**EXCERPT FROM DIRECT AND CROSS-EXAMINATION OF**

**DEFENSE PATHOLOGIST IN A PHYSICAL ABUSE CASE**

**DIRECT EXAMINATION**

**By Defense Counsel:**

**Q.** Would you please state your name for the record.

**A.** Dr. J.S.

**Q.** And what is your profession, Doctor?

**A.** I’m a medical doctor who specializes in pathology.

**Q.** And at the present time how are you engaged in that capacity as a medical doctor and a pathologist?

**A.** I am a pathologist and director of laboratories at…Hospital and medical examiner in this county.

**Q.** And as the medical examiner for this county, could you briefly describe to the jury what your functions are in that capacity?

**A.** Function for the medical examiner is to investigate death in the county and determine whether they are natural, homicide, or accidental or suicide.

**Q.** Pursuant to my request, did you examine certain medical records pertaining to this case?

**A.** Yes.

**Q.** Did you also examine certain copies of photographs and photographs pertaining to this case?

**A.** Yes.

**Q.** Okay, Doctor, I want to show you what is the original certified copy of medical records pertaining to one C.J….and ask you if you’ve looked at a copy of those records before today.

**A.** Yes, I did look at—I did see copies of this record.

**Q.** And who provided you with copies of that record?

**A.** You did.

**Q.** And in addition have you had occasion to take a look at State’s Exhibit No. 4, which are photographs of the infant in question?

**A.** Just a few minutes ago.

**Q.** Okay. And you also had the opportunity to look at some other photographs of the same infant, did you not?

**A.** Yes, previously, yes.

**Q.** Now, you then are familiar, are you not, with the injuries that were recorded in that medical and hospital report for one C.J.?

**A.** That’s correct.

**Q.** And it’s fair to state that the injuries include bruises, scrapes to the face, neck and head area, and what appear to be a fracture of the right parietal skull; is that correct?

**A.** That’s correct.

**Q.** Now, you haven’t spoken to anybody about this case excepting myself, my office, and a representative of the District Attorney’s office; is that correct?

**A.** That’s correct.

**Q.** You didn’t interview the parents of this child?

**A.** No. I don’t—I don’t know them. I’ve never met them.

**Q.** And you’ve never met my client, have you?

**A.** No.

**Q.** Okay. Doctor, I want to give you a hypothetical scenario, if you will, based—keeping in mind what you’ve read in that record there. Assume that the child that is described in that medical record was perched on the lap of its stepfather, my client, while the stepfather was seated in the chair that is directly in front of you there…which, for the record, is State’s Exhibit No. 1. Assume further that the father had his feet propped up on State’s Exhibit 2, which is the ottoman or stool that’s in front of it as you see it here in court. And assume further, if you will, that the child fell from the lap area; in other words, the child was on the lap area with its knees closest to the—with its head closest to the knees and that the child fell from the lap area onto a wooden floor, possibly striking its head on a portion of the chair as it descended. Would the skull fracture that is described in those medical reports that you’ve reviewed be consistent with a fall of such a height—from such a height?

**A.** Yes, it definitely is consistent with a fall from that height with one qualification, if it was a sudden fall because of the fact that there is a certain velocity if a child falls straight. It’s like a projectile hitting a hard object. And the skull of a child of one month is no thicker than an eighth of an inch So certainly with one fracture he takes a hard point of impact, could definitely cause a fracture. Now, however, if the child fell slowly, then that’s another question.

**Q.** Now, Doctor, could you tell us something about the anatomy of the skull of a newborn child relative to fractures particularly the degree of force required to fracture the skull of a child say 30 days of age or less?

**A.** See, a child of one month old I’m sure everybody knows that there is such thing as a membranous part where it’s very soft. It’s not a bone yet. It’s just a piece of membrane. As the child grows, that becomes hard and forms into bone. Therefore, the skull of the child is very soft. And as I stated previously, it’s no thicker than an eighth of an inch. Therefore, if it hits an object, a hard object, with a certain velocity, even at two and a half feet high, it is enough to cause a fracture, not multiple fractures but a fracture.

**Q.** Now, Doctor, there are in addition to the skull fracture there are other apparent injuries to that child; isn’t that correct?

**A.** Yes.

**Q.** And could you state whether or not the injuries in addition to the skull fracture could have occurred from a fall of two to three feet such as the one that I’ve described to you in the hypothetical?

**A.** Not on one fall though.

**Q.** Okay. Would it be fair to state that there would have to be other trauma inflicted upon that child to cause that?

**A.** That’s correct.

**Q.** What other trauma would you presume would have had to occur to this child to have created or caused those additional injuries?

**A.** Well, trauma from a blunt object like a hand slapping the baby or grabbing the baby, but certainly the pressure is strong enough to produce a hemorrhage because the bruising is actually a bleeding beneath the skin.

**Q.** Okay. Is there any way for you to tell, looking at the photographs of the injury or the description contained in the medical report, the degree of force used in causing that trauma?

**A.** A strong slap like that would be enough to cause this trauma.

**Q.** When you refer to a strong slap, you made a gesture with the open hand?

**A.** That’s correct.

**Q.** And you believe that a slap with the open hand could have been responsible for bruising; is that correct?

**A.** That’s correct.

**Q.** Looking at the photographs, in your opinion, given your expertise, what injuries could have been caused by the slapping as you gestured?

**A.** Well, definitely the injury to the face both left and right side, predominantly around the eyes and on the neck side. The one on the neck could be consistent with a person grabbing hard the neck of the baby.

**Q.** Is there any way to tell from what direction the child was grabbed; that is to say, from the front or from the back?

**A.** It looks like it’s from the back.

**Q.** In other words, from the nape of the neck forward?

**A.** That’s correct.

**Q.** Would it be consistent in terms of when you say it looks like—would it be consistent with the same mechanism at least, not necessarily the force but the same mechanism used in holding a newborn infant from the rear in terms of propping the newborn infant’s head up?

**A.** If you grab the new infant from by the neck, yes, that could be consistent with—

**Q.** From behind though?

**A.** That’s right.

**Q.** Could you state whether or not the photographs depict bruises that appear to be all of the same age?

**A.** No. The one on top of the left eye, which is on the forehead, appears to be somewhat bluish, suggesting it should be at least a few days.

**Q.** So at least a portion of the injury to the left side of the baby’s head did not occur at the same time as the injuries that you see about the face and the neck?

**A.** That’s correct.

**Q.** Is that correct?

**A.** That’s correct.

**Q.** Are the injuries that appear on the face and the neck area, do they appear to be of the same time frame?

**A.** Yes.

**Q.** Do those injuries, given your expertise, appear to have been life threatening or of that serious of a nature, the ones around the face?

**A.** I hate to say it, but sometimes it does, yes.

**Q.** It’s potentially possible?

**A.** That’s right.

**Q.** Doctor, are your opinions here today to a reasonable degree of scientific or medical certainty?

**A.** Yes.

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**Q.** Well, let’s assume for the moment that the child had a bone disease of some kind, congenital bone disease. Would the presence of a congenital bone disease alter the—or change the degree of force necessary to cause a fracture to the child?

**A.** Yes.

**Q.** And let’s assume the child had a connective tissue disorder of some kind. Would that connective—would the presence of a connective tissue disorder alter the child’s reaction, the skin’s reaction to trauma?

**A.** It may. It may not. It depends on the connective tissue disease.

**Q.** There is nothing in the medical record there that shows any disease process that was discovered in the course of that hospitalization or discovered in the course of taking medical histories; is that correct?

**A.** Yes, that’s correct.

**Defense Counsel:** I have no further questions of this witness.

**CROSS-EXAMINATION**

**Prosecutor:**

**Q.** Dr. J.S., how are you today?

**A.** Pretty good.

**Q.** Good. Doctor, you never examined C.J. yourself, did you?

**A.** No.

**Q.** And the first time you ever examined these photographs is today when you came to court; is that right?

**A.** These, yes.

**Q.** When you were reviewing the medical reports, did you note that doctors indicated that there was petechiae on the eyelids of the child?

**A.** Yes.

**Q.** And how is that caused, Doctor?

**A.** Well, petechiae—there are several causes. Petechiae could be due to a trauma or it could be a disease process.

**Q.** Well, knowing that this child was not dead, your conclusion would be that if the child had petechiae on the eyes and on the eyelids that it would be due to trauma induced injury?

**A.** Not necessarily because again if the baby has a coagulation problem; in other words, a bleeding problem, it can produce petechiae.

**Q.** Well, knowing that you didn’t see any evidence of that in the medical records, that would rule that conclusion out in this particular case, would it not?

**A.** Because there was none, I would assume yes.

**Q.** And the incidence of trauma to that particular region and the discoloration and bruising to the region was not the result of the skull fracture that the baby sustained on that day, was it?

**A.** No.

**Q.** And, similarly, the bruise that was noted on the—above the forehead on the right-hand side of the baby—I’m sorry, the left side, that was not the cause of the result of the skull fracture, was it?

**A.** No.

**Q.** In fact, the skull fracture was caused by some type of blunt trauma to that particular location where the fracture occurred?

**A.** That’s correct.

**Q.** Before you came to court here today, did you examine the radiologist’s report?

**A.** Yes.

**Q.** And did you have an opportunity to review the CAT scan?

**A.** The CAT scan itself, no, but the report of the radiologist on the CAT scan and the neurosurgeon I did.

**Q.** Did you have occasion to review the x-rays themselves?

**A.** No, just the report.

**Q.** Are you familiar with the amount of distention of the bone produced by this skull fracture?

**A.** Distention of the bone?

**Q.** Yes, how far the skull was pressed in at the point of the fracture.

**A.** Based on the description of the neurosurgeon, yes.

**Q.** And how much was that to your recollection?

**A.** The recollection there was an outward pushing of the bone.

**Q.** Not inward?

**A.** No, not inward.

**Q.** Well, if the testimony here at trial was that there was a three millimeter distention indicating that there was a depression three millimeters, that would be inconsistent with your recollection of the facts?

**A.** No, because, see, the—When you have an inward, the other side is outward.

**Q.** I see.

**A.** So the report that I read was an outward. Now, the doctor who testified may have said the inward on the opposite side because what happens is when you push this, this goes up so the description that I read there is outward. So it’s not inconsistent.

**Q.** Well, when a skull would be fractured by a blunt trauma to that area, would the skull be pushed inward or would it pop outward?

**A.** Should be inward. The other part will be pushed outward, but the point of impact should be inward.

**Q.** All right. A three millimeter distention of the brain—or of the skull as a result of that trauma, what does that indicate to you in terms of the amount of force that was applied to that location to produce that injury?

**A.** Well, it’s strong enough as far as the point of impact.

**Q.** All right. It would be stronger than, for example, if the distention were only one millimeter?

**A.** That’s correct.

**Q.** And it would be stronger than if there was no distention at all, if there was just a spider fracture or some other type of fracture that didn’t result in an actual separation of the bone?

**A.** That’s correct.

**Q.** And in order to produce that type of injury, there would have to be more force applied to that particular location; is that right?

**A.** That’s correct.

**Q.** Now, you testified here today that it would be consistent to see that type of a fracture from a fall of two to three feet; is that right?

**A.** That’s correct.

**Q.** All right. If the actual height was less than two feet, would that be consistent or inconsistent?

**A.** Less than two feet? Then the velocity is less. Then it’s not consistent.

**Q.** Doctor, before you came to court here today, you had not had occasion to actually see this particular exhibit, State’s Exhibits 1 and 2?

**A.** I saw the pictures, shown to me by your assistant.

**Q.** All right. But you had never actually seen the physical objects themselves?

**A.** No.

**Q.** Do you know how high this particular rocking chair sits?

**A.** We approximated it between one and a half to two feet with the thigh of the person laying on the ottoman.

**Q.** All right. And is a fall from that particular height consistent with or inconsistent with the injury or the fracture that C.J. sustained on that day?

**A.** It’s still consistent if the child was laying on the top of the thigh and slid with that velocity. Now, again, if the slide—the child was sliding slowly, and he was grabbed, then certainly it’s not consistent. But if the child is laying on the thigh and suddenly slipped, hit his or her head on a solid object like the floor or the edge of the chair, certainly it’s consistent with—

**Q.** Okay. Doctor, would you step down for a moment and take a look at this chair. Can you find any object towards the front of that chair which could produce the type of fracture that you noted on C.J. in terms of the medical reports?

**A.** No.

**Q.** So the trauma, if the child fell, would have had to have resulted from the floor; is that right?

**A.** That’s correct.

**Q.** If the statement of the defendant indicated that the child landed on its face, that would not have produced the trauma to the back of the skull causing the fracture; is that right?

**A.** No.

**Q.** And if the child had fallen and struck its head on the portion of the rocker which just out here, this little piece, that would not be consistent with the type of fracture you observed either, would it?

**A.** No.

**Q.** The higher the fall, the greater the likelihood that there is going to be some type of fracture?

**A.** That’s correct.

**Q.** You have certainly seen cases where babies or infants of this age have fallen from much higher heights than two or three feet and have not sustained a skull fracture?

**A.** That’s correct.

**Q.** Now, Doctor, while it’s a medical possibility that a fall from that particular height would result in that type of injury, is that a likely injury?

**A.** Not too commonly.

**Q.** When you observed these photographs of the child, you indicate that on the one there appears to be a darker coloration, specifically, the left-hand photograph on the upper—

**A.** Left side, yes.

**Q.** And it’s your opinion that that particular bruise is of older duration than the other ones?

**A.** That’s correct.

**Q.** And that’s based primarily on the color; is that right?

**A.** On the color, that’s correct.

**Q.** Have you ever noticed or have you ever come across incidences in which different portions of the body bruise differently in terms of coloration even though the trauma may have occurred at the same time?

**A.** Not—no, not on the different colors, no, because the colors—different colors of the bruising is based on the deterioration of the red blood cell that came out of the blood vessel. So it is based on the deterioration, which means that this time period rather than severity of the trauma or location.

**Q.** Well, in terms of the time factor that we’re talking about here, that bruising that you note that’s of a darker coloration is the result of how much difference in time as opposed to the other ones?

**A.** I would say a day or two.

**Q.** A day or two?

**A.** Yes.

**Q.** If the history that was received here from both the witnesses and the testimony of the medical personnel indicated that the bruise was not there earlier on that day, are you saying that based on your observation of that particular photograph that that history is completely wrong?

**A.** No, because then there might be something wrong with the photograph. I’m looking at the photograph not on the actual case.

**Q.** Okay.

**A.** So the picture—the color that is depicted in the photograph may be completely different than what it was actually.

**Q.** Now, you indicated that in your testimony on direct there are at least three sources of trauma apart from the fracture to the skull that are observable by those pictures?

**A.** That’s correct.

**Q.** And how are you able to make that determination that there must be more than one?

**A.** Well, certainly there is a different definite bruising on the left side of the face and around the eyes and another one on the right side of the face and underneath excluding the one— the fractures.

**Q.** Now, would the grabbing of an infant that is one month old by the neck which was significant enough to produce the bruising on the back of the neck that’s noted, would that constitute a potentially life threatening type of trauma?

**A.** Well, yes. An infant is a very fragile person.

**Q.** And the slaps or the striking to the head that produced the trauma that you see there, it’s also your opinion that that would be potentially life threatening for a one month old infant to receive?

**A.** Yes.

**Q.** Especially in conjunction with a skull fracture on the back of the head?

**A.** That’s correct.

**Q.** High likelihood that that particular type of trauma may cause significant brain injury to the child?

**A.** It’s more likely, yes.

**Q.** The blows producing those injuries, it could be more than three; is that right?

**A.** It could be, but I would say at least on what I see based on the picture I see at least about three. It could be more, but—

**Q.** Would not be consistent with somebody holding the child by the neck and simply hitting it one time with an open hand?

**A.** Well, it could have created the same thing, somebody holding the child by the neck, holding it tight, creating the bruising and then hitting the child twice so that would be three traumas then.

**Q.** But there would have had to have been at least two blows to the head to produce the injuries?

**A.** That’s correct.

**Q.** Doctor, when you look at the sum total of the injuries sustained by C.J. on that occasion, are those injuries—those injuries are not consistent with accidental trauma, are they?

**A.** No.

**Q.** They are consistent with child abuse, are they not?

**A.** Yes.

**Prosecutor:** Nothing further.