

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION, CRIMINAL PART  
MIDDLESEX COUNTY  
INDICTMENT NO. 17-06-00785  
APP. DIV. NO. \_\_\_\_\_

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STATE OF NEW JERSEY, :  
 :  
 v. : TRANSCRIPT  
 :  
 : OF  
 DARRYL NIEVES, :  
 :  
 : HEARING  
 Defendant. :  
 :

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Place: Middlesex County Courthouse  
56 Paterson Street  
New Brunswick, NJ 08903

Date: October 15, 2020

BEFORE:

HONORABLE PEDRO J. JIMENEZ, JR., J.S.C.

TRANSCRIPT ORDERED BY:

CAROLINE V. BIELAK, ESQ., Assistant Deputy Public  
Defender (Office of the Public Defender)

APPEARANCES:

VANESSA I. CRAVEIRO, ESQ., Assistant Prosecutor  
(Monmouth County Prosecutor's Office)  
Attorney for the State of New Jersey

CAROLINE V. BIELAK, ESQ., Assistant Deputy Public  
Defender, - and -  
DANICA L. RUE, ESQ., Assistant Deputy Public  
Defender  
(Office of the Public Defender, Middlesex Region)  
Attorneys for the Defendant

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I N D E XWITNESS  
FOR THE DEFENSEDIRECTCROSSREDIRECTRE CROSS

Joseph Scheller

By Ms. Craveiro

3

By Ms. Bielak

54

1 (Proceedings commenced at 11:26:54 a.m.)  
2 THE COURT: Dr. Scheller, my understanding is  
3 that you -- that you -- you have -- you have limited  
4 time here?  
5 THE WITNESS: Yes, sir.  
6 THE COURT: What is the time limit that  
7 you've provided?  
8 THE WITNESS: My train back at 1:18. We have  
9 a training set up. I was supposed to testify later  
10 this afternoon.  
11 MS. CRAVEIRO: We can start, Judge.  
12 THE COURT: Well, let's go, because right  
13 now, we have until 12:15.  
14 MS. CRAVEIRO: Oh, okay.  
15 J O S E P H S C H E L L E R, DEFENSE WITNESS,  
16 PREVIOUSLY SWORN  
17 CROSS EXAMINATION BY MS. CRAVEIRO:  
18 Q All right. Dr. Scheller, abusive head trauma  
19 is widely accepted in various disciplines, including  
20 your own field of neurology, and neurosurgery; correct?  
21 (Witness away from microphone)  
22 A That's right.  
23 Q And abusive head trauma has even been  
24 publicly recognized by several medical societies,  
25 including the World Health Organization, Royal College

1 of Pediatrics and Child Health, Royal College of  
2 Radiologists, Royal College of Ophthalmologists,  
3 Canadian Pediatric Society, American Academy of  
4 Pediatrics, American Academy of Ophthalmology --  
5 MS. RUE: Judge, I'm going to object to the  
6 compound question.  
7 MS. CRAVEIRO: It --  
8 THE COURT: No. I'm going to -- I'm going to  
9 allow it. It's not a compound.  
10 MS. CRAVEIRO: No.  
11 THE COURT: But it is quite lengthy. So --  
12 MS. CRAVEIRO: It is, Your Honor. I -- I  
13 just, for the sake of time, instead of asking them all  
14 very separately.  
15 BY MS. CRAVEIRO:  
16 Q American Academy of Ophthalmology, American  
17 Academy -- American Association for Pediatric  
18 Ophthalmology, and (indiscernible) American College of  
19 Radiology, American Academy of Family Physicians,  
20 American College of Surgeons, American Association of  
21 Neurosurgeons, Pediatric Orthopedics Society of North  
22 America.  
23 And once again, in your field, the American  
24 Academy of Neurology. They all recognize abusive head  
25 trauma as a valid diagnosis; correct?

1 A They do.

2 Q And the only group that is on the other side  
3 of that would be the Active Pediatric Scandinavia;  
4 correct?

5 A Right now, that's right.

6 Q And so, the debate that you mentioned on  
7 direct, that's really only within a minority of the  
8 medical community; correct?

9 A That's right.

10 Q And that would be only about 5 percent of the  
11 medical community; correct?

12 A That's my estimate.

13 Q And your opinions on abusive head trauma, and  
14 your alternative hypotheses on what causes the  
15 injuries, fall within that 5 percent of the minority;  
16 don't they?

17 A The first half of the question, yes. But the  
18 second half of the question, I mean, every case is  
19 different.

20 You know, in some cases there's a  
21 disagreement of was it accidental, or abusive? In some  
22 cases there was disagreement about whether it was a  
23 medical dispute.

24 So -- so, that second half of the question  
25 I'd say that really depends on the case. But the first

1 half, yes, my opinions about abusive head trauma in  
2 general reflect the minority.

3 Q Okay. And so, I guess that's why you've been  
4 able to make such a lucrative career on testifying for  
5 the defense; correct?

6 A No, I don't understand that question.

7 Q Well, you make a majority of your money from  
8 this -- from your medical legal practice; correct?

9 A Right now, yes.

10 Q Okay. And you get paid for your opinions;  
11 correct?

12 A I do some pro bono cases, but I get -- if I can  
13 help the defense, then I will get paid. Actually, I  
14 get paid for reviewing records, and I get paid for it  
15 if I can help the defense.

16 Q Okay. And you're even being paid today then;  
17 is that correct?

18 A Well, I hope so. I've got to send an invoice.

19 Q Okay. And I believe you've testified you  
20 said in a few hundred cases at this point; is that  
21 right?

22 A In suspected abuse of head trauma cases I've  
23 testified in more than two hundred.

24 Q Okay. So, then by your analogy, you reviewed  
25 those medical records in those cases, and were paid a

1 sum; correct?

2 A That's right.

3 Q And then when you came in to testify on each  
4 of those occasions, you were paid even more; correct?

5 A In most cases, yes.

6 Q And in every single one of those cases in  
7 which you've testified, you had always found another  
8 explanation for the infant's injuries; isn't that  
9 right?

10 A Yes. But that was not -- that was not a  
11 (indiscernible).

12 Q Yes. You never once testified that the  
13 injuries were caused by abusive head trauma; is that  
14 right?

15 A Well, that's not completely accurate. But I said  
16 it in many, many cases. In some cases I have testified  
17 that I'm absolutely sure that there was no evidence of  
18 abuse, but in other cases I have testified that I'm not  
19 sure. But that I cannot choose abuse over some  
20 alternative fact, simply because there's no way to tell  
21 one way or the other.

22 Q And your opinions on child abuse aren't  
23 always accepted by others; right?

24 A I've had arguments with other doctors, and then  
25 there's been one court that has excluded me as a -- as

1 a witness in this particular area.

2 Q Okay. And when you're talking about that one  
3 court, you're talking about the case of Patrick Duran,  
4 from New Mexico; correct?

5 A That's exactly right.

6 Q And that was a recent case where Mr. Duran  
7 admitted to shaking an eight month old infant after  
8 losing his temper; correct?

9 A He absolutely did not admit that. And that was a  
10 disa -- disa -- I guess misunderstanding that I and the  
11 Judge had. He actually said he jerked the baby to him  
12 and -- out of frustration. But he never admitted to  
13 shaking him. And that's my recollection.

14 Q Okay. And you opined in that case the -- the  
15 child -- the infant's injuries occurred from fluid in  
16 the brain; correct?

17 A That's right. (Indiscernible.)

18 Q And just like this case; correct?

19 A Every case is different. And that case certainly  
20 has aspects that are very, very different then this  
21 case. And when I say this case, I mean the Nieves  
22 case.

23 But -- but in some cases, yes. In -- in some  
24 respect, in that case I said there was extra fluid in  
25 the brain, inside the skull, and in the (indiscernible)

1 child. So, if I get to testify, I would say the same.

2 Q Okay. And in that case, you mentioned the  
3 Judge found that your test -- he excluded it, because  
4 he found that your testimony was not reliable; correct?

5 A There was a Daubert Hearing, and the question was,  
6 was I going to be able to testify about my opinions,  
7 and the Judge found that I could not.

8 Q Okay. And recently in August, Mr. Duran even  
9 pled guilty to child abuse; correct?

10 A Oh, yes? In 2020?

11 Q Yes.

12 A Oh, I had no idea.

13 Q Okay.

14 (Pause in proceeding)

15 MS. BIELAK: Judge, I'm going to object. The  
16 relevance of someone pleading is a case is irrelevant -  
17 -

18 THE COURT: Relevance?

19 MS. BIELAK: -- to this hearing.

20 MS. CRAVEIRO: Judge, the relevance is that  
21 he opined that it was not -- the child's injuries in  
22 that case were not caused by shaking, and that they  
23 were caused by a hygroma, and the defendant himself in  
24 that case then later omitted -- admitted that he did  
25 commit child abuse.

1 So, that's exactly what we're here to test,  
2 whether or not this witness's opinions are reliable,  
3 Judge.

4 MS. BIELAK: No. That --

5 THE COURT: Well, the -- no. Objection  
6 sustained. People plead guilty for all kinds of  
7 reasons. And you know, erratically say whatever  
8 they're going to say to get the plea through. Okay?

9 MS. CRAVEIRO: Okay.

10 THE COURT: So, you're -- you're not going to  
11 be able to equate that somebody pled guilty -- you're  
12 not going to be able to use that guilty plea to  
13 substantiate what you're going to -- try to  
14 substantiate in this case given the nature of pleas,  
15 and why they occur.

16 So, it's -- I'm going to sustain the  
17 objection on grounds of relevance.

18 MS. CRAVEIRO: Okay.

19 BY MS. CRAVEIRO:

20 Q And in other cases in which you've testified  
21 that have gone to trial, the -- in those cases, the  
22 person was also convicted; correct?

23 MS. BIELAK: Objection, Judge.

24 THE COURT: Sustained.

25 (Pause in proceeding)

1 BY MS. CRAVEIRO:

2 Q But to be clear, Doctor, you have even  
3 admitted yourself that abusive head trauma and shaken  
4 baby syndrome are valid diagnoses; correct?

5 A No, I -- I don't think so. I can say that it's  
6 possible to a certain degree, I can imagine  
7 (indiscernible) that might do some harm. But I would  
8 not (indiscernible) the diagnosis.

9 Q Okay. So, you didn't testify to that in the  
10 Duran case?

11 A I'm sorry?

12 Q You didn't testify to that in the Duran case?

13 A Not to my recollection. I -- I testified twice in  
14 that case, and most recently in 2019. So, I -- I don't  
15 -- I -- I wouldn't say that I -- I hope I didn't say  
16 it.

17 Q Okay. But you do agree that violent shaking  
18 can cause injuries to a baby; correct?

19 A Well, it's -- it's -- I believe that it could,  
20 yes.

21 Q And -- and you on direct spoke about the  
22 Ommaya Study from 1968. You said that there was impact  
23 to the monkeys heads during this study.

24 A That's right.

25 Q Okay. But -- and you said that the monkeys

1 died -- that when the monkeys died the injuries to  
2 their -- they had injuries to their necks, and  
3 symmetrical subdural hematomas were found; correct?

4 A That's right.

5 Q Okay. But isn't it true that the monkeys  
6 only sustained a single whiplash event?

7 A In that -- in that study there was a single event.  
8 That's correct.

9 Q Okay. And there was actually no impact;  
10 correct?

11 A Well, it was a very, very dramatic stop. I'd have  
12 to look at the study to recall.

13 Q Okay.

14 A (Indiscernible) then dramatically stopped, but I  
15 don't specifically recall if that was a fact. Dr.  
16 Ommaya did several studies. This (indiscernible).

17 (Counsel conferring)

18 MS. CRAVEIRO: I know we have one marked, but  
19 I -- but for the sake of time, I'm just going to show  
20 him --

21 MS. BIELAK: Okay. Well, I have to have the  
22 marked one.

23 MS. CRAVEIRO: Yeah. You guys put it in  
24 evidence. It's a D marking.

25 MS. BIELAK: Okay.

(Counsel conferring)

1 BY MS. CRAVEIRO:

2 Q All right. Doctor, I'm approaching with what  
3 -- it does have an exhibit number, but I will get one  
4 later with that -- the Ommaya Study that you were  
5 referencing.  
6

7 A I'm sorry. That's specifically a -- that was this  
8 one. It was not this, you know --

9 Q So --

10 A He has other studies from the late '60's, early  
11 '70's, and I was referencing another one. But this is  
12 absolutely an Ommaya Study that did -- there was no  
13 impact. This is (indiscernible).

14 Q Okay. But that is the study from 1968; is  
15 that not correct?

16 A This is published in 1968. It very possibly has  
17 another date. They published a whole bunch of studies  
18 in the '60's, and in the '70's. I seem to recall they  
19 had another one in '68, but I don't --

20 Q Okay. And all of those studies were with  
21 monkeys?

22 A Yes.

23 Q And they were studying crash scenarios?

24 A Yes.

25 Q Okay. And what would the name of that study

1 be?

2 A I'd have to look it up. I -- I don't know. The  
3 author -- obviously, it's the same author. But they  
4 use a different technique to induce the injuries. And  
5 I'm sorry I don't recall it off -- I don't recall it.

6 Q Okay. But in that study in front of you,  
7 it's similar to the one that you had discussed in  
8 direct; correct?

9 A Yes.

10 Q The monkeys were placed in a car, or placed  
11 in a vehicle, and it was a thirty mile per hour  
12 collision; correct?

13 A That's right.

14 Q And it caused a whiplash event; correct?

15 A That's right.

16 Q And with no impact; correct?

17 A That's right.

18 Q And in that study the monkeys didn't die from  
19 their injuries; correct?

20 A That's right.

21 Q Instead, the monkeys were killed in order for  
22 a gross inspection of their brain and proximal spinal  
23 cord to be completed upon autopsy; correct?

24 A Yes. We like to use the word sacrifice, not --

25 Q Okay. And so, that single whiplash event



1 that caused -- so, the monkeys didn't die from that  
2 single whiplash event; correct?  
3 A That's right.  
4 Q Okay. And the study included fifty monkeys;  
5 correct?  
6 A I -- I'd have to look at the exact number.  
7 Q Take a look at the second page.  
8 A Because there was a number of monkeys. I'm not  
9 100 percent sure.  
10 Q Okay. And if you take a look at the second  
11 page, the bottom highlighted areas, would that refresh  
12 your recollection as to how many of the monkeys were  
13 concussed?  
14 A Right. So, it said fifteen of the nineteen.  
15 There were nineteen that went through the procedure the  
16 way he wanted to do it experimentally.  
17 Q Okay.  
18 A I guess the nineteen had these -- had hemorrhages,  
19 subdural hemorrhages.  
20 Q And nineteen of them were concussed; correct?  
21 A That's right.  
22 Q Fifteen of those nineteen had visible  
23 evidence of the subdural hemorrhages; correct?  
24 A That's right.  
25 Q And then only five of the monkeys in that

1 study sustained spinal cord injury; correct?  
2 A That's right.  
3 Q And so, in the Ommaya Study, not every case  
4 where there is intracranial injury there was neck or  
5 spinal cord injury; correct?  
6 A That's right.  
7 Q Okay. And in that Ommaya Study, Ommaya also  
8 noted that bridging veins were particularly likely to  
9 rupture, because of that one in -- whiplash event with  
10 no impact; correct?  
11 A That's right.  
12 Q And that the subdural hemorrhages were caused  
13 by those bridging vein ruptures; correct?  
14 A That's right.  
15 Q Now, in direct you also mentioned the Duhaime  
16 Study. And you said that Duhaime couldn't create the  
17 forces necessary to cause subdural hematomas; correct?  
18 A That's right. In 1987.  
19 Q Thank you for the clarification.  
20 (Pause in proceeding)  
21 Q Okay. But at the time of Duhaime's study,  
22 didn't -- didn't Duhaime also recognize that acute  
23 brain swelling was particularly common in the  
24 pediatrician population; correct?  
25 A Based on the cases that she did.

1 Q Okay. And --

2 A That she had looked at in her hospital practice.

3 Q And she also commented that it's -- their  
4 causes were poorly understood, so more investigation  
5 needed to be done to determine whether shaking alone  
6 could cause those injuries; correct?

7 A She did say that.

8 Q Okay. And in that study, Duhaime's ultimate  
9 conclusion was only that shaken baby syndrome in its  
10 most severe acute form, meaning fatality, could not  
11 usually be caused by shaking alone; correct?

12 A That's right.

13 Q Okay. And you mentioned that Duhaime has  
14 more recent articles and papers; is that correct?

15 A To my knowledge, yes.

16 Q Okay. And in one of those in 2019, didn't  
17 Duhaime state that abusive head trauma remains the  
18 major cause of serious head injury in infants, and  
19 denied the existence of abusive head trauma by  
20 employing unique alternative theories of causation,  
21 faulty mathematical analyses, selective biomechanical  
22 data, and absolute intolerance for the limitations of  
23 clinical research is an unreasonably narrow response to  
24 an accumulated body of clinical, and scientific  
25 evidence?

1 A She did say that.

2 Q Okay. So, that further supports that abusive  
3 head trauma is widely accepted in the medical  
4 community; correct?

5 A Well, that's a very select -- I -- no, it does  
6 not, because in that exact same article she has a whole  
7 paragraph wondering if, indeed, abuse of that trauma is  
8 a valid diagnosis or not. And there's a lot of back  
9 and forth. And there is no conclusion whether or not  
10 abuse of that trauma is a valid diagnosis according to  
11 Dr. Duhaime.

12 Q Okay. But she does state that in her 2019  
13 article. And specifically for the record, that would  
14 be in abusive head trauma evidence ob -- obfuscation  
15 and informed management; correct?

16 A Yes. It was all done on the same article.

17 Q Okay. I just wanted to make sure. And there  
18 have been other biomechanical studies that were able to  
19 exceed the threshold in -- that Duhaime said; correct?

20 A There have been, yes.

21 Q Okay. And one of those was Cory; correct?

22 A That's right.

23 Q And that was Cory's Study in the article from  
24 Can Shaking Alone Cause Fatal Brain Injury; correct?

25 A That's right.

1 Q And another one of those was one by Carole  
2 Jenny; correct?  
3 A That's right.  
4 Q And in that article titled by -- that article  
5 was titled Biomechanical Response of the Infant Head to  
6 Shaking and Experimental Investigation; correct?  
7 A That's right.  
8 Q And in the end of that article, Carole Jenny  
9 concludes that the differences between her findings and  
10 Duhaime's findings suggest a higher potential for  
11 injury with shaking alone than previously reported;  
12 isn't that right?  
13 A That's what Dr. Jenny concluded at that time.  
14 Q And that was in 2017; right?  
15 A That's right.  
16 Q Okay. Now, you mentioned nanny cams in your  
17 direct. You mentioned seeing them -- over thirty of  
18 them in newspaper and YouTube clips?  
19 A I think I said twenty, but --  
20 Q Okay.  
21 A -- if I said thirty, then I misspoke.  
22 Q And you said in none of those cases were the  
23 triad of symptoms found; isn't that right?  
24 A That's right.  
25 Q Okay. Now, where did you get that

1 information from?  
2 A There's a doctor in Europe that collects them. He  
3 sent me the twenty -- the twenty either news clips, or  
4 YouTube clips, and so on.  
5 Q Okay. Did you do your own research on those  
6 twenty clips?  
7 A I looked them all up, and sadly there was violent  
8 shaking. And sadly -- and gladly there was no subdural  
9 hemorrhage or --  
10 Q Okay. And did you look at their medical  
11 records?  
12 A I did not. No. These are from the news or from  
13 YouTube.  
14 Q Okay. And so, you don't actually know what  
15 kind of medical examination these infants underwent;  
16 correct?  
17 A Well, they were all taken to the hospital by  
18 report, according to the news organization. But I  
19 certainly do not know exactly what tests they had.  
20 Q So, you don't know if they had a retinal  
21 exam; correct?  
22 A That's right.  
23 Q You don't know if they had a skeletal exam;  
24 correct?  
25 A I don't.

1 Q You don't know if they had neurosonograms  
2 performed; correct?

3 A That's correct.

4 Q And is it true that if those tests are not  
5 done, you can miss injuries?

6 A Yes.

7 Q Okay. And yet, you believe that the children  
8 in those cases didn't result in those injuries simply,  
9 because you read it in a newspaper article, or saw it  
10 on YouTube?

11 A No, Ma'am. And that's the first step. The second  
12 half is, is that none of them were ever reported in the  
13 medical literature.

14 Q Okay.

15 A Because this will be huge news in this small world  
16 of child abuse that would be the first saying that a  
17 hospital worker should do it. Yes, this is a witnessed  
18 violent shaking, and yes, we found these horrendous  
19 findings, but it has never been published.

20 Q On the other side though no one has ever  
21 published based upon those nanny cam videos as to what  
22 specifically happened in each case or done any research  
23 to find out exactly what happened in those cases;  
24 correct?

25 A That's right. We don't know the medical data

1 other than what the news spoke of.

2 Q Okay. And would you consider that medical  
3 evidence?

4 A Would I consider that medical evidence?

5 Q Yes.

6 A Only for the reason I said is that there are no  
7 reports to say that -- that the violent act produced  
8 what we expected them to based on what the literature  
9 says --

10 Q And would you consider witnesses statements  
11 medical evidence?

12 A If they're not biased, sure.

13 Q What do you mean by non-biased?

14 A Well, if -- if there's a couple that's getting  
15 ready to get divorced, or fighting over custody, and  
16 then one claims that the other one did something  
17 violent to the child, that's something I wouldn't  
18 trust.

19 And if there's somebody who just happens to  
20 walk in, somebody's visiting the house, there's a guest  
21 in the house, or somebody walks into a day care center,  
22 and happens to see somebody do something violent, well,  
23 then that's (indiscernible).

24 Q Okay. But in these types of situations, is  
25 it common that you're going to have a third party

1 witness?

2 A Well, it's been forty five years, and many  
3 thousands of diagnosis for shaken baby syndrome in the  
4 forty five years, and so, I wouldn't expect that in ten  
5 thousand witness cases, I'd expect five, or ten, or  
6 twenty, and their opinion.

7 Q And that's because it isn't common for these  
8 types of scenarios to be witnessed by an unbiased part  
9 -- third party; correct?

10 A That's true.

11 Q And it's also very common that they aren't  
12 caught on video; isn't that correct?

13 A That would be on camera. I reported twenty of  
14 these videos that, again, I'd say were done five or ten  
15 thousand times, that would be very uncommon.

16 Q And you also said that there's no gold  
17 standard for abusive head trauma; correct?

18 A That's right.

19 Q You read a passage from an article by Jeffrey  
20 Debell (ph.)?

21 A That's right.

22 Q Okay. But didn't -- the passage that you  
23 read, didn't you only read half of that sentence?

24 A I guess.

25 Q Okay.

1 MS. CRAVEIRO: And now, again, I don't have  
2 the exhibits, so I can't remember what D number that  
3 was.

4 MS. RUE: It's not my --

5 MS. BIELAK: Ms. Craveiro, just have him read  
6 it.

7 MS. RUE: I don't think we put it into  
8 evidence.

9 MS. BIELAK: It's --

10 MS. RUE: What -- what's the title of it?

11 MS. BIELAK: Did he identify it?

12 MS. RUE: What's the title of it? I have the  
13 list. Head trauma -- no, I didn't put it into  
14 evidence, oh, but there is a D here.

15 MS. BIELAK: It's D-3.

16 MS. RUE: Okay.

17 MS. BIELAK: Yeah. That's what they say,  
18 yeah.

19 MS. CRAVEIRO: Okay.

20 BY MS. CRAVEIRO:

21 Q So, it's --

22 MS. RUE: I don't know if we marked it  
23 though.

24 BY MS. CRAVEIRO:

25 Q -- marked for identification as D-3. Can you

1 read the rest of -- can you read the whole sentence?

2 A Sure. "While it is accepted --" I'm reading from  
3 Page 2 of this devoured article that I quoted last time  
4 I was here. "While it is accepted that there is no  
5 gold diagnostic standard test for abusive head trauma,  
6 setting the threshold for the conclusion at the level  
7 of admitted, or witnessed shaking, or video  
8 documentation of it, is unrealistic as this level of  
9 surety isn't frequently recorded to the real world.  
10 Sad."

11 Q And so, that gold standard that Debell was  
12 referring to was about video evidence such as the nanny  
13 cams that you spoke about; correct?

14 A Well, he said, no, there's no gold standard for  
15 this system. Now, the video evidence would be one.  
16 But there are plenty of other gold standards you can  
17 think of, but there aren't any.

18 Q Okay. And he's saying that you can't just  
19 use the video evidence as a gold standard, because it's  
20 not frequently there; correct?

21 A That's right.

22 Q Okay. And so, that would also -- and so,  
23 speaking of the triad, doesn't Debell say on that first  
24 page that the -- oh, I'm sorry -- on that same page,  
25 that the triad is not used as a diagnostic test in

1 clinical practice?

2 A Yes.

3 Q And the features itemized in the triad are  
4 simply physical signs and symptoms recognized as  
5 consequences of head trauma; correct?

6 A That's right.

7 Q Debell also says on the first page that  
8 abusive head trauma is well recognized, and serious --  
9 is well recognized; correct?

10 A Yes.

11 Q He says that serious form of physical abuse  
12 and that sound evidence based research shows that there  
13 are several clinical features that are significantly  
14 associated with abusive head trauma; correct?

15 A Yes.

16 Q And he says that there is a growing body of  
17 published studies with questionable methodology that  
18 attempt to throw doubt on these two statements;  
19 correct?

20 A Yes.

21 Q And the two statements he was referring to in  
22 that last were the ones about abusive head trauma being  
23 well recognized; correct?

24 A That's right.

25 Q And that opinion piece was actually

1 criticizing the SBU report; correct?

2 A It -- I didn't hear the word you said before  
3 report. SBU report?

4 Q SBU report.

5 A The Swedish Scientific report, yes, criticized the  
6 methodology for shaken baby syndrome. So, this article  
7 that came out of the Debell article, was a criticism of  
8 a criticism.

9 Q And the SBU report concluded that there were  
10 -- that it criticized the SBU's conclusion that there  
11 was limited evidence that the triad caused abusive head  
12 trauma; correct?

13 A That's what the SBU concluded, and Dr. Debell was  
14 criticizing that conclusion.

15 Q Okay. And now, you testified on direct that  
16 Dr. Medina based her opinion that this -- that the  
17 infant in this particular case suffered abusive head  
18 trauma based upon two findings, the multi-layer retinal  
19 hemorrhages, and the subdural hemorrhages; correct?

20 A That's right.

21 Q And that she didn't rule out what you  
22 believed to be a chronic hygroma in making that  
23 diagnosis; right?

24 A That's right.

25 Q But you didn't speak to Dr. Medina to find

1 out exactly what she considered; did you?

2 A I only read her report. That's right.

3 Q And you don't know if she actually did  
4 consider your alternative theory; do you?

5 A I didn't see it in her report, but I don't know  
6 what she was thinking, or (indiscernible). I don't  
7 know that.

8 Q And her eighteen page report that you're  
9 referencing details that she did consult with several  
10 subspecialties when the infant came in for his altered  
11 mental state in -- on February 10th, 2017; isn't that  
12 right?

13 A That's right.

14 Q And those subspecialties included neurology,  
15 ophthalmology, genetics, hematology, and radiology; is  
16 that right?

17 A That's right.

18 Q And Dr. Medina also -- also detailed that she  
19 reviewed the medical records from the infant's birth up  
20 until the point of the incident of February 10th, 2017;  
21 correct?

22 A That's right.

23 Q And those reports -- those records include  
24 several neurosonograms that were read by radiologists;  
25 isn't that right?

1 A That's right.  
2 Q Three of those were conducted at Saint  
3 Peter's; correct?  
4 A That's right.  
5 Q One by a radiologist, Dr. Walor, on March  
6 22nd, 2016; correct?  
7 A Yes.  
8 Q One by a radiologist by the name of Dr.  
9 Hanhan on April 11th, 2016; correct?  
10 A That's right.  
11 Q And one by a radiologist called Dr. Lee on  
12 June 9th, 2016; is that correct?  
13 A That's correct.  
14 Q And then there was even a fourth one done --  
15 A You said three days, and I think the first one you  
16 said 2017.  
17 Q I'm sorry. '16.  
18 A So, I think all three were in 2016.  
19 Q Yes.  
20 A Okay. (Indiscernible.)  
21 Q Okay. But there were still three that were  
22 reviewed; correct?  
23 A That's right.  
24 Q And we were still dealing with three  
25 different radiologies -- radiologists that read those;

1 correct?  
2 A That's right.  
3 Q Okay. And then there was a fourth one that  
4 was a -- taken and read by a radiologist at CHOP;  
5 correct?  
6 A That's right.  
7 Q And that was in July of that same year;  
8 correct?  
9 A 2016, I believe, yes.  
10 Q Yes. The same year. Okay. And CHOP is a  
11 hospital that specializes in diagnosing, and treating  
12 in pediatrics -- infants; correct? In children.  
13 A It's a world famous pediatric hospital.  
14 Q And so, even though Dr. Medina isn't  
15 qualified to read an MRI, there were other doctors in  
16 this case that were consulted that were; correct?  
17 A Yes.  
18 Q And none of those doctors noted any  
19 abnormalities in this infant's imaging; correct?  
20 A In the ultrasounds?  
21 Q Yes.  
22 A I'd have to look at my notes to be absolutely  
23 sure. And I don't have my laptop, but -- or if I did  
24 write a report, it would be in there, but I simply  
25 don't recall.



1 Q Well, speaking of your report, you actually  
2 authored two reports; isn't that correct?

3 A I actually don't remember. I'm sorry.

4 Q Okay.

5 (Counsel conferring)

6 MS. CRAVEIRO: I don't have the other one.  
7 Do you have the other one?

8 MS. BIELAK: I don't know the other one --

9 MS. CRAVEIRO: The one you put in evidence?

10 MS. BIELAK: The one that's in evidence?

11 MS. CRAVEIRO: Do you have it?

12 MS. BIELAK: The Court has it. It's D-2.

13 MS. RUE: D-2.

14 MS. CRAVEIRO: You don't have a copy of it  
15 right now?

16 MS. BIELAK: No.

17 MS. CRAVEIRO: Okay.

18 (Pause in proceeding)

19 MS. CRAVEIRO: Okay. I'm going to approach  
20 with what's been marked for identification as S-25.

21 (Pause in proceeding)

22 BY MS. CRAVEIRO:

23 Q Okay. That -- do you recognize that, Doctor?

24 A Yes.

25 Q Okay. And what is that?

1 A This is a report I wrote on August 8th, 2019 at  
2 the request of Attorney Bielak.

3 Q Okay. And what does it say about the  
4 neurosonograms -- those four neurosonograms that were  
5 performed?

6 A I only have three in this report. And it says  
7 that they were all read as normal.

8 Q Okay. And which three do you have in that  
9 report?

10 A They're all from 2016 in March 22nd, April 11th,  
11 and June 9th.

12 Q And you also have something from July 22nd on  
13 there; isn't that correct?

14 A Right. It's an EEG and brain wave test.

15 Q Okay.

16 A I believe there was an ultrasound around that time  
17 as well. So, it's (indiscernible).

18 Q Okay. You didn't consult with any of those  
19 radiologists who were involved in reading this infant's  
20 images; did you?

21 A I did not.

22 Q And you didn't consult with the neurologist  
23 who saw the infant at Saint Peter's on February 10th;  
24 is that -- is that correct?

25 A That's correct.

1 Q And you didn't consult with any other child  
2 abuse pediatrician in reaching your opinion; isn't that  
3 true?

4 A That's right.

5 Q You didn't speak to the parents in this case;  
6 correct?

7 A No.

8 Q You didn't evaluate the infant; correct?

9 A I didn't actually meet the infant, that's right.  
10 I just had that report.

11 Q Okay. But Dr. Medina did speak to the  
12 parents and evaluate the infant; correct?

13 A Yes, she did.

14 Q And her -- and she only made her diagnosis  
15 more than two months after the initial admittance;  
16 isn't that right?

17 A That's right.

18 Q And after all of those consult -- and she  
19 made that diagnosis after all of those consultations  
20 were done; correct?

21 A That's right.

22 Q And after all of the results and different  
23 additional information were received and reviewed by  
24 her; correct?

25 A That's right.

1 Q And in making that diagnosis, she followed  
2 the widely accepted methodology for making the abusive  
3 head trauma diagnosis; correct? I'm sorry. I doubled  
4 that up.

5 A I -- I -- I'll say I just don't know, because I'm  
6 not a child abuse doctor.

7 Q Okay. And so, you don't also know whether --  
8 but she is qualified to make an abusive head trauma  
9 diagnosis; correct?

10 A If we consider the diagnosis, yes.

11 Q And she's a -- she is a child abuse  
12 pediatrician; correct?

13 A She is.

14 Q And so, you don't know whether the process  
15 that you followed either is widely accepted in the  
16 medical community; correct?

17 A I didn't understand that question.

18 Q The diagnosis you made in this case, the  
19 procedure you took to reach that diagnosis, would it be  
20 widely accepted in the medical community?

21 A I can't say. In other words, I'll say two people  
22 go to a doctor for a problem, and Doctor A might  
23 diagnose Disease X, and Doctor B might diagnose Disease  
24 Y.

25 If I explained this to another neurologist, I

1 think they would understand it. But obviously, I'm  
2 just following the neurology that I learned, and in  
3 practicing. But I can't say that another neurologist  
4 would come to my conclusions.

5 Q Okay. So, even in neurology there are  
6 differing opinions is what you're saying; correct?

7 A Sure.

8 Q And an infant's brain can be injured by  
9 trauma without extra cranial injuries; correct?  
10 Meaning bruising, and fractures, and things of that  
11 nature?

12 A I'm going to say correct, but you have to put the  
13 word in impact. In other words, absolutely an impact  
14 injury to a child's brain -- to a child's head can  
15 cause intracranial injuries. And sometimes you don't  
16 see scalp swelling or skull fractures. So, that is --  
17 it definitely doesn't happen.

18 Q But the mere absence of any of those also  
19 doesn't definitively rule out an abusive head trauma  
20 diagnosis; isn't that right?

21 A That's right.

22 Q And -- and so, just because you noted that  
23 the infant in this case didn't have those symptoms, you  
24 can't make any medical opinions as to his diagnosis  
25 within a reasonable degree of certainty just based upon

1 them; correct?

2 A Well, that's not completely accurate. This is the  
3 problem with that, they're not being a gold standard.

4 In other words, because there are no specific  
5 criteria in the diagnosis of abusive head trauma, and  
6 you can have ten criteria, or two in order to make that  
7 diagnosis.

8 But what I'm saying is that it would be much  
9 more logical and much more medical if you have many  
10 findings that would conclusively say abusive head  
11 trauma, and fewer would be suspected, or possible  
12 abusive head trauma.

13 And so, you are right. I have not ruled it  
14 out in Darryl's case. But I have put in my note, and I  
15 -- and I feel very strongly, that there were very few  
16 findings compared to other children where there were  
17 many -- there were many findings.

18 Q And that does happen sometimes where a child  
19 just doesn't have a lot of findings; correct? It  
20 doesn't --

21 A Well, it happens with every disease, or every  
22 medical diagnosis that we make. But with all the other  
23 ones, there are specific criteria, again, that abusive  
24 head trauma is the diagnosis where there are no  
25 specific criteria.

1 Q Okay. And going to your testimony about  
2 subdural hygromas. You said pediatric neurologists and  
3 neurosurgeons encounter subdural hygromas in practice  
4 when the infant is referred for a larger than expected  
5 head -- head circumference; is that correct?

6 A That's right.

7 Q And that it's more common in premature  
8 infants than full term infants; is that correct?

9 A That's right.

10 Q What medical literature supports that  
11 conclusion?

12 A There's a couple of articles I'm thinking of, but  
13 I'd -- I would have to look at my laptop to -- to see  
14 if they're -- if I'm remembering correctly.

15 But there are articles that say that  
16 premature babies do develop these fluid collections  
17 more than full term babies have.

18 I'd -- I'd have to look at my laptop to get  
19 the article.

20 Q Okay. So, as you sit here today you can't  
21 remember them off the top of your head; correct?

22 A No.

23 Q And isn't the term hygroma itself an  
24 antiquated term in your field?

25 A I don't think so. I -- I know some neurologists

1 and neurosurgeons use it a lot, and some don't use it  
2 at all.

3 Q Okay. So, other -- your peers in neuro --  
4 neurology don't -- some -- strike that.

5 Some peers in neurology no longer use that  
6 term; correct?

7 A That's right.

8 Q Okay. But you say that a subdural hygroma  
9 can cause small subdural or subarachnoid hemorrhages;  
10 correct?

11 A That's right.

12 Q And one way that that can be caused is that  
13 the small vessels that -- that are running from the  
14 inside -- in -- inner skull to the brain surface tear,  
15 and leak blood when they are stretched; correct?

16 A That's right.

17 Q And so, the mechanism of injury there would  
18 be tension, and stretching of those veins; correct?

19 A That's right.

20 Q And those veins are called bridging veins;  
21 correct?

22 A Yeah. There are major bridging veins and then  
23 there's very small ones. But yeah, all of the veins  
24 that go from inside the skull to the surface of the  
25 brain are (indiscernible).

1 Q Okay. And you also said that minor traumas  
2 can cause hygromas; correct?

3 A Can cause hygromas?

4 Q Yes.

5 A That's right.

6 Q And that the trauma comes from the movement  
7 of the brain or skull; correct?

8 A From the moving of the brain away from the skull,  
9 or the skull away from the brain creating some space in  
10 between those two --

11 Q Okay.

12 A -- (indiscernible).

13 Q And you said that it can be seen in head  
14 circumference; right?

15 A You can discover that somebody has a hygroma if  
16 their head is growing too fast. And the only things  
17 that could make a skull grow fast is if the brain's  
18 growing too fast, or for something else inside the  
19 skull that's also pushing out the skull, and that might  
20 be fluid.

21 Q And in this particular case, you noted the  
22 infant's head circumference measurements in your  
23 report; correct?

24 A I did.

25 Q And you say that his head circumference grew

1 from 25 percent at four months to 75 percent at eleven  
2 months; correct?

3 A That's right.

4 (Pause in proceeding)

5 Q Did you use -- how did you come up with those  
6 figures?

7 A It's very dif -- in order to answer that question,  
8 I just want to explain that it's very difficult in  
9 general to find out what a premature baby's head should  
10 be like at eleven months.

11 We have charts that tell us how a premature  
12 baby's head could grow in the first few months. But  
13 then those charts just sort of only go up to the first  
14 few months.

15 So, the way I do it, and the way other  
16 doctors do it, is that we take the day where the -- the  
17 due date of the baby. And the due date, we say that,  
18 oh, that should be the size of a full term baby.

19 And so, the due date was around July. And  
20 so, I -- I used the full term chart for the due date.  
21 And then followed that based on the child being full  
22 term at the expected due date.

23 Q Okay. And then you have to scale down for  
24 the child being premature; correct?

25 A I did not. In other words, if -- if I'm taking a

1 full term baby, and measuring that baby's head size on  
2 day one, that's a full term baby, and then at four  
3 months, or eleven months, that's eleven months after  
4 they're born.

5 But in Darryl's case, because he was so tiny  
6 when he was born, I said -- I decided to use the normal  
7 chart based on when he was due to be born, which was in  
8 the summer, not in the spring, or just prior to the  
9 spring.

10 So, he's -- I considered him full term on the  
11 day that he's due, and then follow a normal baby's head  
12 circumference chart considering that at his first day  
13 of life, his due date, that that's how I got the 25,  
14 50, and 75 percent.

15 Q Okay. And the CDC does give you a head  
16 circumference chart with the percentiles; correct?

17 A They do.

18 Q And they have specific ones for boys from  
19 birth to thirty six months; correct?

20 A Right. And again, those are full term boys --

21 Q Okay. And I'm approaching with what's in  
22 evidence as S-21. Do you recognize that?

23 A Sure.

24 Q Okay. And that's the head circumference  
25 chart that Dr. Medina made; correct?

1 A That's right.

2 Q And do you agree with the information that's  
3 plotted on there?

4 A I'll have to look at the numbers, but let's see.  
5 Forty one and six months.

6 (Witness reviewing exhibit)

7 A Yeah. It looks okay.

8 Q Okay. So, then according to the chart for  
9 the September 11th calculation, wouldn't he only be a  
10 little bit more than 25 percent?

11 THE COURT: You're asking him to interpret  
12 another doctor's chart?

13 MS. CRAVEIRO: I asked him if he agreed with  
14 what's plotted on there and he said yes.

15 THE COURT: Okay.

16 MS. CRAVEIRO: So, that's why I'm asking him  
17 that, Judge.

18 THE WITNESS: Right. So, on Doctor --

19 THE COURT: So, you're going to go through  
20 every point on the chart then.

21 MS. CRAVEIRO: Not every point.

22 THE WITNESS: Dr. Medina's chart on -- on  
23 September 11th, Darryl was just above the twenty fifth  
24 percentile on my chart, which is the World Health  
25 Organization Chart. He's at the fiftieth percentile.

1 BY MS. CRAVEIRO:

2 Q Okay. So, that is a big difference. Isn't  
3 that right?

4 A Oh, for that -- well, you know, she's above the  
5 twenty fifth, but let's say it's thirty or thirty fifth  
6 percentile, you can't really tell, because you're not -  
7 - it's not exact here. So, it's a -- it's a  
8 difference. It isn't a big difference, but it is a  
9 difference.

10 Q Right. And then again with the measurement  
11 on October 2nd, that's between the twenty fifth and  
12 fiftieth percentile on that chart as well; correct?

13 A That's right. So, we would call it the thirtieth  
14 or thirty fifth percentile.

15 Q And that also differs from what you found;  
16 correct?

17 A Right. I got -- I got it there on the fiftieth  
18 percentile.

19 Q Okay. And you do -- you are aware that there  
20 were additional head circumference measurements that  
21 you -- that weren't in the reports in this case;  
22 correct?

23 A That's right.

24 Q And you reviewed the records for those head  
25 circumference?

1 A Yes, I got them last time I -- I think.

2 Q Okay. And are they -- they're plotted on  
3 that chart as well; correct?

4 A That's right.

5 Q And you agree with what's on there; correct?

6 A Well, yeah. I -- I use a different chart. But I  
7 don't disagree. I don't say that Doctor -- that they  
8 got it wrong or anything.

9 Q And so, the way it's plotted there, doesn't  
10 it -- so -- strike that.

11 So, then that would show that on November  
12 29th, the head circumference was again between the  
13 twenty fifth and fiftieth percentile; correct?

14 A That's right.

15 MS. BIELAK: Can we get the year, Judge?

16 MS. CRAVEIRO: I'm sorry?

17 MS. BIELAK: The year?

18 MS. CRAVEIRO: Oh, yes. 2016. I apologize.

19 MS. BIELAK: Oh.

20 MS. CRAVEIRO: Hum?

21 MS. BIELAK: Okay. Thank you.

22 MS. CRAVEIRO: Oh.

23 BY MS. CRAVEIRO:

24 Q And the January 25th, 2017, that was the  
25 first time on that chart that he was actually over 50

1 percent; correct?

2 A That's right.

3 Q But that was only a little bit over 50  
4 percent; correct?

5 A Yes, according to this chart.

6 Q And so, according to that chart, wouldn't the  
7 head circumference show that it was growing steadily  
8 within the normal range?

9 A Well, I would say it was growing steadily between  
10 five months, and eight months. But before five months  
11 it was less than the twenty fifth percentile.

12 And then after eight months it went up to  
13 over the fiftieth percentile. So, it really depends  
14 how you look at it.

15 One might say, oh, there was a steady, a  
16 gradual acceleration, or one could say it accelerated,  
17 and then sort of stabilized, and then accelerated. It  
18 really depends on how you look at it.

19 Q But none of the doctors you -- in the medical  
20 records you reviewed of this infant noted any abnormal  
21 growth in this child's head circumference; correct?

22 A They did not.

23 Q And none of them referred the infant to a  
24 specialist for larger than expected head circumference;  
25 correct?

1 A No, they did not.

2 Q And now, you said the --

3 THE COURT: I'm sorry. We're going to have  
4 to stop this hearing, because we have to end it now.  
5 Okay?

6 I'll offer you the 10/29 date as a reschedule  
7 date. If not --

8 MS. CRAVEIRO: Judge, I have three more  
9 pages, which would take me probably another five, ten  
10 minutes.

11 THE COURT: I don't have that. I don't have  
12 that time. So, 10/29. But my -- well, my calendar  
13 coordinator will reach out to you if that's an issue on  
14 the date.

15 We're going to devote the entirety of the  
16 afternoon of 10/29 for it. Okay?

17 MS. BIELAK: Judge, I would ask --

18 THE COURT: Doctor, thank you very much.

19 MS. BIELAK: -- if I may?

20 THE COURT: We'll be in touch with you.

21 MS. BIELAK: Okay. But can we do this over  
22 Zoom, because we've had to pay for Dr. Scheller to come  
23 up twice.

24 THE COURT: We had -- we had the whole  
25 afternoon scheduled, and Dr. Scheller is unavailable



1 this afternoon. We just found that out.

2 So, we'll -- there has to be -- I can't have  
3 partially virtual, and it would be unfair to the State,  
4 because you had him live for the entirety of the  
5 testimony; right?

6 MS. BIELAK: I understand, Judge. But I -- I  
7 made everyone aware that his availability today was  
8 from 10:15 to 12:45 on Tuesday when we were here.

9 THE COURT: That's -- that's all we got,  
10 folks. Okay? I'll see you on the 29th unless there's  
11 another day when you can make yourself available.  
12 Okay?

13 THE WITNESS: Judge, if I can postpone my --  
14 (Off the record, 12:15:27 p.m.)

15 (Back on the record, 1:44:39 p.m.)

16 THE COURT: We want to get you back home. I  
17 want to get through this, and no offense, I hope it's  
18 the last time I have to see you in court.

19 So, all right. Let's -- let's -- please  
20 resume your seat.

21 (Pause in proceeding)

22 THE COURT: Ms. Craveiro -- oh, okay. We're  
23 on?

24 MS. CRAVEIRO: Yes, Judge.

25 THE COURT: Ms. Craveiro, still with you --

1 MS. CRAVEIRO: Thank you, Judge.

2 THE COURT: -- on cross.

3 MS. CRAVEIRO: Okay.

4 BY MS. CRAVEIRO:

5 Q Doctor, I believe we left off -- small  
6 hemorrhages can irritate the brain and cause seizures;  
7 correct?

8 A Yes.

9 Q And the blood in the subdural space causes  
10 those seizures; right?

11 A Actually not. The -- it would have to get under -  
12 - under the arachnoid, and actually irritate the brain  
13 that way.

14 In other words, the subdural space is one  
15 layer removed from the brain. And so, in order for  
16 blood to get to the brain, it has to actually be more  
17 than that, unless there's (indiscernible).

18 Q Okay. So, then when would the seizures occur  
19 with small hemorrhages?

20 A Sometimes the small hemorrhages are subdural,  
21 which they should not cause seizures. But sometimes  
22 they're subarachnoid (indiscernible). And you got two  
23 layers going to the brain --

24 COURT CLERK: It's not --

25 THE COURT: Doc, we have to -- can you pull

1 the mic closer to you?

2 THE WITNESS: Oh, of course.

3 THE COURT: Because we've got to get -- we've  
4 got to get you on the mic.

5 THE WITNESS: So, blood gets closer to the  
6 surface of the brain if there's subarachnoid blood that  
7 would cause a seizure.

8 But usually a small amount of subdural blood  
9 will not. It would have to be a large amount that  
10 would actually squeeze the brain.

11 BY MS. CRAVEIRO:

12 Q Okay. In this case, the infant didn't have  
13 any seizures after he left the emergency room on  
14 February 10th; correct?

15 A That's right.

16 Q And none occurred during his stay at the  
17 hospital, which lasted until March 3rd; correct?

18 A That's right.

19 Q And isn't it true that seizures can also be  
20 caused by trauma to the brain; correct?

21 A Absolutely.

22 Q Now, Doctor, there are different types of  
23 retinal hemorrhage patterns; correct?

24 A Yes.

25 Q And the pattern of retinal hemorrhages is

1 important when determining the cause; correct?

2 A No.

3 Q Doctors look at the different patterns, or --  
4 strike that.

5 An ophthalmologist will look at the pattern -  
6 - never mind.

7 Sir, retinal hemorrhage patterns are  
8 associated with certain causes; correct?

9 A No.

10 Q Okay. So, you don't believe -- you're not an  
11 ophthalmologist; correct?

12 A I'm not.

13 Q And so, if the association -- the pattern  
14 that's associated with increased cranial pressure is  
15 peripapillary, meaning around the optic nerve; correct?

16 A That is one of the patterns.

17 Q Okay. And the retinal hemorrhage is  
18 associated with abusive head trauma are numerous multi-  
19 layered, and widespread; correct?

20 A That is a common idea proposed by the child abuse  
21 experts. That idea has no foundation in science or in  
22 -- in well done research.

23 Q Okay.

24 A It's an idea that's out there in many dozens of  
25 articles. But it's an idea that has not been

1 corroborated by -- by anything other than antidote.

2 Q That idea is recognized and widely accepted  
3 within the medical community; correct?

4 A Very widely accepted in the child abuse community,  
5 and in the pediatric ophthalmologic community. But I  
6 don't know that it's widely accepted anywhere else.

7 Q Okay. And the pediatric ophthalmological  
8 community would be the experts in pediatric  
9 ophthalmology; correct?

10 A Not as it relates to what might cause retinal  
11 hemorrhages. Pediatric ophthalmologists are experts at  
12 describing it, and detailing it, and making sure that  
13 it doesn't affect the vision, and if -- if necessary  
14 doing surgery for it, but they're not experts in the  
15 cause of it.

16 Q And the numerous multi-layered and widespread  
17 retinal hemorrhages, that was the pattern that this  
18 infant in the case had; correct?

19 A Yes.

20 Q And you testified that they could be caused  
21 by birth; correct?

22 A Well, not in this case. But in other cases they  
23 could be caused by birth.

24 Q Well, in his case, you said it was  
25 prematurity that caused them; correct?

1 A No, no, no. Not at all. I -- I got into the idea  
2 of retinal hemorrhages at birth in order that the Court  
3 understands all the things that might factor in to  
4 causing retinal hemorrhages.

5 But in this particular child's case, these  
6 are not birth related retinal hemorrhages.

7 Q Okay. So, what are his retinal hemorrhages  
8 related to, in your opinion?

9 A Too much pressure. Too much pressure in and  
10 around the -- the brain.

11 Q Okay. And at what point would that pressure  
12 cause those retinal hemorrhages?

13 A Well, it's like anything with the straw that broke  
14 -- breaks the camel -- the camel's back. Every child  
15 is different.

16 And so, in some child -- children who have  
17 subdural and subarachnoid hemorrhages, we see it with  
18 small subdural and subarachnoid hemorrhages, and others  
19 we see it with large subdural and subarachnoid  
20 hemorrhages.

21 Q Okay. But you're saying in this case that  
22 the fluid in his brain started as early -- or that his  
23 head circumference started to change as early as when,  
24 Doctor?

25 A The summer of 2016.

1 Q Okay. So, would these hemorrhages have  
2 appeared at that point then?

3 A It's possible. There's no way to know. Most of  
4 the hemorrhages that happen to babies, they clear up  
5 after a few weeks.

6 And so, you -- we didn't know until we  
7 looked. He did have eye -- eye appointments -- I'm  
8 sorry -- eye visits as part of being premature and they  
9 didn't see any retinal hemorrhages, but those all stop  
10 when a child gets close to term age.

11 In other words, when his due date would have  
12 been, and then they didn't do any.

13 So, we have no idea if he had retinal  
14 hemorrhages between the summer, and when he was  
15 hospitalized.

16 Q Well, that's not true. Wasn't his last  
17 ophthalmological exam on September 20th, 2016?

18 A Okay. Yeah, that's fine.

19 Q And before then he had retinal hemorrhages  
20 associated with his prematurity at birth; isn't that  
21 correct?

22 A No, he did not. He never had retinal hemorrhages  
23 as a -- as an infant, not that I'm aware of.

24 Q You read Dr. Medina's report; didn't you?

25 A I did.

1 Q I'm sorry. Not retinal hemorrhages. He had  
2 retinopathy.

3 A Right, which is a --

4 Q Yes.

5 A -- a completely different --

6 Q I'm sorry. You're correct. And his eyes, as  
7 far as it was in September 20 of 2016, were seen to be  
8 healthy at that point; correct?

9 A He had recovered from all the premature type of  
10 complications that could affect the eyes.

11 Q Okay. And retinal hemorrhages can be caused  
12 by trauma; correct?

13 A Yes.

14 Q Okay.

15 MS. CRAVEIRO: No further questions.

16 THE COURT: Any redirect?

17 MS. BIELAK: Just one question, Judge.

18 REDIRECT EXAMINATION BY MS. BIELAK:

19 Q Good afternoon, Dr. Scheller.

20 A Hello.

21 Q Is there a study that shows a human can shake  
22 a baby causing the triad of injuries?

23 A There is not.

24 MS. BIELAK: That's all.

25 THE COURT: Not --

1 MS. CRAVEIRO: I have nothing, Judge.  
2 THE COURT: Dr. Scheller, thank you very  
3 much.  
4 THE WITNESS: Thank you.  
5 THE COURT: Pleasure meeting you.  
6 THE WITNESS: You're welcome.  
7 THE COURT: Thanks for coming back and thanks  
8 for staying. Okay?  
9 THE WITNESS: (Indiscernible.)  
10 THE COURT: All right. No problem. Please  
11 be careful going home.  
12 THE WITNESS: Thank you.  
13 (Counsel conferring)  
14 THE COURT: Okay. No other witnesses; right?  
15 MS. BIELAK: No, Judge.  
16 THE COURT: And you want to submit a written  
17 argument or do you want to --  
18 MS. BIELAK: Yes, Judge. If we could get two  
19 --  
20 THE COURT: Okay. Great.  
21 MS. BIELAK: -- or three weeks, I guess we  
22 can submit at the same time.  
23 THE COURT: Today's the 15th. Emily, what's  
24 three weeks -- Christine, what's three weeks from  
25 today?

1 MS. CRAVEIRO: Oh, yeah. Thank you.  
2 MS. BIELAK: November 5th, Judge.  
3 THE COURT: You know what? Yeah. Okay.  
4 That's fine. Just give me your written submissions  
5 November 5th. You can upload them on eCourts; right?  
6 MS. BIELAK: Sure.  
7 MS. CRAVEIRO: Yes.  
8 THE COURT: Okay. 11/5 written arguments.  
9 Okay. I'll remain -- right now I'm not going to set  
10 the next date, because I want to get your arguments,  
11 both of your arguments. And then we'll send out a  
12 notice to each of you as to when the next hearing's  
13 going to be.  
14 MS. BIELAK: Okay.  
15 THE COURT: Okay? All right.  
16 MS. BIELAK: And that -- would that be for a  
17 decision or oral argument, Judge?  
18 THE COURT: What I'll wind up doing is --  
19 well, no, you're giving me written arguments.  
20 MS. BIELAK: Right. Oh, I didn't know if you  
21 wanted both.  
22 THE COURT: No, no.  
23 MS. CRAVEIRO: I was going to ask the same  
24 thing.  
25 THE COURT: I'm not going to ask you for

1 both. Put it all in writing.  
2 MS. CRAVEIRO: Yeah.  
3 MS. BIELAK: Okay.  
4 THE COURT: And then I'll tell you what the  
5 next date will be for the -- for us -- we'll -- we'll  
6 mail the decision out to you.  
7 MS. CRAVEIRO: Oh, okay.  
8 THE COURT: And whatever the decision is  
9 going to be, we're going to have to have a hearing one  
10 way or another. All right?  
11 MS. BIELAK: Oh.  
12 MS. CRAVEIRO: Judge, what -- what kind of  
13 hearing?  
14 THE COURT: Just the status.  
15 MS. CRAVEIRO: Oh, okay.  
16 MS. BIELAK: Okay.  
17 THE COURT: Just the status.  
18 MS. BIELAK: Got it.  
19 THE COURT: Just to see where, you know, just  
20 to see which direction we're going. Okay?  
21 MS. CRAVEIRO: At this point I was thinking  
22 another testimonial.  
23 THE COURT: No, no, no, no.  
24 MS. CRAVEIRO: I'm so confused.  
25 THE COURT: No, that's all right.

1 MS. BIELAK: If you want to keep going --  
2 THE COURT: I've got more than enough lined  
3 up. All right. So --  
4 MS. CRAVEIRO: Do you want to give a -- a --  
5 THE COURT: Stay with your -- stay tuned with  
6 your attorney and I'll await your submissions. Okay?  
7 MS. BIELAK: Okay. Thank you, Judge.  
8 MS. CRAVEIRO: You don't want to give it like  
9 a check in date --  
10 THE COURT: No.  
11 MS. CRAVEIRO: -- right now?  
12 THE COURT: No.  
13 MS. CRAVEIRO: Okay.  
14 THE COURT: My dates are scarce.  
15 MS. CRAVEIRO: Got you.  
16 THE COURT: And I don't have any to spare.  
17 MS. CRAVEIRO: No problem.  
18 THE COURT: So --  
19 (Proceedings concluded at 1:56:11 p.m.)  
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CERTIFICATION

I, Madeline Walsh, the assigned transcriber, do hereby certify the foregoing transcript of proceedings on CourtSmart, Index No. from 11:26:54 to 12:15:27, and 1:44:39 to 1:56:11, is prepared to the best of my ability and in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate compressed transcript of the proceedings, as recorded.

/s/ Madeline Walsh

Madeline Walsh

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Agency Name

10/21/20

Date