

1 jury, I think we're going to take about a 15-minute  
2 break so you can stretch your legs and move around a  
3 little bit. Don't discuss the case amongst  
4 yourselves or anybody else. And we'll reconvene in  
5 15 minutes.

6 Please retire the jury.

7 *(Jury leaves courtroom)*

8 *THE COURT:* All right. We'll be in  
9 recess until 3:30.

10 *(Recess taken)*

11 *THE COURT:* Okay. Let's bring the  
12 jury in.

13 *(Jury enters courtroom)*

14 *THE COURT:* Be seated, please.

15 Please call your next witness.

16 *MS. ONCKEN:* State calls Dr. Phatak.

17 *THE COURT:* Raise your right hand for  
18 me, please, sir.

19 *(Witness sworn)*

20 *THE COURT:* Have a seat.

21 DARSHAN PHATAK,

22 having been first duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 Q. *(BY MS. ONCKEN)* Good afternoon.

25 A. Good afternoon.

1           Q.     Can you please introduce yourself to the  
2 jury?

3           A.     Yes. My name is Darshan R. Phatak. I'm an  
4 assistant medical examiner for Harris County, Texas.

5           Q.     And can you spell for the record your first  
6 and last name, please?

7           A.     Sure. the first name is D-A-R-S-H-A-N,  
8 middled initial R, last name P-H-A-T-A-K.

9           Q.     Thank you. And I want to talk to you about  
10 your review in Medical Legal Case Number 100997. Are  
11 you familiar with that case?

12          A.     Yes.

13          Q.     And I say "a review." Did you yourself  
14 perform that autopsy?

15          A.     No.

16          Q.     Okay. And on whom was that autopsy  
17 performed?

18          A.     The name of the decedent is Kamron Kelly.

19          Q.     Which doctor performed the autopsy of  
20 Kamron Kelly?

21          A.     Marissa L. Feeney.

22          Q.     Okay. Did Marissa Feeney work for your  
23 office?

24          A.     Yes.

25          Q.     Okay. And I'm way jumping ahead. What

1 office do you work at?

2 A. It's called the "Harris County Institute of  
3 Forensic Sciences."

4 Q. Was it formerly called the "Medical  
5 Examiner's Office"?

6 A. Correct.

7 Q. Okay. And what is your job there?

8 A. I'm an assistant medical examiner, a  
9 forensic pathologist.

10 Q. Is that also what Dr. Feeney was?

11 A. Yes.

12 Q. Does she still work at your office?

13 A. No.

14 Q. And is she still living in the United  
15 States?

16 A. No.

17 Q. Where does she live now?

18 A. New Zealand.

19 Q. Okay. So, because of that, is it fair to  
20 say that Dr. Feeney is unavailable to testify for  
21 this jury today?

22 A. Correct.

23 Q. Okay. For that reason, did I request that  
24 someone from your office review this case?

25 A. That's right.

1 Q. Okay. Let's talk about you then. Are  
2 you -- you are a doctor, correct?

3 A. Correct.

4 Q. Okay. And what kind of specialty have you  
5 obtained?

6 A. I did a residency in anatomic and clinical  
7 pathology followed by a fellowship in forensic  
8 pathology. I'm board certified in anatomic,  
9 clinical, and forensic pathology. And I have a full  
10 license to practice medicine in the State of Texas.

11 Q. What is forensic pathology?

12 A. Forensic pathology is the branch of  
13 medicine that deals with the cause of human death.

14 Q. Okay. And going back a little bit, where  
15 did you attend -- I almost said "law school" --  
16 medical school?

17 A. I went to the New Jersey Medical School and  
18 graduated in the year 2000.

19 Q. Okay. I remember we talked about this  
20 before when we met. A little bit of an accent, not  
21 too much, though. And how long have you been here in  
22 Houston or Texas?

23 A. It will be six years in July.

24 Q. Okay. And did you work at another medical  
25 examiner or coroner's office before this one, or is

1 Harris County your first?

2 A. My fellowship was at Dallas County for one  
3 year.

4 Q. Okay. At the Dallas County Medical  
5 Examiner's?

6 A. Correct.

7 Q. Okay. Let's turn your attention then back  
8 to the case involving the autopsy of Kamron Kelly.  
9 Now, I'd asked you about something that I called a  
10 "medical legal number." What does that mean to you?

11 A. The medical legal number is a unique number  
12 that is issued to every decedent that comes into our  
13 office for an examination. It will stay with that  
14 person and their report perpetually.

15 Q. And is that case unique to that decedent?

16 A. Yes.

17 Q. Okay. Do you mark the autopsy report and  
18 try to mark any photographs that are taken during the  
19 autopsy with that medical legal number?

20 A. Yes.

21 Q. Specifically we'll look at State's Exhibit  
22 Number 3, coming on right now. And off to the left  
23 there's a little -- I'll call it a little ruler. And  
24 it has a an M.L. number. Do you try to document all  
25 the photographs -- or attempt to -- with a medical

1 legal number on it?

2 A. Yes.

3 Q. Okay. Now, we see a couple of tags also  
4 here in this photograph of infant Kamron Kelly. Are  
5 those tags yours or the hospital's or both?

6 A. There's a combination of tags here. The  
7 scale is from our office. The band around the leg is  
8 issued by our office. And this tag is from the  
9 hospital. *(Indicating.)*

10 Q. Now, I see you pointing, but I'm not seeing  
11 anything happening. That could be our computer.

12 A. Okay.

13 Q. It probably is.

14 A. *(Indicating.)*

15 Q. Okay. Now, when you reviewed this case in  
16 preparation to testify, as you are today, what did  
17 you review? What kinds of things?

18 A. I reviewed the autopsy report and the  
19 pertinent photographs.

20 Q. Okay. And did the file also include  
21 records of the birth of this infant, Kamron Kelly?

22 A. Correct. There were hospital records,  
23 also.

24 Q. And for what purpose would you review  
25 something like that?

1           A.       Whenever a decedent is hospitalized for a  
2           protracted period of time, we always try to get the  
3           medical records in order to piece together, one, what  
4           happened during their hospitalization, two, any  
5           injuries or diseases that may have been diagnosed  
6           while they were hospitalized.

7           Q.       Okay.  And are you referring to the  
8           hospitalization prior to his death at Texas  
9           Children's Hospital?

10          A.       Yes.

11          Q.       Okay.  So, you're trying to just gather as  
12          much evidence as you can?

13          A.       Correct.

14          Q.       So, then did the Texas Children's Hospital  
15          records also come in or were they not quite ready yet  
16          at the time of autopsy, if you know?

17          A.       I don't know.

18          Q.       Okay.  Fair enough.  I want to go through  
19          and just hit some kind of big topics, as the jury's  
20          already seen something else from Dr. Feeney.  I want  
21          to ask you about your pathologic diagnoses.  And what  
22          does that mean in laymen's terms?

23          A.       Pathologic diagnoses are the findings that  
24          we make during the autopsy that are related to  
25          natural disease and, if applicable, any trauma or

1 injuries that might be sustained by a person that  
2 lead to their death.

3 Q. And after reviewing everything, the  
4 autopsy, all the photographs, the medical records,  
5 what was the cause of Kamron Kelly's death?

6 A. The cause of Kamron Kelly's death was  
7 complications of blunt trauma of head with skull  
8 fractures, subdural hemorrhage, and brain injury.

9 Q. Okay. Now, let's start with blunt trauma  
10 of the head. Is blunt force synonymous with blunt  
11 trauma?

12 A. Yes.

13 Q. Okay. And it seems deceptively simple; but  
14 when you say "blunt trauma" or "blunt force," what  
15 does that mean to you?

16 A. That means that either the head impacted  
17 some object or some object impacted the head that was  
18 not sharp such as a blade.

19 Q. Okay. If there had been a sharp object,  
20 what kind of different findings would you expect to  
21 have seen?

22 A. We'd see stab wounds and incised wounds,  
23 and we call those "sharp force injuries."

24 Q. Okay. Again, it seems simple; but what  
25 makes you understand after -- you know, looking at



1 this and Dr. Feeney being able to do the examination,  
2 what makes you think that something blunt struck the  
3 child or vice versa?

4 A. We have multiple contusions and skull  
5 fractures in addition to rib fractures.

6 Q. Okay. And these findings, are these normal  
7 findings that would happen in a situation where there  
8 was not some violence or abuse?

9 A. No.

10 Q. Okay. Was there any kind of birth defect  
11 or anything, a congenital problem with this baby,  
12 that in any way caused his death?

13 A. No.

14 Q. Do you agree with the findings that  
15 Dr. Feeney made about the cause of death, blunt  
16 trauma of the head?

17 A. Yes.

18 Q. And would you consider this a homicide  
19 case?

20 A. Yes.

21 Q. Okay. And I don't use that in a legal  
22 term, but that's a medical term, correct?

23 A. It's a medical-legal term, yes.

24 Q. Okay. Is this -- again based on your  
25 training and what you reviewed, is this merely a

1 shaking situation, shaken baby syndrome as sometimes  
2 people call it?

3 A. I can't say whether this is a case of  
4 shaken baby because shaking is a mechanistic term.  
5 What I can say is that the child's head either struck  
6 something or something struck this child's head.

7 Q. And let me ask it hopefully in a better  
8 way. Are you saying that this is more than shaking  
9 alone?

10 A. Correct. Shaking by itself will not cause  
11 skull fractures.

12 Q. Okay. So, is it fair to say that there  
13 could have been shaking in addition to the blunt  
14 trauma?

15 A. That is possible.

16 Q. Okay. In this case is it correct that the  
17 baby's organs were donated?

18 A. Correct.

19 Q. What does that indicate about the health of  
20 the child?

21 A. That indicates that the child is in good  
22 health. Nobody is going to transplant diseased  
23 organs. We can infer, given that this baby's organs  
24 were donated, that they were healthy.

25 Q. Do you have an opinion based on -- well,

1 let's talk -- I'm sorry. Let's go back and talk  
2 about the skull fractures. How many skull fractures  
3 did you observe?

4 A. There are two skull fractures.

5 Q. Two or?

6 A. Sorry. Three.

7 Q. Okay. And can you tell the jury where  
8 those skull fractures are?

9 A. There are two fractures of the left  
10 parietal bone and one fracture of the right occipital  
11 bone.

12 Q. Okay. And I believe we have a photograph,  
13 State's Exhibit Number 27. What are we looking at in  
14 27?

15 A. This is a portion of the skull that was  
16 removed for anthropological processing, and here we  
17 can see the fracture line. *(Indicating.)*

18 Q. Okay. And do you see both? Is one bigger  
19 and another one smaller?

20 A. Correct. One is very faint. I tried to  
21 mark it here. And here is the big one.

22 *(Indicating.)*

23 Q. Okay. So, the two -- that was going to be  
24 my next question. We actually have two at the left  
25 parietal bone, correct?

1 A. Correct.

2 Q. Okay. And point again to your head where  
3 that bone is on your own.

4 A. *(Indicating.)*

5 Q. All right. So, kind of above the temple on  
6 the left side of the head?

7 A. Correct.

8 Q. Okay. And then the right occipital bone,  
9 there was also a fracture there?

10 A. Correct.

11 Q. What does that tell you, if anything, about  
12 how many times the child was struck against an object  
13 or an object against the child?

14 A. There had to be at least two to three  
15 impacts of this child's head.

16 Q. Okay. And when you say "two to three," how  
17 do you know that?

18 A. Since the fractures are in different  
19 places, there had to be at least one impact to the  
20 back of the head and then at least one impact to the  
21 side of the head. *(Indicating.)*

22 Q. Okay. Now, did you also determine that on  
23 Kamron's left shoulder -- we can see in  
24 State's Exhibit Number 20, is there a contusion or a  
25 bruise on his left shoulder?

1 A. Yes. (*Indicating.*)

2 Q. Okay.

3 A. Sorry.

4 Q. It is not working well today. Or the whole  
5 week.

6 A. Yes. (*Indicating.*)

7 Q. There we go. The left shoulder bruise in  
8 conjunction with the two skull fractures on the left  
9 of his head, does that give you any idea about that  
10 he might have been struck on the left side of his  
11 body?

12 A. It correlates with a story of that nature.

13 Q. Okay. And I guess what you were saying  
14 earlier is certainly on the left side and on the  
15 right to the back, at least one strike to each area?

16 A. Correct.

17 Q. Okay. Can you explain to the jury what a  
18 linear fall is?

19 A. A linear fall is a fall straight down.

20 Q. Okay. Would that be -- let's say that  
21 someone is holding an infant. Okay? They're holding  
22 an infant in their arms. Okay. Does a linear fall  
23 include just the baby falling straight down?

24 A. Yes.

25 Q. What about if the child dropped head first?

1 Is that also a linear fall?

2 A. I believe so. Yes.

3 Q. These injuries to Kamron, are they  
4 consistent with a linear fall?

5 A. No.

6 Q. Why not?

7 A. Because you have two separate areas of the  
8 skull which are in opposition to each other. A  
9 linear fall can maybe account for one fracture to the  
10 back of the head or one fracture to the left side of  
11 the head, but one single fall can't explain both.

12 Q. Can you tell the jury about sort of the  
13 timing of how quickly from the impact to showing  
14 signs of illness or being unwell, how fast does that  
15 happen?

16 A. The brain responds to skull injuries  
17 rapidly.

18 Q. Okay. And does the child become  
19 unconscious?

20 A. Unconsciousness will occur. Yes.

21 Q. Okay. And I believe that you had told me  
22 previously that that would happen immediately?

23 A. Correct.

24 Q. That is correct?

25 A. Yes.

1 Q. And how would Kamron have appeared to  
2 someone observing?

3 A. He would be limp and unresponsive.

4 Q. Would an infant be able to continue crying  
5 if he was unconscious and nonresponsive?

6 A. No. Commonly what people interpret as  
7 crying is seizure activity.

8 Q. Is it possible for vomit or some kind of  
9 foam to come out of someone's mouth when receiving  
10 that kind of brain injury?

11 A. Yes.

12 Q. You talked about a seizure. Would it be  
13 possible for someone's eyes to roll back?

14 A. Yes.

15 Q. I want to just look at a few photographs  
16 specifically that deal with Kamron's head. State's  
17 Exhibit Number 10. I know the photos aren't great,  
18 but can you see any bruises or contusions in State's  
19 10?

20 A. Yes. There are two contusions. I'll draw  
21 little horseshoes around them.

22 Q. Okay. All right.

23 A. *(Indicating.)*

24 Q. Moving forward to State's 11. Is that a  
25 closeup of the same area, or are we looking at

1 different ones, if you know?

2 A. This is a closeup of the same area.

3 Whenever we have injuries of the head, we shave the  
4 scalp hair in order to make them clearer. So, we can  
5 see the same two contusions here. *(Indicating.)*

6 And you can see the corner of his ear  
7 to orient you --

8 Q. Okay.

9 A. -- at the bottom right.

10 Q. For the record, this is State's Exhibit  
11 Number 11. And can you point, just so the jury can  
12 see, where the little tip of his ear is?

13 A. Yes. *(Indicating.)*

14 Q. Okay. So, the top of his head is at the  
15 top of the photograph?

16 A. Correct.

17 Q. State's Exhibit Number 12. And we'll clear  
18 that for you. Can we see any bruises in State's 12?

19 A. Correct. We see the same two bruises here.  
20 This photo is taken slightly towards the front of his  
21 face, and you can now see the corner of his eye.

22 *(Indicating.)*

23 Q. And which side of his head are we looking  
24 at?

25 A. This would be the left side of his head.



1 Q. Okay. And then moving on to State's 13.  
2 Again, the same area. Is this the left side of his  
3 head?

4 A. Correct.

5 Q. Okay. Fourteen, still the same area?

6 A. (Nods head.)

7 Q. Fifteen, can we see any new bruises to kind  
8 of his forehead or his brow or head area?

9 A. (Indicating.)

10 There's a contusion there.

11 Q. Okay. And, so, is it fair to say that this  
12 is a new bruise, different than what we saw in the  
13 past few photographs?

14 A. Correct. What we're looking at now is the  
15 left parietal region. This is the area right above  
16 the fracture that we've discussed.

17 Q. Okay. So, is it correct that the bruise  
18 that the jury is looking at now corresponds with  
19 where the fractures was or the two fractures on the  
20 left side of his head?

21 A. Correct.

22 Q. Okay. Now, these other -- the other  
23 bruises that we looked at, State's sort of 10 through  
24 14, was there anything that corresponded to those,  
25 either through a fracture or through some bruising

1 that you saw underneath the skin? Am I making any  
2 sense?

3 A. Well, there was subdural hemorrhage  
4 surrounding the brain. That's within the skull.

5 Q. Okay. So, can you -- tell us a little bit  
6 more about that.

7 A. So, when you have a skull fracture, there's  
8 a dural membrane underneath the skull. It's between  
9 the skull and the brain. If that dura, if that  
10 membrane is torn directly by the fracture over it or  
11 if the brain is agitated in such a way that the  
12 connection of the dural vein between the dural  
13 membrane and the underlying brain are sheared, you'll  
14 have what's called a "subdural hemorrhage."

15 Q. Okay. And, so, is it correct that there  
16 was hemorrhage, subdural hemorrhage, in the same area  
17 where we can see the outside external bruises?

18 A. Correct. There was diffuse subdural  
19 hemorrhage predominantly over the right side and thin  
20 on the left.

21 Q. Okay. And in State's Exhibit 15, are we  
22 still on the left side or -- I'm trying to orient  
23 myself.

24 A. Correct. This is still the left side of  
25 his head. Towards this direction would be his face,

1 and this aspect is towards the back of the head.

2 (*Indicating.*)

3 Whenever we take a photograph with the  
4 scale, we orient it such that upwards is indicated by  
5 the direction of the letters and numbers.

6 Q. Okay. Let's look at State's 19. And is  
7 this the right torso area?

8 A. Correct. We can see here the right nipple.

9 Q. Okay. Is there any bruising that you can  
10 see in State's 19?

11 A. Yes. I can make out one contusion here and  
12 one up here. (*Indicating.*)

13 Q. Okay. So, you can see two different  
14 contusions?

15 A. Yes.

16 Q. Okay. Now, I want to ask you -- this was  
17 on the left side. State's 20, we looked at his kind  
18 of right torso area. Specifically we looked at the  
19 shoulder. But was there any corresponding bruising  
20 on the right torso area?

21 A. I thought we just saw the right torso.

22 Q. I'm sorry. Left. We're looking at the  
23 left part now. Is there similar bruising on the left  
24 that we saw on the right?

25 A. No.

1 Q. Okay. If -- we'll start with -- is it  
2 possible to cause bruising by doing C.P.R.?

3 A. It's possible.

4 Q. Okay. Is one of the ways of doing C.P.R.  
5 on a baby to lift the baby and press with your  
6 thumbs?

7 A. No.

8 Q. No? Okay. How would one do C.P.R. on an  
9 infant, if you know?

10 A. Never lift the infant. C.P.R. on an infant  
11 is done with gentle pressure of the index and middle  
12 finger, slightly under the xiphoid process or lower  
13 part of the sternum. Very, very gently.

14 Q. So, what I'm trying to figure out is: Is  
15 it possible that the bruising that we see on his  
16 right side could have come from C.P.R. being done on  
17 the baby?

18 A. Bystander C.P.R. by someone who's not  
19 trained, certainly.

20 Q. Okay. Would, though, it be a one-sided  
21 C.P.R.? In other words, if someone was trying to  
22 press their thumbs on both sides, wouldn't there be  
23 maybe corresponding wounds on the other side of the  
24 baby?

25 A. Yes.

1 Q. Okay. But we don't see that?

2 A. No.

3 Q. Okay. I also want to talk about C.P.R. in  
4 terms of rib fractures. What, if any, kind of rib  
5 fractures did Kamron have?

6 A. Kamron had seven fractures involving his  
7 left sided sixth through eighth ribs and his right  
8 eighth rib.

9 Q. So, how many is that total?

10 A. He had a total of seven.

11 Q. And where are they located? Posterior or  
12 anterior?

13 A. These fractures are posterior.

14 Q. Okay. And in laymen's term?

15 A. Towards the back.

16 Q. Okay. Again, talking about C.P.R., if  
17 someone did C.P.R. -- let's say like a bystander that  
18 didn't know how to do it correctly -- is it possible  
19 for them to break the ribs in the back like Kamron's  
20 were?

21 A. No.

22 Q. Why not?

23 A. Given the pressures that we're thinking are  
24 taking place, you would also see anterior rib  
25 fractures. You wouldn't just have posterior rib

1 fractures without anterior rib fractures, no matter  
2 how incompetently the C.P.R. was being performed.

3 Q. Okay. So, in other words, you're saying  
4 that it would only happen -- well, it would only make  
5 sense if you saw broken ribs in the front and the  
6 back? Am I understanding that?

7 A. You would have to see broken ribs  
8 anteriorly, not posteriorly.

9 Q. Okay. Only in the front?

10 A. Correct.

11 Q. Okay. And State's Exhibit 29, we were  
12 talking about the ribs. In cases involving child  
13 abuse, do y'all sometimes send over for a consult  
14 with your anthropology department?

15 A. Correct. They come down. They're in the  
16 same facility. They will remove and retain the  
17 bones, deflesh them, examine them, and photograph  
18 them.

19 Q. And in State's Exhibit 29, can we see some  
20 of the ribs that were examined?

21 A. Yes.

22 Q. Is that the bottom part of -- the bottom  
23 portion of the photograph?

24 A. Correct.

25 Q. And State's Exhibit 30, what do we see

1 here?

2 A. So, what we see on the left side of the  
3 photo is the right eighth rib. What we see on the  
4 right side of the photo are the left sixth, seventh,  
5 and eighth ribs. You can see a fracture of the left  
6 sixth rib that fragments the bone. And you can see  
7 irregular fractures of the heads of the remaining  
8 ribs.

9 Q. And according to your training and  
10 experience, are rib fractures consistent with child  
11 abuse?

12 A. Posterior rib fractures more than anterior  
13 ones.

14 Q. Okay. And that's what we have in this  
15 case?

16 A. Correct.

17 Q. And is blunt trauma of the head that causes  
18 brain swelling and skull fractures, is that also  
19 consistent with child abuse?

20 A. Yes.

21 MS. ONCKEN: Pass the witness.

22 THE COURT: Mr. Hochglaube.

23 CROSS-EXAMINATION

24 Q. (BY MR. HOCHGLAUBE) It's Dr. Phatak?

25 A. Phatak.

1           Q.     Phatak.  You work for the Harris County  
2 Institute of Forensic Science?

3           A.     Correct.

4           Q.     And correct me if I'm wrong, but that is an  
5 independent agency.  Is that -- independent from law  
6 enforcement; is that right?

7           A.     That's right.

8           Q.     And, well, in fact you guys -- I believe  
9 your office has made recently a fairly sort of  
10 emphatic push to assure the community of your  
11 independence from law enforcement; is that fair to  
12 say?

13          A.     That's part of our public outreach, yes.

14          Q.     Why is it so important that your office be  
15 independent from law enforcement?

16          A.     We don't want to have any sort of bias  
17 perceived where we merely do the bidding of the  
18 police and call cases "homicide" just because the  
19 police say that a murder has taken place.  We're  
20 independent of them.  Our conclusions are independent  
21 of theirs.

22          Q.     And you would agree with me that it's not  
23 just a perception that you're afraid of.  You're  
24 afraid of actually being influenced if you were  
25 attached to law enforcement; isn't that fair to say?



1           A.     Yes.  That's correct.  We don't want to  
2     lose our independence certainly.

3           Q.     And it's very important that physicians --  
4     it's a distinction to be made between physicians that  
5     are involved with law enforcement, that are employed  
6     by law enforcement, that work with law enforcement in  
7     investigations -- there's a distinction to be made  
8     between those physicians and physicians like yourself  
9     who work at an independent agency.  Would you agree  
10    with that?

11          A.     Yes.

12          Q.     You and the autopsy report, you're  
13    basically in agreement with all the findings in the  
14    autopsy report; is that right?

15          A.     Correct.  Yes.

16          Q.     Is there any place in the autopsy report  
17    that you feel like Dr. Feeney may have misread  
18    something or may have been mistaken about anything?

19          A.     No.

20          Q.     Okay.  So, basically you and the autopsy  
21    report, the exact same opinions, the exact same  
22    conclusion, the same testimony; is that right?

23          A.     Correct.

24          Q.     And the offense report finds one specific  
25    cause of death, which is blunt trauma to the head; is

1 that right?

2 A. The police offense report?

3 Q. I'm sorry. The autopsy report.

4 A. Yeah.

5 Q. The autopsy report concludes that blunt  
6 trauma to the head is the singular cause of death,  
7 correct?

8 A. Correct.

9 Q. Shaking the baby or shaking the complainant  
10 in this case with the hands, that's not a cause of  
11 death, is it?

12 A. That's not one that I can diagnose,  
13 correct.

14 Q. Okay. And you didn't find that in your  
15 reviewing this autopsy report, right?

16 A. Correct.

17 Q. You didn't find that in your review of any  
18 of these photographs?

19 A. Correct.

20 Q. You didn't find that in reviewing all of  
21 the medical records that came from the hospitals?

22 A. Correct.

23 Q. And it's safe to say that you have the  
24 benefit, to some extent, of seeing more than the  
25 physicians that see a patient at the hospital, right?

1           A.     Correct.

2           Q.     Because you get to actually go inside and  
3 look around and evaluate the entirety of the body,  
4 right?

5           A.     Correct.

6           Q.     And the doctors at the hospital, obviously  
7 if they're trying to save this person, they're not  
8 going to take the same sort of invasive actions that  
9 you're going to take, right?

10          A.     Correct.

11          Q.     Now, the blunt force trauma to the head,  
12 you suggest that there was either two or three  
13 impacts; is that right?

14          A.     At least.

15          Q.     Okay. So, it could be as small as two; is  
16 that right?

17          A.     Correct.

18          Q.     And you don't know how those occurred, do  
19 you?

20          A.     No.

21          Q.     You don't know how fast they occurred?

22          A.     No.

23          Q.     You don't know through what mechanism they  
24 occurred, right?

25          A.     Correct.

1 Q. All you can say is that something collided  
2 with the baby's head at least two times?

3 A. Correct.

4 Q. There's some mention of there being rib  
5 fractures, and your testimony is that the rib  
6 fractures are not consistent with even incompetently  
7 performed C.P.R., right?

8 A. Correct.

9 Q. So, basically you're saying that even if a  
10 civilian who didn't know what he was doing was  
11 applying C.P.R. in a totally different way than what  
12 you've described, that that couldn't possibly have  
13 caused the rib fractures you saw?

14 A. Correct.

15 Q. But the way you described properly  
16 performed C.P.R., as I'm understanding it, is that  
17 you don't place your hands underneath. And I'm  
18 talking about on an infant now. Okay?

19 A. *(Nods head.)*

20 Q. When you're performing C.P.R., you only  
21 take two fingers and you touch very lightly upon the  
22 chest area; is that right?

23 A. Well, not very lightly. You have to  
24 compress it, but not the same amount of force that  
25 you would put on a grown man or woman's chest.

1           Q.     Right.  If -- and this is a hypothetical,  
2     okay?  If somebody placed their hands underneath the  
3     child, right, such that their thumbs went over the  
4     child's sternum, right, and their hands were in the  
5     back, their fingers were in the back, right, that's  
6     not the correct way to do C.P.R.  is what you're  
7     saying to me, right?

8           A.     Correct.  That is incorrect.

9           Q.     That's the wrong way to do it, right?

10          A.     That's wrong.

11          Q.     Okay.  And you're telling me, all right,  
12     that when you do that, specifically if you did it  
13     that way, that could cause bruising certainly on both  
14     the front and the back, could it not?

15          A.     Correct, because you're squeezing the child  
16     at this point.

17          Q.     Right.  And, so, certainly if a civilian,  
18     all right, was doing that, all right, and they're  
19     untrained in what they're doing and they're perhaps  
20     scared or nervous and doing things in a stronger  
21     manner than they should, that not incompetently  
22     performed C.P.R.  but completely wrong form of doing  
23     it, that could result in rib fractures, could it not?

24          A.     Certainly.  It's so wrong that it's not  
25     C.P.R.  anymore.

1 Q. Okay. And, so, if the E.M.T., right --  
2 you're aware that this child went to the hospital,  
3 right?

4 A. Correct.

5 Q. And I think you're aware that this child  
6 went to the hospital in an ambulance, right?

7 A. Correct.

8 Q. So, if the E.M.T. came in here and  
9 testified that he performed C.P.R. by putting his  
10 fingers underneath the back and by placing his thumbs  
11 over the chest, you would have to agree that that  
12 E.M.T. was doing something particularly wrong?

13 A. Yes. That's not how I was trained to do  
14 C.P.R. on an infant.

15 Q. And potentially harmful to the child?

16 A. Potentially.

17 Q. There's some mention that was made of the  
18 retinas of the child. Did you follow any review of  
19 the retinas of the child in the autopsy report?

20 A. Yes.

21 Q. And what was the condition of the -- the  
22 retinas are inside the eyes, right?

23 A. Correct.

24 Q. And what was the condition of the child's  
25 retinas?

1           A.     The baby had retinal hemorrhages.

2           Q.     Okay.  That's a non-specific finding, is it  
3 not?

4           A.     By itself, yes, it would be.

5           Q.     Okay.  So, if you heard a doctor who was  
6 associated with law enforcement come in and testify  
7 that that's an indication that the child was shaken,  
8 you would disagree with that categorically being  
9 true; is that right?

10          A.     I would disagree with that statement being  
11 presented as a fact, yes.

12          Q.     Okay.  The prosecutor asked you about a  
13 possibility of there being a linear fall in this  
14 case, and your testimony is that this child suffered  
15 more injuries than just one linear fall; is that fair  
16 to say?

17          A.     It's fair to say that one linear fall does  
18 not account for the extent and number of head  
19 injuries.

20          Q.     Okay.  Fair enough.  But you would also  
21 agree with me that it could account for some of the  
22 injuries?

23          A.     It could -- yes, that's possible.  
24 Certainly.

25          Q.     And, in fact, it could account for the

1 injury that caused the most severe fracture in the  
2 child's head, could it not? A hard enough fall  
3 could, couldn't it?

4 A. He would only have to have fallen on that  
5 aspect of his body. If a person falls to strike the  
6 left side of the head, they're also presenting their  
7 left upper extremity in the same fall.

8 Q. Okay.

9 A. So, we would expect to see arm injuries  
10 also in addition to the head injury.

11 Q. Okay. Well, let me go back. All right.  
12 And I'm trying to ask you really specific questions.  
13 Is it possible that a singular linear fall, because  
14 babies' heads -- their necks, rather, are weak, are  
15 they not?

16 A. Correct.

17 Q. They don't have the head strength  
18 necessarily to move forward or side to side, right?

19 A. Correct.

20 Q. And, so, like a lot of times when you see a  
21 child in their car seat, their head will be tilted to  
22 the side, right?

23 A. Yes.

24 Q. Okay. Is it possible that one of the  
25 fractures to the head could have been caused through



1 a linear fall?

2 A. Yes.

3 Q. All right. Can you tell me which of the  
4 linear fractures -- or which of the falls -- pardon  
5 me. Can you tell me which of the fractures was  
6 responsible, was the causation, of the baby's death?

7 A. Both in conjunction.

8 Q. Is it possible that one did it?

9 A. One followed by another one over some  
10 amount of time, possibly. But you still have  
11 multiple skull fractures in a four-month-old.

12 Q. I'm not disputing what you're saying. I'm  
13 trying to make sure that if that first -- the larger  
14 fracture, right, the one that's most prominent on the  
15 skull bone that we see in there?

16 A. Uh-huh.

17 Q. That fracture on its own is capable of  
18 causing death, is it not?

19 A. Yes.

20 Q. And if that fracture was caused through a  
21 linear fall, then that fall on its own is capable of  
22 causing a death; is that right?

23 A. Yes.

24 Q. The bruises that you talk about on the  
25 chest and on the shoulder, that bruise -- those

1 bruises are difficult to put a time on; is that fair  
2 to say?

3 A. Correct.

4 Q. So, you can't really say definitively that  
5 any of the bruising necessarily happened at any time  
6 near the head injury. It could have happened well  
7 before that injury, could have conceivably happened  
8 afterwards?

9 A. It's possible. I can't say in what order  
10 the injuries occurred in.

11 Q. And the bruises, I mean, they could be a  
12 day old. They could be two days old, could they not?

13 A. Correct.

14 Q. Or I should say older than the day that he  
15 arrived at the hospital, right?

16 A. That's possible, yes.

17 MR. HOCHGLAUBE: I pass the witness.

18 THE COURT: Ms. Oncken.

19 MS. ONCKEN: Just briefly, your Honor.

20 REDIRECT EXAMINATION

21 Q. (BY MS. ONCKEN) I want to make sure I  
22 understand. What you said earlier was that he's got  
23 skull fractures on the left side of his head and on  
24 the right side of his head, correct?

25 A. Correct.

1 Q. Okay. One fall could not cause all that?

2 A. No.

3 Q. Okay. And you also mentioned that if the  
4 baby fell such that he hit the left part of his head  
5 that you would also maybe expect to see corresponding  
6 bruises along that left arm?

7 A. Correct.

8 Q. Okay. Would that be more than what we saw  
9 simply to the shoulder?

10 A. Well, that shoulder bruise is more  
11 anterior. To be in the same plane as that side of  
12 the head, you would expect to see injuries to the  
13 left shoulder and the left arm along the lateral  
14 surface, unless the fall occurred where you're  
15 standing next to a counter and it's only the child's  
16 head that's striking the counter and the rest of him  
17 doesn't.

18 Q. Okay. And, of course, we weren't there?

19 A. Correct.

20 Q. I mean, we're sort of just making, you  
21 know, speculations. If someone had a baby held in  
22 their arms standing at normal adult height and the  
23 baby, you know, dropped out of their arms a foot or  
24 so, is that enough force to crack open the skull to  
25 the point where it's almost a 4-inch fracture?

1 A. (No response.)

2 Q. Or, I guess, do you know?

3 A. It's -- I -- well, to answer the first part  
4 of your question, if someone who carries a child at a  
5 standing height drops it from that standing height,  
6 certainly a fracture can be sustained. There's no  
7 research done, of course, as to the amount of force  
8 that's needed to fracture a child's skull. But a  
9 fall from a standing position can certainly result on  
10 a skull fracture to a child's head. It depends on  
11 the intrinsic strength of the child's skull. It  
12 depends on the surface that the head makes contact  
13 with.

14 Q. Okay. And your specialty is in forensic  
15 pathology, correct?

16 A. Correct.

17 Q. Okay. It's not in child abuse pediatrics,  
18 correct?

19 A. No. I do not have any expertise on living  
20 children child abuse.

21 Q. Okay. Or even a specific specialty on  
22 child abuse whether the child survives or dies, like  
23 some of the doctors maybe at Texas Children's, if  
24 that's what they do sort of all day long?

25 A. Well, death would be my purview; but

1 treating the living, that's theirs.

2 Q. Okay. Fair enough.

3 MS. ONCKEN: I'll pass the witness.

4 MR. HOCHGLAUBE: I have nothing  
5 further, Judge.

6 THE COURT: Thank you, sir. You can  
7 step down.

8 Who's next?

9 MS. ONCKEN: Shauna Schoonover.

10 THE COURT: Raise your right hand for  
11 me, please, ma'am.

12 (Witness sworn)

13 THE COURT: Have a seat.

14 MS. ONCKEN: May I proceed?

15 THE COURT: Yes, ma'am.

16 SHAUNA SCHOONOVER,  
17 having been first duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 Q. (BY MS. ONCKEN) Well, I almost said, "Good  
20 morning." Good afternoon. How are you?

21 A. Fine. Thank you.

22 Q. Good. Can you please tell the jury your  
23 name?

24 A. My name is Shauna Schoonover.

25 Q. And where do you work?