

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

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2
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5 behalf of the Defendant, Lisa K. Woolley.

6
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9 Defendant, William Woolley, III.

10
11 MR. ERIC M. JORDAN, Assistant District Attorney, 213
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1 THE COURT: We are on the record in
2 CF-2018-554, the State of Oklahoma versus Lisa
3 Woolley, and CF-2018-553, the State versus William
4 Woolley, III.

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

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

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

17 THE COURT: Does the State rest?

18 MR. JORDAN: The State rests.

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

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

25 THE COURT: Of course. Yes, sir.

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

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

16 THE COURT: Okay. Call your witness.

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

20 THE COURT: Okay.

21 (WHEREUPON, the witness was sworn.)

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

23 DIRECT EXAMINATION

24 BY MR. COPELAND:

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

1 spell the last name for the court reporter, please.

2 A Robin Woldtvedt, W-o-l-d-t-v-e-d-t.

3 Q Is it Mrs. Woldtvedt?

4 A Yes.

5 Q Okay. Mrs. Woldtvedt, could you tell the Court what
6 it is that you do for a living?

7 A I own a daycare center called Playtime Plus.

8 Q And how long have you owned it?

9 A 26 years.

10 Q And where is it located?

11 A I have three locations. 101st and -- no, we moved.
12 193rd and 71st in Broken Arrow, 51st and Memorial in
13 Tulsa, and 21st and 145th in Tulsa.

14 Q So is there a location that's on Kenosha next to Life
15 Church area over there?

16 A Yes.

17 Q In Broken Arrow?

18 A That's the Broken Arrow location.

19 Q What is the business? How does it operate? What is
20 the purpose of the business?

21 A We are -- we kind of cater to the needs of the
22 parents. We accept drop-ins. We accept full-time,
23 part-time, before and aftercare.

24 Q Okay. And what child ranges do you see?

25 A Age four months to 12 years.

1 Q And so parents I guess sign up somehow with you. And
2 do they pay monthly? How does it work?

3 A They fill out the enrollment packet. And once
4 they're enrolled, then they can come hourly -- pay
5 hourly or -- we're a pay daily facility. So they
6 either pay in advance or they pay daily.

7 Q And did you bring a packet of what you -- your
8 records on Elijah Woolley by chance today?

9 A I did not.

10 MR. COPELAND: Can I approach, Your Honor?

11 THE COURT: Yes.

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

14 THE COURT: It will be No. 2.

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

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

19 Q (By Mr. Copeland) Can you identify that for the
20 Court, please?

21 A Yes. This is a letter to you from our director,
22 Tamara Bollig.

23 Q What's underneath that letter? Are those your
24 records for your business?

25 A Yes.

1 Q Can you identify who those records are regarding?

2 A Elijah Woolley.

3 Q And can you look at the specific -- the last two
4 pages of that stapled document.

5 A Okay.

6 Q Can you tell the Court what those last two pages are?

7 A This is his enrollment, the days that he was at
8 Playtime.

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

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

14 Q (By Mr. Copeland) Now, can you tell me -- first of
15 all, peruse through that real quick for the Court.
16 And just tell us -- are all of those pages related to
17 your business and look like they're an accurate
18 representation of what your business produces in the
19 ordinary course of business?

20 A Yes.

21 Q Okay. And specifically as it relates to the two
22 pages that I had you look at in the back --

23 A Uh-huh.

24 Q First of all, have you had a chance to review these
25 records before today?

1 A Yes.

2 Q All right. Are you familiar with when Elijah Woolley
3 became enrolled or began coming and visiting your
4 place of business?

5 A It would be May 4th, 2017.

6 Q May 4th, 2017?

7 A Uh-huh.

8 Q And would you look at the very last page?

9 A Okay.

10 Q What date does it indicate that he was last seen?

11 A March 22nd of 2018.

12 Q And from May 4, 2017, through March 22, 2018, are you
13 able to count up how many visits he had with your
14 establishment?

15 A Did you say May of '17?

16 Q All the visits. Just count all of the visits.

17 A Oh, all of the visits. 25.

18 Q 25?

19 A Yes.

20 Q That's what I got too. Okay. And so if you look at
21 the page just -- two pages preceding this history, do
22 you see where it says "Cub room rules"?

23 A Yes.

24 Q Is this basically a policy about -- it has other
25 things in it, but it also indicates -- do you have a

1 highlighted version down there?

2 A I do.

3 Q Can you read that, please?

4 A "Diapers must be checked and documented every hour
5 and changed as needed. Diapers should be changed at
6 least every other check. Be sure time on daily sheet
7 reflects time changed."

8 Q Now, that's the policy; is that correct?

9 A Yes.

10 Q And do you enforce that policy?

11 A Yes.

12 Q And all of your employees that work on your behalf,
13 they're trained in that policy?

14 A Yes.

15 Q And as it relates to Elijah Woolley having visited
16 your establishment 25 times, did you ever have the
17 need or concern from any of your employees to report
18 any concerns about child abuse or sexual abuse on
19 Elijah Woolley?

20 A No.

21 Q And as it relates to changing the diapers, that's
22 done every hour; is that right?

23 A They're checked every hour. If they're soiled at
24 all, they have to be changed. If they're not soiled,
25 they can wait another hour. But if on the second

1 hour even if they're dried out, they're changed.

2 Q Would it be true and a fair practice for your
3 establishment that you change the diaper at least
4 once for an infant prior to returning the child to
5 the parents?

6 A If he's there longer than two hours, yes.

7 Q Okay. Well, are you able to tell from your
8 indication here if there was any situation where he
9 was there for more than two hours, Elijah Woolley?

10 A It should say timing.

11 Q Start with May 4th. Is it true that it's more than
12 two hours, correct?

13 A Let me find that page.

14 Q The second to last page.

15 A Okay.

16 Q You'll see there in the middle of the column.

17 A Yes. He was there --

18 Q From 5:08, check out 7:20; is that true?

19 A Yes.

20 Q So that would be more than two hours. He would have
21 gotten his diaper changed back on May 4, 2017,
22 correct?

23 A Yes.

24 Q Also, in July of 2017, July 19th would be exact?

25 A Uh-huh.

1 Q 9:40 to 12:00. That would be in excess of two hours.
2 Would he have gotten his diaper changed then as well?

3 A Yes.

4 Q How about from -- on September 18th 6:29 to
5 8:57 p.m., that would be more than two hours as well,
6 correct?

7 A Yes.

8 Q And ma'am, you can peruse that, but I can look back
9 -- just glance at it. Most of these stops were all
10 more than two hours. Would you agree?

11 A Yes, it looks like it.

12 Q All right.

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

16 THE COURT: Any objection?

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

21 THE COURT: Okay.

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

24 THE COURT: Very good.
25

1 CROSS-EXAMINATION

2 BY MR. JORDAN:

3 Q Is it Ms. Woldbedt?

4 A Woldbedt.

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

8 A No, I don't.

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

11 A Twenties or thirties.

12 Q Twenties or thirties, okay.

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

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

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

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

24 A Yes.

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

1 as to whether a bruise is significant?

2 A Either I do or my director does.

3 Q Did you personally ever change the diaper of Elijah
4 Woolley?

5 A I did not.

6 Q And you guys, do you document such things as a child
7 has constipation or child is sick or the substance of
8 the child's stool whether it's watery, whether it's
9 hard? Do you make any of those kinds of
10 documentations?

11 A If a child has, like, say they have a runny stool and
12 they're like three in one hour, we call the child's
13 home, and we document it because they can't come back
14 for 24 hours.

15 Q Okay.

16 A Something like that.

17 Q So if any of these 25 visits Elijah had been sick or
18 had some sort of issue that needed to be documented,
19 where would that be in these records?

20 A That would be in his -- in the computer under notes.
21 And I don't think there was any, but I can ask my
22 director. I mean, I think she would have printed
23 that if it was there.

24 Q I'm just asking if -- so if in the records that
25 counsel has been provided, if there were medical

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

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

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

14 A No.

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

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

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

24 A True.

25 Q All right.

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

3 THE COURT: Okay. Mr. Smallwood?

4 MR. SMALLWOOD: No questions, Your Honor.

5 MR. COPELAND: I just need a brief second.

6 THE COURT: Sure.

7 REDI RECT EXAMINATION

8 BY MR. COPELAND:

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

11 A Okay.

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

14 A Medication permission.

15 Q And whose form is that?

16 A For Elijah Woolley.

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

19 A Yes, DHS.

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

22 A Yes.

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

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

1 to apply to his bottom when changing.

2 Q And who would have informed your office or your
3 business establishment of the need to apply rash
4 medication?

5 A Who brought him in.

6 Q The person --

7 A The person that checked him in.

8 Q So if the parents of the child brought Elijah Woolley
9 in, they would have given that instruction?

10 A Yes. We can't apply diaper ointment without
11 documenting.

12 Q Right. And so I guess what I'm getting at also is if
13 it had been an issue where -- you guys responded to a
14 subpoena; isn't that true?

15 A Yes.

16 Q And that subpoena asked for every document?

17 A Yes.

18 Q Correct?

19 A Uh-huh.

20 Q All right. So would there be any reason why your
21 director who printed this off for you would have left
22 out even a screenshot?

23 A No.

24 MR. JORDAN: Objection; that calls for
25 speculation.

1 THE COURT: Sustained. Any recross?

2 MR. JORDAN: Pardon me?

3 THE COURT: Any recross?

4 MR. JORDAN: No.

5 THE COURT: Mr. Smallwood?

6 MR. SMALLWOOD: No.

7 THE COURT: Any objection to Defendant's Lisa
8 Woolley's Exhibit No. 2?

9 MR. JORDAN: Well, my only objection is if
10 there are additional records then -- which this
11 witness has indicated there are on the computer,
12 they may be screenshots, et cetera, I would rather
13 have all the records. I just don't think that
14 this is relevant, but I don't have an overwhelming
15 screaming objection, so.

16 THE COURT: Okay.

17 MR. JORDAN: If the Court would like to admit
18 it, I guess basically what I'm saying with the
19 caveat is if she will go back to her director and
20 print off a copy of every screenshot or every
21 additional record that Playtime has with regard to
22 Elijah Woolley, then I have no objection to that.
23 And if those records can be submitted with these
24 in existence.

25 MR. COPELAND: Your Honor, I have no

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

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

7 Mr. Copeland, the next witness.

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

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

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

14 THE COURT: Okay.

15 (WHEREUPON, the witness was sworn.)

16 THE WITNESS: Thank you. Have a seat.

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

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

1 Is that the case?

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

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

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

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

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

24 THE COURT: Okay. All right.

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

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

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

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

8 DIRECT EXAMINATION

9 BY MR. COPELAND:

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

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

13 Q And it's doctor, is it not?

14 A Right.

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

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

20 Q And what year did you graduate medical school?

21 A 1981.

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

24 A Something like that.

25 Q And where are you currently practicing or what do you

1 currently do?

2 A I am a professor at the University of Michigan, and
3 we do forensic services for Wayne and Monroe Counties
4 in Michigan under contract. And I have the
5 appointment of chief medical examiner for Wayne and
6 for Monroe Counties. Another way of stating that is
7 that we investigate the cases that fall under the
8 medical examiner's statutes in Michigan.

9 Q And how many cases would you review a year in your
10 field of pathology?

11 A Well, our case load is approximately 34- to 3,600
12 cases a year. And we do about 2,500 autopsies in the
13 office every year.

14 Q 2,000 --

15 A 500.

16 Q And how many would you perform yourself on the
17 average year?

18 A Lately I've been doing about 300, 350.

19 Q A year?

20 A Yes.

21 Q That's almost as many days as there are in the year.
22 How do you manage that?

23 A We have assistants who help us with some of the more
24 tedious labor intensive parts of the process.

25 Q What's the average time it takes to do an autopsy?

1 A It depends. A typical death takes about 30 to 40
2 minutes. And a child abuse case can take -- when you
3 include everything we do for a child abuse case,
4 probably a total of maybe 20 hours.

5 Q Now, how long have you been as chief medical examiner
6 -- did you say that yet? -- at this location?

7 A I have been chief medical examiner since 2003.

8 Q And that's for the Wayne County, is that what you
9 said?

10 A For Wayne county.

11 Q What's the population of that are? Are you familiar
12 with that?

13 A Currently, about 1.8 million.

14 Q Now, could you tell the Court a little bit about any
15 specialties that you have?

16 A Well, to be a forensic pathologist you have to do a
17 specialty training in anatomic pathology. I have
18 training in anatomic and clinical pathology. And I
19 am board certified in anatomic and clinical
20 pathology. And then you can do a subspecialty in
21 pathology -- in forensic pathology, which is
22 recognized by the American Board of Pathology as a
23 subspecialty. And I'm also board certified in
24 forensic pathology.

25 Q Have you authored any medical journal articles that

1 have been published?

2 A I have over 40 publications, peer review
3 publications, which I have mostly coauthored. And I
4 have published book chapters and provided case
5 reports, for example, in Atlas of Child Abuse that --

6 Q I'm sorry? I couldn't hear the name.

7 A In Atlas of Child Abuse.

8 Q Atlas of Child Abuse?

9 A Child Abuse. That is used by people who investigate
10 child abuse.

11 Q And would that include sexual child abuse aspects?

12 A No. 99 percent of sexual child abuse is actually
13 done by child abuse pediatricians because the child
14 abuse fatality that includes sexual abuse is
15 extraordinary rare.

16 Q So you're talking about child abuse that has a sexual
17 component or there's a death in it?

18 A Child abuse that has a sexual component that results
19 in the death of a child is very rare.

20 Q And you're talking about where -- can you clarify
21 that for the Court as it relates to what you're
22 saying here. Are you saying that the act of sex is
23 occurring at the time of death?

24 A Correct. That we can identify that sexual abuse
25 occurred at the time of death is actually very rare.

1 Q Okay. And as it relates to the testimony -- you've
2 been contacted by my office and I think
3 Mr. Smallwood's office; would that be true?

4 A Correct.

5 Q And it has to do with an individual by the name of
6 Elijah Woolley. Are you familiar?

7 A Yes.

8 Q Okay. Did you receive -- what did you receive from
9 Mr. Smallwood's office? If I remember correctly, he
10 sent you --

11 A I received the autopsy report, the toxicology report,
12 including, the primary blood work. I got -- I've
13 seen pictures. There are actually two different sets
14 of pictures taken. I saw the autopsy pictures,
15 the -- excuse me, the autopsy report and the
16 microscopic slides.

17 Q Now, as it relates to your expertise in the field
18 that you're here to testify here about today, is
19 there anything about that little slither of the 99
20 percent of these types of cases that occur dealing
21 with a different type of expert on sexual abuse
22 during death, is there anything about this case that
23 would prevent you from giving an accurate opinion on
24 the pathologies today that we're going to present?

25 A No.

1 Q Now, did you bring with you -- okay. You said -- did
2 you say that you received some slides from -- or did
3 you mention that yet?

4 A I did.

5 Q Okay. And did you bring slides with you as well as
6 photos --

7 A I did.

8 Q -- that you reviewed?

9 MR. COPELAND: Your Honor, may I approach?

10 THE COURT: Yes, sir.

11 Q (By Mr. Copeland) Let's see those photos that you
12 have.

13 A I gave -- oh. Well, here are the two CDs. One of
14 them were the x-rays. I forgot to mention the
15 x-rays.

16 Q Okay.

17 A And then here is the thumb drive with the pictures.
18 And here is the autopsy report and toxicology report.

19 MR. COPELAND: And Your Honor, I've got an
20 agreement with the State that we're going to
21 stipulate to these photos. Do you want to look at
22 these that he has here or do you just want to --
23 in other words, I can pull that up over here and
24 see what he's reviewed.

25 MR. JORDAN: No, no, I know that. I'm not

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

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

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

9 MR. COPELAND: Okay.

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

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

14 MR. JORDAN: Sure.

15 MR. COPELAND: One moment, Your Honor.

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

20 A Mexico City.

21 Q Mexico City?

22 A Right.

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

25 A Yes.

1 Q And did you do any fellowships when you went to --
2 when you got out of medical school?

3 A Yes. After medical school you do specialty training.

4 Q And what would -- okay. So are you a D.O. or an
5 M.D.?

6 A M.D.

7 Q So that would be a doctor of osteopathy?

8 A No, a doctor of medicine.

9 Q Oh, you're -- I'm sorry. You said an M.D. I'm
10 sorry. I got that wrong. Now, what -- tell the
11 Court what a doctor of medicine does?

12 A A doctor of medicine is an individual who is licensed
13 by each individual state to look at patients,
14 diagnose their diseases, and provide them with
15 treatment.

16 Q And in utilizing that training, where did you go
17 immediately out of your medical school for your next
18 training?

19 A Well, I actually did two years of general surgery
20 after medical school.

21 Q And what kind of surgery was that?

22 A General surgery.

23 Q And what -- what hospital was that?

24 A That was in New Jersey.

25 Q Are then what did you do?

1 A And then I did those three years of general surgery,
2 and then I went to graduate school where I had
3 started a Ph.D. in neurobiology at the University of
4 Connecticut.

5 Q And what does that discipline in neurobiology, what
6 is that?

7 A That is the study of the structure and function of
8 the nervous system at the basic science level.

9 Q The study of the nervous system at the basic science
10 level?

11 A Correct.

12 Q And what was the purpose of seeking that degree for
13 you?

14 A I wanted to get away from clinical medicine for a
15 while in the process of getting a Ph.D. I have it a
16 year and -- but after two years, after living on a
17 graduate student stipend, I decided I could regain my
18 license to practice medicine. And I didn't want to
19 see my patients, so I went in to pathology.

20 Q Okay. Doctor, let's move forward to your current
21 practice in Wayne County. How many baby autopsies
22 have you performed over the last say ten years?

23 A Well, we do about 200 pediatric autopsies a year of
24 which about 50 to 60 are under the age of one. And
25 currently because we are three pathologists that do

1 30 percent of that, so. Last year I did about -- I
2 don't know -- 15, 20 sudden infant death autopsies. I
3 actually do most of the child abuse cases in the
4 office when I'm in the office because I'm probably
5 more familiar with the literature in child abuse than
6 my colleagues are. And they're difficult in court,
7 so I do four or five cases of child abuse a year at
8 least.

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

11 A About.

12 Q Did you testify in any of those cases?

13 A Most of those end of going to court.

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

16 A I have.

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

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

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

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

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

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

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

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

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

19 THE COURT: Certainly.

20 MR. JORDAN: Thank you, Your Honor.

21 VOIR DIRE EXAMINATION

22 BY MR. JORDAN:

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

25 A Mexico City.

1 Q You went to medical school in Mexico City?

2 A Right.

3 Q And in order to have that recognized, that being a
4 medical school in a foreign county, did you have to
5 take an additional exam to have your credentials
6 applied to the United States?

7 A Yes. I took three of them.

8 Q Okay. I bet that wasn't much fun.

9 A Right.

10 Q What year -- or how long did it take you to get
11 through that testing process after you graduated from
12 medical school in Oklahoma City [sic] to get approved
13 in the United States?

14 A You mean in Mexico City.

15 Q I'm sorry. Yes, sir.

16 A It took about three years.

17 Q About three years. What did you do during that time
18 period?

19 A I did some family practice.

20 Q In Mexico?

21 A In Mexico City.

22 Q Okay.

23 A And I also worked with a couple of orthopaedic
24 surgeons who were doing research on abnormalities of
25 the spine which are very common.

1 Q Okay. And then after your credentials were approved,
2 what year was that approximately?

3 A 1984.

4 Q 1984. Then you said you --

5 A Actually, let me rephrase that.

6 Q Yes, sir.

7 A I based the test in 19 -- it was either 1981 or '82,
8 but I didn't come to the United States until 1984
9 because you have to go through the interview process
10 and application for license.

11 Q Okay. And where did you apply for residency status?

12 A No, no, for the residency -- I mean specialty
13 training.

14 Q Yes, sir.

15 A I eventually ended up in Moorestown, New Jersey.

16 Q Moorestown, New Jersey?

17 A Right.

18 Q And is that where you did the two years of general
19 surgery?

20 A Correct.

21 Q Okay. And what -- was there a medical school
22 associated in Moorestown, New Jersey, with that
23 residency program?

24 A The program was affiliated with Columbia University.

25 Q Okay. All right. Then you said you did two years of

1 general surgery?

2 A Right.

3 Q And after that you started your Ph.D. in
4 neurobiology?

5 A Correct.

6 Q And that was in Connecticut?

7 A In Connecticut.

8 Q During these two years did you -- were you practicing
9 medicine while you were working on your Ph.D. in
10 neurobiology?

11 A No. All I did was laboratory work.

12 Q Okay. So when you got back in to medicine, what
13 program did you have to do in order to continue your
14 studies in pathology?

15 A Well, I just -- I applied to the program at the
16 Medical College of Ohio in Toledo.

17 Q Medical College of Ohio. And was this a pathology
18 program that you were in to at Medical College of
19 Ohio?

20 A Yes, in anatomic and clinical pathology.

21 Q How long did that take you to complete that?

22 A That was four years.

23 Q Four years. All right. And then in the specialty
24 training in forensic pathology, where did you
25 complete that training?

1 A At the Wayne County Medical Examiner's Office.

2 Q And was that affiliated with the University of
3 Michigan or another --

4 A No. At that time it was a free-standing program
5 accredited by the ACGME, which stands for the
6 Accreditation Council for Graduate Medical Education.

7 Q And how long did it take you to complete that
8 specialty training in forensic pathology?

9 A That was a year.

10 Q A year. And after that time, did you become employed
11 by the office of the medical examiner in Wayne
12 County?

13 A Correct.

14 Q All right. And what year did you first become
15 employed?

16 A Well, you're an employee as -- when you're doing your
17 specialty training, so that would have been in 1994.

18 Q '94?

19 A Right.

20 Q All right. Now, you've -- you said you've testified
21 as an expert in various courts including federal
22 court, true?

23 A Correct.

24 Q Have you -- are these in the capacity as a medical
25 examiner for Wayne County or in the capacity as an

1 expert witness hired by someone else?

2 A 95 percent of my testimony is as an expert witness
3 through my daily work in Detroit. And about
4 5 percent -- probably, actually less than that,
5 because I've only started doing -- I've only done
6 private consultation for about ten years -- is -- has
7 been in other courts with the caveat that most of my
8 testimony in Michigan has actually been done -- in
9 all jurisdictions in Michigan, has actually been done
10 through my work in Detroit because Detroit and Ann
11 Arbor have tertiary medical care centers.

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

18 Q The autopsy comes to you?

19 A Right.

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

22 A Right.

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

1 A With the exception of two, yes.

2 Q And have you ever testified -- have you ever
3 testified in the State of Oklahoma before?

4 A I have never been to Oklahoma until today.

5 Q Enjoy your visit.

6 A Thank you.

7 Q Have you ever in court been denied any portion of
8 your testimony by either a state or federal court; in
9 other words, not been allowed to give an opinion?

10 A Not that I am aware of.

11 Q Not that you're aware. And has your medical license
12 ever been suspended or limited in any way by any
13 authorities that you are credentialed?

14 A It has not.

15 Q And I know you stated that you had been an author of
16 I think what you entitled the Atlas of Child Abuse.
17 Did you say that is a literature that is on the issue
18 of physical abuse versus sexual abuse?

19 A It includes both of them.

20 Q It includes both?

21 A Yes.

22 Q All right. Have you ever been certified by any court
23 in the United States to testify as an expert
24 specifically in the field of child sexual abuse?

25 A No.

1 Q Okay.

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

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

9 Mr. Copeland?

10 MR. COPELAND: Thank you, Judge.

11 FURTHER DIRECT EXAMINATION

12 BY MR. COPELAND:

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

17 A Correct.

18 MR. COPELAND: Your Honor, just one second.

19 THE COURT: You're all right.

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

25 A That's the front page.

1 Q The front page, correct.

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

5 THE COURT: Yes.

6 MR. COPELAND: Thank you.

7 Q (By Mr. Copeland) The Office of the Chief Medical
8 Examiner, Report of Investigation by Medical
9 Examiner, Eastern Division of Tulsa. It's for Elijah
10 Woolley, 7425 S. Delucca Street, Broken Arrow,
11 Oklahoma. It says: Examiner notified by name: Deputy
12 Crockett at Wagoner County Sheriff's Office on
13 3/30/2018 at 11:57 in the morning, correct?

14 A Correct.

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

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

22 A Yes.

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

1 A Yes, they're her diagnostic conclusions.

2 Q Okay. She signed off on that. She signed off on
3 this as: "I hereby state that, after receiving notice
4 of the death described herein, I conducted an
5 investigation as to the cause and manner of death, as
6 required by law, and that the facts contained herein
7 regarding such death are true and correct to the best
8 of my knowledge."

9 Now, she signs -- it indicates the day initiated
10 3/30/2018, and the day case finalized was May 31st,
11 2018. So that would be about two months, correct?

12 A Correct.

13 Q Okay. This is on, it says, a 14 month old, date of
14 birth January 16, 2017, white male. Presented to a
15 Barbara Bastiaanse and Cheryl Niblo, D.O. Do you
16 know Barbara Bastiaanse is? I don't know how to
17 pronounce that.

18 A Bastiaanse. No, I don't know who she is.

19 Q Okay. Earlier when you testified about sometimes you
20 have assistance. Is that probably what -- what does
21 this indicate to you when you look at that, who she
22 would be when she signed this?

23 A It's probably an assistant.

24 Q Okay. So you got -- and does it necessarily mean
25 that the assistant has her qualifications, do you

1 know?

2 A I don't know what the qualifications are.

3 Q And in your office would every assistant have the
4 same qualifications?

5 A We have two kinds of assistants. One for trained
6 pathology assistants with a master's degree in
7 pathology assistant. And then we have autopsy techs
8 who only have to have a high school education, and we
9 train them in some of the heavy lifting and all in
10 autopsies.

11 Q All right. Sir, thank you. And in the middle of
12 this page it says pathologic diagnoses. No. 1, she's
13 got three Roman Numerals there, and she's got
14 subparts A, B C, D, and A, B, C on Roman Numeral II,
15 correct?

16 A Yes.

17 Q So it says: "Numeral I, Roman Numeral, asphyxia due
18 to suffocation. A, contusion of the upper frenulum.
19 And B, contusion of the left lower [sic] lip mucosa.
20 1.C. is laceration of the right upper lip mucosa.
21 1.D. is soft tissue hemorrhage of the right neck at
22 the base of the skull and right upper back."

23 Is that accurate?

24 A Right.

25 Q That's what it says here. Now II Roman Numeral says

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

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

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

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

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

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

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

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

1 to the anus.

2 A No, I don't know what OSC is.

3 Q Is this probably in-house pneumonic or?

4 A I have no idea.

5 Q Manner of death: homicide?

6 A Right.

7 Q So Dr. Niblo -- this is her pathologic diagnosis.

8 A I know what OSC is. Other -- it's part two of the
9 death certificate. Other significant conditions.

10 Q Okay. So other significant conditions would be a
11 multiple penetrating blunt impact injuries, according
12 to her, to the anus?

13 A Right.

14 Q Okay. And she's concluded it's a homicide; is that
15 true?

16 A Correct.

17 Q According to this report that's been admitted. Go to
18 the middle of the next page, please.

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

1 A I do.

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

4 Authorization. It says: "Postmortem examination
5 performed --

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

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

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

21 THE COURT: I've read the autopsy report.

22 MR. COPELAND: Okay. Thank you, Judge.

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

1 A Those are on page 5, I think.

2 Q Yes. Now, is -- this is just the description, right?

3 A Correct.

4 Q So what would be her microscopic conclusions? Is
5 this going to be her conclusion?

6 A Correct. That's her description of her observations
7 of the slice under the microscope.

8 Q Okay. Looking at her microscopic description, do you
9 have any information you can tell the Court based --
10 first of all, you looked at some slides in this case,
11 correct?

12 A Correct.

13 Q Okay. Is that what that means microscopic
14 description, is she is going to look under some
15 slides? Is that --

16 A Yes. This is -- these are the -- this is the
17 description of the tissue that she has submitted for
18 processing and looked at under the microscope.

19 Q Now, is there -- in this microscopic description, do
20 you see anything that's -- that you disagree with?

21 A No. Except for the fact that it was -- it's hard for
22 me to tell exactly what she took a section from
23 because it is our habit, and I think most people's
24 habit, to provide a key that will correlate what
25 tissue section you took with the place where you took

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

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

12 THE COURT: I think I understand that
13 process.

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

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

1 so that you can look at it under the microscope.

2 Q In this particular case you received slides. How
3 many slides did you receive?

4 A I think it was 22 slides, but I can check and make
5 sure.

6 Q I think you told me 21.

7 A Or maybe number 21 slides. It was 21 slides.

8 Q 21 slides. Okay. And Doctor, as it relates to those
9 slides, you're talking about a key. Explain to the
10 Court what's going on here as it relates to this
11 Roman Numeral II, and it says: "Contusion of the
12 12:00 position of anus along the external surface
13 extending into the internal aspect of the anus (child
14 in prone position); and B, laceration; and C,
15 multiple lacerations.

16 A Well, the problem is not so much the pathologic
17 diagnosis. It's in the microscopic description
18 because I don't know she -- she does a general
19 description of the right one. I mean, the anus. So
20 if you look at page 5, it says anus 7:00 in total.
21 And what that means is that she took a section from
22 7:00 to 12:00 and submitted the whole thing for
23 histology. Histology by the way is synonymous with
24 microscopic anatomy. And the problem is I don't know
25 if she used the sequence which is only known to her

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

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

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

17 A It was slides like 16 through 21.

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

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

23 Q So it would be six slides, correct?

24 A Correct.

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

1 of those six slides there's -- when she describes
2 like a 7:00 to a 12:00, if you had just five slides,
3 you would take a section maybe from 7 to 8 from 8 to
4 9 to 9 to 10 of the rectum, 11 to 12; is that what
5 you're saying?

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

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

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

13 A Correct.

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

16 A Yes.

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

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

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

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

1 Q All right. And so of these two paragraphs what is
2 it -- you say here -- is this your note: "lividity
3 has shifted"?

4 A Correct.

5 Q So what is the clinical significance in your field of
6 study that you're trying to tell the Court here with
7 this notation and these photos?

8 A Well, what it means is that lividity had not quite
9 finished shifting at the time the child was found
10 dead.

11 Q Tell the court what lividity is.

12 A Lividity is the settling of blood due to gravity
13 after heart has stopped pumping. The reason that we
14 are hemorrhages is skin color is because the heart
15 continues to pump blood and your skin color doesn't
16 shift because of vocal changes in blood flow. After
17 death when the blood stops pumping, then the blood
18 settles down by gravity, and the -- in the more
19 superior portions of the body, depending on how you
20 ended up dead, you're going to be pale. And where
21 the blood settles down due to gravity you're going to
22 be redder. The one exception is that lividity is due
23 to the filling up of the blood vessels with blood
24 that is settling, so that when you are lying --
25 depending on how you're lying down.

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

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

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

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

1 Q Okay. And in this photo also we see -- what do you
2 call these little steel -- is it -- that you use in
3 your field? What are those called?

4 A That's the autopsy table.

5 Q All right, autopsy table. What does this depict here
6 on the posterior end of the -- of the buttocks area?

7 A That's the rectum.

8 Q And so I guess what I'm getting at, Doctor, isn't
9 there a malformation right here? It's not a normal
10 looking shape here.

11 A Well, it's -- because the child is dead, after death
12 the rectum becomes dilated. Notice that the buttocks
13 are actually fairly white because lividity hadn't
14 completely shifted. So now that the child was placed
15 face up with pressure on its buttocks, then the blood
16 has gotten displaced, kind of like squeezing water
17 from a sponge. But the rectum is actually a little
18 redder than that because it is not a pressure point.
19 And it has become dilated because muscle relaxes
20 after death.

21 Q Now, in this report by Dr. Niblo, doesn't she
22 indicate that there was a hard stool that was located
23 at the time and at the scene of where they
24 located the --

25 A She describes hard stool in the diaper.

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

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

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

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

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

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

24 Q The hard stool?

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

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

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

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

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

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

18 Q And how common is that?

19 A It's very common.

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

23 A I'm sorry?

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

1 in the throes of death?

2 A Yes, it can happen.

3 Q And it could be totally unrelated to any kind of
4 homicidal sinister action upon a deceased individual?

5 A Yes.

6 Q Now, you saw several different photos in this case.
7 Did you have any opinions about what happened to the
8 lips or did you find any laceration that you want to
9 discuss with this Court that you contest are not
10 reflective of a true diagnosis?

11 A Well, I think the lesion she's describing as a
12 contusion on the frenulum are not really a contusion
13 in fact, the frenulum is intact, which is not the
14 case when there is a sufficiently intense effort to
15 asphyxiate a child. Then --

16 Q Now, in this photograph is -- the frenulum is up in
17 this area?

18 A Yes. You have to raise the upper lip to see it.

19 Q Tell me, Doctor, when you see the frenulum shot; is
20 this it right here (indicating)?

21 A No. A little further down. Two pictures down.
22 There you go. Yeah. That's the frenulum right
23 there.

24 Q Okay.

25 A She describes the contusion in the frenulum which is

1 an absurdly small size.

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

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

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

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

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

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

20 A By 1/16th of an inch.

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

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

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

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

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

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

15 Q Okay. So when you tell the Court that that is not a
16 contusion, you are disagreeing at -- under evidence
17 of the recent injury "left lower lip mucosa
18 purple-red contusion measuring" -- excuse me. "Upper
19 frenulum purple-red contusion measuring 1/16th by
20 1/16th."

21 You are disagreeing with Dr. Niblo on that
22 issue?

23 A Correct.

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

1 think is what you said?

2 A I think it's an ulceration.

3 Q Okay. What is the difference between ulceration and
4 a contusion?

5 A A contusion is where you will apply force to tissue,
6 blunt trauma. Let's say you get hit with an object.
7 Let's say you get punched and this causes blood
8 vessels to burst in tissue and you get the
9 hemorrhagic in soft tissue that is typical of a
10 bruise. That's what a bruise is, a contusion. And
11 it is -- it results in hemorrhagic infiltration of
12 tissue. This is not that hemorrhagic infiltration of
13 tissue. It looks to me like a superficial
14 ulceration, if that.

15 Q So if Dr. Niblo wanted to confirm whether or not in
16 number two when she says it's a contusion, she would
17 have needed to take a section of the frenulum; would
18 that be true?

19 A If she had wanted to figure out what it was, period,
20 I would have taken a section.

21 Q Would that be normal practice?

22 A No, because the frenulum is normal. I -- I would not
23 have taken a section of that frenulum because it's
24 pink and it's intact.

25 Q If I hear you -- if I understand what you're saying,

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

4 A Correct.

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

9 A I would have.

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

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

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

1 basically saying, correct?

2 A Right.

3 Q So if the State wants to allege that this little
4 bitty 1/16th by 1/16th, approximately, that wouldn't
5 even get your attention, you won't even section it
6 yourself because it's not normal practice for you, if
7 they -- if the State wants to allege that that is
8 part of a process of smothering, they should have at
9 least taken a section of it; is that true?

10 MR. JORDAN: Judge, this is leading. I'm
11 going to ask that he please ask nonleading
12 questions.

13 THE COURT: Sustained.

14 Q (By Mr. Copeland) Doctor, do you have an opinion as
15 to whether the State, if they want to allege that
16 this is part of the process of a murder, that they
17 should have gotten a section of this frenulum?

18 MR. JORDAN: Objection; leading.

19 THE COURT: Sustained.

20 Q (By Mr. Copeland) Doctor, what opinions do you have
21 regarding this frenulum that have not been otherwise
22 discussed?

23 A I think it's a superficial ulceration in an otherwise
24 normal frenulum.

25 Q Okay. Thank you, Doctor. Now, do you have -- on

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

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

6 Q Hold on.

7 A There you go.

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

9 A Yes.

10 Q Evidence of recent injury No. 2?

11 A Correct.

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

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

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

19 A Correct.

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

22 A Correct.

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

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

1 Q I'm sorry, Doctor, we can't hear you because of
2 the --

3 A When you see the upper teeth and you see that little
4 area of red discoloration between the teeth?

5 Q Are you talking about here (indicating)?

6 A Yes. To which no one seems to have commented about,
7 by the way, but. It's partly -- it's part of the
8 process of lividity. If you -- those are the little
9 crooks and crannies between the teeth where blood has
10 settled because there is no pressure there. So it's
11 just part of the pattern of lividity.

12 Q So while we're on that subject, Doctor, do you have
13 an opinion as to this area that you just mentioned as
14 it relates to --

15 A It's a normal gingival body with a little -- with a
16 few -- with some accumulation of blood due to
17 lividity.

18 Q Would that accumulation of blood and that lividity
19 demonstrate any idea or concept of murder by
20 smothering?

21 A No.

22 Q Now, over here on the lip where it's described as the
23 left upper lip -- so this would be the left side of
24 the baby -- or the infant?

25 A Correct.

1 Q Now, is this the area you guess she's talking about?
2 Because you have got the line. What do you see here?

3 A What I see is an area of redness, which is probably
4 lividity. And she didn't take a section of that, so.
5 I think that all that is is lividity. And the other
6 thing is that when you strike -- when you impact a
7 child's face with sufficient force to actually cause
8 an injury to the face, it doesn't look like that.
9 because of the rich blood supply on the inner --
10 basically, the mouth has very rich blood supply.
11 You're going to get a pretty extensive hemorrhage
12 very quickly.

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

18 And the second issue is that this child has
19 teeth, so if you press the cheek against the teeth, I
20 can't -- I don't see any injuries sufficient to cause
21 mucous hemorrhage like that without having the teeth
22 left an imprint on the inner aspect of the lip.

23 Q So Doctor, if someone is in the process of
24 smothering, that would require force, would it not?

25 A It requires force, especially, in bigger children.

1 Q Okay. And in this -- the child is 14 months --

2 A Right.

3 Q -- in this context. If the State were to allege that
4 this child -- let me context by something. Do you
5 have an opinion, Doctor, as to where this baby died
6 according to the photos you reviewed?

7 A I think it died in the crib.

8 Q What tells you that, Doctor?

9 A That there is an area of -- a wet spot, if you will,
10 in the crib.

11 Q Okay. So have you seen any photos of the crib all --
12 what the size of it is or the mass size of it is?

13 A Yes. It's a Pack 'n Play.

14 Q Okay. In your opinion, could a grown man be having
15 sex in that Pack 'n Play with a baby at the time of
16 death?

17 MR. JORDAN: Objection; calls for
18 speculation.

19 THE COURT: Sustained.

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

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

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

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

12 THE COURT: Sustained.

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

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

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

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

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

23 THE COURT: Just ask another question,
24 please.

25 MR. COPELAND: Thank you, Judge.

1 Q (By Mr. Copeland) Now, is this next photo to deal
2 with number three the lower lip mucosa or do we --

3 A Yes, that's really the only photo that documents that
4 particular lesion on the inner aspect of the left
5 upper lip.

6 Q Okay. But on number three it discusses a right
7 lower lip.

8 A Well, yeah, but that's the right lower lip. That
9 will be another picture.

10 Q But all I'm asking is there one of the photos that
11 you provided that deals with that or do you want me
12 to --

13 A There is another picture that deals with that -- that
14 shows the area of redness in the left -- the right
15 lower lip.

16 Q Where is that? I can't find the mouse here. There
17 we go.

18 A There, that one.

19 MR. COPELAND: It's hard to see at this
20 angle, Judge.

21 A Okay. So that's the inner aspect of the right lower
22 lip. And you can see a 1/16th of an inch probably
23 terminal bite.

24 Q (By Mr. Copeland) Probably what?

25 A Terminal bite.

1 Q Terminal bite?

2 A Right.

3 Q Okay. How does that happen? Tell the Court, please.

4 A It's part of the process. It is not unusual to find
5 in people's lower lips -- as I mentioned before, it's
6 easy to grab your lower lip with your teeth. And
7 sometimes people end up with an imprint on there --
8 on the inner aspect of their lip to the back, and
9 that's exactly what that looks like.

10 Q I mean, is this described as -- is it probably
11 described as an imprint or is this an ulceration or a
12 pinch mark or what is that?

13 A It's an -- it's actually a pinch mark. I think
14 there's been some loss of this very superficial
15 membrane. And that's all anybody can say about it.
16 The lip itself isn't red. There's been no
17 significant injury to the lip.

18 Q Okay. So earlier when we were going over the other
19 photo that showed the lip hanging over the bottom lip
20 and it looked like there was some --

21 A Right. The teeth were catching the lip.

22 Q Okay. In that process -- is it in that process we're
23 calling it in the throes of death that this occurred
24 also?

25 A Yes. Yes. I think it was part of the --

1 Q And how common is that, Doctor?

2 A That's very common.

3 Q And this is something you've seen before that you've
4 verified before?

5 A Yes.

6 Q And is there medical literature that supports that?

7 A Probably. Somewhere.

8 Q Okay. Did you have the need to ever research that
9 issue?

10 A No. This is a tiny little injury.

11 Q Okay. Now, when you say that's a tiny little injury,
12 was there a section made of that particular mark?

13 A She did not make a section of that.

14 Q And had she made a section of it, what would that
15 tell you?

16 A It would tell me exactly what it is. It would show
17 me whether or not it's an ulceration or a miniscule
18 bite mark that was agonal.

19 Q She describes it as a --

20 A This is why we take slides, because it tells us what
21 things are.

22 Q Okay. Now, if a -- would a slide tell you whether or
23 not it was a laceration as she alleges in number
24 three, right lower lip mucosa laceration?

25 A It would assist in the diagnosis because the

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

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

7 MR. JORDAN: It's --

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

10 MR. JORDAN: It's argumentative.

11 THE COURT: Sustained.

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

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

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

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

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

6 Q You discount them as inconsequential?

7 A Correct.

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

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

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

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

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

24 A Correct.

25 Q And in this particular situation, Doctor, what is

1 significant about that to you?

2 A Well, it looks like just the lividity pattern of a
3 child who died on a relatively flat surface and has
4 the lividity pattern of being found prone after he
5 died.

6 Q Have you seen cases where babies such as this have
7 died face down?

8 A Lots of times.

9 Q That did not have anything to do with homicide?

10 A Correct. Yes, many times.

11 Q Okay. So in and -- just the context that a child
12 dies on its face without context, is just an innocent
13 situation; is that true?

14 MR. JORDAN: Objection; that's a leading
15 question.

16 THE COURT: Sustained.

17 Q (By Mr. Copeland) Well, Doctor, as it relates to when
18 you say "lack of pattern on the skin," are you
19 describing the forehead's lack of pattern?

20 A Well, I say there is a lack of pattern is that when
21 you smother somebody, especially, already an older
22 child, you're going to find the imprint of the
23 surface at which you pressed that child actually
24 embedded on the skin. And that includes, by the way,
25 the effort of obstructing the airway and pressing the

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

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

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

12 A She does not.

13 Q Does she indicate any finger marks on the skin?

14 A No.

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

17 A She does not.

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

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

22 A Right.

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

24 A Right.

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

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

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

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

9 A She does not describe anything like that.

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

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

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

1 something has happened?

2 A Well, I would think -- this child is already big
3 enough. I would think that there would be some kind
4 of deformity of the nose or some kind of imprint on
5 the skin.

6 Q So in your examination of the photos, Doctor, can you
7 render the Court your opinion as to what the face
8 shows as it relates to any textile patterns?

9 A Nothing.

10 Q Is a textile pattern something that you would
11 regularly find?

12 A You can find that. I've seen that. I've seen -- as
13 I mentioned before, I've seen finger imprints in
14 younger children. Sometimes all you find is
15 deformity.

16 Q Okay. And so did Dr. Niblo indicate any deformity on
17 the nose?

18 A No, she does not.

19 Q Did she indicate any deformity on the chin area?

20 A She did not.

21 Q Did she indicate any deformity on the forehead area?

22 A No.

23 Q How about in the eyes, did she indicate any deformity
24 with the eyes?

25 A She actually looked at the eyes. There was nothing

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

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

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

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

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

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

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

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

6 A Yes, I think it can.

7 Q In a baby?

8 A Yes.

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

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

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

25 A It means that his blood pressure was dropping and

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

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

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

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

11 A Yes.

12 Q What does that indicate to you?

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

16 Q And why is that?

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

1 people can leak through those -- all those orifices.

2 Q And did we not just look at a photo about the nose?

3 Did you notice the wet on the area of that photo?

4 A Yes. There was a drop of fluid on the tip of the
5 nose.

6 Q In this area right here (indicating)?

7 A Yes. You can see the reflection of the flash shows
8 you that there is -- that the surface is humid.

9 Q And up here on the forehead also?

10 A Right.

11 Q So would it be fair to say that this child was laying
12 in some part on his own bodily fluids?

13 A Well, I think that there were body fluids coming out
14 of the nose and the mouth and that he was there long
15 enough for that to seep into the mattress and the
16 cloth of the Pack 'n Play.

17 Q And do we know -- are you able to tell, Doctor, based
18 off of your training and experience and looking at
19 these photos and understanding the context of what is
20 alleged versus what you see whether or not the
21 explanations came from the mouth or nose, what the
22 sources of those were? Were they anything from the
23 lungs? Anything from the stomach?

24 A They typically have two -- two sources. If there --
25 there's such a thing as terminal heart failure. And

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

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

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

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

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

1 the infant most likely died?

2 A Yes.

3 Q Now, did you mention, Doctor, the -- if fluid comes
4 from the stomach, what causes that?

5 A Well, that's because that's -- that can be one of the
6 sources of fluid to the wet spot. That's because at
7 the moment of death the valve that lies between your
8 esophagus and your stomach relaxes and so fluid can
9 search up. It's like reflux, basically. Agonal
10 reflux.

11 Q What kind of valve is that that's in your agonal
12 reflux?

13 A It's called the gastroesophageal sphincter.

14 Q It's a sphincter muscle?

15 A Correct.

16 Q Okay. Is that the same kind of muscle that deals
17 with the rectum?

18 A It's similar. The gastroesophageal sphincter is
19 composed entirely of a muscle called smooth muscle.
20 And the rectum is composed of smooth muscle as well
21 as striated muscle. And the difference is technical.

22 Q Now, going to photo 11 here on the PowerPoint,
23 Doctor, you've got him laying I guess in the exam
24 room, right, with the -- this is the autopsy photo,
25 correct?

1 A I think -- I don't know.

2 Q Okay, that's fine. But we've got a little ruler
3 here. It says OCME, so either someone is at the
4 scene or things look close-up. I can't tell the
5 context maybe. But I guess what I'm getting at
6 you've here it says, "cloth pattern to shirt," I
7 guess?

8 A Right.

9 Q Okay. And what are you trying to say here, Doctor?

10 A Well, this is the contrast between the note pattern
11 on the face and the cloth pattern, because this
12 child's t-shirt was on and the elastic rim was
13 providing pressure against the neck. You can see the
14 imprint of the -- elastic rim of the t-shirt on the
15 neck. And it's a good contrast to the absence of a
16 pattern on the rest of the face.

17 Q And so on photo 11, Doctor, it says, "nose is
18 intact." Would this be another good photo -- what
19 are you trying to say here?

20 A That the nose is intact. It's not deformed. It's
21 not flattened. It's not hemorrhagic. It's a normal
22 nose you would expect to find in a dead toddler.

23 Q And would that be consistent with natural causes of
24 death?

25 A Yes.

1 Q And on the chin again, you mention here on the same
2 photo "no pattern."

3 A No.

4 Q Would that be consistent with natural causes of
5 death?

6 A Yes.

7 Q On the photo 12 -- okay, we've already covered this
8 on the frenulum. I think we are about ready to move
9 on. Okay, this is real graphic. We are about ready
10 to move on to the photos dealing with some of the
11 dissections.

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

15 MR. JORDAN: No.

16 MR. SMALLWOOD: No.

17 THE COURT: Why don't we do that.

18 MR. COPELAND: Yes. Thank you, Judge.

19 THE COURT: We'll be off the record.

20 (WHEREUPON, a lunch recess was here taken.)

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

25 MR. COPELAND: Thank you, Judge.

1 THE COURT: Yes, sir.

2 Q (By Mr. Copeland) Dr. Schmidt, we are back from
3 lunch. Are you ready to continue?

4 A Yes.

5 Q Okay. I want to jump in the meat of this case as it
6 relates to essentially one of the allegations by
7 Dr. Niblo. She is alleging that there are blunt
8 force traumas in her report. Are you familiar with
9 that area?

10 A Yes.

11 Q And regarding that, I want to analyze with you the
12 microscopic description that she has at page 5. See
13 the highlighted version here where it says "anus 7:00
14 to 12:00 in toto"?

15 A I do.

16 Q What does that mean? Tell the Court what that means.

17 A It means that she took the anus and she took a
18 section from 7:00 to 12:00. And she made multiple
19 sections of it and submitted that entire portion of
20 the rectum and made it into slides such as the one
21 that you see in these boxes. So the entire rectum
22 from 7:00 to 12:00 is -- was submitted for processing
23 so you could look at it with a microscope.

24 Q Does that mean that she -- do we know what depth she
25 took, like, cored out the rectum?

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

10 Q Just tell the Court what those are.

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

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

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

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

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

12 Q What page are you on?

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

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

21 A Under Roman Numeral II.

22 Q II. Okay.

23 A You'll see that section A.

24 Q Okay, section A.

25 A It has "contusion" --

1 Q "From the 12:00 position of the anus."

2 A Going into -- "the anus along the external surface
3 extending into the internal aspect of the anus."

4 Q Okay. And so as it relates to how far she went, does
5 that tell you anything clinically when you're looking
6 at it under a microscope? What's the distinction
7 about how far she went though?

8 A Well, I think the bigger issue is that the section of
9 the rectum that I got are completely normal. There
10 is no hemorrhage. There is no nothing. It is a
11 completely normal mucocutaneous rectal junction.
12 There is no hemorrhage. As I said before, there is
13 no nothing. And I think that if there's anything
14 that needs to be reconciled, is the discrepancy
15 between the assertion that there are multiple
16 penetrating blood impact injuries to the anus where
17 there is no histologic conservation of it. And if
18 you don't see it in the slides, it simply ain't
19 there.

20 Q Now, we're talking about from 7:00 -- when we -- let
21 me read this to you, Doctor, while I've got this page
22 out to make this clear. Now, she says the 12:00 of
23 the anus there's a purple-red contusion. So I want
24 to orient this photograph for a second.

25 Is this what you call the 12:00 area

1 (indicating)?

2 A That is what I presume she was calling the 12:00.

3 Q Okay. So if that's the 12:00, and she says at the
4 12:00 there's a purple-red contusion along the
5 external surface, do you think this is what she's
6 referring to right through here (indicating)?

7 A That purple-ish -- that are with purple discoloration
8 is what I think she's referring to. And she says
9 that goes into the internal aspect of the anus even
10 though there is no documentation of it.

11 Q Okay. What do you mean there is no documentation?
12 She's referring to it in her report?

13 A She's referring to it, but we don't see how -- there
14 is no picture of the extension of that area of
15 purpose discoloration into the internal aspect of the
16 anus, which is what I think she must be referring to.

17 Q Okay. Are you saying that there's not a photograph
18 that she's provided you that would show that
19 description?

20 A Correct. All we see is the external --

21 Q We don't see the inside?

22 A -- skin of the anus. That's correct.

23 Q Okay. And so she says from the 7:00 position, at
24 number two, of the anus. Would this be about 7:00 if
25 this is 12:00?

1 A Yes.

2 Q Okay. So is this where you've got this line drawn
3 right here, in this area right here (indicating)?

4 A Yes. I think that's what she refers to as the
5 laceration.

6 Q Okay. So she says it's a laceration measuring 1/8th
7 by 1/8th. Is it your understanding -- is this
8 probably what she's talking about right here
9 (indicating)?

10 A Yes. That is the injury that she describes as most
11 consistent with that description.

12 Q And again she says on number three from the 9:00
13 position extending to the 12:00. So she's especially
14 talking about these areas right through here, and
15 she's saying there's multiple lacerations all the way
16 through here; is that correct?

17 A Correct.

18 Q She says "multiple lacerations over an area of 1/8th"
19 -- or "1/2 inch by 1/8th inch." Is she saying that
20 -- by your interpretation, is she saying that the
21 area is only that length or is she talking about the
22 width?

23 A Well, I don't know because she asserts that there are
24 multiple lacerations. And frankly, I see only one.
25 And what I basically see is just the area of purple

1 discoloration in the external sphincter of the anus.

2 Q Okay. And let me back us up a little bit, Doctor,
3 for you. Now, you said you only see one. The
4 question had to do with a laceration. Do you see a
5 laceration or -- do you see a laceration?

6 A I think that's a fissure.

7 Q Okay. And we're talking about the 9:00 area?

8 A 7:00-ish.

9 Q 7:00. You're right. Okay, 7:00, 12:00. All right.
10 So the 7:00 area, you think that this is a fissure?
11 This is your handwriting here, correct?

12 A Correct.

13 Q So you're pointing to this area and you're saying
14 that's a fissure. Can you tell the Court what the
15 difference is between a fissure and a laceration?

16 A A fissure, which is very common in the anus and the
17 rectum, by the way, is just a separation of the
18 mucous membrane. And it can or often is not
19 associated with a tiny amount of hemorrhage in the
20 subcutaneous tissue that supports the mucous
21 membrane. And it's very common especially with kids
22 with constipation. Actually, anybody with
23 constipation.

24 Q And so what's the difference -- tell us what a
25 laceration is.

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

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

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

10 Q So it has a bruise contained within the opening?

11 A Correct.

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

16 A Correct.

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

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

22 Q So the capillaries leak; is that what occurs?

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

1 Q A laceration. So the distinction of what your -- is
2 it correct the distinction you're talking about here
3 on the anus where she's talking about at the 7:00, is
4 that she calls that a laceration, and you call it a
5 fissure --

6 A Correct.

7 Q -- and it has to do with blunt trauma versus -- what
8 kind of trauma?

9 A Blunt trauma, period.

10 Q Well, I'm asking the distinction between a fissure
11 and a laceration. What's the different kind of
12 trauma that's going on right here?

13 A Fissures are just responses to straining. The tissue
14 stretches as a result of the constipation.

15 Q So you're talking about like a stool passing through?

16 A Like a stool passing through, for example.

17 Q And if the child is constipated would it -- it puts
18 pressure on the site?

19 A It could put pressure there, and it could cause a
20 little bit of bleeding, whereas, a contusion is --
21 implies that you took an object and rammed it into
22 the rectal region.

23 Q So if it's like Dr. Niblo says, from 7:00 all the way
24 to 12:00 there's multiple lacerations, what would you
25 expect to find under microscope?

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

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

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

16 Q Okay. But --

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

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

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

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

1 A Correct.

2 Q A focal hemorrhage; is that correct?

3 A Correct.

4 Q And a rare hemosiderin laden macrophages, iron stain;
5 is that correct?

6 A Correct.

7 Q Now, explain to the Court what submucosal congestion
8 is.

9 A Submucosal congestion is what happens when the veins
10 in the rectum become congested and dilated. And in
11 older individuals -- actually, it can happen in
12 children too. But when those veins become really
13 distant, they become hemorrhoids.

14 Q Let me point this out, Doctor. Do you have an
15 opinion as to what this area right here would be?
16 What would you describe this darker -- why is it
17 dark?

18 A That purple discoloration is the submucosal
19 congestion.

20 Q Okay. So if I understand your testimony, you're
21 telling this Court that this dark area is where veins
22 have become engorged or been what? Slow to relax or
23 what?

24 A Distended.

25 Q Distended.

1 A The veins are distended. Veins distend easily when
2 they become engorged with fluid.

3 Q And what is it you testified that leads to
4 hemorrhoids?

5 A When those veins become distended and the tissue
6 around it becomes inflamed, then that -- it becomes
7 actually a varicose vein, and it becomes a
8 hemorrhoid. Hemorrhoids are varicose veins.

9 Q Now, back to the focal hemorrhage. What is she
10 saying when she says focal hemorrhage? Just based
11 off of your training and knowledge in the field, what
12 does focal hemorrhage mean to you?

13 A Focal hemorrhage is the term that we use when
14 hemorrhage is localized to a very particular area.
15 It's hemorrhage that is very discrete and is present
16 only once -- in this case I bet that it was present
17 in only one slide because there are no areas of focal
18 hemorrhage in the slides that I got. And that's
19 actually very common, especially, in areas that are
20 subject to some kind of trauma like the rectum. But
21 she doesn't specify which slide did she see the focal
22 hemorrhage either.

23 Q Would that be helpful to you to know which slide she
24 is trying to indicate?

25 A It would because at least it would give me a better

1 idea of what she was looking at. But we don't
2 know -- she -- since she doesn't have a key to what
3 sections she took from where, I don't know if slide
4 16 starts at the 7:00 position or if it starts at the
5 12:00 position and goes in the opposite direction.

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

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

11 THE COURT: Sustained.

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

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

18 MR. COPELAND: Okay.

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

24 A We do.

25 Q Is that common practice for you?

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

6 Q And that was not provided in this case?

7 A It was not.

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

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

19 THE COURT: Sustained.

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

24 A Correct.

25 Q 16 through 21, right?

1 A Right.

2 Q So looking at those slides, is there like a -- I'm
3 looking for the best word for it, but like a
4 topography when you're looking over the microscope
5 and you're having to move the slide around and find
6 and look for things, is that kind of the situation
7 you're in when you're trying to verify something from
8 someone?

9 A Well, that's the process you use to look at a slide.
10 You put it under the microscope. And you go from a
11 low magnification to a higher magnification, and you
12 move the slide around so that you can look at all of
13 the areas that are pertinent.

14 Q So in this particular case did you magnify, or
15 remagnify, lower the magnification, raise the
16 magnification?

17 A I use the same process I use when I look at slides in
18 every case.

19 Q Did you seek any second opinions, Doctor, in reaching
20 your conclusions here today as it relates to the
21 slides and what they say?

22 A I showed them to a couple of pathologists in my
23 office.

24 Q Did you tell the pathologists what you were looking
25 for? How did that go about?

1 A No. I just showed them the slides of the rectum and I
2 asked them what they thought.

3 Q And what came out of that conversation? What came
4 out of -- what were your conclusions as a result of
5 that? Do you feel verified?

6 A They said they didn't find anything either.

7 MR. JORDAN: Objection; move to strike.
8 That's hearsay.

9 THE COURT: It is hearsay. That's sustained.

10 Q (By Mr. Copeland) As a result of what you learned
11 from your -- were these colleagues?

12 A Yes.

13 Q As a result of what you learned from these
14 colleagues, did you feel like you were more solid or
15 what was the reason that you sought a second opinion?

16 A I just wanted to let them -- to have them look at
17 them and see what they thought.

18 Q Now, as it relates to focal hemorrhage, did you -- am
19 I understanding correctly that you are testifying
20 that you couldn't find the focal hemorrhage that
21 she's talking about?

22 A None of my slides contained focal hemorrhage.

23 Q Now, as it relates to her own description, Doctor, of
24 no focal hemorrhage, is it -- would you expect her
25 description to be different if you were looking at

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

3 What she describes as essentially a 7:00 to
4 12:00 pattern of lacerations, multiple lacerations,
5 would you expect to find a different description
6 other than something called a focal hemorrhage?

7 A Yes.

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

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

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

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

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

24 MR. JORDAN: Objection; leading.

25 THE COURT: Sustained.

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

4 MR. JORDAN: That's also leading.

5 THE COURT: Sustained.

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

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

14 Q Okay.

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

18 Q Okay.

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

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

1 A If there was a key I would say -- I would have said
2 there was focal hemorrhage in slide number 18 which
3 was to say something 10:00 position of the rectum.

4 Q Would that be your practice, that you would have --

5 A Yes, that's what we do. We describe the slides.
6 Since we have a key we would say there was focal
7 hemorrhage in slide number 18.

8 Q And you're following the guidelines when you make a
9 description that accurate; is that correct?

10 A You're following the guidelines, but for the key the
11 description is up to you.

12 Q Okay. Now, as it relates to this photograph, Doctor,
13 do you have an opinion as to -- when she describes
14 focal hemorrhage, do you have a conflict with that
15 statement at all?

16 A No. What I have a conflict with is the description
17 of contusion as her gross diagnosis and the
18 unresolved discrepancy between what she -- she is
19 describing a normal rectum and yet she's issuing a
20 gross diagnosis of -- and she says explicitly -- she
21 says, "Contusion of the 12:00 position of the anus
22 along the external surface laceration off the 7:00
23 position, multiple lacerations of the 9:00 position
24 to the 12:00 position of the anus."

25 All those, whether it be lacerations or

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

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

17 A No.

18 Q It does not?

19 A It does not.

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

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

1 Q Okay, I want to know what you believe as a
2 possibility.

3 A I think that she was trying -- a narrative that isn't
4 there. Trying to fit a square peg into a round hole.
5 And I've seen people do that. Sometimes you have
6 findings that don't match some horrendous story, but
7 you have to base your conclusions on your findings.
8 The story -- if the story doesn't match the findings,
9 there's only one of two possibilities: either you
10 made a mistake or the story is erroneous and does not
11 correspond to what actually happened or is greatly
12 exaggerated.

13 Q And, Doctor, in the course of your practice and the
14 training and what you do in Wayne County, Michigan,
15 have you had occasion where you've had to tell the
16 authorities hey, there's not an injury here like you
17 think. Stand down. Do not press this case.
18 Anything like that?

19 A Yes.

20 Q Could you tell the Court about those situations and
21 scenarios.

22 MR. JORDAN: Objection; relevance.

23 THE COURT: Sustained.

24 Q (By Mr. Copeland) Doctor, as you sit here today and
25 what you reviewed, do you have an opinion as to

1 whether or not this child was asphyxiated by
2 suffocation?

3 A He was not.

4 Q And why is that?

5 A Because the findings of the face are trivial. They
6 don't correspond to a child who -- with -- who has
7 managed to have teeth having been suffocated by --
8 especially, by pressing his face against a surface.

9 Q Doctor, I want to bring up a photo that you wanted to
10 bring up. Can you tell the Court what we're looking
11 at here?

12 A This is a picture of a gross dissection of the skin.
13 This is a pretty standard dissection you do in cases
14 of suspected child abuse.

15 Q Okay. But what's the location of this? What's the
16 significance?

17 A There are two injuries here. One is in the upper
18 cervical spine. You can see toward the right of the
19 picture. And that is a -- more of a strawberry
20 colored spot. And then in the right -- in the right
21 scapular region, in other words, around the region of
22 the shoulder blade, you'll see a more homogeneous
23 variegated lesion that is also larger than the one on
24 the cervical spine.

25 Q And how does Dr. Niblo describe those?

1 A She describes those as --

2 Q Would that be number four, number five on page 3?

3 A She describes as soft tissue hemorrhage of the right
4 neck at the base of the skull and the right upper
5 back. Pathologic diagnosis.

6 Q And so based on her description, what are you able to
7 determine based off of your own opinion?

8 A Well, it should be clear that those are two different
9 kinds of lesions. The lesion of the base of the neck
10 is actually a different color than the one in the
11 right scapular region. And the one in the right
12 scapular region also doesn't look exactly like a
13 bruise. It is not -- it is not all the way this dark
14 purple. The fact that it is dark purple versus the
15 brighter red region in the base of the neck, if they
16 were bruises -- and we don't actually know what they
17 are.

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

1 They appear -- they clearly appear at different
2 times.

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

5 A Yes.

6 Q What is that?

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

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

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

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

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

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

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

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

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

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

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

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

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

20 A That's on the upper cervical spine.

21 Q So just the neck area?

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

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

25 A Correct.

1 Q And go down to the right shoulder blade area. Is
2 that where she's describing?

3 A That would be over the shoulder blade more or less.

4 Q Now, in her dissecting has she had to cut any areas
5 that might have leaked and caused these bleeds?

6 A Well, I can't tell you -- I can't tell you exactly
7 what happened in the strawberry lesion up here in the
8 upper part of the neck. And she didn't take a
9 section, so we don't know what it is.

10 Q And she did not take --

11 A She did not take a section, so we don't know what it
12 is.

13 Q Okay. So let me ask you this, Doctor. As it relates
14 to your practice in Wayne County in Michigan -- and
15 by the way, pathology is recognized nationally, is it
16 not, as it relates to the --

17 A Yes, we have standard training and whatnot.

18 Q Okay. And so in that standard training would you --
19 would you have taken a section of this and had it for
20 microscopy?

21 A I would have being that those are the only two
22 lesions in the back and they look so different from
23 each other, that I would have liked to characterize
24 them better, and you can only do that by taking a
25 section.

1 Q And if you take a section what would be expect to be
2 able to see?

3 A Well, if the one in the base of the neck is a
4 dissection artifact, all you're going to see is
5 infiltration of blood around tissue. But the really
6 interesting one is the one in the right shoulder
7 blade because it is actually doesn't look like a
8 bruise as much as like maybe a vascular tumor with
9 clotted blood vessels. And that's what would give it
10 the variegated appearance that we see so clearly in
11 that picture.

12 Q Would that pathology -- if she would have of
13 dissected that and had that available for viewing on
14 a slide, would you be able to critique that and
15 determine if that's something that would be a tumor
16 or if it would be something that would be cancerous
17 or it would be something that was congenital and he
18 was born with it?

19 A Correct.

20 Q You could do all of that?

21 A You would be able to characterize it if you had taken
22 a section.

23 Q Okay. And did you find anywhere in her report where
24 she took a section of those areas?

25 A She did not.

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

3 MR. JORDAN: Objection; not relevant.

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

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

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

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

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

25 Q Would that have been your practice, though?

1 A Yes.

2 Q Not whether you would like to have. I want to know
3 would it have been your standard practice to do that?

4 A It is my practice if I see something that looks
5 different and I can't explain -- I can't explain what
6 it is just by gross appearance, I will take a
7 section.

8 Q Would that be considered due diligence on your part?

9 A I think so.

10 Q Yes. Doctor, as you set here today and after what
11 we've gone over today and what you reviewed, do you
12 have an opinion as to whether or not this child
13 suffered blunt impact injuries to the anus?

14 A No, I don't think this child suffered blunt impact
15 injuries.

16 Q Can you summarize for the Court the reasons?

17 A Because the microscopic slides don't support that.
18 And if there is no hemorrhage in the subcutaneous
19 tissue that is indicative of blunt trauma having
20 happened, then what you're looking at is something
21 else. I think this is a normal rectum. And I think
22 that the bluish discoloration that you see at the rim
23 of the rectum is due to the prominently venus
24 congestion that is present in the slides. And that
25 actually it is fairly prominent venus congestion.

1 Q And is venus congestion, is that something that
2 occurs normal without the implication of blunt trauma
3 force?

4 A Yes.

5 Q And is it something that occurs normal with an
6 individual who has confirmed golf ball size
7 constipation?

8 A I think you're much more likely to find it in kids
9 who are constipated like that, yes.

10 Q Now, Doctor, in your situation even for preparation
11 for today you got some second opinions to have
12 someone looks at slides. Do you know if Dr. Niblo
13 had anyone look at slides? Did she indicate that she
14 had anyone look at slides other than herself?

15 MR. JORDAN: Objection; calls for
16 speculation.

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

19 A It's not in the report.

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

22 THE COURT: Mr. Jordan?

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

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

3 (WHEREUPON, a brief recess was here taken.)

4 THE COURT: We are back on the record after a
5 short recess. The attorneys are present.

6 Dr. Schmidt is on the witness and
7 cross-examination by Mr. Jordan.

8 MR. JORDAN: Thank you, Your Honor.

9 THE COURT: Yes, sir.

10 CROSS-EXAMINATION

11 BY MR. JORDAN:

12 Q Good afternoon, Dr. Schmidt.

13 A Good afternoon.

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

16 A I don't know.

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

19 A There was.

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

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

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

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

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

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

13 A Correct.

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

18 A No.

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

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

24 THE COURT: Overruled. You can answer.

25 THE WITNESS: I'm sorry, what was the

1 question again?

2 Q (By Mr. Jordan) Do you think pathologists do that
3 here in the state of Oklahoma, jump on and try to say
4 that something is murder if they in their examination
5 and in their training don't believe that it is
6 scientifically warranted?

7 A No, I don't think so.

8 Q You don't think Dr. Niblo is doing that here, you
9 just think she's wrong; fair?

10 MR. COPELAND: Objection, Your Honor, He's
11 asking him to get inside the mind of Dr. Niblo.

12 MR. JORDAN: No.

13 THE COURT: Up here. No, you don't have to
14 come. Just direct it at me, not one another.
15 Overruled. Why don't you ask the question again.

16 MR. JORDAN: Yes, sir.

17 Q (By Mr. Jordan) You don't think Dr. Niblo is trying
18 to do that in this case, she's just trying to give
19 you her medical opinion for which you believe she's
20 wrong; true?

21 MR. COPELAND: Objection, Your Honor. Again,
22 that's speculation requiring him to get in the
23 mind of Dr. Niblo.

24 THE COURT: You want to give a foundation for
25 that?

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

7 THE COURT: Overruled.

8 A She's wrong.

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

11 A You mean like if there is an evil intent?

12 Q Yes.

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

14 Q Okay. And pathologists can be wrong, true?

15 A Sure.

16 Q Have you ever been wrong in your career?

17 A Never. I'm kidding. (Laughter).

18 Q Uh-huh. You're under oath.

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

20 Q Yeah. I understand. It can happen?

21 A Right.

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

1 things actually look at because you can only do so
2 from pictures?

3 A Correct. And I think that's generally true.

4 Q Okay. And I'm not taking anything away from the work
5 that you've done in this case at all. I'm just
6 saying she may have seen things at the morgue in
7 realtime that you simply can't discern from the
8 photographs because that's all you've got to look at
9 besides the slides and her work, true?

10 A That's true, but it's also true that you tend to
11 photograph what it is that you saw.

12 Q Okay. But we know you couldn't see, for example, on
13 some of the anal injuries the internal aspect because
14 she didn't take a picture of it?

15 A Correct.

16 Q So that is an issue. She would have been able to see
17 that in realtime at the scene, but if she didn't
18 photograph it, you as a reviewing M.E. cannot see
19 what she saw?

20 A Except that there are slides.

21 Q Except for the slides.

22 A Which don't show anything, so. So I can tell you
23 with certainty that there were no internal injuries
24 because there are no such injuries on the slides.

25 Q You know I've heard about these blocks, because you

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

4 A Correct.

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

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

16 Q In all of the slides throughout.

17 A Right.

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

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

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

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

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

13 Q None?

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

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

18 A Correct.

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

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

1 succumb to something that had been previously
2 undiagnosed.

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

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

13 Q Okay.

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

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

21 A Correct.

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

25 A No, not necessarily.

1 Q Okay. Would you expect there to be a history of
2 rhythm abnormalities in the child's parents or
3 grandparents?

4 A There may be. Some -- some abnormalities like Long
5 QT syndrome, which is probably one of the more common
6 ones, does tend to have a family history. But
7 sometimes some kids are the first -- first in the
8 family to gain the mutation. And there's actually
9 over 250 mutations associated with it.

10 Q Okay. But again, we're just speculating here, true?

11 A Right. I don't think anybody knows why this child
12 dies.

13 Q Well, let me go back to the frenulum a little bit.
14 You said the frenulum was intact.

15 A Right.

16 Q You said it's the most important aspect to child
17 abuse it being intact?

18 A Correct.

19 Q That that was a big factor for you?

20 A Right.

21 Q Is that because you believe it takes a large degree
22 of force to smother a 14-month-old child?

23 A No. The frenulum can get injured without very much
24 force. And it's very common in kids to see the
25 frenulum peaking or rising in kids who are slapped

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

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

13 A Yes.

14 Q All right. I mean, in all fairness, you don't know
15 how much force it would have taken to smother a
16 14-month-old child, true?

17 A Correct.

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

21 A True.

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

1 circumstance taken at the morgue.

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

8 A That's correct.

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

11 A Right.

12 Q Do you remember that?

13 A Right.

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

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

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

19 A Correct.

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

23 A That's correct.

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

1 died, true?

2 A Right.

3 Q Okay. And the other thing is that if the child was
4 killed and then put into the Pack 'n Play and there
5 was a wet area, that could also be from purge after
6 death, true?

7 A That's possible, yes.

8 Q In terms of the injuries or, let's say, findings with
9 regard to the anal area of the child, okay, if in a
10 child that has whether it be a fissure, whether it be
11 a laceration, whether it an abnormality, if we just
12 call it, I don't want to pin you down to anything.
13 If it is from constipation, can we agree that you are
14 not going to find external injuries in the anal area
15 of the child?

16 A Just the anal fissures.

17 Q Just the fissure.

18 A Right.

19 Q Can I ask you, Doctor -- and I think you told me
20 everything -- or told counsel everything that you've
21 been provided. It was the autopsy reports, some
22 scene photos, the autopsy photos, and the slides?

23 A Correct.

24 Q Okay. Is there any other thing that you have been
25 provided?

1 A I think -- I think what I have is pretty much
2 everything that I was given.

3 Q Have you been provided any police reports?

4 A No.

5 Q Have you been provided any documented findings from
6 the forensic examination of the descendant's brother?

7 A No.

8 Q Have you been provided any information about any of
9 those items from counsel?

10 A No.

11 Q Have you been provided any statements from either
12 Lisa or William Woolley?

13 A No.

14 Q Have you asked for any of those things?

15 A No.

16 Q And I'm not saying you should have, I'm just asking.

17 A No.

18 Q Okay. Now, well -- strike that. Is there anything
19 that you haven't been provided that you would like to
20 be provided in order to continue your evaluation of
21 this case?

22 A No. I think that the pathologic information that I
23 saw, especially, since I did have the rekits of the
24 slides, which I think are the most important piece of
25 information, are sufficient.

1 Q Okay. All right. And now I have to ask you the --
2 how much have you been paid for this?

3 A So far, nothing.

4 Q Nothing.

5 A Right.

6 Q You're doing it for free?

7 A No. I'm going to submit a bill.

8 Q I was going to say. How much are you charging for
9 this?

10 A I charge \$400 an hour.

11 Q Okay. Can you tell me how many hours you have in
12 this case?

13 A So far I have -- not including today, I probably have
14 about eight hours in the case.

15 Q So that's about 3,200. And then will you -- you'll
16 charge for the time you've been in court today?

17 A Right.

18 Q Okay. Is that also at \$400 an hour?

19 A Yes. Well, I charge for -- if I travel out of town,
20 I just charge for the full day.

21 Q All right. So today will be a full day. Are you
22 flying back tonight?

23 A No, tomorrow.

24 Q Tomorrow. And you'll charge for the flight back
25 tomorrow?

1 A No. The flight will be paid for, but tomorrow is
2 Saturday. I won't bill for Saturday.

3 Q You're more generous than some in the civil field.
4 All right. So about \$3,200 plus today, et cetera.
5 And I wanted to ask you: How many times have you
6 testified on behalf of a defendant who was charged
7 with a crime in the last four years?

8 A Three.

9 Q Three. And how were you contacted in this case?

10 A In this case I had coauthored an article with one of
11 the relatives of the defendants. And she had come to
12 my office to collect specimens and I was familiar
13 with her and she put the attorneys in contact with
14 me.

15 Q What's the name of the relative?

16 A Candice Savonen.

17 Q Could you spell the last name, please?

18 A S-a-v-o-n-e-n.

19 Q And you said you had authored an article with her?

20 A Yes.

21 Q What article was that?

22 A It was an article on the sophisticated analysis of drug
23 use patterns in the metropolitan Detroit area. And
24 there's actually another one on changes in gene
25 expression that happened after chronic drug use.

1 Actually, they're in my CV.

2 Q Well, they didn't give me your CV, so sorry, I have
3 to ask.

4 A Okay.

5 Q Have you authored any articles that you believe are
6 relevant to this particular case?

7 A Well, I have a lot of experience in child abuse, and
8 I have contributed material to book chapters that
9 were put together by child abuse pediatricians. And
10 when you get a copy of my CV, you will see that I've
11 written stuff in books like a Diagnostic Guide to
12 Child Abuse and Negligent edited by Giartino. That's
13 spelled G-i-a-r-t-i-n-o.

14 I contributed a chapter on fatal child abuse to
15 an Atlas of also Child Abuse and Negligent, as well
16 as a compendium of case stories. And I've published
17 case report on a child of a particular liver injury
18 who actually suffered blunt trauma to the abdomen.
19 And I've written material on abusive head trauma.

20 Q Okay. Have you relied on any particular medical
21 literature to formulate your opinions in this case?

22 A No, not today.

23 Q Is there any specific medical literature that you can
24 point me to that you believe is authoritative on some
25 of the subject matter that you testified about today?

1 A Yes.

2 Q Especially, with regard to -- let's try to -- with
3 regard to your testimony about the analysis of the
4 anal area of the child, is there anything in
5 particular that you can point me to that could be
6 instructive?

7 MR. COPELAND: Your Honor, I'm going to
8 object as outside the scope of direct examination.

9 THE COURT: Overruled.

10 A I think that to look at the specific issues with
11 regard to the anus and rectum, a book on normal
12 anatomy, for example, there's a book titled Histology
13 For Pathologists, which is on its third or fourth
14 edition, could help you look at the normal anatomy of
15 the rectum. And you can actually compare the slides
16 to what you see there.

17 But also you could look at books like Spitz and
18 Fishers Medical Legal Investigation of Death. In
19 fact, I brought a copy with me today in case you want
20 to look at it, as well as another book on forensic --
21 General Forensic Pathology written by Dolinak Matshes
22 and Lew, and just so you can see for yourself what
23 the definition of a contusion is. And they have
24 actual pictures of it.

25 And I think the other thing that you might try

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

4 Q Okay.

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

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

12 A If the child is alive, yes.

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

15 A You're welcome.

16 THE COURT: Mr. Smallwood?

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

19 THE COURT: You are.

20 CROSS-EXAMINATION

21 BY MR. SMALLWOOD:

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

25 A Yes.

1 Q -- with respect to formulating some sort of opinion
2 as to cause of death?

3 A Sure. There is --

4 Q Why?

5 A -- utero drug exposures that predispose a child to
6 sudden death.

7 Q Based upon your training and experience, everything
8 that you have looked at and examined in this case, do
9 you find that there is any evidence for a pathologist
10 to reach a conclusion that this child died from
11 homicide?

12 A No.

13 Q Based upon your training and experience and
14 everything that you've looked at in this case, do you
15 find that there is any evidence to reach a conclusion
16 that this child was being sexually abused immediately
17 before or at the time of death?

18 A No.

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

20 THE COURT: Mr. Copeland?

21 MR. COPELAND: Just briefly.

22 REDI RECT EXAMINATION

23 BY MR. COPELAND:

24 Q Doctor, you were asked the question by Mr. Jordan
25 about whether or not -- what things you have been

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

4 A Right.

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

8 A No.

9 MR. COPELAND: That's all I have.

10 THE COURT: Nothing Mr. Jordan?

11 MR. JORDAN: Nothing at all.

12 THE COURT: Anything else, Mr. Smallwood?

13 MR. SMALLWOOD: No, sir.

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

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

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

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

1 THE COURT: Are you offering that as a --

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

5 THE COURT: Any objection?

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

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

18 MR. SMALLWOOD: Thank you.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 Sinclair, the nurse, testified that Clayton
12 Woolley didn't appear coached in any way. That
13 when cross-examined she admitted she followed no
14 criteria for reaching such conclusion and that it
15 is clear as she just realized on what seems
16 fitting. She testified to that on line -- page
17 157, line 1 through 14.

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

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

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

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

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

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

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

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

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

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

1 that's why it's relevant.

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

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

12 MR. COPELAND: Yes, sir.

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

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

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

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

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

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

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

12 MR. SMALLWOOD: And we rest as well.

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

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

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

25 MR. COPELAND: Correct, correct, because I

1 want to introduce those.

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

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

10 MR. JORDAN: But I still want my copy.

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

13 MR. JORDAN: Give me another copy, okay.

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

16 MR. JORDAN: No.

17 MR. COPELAND: No.

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

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

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

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

13 THE COURT: Mr. Jordan?

14 MR. JORDAN: Absolutely, Judge. No problem
15 with that. And again if it's -- are you needing
16 25 each or you just want to make it a total 25 and
17 have this split that? I have no problem with
18 that. I'm not trying to --

19 MR. SMALLWOOD: That's fine.

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

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

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

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

5 MR. JORDAN: Yes.

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

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

14 THE COURT: Mr. Copeland, is that correct?

15 MR. COPELAND: Yes, Your Honor.

16 THE COURT: Mr. Jordan?

17 MR. JORDAN: Yes, sir.

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

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

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

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

5 MR. COPELAND: Yes, sir.

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

13 MR. COPELAND: Nothing.

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

16 (WHEREUPON, a brief recess was here taken.)

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

20 Okay. Mr. Copeland?

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

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

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

6 MR. JORDAN: It is, Your Honor.

7 THE COURT: Okay. Who wants to go first?

8 MR. COPELAND: I will.

9 THE COURT: Mr. Copeland, okay.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 But, Your Honor, it still has to meet the
20 test of more likely than not, 50 percent -- over
21 50 percent that these people were accused or
22 released under the language of the State versus
23 the Heath case in 2011, Your Honor, that says --
24 has been defined to be reasonable grounds.

25 Is it reasonable when you've got no physical

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

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

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

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

3 There are so many false allegations that have
4 been going on across this nation dealing with the
5 fact that individuals are brought into court
6 having to spend their life savings. These folks
7 had their house paid off. They had their house
8 paid off. Who does that by the age of 56, 54 or
9 59? Not many. That's because they're good
10 citizens. And as a good citizen they stepped up
11 to the bar and take responsibility for their
12 grandchild because it's family. And they put the
13 skids on their own daughter having to have -- have
14 rules and going to rehab. And the actual father
15 of that child can't see that child on certain
16 circumstances.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 Her answer: That is just my opinion.

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

6 Answer, page 5: No, sir.

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

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

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

24 MR. SMALLWOOD: Your Honor, I'll be brief.

25 This for the record so that's clear. As this

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 MR. SMALLWOOD: Theories.

8 THE COURT: -- crimes.

9 MR. SMALLWOOD: Two separate theories.

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

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

17 MR. COPELAND: Yes.

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

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

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

25 MR. JORDAN: There's a specific jury

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

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

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

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

25 You see what I'm saying?

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

3 MR. JORDAN: Other than the autopsy. Yeah.

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

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

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

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

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

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

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

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

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

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

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

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

14 Quoting, that's at paragraph 12 of the
15 Bradley and Brodie decisions, also citing Title
16 22, Oklahoma statutes Sections 1089.5, also
17 Vincent and Berry.

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

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

1 count one and count two.

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

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

16 THE COURT: Mr. Jordan?

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

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

22 MR. JORDAN: Of course.

23 MR. SMALLWOOD: We appreciate that.

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

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

5 MR. SMALLWOOD: Passports have been
6 surrendered.

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

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

13 THE COURT: Of course. Of course.

14 MR. COPELAND: Thank you.

15 THE COURT: Anything else, Mr. Copeland?

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

18 THE COURT: Yes.

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

22 THE COURT: I don't know.

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

1 has actually happened.

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

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

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

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

11 MR. COPELAND: Correct.

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

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

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

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

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

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

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

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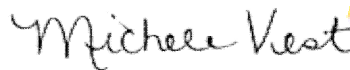
1 CERTIFICATE

2 STATE OF OKLAHOMA)
) SS
3 COUNTY OF TULSA)
4

5 I, Michele Vest, Certified Shorthand Reporter in
6 and for the State of Oklahoma, do hereby certify that on the
7 29th day of March, 2019, at the Wagoner County Courthouse,
8 307 E. Cherokee Street, Wagoner, Oklahoma, that the above
9 proceedings taken was reduced by me in stenograph and
10 thereafter transcribed under my supervision, and is fully
11 and accurately set forth in the preceding 180 pages.

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

15 WITNESS my hand this 9th day of April,
16 2019.

17
18 
19



20 Michele Vest, CSR #1739
21
22
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Original Deposition Cost: \$630.00

25 Paid by the Defendants for Ms. Lisa K. Woolley.

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