do most of the child abuse cases in the office when I'm in the office because I'm probably more familiar with the literature in child abuse than my colleagues are. And they're difficult in court, so I do four or five cases of child abuse a year at least.

Q So in the last ten years it would be at least 50 you have done?

A About.

Q Did you testify in any of those cases?

A Most of those end of going to court.

Q Have you been recognized in other courts as an expert in your field?

A I have.

Q Could you tell the Court a few of those examples where you've been recognized as an expert?

A Well, most of the testifying we do is in Third District Court in Michigan, which is Detroit. And I've testified in Oakland, Macomb, Monroe, Benzie, Wexford counties in Michigan.

I've also testified -- I do some private consulting work, so I've testified in Minnesota on several occasions on child abuse cases. And I've

also testified in Ohio, Kentucky, and then federal court on several occasions.

Q And in those cases that you're testifying in, is the testimony that you're rendering have to do with the opinions as to the cause of death?

A Yes, just about all of them are opinions direct to something about the process of death, usually involving the cause of death.

MR. COPELAND: Your Honor, at this time, we would move that Dr. Schmidt be recognized in the field of pathology and ask that the Court would receive opinions today.

THE COURT: The Court will so -- any response Mr. Jordan on that?

MR. JORDAN: I would like to voir dire briefly on his qualifications. I have no doubt that he's qualified, but I still would like to voir dire.

THE COURT: Certainly.

MR. JORDAN: Thank you, Your Honor.

VOIR DIRE EXAMINATION

BY MR. JORDAN:

Q Dr. Schmidt, where did you go to medical school? I think counsel didn't ask that.

A Mexico City.

Q You went to medical school in Mexico City?
A Right.
Q And in order to have that recognized, that being a medical school in a foreign county, did you have to take an additional exam to have your credentials applied to the United States?
A Yes. I took three of them.
Q Okay. I bet that wasn't much fun.
A Right.
Q What year -- or how long did it take you to get through that testing process after you graduated from medical school in Oklahoma City [sic] to get approved in the United States?
A You mean in Mexico City.
Q I'm sorry. Yes, sir.
A It took about three years.
Q About three years. What did you do during that time period?
A I did some family practice.
Q In Mexico?
A In Mexico City.
Q Okay.
A And I also worked with a couple of orthopaedic surgeons who were doing research on abnormalities of the spine which are very common.

Q Okay. And then after your credentials were approved, what year was that approximately?
A 1984.
Q 1984. Then you said you --
A Actually, let me rephrase that.
Q Yes, sir.
A I based the test in 19 -- it was either 1981 or '82, but I didn't come to the United States until 1984 because you have to go through the interview process and application for license.
Q Okay. And where did you apply for residency status?
A No, no, for the residency -- I mean specialty training.
Q Yes, sir.
A I eventually ended up in Moorestown, New Jersey.
Q Moorestown, New Jersey?
A Right.
Q And is that where you did the two years of general surgery?
A Correct.
Q Okay. And what -- was there a medical school associated in Moorestown, New Jersey, with that residency program?
A The program was affiliated with Columbia University.
Q Okay. All right. Then you said you did two years of

general surgery?
A Right.
Q And after that you started your Ph.D. in neurobiology?
A Correct.
Q And that was in Connecticut?
A In Connecticut.
Q During these two years did you -- were you practicing medicine while you were working on your Ph.D. in neurobiology?
A No. All I did was laboratory work.
Q Okay. So when you got back in to medicine, what program did you have to do in order to continue your studies in pathology?
A Well, I just -- I applied to the program at the Medical College of Ohio in Toledo.
Q Medical College of Ohio. And was this a pathology program that you were in to at Medical College of Ohio?
A Yes, in anatomic and clinical pathology.
Q How long did that take you to complete that?
A That was four years.
Q Four years. All right. And then in the specialty training in forensic pathology, where did you complete that training?

A At the Wayne County Medical Examiner's Office.
Q And was that affiliated with the University of Michigan or another --
A No. At that time it was a free-standing program accredited by the ACGME, which stands for the Accreditation Council for Graduate Medical Education.
Q And how long did it take you to complete that specialty training in forensic pathology?
A That was a year.
Q A year. And after that time, did you become employed by the office of the medical examiner in Wayne County?
A Correct.
Q All right. And what year did you first become employed?
A Well, you're an employee as -- when you're doing your specialty training, so that would have been in 1994.
Q '94?
A Right.
Q All right. Now, you've -- you said you've testified as an expert in various courts including federal court, true?
A Correct.
Q Have you -- are these in the capacity as a medical examiner for Wayne County or in the capacity as an

expert witness hired by someone else?

A 95 percent of my testimony is as an expert witness through my daily work in Detroit. And about 5 percent -- probably, actually less than that, because I've only started doing -- I've only done private consultation for about ten years -- is -- has been in other courts with the caveat that most of my testimony in Michigan has actually been done -- in all jurisdictions in Michigan, has actually been done through my work in Detroit because Detroit and Ann Arbor have tertiary medical care centers.

And under Michigan law people -- the death belongs to the county where the patient died. So we end up testifying in other counties a lot because even though the incident occurs in another county, they end up -- they end up getting treatment in either Wayne or Washtenaw counties.

Q The autopsy comes to you?

A Right.

Q You've got to go out and testify in another county in Michigan?

A Right.

Q In terms of the expert consultation where it's not on behalf of the medical examiner, have all of those cases been outside of the State of Michigan?

A With the exception of two, yes.
Q And have you ever testified -- have you ever testified in the State of Oklahoma before?
A I have never been to Oklahoma until today.
Q Enjoy your visit.
A Thank you.
Q Have you ever in court been denied any portion of your testimony by either a state or federal court; in other words, not been allowed to give an opinion?
A Not that I am aware of.
Q Not that you're aware. And has your medical license ever been suspended or limited in any way by any authorities that you are credentialed?
A It has not.
Q And I know you stated that you had been an author of I think what you entitled the Atlas of Child Abuse. Did you say that is a literature that is on the issue of physical abuse versus sexual abuse?
A It includes both of them.
Q It includes both?
A Yes.
Q All right. Have you ever been certified by any court in the United States to testify as an expert specifically in the field of child sexual abuse?
A No.

Q Okay.

MR. JORDAN: That's all I have for the voir dire. I don't have any objection to him being submitted as an expert witness in the field of forensic pathology as well as anatomic and clinical pathology.

THE COURT: All right. He will be so recognized today and his testimony given.

Mr. Copeland?

MR. COPELAND: Thank you, Judge.

FURTHER DIRECT EXAMINATION

BY MR. COPELAND:

Q Doctor, I kind of want to try to do this as systematically as I can. And you've had a chance to review the medical examiner's report of Dr. Niblo; is that true?

A Correct.

MR. COPELAND: Your Honor, just one second.

THE COURT: You're all right.

Q (By Mr. Copeland) Now, Doctor, can you see this? This is the Defendant's Exhibit 1, I believe. Actually, States' Exhibit 3. Doctor, this has been -- this is the medical report; is that true? Do you recognize that?

A That's the front page.

Q The front page, correct.

MR. COPELAND: And so this has already been introduced into evidence, Your Honor. Is it all right if I display this now?

THE COURT: Yes.

MR. COPELAND: Thank you.

Q (By Mr. Copeland) The Office of the Chief Medical Examiner, Report of Investigation by Medical Examiner, Eastern Division of Tulsa. It's for Elijah Woolley, 7425 S. Delucca Street, Broken Arrow, Oklahoma. It says: Examiner notified by name: Deputy Crockett at Wagoner County Sheriff's Office on 3/30/2018 at 11:57 in the morning, correct?

A Correct.

Q We're going to be looking at this in the context, Doctor, of -- it says significant observations and injury documentations. Number one, asphyxia due to suffocation. Number two, multiple penetrating blunt impact injuries to the anus.

Is this kind of the scope that you did in your evaluation and began to look at this?

A Yes.

Q Okay. And by the way, what this means is this is what the -- the synopsis of the findings of Dr. Niblo; is that true? Significant observation --

A Yes, they're her diagnostic conclusions.
Q Okay. She signed off on that. She signed off on this as: "I hereby state that, after receiving notice of the death described herein, I conducted an investigation as to the cause and manner of death, as required by law, and that the facts contained herein regarding such death are true and correct to the best of my knowledge."

Now, she signs -- it indicates the day initiated 3/30/2018, and the day case finalized was May 31st, 2018. So that would be about two months, correct?
A Correct.
Q Okay. This is on, it says, a 14 month old, date of birth January 16, 2017, white male. Presented to a Barbara Bastiaanse and Cheryl Niblo, D.O. Do you know Barbara Bastiaanse is? I don't know how to pronounce that.
A Bastiaanse. No, I don't know who she is.
Q Okay. Earlier when you testified about sometimes you have assistance. Is that probably what -- what does this indicate to you when you look at that, who she would be when she signed this?
A It's probably an assistant.
Q Okay. So you got -- and does it necessarily mean that the assistant has her qualifications, do you

know?
A I don't know what the qualifications are.
Q And in your office would every assistant have the same qualifications?
A We have two kinds of assistants. One for trained pathology assistants with a master's degree in pathology assistant. And then we have autopsy techs who only have to have a high school education, and we train them in some of the heavy lifting and all in autopsies.
Q All right. Sir, thank you. And in the middle of this page it says pathologic diagnoses. No. 1, she's got three Roman Numerals there, and she's got subparts A, B C, D, and A, B, C on Roman Numeral II, correct?
A Yes.
Q So it says: "Numeral I, Roman Numeral, asphyxia due to suffocation. A, contusion of the upper frenulum. And B, contusion of the left lower [sic] lip mucosa. 1.C. is laceration of the right upper lip mucosa. 1.D. is soft tissue hemorrhage of the right neck at the base of the skull and right upper back."
Is that accurate?
A Right.
Q That's what it says here. Now II Roman Numeral says

"Multiple penetrating blunt impact injuries to the anus." A, this is subpart. "Contusion of the 12:00 position of the anus along the external surface extending into the internal aspect of the anus. (Child in prone position.)

B, Laceration of the 7:00 position of the anus (child in the prone position.)

C, Multiple lacerations of the 9:00 position extending to the 12:00 position of the anus (child in prone position.)

III, acute bronchopneumonia of the lower right -- the lower lobe of the right lung."

Now, tell the Court what pathologic diagnosis is supposed to be.

A A pathologic diagnosis is when you have looked at the external exam and done a microscopic exam and reached a conclusion based on both of those findings as well as any laboratory testing that may be necessary. And that's your pathologic diagnoses.

Q And so she comes down and she says -- and then she signs under it Cheryl Niblo, D.O. Calls the death asphyxia due to suffocation, multiple penetrating blunt impact injuries to the anus."

Do you know what OSC represents right here? She's describing multiple penetrating blunt injuries

to the anus.
A No, I don't know what OSC is.
Q Is this probably in-house pneumonic or?
A I have no idea.
Q Manner of death: homicide?
A Right.
Q So Dr. Niblo -- this is her pathologic diagnosis.
A I know what OSC is. Other -- it's part two of the death certificate. Other significant conditions.
Q Okay. So other significant conditions would be a multiple penetrating blunt impact injuries, according to her, to the anus?
A Right.
Q Okay. And she's concluded it's a homicide; is that true?
A Correct.
Q According to this report that's been admitted. Go to the middle of the next page, please.

Okay. She basically talks about the circumstances of death on this page 2. Is that page 2? It says page 2. Received for autopsy examination is a body of a 14-month-old child, date of birth 1/16/2017. Reportedly was found deceased in a playpen. You saw photos of a playpen, have you not?

A I do.
Q Or they call them Pack 'n Plays. It's kind of a sleep pen to be more accurate.

Authorization. It says: "Postmortem examination performed --

MR. JORDAN: Judge, I'm sorry, I don't want to interfere with counsel's deal, but I would like to get to what this doctor's conclusions are. We don't need to have counsel reading from cover to cover the autopsy report. We can all read it. It's been admitted.

If he has questions can -- I would request that he get to Dr. Schmidt's opinions. Otherwise, we're going to be here all day while he reads the autopsy report cover to cover.

MR. COPELAND: Your Honor, I was just giving the Court the context. The Court hasn't had the benefit of reading all of the documents involved in this case, especially, all of the report. If the Court is satisfied, we can move on with that.

THE COURT: I've read the autopsy report.

MR. COPELAND: Okay. Thank you, Judge.

Q (By Mr. Copeland) Let's go back up to the conclusions then. Go down to -- the microscopic description, what page are those on, Doctor?

A Those are on page 5, I think.
Q Yes. Now, is -- this is just the description, right?
A Correct.
Q So what would be her microscopic conclusions? Is this going to be her conclusion?
A Correct. That's her description of her observations of the slice under the microscope.
Q Okay. Looking at her microscopic description, do you have any information you can tell the Court based -- first of all, you looked at some slides in this case, correct?
A Correct.
Q Okay. Is that what that means microscopic description, is she is going to look under some slides? Is that --
A Yes. This is -- these are the -- this is the description of the tissue that she has submitted for processing and looked at under the microscope.
Q Now, is there -- in this microscopic description, do you see anything that's -- that you disagree with?
A No. Except for the fact that it was -- it's hard for me to tell exactly what she took a section from because it is our habit, and I think most people's habit, to provide a key that will correlate what tissue section you took with the place where you took

it. So for example, if you have right upper lobe of the lung, it will be site No. 1; right lower lobe No. 2; right lower lobe No. 3, and so on and so forth. So I can more or less figure out what she was looking at by looking at the slides. But like for the lung, for example, it was hard for me to tell what was what because it was not clear.

Q For the Court's benefit, Your Honor, would you like me to go into what a slide is and how much -- what it is? Does the Court what to take judicial notice about a slide --

THE COURT: I think I understand that process.

Q (By Mr. Copeland) Okay. On page 1 after the information sheet, okay. Now, you were talking about the sections of a slide. Can you describe a little bit about what a section is and how it supports with a slide?

A Well, you look for areas that look pathological. In other words, you look for areas that look abnormal. And you will take a portion of that and put it in a plastic cassette and that will get sent to a lab that will transform that tissue into -- through a process which will -- which ends up with a tissue embedded in wax that is put under a glass slide and then stained

so that you can look at it under the microscope.
Q In this particular case you received slides. How many slides did you receive?
A I think it was 22 slides, but I can check and make sure.
Q I think you told me 21.
A Or maybe number 21 slides. It was 21 slides.
Q 21 slides. Okay. And Doctor, as it relates to those slides, you're talking about a key. Explain to the Court what's going on here as it relates to this Roman Numeral II, and it says: "Contusion of the 12:00 position of anus along the external surface extending into the internal aspect of the anus (child in prone position); and B, laceration; and C, multiple lacerations.
A Well, the problem is not so much the pathologic diagnosis. It's in the microscopic description because I don't know she -- she does a general description of the right one. I mean, the anus. So if you look at page 5, it says anus 7:00 in total. And what that means is that she took a section from 7:00 to 12:00 and submitted the whole thing for histology. Histology by the way is synonymous with microscopic anatomy. And the problem is I don't know if she used the sequence which is only known to her

or how it is that she actually correlated what she saw grossly with the slide that she submitted, so.

She says submucosal congestion, focal hemorrhage, rare hemosiderin laden macrophages, iron stain. But I don't know if the slides she took correspond which one is at 7:00, which one is at 10:00 and which one is a -- she thinks is a contusion and which one is a laceration.

Q Okay. So in layman's terms I want to try to see if I can clarify and understand correctly. You're saying that on page 5 down here where she says anus and she did a 7:00 to a 12:00 in toto submucosal congestion, focal hemorrhage, rare hemosiderin laden macrophages, iron stain, in that situation -- how many -- did you determine how many of the slides had to deal with the anus? Was it five?

A It was slides like 16 through 21.

Q Okay. That would be six slides when you count 16 through 21 each slide counted; is that correct?

A Each slide was a section -- let me look just to make sure. That's not it. Okay, 16 through 21 are the slides of the rectum.

Q So it would be six slides, correct?

A Correct.

Q So six slides what -- are you telling the Court that

of those six slides there's -- when she describes like a 7:00 to a 12:00, if you had just five slides, you would take a section maybe from 7 to 8 from 8 to 9 to 9 to 10 of the rectum, 11 to 12; is that what you're saying?

A Right. I don't know which slide corresponds to a section of the position of the clock.

MR. COPELAND: Photos are getting ready to be shown.

Q (By Mr. Copeland) Now, Doctor, you see -- you sent me, did you not, some -- a PowerPoint; is that correct?

A Correct.

Q Do you recognize this to be your PowerPoint? We've got a stipulation that this will come in, but.

A Yes.

Q Doctor, can you tell the Court what we're looking at?

A Looking at the back of the deceased's head and the back of the neck.

Q Okay. And you received two batches of photos -- or photos from the crime scene, alleged crime scene, and photos from the --

A The picture on the left is a picture that was taken at the scene. And the picture on the right is a picture that was taken on the autopsy table.

Q All right. And so of these two paragraphs what is it -- you say here -- is this your note: "lividity has shifted"?
A Correct.
Q So what is the clinical significance in your field of study that you're trying to tell the Court here with this notation and these photos?
A Well, what it means is that lividity had not quite finished shifting at the time the child was found dead.
Q Tell the court what lividity is.
A Lividity is the settling of blood due to gravity after heart has stopped pumping. The reason that we are hemorrhages is skin color is because the heart continues to pump blood and your skin color doesn't shift because of vocal changes in blood flow. After death when the blood stops pumping, then the blood settles down by gravity, and the -- in the more superior portions of the body, depending on how you ended up dead, you're going to be pale. And where the blood settles down due to gravity you're going to be redder. The one exception is that lividity is due to the filling up of the blood vessels with blood that is settling, so that when you are lying -- depending on how you're lying down.

So, for example, this child's face was lying flat against the surface in which it died, which was squeezing the blood vessels at the pressure points where this child's face was pressing against where it was found dead. So those would be pale because there is compression of those blood vessels so they're not going to fill up with blood. I hope that's clear. That's where you get areas of paleness and redness in lividity.

So what this picture is showing us is because this child was face down the neck is pale. But if you look at the picture the next day, the upper part of the neck is now red because the blood has shifted. That means that at the time that the child was found dead the lividity hadn't gotten fixed yet.

Q So in other words, maybe putting the child and shifting it to the autopsy location would shift the blood inside the body?

A Well, the child would have been placed face up in the body bag at the scene. I don't know that for a fact, but I presume because that is the way people are put in body bags at scenes everywhere I know. So that the lividity would have shifted during -- after the child was placed face up and transported to the medical examiner's office.

Q Okay. And in this photo also we see -- what do you call these little steel -- is it -- that you use in your field? What are those called?
A That's the autopsy table.
Q All right, autopsy table. What does this depict here on the posterior end of the -- of the buttocks area?
A That's the rectum.
Q And so I guess what I'm getting at, Doctor, isn't there a malformation right here? It's not a normal looking shape here.
A Well, it's -- because the child is dead, after death the rectum becomes dilated. Notice that the buttocks are actually fairly white because lividity hadn't completely shifted. So now that the child was placed face up with pressure on its buttocks, then the blood has gotten displaced, kind of like squeezing water from a sponge. But the rectum is actually a little redder than that because it is not a pressure point. And it has become dilated because muscle relaxes after death.
Q Now, in this report by Dr. Niblo, doesn't she indicate that there was a hard stool that was located at the time and at the scene of where they located the --
A She describes hard stool in the diaper.

Q And so, Doctor, as it relates to lividity and rigor mortis setting in, those issues, if you had a hard stool right here on this photograph where you've got lividity has shifted, a hard stool, would that have an explanation as to -- total innocent explanation as to why the shape of this --

A Well, if you leave a diaper in place and the stool is hard enough, then that will serve as a mold that will -- that will to some extent expand a little bit the appearance of the rectum.

Q Do you have an opinion, Doctor, as it relates to the shape of how this -- the buttocks -- the buttocks are currently in this photograph in a frozen state in this shape, do you have an opinion as to what caused that?

A Well, that was because the child was face up after it was placed supine after it was picked up from the scene and was like that overnight in the refrigerator.

Q But I'm asking you the shape of it though, do you have an opinion as to what caused the shape?

A Oh, it could have been -- it could have been the pressure of the --

Q The hard stool?

A Of the hard stool that was left in place overnight.

Q Thank you. Now, if we could go to slide three, please.

Doctor, you -- did Dr. Niblo make any issues about the lips in this case?

A She said that there was a contusion in the left inner upper lip and that there was -- it was laceration of the right lower lip and that's about it.

Q So the right lower lip mucosa, where would that be in this photo?

A You can't really see it. This is -- this photo shows how the lip when the child died -- when people die they have a series of muscle reflexes, and one of them is to catch your lower lip with your teeth. And it's actually not hard to do. I think anybody in that room can easily catch his lower lip with his upper teeth. And that happens -- that's how we often find individuals who die.

Q And how common is that?

A It's very common.

Q So you're telling the Court then as it relates to individuals dying -- is it part of the process in the throes of death biting your bottom lip?

A I'm sorry?

Q Would it be fair to characterize fairly to say that biting your bottom lip would be something that occurs

in the throes of death?
A Yes, it can happen.
Q And it could be totally unrelated to any kind of homicidal sinister action upon a deceased individual?
A Yes.
Q Now, you saw several different photos in this case. Did you have any opinions about what happened to the lips or did you find any laceration that you want to discuss with this Court that you contest are not reflective of a true diagnosis?
A Well, I think the lesion she's describing as a contusion on the frenulum are not really a contusion in fact, the frenulum is intact, which is not the case when there is a sufficiently intense effort to asphyxiate a child. Then --
Q Now, in this photograph is -- the frenulum is up in this area?
A Yes. You have to raise the upper lip to see it.
Q Tell me, Doctor, when you see the frenulum shot; is this it right here (indicating)?
A No. A little further down. Two pictures down. There you go. Yeah. That's the frenulum right there.
Q Okay.
A She describes the contusion in the frenulum which is

an absurdly small size.

Q Now, you've got a line drawn here that says "described as contusion upper frenulum, did not take a section."

What does that say, can you tell? Something "the frenulum is intact"?

A Right, the frenulum is intact, which is actually the most important thing with respect to child abuse. And I am personally amazed that she described that little lesion in the upper part of the frenulum because that looks more like an ulceration or a small bruise that one can get, for example, when one brushes their teeth and the toothbrush slips.

Q So is this -- you've got like an arrow -- or a line drawn to this. Is this little area, you think that's what she's referring to?

A I think that's what she's referring to. And she describes it as a --

Q Red contusion measuring 1/16th by 1/16th?

A By 1/16th of an inch.

Q Does that qualify as 1/16th of an inch to you?

A Well, you can look at the ruler. I think it is barely 1/16th of an inch.

Q Okay. And so what can cause this particular type of lesion that you discussed, or ulceration?

A Well, as I said before, it could be trivial trauma due to brushing your teeth wrong. Other that that, it's an ulceration whose origin can be very hard to discern. If I had had any questions about an injury as trivial as that, I would have taken a microscopic section.

Q Okay. And tell the Court what a section taken, a microscopic section, of the frenulum would assist you as a pathologist to determine?

A Well, first of all, it will tell if that's really is a contusion, which is not, because a contusion would have caused extensive red discoloration with the frenulum. And there -- that actually is a completely normal frenulum.

Q Okay. So when you tell the Court that that is not a contusion, you are disagreeing at -- under evidence of the recent injury "left lower lip mucosa purple-red contusion measuring" -- excuse me. "Upper frenulum purple-red contusion measuring 1/16th by 1/16th."

You are disagreeing with Dr. Niblo on that issue?

A Correct.

Q And the basis of that disagreement is if I understand it is because it's too small? It's an ulceration I

think is what you said?
A I think it's an ulceration.
Q Okay. What is the difference between ulceration and a contusion?
A A contusion is where you will apply force to tissue, blunt trauma. Let's say you get hit with an object. Let's say you get punched and this causes blood vessels to burst in tissue and you get the hemorrhagic in soft tissue that is typical of a bruise. That's what a bruise is, a contusion. And it is -- it results in hemorrhagic infiltration of tissue. This is not that hemorrhagic infiltration of tissue. It looks to me like a superficial ulceration, if that.
Q So if Dr. Niblo wanted to confirm whether or not in number two when she says it's a contusion, she would have needed to take a section of the frenulum; would that be true?
A If she had wanted to figure out what it was, period, I would have taken a section.
Q Would that be normal practice?
A No, because the frenulum is normal. I -- I would not have taken a section of that frenulum because it's pink and it's intact.
Q If I hear you -- if I understand what you're saying,

you're saying you would not have taken a section of that frenulum because it is so normal that it wouldn't even draw your attention?

A Correct.

Q But in the event that Dr. Niblo wants to say that it's a contusion, is it your testimony, Doctor, that Dr. Niblo should have taken a section of that and done a microscopic?

A I would have.

Q And under a microscope she would have been able to see if it was a contusion by looking at hemorrhages that would leak and out and spread out; is that correct?

A Right. But I think the bigger point is if this were a contusion of the frenulum, when you consider how rich the blood supply is in the mouth, you would have seen much more extensive hemorrhage. You would have seen hemorrhage, period. You don't see hemorrhage here at all. When you have an injury that causes hemorrhage in the frenulum, you're also going to see hemorrhage on the inner aspect of the lips, especially the upper lip.

Q So if someone were -- as Dr. Niblo concluded in her report, that someone smothered this baby or asphyxiated this baby; is that -- is that what she's

basically saying, correct?
A Right.
Q So if the State wants to allege that this little bitty 1/16th by 1/16th, approximately, that wouldn't even get your attention, you won't even section it yourself because it's not normal practice for you, if they -- if the State wants to allege that that is part of a process of smothering, they should have at least taken a section of it; is that true?
MR. JORDAN: Judge, this is leading. I'm going to ask that he please ask nonleading questions.
THE COURT: Sustained.
Q (By Mr. Copeland) Doctor, do you have an opinion as to whether the State, if they want to allege that this is part of the process of a murder, that they should have gotten a section of this frenulum?
MR. JORDAN: Objection; leading.
THE COURT: Sustained.
Q (By Mr. Copeland) Doctor, what opinions do you have regarding this frenulum that have not been otherwise discussed?
A I think it's a superficial ulceration in an otherwise normal frenulum.
Q Okay. Thank you, Doctor. Now, do you have -- on

this slide did you have any photos -- is this the photo that would deal with the number two allegation of left upper lip mucosa purple-red contusion measuring one-half by one-quarter inch?

A I did label it somewhere. I can't see from here.

Q Hold on.

A There you go.

Q Will this assist the Court on that issue on No. 2?

A Yes.

Q Evidence of recent injury No. 2?

A Correct.

Q Now, is that large enough for you, Doctor?

A Yes. Well, I did -- I drew the -- I did the annotation myself so I know exactly what you're looking at.

Q Okay. And what did you write here? I think it says "I think this is what she refers to as a contusion of the left upper lift mucosa"?

A Correct.

Q So that -- you're specifically addressing No. 2 here in this slide, right?

A Correct.

Q Now, what do you see in the slide, Doctor?

A Well, I think while the slide itself shows the upper teeth. Do you see --

Q I'm sorry, Doctor, we can't hear you because of the --
A When you see the upper teeth and you see that little area of red discoloration between the teeth?
Q Are you talking about here (indicating)?
A Yes. To which no one seems to have commented about, by the way, but. It's partly -- it's part of the process of lividity. If you -- those are the little crooks and crannies between the teeth where blood has settled because there is no pressure there. So it's just part of the pattern of lividity.
Q So while we're on that subject, Doctor, do you have an opinion as to this area that you just mentioned as it relates to --
A It's a normal gingival body with a little -- with a few -- with some accumulation of blood due to lividity.
Q Would that accumulation of blood and that lividity demonstrate any idea or concept of murder by smothering?
A No.
Q Now, over here on the lip where it's described as the left upper lip -- so this would be the left side of the baby -- or the infant?
A Correct.

Q Now, is this the area you guess she's talking about? Because you have got the line. What do you see here?
A What I see is an area of redness, which is probably lividity. And she didn't take a section of that, so. I think that all that is is lividity. And the other thing is that when you strike -- when you impact a child's face with sufficient force to actually cause an injury to the face, it doesn't look like that. because of the rich blood supply on the inner -- basically, the mouth has very rich blood supply. You're going to get a pretty extensive hemorrhage very quickly.

That's why things like swollen lips and broken teeth can bleed a lot, because of that rich blood supply. So that even a minor injury can get pretty extensive pretty quickly. And this doesn't look a minor injury at all.

And the second issue is that this child has teeth, so if you press the cheek against the teeth, I can't -- I don't see any injuries sufficient to cause mucous hemorrhage like that without having the teeth left an imprint on the inner aspect of the lip.
Q So Doctor, if someone is in the process of smothering, that would require force, would it not?
A It requires force, especially, in bigger children.

Q Okay. And in this -- the child is 14 months --
A Right.
Q -- in this context. If the State were to allege that this child -- let me context by something. Do you have an opinion, Doctor, as to where this baby died according to the photos you reviewed?
A I think it died in the crib.
Q What tells you that, Doctor?
A That there is an area of -- a wet spot, if you will, in the crib.
Q Okay. So have you seen any photos of the crib all -- what the size of it is or the mass size of it is?
A Yes. It's a Pack 'n Play.
Q Okay. In your opinion, could a grown man be having sex in that Pack 'n Play with a baby at the time of death?

MR. JORDAN: Objection; calls for speculation.

THE COURT: Sustained.

Q (By Mr. Copeland) Doctor, do you render opinions -- in your expert field, do you ever render opinions on the possibilities of actions occurring that have been alleged by the State specifically in this type of scenario where a -- whether or not something could be possible or impossible?

A Sometimes, but I have to have enough information to be able to do something like that.

Q As you sit here today without maybe getting more context are you able to give any opinion about the Pack 'n Play situation if the State were to allege that a grown man setting over here this size at the end of this table was having sex with a 14 month old in the Pack 'n Play?

MR. JORDAN: Objection, Your Honor. Again, it calls for speculation, number one. And number two, the State hadn't alleged that.

THE COURT: Sustained.

MR. COPELAND: So as I understand, the State is not going to allege that; is that correct?

MR. JORDAN: I'm not on the stand, counsel.

MR. COPELAND: No, no, no. I just want to find out if we've got an agreement so that --

MR. JORDAN: I said the State hasn't alleged that, okay. I'm not answering your questions. I'm not on the stand.

MR. COPELAND: I just don't want to have to go back to resolve this issue.

THE COURT: Just ask another question, please.

MR. COPELAND: Thank you, Judge.

Q (By Mr. Copeland) Now, is this next photo to deal with number three the lower lip mucosa or do we --
A Yes, that's really the only photo that documents that particular lesion on the inner aspect of the left upper lip.
Q Okay. But on number three it discussions a right lower lip.
A Well, yeah, but that's the right lower lip. That will be another picture.
Q But all I'm asking is there one of the photos that you provided that deals with that or do you want me to --
A There is another picture that deals with that -- that shows the area of redness in the left -- the right lower lip.
Q Where is that? I can't find the mouse here. There we go.
A There, that one.
MR. COPELAND: It's hard to see at this angle, Judge.
A Okay. So that's the inner aspect of the right lower lip. And you can see a 1/16th of an inch probably terminal bite.
Q (By Mr. Copeland) Probably what?
A Terminal bite.

Q Terminal bite?
A Right.
Q Okay. How does that happen? Tell the Court, please.
A It's part of the process. It is not unusual to find in people's lower lips -- as I mentioned before, it's easy to grab your lower lip with your teeth. And sometimes people end up with an imprint on there -- on the inner aspect of their lip to the back, and that's exactly what that looks like.
Q I mean, is this described as -- is it probably described as in imprint or is this an ulceration or a pinch mark or what is that?
A It's an -- it's actually a pinch mark. I think there's been some loss of this very superficial membrane. And that's all anybody can say about it. The lip itself isn't red. There's been no significant injury to the lip.
Q Okay. So earlier when we were going over the other photo that showed the lip hanging over the bottom lip and it looked like there was some --
A Right. The teeth were catching the lip.
Q Okay. In that process -- is it in that process we're calling it in the throes of death that this occurred also?
A Yes. Yes. I think it was part of the --

Q And how common is that, Doctor?
A That's very common.
Q And this is something you've seen before that you've verified before?
A Yes.
Q And is there medical literature that supports that?
A Probably. Somewhere.
Q Okay. Did you have the need to ever research that issue?
A No. This is a tiny little injury.
Q Okay. Now, when you say that's a tiny little injury, was there a section made of that particular mark?
A She did not make a section of that.
Q And had she made a section of it, what would that tell you?
A It would tell me exactly what it is. It would show me whether or not it's an ulceration or a miniscule bite mark that was agonal.
Q She describes it as a --
A This is why we take slides, because it tells us what things are.
Q Okay. Now, if a -- would a slide tell you whether or not it was a laceration as she alleges in number three, right lower lip mucosa laceration?
A It would assist in the diagnosis because the

laceration would show -- because it's due to blood trauma, it would show the infiltration of soft tissue by hemorrhage.

Q Doctor, would you ever render an opinion where an individual's lively ability to stay and have their freedom restored to them --

MR. JORDAN: It's --

MR. COPELAND: I haven't gotten my question out.

MR. JORDAN: It's argumentative.

THE COURT: Sustained.

Q (By Mr. Copeland) So can you -- Doctor, what would you normally do in your practice if you saw this in a situation and you were evaluating someone for homicide?

A We would say that it's a 1/16th of an inch ecchymosis, which is a nonspecific term. That's spelled e-c-c-h-y-m-o-s-i-s, which as a nonspecific term for an area that has blood in it but we don't know exactly what it is.

Q When you say you don't know exactly what it is, it means that you wouldn't know what the cause is, or what do you mean by that?

A Well, we know there's a tiny little amount of hemorrhagic infiltration there. It could be to a

number of reasons. But we don't know which one. And if we really had a burning desire to figure out what it was we would take a section of it. But tiny little lesions like these, we describe them and discount them as inconsequential.

Q You discount them as inconsequential?

A Correct.

Q So in your practice regarding this type of situation it wouldn't rise to the level of seeking out even a pathology -- pathologic study with a microscope?

A I wouldn't have to get a section of it either just because it's so trivial.

Q And Doctor, have you -- we'll get to that in a second. On number four, Doctor, we're going to go on I think to number four: right neck soft tissue at the base of the skull, (posterior neck dissection), hemorrhage measuring at one-quarter by one-quarter.

In fact, Doctor, we're going to back up a second before we head to the back and the areas of the neck.

Now, Doctor, you've got over here, it says on this photograph, it says, "Lack of pattern on the skin." And this is a line drawn to the forehead; would that be an accurate depiction?

A Correct.

Q And in this particular situation, Doctor, what is

significant about that to you?
A Well, it looks like just the lividity pattern of a child who died on a relatively flat surface and has the lividity pattern of being found prone after he died.
Q Have you seen cases where babies such as this have died face down?
A Lots of times.
Q That did not have anything to do with homicide?
A Correct. Yes, many times.
Q Okay. So in and -- just the context that a child dies on its face without context, is just an innocent situation; is that true?
MR. JORDAN: Objection; that's a leading question.
THE COURT: Sustained.
Q (By Mr. Copeland) Well, Doctor, as it relates to when you say "lack of pattern on the skin," are you describing the forehead's lack of pattern?
A Well, I say there is a lack of pattern is that when you smother somebody, especially, already an older child, you're going to find the imprint of the surface at which you pressed that child actually embedded on the skin. And that includes, by the way, the effort of obstructing the airway and pressing the

lips against the teeth. At least I have never seen smothering except in an infant who had no teeth where you actually didn't see a pattern of the skin.

But you -- if you look carefully and you have a good photographer, you can often times find patterns of fingers on the skin in infants who are smothered who have no teeth. But in this particular instance, I think the most important thing is what is not there. There is no pattern of anything on the skin, and the nose is actually not deformed.

Q And does Dr. Niblo indicate any pattern on the skin?

A She does not.

Q Does she indicate any finger marks on the skin?

A No.

Q Does she indicate any finger marks on the back of the neck?

A She does not.

Q Okay. And so let me move to this next photo.

Now, you've got a question mark -- or no, it says -- does that say "no pattern"; is that what that says here?

A Right.

Q Okay. And we're looking at the chin area?

A Right.

Q Okay. So if someone is smothering -- when you're

looking for -- there's been a smothering occur, are you looking for a pattern on the chin?

A Yes, because the chin is one of the most prominent parts of the face, so that when you squeeze a child's face or for that matter when you put the palm of your hand over a child, you will generally leave some kind of imprint even if subtle on the skin.

Q Dr. Niblo find any pattern on the chin area?

A She does not describe anything like that.

Q And let's go to the next photo. Okay. What are you saying when you say on this photo here -- it is about the nose, it says -- does it say "is not deformed"? What does that say? Is not deformed or abraded?

A Right. Because nose is also so prominent -- the nose is fine. It's not -- it's not deformed. And it doesn't look like it's got -- it has had any pressure against the tip of the nose, which you will often find in instances of smothering, because the nose is so prominent that you end up rubbing the tip of some kind of a pattern there, if only just a simple scrape.

Q So if you're looking for -- as a pathologist, if you're looking for something consistent with homicide or murder by smothering, would you expect to find something in this area that would tell you that

something has happened?
A Well, I would think -- this child is already big enough. I would think that there would be some kind of deformity of the nose or some kind of imprint on the skin.
Q So in your examination of the photos, Doctor, can you render the Court your opinion as to what the face shows as it relates to any textile patterns?
A Nothing.
Q Is a textile pattern something that you would regularly find?
A You can find that. I've seen that. I've seen -- as I mentioned before, I've seen finger imprints in younger children. Sometimes all you find is deformity.
Q Okay. And so did Dr. Niblo indicate any deformity on the nose?
A No, she does not.
Q Did she indicate any deformity on the chin area?
A She did not.
Q Did she indicate any deformity on the forehead area?
A No.
Q How about in the eyes, did she indicate any deformity with the eyes?
A She actually looked at the eyes. There was nothing

wrong with the eyes. There were no petechiae, which you often find -- also, when you try to asphyxiate someone, you will often find petechiae in the eye. And she actually documented that there were no petechiae very well.

Q Doctor, would you go ahead and define for the Court and tell the Court what petechiae is?

A Petechiae are a very localized areas of hemorrhage where capillaries rupture and leave an imprint -- a very localized hemorrhage, what we call focal hemorrhage, in the subcutaneous tissue.

And in suffocation you see it fairly often due to changes in blood pressure within the head as the forential pressure is being applied is -- is compressing and relaxing the neck, if that is what is being done or localized pressure and soft tissues of the face can also cause petechiae. And that's why rarely you can find petechiae that are (inaudible) One eye versus another. I actually have seen a case -- one case of that. But that's what petechiae are, little pinpoint hemorrhages.

Q Is that something you find in the context of putting pressure on the neck or behind the neck and pressing?

A Yes. If you put pressure around -- if you put pressure on the blood vessels of the neck and you

squeeze and relax and squeeze and relax and allow the blood pressure to change within the head, as a result of that you may find petechiae hemorrhages.

Q Could that also occur from a squeeze behind the neck from that direction?

A Yes, I think it can.

Q In a baby?

A Yes.

Q Okay. Doctor, this is a photograph -- here is something I wanted to bring up. Doctor, in this photograph do you see any indication where the teeth have shifted or any impressions of the teeth on the bottom lip?

A Well, no, not in that picture. This is a picture -- an interior picture of the body that is found at the scene. But there is a picture where I show that there's two very fake lines on the anterior lip where you can see the impression of the two teeth that are holding the lip as the child terminally bit its lip. And because the child was agonal at the time, there is no hemorrhage associated with those two lines, but they're very distinct.

Q Because the child was agonal, please tell the Court what that is.

A It means that his blood pressure was dropping and

your -- your blood pressure drops as part of the process of death. You're no longer able to hemorrhage in the way that you do when you're alive.

Q And does this -- do those findings and your observations in that context have anything to do with any opinions you're rendering here today?

A Well, they're not asphyxia. They're agonal findings.

Q Move to picture seven here, Doctor. Okay. Well, let's start with eight, it's easier to see. You've got it here, it says, "wet area"?

A Yes.

Q What does that indicate to you?

A When you're investigating sudden deaths, sudden pediatric deaths, often times that wet area is where the infant actually died.

Q And why is that?

A That's because as you die -- this can actually start happening before you die. As blood flow is decreasing and your blood pressure drops, mucous membranes, they start breaking apart so that interstitial fluid, the fluid that is between your tissues, and as well as secretions, actually, start dripping out and leave an imprint of where you lay at that side. This is why funeral home directors routinely plug noses and mouths with cotton because

people can leak through those -- all those orifices.
Q And did we not just look at a photo about the nose? Did you notice the wet on the area of that photo?
A Yes. There was a drop of fluid on the tip of the nose.
Q In this area right here (indicating)?
A Yes. You can see the reflection of the flash shows you that there is -- that the surface is humid.
Q And up here on the forehead also?
A Right.
Q So would it be fair to say that this child was laying in some part on his own bodily fluids?
A Well, I think that there were body fluids coming out of the nose and the mouth and that he was there long enough for that to seep into the mattress and the cloth of the Pack 'n Play.
Q And do we know -- are you able to tell, Doctor, based off of your training and experience and looking at these photos and understanding the context of what is alleged versus what you see whether or not the explanations came from the mouth or nose, what the sources of those were? Were they anything from the lungs? Anything from the stomach?
A They typically have two -- two sources. If there -- there's such a thing as terminal heart failure. And

some people will -- as the heart slows down because you're dying, you will generate fluid in the lungs and some of that because of the heart failure and some of that will come out through the airway.

But the other sources, as I said before, is that mucous membranes start breaking down. And you also lose all of those reflexes which allow you to hold secretions in your airway and in your mouth. So you start drooling. Essentially, it's a kind of uncontrolled drool, especially, where saliva is concerned, but it's also because membranes break down and fluids from inner tissues start leaking to wherever it is you are.

Q How soon after death do you -- have you seen the fluid start to leak out as it relates to fluids -- tissues breaking down as opposed to release of the sphincter?

A Well, as I mentioned, it can happen before death. If you see agonal patients in intensive care units, they're constantly getting fluids sucked out because their mucous membranes start breaking down if they're in an agonal state. The practical contacting importance of the wet spot is that it is where the infant died.

Q Okay. And is that your opinion, that that is where

the infant most likely died?
A Yes.
Q Now, did you mention, Doctor, the -- if fluid comes from the stomach, what causes that?
A Well, that's because that's -- that can be one of the sources of fluid to the wet spot. That's because at the moment of death the valve that lies between your esophagus and you stomach relaxes and so fluid can search up. It's like reflux, basically. Agonal reflux.
Q What kind of valve is that that's in your agonal reflux?
A It's called the gastroesophageal sphincter.
Q It's a sphincter muscle?
A Correct.
Q Okay. Is that the same kind of muscle that deals with the rectum?
A It's similar. The gastroesophageal sphincter is composed entirely of a muscle called smooth muscle. And the rectum is composed of smooth muscle as well as striated muscle. And the difference is technical.
Q Now, going to photo 11 here on the PowerPoint, Doctor, you've got him laying I guess in the exam room, right, with the -- this is the autopsy photo, correct?

A I think -- I don't know.
Q Okay, that's fine. But we've got a little ruler here. It says OCME, so either someone is at the scene or things look close-up. I can't tell the context maybe. But I guess what I'm getting at you've here it says, "cloth pattern to shirt," I guess?
A Right.
Q Okay. And what are you trying to say here, Doctor?
A Well, this is the contrast between the note pattern on the face and the cloth pattern, because this child's t-shirt was on and the elastic rim was providing pressure against the neck. You can see the imprint of the -- elastic rim of the t-shirt on the neck. And it's a good contrast to the absence of a pattern on the rest of the face.
Q And so on photo 11, Doctor, it says, "nose is intact." Would this be another good photo -- what are you trying to say here?
A That the nose is intact. It's not deformed. It's not flattened. It's not hemorrhagic. It's a normal nose you would expect to find in a dead toddler.
Q And would that be consistent with natural causes of death?
A Yes.

Q And on the chin again, you mention here on the same photo "no pattern."
A No.
Q Would that be consistent with natural causes of death?
A Yes.
Q On the photo 12 -- okay, we've already covered this on the frenulum. I think we are about ready to move on. Okay, this is real graphic. We are about ready to move on to the photos dealing with some of the dissections.

THE COURT: Mr. Copeland, if I could, it's almost noon. Anybody objection for us taking a lunch recess at this time?

MR. JORDAN: No.

MR. SMALLWOOD: No.

THE COURT: Why don't we do that.

MR. COPELAND: Yes. Thank you, Judge.

THE COURT: We'll be off the record.

(WHEREUPON, a lunch recess was here taken.)

THE COURT: We're back on the record after a lunch recess. Dr. Schmidt is still in the witness stand. I believe we were in the middle of direct examination. Go ahead, Mr. Copeland.

MR. COPELAND: Thank you, Judge.

THE COURT: Yes, sir.
Q (By Mr. Copeland) Dr. Schmidt, we are back from lunch. Are you ready to continue?
A Yes.
Q Okay. I want to jump in the meat of this case as it relates to essentially one of the allegations by Dr. Niblo. She is alleging that there are blunt force traumas in her report. Are you familiar with that area?
A Yes.
Q And regarding that, I want to analyze with you the microscopic description that she has at page 5. See the highlighted version here where it says "anus 7:00 to 12:00 in toto"?
A I do.
Q What does that mean? Tell the Court what that means.
A It means that she took the anus and she took a section from 7:00 to 12:00. And she made multiple sections of it and submitted that entire portion of the rectum and made it into slides such as the one that you see in these boxes. So the entire rectum from 7:00 to 12:00 is -- was submitted for processing so you could look at it with a microscope.
Q Does that mean that she -- do we know what depth she took, like, cored out the rectum?

A She does not specify how deep she went. And she does not specify two things. One is how deep around the rectum she actually went. But the other thing she doesn't specify is how deep up into the rectum she went. And by that I mean is that there's two anatomical landmarks in the rectum. One of them is called the pectinate. That's spelled p-e-c-t-i-n-a-t-e, and the other one is called the white blind.

Q Just tell the Court what those are.

A Right. Pectinate line is anatomical landmark where the mucous membrane that is typical of the GI tract, gastrointestinal tract, suddenly transitions into a mucous membrane that looks more like skin. Skin is a layer of flattened cells that's very distinct. So at the pectinate line is where you get a transition from what looks like bowel to starts looking like skin. And in the white line you'll get a transition where now that that transformation into skin starts to developing keratin, which is what lines our skin, and is much more resistant to the environment.

She doesn't specify how far up if she included the pectinate line or not. I think she did because in some of the sections you can actually see pockets of bile mucous membrane. So she must have included

the pectinate line, but she doesn't specify how far up she went.

Q And for the benefit of the Court, could you tell the Court what's the significance of how far she went into the rectum?

A Well, I think the significance is that she describes -- in her pathologic diagnosis, she says in II-A, she says "Contusion of the 12:00 position of the anus along the external surface extending into the internal aspect of the anus. Child in the prone position."

Q What page are you on?

A This is the first page. This is where she is in the pathologic diagnosis. These are her conclusions regarding -- the diagnostic conclusions regarding the case. So when she says "extending into the internal aspect of the anus," well, what exactly does that mean?

Q So could you point out here where you're referring to? Is it on?

A Under Roman Numeral II.

Q II. Okay.

A You'll see that section A.

Q Okay, section A.

A It has "contusion" --

Q "From the 12:00 position of the anus."
A Going into -- "the anus along the external surface extending into the internal aspect of the anus."
Q Okay. And so as it relates to how far she went, does that tell you anything clinically when you're looking at it under a microscope? What's the distinction about how far she went though?
A Well, I think the bigger issue is that the section of the rectum that I got are completely normal. There is no hemorrhage. There is no nothing. It is a completely normal mucocutaneous rectal junction. There is no hemorrhage. As I said before, there is no nothing. And I think that if there's anything that needs to be reconciled, is the discrepancy between the assertion that there are multiple penetrating blood impact injuries to the anus where there is no histologic convervation of it. And if you don't see it in the slides, it simply ain't there.
Q Now, we're talking about from 7:00 -- when we -- let me read this to you, Doctor, while I've got this page out to make this clear. Now, she says the 12:00 of the anus there's a purple-red contusion. So I want to orient this photograph for a second.
Is this what you call the 12:00 area

(indicating)?
A That is what I presume she was calling the 12:00.
Q Okay. So if that's the 12:00, and she says at the 12:00 there's a purple-red contusion along the external surface, do you think this is what she's referring to right through here (indicating)?
A That purple-ish -- that are with purple discoloration is what I think she's referring to. And she says that goes into the internal aspect of the anus even though there is no documentation of it.
Q Okay. What do you mean there is no documentation? She's referring to it in her report?
A She's referring to it, but we don't see how -- there is no picture of the extension of that area of purpose discoloration into the internal aspect of the anus, which is what I think she must be referring to.
Q Okay. Are you saying that there's not a photograph that she's provided you that would show that description?
A Correct. All we see is the external --
Q We don't see the inside?
A -- skin of the anus. That's correct.
Q Okay. And so she says from the 7:00 position, at number two, of the anus. Would this be about 7:00 if this is 12:00?

A Yes.
Q Okay. So is this where you've got this line drawn right here, in this area right here (indicating)?
A Yes. I think that's what she refers to as the laceration.
Q Okay. So she says it's a laceration measuring 1/8th by 1/8th. Is it your understanding -- is this probably what she's talking about right here (indicating)?
A Yes. That is the injury that she describes as most consistent with that description.
Q And again she says on number three from the 9:00 position extending to the 12:00. So she's especially talking about these areas right through here, and she's saying there's multiple lacerations all the way through here; is that correct?
A Correct.
Q She says "multiple lacerations over an area of 1/8th" -- or "1/2 inch by 1/8th inch." Is she saying that -- by your interpretation, is she saying that the area is only that length or is she talking about the width?
A Well, I don't know because she asserts that there are multiple lacerations. And frankly, I see only one. And what I basically see is just the area of purple

discoloration in the external sphincter of the anus.
Q Okay. And let me back us up a little bit, Doctor, for you. Now, you said you only see one. The question had to do with a laceration. Do you see a laceration or -- do you see a laceration?
A I think that's a fissure.
Q Okay. And we're talking about the 9:00 area?
A 7:00-ish.
Q 7:00. You're right. Okay, 7:00, 12:00. All right. So the 7:00 area, you think that this is a fissure? This is your handwriting here, correct?
A Correct.
Q So you're pointing to this area and you're saying that's a fissure. Can you tell the Court what the difference is between a fissure and a laceration?
A A fissure, which is very common in the anus and the rectum, by the way, is just a separation of the mucous membrane. And it can or often is not associated with a tiny amount of hemorrhage in the subcutaneous tissue that supports the mucous membrane. And it's very common especially with kids with constipation. Actually, anybody with constipation.
Q And so what's the difference -- tell us what a laceration is.

A A laceration is the separation of the skin or tissue that's caused by a blunt impact. So you have a hemorrhagic infiltration not only of the force of the blunt impact but you also have the disruption of tissue caused by that impact.

Q So the impact, does it usually lead to a bruising; would that that be --

A Right. So a laceration is a bruise that it has opened apart.

Q So it has a bruise contained within the opening?

A Correct.

Q Okay. So if I was to -- a blunt trauma, would that be analogous to like getting punched and getting a black eye and lacerating right here on the orbital bone?

A Correct.

Q And if I had a fissure on my face, what would be the difference between that and a big punch?

A Well, it's correct to get fissures of the face, but let's just say you -- you -- if I punch you and you just get a bruise, then it's a contusion.

Q So the capillaries leak; is that what occurs?

A Right, the capillaries leak. But if I punch you hard enough so that your skin impacts the bone of the orbital rim and it tears, that's a laceration.

Q A laceration. So the distinction of what your -- is it correct the distinction you're talking about here on the anus where she's talking about at the 7:00, is that she calls that a laceration, and you call it a fissure --
A Correct.
Q -- and it has to do with blunt trauma versus -- what kind of trauma?
A Blunt trauma, period.
Q Well, I'm asking the distinction between a fissure and a laceration. What's the different kind of trauma that's going on right here?
A Fissures are just responses to straining. The tissue stretches as a result of the constipation.
Q So you're talking about like a stool passing through?
A Like a stool passing through, for example.
Q And if the child is constipated would it -- it puts pressure on the site?
A It could put pressure there, and it could cause a little bit of bleeding, whereas, a contusion is -- implies that you took an object and rammed it into the rectal region.
Q So if it's like Dr. Niblo says, from 7:00 all the way to 12:00 there's multiple lacerations, what would you expect to fined under microscope?

A Well, if there were multiple lacerations, you would expect to find tears -- some kind of a tearing of mucous membrane or a disruption or as pathologists like to say discontinuity. And you would expect to find hemorrhage in the soft tissue. And there is no hemorrhage in the soft tissue. There is no hemorrhage in any of the slides that I got.

Q Let's cruise back down to microscopic description, Doctor. And I'm going to highlight that. I want to re-highlight here. So she says regarding the anal -- or the anus sections that she took in toto, meaning she took out the whole anus surface extent area of the pectinate line you described it?

A No. She's talking about circumference of the rectum them.

Q Okay. But --

A But what she doesn't describe is to what extent into the tube -- into the rectal tube she took the section. That's what I mean by internally.

Q So 7:00 to 12:00 she did at least an external in toto. Toto means all of it?

A Right, she submitted that whole quarter 40 percent of the circumference of the anus.

Q And her findings are submucosal congestion; is that correct?

A Correct.
Q A focal hemorrhage; is that correct?
A Correct.
Q And a rare hemosiderin laden macrophages, iron stain; is that correct?
A Correct.
Q Now, explain to the Court what submucosal congestion is.
A Submucosal congestion is what happens when the veins in the rectum become congested and dilated. And in older individuals -- actually, it can happen in children too. But when those veins become really distant, they become hemorrhoids.
Q Let me point this out, Doctor. Do you have an opinion as to what this area right here would be? What would you describe this darker -- why is it dark?
A That purple discoloration is the submucosal congestion.
Q Okay. So if I understand your testimony, you're telling this Court that this dark area is where veins have become engorged or been what? Slow to relax or what?
A Distended.
Q Distended.

A The veins are distended. Veins distend easily when they become engorged with fluid.
Q And what is it you testified that leads to hemorrhoids?
A When those veins become distended and the tissue around it becomes inflamed, then that -- it becomes actually a varicose vein, and it becomes a hemorrhoid. Hemorrhoids are varicose veins.
Q Now, back to the focal hemorrhage. What is she saying when she says focal hemorrhage? Just based off of your training and knowledge in the field, what does focal hemorrhage mean to you?
A Focal hemorrhage is the term that we use when hemorrhage is localized to a very particular area. It's hemorrhage that is very discrete and is present only once -- in this case I bet that it was present in only one slide because there are no areas of focal hemorrhage in the slides that I got. And that's actually very common, especially, in areas that are subject to some kind of trauma like the rectum. But she doesn't specify which slide did she see the focal hemorrhage either.
Q Would that be helpful to you to know which slide she is trying to indicate?
A It would because at least it would give me a better

idea of what she was looking at. But we don't know -- she -- since she doesn't have a key to what sections she took from where, I don't know if slide 16 starts at the 7:00 position or if it starts at the 12:00 position and goes in the opposite direction.

Q As it -- do you have an opinion, Doctor, as to whether or not it would be subpar documentation of a physicians in her position to not provide a key?

MR. JORDAN: Objection; relevance. This is not a medical malpractice case.

THE COURT: Sustained.

MR. COPELAND: Judge, I just argue that it goes -- well, you already sustained it, if you don't want to hear me.

THE COURT: Well, you could -- you know, if you can ask him what his opinion is as to his practice.

MR. COPELAND: Okay.

Q (By Mr. Copeland) Doctor, as it regards your practice, would you provide a key in the situation where you know that somebody's going to be looking at your work subsequent to that on a situation where you were saying that it's a homicide?

A We do.

Q Is that common practice for you?

A We do it in all of our cases. Since we are accredited by the National Association of Medical American Examiners one of the autopsy performance guidelines is to include a key to the slides in your autopsy report.

Q And that was not provided in this case?

A It was not.

Q Okay. Now, I'm not saying this is -- Dr. Niblo is doing this, but if someone were, you know, potentially listening to, you know, an ear shot with the influence of a lead investigator on a situation like this, and she is wanting to maybe halfway appease that investigator while also do her job, would it help to ride the fence at all if she were to not provide a key?

MR. JORDAN: Objection; argumentative; assumes facts not in evidence, and calls for speculation.

THE COURT: Sustained.

Q (By Mr. Copeland) Now, Doctor, as it relates to looking for a focal hemorrhage on slides that were provided to you -- and you said there were six slides, correct?

A Correct.

Q 16 through 21, right?

A Right.
Q So looking at those slides, is there like a -- I'm looking for the best word for it, but like a topography when you're looking over the microscope and you're having to move the slide around and find and look for things, is that kind of the situation you're in when you're trying to verify something from someone?
A Well, that's the process you use to look at a slide. You put it under the microscope. And you go from a low magnification to a higher magnification, and you move the slide around so that you can look at all of the areas that are pertinent.
Q So in this particular case did you magnify, or remagnify, lower the magnification, raise the magnification?
A I use the same process I use when I look at slides in every case.
Q Did you seek any second opinions, Doctor, in reaching your conclusions here today as it relates to the slides and what they say?
A I showed them to a couple of pathologists in my office.
Q Did you tell the pathologists what you were looking for? How did that go about?

A No. I just showed them the slides of the rectum and I asked them what they thought.
Q And what came out of that conversation? What came out of -- what were your conclusions as a result of that? Do you feel verified?
A They said they didn't find anything either.
MR. JORDAN: Objection; move to strike. That's hearsay.
THE COURT: It is hearsay. That's sustained.
Q (By Mr. Copeland) As a result of what you learned from your -- were these colleagues?
A Yes.
Q As a result of what you learned from these colleagues, did you feel like you were more solid or what was the reason that you sought a second opinion?
A I just wanted to let them -- to have them look at them and see what they thought.
Q Now, as it relates to focal hemorrhage, did you -- am I understanding correctly that you are testifying that you couldn't find the focal hemorrhage that she's talking about?
A None of my slides contained focal hemorrhage.
Q Now, as it relates to her own description, Doctor, of no focal hemorrhage, is it -- would you expect her description to be different if you were looking at

what she describes as -- I'm on the wrong page. Hold on a second.

What she describes as essentially a 7:00 to 12:00 pattern of lacerations, multiple lacerations, would you expect to find a different description other than something called a focal hemorrhage?

A Yes.

Q What would you expect a description to actually entail that would be accurate and representative of someone that -- in a child whose anus has multiple blunt trauma forced injuries from 7:00 to 12:00?

A You would expect to see diffused hemorrhage in the subcutaneous tissues of the rectum.

Q So where she says focal hemorrhage, you'd expect to see -- could you -- I couldn't hear that well. Can you say that again?

A Focal hemorrhage is localized hemorrhage. I have no doubt that she did see the focal hemorrhage. It's just that she doesn't specify which slide it is and it's not diffused. It's focal.

Q So if it's not diffused and it's focal and you couldn't find it, is it typical without a key it's hard to find because it's so focal?

MR. JORDAN: Objection; leading.

THE COURT: Sustained.

Q (By Mr. Copeland) Doctor, is it hard to find a focal hemorrhage if it's -- is it hard to find a focal hemorrhage in a slide you don't have a key?

MR. JORDAN: That's also leading.

THE COURT: Sustained.

Q (By Mr. Copeland) Doctor, can you tell the Court as it relates to a focal hemorrhage how you would go about describing that?

A Okay. I think -- I think I need to clarify something here, that is that -- when I said there was no key, what I meant was that there is no correspondence between the slide number and one from where she took the slide.

Q Okay.

A So I don't if slide 16 is 7:00, slide number 17 is 8:00, slide number 19 is 9:00, and so on and so forth.

Q Okay.

A Focal hemorrhage means that she saw a hemorrhage that was localized to one tiny little spot, and she did not specify which site did she see it on, because it's focal, I have no doubt she saw it at most one or two slides.

Q Well, Doctor, would you expect her to have indicated which slide the focal hemorrhage was on?

A If there was a key I would say -- I would have said there was focal hemorrhage in slide number 18 which was to say something 10:00 position of the rectum.
Q Would that be your practice, that you would have --
A Yes, that's what we do. We describe the slides. Since we have a key we would say there was focal hemorrhage in slide number 18.
Q And you're following the guidelines when you make a description that accurate; is that correct?
A You're following the guidelines, but for the key the description is up to you.
Q Okay. Now, as it relates to this photograph, Doctor, do you have an opinion as to -- when she describes focal hemorrhage, do you have a conflict with that statement at all?
A No. What I have a conflict with is the description of contusion as her gross diagnosis and the unresolved discrepancy between what she -- she is describing a normal rectum and yet she's issuing a gross diagnosis of -- and she says explicitly -- she says, "Contusion of the 12:00 position of the anus along the external surface laceration off the 7:00 position, multiple lacerations of the 9:00 position to the 12:00 position of the anus."
All those, whether it be lacerations or

contusions -- and as I mentioned, a laceration is blunt trauma in which there is disruption of the surface of the skin -- the slides don't show that. The slides are perfectly normal rectal mucous membrane. So, there is a discrepancy between what is the gross description, the diagnosis, which is basically blunt trauma to the anus and the microscopic findings which are those of a completely normal rectal mucous membrane.

Q So, Doctor, do you have an opinion as it relates to her finding to how she stated it, do her findings support saying it's contusion laceration -- do her findings based on your microscopic investigation support the conclusion that this child was sexually molested or had some kind of sexual abuse occur by blunt trauma force?

A No.

Q It does not?

A It does not.

Q Okay. Do you know how to explain the discrepancy between what she's dictated and focal hemorrhage and not showing any hemorrhages that support contusion lacerations? Do you know how to explain that?

A I have some idea, but you're going to have to ask her.

Q Okay, I want to know what you believe as a possibility.
A I think that she was trying -- a narrative that isn't there. Trying to fit a square peg into a round hole. And I've seen people do that. Sometimes you have findings that don't match some horrendous story, but you have to base your conclusions on your findings. The story -- if the story doesn't match the findings, there's only one of two possibilities: either you made a mistake or the story is erroneous and does not correspond to what actually happened or is greatly exaggerated.
Q And, Doctor, in the course of your practice and the training and what you do in Wayne County, Michigan, have you had occasion where you've had to tell the authorities hey, there's not an injury here like you think. Stand down. Do not press this case. Anything like that?
A Yes.
Q Could you tell the Court about those situations and scenarios.
MR. JORDAN: Objection; relevance.
THE COURT: Sustained.
Q (By Mr. Copeland) Doctor, as you sit here today and what you reviewed, do you have an opinion as to

whether or not this child was asphyxiated by suffocation?
A He was not.
Q And why is that?
A Because the findings of the face are trivial. They don't correspond to a child who -- with -- who has managed to have teeth having been suffocated by -- especially, by pressing his face against a surface.
Q Doctor, I want to bring up a photo that you wanted to bring up. Can you tell the Court what we're looking at here?
A This is a picture of a gross dissection of the skin. This is a pretty standard dissection you do in cases of suspected child abuse.
Q Okay. But what's the location of this? What's the significance?
A There are two injuries here. One is in the upper cervical spine. You can see toward the right of the picture. And that is a -- more of a strawberry colored spot. And then in the right -- in the right scapular region, in other words, around the region of the shoulder blade, you'll see a more homogeneous variegated lesion that is also larger than the one on the cervical spine.
Q And how does Dr. Niblo describe those?

A She describes those as --
Q Would that be number four, number five on page 3?
A She describes as soft tissue hemorrhage of the right neck at the base of the skull and the right upper back. Pathologic diagnosis.
Q And so based on her description, what are you able to determine based off of your own opinion?
A Well, it should be clear that those are two different kinds of lesions. The lesion of the base of the neck is actually a different color than the one in the right scapular region. And the one in the right scapular region also doesn't look exactly like a bruise. It is not -- it is not all the way this dark purple. The fact that it is dark purple versus the brighter red region in the base of the neck, if they were bruises -- and we don't actually know what they are.

But if they were bruises, they would have been caused at different types just because their color is sufficiently different to be able to tell that they were injuries that were caused at different times. I can't tell you with certainty what different times. But clearly, the lesion in the right upper back has had time to clot. It is as we say thrombose. And that's basically it. They are two different lesions.

They appear -- they clearly appear at different times.

Q Okay. And, Doctor, have you ever heard the term "dissection artifact"?

A Yes.

Q What is that?

A Dissection artifact is when you are dissecting tissue and you strike a blood vessel and there is still some blood left in that vessel and it bleeds. And it looks like an injury when in fact it's not. It's something that is caused as part of your process of dissection.

Q And looking at this photograph that you provided, could this be an artifact?

A It has the right color to be a dissection artifact.

Q And by that, you mean kind of a bright strawberry red?

A It's a bright strawberry red. And it's not clotted in the way that the one in the right upper back is.

Q And the one here on the right of her back, could that be a blend of an artifact with what you called a lesion, right?

A Well, you know, I don't think anybody knows what that lesion is because it's variegated. If you see -- just from here, you can see that it's not a

hemorrhaging this dark purple thing. It has -- it has embedded within it fairly distinct yellow lines which I think are --

Q Are you talking about these right here (indicating)?

A Yes. Which I think are either fact or some other kind of connective tissue. And I don't know what that is. I'm not even sure you could even categorize it as a bruise.

Q Did Dr. Niblo regarding these two marks that she calls soft -- right neck soft tissue at the base of the skill hemorrhage, is she trying to say that that is indicative -- in your opinion is she trying to say that it is indicative somehow of smothering? And we're looking at the one of the neck or the back.

A What she says is "asphyxia due to suffocation." I think she is trying to relate them to the process of suffocation, but she doesn't say exactly how.

Q And as it relates to the one -- where is this located on the body?

A That's on the upper cervical spine.

Q So just the neck area?

A In the neck. In the back of the neck.

Q Okay. And so to the right would be where the skull is, would that be true?

A Correct.

Q And go down to the right shoulder blade area. Is that where she's describing?
A That would be over the shoulder blade more or less.
Q Now, in her dissecting has she had to cut any areas that might have leaked and caused these bleeds?
A Well, I can't tell you -- I can't tell you exactly what happened in the strawberry lesion up here in the upper part of the neck. And she didn't take a section, so we don't know what it is.
Q And she did not take --
A She did not take a section, so we don't know what it is.
Q Okay. So let me ask you this, Doctor. As it relates to your practice in Wayne County in Michigan -- and by the way, pathology is recognized nationally, is it not, as it relates to the --
A Yes, we have standard training and whatnot.
Q Okay. And so in that standard training would you -- would you have taken a section of this and had it for microscopy?
A I would have being that those are the only two lesions in the back and they look so different from each other, that I would have liked to characterize them better, and you can only do that by taking a section.

Q And if you take a section what would be expect to be able to see?
A Well, if the one in the base of the neck is a dissection artifact, all you're going to see is infiltration of blood around tissue. But the really interesting one is the one in the right shoulder blade because it is actually doesn't look like a bruise as much as like maybe a vascular tumor with clotted blood vessels. And that's what would give it the variegated appearance that we see so clearly in that picture.
Q Would that pathology -- if she would have of dissected that and had that available for viewing on a slide, would you be able to critique that and determine if that's something that would be a tumor or if it would be something that would be cancerous or it would be something that was congenital and he was born with it?
A Correct.
Q You could do all of that?
A You would be able to characterize it if you had taken a section.
Q Okay. And did you find anywhere in her report where she took a section of those areas?
A She did not.

Q Okay. Would that be falling below your standards in your practice?

MR. JORDAN: Objection; not relevant.

MR. COPELAND: Your Honor, I think it is relevant.

MR. JORDAN: There is no standard. This is preliminary hearing.

THE COURT: Again, I think you can ask him, you know, what he would do in terms of the standard of care or actions. Unless he can say that. Now, if he can there's a standard. But I think you're -- I think it's better to ask him what he would do under the same or similar circumstances, I think you could ask that.

Q (By Mr. Copeland) Doctor, if you had this autopsy performed in your setting at your location of Wayne County, would you have taken a section of that if you were going to create a report that would include accusing individuals that will put them away for the rest of their life?

A Well, I think I would have taken a section just because the two look so different that I would like to know what they are. That's really the bottom line.

Q Would that have been your practice, though?

A Yes.
Q Not whether you would like to have. I want to know would it have been your standard practice to do that?
A It is my practice if I see something that looks different and I can't explain -- I can't explain what it is just by gross appearance, I will take a section.
Q Would that be considered due diligence on your part?
A I think so.
Q Yes. Doctor, as you set here today and after what we've gone over today and what you reviewed, do you have an opinion as to whether or not this child suffered blunt impact injuries to the anus?
A No, I don't think this child suffered blunt impact injuries.
Q Can you summarize for the Court the reasons?
A Because the microscopic slides don't support that. And if there is no hemorrhage in the subcutaneous tissue that is indicative of blunt trauma having happened, then what you're looking at is something else. I think this is a normal rectum. And I think that the bluish discoloration that you see at the rim of the rectum is due to the prominently venus congestion that is present in the slides. And that actually it is fairly prominent venus congestion.

Q And is venus congestion, is that something that occurs normal without the implication of blunt trauma force?
A Yes.
Q And is it something that occurs normal with an individual who has confirmed golf ball size constipation?
A I think you're much more likely to find it in kids who are constipated like that, yes.
Q Now, Doctor, in your situation even for preparation for today you got some second opinions to have someone looks at slides. Do you know if Dr. Niblo had anyone look at slides? Did she indicate that she had anyone look at slides other than herself?

MR. JORDAN: Objection; calls for speculation.

THE COURT: It goes to whether he knows or not, if it's in her report. You can answer that.

A It's not in the report.

MR. COPELAND: Thank you. I have nothing further, Your Honor.

THE COURT: Mr. Jordan?

MR. JORDAN: Judge, I apologize, but do you mind if we run to the restroom -- if I run to the restroom before I get started.

THE COURT: Let's take ten minutes. We'll be off the record.

(WHEREUPON, a brief recess was here taken.)

THE COURT: We are back on the record after a short recess. The attorneys are present. Dr. Schmidt is on the witness and cross-examination by Mr. Jordan.

MR. JORDAN: Thank you, Your Honor.

THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. JORDAN:

Q Good afternoon, Dr. Schmidt.

A Good afternoon.

Q One thing I didn't hear that I was dying to hear is what caused the Elijah's death?

A I don't know.

Q Now, I noted there was the presence of bronchial pneumonia?

A There was.

Q Were there any findings that would suggest that the bronchial pneumonia was serious in and of itself to cause Elijah's death?

A No, and she describes grossly normal lungs. And when you have pneumonia that's significant enough to cause death, you generally will have some kind of a

morphological correlate that will indicate the extent and the severity of the infection.

Q Okay. So we're left with we have a deceased 14 month old, but we -- as we sit here today you don't believe that you can determine an anatomic cause of death for Elijah Woolley, true?

A Correct. I think this is one of those cases where it is the more important to say what something isn't versus what it is.

Q Okay. Now, can we agree on one thing, Doctor, that the pathologist -- and you have been a pathologist for years, correct?

A Correct.

Q You've worked with law enforcement. You've worked with detectives, et cetera. Do you in your practice jump on and try to say this is a murder if you don't really think it is? Do you do that in your practice?

A No.

Q Do you think average pathologists even here in the dumb old state of Oklahoma do that?

MR. COPELAND: Let me object to the argumentative nature, Your Honor, also to the speculation requirement.

THE COURT: Overruled. You can answer.

THE WITNESS: I'm sorry, what was the

question again?
Q (By Mr. Jordan) Do you think pathologists do that here in the state of Oklahoma, jump on and try to say that something is murder if they in their examination and in their training don't believe that it is scientifically warranted?
A No, I don't think so.
Q You don't think Dr. Niblo is doing that here, you just think she's wrong; fair?
MR. COPELAND: Objection, Your Honor, He's asking him to get inside the mind of Dr. Niblo.
MR. JORDAN: No.
THE COURT: Up here. No, you don't have to come. Just direct it at me, not one another. Overruled. Why don't you ask the question again.
MR. JORDAN: Yes, sir.
Q (By Mr. Jordan) You don't think Dr. Niblo is trying to do that in this case, she's just trying to give you her medical opinion for which you believe she's wrong; true?
MR. COPELAND: Objection, Your Honor. Again, that's speculation requiring him to get in the mind of Dr. Niblo.
THE COURT: You want to give a foundation for that?

MR. JORDAN: Your Honor, with all due respect. He has been a pathologist for 30 something years. He has worked other pathologists across the country. I think that he is qualified to opine what in general pathologists are trying to do.

THE COURT: Overruled.

A She's wrong.

Q (By Mr. Jordan) Yeah, but you don't think she's trying to do anything evil?

A You mean like if there is an evil intent?

Q Yes.

A No. No. No. I just think she's wrong.

Q Okay. And pathologists can be wrong, true?

A Sure.

Q Have you ever been wrong in your career?

A Never. I'm kidding. (laughter).

Q Uh-huh. You're under oath.

A Right. That's why I said I'm kidding.

Q Yeah. I understand. It can happen?

A Right.

Q So let's start, first of all, can we agree that the pathologist who is examining the body and what she saw in realtime at the scene and at the morgue is in a better position than you are to evaluate what

things actually look at because you can only do so from pictures?
A Correct. And I think that's generally true.
Q Okay. And I'm not taking anything away from the work that you've done in this case at all. I'm just saying she may have seen things at the morgue in realtime that you simply can't discern from the photographs because that's all you've got to look at besides the slides and her work, true?
A That's true, but it's also true that you tend to photograph what it is that you saw.
Q Okay. But we know you couldn't see, for example, on some of the anal injuries the internal aspect because she didn't take a picture of it?
A Correct.
Q So that is an issue. She would have been able to see that in realtime at the scene, but if she didn't photograph it, you as a reviewing M.E. cannot see what she saw?
A Except that there are slides.
Q Except for the slides.
A Which don't show anything, so. So I can tell you with certainty that there were no internal injuries because there are no such injuries on the slides.
Q You know I've heard about these blocks, because you

get -- what they do when they give you slides is -- are they giving you recuts of the blocks that they took or?

A Correct.

Q Okay. And so I have heard and in my experience having done some medical malpractice defense, that occasionally that when they take slides from the blocks that there may be -- when they do recuts you may not get a cut that is visually the same as the cut from the initial slide that the M.E. saw?

A That's true. In this case I did not see focal hemorrhage, which she did she, except if there were diffuse injury, if there were blunt trauma there would be diffuse hemorrhage which would be present in all of the slides.

Q In all of the slides throughout.

A Right.

Q All right. Then a couple of things also. You talked about -- I guess counsel was asking you about the shape of the buttocks. I'm not sure exactly why. And he asked you something about yeah, it could be the hard stool that caused the shape of the buttocks. Is the shape of the buttocks anything relevant to your examination here?

A I think what he was referring to was not so much the

shape of the buttocks but the confirmation that the actual anus was seen with when the diaper was taken off the next day at the morgue. And there was clearly -- in one of the pictures you can see that there's still a hard stool impacted and that would have dilated the anus a little bit. And I think this is what we were seeing.

Q All right. Now, if a medical disease process caused Elijah Woolley's death, would you have expected there to be evidence of that prior to the baby just dying?

A No. There's a lot of disease processes that don't leave any morphologic evidence.

Q None?

A For example, there are congenital abnormalities of heart rhythm.

Q Would that -- and that would not have been found at autopsy because it's a rhythm abnormality?

A Correct.

Q Would you expect there to be medical records -- past medical records wherein that was detected?

A Not necessarily, because to diagnose an abnormal heart rhythm you have to actually pick up the rhythm when it happens. And there's a number of people who grow into adulthood who have had repeated electrocardiograms which are normal and then finally

succumb to something that had been previously undiagnosed.

Q Well, is there any medical literature that correlates babies dropping from an abnormal heart rhythm at 14 months and something I could look at?

A There are some disease entities that can cause this. For example, Long QT syndrome. But other than that, I can tell you that in about 10 to 15 percent of the infants and toddlers we see in our practice, they don't have a cause of death because there is no morphologic finding to correlate with the cause of death.

Q Okay.

A And I think that's pretty standard for offices that have a significant volume of infants and children.

Q Is it fair to say though we can rule out an actual heart defect because the heart was evaluated, dissected, and examined and any identifiable defects to that heart would have been seen and noted by the pathologist?

A Correct.

Q All right. So a rhythm abnormality is a potential. Would you expect that a child with a rhythm abnormality would be symptomatic?

A No, not necessarily.

Q Okay. Would you expect there to be a history of rhythm abnormalities in the child's parents or grandparents?
A There may be. Some -- some abnormalities like Long QT syndrome, which is probably one of the more common ones, does tend to have a family history. But sometimes some kids are the first -- first in the family to gain the mutation. And there's actually over 250 mutations associated with it.
Q Okay. But again, we're just speculating here, true?
A Right. I don't think anybody knows why this child dies.
Q Well, let me go back to the frenulum a little bit. You said the frenulum was intact.
A Right.
Q You said it's the most important aspect to child abuse it being intact?
A Correct.
Q That that was a big factor for you?
A Right.
Q Is that because you believe it takes a large degree of force to smother a 14-month-old child?
A No. The frenulum can get injured without very much force. And it's very common in kids to see the frenulum peaking or rising in kids who are slapped

without very much force. And it's one of the things that child abuse pediatricians will look for when a child comes into the emergency room. They look at the frenulum. It doesn't have to necessarily tear. But you'll -- you will have some kind of new mucosal injury just because the blood supply to the mouth is so abundant.

Q And we can agree, can we not, that 99 percent of child abuse is actually investigated and/or determined by pediatricians rather than by pathologists? I think you said that at the beginning of your testimony. True?

A Yes.

Q All right. I mean, in all fairness, you don't know how much force it would have taken to smother a 14-month-old child, true?

A Correct.

Q And you say -- although you say it's a superficial ulceration, Dr. Niblo says she believes it's a contusion, true?

A True.

Q And I had a question about the lividity shift you were talking about. You were comparing what looked to be a poor quality scene photograph with way too much bright light versus a photograph in a controlled

circumstance taken at the morgue.

So my question to you is: In terms of determining whether there was an actual lividity shift, is it fair to say -- and it's not a criticism, but is it fair to say you are limited to the photographs you've been provided to make that determination?

A That's correct.

Q All right. Now, you talked also about the wet area in the Pack 'n Play?

A Right.

Q Do you remember that?

A Right.

Q Okay. Can I ask you how do you know if that's a wet area?

A Well, it's -- it's just got a different shade. It looks like a wet area.

Q But you're looking at a photograph, true?

A Correct.

Q So you don't know if that is an area that has been stained and been there for a while or if it's an actual wet area in all fairness, true?

A That's correct.

Q And if it's not an actual wet area, then you can't say for certain that that's the area where the child

died, true?
A Right.
Q Okay. And the other thing is that if the child was killed and then put into the Pack 'n Play and there was a wet area, that could also be from purge after death, true?
A That's possible, yes.
Q In terms of the injuries or, let's say, findings with regard to the anal area of the child, okay, if in a child that has whether it be a fissure, whether it be a laceration, whether it an abnormality, if we just call it, I don't want to pin you down to anything. If it is from constipation, can we agree that you are not going to find external injuries in the anal area of the child?
A Just the anal fissures.
Q Just the fissure.
A Right.
Q Can I ask you, Doctor -- and I think you told me everything -- or told counsel everything that you've been provided. It was the autopsy reports, some scene photos, the autopsy photos, and the slides?
A Correct.
Q Okay. Is there any other thing that you have been provided?

A I think -- I think what I have is pretty much everything that I was given.
Q Have you been provided any police reports?
A No.
Q Have you been provided any documented findings from the forensic examination of the descendant's brother?
A No.
Q Have you been provided any information about any of those items from counsel?
A No.
Q Have you been provided any statements from either Lisa or William Woolley?
A No.
Q Have you asked for any of those things?
A No.
Q And I'm not saying you should have, I'm just asking.
A No.
Q Okay. Now, well -- strike that. Is there anything that you haven't been provided that you would like to be provided in order to continue your evaluation of this case?
A No. I think that the pathologic information that I saw, especially, since I did have the rekits of the slides, which I think are the most important piece of information, are sufficient.

Q Okay. All right. And now I have to ask you the -- how much have you been paid for this?
A So far, nothing.
Q Nothing.
A Right.
Q You're doing it for free?
A No. I'm going to submit a bill.
Q I was going to say. How much are you charging for this?
A I charge $400 an hour.
Q Okay. Can you tell me how many hours you have in this case?
A So far I have -- not including today, I probably have about eight hours in the case.
Q So that's about 3,200. And then will you -- you'll charge for the time you've been in court today?
A Right.
Q Okay. Is that also at $400 an hour?
A Yes. Well, I charge for -- if I travel out of town, I just charge for the full day.
Q All right. So today will be a full day. Are you flying back tonight?
A No, tomorrow.
Q Tomorrow. And you'll charge for the flight back tomorrow?

A No. The flight will be paid for, but tomorrow is Saturday. I won't bill for Saturday.
Q You're more generous than some in the civil field. All right. So about $3,200 plus today, et cetera. And I wanted to ask you: How many times have you testified on behalf of a defendant who was charged with a crime in the last four years?
A Three.
Q Three. And how were you contacted in this case?
A In this case I had coauthored an article with one of the relatives of the defendants. And she had come to my office to collect specimens and I was familiar with her and she put the attorneys in contact with me.
Q What's the name of the relative?
A Candice Savonen.
Q Could you spell the last name, please?
A S-a-v-o-n-e-n.
Q And you said you had authored an article with her?
A Yes.
Q What article was that?
A It was an article on the sophistical analysis of drug use patterns in the metropolitan Detroit area. And there's actually another one on changes in gene expression that happened after chronic drug use.

Actually, they're in my CV.
Q Well, they didn't give me your CV, so sorry, I have to ask.
A Okay.
Q Have you authored any articles that you believe are relevant to this particular case?
A Well, I have a lot of experience in child abuse, and I have contributed material to book chapters that were put together by child abuse pediatricians. And when you get a copy of my CV, you will see that I've written stuff in books like a Diagnostic Guide to Child Abuse and Negligent edited by Giartino. That's spelled G-i-a-r-t-i-n-o.

I contributed a chapter on fatal child abuse to an Atlas of also Child Abuse and Negligent, as well as a compendium of case stories. And I've published case report on a child of a particular liver injury who actually suffered blunt trauma to the abdomen. And I've written material on abusive head trauma.
Q Okay. Have you relied on any particular medical literature to formulate your opinions in this case?
A No, not today.
Q Is there any specific medical literature that you can point me to that you believe is authoritative on some of the subject matter that you testified about today?

A Yes.
Q Especially, with regard to -- let's try to -- with regard to your testimony about the analysis of the anal area of the child, is there anything in particular that you can point me to that could be instructive?
MR. COPELAND: Your Honor, I'm going to object as outside the scope of direct examination.
THE COURT: Overruled.
A I think that to look at the specific issues with regard to the anus and rectum, a book on normal anatomy, for example, there's a book titled Histology For Pathologists, which is on its third or fourth edition, could help you look at the normal anatomy of the rectum. And you can actually compare the slides to what you see there.
But also you could look at books like Spitz and Fishers Medical Legal Investigation of Death. In fact, I brought a copy with me today in case you want to look at it, as well as another book on forensic -- General Forensic Pathology written by Dolinak Matshes and Lew, and just so you can see for yourself what the definition of a contusion is. And they have actual pictures of it.
And I think the other thing that you might try

to do is actually send the recuts out to two people who don't know anything about the case and have them look at the slides and see what they think --

Q Okay.

A -- without actually telling them anything about the case.

Q Okay. All right. A couple of final questions. In terms of not taking away from your analysis, but would a pediatrician with specialized training in child abuse be better situated in identifying injuries suggestive of abuse than you?

A If the child is alive, yes.

Q Okay. Dr. Schmidt, I very much appreciate your time today. And thank you for coming to Oklahoma.

A You're welcome.

THE COURT: Mr. Smallwood?

MR. SMALLWOOD: May I proceed, Your Honor? I think I'm in the cross mode.

THE COURT: You are.

CROSS-EXAMINATION

BY MR. SMALLWOOD:

Q Dr. Schmidt, would there be any significance to the fact that this child was born to what might be commonly known as a drug mother --

A Yes.

Q -- with respect to formulating some sort of opinion as to cause of death?
A Sure. There is --
Q Why?
A -- utero drug exposures that predispose a child to sudden death.
Q Based upon your training and experience, everything that you have looked at and examined in this case, do you find that there is any evidence for a pathologist to reach a conclusion that this child died from homicide?
A No.
Q Based upon your training and experience and everything that you've looked at in this case, do you find that there is any evidence to reach a conclusion that this child was being sexually abused immediately before or at the time of death?
A No.

MR. SMALLWOOD: That's all I have, Judge.

THE COURT: Mr. Copeland?

MR. COPELAND: Just briefly.

REDIRECT EXAMINATION

BY MR. COPELAND:
Q Doctor, you were asked the question by Mr. Jordan about whether or not -- what things you have been

provided for review to render your opinions today, like police reports, et cetera. Do you remember that?

A Right.

Q Okay. Do you need all of those things to determine whether or not there's hemorrhage revealed on the slides that you reviewed?

A No.

MR. COPELAND: That's all I have.

THE COURT: Nothing Mr. Jordan?

MR. JORDAN: Nothing at all.

THE COURT: Anything else, Mr. Smallwood?

MR. SMALLWOOD: No, sir.

THE COURT: Dr. Schmidt, thank you for being here today. You may step down.

THE WITNESS: It's going to be a minute.

THE COURT: You're all right. Take your time.

MR. SMALLWOOD: Your Honor, before we rest, we will offer -- make an offer of proof of the transcript of testimony of Mr. Danny Elliott before Judge Dennis Shook in State versus Martinez, a Wagoner County Case No. CF-2018-62, partial transcript held on the 21st day of February 2019 consisting of a total of 11 pages.

THE COURT: Are you offering that as a --

MR SMALLWOOD: We are asking that the Court consider that for purposes of effecting credibility bias in the interest of witnesses.

THE COURT: Any objection?

MR. JORDAN: Yeah, Judge, we certainly object. We had a brief conversation about this in chambers. It's my understanding that Your Honor conducted an in-camera review of that transcript determining that it was not relevant to the credibility of Danny Elliott, and thus, would not become a part of the record in this case.

THE COURT: I'm not going to include it as a part of the record. I have reviewed the transcript myself. And I'm happy to take that into consideration in regard to any rulings in this case.

MR. SMALLWOOD: Thank you.

THE COURT: Mr. Copeland, any other witnesses you'd like to call at this time?

MR. COPELAND: Your Honor, on behalf of Mrs. Woolley, we have no further witnesses.

I would like to introduce to the Court the Motion to Quash and brief and support on the matter before Judge Thygesen on the same issues

that are wrapped up in this transcript involve -- for the preliminary hearing that was on July 31st of last year. And specifically, Your Honor, this brief lays out some of the bases of our Motion to Quash and the binding over for that particular case which overlap the same nurse issue that was introduced to Mr. Elliott and the State on Tuesday.

THE COURT: Okay. And although I have read the transcript, in those cases I -- it's my understanding we're talking about alleged different victims; is that correct?

MR. COPELAND: That's what the State's trying to present, Your Honor, yes.

THE COURT: So help me then understand how -- are you referring simply to the legal arguments in regard to the hearsay statements?

MR. COPELAND: Your Honor, those as well as the context of the testimony that's presented at the preliminary hearing, the fact that Ms. Sinclair did not administer an oath to this child, was not -- did not communicate the importance of his truthfulness, did not communicate any need for accuracy on the part of Clayton Woolley for anything that he told her.

She did not have any idea whether Clayton Woolley knew he was to be truthful or whether he could just tell her what he wanted to tell her, and did not challenge or test any of his truthfulness as she was only writing what Clayton Woolley said to her. Just obtaining history. So therefore, we think it's relevant on those issues as well as how she testified in the case.

Ms. Sinclair testified that when she talked to Clayton Woolley, statements were based off of her suggestion as well as his spontaneity. She testified that -- she testified that there was no physical indications of sexual abuse on Clayton Woolley at page 128, lines 14 through 16. She testified that five-year-old Clayton Woolley said his grandfather "Papa put his penis" -- Judge, that's for the other hearing. Let me get to the part.

Ms. Sinclair testified also that five-year-old Clayton Woolley said: "Papa puts his privates in E.W.'s butt and it happens every day. That is what came out on Tuesday in his cross-examine of that issue.

Mr. Elliott says "Grandma sees him do it. She doesn't say nothing, just watches TV."

Sinclair testified that she was not informed that just prior to her encounter with Clayton Woolley, that Clayton Woolley was in a forensic interview for seeking any evidence of such sexual abuse lasting an hour and a half, and that Clayton Woolley made no allegations against his grandfather or grandmother. It was a clean interview.

Sinclair testified her only diagnosis was "Clayton Woolley seemed fearful of talking even though he was smiling and not crying while talking with her." Those things are contradictory.

Sinclair testified that he didn't appear to be afraid of her. Sinclair testified that Clayton Woolley appeared to be afraid of just talking. Sinclair testified on recross that Clayton Woolley seemed to be afraid of talking with her. She's bouncing all over the map.

Sinclair testified her diagnosis of his fear is not in her report despite her admitted reports of accurate documentation. And contrary to this importance, she has no plans to amend the report to include her diagnosis.

Sinclair further testified on recross-examination that she did not quote a

(inaudible) diagnosed fear of talking with her while smiling to anything regarding the shower incident with grandpa. Sinclair admitted on recross her assessment of fear, that was her only diagnosis, could be wrong when she testified based on the sum total of the symptoms she relied upon to diagnose this fear of talking was that Clayton Woolley dropped his head while talking at 8:00 to 9:00 at night after his son -- or his brother had tied and he is away from his family.

Sinclair, the nurse, testified that Clayton Woolley didn't appear coached in any way. That when cross-examined she admitted she followed no criteria for reaching such conclusion and that it is clear as she just realized on what seems fitting. She testified to that on line -- page 157, line 1 through 14.

Sinclair testified that she did not find it important to ask whether Clayton Woolley would describe his grandpa's penis as hard or sticking out or down. So, here you have this nurse's great impetus because you've got -- on one side you've got a forensic clean interview on the same day that the same nurse took this event, not recorded. One is recorded, this one is not. Then a few days

later, April 4th, they have another clean forensic interview of this child.

So the reliability of this child, Your Honor, that has no context, she admits all over the record that she had no context. She bounces back being and forth between her own credibility as it relates to what she's saying. And there is the reason we filed a Motion to Quash that has yet to be heard before Judge Thygesen on the first case that went before the judge -- has already been bound for trial.

So Your Honor, we're wanting to admit this into the facts as it relates to the issue of them trying to bootstrap this whole context that Elijah Woolley has been raped in the living room every day. So for that reason we think it's relevant and the Court should consider it.

THE COURT: Any objection to that, Mr. Morgan?

MR. JORDAN: Yes, Your Honor, because as we talked about -- and I have no -- I completely understand that they're going to want to litigate the Motion to Quash in district court as well in that case. We just ask for them to stipulate to this transcript so we didn't have to do that whole

hearing over again. So nobody is saying that they can't continue and contest and litigate those issues at the district court level.

For preliminary hearing purposes though, I don't understand why a Motion to Quash would be relevant if they've stipulated to the transcript, just so we didn't have to do the whole thing over again.

MR. COPELAND: Your Honor, it's relevant because in their entire case has tried to establish that there's been sexual abuse other than this now, I think, highly impeached doctor's report of the M.E., that there's been sexual abuse. So what you've got is a bunch of physical evidence that doesn't exist. No semen, no fluids, no et cetera. And then you've got in the context on the other hand of a five-year-old child with a speech impediment who is allegedly calling his Grandpa William, which he never does, and the testimony on the stand that is in that transcript that the Court has reviewed.

I just wanted to isolate for the Court the relevant portions that go to the argument that this case should not be bound for trial on sexual issues because there is no foundation for it. And

that's why it's relevant.

And we are not trying to re-litigate the other issues, just have -- they brought the other issue in a bootstrap this issue to say that my client, Lisa Woolley, you know, enabled the child to sexual abuse, for which she is charged. And now it's capsulated in a murder case. So for that reason, Your Honor.

THE COURT: Okay. Well, I think you've highlighted the areas on the record that you want me to take into consideration, correct?

MR. COPELAND: Yes, sir.

THE COURT: And certainly I will do that. I also think the transcript is replete with your questioning of the witness on those areas. And certainly, obviously, I'm going to take that into consideration as well.

MR. COPELAND: Your Honor, I still think if the Court was inclined to do so it would be just real easy just to go okay, here is my argument on that issue.

THE COURT: I'm happy to look at it, but I think you've made your argument.

MR. BENNETT: You're Honor, I point out for the Court that that one is fully briefed within

the other cases, including the State's response to this Motion to Quash. Now, the hearing has not been had on the competing versions of that. But certainly if the Court's going to take a look at their motion, I'd ask the Court to also review the State's response.

THE COURT: And that's absolutely fair, and I will do that as well. Before we get to that, no other witnesses?

MR. COPELAND: No, Your Honor. Defendants for Mrs. Woolley rest.

MR. SMALLWOOD: And we rest as well.

THE COURT: All right, very good. Any other witnesses, Mr. Jordan?

MR. COPELAND: Other than moving the evidence and all of the photos that we've agreed by stipulation with the State, we will provide and mark those under the next exhibit number on -- well, you've got the flash drive, Your Honor -- by stipulation with Mr. Jordan, that we would provide those photos of the PowerPoint that we went over. Do you want those?

MR. JORDAN: Well, I assume you could give me copies of that stuff.

MR. COPELAND: Correct, correct, because I

want to introduce those.

MR. JORDAN: If you want to produce them, that will be fine, but shouldn't you have printed them out and then given them to the court reporter?

MR. COPELAND: I've seen it produced by, like, a CD or something, or you can do it digitally. You can have prints if you want, but. It's up to you.

MR. JORDAN: But I still want my copy.

MR. COPELAND: I'm going to give you as many copies as you want.

MR. JORDAN: Give me another copy, okay.

THE COURT: Okay. So both sides rest? No further testimony at this time?

MR. JORDAN: No.

MR. COPELAND: No.

THE COURT: Before I hear argument on -- I assume we're going to have Murray here in a minute. Before we do that, I would like to take up the issue of the bail in all four of these cases. Mr. Smallwood, Mr. Jordan, would either of you like to at this time address that issue?

MR. SMALLWOOD: Judge, it's my understanding, and correct me if I'm wrong, that based upon

earlier discussions with Judge Thygesen, communicated to the State counsel, that we will agree with the Court's suggestion to transfer the exact amount of the bail from CF-2018-167, the sexual abuse case, to the two counts or alternate counts of -- to this murder case with respect to the identical bonds on these Defendants from 167.

And we would ask that the Court set a single bond on each of the Defendants for both of the alternate counts in the amount of $25,000. If that's the understanding, we certainly would move to do that and would be agreeable to that.

THE COURT: Mr. Jordan?

MR. JORDAN: Absolutely, Judge. No problem with that. And again if it's -- are you needing 25 each or you just want to make it a total 25 and have this split that? I have no problem with that. I'm not trying to --

MR. SMALLWOOD: That's fine.

MR. JORDAN: Although I know the bondsman. I'm not trying to cut you guys down.

MR. SMALLWOOD: I think there is ample evidence that these people are not a flight risk. And everybody knows what this case is all about and is not -- and we would ask that the Court set

an amount of 25,000 bond in the case, 12,500 per defendant.

THE COURT: Okay. So the record is clear, parties came to the Court.

MR. JORDAN: Yes.

THE COURT: As we met in chambers and approached the Court about an agreed to bail between the State and both Defendants and asked the Court to consider the agreement that both the State and the Defendant had reached on bail with all four of these cases. Is that correct, Mr. Smallwood?

MR. SMALLWOOD: That's correct, Your Honor.

THE COURT: Mr. Copeland, is that correct?

MR. COPELAND: Yes, Your Honor.

THE COURT: Mr. Jordan?

MR. JORDAN: Yes, sir.

THE COURT: All right. So the order of the Court will be then that in Case No. CF-2018-553 State versus William Woolley the bail will be set at $100,000.

In Case No. CF-2018-554, State versus Lisa Woolley, the bail will be set at $50,000. In Case No. CF-2018-167, the State versus William Woolley, III, the bail will be set at $12,500. And in

CF-2018-168, the State of Oklahoma versus Lisa K. Woolley, the bail will be set at 12,500.

MR. SMALLWOOD: Yes, that's our understanding.

MR. COPELAND: Yes, sir.

THE COURT: All right, that will be the order. Now, before you make arguments, I'm going to need to read this, the Motion to Quash, and I'm going to need to read the response. Let's take -- give me 15 minutes to have the chance to take a look at these, if I could. Anything else we need to take up before we go off the record?

MR. COPELAND: Nothing.

THE COURT: Thank you. We'll be off the record.

(WHEREUPON, a brief recess was here taken.)

THE COURT: We're back on the record. I apologize for the delay. These were a little thicker than I thought they would be.

Okay. Mr. Copeland?

MR. COPELAND: Yes, Your Honor, I just want to move into evidence that the Court is going to accept these photographs by stipulation, I believe. And we've got these copies out for the Defendants. It is Exhibit 3.

(WHEREUPON, Exhibit No. 3 was marked for identification purposes.)

THE COURT: Defendant Lisa Woolley No. 3 will be admitted without objection; is that right, Mr. Jordan?

MR. JORDAN: It is, Your Honor.

THE COURT: Okay. Who wants to go first?

MR. COPELAND: I will.

THE COURT: Mr. Copeland, okay.

MR. COPELAND: Your Honor, when it comes down to Lisa Woolley, Your Honor, on her behalf we are asking the Court to not bind her over for trial. And Your Honor, specifically, what the Court has heard in this case is an investigator by the name of Mr. Elliott, who testified on Tuesday. He presented in the witness seat, Judge, and he essentially was unprepared. He said he wasn't a baby guy. He hadn't looked at any of the videos. His testimony was really not credible as someone who is pointing the finger at my client. He had no details that he testified to. We had to take a break just to let him watch the videos for the confessions.

He said that the most serious case that he's had in years it snuck up on him. That was his

testimony, Judge. And as it relates to what he thought was suspicious, the only thing he could point to, Judge, really was that the baby had a funny appearance on his face when he first saw the baby.

The testimony from the pathologist, Dr. Schmidt, today right out of gate, showed the difference in lividity, and how it's explained, how it is. The investigator told this Court that he did not recognize SIDS as a -- as actually a legitimate disease process that leads to death in babies.

He testified to this Court that he had an issue with a niece regarding Christians, who our clients are well-known Christians, and prayed with them. He asked them to pray in his conversation with them in the interview. And Judge, he's got a little bit of a chip on his shoulder it looks to me because he's testifying without having any basis to point the finger at these individuals.

He says what's suspicious and then he couples that, Your Honor, with the M.E, report and the statements by Elijah -- Elijah, excuse me, statements by Clayton Woolley, who was five at the time.

And Your Honor, the testimony of Glory Woolley, she's testified very clearly about the responses of her father, how it was the first time she had ever seen him cry, that he ran out the house and began to just blow up in an emotional outburst. And this is the individual that they want to say who has molested these children -- or in this particular case, the 14 month old that we believe died of natural causes.

You've heard the testimony of Dr. Schmidt say he doesn't think anybody really knows the actual cause. But what he does know for certain is that there's nothing on the slides that indicate a murder occurred. There's nothing on the slides that indicated -- excuse me. Nothing on the slides that indicated sexual molestation occurred. There's nothing on the slides that indicated a blunt force trauma.

You have Dr. Niblo's statement there where she says "anus at 7:00 to 12:00 in toto." She didn't label the slides. She didn't give a key. He testified about the focal hemorrhage that he couldn't locate, and that it's very focal.

But what he was clear beyond avail, Judge, is that any slide would have shown the kind of

hemorrhage that she's trying to discuss or correspond to in the 7:00 to 12:00 range taken in toto of the rectum for basically a microscopy and to create the slide on it.

This Doctor, Your Honor, has testified that Dr. Niblo -- first of all, in her report she doesn't indicate a time of death. She doesn't indicate -- Dr. Schmidt refuted all the statements in her report right down from asphyxia down to the multiple penetrating blunt impact injuries. He testified about the lower lip. He testified about the upper frenulum. He testified about the right lower mucosa. He testified about the hemorrhage to the right neck at the base of the skull.

He said that she did not take dissections, Your Honor. She didn't take dissections of the frenulum. She didn't dissections of the back -- alleged back injuries. And there's a reasonable explanation.

He said if you would have taken a dissection you could tell whether or not it was a tumor. You could tell whether or not it was something that was congenital, but she didn't. He also said that the injury to the neck or the bleeding to the neck could be what was called a dissection artifact

that she could have created herself by slicing through some of the capillaries or some of the other vessels that were in that area.

The photographs have been introduced into evidence, those photographs that Dr. Schmidt analyzed and acknowledged here before the Court showed very clearly the dissection. That she had gone through various areas and they were fresh. He called them a strawberry. But the thing is if they had -- if she had put these dissection -- taken a dissection and put it on slides for him to see it analyzed, then he would be able to tell, Your Honor, whether or not there was actually an injury that had bruising or hemorrhages.

This case, Your Honor, turns on the hemorrhages information. Because, Judge, there's no hemorrhages in any of the slides. There's no hemorrhage in any of the slides. He's encouraged the State to send these off to another individual -- or other individuals that don't know anything about the background of this case.

And I think that the Court should understand at it relates to Elijah Woolley, Your Honor, and the only other thing that they're using to corroborate this issue, not to mention the fact

that the lab came back, and it's in Defendant's Exhibit 1, there's no semen that was detected in the rectal swabs from Elijah Woolley. That's huge. There's no semen that was detected in the diaper of Elijah Woolley. There is no semen that was detected on the external swabs from Clayton Woolley. There's no semen detected on the anal swab from Clayton Woolley. There's no oral -- excuse me. The oral swab -- excuse me. No semen was detected on the underwear of Clayton Woolley.

Judge, she's got -- they're alleging that these children have been molested but yet there is no corroboration. The only corroboration from this report, that's got errors in it, Your Honor, that fall below the standard, that fall below the nationally recognized guidelines that would have actually given someone like Dr. Schmidt the opportunity to look at some slides that actually were of the dissection of an actual area that's alleged to have been a contusion. Whether or not it's a laceration, whether it's bruise, whether it's, you know, a contusion and laceration in those areas, he said it was a fissure.

The distinction between those, You Honor, is what you would find on the slide. You would find

either hemorrhages or you would not find hemorrhages more likely than not. Couldn't find hemorrhages. Couldn't even find the focal hemorrhage. So whenever she tells this court that she's got a 7:00 to 12:00 range of injury, his testimony is very clear. He would expect to find hemorrhages on any of those slides, but they weren't there. It's not there. Your Honor, that right in and of itself dispels all the issues of the sexual allegations.

And the -- you know, the State's refuting that now, but Mr. Jordan would not commit that they were making an election that they would not say that the baby did or didn't die in the location of the Pack 'n Play. Just trying to leave that open, I guess.

But Your Honor, the point is that -- the testimony is that that wet area indicates where he died. Yes, Mr. Jordan did bring up the issue on that and said that potentially it could be another location, but he couldn't tell if it was wet or not. That photo can tell you if wet or not. You can see the wetness on the boy's face. It was wet, it was where it came from. It was all flowing out of his body. It's logical.

He testified about the two sphincters in the body. You've got the esophagus -- the esophageal sphincter and the rectum sphincter. The body relaxes when you die. That's why there's a -- there's -- the rectum is a gate. That's why there's a wet spot. That's where he died. So a clear sense of logic, Your Honor, is that this child died of natural causes in that Pack 'n Play.

Your Honor, they want to allege to this Court that there's some kind of struggle to the head on this baby, but yet there's no textile patterns. There's no deformity of the nose being pushed up. There was nothing seen as it related to impressions of teeth on the inside of the lips. The only thing you have is a little bit of a reflex he said. It happens commonly with other children that are seen -- that have died in the throes death, that's it.

He said that this little mark -- this little bitty 1/16th of a mark -- that he also said wouldn't be 1/16th, but he satisfied he wouldn't look at it. He wouldn't even consider it. You know, he says "if" you're going to, you know, actually consider it, at least you need to take -- dissect that and create it for a microscopic, get

a slide made out of it so you can examine it.

So there's all kinds of questions, Your Honor, as to why the State's not doing this, but they still have the burden of proof. They have the burden right here right now for -- to bind them over for trial. And, Your Honor, and we've already submitted this last week, Your Honor, to get this witness, Mr. Schmidt, to testify.

In Oklahoma probable cause has been defined, Your Honor -- at page of the brief for Ms. Lisa Woolley.

"In Oklahoma probable cause has been defined to be reasonable grounds for belief supported by circumstances sufficiently strong in themselves to warrant an impartial and reasonably prudent man in the belief that the person accused is guilty of the offense with which he or she is charged."

So this Court in its opposition -- the obligation on this Court is -- been in the criminal arena for a while and I understand the Court's background. I respect it, highly respect it. But, Your Honor, they still have to prove probable cause to bind them over.

And under this definition -- and I go all the way back to a 1915 case, Your Honor, it's still

good law. And it lays it out. It says it -- it says, Your Honor, it's going to be sufficiently strong in itself to warrant an impartial reasonable man in the belief of the person accused is actually guilty to bind them over for trial.

This is like -- Your Honor, these individuals have been in jail for eight months when you count both cases. They have lost their businesses. They didn't -- this young -- this man here didn't get to go to his own father's funeral. They didn't get to go see their daughter graduate who they reared from a baby. These individuals, Your Honor, they say in -- you know, what's the tale? They say that no good deed goes unpunished?

These individuals stepped up to the plate. They watched what was going on in these children's lives. And as the State has introduced, they sought guardianship within one month of Elijah having -- you know, seeing what he was born into their daughter, whom they still love, but they still had more inherent duty out of family and honor to go and seek the Court. Go seek Judge Shook and get a guardianship so they could control what this baby was being exposed to, get him out of the drug situation. They did the honorable

thing, and now they're getting punished for having done that because there is no way on earth they could have seen the calamity of events that some child that they loved, by the way, dies of natural causes laying in his sleeper at night when Glory Woolley says she's up until 2:00 and then she only wakes up again at 5:40 approximately to go to the gym and be there by 6:00.

You've got a three-hour-and-forty-minute window, Your Honor, where they want to say that Bill Woolley woke up in his snore and creeped around the house, decided he wanted to have sex with a 14 year old [sic] whose never -- he's never had any kind of an inkling of past history of this. Doesn't fit a prayer nor profile from here to gone. And they want to say that my client engaged in enabling that under the context of a five year old who has a speech impediment.

In his own quote that everybody's been relying and started the impetus of this whole situation rolling down the event says to a SANE nurse just after a clean interview an hour and a half with a Ms. Martinez from Kids Space down in Muskogee. And they want to say that this kid who's -- they're relying on these statements by

him. But oh, let's not look at the statement that he says every day. It happens every day. Well, we don't really believe it happened every day. But, you know, maybe it just happened.

So they're only trying to get a confirmation of this from -- for whatever reason, as Dr. Schmidt said, that he's made mistakes. He made a joke about it. He's made mistakes himself in his own life. This lady is making a huge, huge mistake, and it's caused these people to suffer for it and in a grave, grave way.

And so, Your Honor, we're asking this Court to recognize -- there's no corroboration. The State had the choice -- the choice to bring for Dr. Niblo to answer this. They had the choice. Instead they chose to try to, for whatever reason, just admit their report under the statute is their right.

But, Your Honor, it still has to meet the test of more likely than not, 50 percent -- over 50 percent that these people were accused or released under the language of the State versus the Heath case in 2011, Your Honor, that says -- has been defined to be reasonable grounds.

Is it reasonable when you've got no physical

evidence? Is it reasonable when you have no instrumentation of rape that is located at the scene? Is it reasonable whenever you had no swabs that have any DNA on it? Is it reasonable when a child who has been clearly identified as having constipation all through the testimony recognized by even Mr. Elliott who is the investigator, it's recognized in report of the -- the M.E.'s report. It said that is what he was found, with a hard stool.

In fact, that's the whole point of why I presented that photo, Judge, is the contour of his buttocks had formed around this hard stool. That's how hard it was. And the testimony of Dr. Schmidt is that that's what causes these fissures, is the abrasiveness of coming through that area.

Now, the State wants to say well you only find -- you wouldn't find fissure outside, would you? It would have to be inside. He said at the anus right there, at the opening you can have them. But the point is, Judge, is that's how hard his constipation is. It's all through the medical literature. The Court probably already knows this by taking judicial notice. It's in the

literature, that it's a common thing that people have to deal with.

There are so many false allegations that have been going on across this nation dealing with the fact that individuals are brought into court having to spend their life savings. These folks had their house paid off. They had their house paid off. Who does that by the age of 56, 54 or 59? Not many. That's because they're good citizens. And as a good citizen they stepped up to the bar and take responsibility for their grandchild because it's family. And they put the skids on their own daughter having to have -- have rules and going to rehab. And the actual father of that child can't see that child on certain circumstances.

That's the whole purpose. That's in the record on the -- why they sought it. The Court can see that. They admitted it into evidence and admitted the evidence on the other prelim. But there was a basis why they sought the guardianship. And it's laid out. Because they feared for the safety of that child.

It's crazy to me to think that because of, you know, one investigator or one circumstance, a

guy who's not really trained and not a baby guy can walk over and see a crib on a 911 call that shows up at the residence and begins looking at these incriminating. Why? Because he always presumes essentially that there's a crime committed -- that's been committed. He's trained that way.

So they looked at it from the eye of let's try to prove the bias of a crime having been committed. And, Your Honor, this is not a case to bind over trial.

Your Honor, there's another case law out, I meant to bring it. But it says there's not been a judge on the bench that hasn't bound a case over when they had the reluctance to think, you know, there's that case where I just wish I had stood up and had the courage to say no. I'm going to put a stop this to because the State hasn't brought -- hasn't proved their burden. Or perhaps in the mind of looking at the case law, is it reasonable? You know, what kind of preference do we have to give the State?

You know, they're going to say yeah, you've got to look at it in the light most liable to the State. Judge, but even in the light most

favorable to the State, which I think is constitutional. I'll make an objection right now and here that this should be appealed. If someone had gotten into a situation where we could challenge this law, it needs to be examined by the Court's -- or reexamined by the Court's. Having a presumption when you are supposed to be presumed innocent, but you're presumed that we're looking at the case most favorable to the State.

They have taken some crazy civil law standard and put it in criminal law where you get penalized and you've got -- you're subject to losing your freedom. I don't know why they're doing that. But still yet, they still have the burden to get right down to the root of it, Judge. They've got to meet probable cause, and it's got to be what a reasonably prudent man in looking at what was testified to and all the innocent explanations that was presented by Dr. Schmidt, all the innocent explanations. That's caused by constipation, you know.

Your Honor, I'm asking the Court -- I'm asking the Court to look at this and put the actual language in the Court's own eye and go, being reasonably prudent should these people be

bound for trial any longer? I mean, they could have brought, you know, some evidence to try to say they should be bound over. Instead all they did was admit a malfunct report, Judge.

It doesn't have anything in here about the time of death. It doesn't have -- there is no physical evidence or corroboration. This was a five year old who said something out of context after having been sandwiched between two very clean forensic interviews. Somehow they get him to say that, and they got this coupled with it. And this has been refuted.

So all that's left, Your Honor, for a murder case is nothing. But all that's left for our sexual abuse case is the word -- the hearsay word yet of a five year old. And it's not been contextualized as to what he meant when he said those things.

The testimony of the SANE nurse, Judge -- and I've quoted it on page 5 of that brief. She says that she diagnosed, Judge, fear. And I asked her the question -- I asked her the question, Well, are there any ground rules by which you make these conclusions or is it just, you know, you pull it out of air? It just didn't seem that way to you?

Her answer: That is just my opinion.

Question: Are there any ground rules that you utilize to come up with these opinions? In other words, do you have any criteria that you follow to reach these types of conclusions?

Answer, page 5: No, sir.

So, Your Honor, the reliability hasn't been tested. We haven't had the hearing that would be after the preliminary hearing. But even before that, there's not reliability to say it corroborates murder, that it corroborates sexual abuse when you got sandwiched right in between it two clean forensic interviews.

Your Honor, we are asking for a relief from this Court. This is what the Court is here for. It's not just as administrator. It's to actively find justice and have the eye to see the justice when it needs to be seen. And it's not necessarily always easy, but I submit to the Court it's easy in this case, really. Your Honor, for these reasons we ask the Court to not bind over for trial.

THE COURT: Thank you, sir. Mr. Smallwood?

MR. SMALLWOOD: Your Honor, I'll be brief. This for the record so that's clear. As this

Court is aware the State must establish probable cause which means more likely than not at this juncture that there's evidence of what I assume in the initial paragraph of the information is a malice aforethought murder, which would be the alleged suffocation or death resulting during an act of sexual abuse. I have to present that with evidence.

The only evidence that has been presented -- this was by their choice, and they certainly have every right to proceed under 751 if they appease to rest solely on the basis of the written autopsy protocol, which they've done.

It is the opinion of Dr. Cheryl Niblo. I don't know Dr. Niblo. I've never had the opportunity to meet her socially or in a courtroom. But I do know that there is nothing in that autopsy report that justifies any finding of suffocation. There's nothing in that autopsy report that testifies the finding of any sexual abuse. There's nothing in that autopsy report that justifies the finding that this child died as a result of suffocation or that this child died as a result of an immediate act of sexual abuse. That was utterly and totally in my opinion not

only -- not only lack of probable cause but utterly refuted by Dr. Schmidt's testimony.

There is no cause of death. There is no indication in the autopsy protocol that she's performed any kind of tests to rule out any kind of a differential diagnosis. Astonishingly, Judge there is nothing in that autopsy protocol that even mentions this golf ball size piece of feces in this child's rear end as having any potential cause to result in any injuries to his anus or his rectum.

I mean, that is simply unforgivable in my opinion. If they had had -- and I'm sure these lawyers who are experienced lawyers have had discussions with Dr. Niblo. If there was any evidence that she could have presented to have justified her conclusions by scientific findings or tests or medical literature or authority, we would have heard that. I don't know who said what to her, Judge. But I cannot imagine that she reached these conclusions which had to become -- had to come out of entirely a whole qua of her imagination unless somebody was giving her some history of what they believed had happened to that child.

Now, we heard Detective Elliott deny that he had any conversations with her in that regard. We heard him testify that he had some discussions with the M.E. investigator. In my experience, and I'm sure this Court's experience, as well as the other lawyers in this room, is that -- is that -- particularly, in cases of these circumstances where you have an unexplained death with no physical evidence, no motivation, no history other than good history from people who love and have cared for that child, they rely on some sort of a history to help them with what possibly could have happened to this kid.

We could have heard from Dr. Niblo as to what she was told. They chose not to put her on. That's their call. So they're stuck with this report. There simply is no evidence that any kind of a malice aforethought murder occurred here. Nothing that these people did upon learning that their beloved 14-month-old grandson was dead in their home is inconsistent with a bereaved grandparent, desperate to grieve over this child and to find out what happened. Nobody tried to cover up evidence. Nobody tried to delay any kind of a report. Nobody tried to hotbox the other

adult who was their, Glory, and to make sure that she said what they wanted her to say. None of that exist in this case because they had no motivation to do that. They're as innocent as you or I, Judge.

The only conceivable evidence that the State of Oklahoma has for a murder case is the allegations of Clayton Woolley, which are patently on their face unbelievable, Judge. The only place that this alleged act on a daily basis could have occurred would have been in the living room. Does anybody in this room believe that this woman would have sat by and watched this man anally sodomize this 14-month-old grandson based upon the history of these women and their history with their family, their kids, and these two grandkids? It's simply outrageous that that could be believed.

Even if for whatever reason the Court is going to accept that, it has -- the sexual abuse has to have been the cause of this child's death. Zero evidence for that. All the -- the little amount of evidence that's been submitted for clinical laboratory tests has come back entirely negative for any kind of a sexual activity of this man with his grandson.

I feel the Court has heard all the evidence that could be presented in this case, and there simply is no credible evidence that establishes that a crime was committed or that either one of these people had anything to do with that child's death. And we would ask that you sustain (inaudible).

THE COURT: Thank you, Mr. Smallwood. Mr. Jordan?

MR. JORDAN: Judge, I have to tell you I completely disagree with virtually everything that Mr. Copeland said, but I don't disagree with everything that Mr. Smallwood said. However, I do disagree with a couple of major things, and that is Dr. Schmidt -- and I -- I mean, I think he's a qualified expert. But it's always difficult to come and conduct an examination based on photographs, et cetera.

The best evidence is from the pathologist who has hands on the body and is doing the actual examination. And is the State Medical Examiner's Office in Oklahoma perfect? No. Did they photograph everything perfectly? No. Could they possibly photograph everything that Dr. Niblo could see in that examination room? No.

But in the light most favorable to the State, she has concluded that the cause of this baby's death is asphyxiation due to suffocation and that there are multiple penetrating blunt impact injuries to the anus. Those were her conclusions from seeing that in realtime, not from comparing photographs, not from looking at recuts of slides that may or may not have the same abnormalities as the original slides do.

Dr. Schmidt wisely suggested some additional recuts to be done, and the State intends to do that because the State has an interest not in rushing the judgment here but in trying to find out what happened, because the most horrifying thing that we didn't get from Dr. Schmidt is the explanation as to why Elijah Woolley is dead. But we did receive that explanation from Dr. Niblo who did the examination after his death.

That coupled with the hearsay statements from Clayton Woolley, again, I don't know why he said what he did, but the State is obligated to act based on what he did. I'm not trying to paint the Woolleys as monsters. I'm trying to review the evidence that I am given and make a determination after examining all of the evidence as to what to

do. And that is the best that we can do at this point in time.

But for preliminary hearing purposes and for probable cause, the State believes it's met its burden as to the counts against Mr. and Mrs. Woolley. We have agreed to lower the bond because I have told counsel for both that I will do forthwith everything in my power to ensure that this investigation is completed fully and significantly before the State makes a final determination as to what we are to do in this case.

But the determinations between what Dr. Niblo says in her report and what Dr. Schmidt says, those are factual determinations to be made by a jury at the time of trial for preliminary hearing purposes in the light most favorable to the State. Although Dr. Schmidt's testimony was instructive and helpful to the State, Dr. Niblo's report is basically uncontested.

For those reasons, Your Honor, we believe the case should be bound over. The only thing I am not sure of, Your Honor, is if there is a potential merger of count two with count one -- and I'm not certain. Mr. Smallwood didn't address

that. But if it's child abuse murder/child abuse, does the sexual abuse merge? I don't know. That's an issue for the Court to decide. It might. I hadn't really thought about that until today.

THE COURT: Well, they're two separate --

MR. SMALLWOOD: Theories.

THE COURT: -- crimes.

MR. SMALLWOOD: Two separate theories.

THE COURT: Well, two separate theories, and potentially two separate crimes. One does not necessarily have to include the other. It could. So, I mean, I've got to deal with what I've got right here.

MR. SMALLWOOD: And I think it's basically two decisions, Judge.

MR. COPELAND: Yes.

MR. SMALLWOOD: And that's why I broke my argument down into malice aforethought and sexual abuse.

THE COURT: Yeah, it's not charged malice aforethought.

MR. SMALLWOOD: I don't know what else it could be, Judge.

MR. JORDAN: There's a specific jury

instruction which relates to death of a child, and I think that was the intent of the prosecutor who filed this. It stands on its own. It's still murder in the first degree, but it's a slight variation because it's a death of a child.

MR. SMALLWOOD: Judge, I think -- I think that particular statute, that particular jury instruction, has to do with death as a result of physical abuse, punishment of a child, something of that nature. That's not what was going on here. That's certainly not what the State is alleging. There is zero evidence to support that.

But suffocation is malice aforethought, Judge. That's what Niblo has concluded. This is -- if it was negligent parenting, it wouldn't be -- it wouldn't be by -- it wouldn't be malice aforethought. It wouldn't be murder.

MR. JORDAN: Not necessarily. If it is alleged based on the context of the acute injuries that the sexual act of abuse inadvertently caused the death of child by suffocation, i.e., pressing down on the back of the baby's head during the act of sexual abuse which caused the murder, then the child abuse murder would apply.

You see what I'm saying?

MR. SMALLWOOD: I do. And that's pure speculation. There's no evidence to support that.

MR. JORDAN: Other than the autopsy. Yeah.

MR. SMALLWOOD: Judge, in your ruling, depending on what it is, if you determine that there's probable cause to find to bind my client over for anything, I would ask that you delineate what those -- what the factual basis is to support that so we'll know how to proceed at the district court level.

THE COURT: Well, I don't think I'm required to do that.

MR. SMALLWOOD: And you may not be. I'm asking that you would.

THE COURT: I understand. I don't think that's my charge today, is to decide what the State's theory is and what the facts are that support that theory. I think my charge is to determine whether or not there's possible cause to believe a crime is committed and probable cause to believe that these people charged in these informations are guilty of those crimes.

So I have reviewed the Defendant Lisa Woolley's Motion to Quash and brief and support as well as the State's response to Defendants' Motion

to Quash. I have reviewed the transcript of preliminary hearing dated July 31, 2018, in both Case No. CF-2018-167 and CF-2018-168. I have reviewed the transcript of the bond hearing which was had on May the 1st, 2018, in Case No. CF-2018-167, as well as the exhibits that were presented in the two days of preliminary hearing that we've had.

The State has the burden in any criminal case. At trial it's beyond a reasonable doubt. We're not at trial. This is a preliminary hearing. At a preliminary hearing that burden is probable cause -- to establish probable cause to believe a crime is committed and that the two people that are here that are charged committed that crime. That's what it is.

I'm going to cite State versus Bradley and State versus Brodie, B-r-o-d-i-e is how -- Bradley, B-r-a-d-l-e-y. These are two separate cases that are included under the same citation, which is 2018 Oklahoma criminal 34, also 434 Pacific 3d 5. Obviously, a 2018 opinion, the latest pronouncement I could find on these issues.

"In terms of the purpose of preliminary hearing is to establish probable cause that the

crime was committed and probable cause that the Defendant or Defendants committed those crimes." That's at paragraph 12 in those decisions.

It also cites Title 22, Section 258 sub 8 as well as State versus Vincent 2016, Oklahoma Criminal 7 at paragraph 5.

Counsel has discussed that the standard of review -- of my review of the evidence in this case is to determine, quote, "whether the evidence taken in the light most favorable to the State is sufficient to find that a felony crime has been committed and that the Defendant or Defendants probably committed that crime."

Quoting, that's at paragraph 12 of the Bradley and Brodie decisions, also citing Title 22, Oklahoma statutes Sections 1089.5, also Vincent and Berry.

It's my finding in this case that the State has met their burden of proof in Case No. CF-2018-553, The State versus William Woolley, III, in regard to the original count one and the alternative count one.

It's also my finding that the State has met its burden in CF-2018-554, The State of Oklahoma versus Lisa Woolley, in regard to the alternative

count one and count two.

Defendants will be bound over for district court arrangement. And I'm not sure -- I'll have to get that date. I'll provide that to the parties. Anything else?

MR. COPELAND: Your Honor, yes. Your Honor, I can appreciate the Court's ruling. I understand the burden in the context of the presumption that you have to deal with. But on the matter of bond, we would ask the Court's leave, if you will, to allow -- once they make bound, allow her to go see her dad in Michigan. Mr. Woolley himself lost his dad while he was in jail. We would ask the Court to allow her to leave the State for that purpose and that purpose alone.

THE COURT: Mr. Jordan?

MR. JORDAN: I certainly don't have any objection with that as long as she doesn't have any communication with Dr. Schmidt.

MR. SMALLWOOD: I assume that my client would like to attend that with her.

MR. JORDAN: Of course.

MR. SMALLWOOD: We appreciate that.

THE COURT: I have no issue with that other than the conditions that we -- that were in place

when the earlier bonds were set, which were to surrender all passports, okay, as well other than this instance, not leaving the State of Oklahoma without permission from the Court.

MR. SMALLWOOD: Passports have been surrendered.

THE COURT: Okay. And obviously, no contact with the alleged victim in this case as well. Any other conditions that the State --

MR. BENNETT: I'd just say personally or through others with respect to contact with the victim.

THE COURT: Of course. Of course.

MR. COPELAND: Thank you.

THE COURT: Anything else, Mr. Copeland?

MR. SMALLWOOD: Judge, did you say you were going to give us a date?

THE COURT: Yes.

MR. SMALLWOOD: Thank you, Judge. Your Honor, I assume this has been assigned to Judge Thygesen as well?

THE COURT: I don't know.

MR. SMALLWOOD: The last I spoke with her about it, he thought that that happened or that it was going to happen, but I haven't heard that it

has actually happened.

THE COURT: I -- if it has, I'm unaware of it. I am only aware of 167 and 168, that he's been assigned to.

MR. SMALLWOOD: So we just come to the courthouse and see who our judge is?

MR. BENNETT: That's correct, Your Honor. It should be a Kirkley case after that.

MR. SMALLWOOD: So we'd have to waive two judge ruling --

MR. COPELAND: Correct.

MR. JORDAN: I would just suggest that you do that. I think Judge Kirkley, he made the determination because he did hear the preliminary hearing on the others that he needed to reassign it. We just make sure that we let him make that decision.

MR. SMALLWOOD: I think -- my understanding is it was going to end up with Judge Thygesen, and I just don't think that's happened yet.

THE COURT: Again, it may have. I'm not aware if it has.

MR. COPELAND: As far as Kirkley, Your Honor, on the Motion to Quash ask -- I guess it would be a motion to reconsider his own ruling? If this --

the whole purpose of going to district court would be for a review.

MR. SMALLWOOD: Well, we'll be here on the day you tell us to be here, and we'll find a judge.

THE COURT: Everybody keep your seat. Let me see if I can find some dates. We can go off the record. (Court adjourned at 4:41 p.m.)

CERTIFICATE

STATE OF OKLAHOMA)
) SS
COUNTY OF TULSA)

I, Michele Vest, Certified Shorthand Reporter in and for the State of Oklahoma, do hereby certify that on the 29th day of March, 2019, at the Wagoner County Courthouse, 307 E. Cherokee Street, Wagoner, Oklahoma, that the above proceedings taken was reduced by me in stenograph and thereafter transcribed under my supervision, and is fully and accurately set forth in the preceding 180 pages.

I do further certify that I am not related to nor attorney for any of the parties hereto or otherwise interested in the event of said action.

WITNESS my hand this 9th day of April, 2019.

Michele Vest

Michele Vest, CSR #1739

Original Deposition Cost: $630.00
Paid by the Defendants for Ms. Lisa K. Woolley.

U