**EXCERPT FROM DIRECT AND CROSS-EXAMINATION OF HOSPITAL PATHOLOGIST TESTIFYING AS A DEFENSE EXPERT REGARDING BURN INJURIES IN A CHILD PHYSICAL ABUSE CASE**

## DIRECT EXAMINATION BY DEFENSE ATTORNEY

## Q: Doctor what are the significance of the [burns on the shoulder]?

## A. I would interpret these marks as a mark in which there is contact of the skin with a hot

## object.

## Q. Can you tell... whether... the contact was caused by the object being placed on the child’s

## skin or merely the object coming in contact with the child?

## A. No… these marks don’t tell me what caused it -- how it was caused.

## Q. Would you consider those to be pattern burns?

## A: Pattern in the sense of an object being placed up against the skin… yes; but pattern of

## what I don’t know.

## Q: … Does that shape remind you of anything that you would see in the bathroom area?

## A: I can’t be sure. I would only speculate as to whether this could be related to the spigot…

## or handles.

## Q: The intact skin on the upper thighs, does that tell you anything...?

## A. It doesn’t… except the fact that if you had a baby that you were forcing down in

## immersion I would imagine, depending on how deep the water is, which we don’t know… if

## you’re going to… claim that’s an immersion line for being held down I would expect you’d have

## some of this area involved in a similar way.

## Q. Looking at this photograph [of the buttocks] describe… the significant areas of what

## you’re seeing?

## A. … I’m concerned that this area can be interpreted as an immersion line… it’s not straight

## across… In my experience when you’re dealing with an immersion you’re dealing with a line

## that’s almost straight…

## Q. What would be the significance of the lower left heel not being as involved as the upper

## foot?

## A. Well, one thing, if the heel and bottom of the feet… and you’re sitting in or being forced

## in a hot liquid, I would expect these to show the same sort of injury as the rest of the foot. The

## rest of the lower extremity.

## Q. … Does the right heel, is that significant to you for any reason?

## A. … [T]he heel looks basically uninvolved… that would imply to me that there wasn’t a

## problem with the soles of the feet… the fact the soles and heels are spared is an indication there

## could be pressure on them, which then if you could interpolate… [the child] is standing up…

## that’s what I said about trying to exit.

## Q. … Doctor, if we assume that this is a faucet… and the bathtub comes out… would you

## expect to see the types of injuries you saw on the shin … if his legs came in contact with the hot

## water coming down on him?

## A. Yeah… if someone was in the hot liquid and was trying to exit and bumped up against

## say, faucets, you would expect one of their extremities… to get the direct force of the hot liquid.

## Q. ...[L]ooking at all these injuries, do you have an opinion to a reasonable degree of

## medical certainty… whether these injuries occurred as a result of accidental trauma or intentional?

## A. I would think the probability from what I have seen is that they’re accidental. The

## possibility they were not, but… at least as I understand the law the aspect of reasonable doubt

## falls on those that are trying to prove what the problem was.

## Q. Okay… what you’re saying… it’s not proper pathological science based upon what you

## have seen here to conclude that these injuries were intentionally caused...?

## A. That’s what I’m trying to say.

## Q. You can’t rule it out but you cannot say to a reasonable degree of medical certainty that

## these were intentionally caused injuries?

## A. That’s what I’m trying to say, yes.

## Q. [W]hen you see burn type injuries that involve patterns, those can be intentional, is that

## correct?

## A. They can be, yes.

## Q. And the same with immersion type burns...?

## A. Yes.

## Q. Is it common to see pattern burns and immersion burns with intentional burning of a

## child?

## A. Not in my experience. It’s conceivable. It does happen. It’s a wild world out there… but

## in my experience I think that would be very unusual. It doesn’t mean it can’t happen.

## Q. The combination of burns in this case, does it give you any indication one way or the

## other whether it was... intentional or accidental...?

## A. I don’t see anything there that would make me say that it was intentional.

## EXCERPT FROM CROSS-EXAMINATION BY PROSECUTOR

## Q. Doctor, just so we’re absolutely clear about your past experience in examining burn

## cases, would you tell us again how many burn cases you’ve seen during your career?

## A. I would estimate I have seen 20 to 25 and been involved in many more.

## Q. And when you say involved you’re talking about discussions with your colleagues in

## which you’re not seeing the actual patient or injury, correct?

## A. I’m discussing cases which are presented on film just like you’re presenting this case

## here, and then the case is discussed.

……………………………………

## Q. Doctor, how many of those 20 cases that you have examined personally have involved

## scald-type injuries?

## A. I would imagine about 10.

## Q. And how many of those have involved direct-contact type injuries?

## A. I would estimate maybe about half of those.

## Q. You are not a burn specialist correct?

## A. That is correct.

## Q. And you are not a forensic pathologist either?

## A. That’s correct.

## Q. And so you are less qualified than a forensic pathologist to testify in a court of law

## regarding the interface between the injuries observed and the mechanism for those injuries,

## correct?

## A. That is not correct….

**Q.** Doctor, you are not trained in the interface between the law and medicine, correct?

**A.** What do you mean by not trained? Not certified?

**Q.** You are not a forensic pathologist?

**A.** The statement I am not a forensic pathologist is correct. I am a pediatric pathologist.

**Q.** What is your understanding of what a forensic pathologist does?

**A.** A forensic pathologist deals with violent or unexplained deaths, and they deal with death.

They don’t deal with the living. They deal with the living before they die, but they don’t deal

with the living in a sense of being involved with cases that are not fatal.

**Q.** They also deal with the manner and mechanism producing the death and how that relates

to whether the death is accidental or non-accidental, is that correct?

**A.** They do that, but it’s not exclusive to a forensic pathologist.

**Q.** In your words, you feel competent to do that yourself?

**A.** I feel on cases that I can do that, yes.

## Q. Have you published any articles on burns?

## A. No sir.

## Q. Have you lectured at all on burns?

## A. No sir.

## Q. And have you attended any national conferences where the subject of burn injuries in

## terms of assessing whether they were accidental or non-accidental were presented?

## A. Yes sir.

## Q. And which ones were that?

## A. The Society for Pediatric Pathology has various papers and they have seminars on the

## issues of child abuse.

## Q. And specifically dealing in the area of burn investigation?

## A. I think some of those cover that, yes sir.

## Q. And you have attended those personally?

## A. Yes sir.

**Q.** Are you familiar with the general literature in the field of pediatric burns?

**A.** I am familiar with the literature, but that does not mean I know every article, yes sir.

**Q*.*** Now you have offered an opinion in this particular case that in your opinion the evidence

here does not establish beyond a reasonable doubt that these burns were intentional and instead,

that they are the result of accidental trauma. Would you tell me doctor, do you have a law

degree?

## A. No sir.

## Q. Do you know what the standard of proof is for beyond a reasonable doubt?

**A:** No sir.

**Q:** Do you know, in fact, what the definition is in the jury instructions for beyond a

reasonable doubt?

## A. Not legally, but as a human being and a very informed consumer I have interpreted

## what I thought, but I stand to be corrected.

## Q. Well, doctor, would you please explain to us what you mean by beyond a reasonable

## doubt so the jury has the benefit of your experience and your opinion in that regard?

## A. I understand, again as a lay person, that in order to say someone did something, and,

## therefore, to have the consequence of that, one has to be certain of what happened.

**Q.** 100% sure?

**A.** Oh, nobody is 100% certain.

**Q.** Well, doctor, isn’t that, in fact, the basis for your saying in this particular case that these

injuries are accidental and not the result of intentional conduct?

**A.** No, it’s not.

**Q.** Well, when you tell us that you don’t know all of these things about the circumstances

that are involved in this particular case, for example the water temperature, the configuration of

the bathtub, the size and shape of the spigot, the developmental abilities of the child, the

construction of the bathtub, aren’t you in effect saying that because you’re not certain of those

factors you cannot be certain in making your conclusions?

**A.** No, sir. I’m saying - can I elaborate on that?

**Q.** Certainly.

**A.** I’m saying that anyone who is trying to make a competent judgment without all those

factors would have a difficult time.

**Q.** How many cases of child abuse have you been involved with in your 20 years of

experience, doctor?

**A.** I would have to estimate.

**Q.** Would you please.

**A.** I would imagine maybe 75.

**Q.** And how many of those have involved burn injuries, sir?

**A.** Again, I mentioned before that I saw between 20 - about 20 burn injuries, and I said about

half of those were scalds. I think that’s on the record.

**Q.** Yes sir, but you didn’t indicate of that number, how many of those were in abusive

situations.

**A.** Okay. In other words, if I understand the question correctly… do I always say they’re

accidental?

**Q.** No. My question for you sir, is of the 20 cases involving burn injuries that you have

participated in personally, of that 20 how many of those did you have a medical opinion were

abusive?

**A.** I would again guess about half.

**Q.** Now you have offered an opinion in this case that the combination of injuries that are

apparent in these photographs taken of the child do not suggest that these injuries were the result

of an intentional conduct. What do you mean by that statement?

**A.** What I mean about that statement is that the lesions there do not indicate how they were

caused intentionally, and they are consistent with an accidental explanation. That’s what I mean.

**Q.** Would you offer us that accidental explanation so that we can understand exactly what

scenario it is that you perceive would account for all of these injuries?

**A.** Yes sir. I would think that an infant in a tub of water which was luke warm and then the

water suddenly became hot and the youngster trying to escape that situation could have contact

injuries with objects connected with the tub. That’s what I would say.

**Q.** And those objects you’re hypothesizing to be the spigot?

**A.** What I would hypothesize if I know tubs and stuff like that, I would think that certainly

would be a hot water spigot and a faucet, and then there would be a spigot. That’s what I would

say, yes.

**Q.** Now you have examined the histories provided by the defendant in this case, and is it

your opinion, doctor, to a reasonable degree of medical certainty, that the explanation provided

by the defendant to the investigating detective, the final version about leaving the child

unattended in the tub with the water running luke warm, coming back in and finding him laying

in a pool of water with every part of his body submerged under the water except for the upper

portion of his arms above the elbow and his face, and pulling him out, noticing that the water was

very hot, that it was steaming, that it was hot to the touch, that that explanation is consistent with

the medical evidence in this particular case?

**A.** Yes, sir.

**Q.** And that scenario, in your opinion, would account for each and every one of the injuries

that you have seen on the photographs of this child.

**A.** I would think the injuries would be consistent with that scenario.

**Q.** Doctor, in your experience, how many times have you come across circumstances in

which the trauma produced, the burn injury produced, was of two distinct types, that being

contact and immersion?

**A.** I think that is - uncommon, but I have seen that happen.

**Q.** And in how many of those circumstances did you conclude that that was a result of

accidental trauma?

**A.** I would think that in - again, I don’t know the exact number, but I would think that a

certain number of cases were accidental. There were child abuse also, but so, it goes both ways.

One has to look at all the material.

**Q.** Do you agree, doctor, that the presence of two distinct and different forms of injury, that

being contact and immersion, is highly suggestive of abuse?

**A.** I think that one has to be suspicious of abuse in any injury to a child. Being able to state

that, one can’t use statistics. One has to judge the individual case.

**Q.** Now, how many cases of abuse have you been involved in where there was an eyewitness

to the event other than the alleged perpetrator and the child who was victimized?

**A.** I think the most usual circumstance is that - there is not an eyewitness except the person

who was the perpetrator in an abuse case.

**Q.** And is it your opinion that without such an eyewitness we could not make a

determination of abuse?

**A.** No, it is not.

**Q.** Then how would you go about making that determination in the absence of an

eyewitness?

**A.** What you would do is you would have the examination of the child by the people who

examined the child at the time and recording of the injuries. You would also be able to check

this out because if there are questions, there’s always Child Welfare involved, as to the

circumstances that this occurred in, and then you would have a medical history which is given

about the events. In other words, what you would have to - what I’m trying to say is that you

would have to get it all, and then you are - you’re left with trying to put it all the pieces together

and come up with what’s most probable.

**Q.** And if you don’t have it all, you can’t make that conclusion, isn’t that your opinion,

doctor?

**A.** No, it is not my opinion.

## Q. Well in this particular case what don’t we have that you feel is absolutely necessary in

## order for you to make a determination whether this was abuse or not?

## A. What I don’t have are the circumstances like the depth of the water of the tub, etc. - that’s

## a big piece that’s missing, number one; and number two, I think from the injuries that are here

## this is consistent with a hot liquid injury which could have occurred in a tub in which water was

## present and then suddenly became hot. That’s what I’m saying .

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**Q.** Let’s get down to some specifics here. Okay. If I were to tell you that the tub here in this

case was porcelain, that the water temperature was set on on high that day, that the normal range

for water temperature in the medium settings is 140 degrees Fahrenheit or above, and you were

presented with the factual scenario that the defendant gave, is it your opinion that given those

circumstances that these injuries are consistent with that history?

**A.** Yes, I - the only thing I would wonder is I - I know that hot water heaters and - but I don’t

know if a hot water heater is 140 or higher or a little bit lower, I don’t know that.

## Q. But we do know something about the hot water temperature in this particular case, at least

## in terms of how hot it had to be to produce the splash injuries, don’t we, doctor?

## A. Absolutely, yes sir.

## Q. And it had to be over 140 degrees Fahrenheit in order to produce those injuries, correct?

## A. I think it would have to be 140, yes, or higher.

## Q. And at that water temperature how long would it take to produce a full thickness injury in

## a child?

## A. Okay. If you read Moritz in 1947 which is a classic article which dealt with direct

## burning of skin, they did guinea pigs and extropolated to some humans, you’re dealing with

## something around 3 seconds. If you read some of the pediatric literature they’re talking about

## between 5 and 10 seconds....

**Q.** And doctor, is that water temperature not inconsistent with the burn injuries that are

present in this particular case given the fact that this child did not sustain full thickness injuries

over the entire portion of his lower extremities?

**A.** It’s consistent with the fact that those injuries were not produced and therefore might

relate to the duration that one was exposed to this liquid.

## Q. Well, wouldn’t you expect, doctor, that if this child were sitting in this bathtub for the

## amount of time that he was in the position that the defendant claims that he was, and producing

## the burn injuries to the lower parts of his extremities as they are depicted in these photographs,

## that he would have sustained substantially greater burns if that water temperature was 140

## degrees or above coming out of that faucet?

## A. I don’t understand what you mean by position.

**Q.** The position as described by the defendant in that bathtub?

## A. What position?

## Q. Laying on his back, floating in the water with every part of his body submerged except

## for his upper arms and his face?

## A. You know, that’s one of the things that I think is very difficult. One of the things is

## difficult if a youngster is trying to exit a tub and has screamed and tries to go over the tub and

## falls back, okay, and you come into the room and see his head and his arms, I – I was not

## clear when you say floating, it seems like you’re out in the ocean, you’re floating on your

## back.

**Q.** I’m asking you to interpret.

## A. What I’m trying to say is that I’m trying to clarify for myself how I can get these

## petechial-type things over the whole back, over the base of the neck, this area was exposed but it

## wasn’t exposed for a long enough period of time; but that’s the best I can do with it.

## Q. Then why don’t you explain for us how the petechial areas would occur on the back but

## not on the chest if the same exposure took place?

## A. Because he wasn’t -- he was floating, and again, it’s how we interpret floating. I guess

## when you float you’re not submerged.

## Q. You understand the principles of hot water as to what areas of a tub are going to be hotter

## than others? Hot water rises, cold water sets. Someone is floating in a tub on their back would

## have their back exposed to the coldest temperatures of the water, the hottest water would be to

## the top part covering their chest, correct?

## A. I’m not absolutely clear with that, but I -- these injuries I feel when you asked me if it’s

## consistent with the position, that’s how I’m saying the position would be consistent; but to say

## that someone is floating in a tub of very hot water and then there are not injuries like the other

## parts of the body, you know, it sounds like it’s cut and dry, and when some – if someone fell

## back, I tell you when you hit that, you know, the flight or the fight and flight response – I mean,

## your eyes dilate, okay. You – I mean, it’s a shocker. So, if you’re there when that happens and

## you do something, take somebody out, it’s the length of exposure. That’s what I’m saying.

**Q:** Well – you have offered a hypothesis as to how this young child would attempt to get out

of the bathtub under these circumstances, and I believe you indicated he would begin to grab for

the side of the tub, is that correct?

**A:** That would be one way to get out. It depends on what he’s close to. I don’t know what

the tub is.

## Q. In your experience, doctor, an eight month old child who is sitting on his rump and is

## attempting to get up and away from something, how would that child act? How would he

## move in order to get away from that source?

## A. … I would imagine what they would try to do is just -- try to exit. If the side is low

## enough, and they might bump into something. Just – from my experience with my own kids,

## you know – I mean, you can’t predict what they’re going to do.

## Q. He would bump into it how many times?

## A. Just depends.

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## Q. Well is that within the realm of scientific possibility in your opinion that he would do it

## eight times?

## A: I don’t think -- you know, the eight times is an exaggeration but --

## Q. Is it? We have at least eight separate injuries on the upper torso this child as you

## indicated by direct contact?

## A. Yeah, but you know, if you hit a faucet and a spigot, and I don’t know how the spigot is

## arranged as far as the indentation, stuff like that, two of those marks can be from one thing,

## and then you bump into it again, I don’t know, but that’s the way I would put it together.

## Q. You’re speculating, correct?/

## A: I am giving a very probable scenario based on my experience.

## Q. And that probable scenario includes the fact that the spigot, … produced the contact

## injuries, … the ones on the shoulder and the ones on the abdomen, as well as the contact

## injuries below, correct?

## A. Yes sir.

## Q. And you’re speculating that those were produced by the spigot in this case, is that

## correct?

## A. I didn’t say only – what I’ve said several times that we’re not only talking about the

## spigot. We would talk about a handle, too.

## Q. And under the scenario that was provided by the defendant, when he came… back into

## the bathroom the water was still on in the faucet, correct?

## A. Yes.

## Q. And in order to heat the faucet up to a point where it would produce these injuries, that

## would come from the water itself, correct?

## A. Yes sir.

## Q. And so, one would assume, would they not, doctor, it would be a logical conclusion

## that you would also see some form of liquid burn as a result of coming in contact with that

## spigot, correct?

## A. Depending on whether you were sitting in a tub and it was so small you’re under the

## spigot, or whether it’s something where you can sit back, and the injury I mentioned to the

## right foot could be directly under the water as one is trying to exit. That’s what I said.

## Q. How would the child get these two injuries on his shoulder? How could he possibly do

## that in this tub?

## A. By contacting the -- faucet part several times, I would imagine.

## Q. And that would be while the hot water was streaming out… of that faucet?

## A. Yes.

## Q. And yet there are no associated injuries as a result of hot water in the area of these

## contact burns, correct?

## A. No, they’re on the feet. They’re on the foot…

## Q. Doctor, show me how this child would touch a spigot to produce these injuries and not

## sustain scald burns as a result of water that was coming out of that faucet at the same time.

## A. I -- I must -- I need clarification, Your Honor. What do you mean by a spigot? I keep

## saying a faucet handle. Maybe I’m not making myself clear.

**Q.** Do you know of a faucet handle that has an imprint like that?

**A.** It’s – you see round ones, I don’t know, with – I have no idea because we have no information about what the tub was like.

**Q.** In other word, again, you’re speculating that these injuries were produced by a faucet

handle of which you have no information at all, correct?

**A.** Like anyone else would speculate as to what caused it, yes?

**Q.** That’s your explanation for why there’s a reasonable doubt in this case, correct?

**A.** No, it’s not my only reason.

## Q. Well, let’s talk about the ones on the abdomen then. How did he get those.

## A. I think it’s contact.

## Q. And with what object?

## A. He might have hit the side of the spigot, I’m not sure.

## Q. And again he has no associated burn injuries as a result of the hot water coming out of

## that area, correct?

## A. On his feet he does.

## Q. But not in the area where he’s coming in contact with the water, or with the spigot where

## the water is coming out, does he?

## A. Yeah, I guess I’m not clear. When I think of a spigot and water coming down, I mean,

## there’s a whole top of the spigot. So if you hit that, okay, particularly on your left side, your feet

## are going to be out. That’s what I --

## Q. How many spigots do you know that are shaped like that doctor?

## A. I can’t answer that.

## Q. You have never seen one in your entire life, have you?

## A. I don’t work in kitchen appliances.

## Q. Is it a fact, doctor, you have never seen a spigot in your entire life that was shaped like

## this?

## A. Yeah I would have to say I never have seen one like this, but I haven’t seen a lot of

## spigots to be honest with you.

**Q.** And in order for this child to sustain these injuries on his abdomen, these mirror image

injuries -- you would agree these are mirror image injuries, is that correct?

**A.** Have you seen – I don’t know. Have you seen something like that?

**Q.** Doctor, I’m asking you, okay?

**A.** Yes.

**Q.** Is it you opinion that these are mirror image injuries, the two injuries to his abdomen?

**A.** I can’t say they’re mirror image. It looks – it could be, but it doesn’t have to be.

**Q.** Well, it’s your opinion that these are produced by the same object, is it not?

**A.** Yes, they’re produced by – by – yes.

**Q.** All right. And probably by the same object that produced this injury to the child’s side?

**A.** No, not necessarily.

**Q.** So, now, in this tub, we would have to have two separate, independent objects that would

have produced these injuries, correct?

**A.** I would think, yes.

**Q.** And if I were to tell you that the defendant’s wife indicated she was not aware of anything

in the bathroom that would produce these injuries, what would that do to your hypothesis?

**A.** That was not what I read in the deposition.

**Q.** I understand that sir.

**A.** Then that’s all I need.

**Q.** Well, I’m telling you that now. Based on her testimony in this trial here today. What

would that do to your hypothesis?

**A.** I would have to – the cause of the injury would be indeterminate, but the cause of the

injury I think does not indicate something perpetrated on the infant. Let me just – can I explain

something?

**Q.** No doctor. I’ll ask the questions, and then you can answer the questions.

**A.** Okay.

**Q.** If you would, please. In order for the child to sustain these injuries on the spigot, he

would have had to have come directly in contact to produce that injury to his abdomen, and then

turn around in the same position to get a similar burn – virtually a 180 degree turn, correct?

**A.** I don’t think so.

**Q.** Do you think it’s the side of the spigot that’s causing this, or the underneath, or the top?

**A.** I don’t know. I think it’s a hot object.

**Q.** Could be something that was branded on the child to produce that injury, don’t you think.

**A.** It could be. It could be anything hot, sure?

**Q.** That’s correct, but since we don’t know what the object is, you’re saying that we can’t be

certain that it’s abusive, isn’t that right?

**A.** I’m saying that is consistent with a non-applied hot object. That’s – that’s what I’m

saying.

**Q.** You’re saying that it’s consistent with a child running into this hot object two separate

times in directly the same position, or in the same area, shifting his body to the positions to get

this? That’s what you’re saying?

**A.** What I’m saying is that I don’t know exactly what’s causing the contact…

**Q.** Do you consider there to be sharp lines of demarcation on this particular object that

produced the burns in State’s Exhibit No. 1?

**A.** Meaning can it give you an exact pattern? Is that what you mean?

**Q.** Yes. Is this a patterned injury?

**A.** Patterned in the sense that it’s due to contact?

**Q.** Is it your opinion that the same object produced both of these burns?

**A.** The same object, yes, but not at necessarily the same time.

**Q.** Well, we do know this child sustained these injuries within a relatively short period of

time that night, don’t we doctor?

**A.** It appears that way, yes.

**Q.** And how reasonable of a medical conclusion is it for a child of this age to sustain the

number of injuries that he did in that short a time period?

**A.** They are consistent with an accidental injury.

**Q.** Under what hypothesis, doctor?
**A.** Under the hypothesis that indicates if it was a ceramic tub and he was held forcibly he would have a donut shape lesion on his buttock, okay, and the – the aspect of the petechia on the back being exposed to hot liquid. Those are the things I spoke to to indicate why I said that.

**Q.** Is it your opinion that in all forced immersion injuries there is going to be a donut shaped

pattern on the buttocks?

**A.** No, not in all.

**Q.** Why is the fact that there isn’t a donut shape in this case indicative that it’s not forced

immersion?

**A.** Because it’s just something that speaks against it. It doesn’t mean that it’s always

present, but it speaks against trying to prove that’s what caused it.

**Q.** If the water was 6 or 8 inches in depth in this tub at the time the incident took place, and

if the child was only dipped in there a couple of inches, it would produce the injuries that you

saw on those photographs, would it not?

**A.** No.

**Q.** It wouldn’t?

**A.** You mean if he was just dipped in there?

**Q.** Yes.

**A.** I – no. I don’t feel that way.

**Q.** You can’t conceive of a circumstance that would produce those injuries by forced

immersion?

**A.** Not that – well, conceive, yes. I can imagine things happening. I’m trying to go on

probability, that’s all.

**Q.** And what is it that says it is not probable that it took place that way?

**A.** It’s as I have described.

**Q.** He was sitting there and the water suddenly got hot and he tried to get out, correct?

**A.** He was sitting there, and according to the deposition I read from the mother, they have

had trouble with the water in the bathroom where it suddenly got very hot.

**Q.** And we don’t know whether that happened on this night or not, do we doctor?

**A.** Nobody knows that.

**Q.** So, again, you would have to be speculating in order for that to be the circumstance under

which these injuries took place, correct?

**A.** I would be speculating on the basis of seeing these injuries as a logical speculation.

**Q.** If I told you that under the laws the court will use to instruct this jury, a reasonable doubt

may not be based on guesswork or speculation, is it your opinion that your testimony should be

taken by this jury as suggesting a reasonable doubt for his injuries?

**A.** Yes, I think it is. If you’re going to put it that way.

**PROSECUTOR:** Judge, at this point in time, given that answer, I would move to strike the entirety of this doctor’s testimony.

**COURT:** I’ll take the motion under advisement. You may continue.

**Q.** Doctor have you seen any forced immersion injuries that would have produced the types

of burn patterns that are present in this child in your experience?

**A.** I think it’s possible.

## Q. Is it not suggested in the medical literature and in the training conferences that you have

## attended that a frequent area of sparing in forced immersion types of injuries is the tops of the

## thighs and the knees?

## A. Not necessarily.

## Q. Is it not suggested, doctor, that that is an area that is frequently seen as being spared in those types of circumstances?

**A.** Not – it’s not frequent.

**Q.** Not frequent?

**A.** No. It can happen

**Q.** And how does that happen, doctor?

## A. I guess a baby is there with their leg flexed?

## Q. And that is a normal reaction by a baby who is being immersed in a hot liquid, to withdraw away from the source of the hot liquid, correct?

## A. That would be correct.

## Q. You would expect, in fact, a baby who is being held by his shoulders, or underneath his

## arms, or by his head and is being dipped into a tub of hot water to, in fact, react in that fashion,

## would you not?

## A. Yes.

## Q. And that would, in fact, account for the areas of sparing on this child, correct?

## A. It would not account for the contact marks.

**Q.** I know that. That’s a whole different ballgame. That’s a totally separate injury, isn’t it,

doctor?

**A.** I don’t feel that it needs to be a separate injury.

**Q.** You don’t feel that it needs to be? Are you telling us that these contact injuries took

place at the same time that he got these immersion injuries?

**A.** They could have, yes.

**Q.** Was he contacting the object at the same time he was being scalded in the water?

**A.** I think, again, you can’t deal with time with those injuries. You can deal with time

causing injury, so many seconds, but you can’t say whether something is caused a second apart as

ar as a contact injury.

**Q.** Showing you State’s Exhibit No. 14.

**A.** Yes.

**Q.** In your opinion, is that an immersion line?

**A.** I think it’s a little bit – in my experience immersion lines go across. You know what I

mean? They don’t come up. You’re sitting in a tub, unless the tub has a hump in it, you’re

sitting in a flat tub, and you’re indicating this is an immersion line. I – okay?

**Q.** Yes doctor. Are you familiar with the medical literature that suggests that the immersion

line comports with the angle at which the child is placed into the water itself, and not necessarily

with the position of the water?… Specifically, an article published in the Journal of Trauma in

1977, “Specific Patterns of Inflicted Burn Injuries” by Doctors Lenaski and Hunter form the

University of Southern California in Los Angeles, which indicates in that article that the burn

patterns on immersion injuries are a reflection of the angle at which the child is placed into the

water, and not necessarily in terms of the configuration of the water itself at the time of

immersion? Are you familiar with that principle?

**A.** I have read the articles. That’s the same articles that talks about the compression donut

on the buttocks. Is that the same article?

**Q.** Yes sir. There is some information about that.

**A.** Okay. I didn’t read anything about the irregularity of the immersion line.

**Q.** Well in fact there’s a diagram that suggests such an irregular pattern and I’ll show you

that at page 843… Does that article not depict exactly what I have been speaking of?

**A.** It certainly does not unless I’m looking at it wrong. This shows an infant with an area

here which would be compression sparing and the burn showing a straight line. It doesn’t show

what you’re showing here as far as something going up and then coming down. That’s what I’m

saying. I don’t see that.

**Q.** Doctor, if that child were tilted on its side, or if , in fact, the water was splashed up during

the point of immersion on that side, that would account for that little hump that you’re referring

to in that picture, would it not?

**A.** I don’t think so.

**Q.** Okay. In you medical opinion the, doctor, the two sharply marked lines of demarcation in

State’s Exhibits No. 14 and 15 are not areas of forced immersion of this child, is that correct?

**A.** They’re not indicative of – I don’t interpret that as a forced immersion line, that’s correct.

**Q.** And in fact, you don’t interpret the stocking patterns on State’s Exhibit No. 16 as

indicative of forced immersion either, do you?

**A.** No, I do not.

**Q.** And in fact, that is also a point that is referenced repeatedly in the scientific literature

indicative of a telltale sign of forced immersion, is it not?

**A.** What I’m not clear on - I’m getting a bit confused. If you are asking me are immersion

lines related to forced injury, then the answer is yes. Do I feel that these pictures show an

immersion line, my answer is no. And the doctors, from what I read in the record, the doctors

who saw this baby and handled the baby, did not describe an immersion line. That’s what I’m

going by. So the answer, do I know in the literature that immersion lines are associated with

forced. Yes I know that…

**Q.** You’re also familiar, doctor, with the fact that immersion injuries are frequently

misdiagnosed by physicians throughout the country as being accidental when, in fact, they are

abusive, are you not?

**A.** Yes I am.

**Q.** In fact, there is a high percentage of that taking place, correct? According to the medical

literature?

**A.** It shouldn’t take place in a regional children’s hospital with a child abuse team of which

Dr. R. is a member.

**Q.** Are you saying that Dr. R. is infallible here, sir?

**A.** No sir, nobody is.

**A recess was held in the proceedings**

**Q.** Doctor, backtracking here for a little bit. You indicated that one of your functions at the

hospital is to head the area involved in sudden infant death syndrome, is that correct?

**A.** Yes sir.

**Q.** And sudden infant death syndrome is a syndrome in which a child dies for otherwise

unexplained reasons, is that correct?

**A.** It’s a specific diagnosis, yes.

**Q.** And in order for you to make a diagnosis of sudden infant death syndrome you have to

rule out each and every other potential cause of death for that child, through autopsy, toxicology,

various types of pathological findings, is that right?

**A.** That’s correct sir.

**Q.** And so, your fundamental way of thinking in terms of sudden infant death syndrome

investigations is to say that unless we have no other explainable cause for this child’s death we

can’t make a finding of SIDS, is that correct?

**A.** No, it isn’t.

**Q.** Well, isn’t that basically the methodology that you employ? You eliminate each and

every other cause of death before you make a SIDS diagnosis?

**A.** But you have to use judgment in the sense that there can be a major congenital heart

defect and the child can still have SIDS. There’s not a definition of what SIDS is. There are

criteria to establish a diagnosis. An autopsy is a very important part of the criteria.

**Q.** That methodology of eliminating all the other potential causes is something that you have

employed in your analysis of this particular case, is that right?

**A.** Trying to look at what possible causes could cause this type of injury?

**Q.** No sir. The elimination of any other causes before you make a finding or a ruling or a

judgment in this particular case that the injuries are by non-accidental means?

**A.** Yes, examining what you have and trying to come up with a probable reason for that, yes.

**Q.** Is it to say, doctor, that before you would make a diagnosis or a conclusion in this case

that these injuries were caused by non-accidental means, that instead they were abusive injuries,

you would have to be satisfied that there was no other conceivable explanation that could account

for these injuries in some form of accident?

**A.** Yes, that’s true.

**Q.** And is that the standard that is employed by physicians in your hospital before they would

make a referral to the Department of Health and Social Services in a suspected child abuse case?

**A.** I’m not sure that I know the policies in the hospital, but I’ll comment on the fact that one

is suspicious of problems because child abuse does exist and you don’t want to miss it. It doesn’t

mean you don’t miss it, but you don’t want to. So yes, you are suspicious that this could occur.

**Q.** In this particular case if you were the attending physician at the hospital treating this

child, observing and seeing the injuries that were noted on him and the explanation provided by

the father, the defendant, would you have made a referral to the Department of Social Services?

**A.** Yes, I would make a referral; and I would – I would also ask that there would be a look at

the circumstances to let me know what is going on or what – give me some more information.

Yes I would, to answer your question directly, I would make a request to find out, can you tell me

other information. I would assume that they would be in contact with the investigative arm to

also get other data that would either fit or negate a problem?

**Q.** Doctor, why would you make a referral for child abuse to the department given these

factual circumstances if your opinion in this case is that these injuries are caused accidentally?

**A.** Why? Because there is a possibility that could exist when this comes up, and according

to – and again, I got slammed for quoting the law, but if you don’t report something in a state,

whether you’re right or wrong, you end up getting where the blame is put on you. So, many

things that are suspicious or risks are asked to be looked at. That’s why.

**Q.** Over the noon hour you had the opportunity to review a number of articles that I provided

to you involving burn injuries in children, is that correct?

**A.** I had a chance to look at them , and I did the best I could, yes sir.

**Q.** And several of those articles speak about various factors that are used in making

assessments of burn injuries in determination as to whether or not they are consistent or

inconsistent with accident or non-accidental trauma, is that right?

**A.** Yes sir.

**Q.** And among those factors are the factors of whether the historical information that is

provided by the caretaker is consistent with the physical injuries?

**A.** That’s usually one of eight or nine criteria, that is correct.

**Q.** And would you agree that in this particular case at least two of the historical accounts that

## were provided by the defendant were totally inconsistent with the medical findings, is that right?

## A. That is correct…

## Q. Now another factor is a delay in bringing the child in for medical treatment, correct?

## A. Yes sir…

## Q. Are you aware that there was some delay by the defendant in seeking medical attention

## for this child after these injuries?

## A. I am aware of that, yes sir.

## Q. So that would be another factor that would cause one at least under the scientific

## literature to lean towards making a diagnosis of abuse?

## A. It would lean towards making you aware that abuse could occur. What I think that I’m

## trying to express is that statistics allow you to look at those trends, but you must look at each case

## individually, but I agree with you that that is something that would alert one to raise a suspicion

## whether that’s occurring.

## Q. Well, another factor is changing versions as to how the child was injured, is that correct?

## A. That would go along with the first one you said about changing histories.

## Q. No. The first one was whether the history was consistent with the injuries themselves.

## The next criteria that I’m asking you to consider is changing histories which is also set forth in

## the medical literature, is that right?

## A. Okay. But the first one I did answer that it is consistent with the tub. So the first one I

## answered, it is consistent. The second one I said no. The third one – there were inconsistencies

## in the history, that’s correct.

## Q. Another factor which is cited is an inappropriate or lack of parental concern towards the

## welfare and well-being of the child; and do you have any knowledge as to whether or not that f

## actor is present in this case?

## A. One would be -- you couldn’t jump to a conclusion like that.

## Q. Well doctor, if I were to tell you that the defendant didn’t take the child into the hospital,

## that he didn’t stay with the child and comfort the child while the child was screaming in the other

## room, that he didn’t take the child into the hospital, that in fact he never shed a tear according to

## his wife’s testimony about any of this injury, would that suggest that particular factor in your

## mind?

## A. Okay. I would -- I don’t know the scenario you’re giving me as far as a man showing

## emotion or what was going on at that particular time. From the records I read the parents stayed

## at the Ronald McDonald House which is provided for the parents at the hospital as a place to

## stay, and I think he visited the child... What went around right at the time, you know, I don’t

## know that. What I … read in there was a great deal of fright and how – what was he like in

## the wife’s deposition that day. He was – seemed to be fine. What was he like when you came

## home. He was scared. Scared, you know, he seemed to be upset and distraught. That’s what

## I read in what I was given to read.

**Q.** Doctor, are you also aware that the medical record also indicates that there were a number

of occasions when the defendant did not participate in the therapy or treatment of his son during

the course of stay of 6 weeks up at the hospital?

**A.** I’ll go with what you’re telling me. I didn’t read the record to go over those, but if

you’re telling me that, I believe that.

**Q.** Well, if that were, in fact documented by the medical record, would that suggest that this

particular factor was again present in this case?

**A.** Well, it would raise – I don’t know, but – I would answer that in this way. If you are in a

town which is displaced from where the hospital is, and it would depend on your means and

everything else, but so, if someone is not present someplace it might not indicate a lack of

concern.

**Q.** He was present, doctor. He was sleeping in the room or he was watching television…

Doctor, if in fact, the defendant had been told by medical personnel that were treating his son that

it was important to provide them with the exact mechanism by which this injury took place in

order to properly treat the child, and the defendant delayed providing that information to medical

personnel for 24 or 48 hours, would that suggest to you that he showed inappropriate parental

concern for the welfare of the child under this criteria?

**A.** I think it would be a concern about the injury but not fitting what was described.

**Q.** One of the other factors that’s cited is mirror image burns of the extremities?

**A.** Yes, that was one of the things that confused me before. When you are talking about

mirror image, mirror image burns as I understand them are either the stocking type over the feet

or the glove on the hands. There are no burns on the hands or the soles or anything like that. So

I was confused when you were talking about mirror before. That’s why I might have hesitated a

bit, because mirror to me seems symmetrical in – in the sense that one of these articles says.

**Q.** It doesn’t mean to you identical burn patterns in different areas of the body?

**A.** Well symmetrical is on either side, and mirror image would be your left and right are

mirror image.

**Q.** You wouldn’t consider the burns on the abdomen to be mirror image burns?

**A.** I think there’s – there seems to be a pattern there, you know, and I’m not sure if it’s a

mirror image. I’m not trying to say that they are not, but it’s a problem I have if someone looks

at an ink blot test like a Rorschach. Some people see a house or a bat. There are marks there,

and it looks like they might be 180 degrees, but I can’t say they are.

**Q*.*** One of the other factors is the burn is incompatible with the developmental age of the

## child. Do you consider that to be present in this particular case?

## A. I think this infant, from what I read in the deposition of the mother, was capable of

## walking and also showed evidence of getting out of the tub previously. So I don’t think it’s

## inconsistent with a child being active.

## Q. You mentioned the fact that this child did not have any burns on his hands. He also

## did not have any burns on his knees. How do you account for that doctor?

## A. I think, you know as far as not having it in certain areas of the knee, I would have to

## think it might be related to the ability to exit the tub. That’s what I would say.

## Q. Doctor, don’t you think if this child were sitting down in a tub of hot water and hot

## water was coming in and he began to exit that he would, one, place his hand into that tub of

## water, and two, roll over on his knees before he attempted to pull himself up by the side of the

## tub or by any other object in the tub?

## A. Not if it’s – you described before, an infant tub. You would grab for the side.

**Q.** What if it were just a regular tub as in the defendant’s statement. The one you say is

accurate. If it were that factual scenario, wouldn’t you expect that child developmentally at the

age of 8 ½ months to have rolled over onto his knees and on his hands in an attempt to push

himself up before he began grabbing to the side of the tub?

## A. I wouldn’t, and the reason I say that is because when you have infants who are out of

## the crawling stage and they start to walk they don’t go back to crawl before they walk. If you

## have a stimulus to you, you will try to exit. You will stand up and try to get away. That’s –

## that’s why I’m saying that.

## Q. Doctor, when was the last time you saw an 8 1/2 month infant who was sitting on his

## bottom grab up onto the side of an object without first rolling over to his knees?

## A. I don’t know.

## Q. I take it from your non-response that it’s been a long time?

**A.** I would take it from my response that I think it’s – it’s a question – I see many infants

who are getting up, they don’t go back to crawling or on their knees if they’re sitting in

something. They would get up by pulling themselves up. They wouldn’t roll over on their knee

the opposite way. That’s what’s confusing me.

## Q. Does the fact the defendant provided four different versions of how these injuries took

## place concern you at all in this case?

## A. It certainly would concern me, yes.

## Q. But it doesn’t change your opinion in the least?

## A. I can’t make a diagnosis of something just on the basis of inconsistencies in a story.

…………………………………….

## Q. Doctor, did you agree with this statement in the article called “Child Abuse by Burning”

## by Nelson H. Stone, that most incidents of child abuse by burning pass for accidents and will

## continue to do so unless physicians are cognizant of the magnitude of the problem and the

## characteristics of the burned, abused child?

## A. I don’t know if I agree with most, but I think it’s -- you have got to be concerned about

## that and you have to individually consider every case.

## Q. In the study that was done by Dr. Height and Dr. Bachalar entitled “Inflicted Burns in

## Children” under the comments on page 518, and I would note, doctor, that was printed in the

## Journal of the American Medical Association, that’s a well respected publication, is that correct?

## A. That is correct. It’s a well respected publication.

## Q. And the paragraph indicates “In general, inflicted burns are thought of as repeated

## cigarette, hot iron, or radiator burns. Such non-accidental injuries are rarely over-looked by

## attending medical personnel. In a series of 142 inflicted burns, however, these obvious type

## injuries were the exception. Intentional scalding injuries are similar in appearance to accidental

## burns and can easily be overlooked unless the historical and physical information pertaining to

## the accident is carefully assessed. Did you agree with that particular statement?”

## A. Yes I do agree with that certainly.

## Q. And in this particular case do you not consider that the historical information… is not

## consistent with the physical findings and the injuries?

## A. I think after looking at the injuries and saying that it is a tub-type injury, I think the

## history is not -- is consistent with that happening. In that article there, the other – when

## people teach and write and stuff like that, I think it’s – it’s guidelines for people, and in the

## same article by Height, I’d like to read here something that we in medicine -

##  Q. Doctor, there’s not a question on the floor right now, if you don’t mind… One of the other factors that is considered in making the assessment between accidental and non-accidental is whether there are repeated burns or burns occurring in a patten of repeated injury. Would you agree with that factor?

## A. Yes.

## Q. And you agree that’s an important factor to consider?

## A. It is certainly.

## Q. And do you consider that we have repeated burns or burns occurring in a pattern of

## repeated injury in the present circumstances?

## A. No, I don’t.

## Q. So you don’t consider the two burns on the child’s left shoulder, the two burns on his

## abdomen, the four other contact burns on his upper torso… to be a pattern or repeated burns?

## A. No, I do not.

## Q. One of the other factors that is cited in a number of these articles is the location of the

## particular injuries and their relationship to the historical information provided. You consider that

## to be an important factor as well?

**A.** The history?

**Q.** The history in terms of the location where the injuries take place.

## A. Yeah, I think that can be reliable. Might not be, but it could, yes.

## Q. All right. Do you consider that there are any injuries on this child which in terms of

## their location are inconsistent with historical information provided by the defendant...?

## A. Okay. I think the injuries that are seen on this child are consistent with immersion

## in a tub of water and trying to exit.

## Q. Do you consider the location of any of these injuries on the child to be suspicious for

## physical abuse?

## A. Yes.

## Q. Which ones?

## A. I think -- the lower extremity problems as far as dealing with the buttocks and lower

## extremity.

## Q. So the burns below the waist are more suspicious to you than the ones on the shoulder

## and on the abdomen?

## A. They are more suspicious of abuse to me. In the article, the articles that you have quoted

## here, I think several of them state that in abuse injuries they are injuries that usually on an

## average occupy something like 13.6 or 14% of body surface. This youngster was burned 60%

## according to the record.

## Q. And 30-35% of that involved second or third degree burns?

## A. Most were, yes.

## Q. And that’s also a significant factor in making determinations of abuse or neglect?

**A.** Making a hot liquid scale, that’s important.

**Q.** Now, doctor, one of the other factors in making that assessment, number six by Hobbs, is

noted the type of contact burns and unusual sites, showing clear outline of object, or scalds with

clear-cut edges, glove and stocking distribution. Do you consider that factor to be present in this

case?

**A.** I don’t consider if they’re talking about glove and stocking, there is certainly nothing to

indicate glove or stocking. The other aspect, contact burns in unusual sites, showing clear-cut

outline of the object, it can be very important. If you know what object you’re looking for, etc.;

and again, that gets back to the circumstances at the time.

**Q.** Well, let’s touch on that doctor. Would you agree that in most abuse cases you do not

receive accurate historical information from the family, from the caretaker who is suspected of

the abuse?

**A.** In most abuse cases I think the story ends up being very inconsistent. That is correct.

**Q.** In your circumstances of dealing with, I believe, what was it, ten cases involving burns

that were abuse, did you have the exact object that was the suspected instrument of that damage

provided to you for your assessment?

**A.** I think at times – yes, that comes up. In the investigation and stuff like that, you know…

You have an investigator go out there. Is there something like that around? We’re dealing with

people’s lives. We’re dealing with medical decisions, and so we want all we can get.

**Q.** I see… You are not happy with the Sheriff’s Department investigation in this particular

case, is that correct doctor?

**A.** I have nothing personal against the Sheriff’s Department.

**Q.** But you think they bungled the job here, don’t you?…

**A.** It made the job impossible to say that this is abuse?

**Q.** Yes sir.

**A.** And then you would have to come up with issues of branding and putting in an oven and

stuff like that. I would think, yes, it would be very helpful if at a time people would give more

information around these cases.

**Q.** Doctor, isn’t it a fact that it was your staff at the hospital who made the diagnosis two

days after admission that these injuries were consistent with immersion but made no mention of

the upper body or upper torso injuries?

**A.** There was no mention in the chart that I saw about contact.

**Q.** Right.

**A.** I guess it’s there.

**Q.** Well, it was obviously there. It’s in the pictures, isn’t it? You would have expected the

treating physicians for the child who were making the assessment to have known about those

upper torso injuries, would you not?

**A.** You – yeah, you – yes.

**Q.** Yes. And in fact, the pictures on February 8th, the day of admission, clearly show a

defined pattern in terms of the injuries to the shoulder and to the torso, correct?

**A.** They show contact, yes.

**Q.** And would you not agree, doctor, that a reasonable physician in that position would have

been highly suspicious of those patterned injuries and those locations?

**A.** Not if they assumed that this could have been a problem that was accidental.

**Q.** I see.

**A.** I mean, they – that can be overlooked, just like that – they didn’t see immersion lines, and

it was – it’s very difficult for me on the pictures, you’re – that I saw on February 8, the pictures

of the baby’s extremities are covered, okay, and the picture that supposedly shows the immersion

line is February 11. It’s almost 80 hours later. After the wound has been handled and stuff like

that. So that’s why I was, you know – that didn’t look like an immersion line. I would have to

see the clinician at that particular time say that there was a demarcation there. They didn’t

## indicate that, and there’s no indication in there that there is anything there.

## Q. Doctor, if you had been the treating physician provided with the account that the

defendant provided in the medical chart and to the detective, and having seen all of theinjuries

## on February 11 as they are depicted in the photographs, would you have requested further

## investigation to be done?

## A. Yes I would.

## Q. Because you would have been suspicious of that historical account, correct?

## A. Because I would be concerned about the possibility of child abuse. I would be, you

## know, alerted or aware to that, and I would want to find out if that’s an issue. So it doesn’t come

## to a stage in which people are making kinds of speculation aas to what really did happen when

## you can’t say what did.

**Q.** Well, we know for a fact, doctor, from the medical evidence that this child sustained at

least 8 separate contact injuries to his upper torso, do we not?

**A.** We don’t – when we say 8 separate injuries, it makes it sound like its repeated.

**Q.** Well –

**A.** There are 8 areas – well –

**Q.** He didn’t sustain them at the same time, did he?

**A.** I – I – I would not think so.

**Q.** He had to have contact with a hot object on 8 separate occasions to produce the 8

independent injuries on his body, correct?

**A.** If some of the injuries – obviously, these injuries on the left shoulder, this on the

abdomen, if some of these injuries are not, indeed, big splashes that have been uncovered and

stuff like that. So, it is difficult, and I made the point of saying that everything outside of those

that are clear are pattern injuries. I think one has to be very careful about that.

## Q. Would you agree that there are at least five specific patterned injuries in this particular

## case?

## A. I would say the shoulders, the abdomen and the linear marks are, you know – I would --

## are patterns, and I think there was one on the flank.

**Q.** Right.

**A.** Yes.

## Q. So now we’re up to seven.

## A. No that’s five.

## Q. Well, [counting] 1, 2, 3, 4, 5, 6, 7.

## A. Okay.

## Q: And wouldn’t you agree that that large a number of contact injuries in a child of his

## developmental age would be highly indicative for non-accidental trauma?

## A. I say they’re highly suspicious.

## Q. But not highly indicative?

## A. I wouldn’t say highly indicative until I get all the information on this.

## Q. What about the same injuries on both sides of the ears. How do you explain that,

## doctor as being accidental?

## A. By going back into water. That’s how I explain that.

## Q. And doctor, if he were laying on his back in the water that was hot enough to produce

## injuries to the tops of his ears, why did he sustain no injuries to the bottom of the ears which

## is only a fraction of an inch from the source of the water?

## A. I cannot explain why splashes occurred but he had splashes on his left arm, which is

## not typical of forced immersion to have splash marks. I don’t know when you hit water where

it goes. I have no idea, but I’m saying that it seemed realistic to me….

## Q. How would this child have had to have fallen into a spigot to get that kind of injury to

## his shoulder, in your opinion?

## A. He would have to have, if he was exiting a tub, he would -- have to fall against it with

## his left shoulder, I guess.

## Q. And then he would have had to have backed off and fallen against it again, correct?

## A. He would have to hit it twice.

**Q.** And then how would he have gotten the imprints on his abdomen? Did he go like that

[demonstrating] to the spigot?

**A.** No.

**Q.** How is that produced?

**A.** He might have produced that – we’re – what we’re talking about is the faucet handle

too…

## Q. Let’s assume, doctor, for the moment, that there’s only one faucet handle that turns on the

## water, and it’s constructed out of plastic. That would not likely produce this type of injury,

## would it?

## A. That is correct.

## Q. So, let’s assume that it was the spigot that was the only object there that was capable of

## being heated up. How could this child have come in contact with that spigot to sustain those

## injuries?

## A. I don’t know.

**Q.** It’s almost impossible, isn’t it?

**A.** I don’t know.

## Q. Wouldn’t you say that it was developmentally impossible for this child to come in contact

## with the water spigot and get those two injuries on his abdomen in the position that they are?

## A. I don’t know if I can answer that that way.

## Q. And wouldn’t it be totally unlikely that if he did make that contact while water was

## running out that you would see no associated burn injuries as a result of scalding water on his

## lower abdomen?

## A. I would expect the scalding to occur on his genital region and his feet. That’s what I

## would expect. If somebody fell, for example, if you fell to the right and hit your left shoulder,

## your feet would be to the left.

## Q. Doctor, let’s assume that I take the lid off of this water pitcher and I turn this water

## pitcher upside down and I come in contact with the edge of that water pitcher, and let’s assume

## that my hand represents this child’s abdomen. Are you telling me that he would have no burn

## injuries or no spill injuries along his abdomen between the area of the burn and the area of his

## genitals?

## A. No I’m not telling you – With the description that you gave, with pouring something on

## your abdomen, I think obviously there would be marks on your abdomen.

## Q. That’s not present here, is it? There is no associated water injury to this child’s abdomen

## between the area of the two contact marks on his abdomen and the area of his genitals?

## A. No, it’s on the – it’s on the left flank. The left flank has a pretty severe area of injury, and

it’s got blisters around it.

**Q.** Which indicates a third source or third type of contact with that area, totally independent

from the two on his abdomen.

**A.** It might, or it might indicate a large area in which a blister had ruptured.