

**NOTICE**

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2013 IL App (4th) 110517-U

NO. 4-11-0517

IN THE APPELLATE COURT

FILED

June 17, 2013

Carla Bender

4<sup>th</sup> District Appellate Court, IL

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff-Appellee,

v.

JEREMIAH L. CAMPBELL,

Defendant-Appellant.

) Appeal from  
Circuit Court of  
Macon County  
No. 06CF143  
Honorable  
Timothy J. Steadman,  
Judge Presiding.

---

JUSTICE KNECHT delivered the judgment of the court.

Justices Turner and Harris concurred in the judgment.

**ORDER**

¶ 1    *Held:* (1) The State sufficiently proved defendant guilty of first degree murder beyond a reasonable doubt, as the expert and lay testimony, viewed in the light most favorable to the prosecution, establishes a rational trier of fact could have found beyond a reasonable doubt the fatal injury to the victim occurred when the victim was in defendant's care.

(2) The trial court did not err in denying defendant's request for an evidentiary hearing on juror impartiality when defendant failed to meet his burden of introducing specific, detailed, and nonconjectural evidence supporting his position.

¶ 2    In February, a jury found defendant, Jeremiah L. Campbell, guilty of the first degree murder (720 ILCS 5/9-1(a)(1) (West 2006)) of his then-girlfriend's 19-month-old son. In June 2011, the trial court sentenced defendant to 60 years' imprisonment. Defendant appeals his conviction, arguing (1) the State failed to prove him guilty beyond a reasonable doubt, because the only reasonable expert testimony established the fatal

injury could not have occurred when defendant was alone with the victim; and (2) trial court erroneously denied his posttrial motion for an evidentiary hearing on juror impartiality after he alleged a juror knew a key witness's sister and cousin and that same juror had received questionable outside contact. We affirm.

¶ 3

## I. BACKGROUND

¶ 4

In January 2006, the State charged defendant with five counts of the first degree murder of Galen (born May 23, 2004), the 19-month-old son of defendant's girlfriend, Ebony Brady. All five counts alleged defendant, acting under different mental states, caused Galen's death by blunt-force trauma. Defendant's first trial, in October 2008, resulted in a mistrial due to a hung jury.

¶ 5

### A. Defendant's Trial

¶ 6

In February 2011, a second jury trial was held. Three forensic pathologists, Dr. Jessica Bowman, Dr. John Ralston, and Dr. Mary Case, offered expert opinions regarding the cause of death in this case. All three agreed Galen's liver injury caused or contributed to his death. The experts disagreed as to the timing of this injury. Dr. Bowman and Dr. Case agreed with each other as to the timing of the fatal injury to Galen, placing it within three hours of his death. Both disagreed with Dr. Ralston's conclusion the liver injury was older than they opined.

¶ 7

At trial, Galen's father, Galen Cole, Sr. (Cole), testified he saw Galen every weekend. Typically, on Fridays, Cole picked up Galen from day care between 1:30 and 2 p.m. and kept Galen until the following Sunday evening. While in his care, Cole would bathe Galen. Cole had no concern about the care Ebony provided for Galen. In January

2006, Cole did not notice anything unusual about Galen's physical welfare. Cole believed Galen was not suffering a cold in January 2006, and Cole denied his son had "colds or routine childhood illnesses." Galen's breathing problems resolved before Cole and Ebony's relationship ended in the winter of 2005.

¶ 8        Cole testified he saw his son for a short time on Thursday, January 19. Cole's sister, Dawnell Cole, ran a child-care business. On Thursday, January 19, Cole saw Galen at Dawnell's house. His visit was short, because Ebony arrived shortly after Cole did. Cole did not observe anything physically wrong with Galen. Galen was "hollering at" Cole, who was trying to get dressed. Cole believed Galen was trying to get his attention. Cole believed this behavior was normal. Cole did not believe Galen had a cold or other breathing problem. Cole kissed Galen good-bye and told him he would see him the following day. During this visit, Cole saw Galen running and playing.

¶ 9        Cole stated Galen was a normal baby who walked around and got into things. Cole testified he did not know defendant personally, but knew defendant was dating Ebony.

¶ 10        On cross-examination, Cole testified he did not examine his son's body when he saw him on January 19. Cole kept Galen on weekends because Ebony wanted to go out to bars. Cole had not, in the months before Galen's death, noticed any injuries to Galen's body or head.

¶ 11        Michael Day, the Macon County coroner, testified , at approximately 10:39 a.m. on Friday, January 20, he was sent to Decatur Memorial Hospital as a result of an infant's death in the emergency room. When Coroner Day arrived at the hospital, law-enforce-

ment officers were already there. Coroner Day observed Galen's body, which had "some disturbing signs" of a traumatic event. These signs included "some potential bruising about the head" and "possibly to the chest," as well as a distended abdomen.

¶ 12        On cross-examination, Coroner Day testified Dr. Jessica Bowman was hired as a coroner's physician to replace a retiring Dr. Travis Hindman, who worked with Dr. Bowman. After Dr. John Ralston, a board-certified forensic pathologist, stated he was moving to the area, a decision was made to replace Dr. Bowman and hire Dr. Ralston to be the coroner's physician. Coroner Day knew Dr. Bowman was not a certified forensic pathologist, as she had failed the certification exam multiple times. Coroner Day believed Dr. Ralston was a better choice for Macon County. Coroner Day ~~had~~ heard from either the law enforcement or the State's Attorney's office that relations with Dr. Bowman appeared "strained" and concerns had been voiced to him. Dr. Ralston worked for several counties and routinely testified as an expert for the State. Coroner Day had no "reservations or qualms about Dr. Ralston's quality of work or his professional demeanor." Coroner Day intended to continue Dr. Ralston's employment as the coroner's physician.

¶ 13        Coroner Day testified, because of Galen's age, an autopsy of Galen was required. A staff member from the State's Attorney's office had discussions with him regarding having an independent individual review the case. Coroner Day did not seek a second opinion until defendant secured an expert-opinion report by Dr. Ralston.

¶ 14        On redirect examination, Coroner Day testified Dr. Ralston was not acting as a coroner's physician when he initiated his report. Dr. Mary Case was selected to review the work of Dr. Bowman and Dr. Ralston, because she was "known to be very knowl-

edgeable in the issues concerning child death." Dr. Case had helped Macon County on a couple of other occasions.

¶ 15        Dr. Jessica Bowman, a forensic pathologist, testified she obtained a permanent license in 1998 or 1999. She graduated from the Indiana University School of Medicine in 1993 and began her residency in pathology at Methodist Hospital of Indiana. As part of the residency program, Dr. Bowman had a rotation in pediatric pathology. She completed the residency program in 1998. Dr. Bowman completed a fellowship in forensic pathology at Indiana University School of Medicine. Dr. Bowman was licensed in Wisconsin, Nebraska, and Arizona, as well as in Illinois.

¶ 16        Dr. Bowman testified she performed autopsies at St. John's Hospital in Springfield, and she reviewed cases sent from other central Illinois counties. Her case load averaged 250 to 300 autopsies per year, totaling approximately 3,000 autopsies in her career. Dr. Bowman was not board certified as a forensic pathologist, but she was a board-certified anatomic and clinical pathologist as of 2002.

¶ 17        Dr. Bowman conducted an autopsy of Galen on Saturday, January 21, 2006. Dr. Bowman identified bruising scattered across Galen's chest and abdominal region, as well as bruising on the forehead and in the area below the eyebrows. Dr. Bowman opined the abdomen and chest area contained "numerous circular bruises, some of which [were] almost confluent of a pattern \*\*\* recognizable as that characteristically seen when caused by a fist." Dr. Bowman did not recall significant bruising on Galen's legs. On Galen's right arm there were "faintly demonstrated marks" that could have been caused by a fist or having been grabbed. There were no injuries to Galen's mouth.

¶ 18        During the internal examination of Galen, Dr. Bowman observed evidence of traumatic injury. Damaged blood vessels had hemorrhaged into Galen's abdominal cavity, his buttocks, his back, and in one of his lungs. Galen had two broken ribs on each side. No healing had occurred, which indicated the ribs were recently injured. Subdural blood was found in the area surrounding the brain. This blood indicated an injury, but the injury was not lethal.

¶ 19        Dr. Bowman testified regarding injuries to Galen's liver. Dr. Bowman identified a hemorrhage in the midregion of the liver. The capsule surrounding the liver was torn. The liver was separated, causing bleeding. The capsule tear indicated "no piling up or evidence of distortion," which would indicate healing. Dr. Bowman opined the injury to the liver was recent. The purplish coloration did not necessarily mean the injury was recent, but it was "characteristic of recent injury."

¶ 20        Dr. Bowman testified she prepared glass slides of various organs to demonstrate injury and to look for the presence of "anatomic disease processes," like infection or cancer. In these slides, Dr. Bowman found no evidence of disease in Galen.

¶ 21        Dr. Bowman opined Galen's death was due to blunt-force injury that appeared to be "contemporaneously inflicted," meaning the injuries occurred within, at most, a couple of hours. Dr. Bowman based this opinion on the gross or naked-eye appearance of the injuries to Galen, as well as the microscopic appearance of the injuries. Dr. Bowman explained blood contains inflammatory cells that help attempt to repair tissues. Inflammatory cells were present, but they had not begun reacting with the tissues yet, indicating the injuries were recent.

¶ 22 When asked "to what part of this all would have been the fatal \*\*\* injury," Dr. Bowman stated "the fractured ribs played an important role because fracturing of both ribs and collapse of the lungs and impairment of breathing [was] a significant event." Dr. Bowman opined the injury to the liver would have been expected to contribute to Galen's death. Dr. Bowman also noted the hemorrhage within the mesentery, or the connective tissue that covers vessels to other organs.

¶ 23 According to Dr. Bowman, Galen's injuries were not self-inflicted. The circular patterning provided a classic example of injuries characteristic of fist injuries. Due to the deep hemorrhages and the broken ribs, she did not expect a child in child care would be able to inflict such damage. Dr. Bowman opined the injuries would likely have been very painful to Galen, as a lot of tissue had been damaged and ribs, which are covered in a lining containing "a lot of nerves," had been broken. Dr. Bowman testified she did not know whether the head injuries were sustained first.

¶ 24 Dr. Bowman opined Galen, based on the total of his injuries, would have lived "maybe a couple hours" after sustaining those injuries: "Looking at the sum total of injuries that this child has and the broken ribs, the lacerated liver, the hemorrhage in the mesentery, I would expect things like respiratory difficulty and shock to take the life of this child within at least a couple of hours and, perhaps, sooner." Dr. Bowman "very much doubt[ed]" Galen could walk around having suffered such injuries.

¶ 25 Dr. Bowman testified after Galen's lungs collapsed, he would not have been able to breathe. She did not know when the parietal pleural tore or whether a broken rib punctured a parietal pleural later in the beating. Emphasizing Galen's injuries to his

buttocks and head, Dr. Bowman believed Galen's injuries could not have been caused during resuscitation efforts.

¶ 26        According to Dr. Bowman, her examination of lung tissue did not indicate evidence of hemosiderin-laden macrophages. Macrophages, over time, would consume the blood if the individual survived the bleeding of the lungs. However, only blood was present.

¶ 27        On cross-examination, Dr. Bowman testified the capsule surrounding the liver was "[m]ostly intact with a little bit of tearing." Dr. Bowman observed "some visible raggedness to part of the capsule," but it had not been completely ripped open. Most of the damage to the liver was on the inside of the liver, and the healthy tissue appeared to be around the outside edges, "[m]ore so on the sides and undersurface than on the top."

¶ 28        Dr. Bowman acknowledged it was possible some of the bruises could have been caused by fingertips or by someone grabbing the child, but added "[t]he distribution [was]n't classic for grabbing a child." No ibuprofen, which is contained in Motrin, above the screening threshold was found in Galen. Dr. Bowman believed, given the severity of Galen's injuries, Motrin would have been insufficient to control the pain, had the injuries occurred over a number of days.

¶ 29        Dr. Bowman believed some of the forehead lesions may have been caused by a child striking his head against a headboard. She believed, however, the injury below the eyebrow was not characteristic of such impact.

¶ 30        Dr. Bowman agreed she had stated the review of the tissue slides could have backdated the time of the injuries up to 12 hours, but she stated such a conclusion was

made without consideration of the broken ribs, the effect of those broken ribs on respiration, the hemorrhage in the deep soft tissues, and the evidence of shock. These latter factors indicated "a more recent demise." She believed it was possible Galen survived more than three hours after his injuries, but not likely or probable.

¶ 31        Dr. Lawrence Jeisy, an emergency-room physician, testified he was working at Decatur Memorial Hospital on January 20, 2006. On that date, Dr. Jeisy attempted to treat Galen, who had no vital signs and was neurologically unresponsive when Dr. Jeisy saw him. Galen had no heartbeat and was not breathing. Dr. Jeisy believed Galen was brain dead. Galen's core temperature was 94 degrees, indicating he had probably been dead for a few minutes. Galen had some bruising on his face and some abnormal discoloration on his chest. Galen was pronounced dead at approximately 10:05 a.m.

¶ 32        On cross-examination, Dr. Jeisy testified Galen had been dead a minimum of 10 minutes for all physiological activity to cease. Dr. Jeisy testified he knew the minimum amount of time Galen had been deceased, but he did not know the maximum time frame.

¶ 33        Dr. John William Ralston, a forensic pathologist, testified he had been licensed in forensic pathology since 2003. He graduated from medical school at East Tennessee State University. His residency was in anatomic and clinical pathology at Rush University. He then undertook a one-year pathology fellowship at the Cook County Medical Examiner's Office. Dr. Ralston was board certified in anatomic and clinical pathology as well as in forensic pathology. Dr. Ralston, at the time of his testimony, performed forensic autopsies for approximately 30 counties in central Illinois. He was hired as the coroner's physician for Macon County in July 2008. He also occasionally accepted

private autopsy cases and reviewed other physicians' cases. Dr. Ralston estimated he had performed approximately 1,100 autopsies.

¶ 34        Dr. Ralston testified, in his role as a coroner's physician, when he testifies for the prosecution, as a courtesy due to his employment by the county, he charges \$250 per hour for his time. When he testifies for the defense, Dr. Ralston charges \$350 per hour. In this case, the defense paid Dr. Ralston approximately \$2,500 to review Dr. Bowman's results and render an opinion. Dr. Ralston believed he had testified approximately 16 or 17 times as a certified forensic pathologist. In 90% or more of those cases, he testified as a State witness.

¶ 35        According to Dr. Ralston, in October 2009, defense counsel sent him materials relating to Galen's death for review. The materials Dr. Ralston received included Dr. Bowman's autopsy report, a disk of photographs taken at the hospital, and a copy of Dr. Bowman's testimony from the 2010 trial. Dr. Ralston was also permitted to view microscopic slides from the first autopsy. He learned Galen had been found unresponsive in his home on January 20, 2006.

¶ 36        Dr. Ralston commented in his report Dr. Bowman had not, in her report, estimated or opined how old the fracture injuries or the hemorrhage injuries were. According to Dr. Ralston, particularly in subdural hematoma cases, it was useful to take a microscopic section of the clotted blood to determine the age of the hemorrhage. As a hemorrhage builds up, the blood clots and pools. The body would attempt to organize the clot by turning it into fibrous tissue and then get rid of it. Microscopically, one could determine how mature a clot is. Such a test was not done, but would have been helpful in aging the

rib fractures and the bruises.

¶ 37        According to Dr. Ralston, some processes in the body continue immediately after death. These processes occur only in the first few minutes. Once blood flow stops, there is no blood flow to transport the specialized cells to where they need to go. Once an individual has lost brain function, the chemical reactions can continue for a few minutes. These reactions include enzyme activity.

¶ 38        Dr. Ralston defined a macrophage as a type of white blood cell, part of the immune system, that deals with specific types of infections and large amounts of tissue damage. Macrophages are "designed to gobble up debris and start the healing process." They remove tissue and promote healing.

¶ 39        Dr. Ralston examined the injury to the liver. He based his opinion as to the age of the liver injury at first on the photograph findings, including the color of the liver injury, and then on the information acquired from examining the microscopic slides. The liver normally has a smooth surface and a red-brown coloration. In the photographs of Galen, Dr. Ralston could see an area of tissue damage with a recent hemorrhage around it and an area of tissue that had turned "yellow-tan," indicating a loss of blood supply to that tissue and necrosis, meaning "dead tissue." Based on the photographs alone, Dr. Ralston believed the injury to the liver was at least 24 hours old. Dr. Ralston stated, at most, the injury could have been several days old.

¶ 40        Dr. Ralston examined the rib fractures. He opined some of the rib fractures were a few hours or few minutes old. The others, however, were becoming very dark and beginning to change color. Those appeared a few days old. Dr. Ralston suspected the rib

fractures occurred at different times because they were healing at different rates.

¶ 41        According to Dr. Ralston, based on the internal injuries, the age of the injuries was a minimum of several hours to a few days old. Some of the rib fractures and abdominal bruises could have been more recent than 24 hours. Dr. Ralston found no indication of a collapse of the lungs. There were, however, indications of hemorrhaging within the lungs, as in a bruise to the lung. A child could survive one collapsed lung for several hours.

¶ 42        Dr. Ralston opined the most serious injury he saw in Galen was the injury to his liver. The pain of such injury would be "probably of a diffuse nature." The child would probably be tired and not feeling well, but could still be mobile. The child could make verbal sounds and "eat and drink somewhat." The child may be listless as the injuries continued to damage him. Dr. Ralston could not ascertain from Dr. Bowman's report whether Galen died because of a hemorrhage from the liver or whether it was liver failure. This conclusion could not be made because Dr. Bowman failed to identify in the autopsy report whether the fluid in the abdomen was blood or simply fluid from the abdomen. The liver injuries would result in tenderness in the abdomen and additional bruising. Dr. Ralston opined the cause of death was blunt-force trauma due to an assault that caused damage to Galen's liver.

¶ 43        Dr. Ralston reviewed the slides in the pathology department at the hospital in July 2010. He examined slides from Galen's liver, lungs, spleen, kidneys, adrenal glands, and brain. Dr. Ralston photographed macrophage activity in some of the slides. He also saw tissue damage, indicating complete necrosis, and neutrophil cells, which are the fast

response, inflammatory cells. Dr. Ralston determined the injury was a chronic injury—one usually over 24 hours old. He observed both an acute or immediate immune response and a prolonged immune response to deal with long-term consequences. The predominant macrophage response was in the liver. Dr. Ralston concluded the damage to the liver was one to two days old.

¶ 44        Dr. Ralston opined if the injuries were inflicted contemporaneously, they would have occurred one to two days and possibly several days earlier. Dr. Ralston did not believe the injuries were consistent with the conclusion they were self-inflicted or caused by similarly aged peers. He opined some of the injuries, including those to the liver and abdomen, could have been inflicted by an adult grasping the child's torso over the ribs and squeezing. The bruising pattern could be from knuckles or from fingers pressed into the tissue.

¶ 45        On cross-examination, Dr. Ralston testified he received specialized training in regard to child-abuse deaths. He had reviewed case reviews, and received numerous lectures and "gone through microscopic and gross photographs with specialized pathologists who are recognized as authorities in the field of child abuse as well as [received] hands-on training with numerous child[-]abuse cases."

¶ 46        Dr. Ralston testified, based on the color variations in the bruises on Galen's forehead and his eyelids, as well as bruises on the abdomen and arm, there seemed to be a variation in the age. Dr. Ralston opined a new injury would be a reddish coloration, like the one on the forehead, whereas an older injury, like the one on the forearm or chest, would have more of a brown coloration. He expected the brown bruises to have been two

to three days old. The redder bruise could have been minutes to hours old, but Dr. Ralston could not say for certain.

¶ 47        Dr. Ralston testified there were no samples taken from the hemorrhaged area near the rib cage from which to determine age. No samples were taken from the bone to determine whether cells were attempting to clean up the broken bone and form new bone. Dr. Ralston, upon examining a photograph of one side of Galen's rib cage, used the color of the hemorrhage to estimate the age of the injury was several minutes to several hours. He opined Galen's injuries were not like those typically seen from cardiopulmonary-resuscitation efforts. Galen's injuries were more consistent with abuse.

¶ 48        Dr. Ralston, upon examining a photograph of the other side of Galen's chest, observed the hemorrhage had become dark and turned brown, which indicated it was older than the injuries to the other side of Galen's chest. Dr. Ralston estimated the age of the older injury to be two to three days.

¶ 49        Dr. Ralston testified Galen suffered a subdural hematoma, meaning bleeding occurred beneath the dura mater, a tough coating surround the brain, and on top of the brain. Dr. Ralston could not opine as to the age of this injury based on the photograph. Dr. Bowman had not described whether the blood had clotted or whether it was liquid. If Dr. Ralston had tissue samples, one could see the type of reaction that was occurring.

¶ 50        In Dr. Ralston's opinion, it would be easier to burst the liver capsule or cause a deep injury by a sharp blow than by squeezing. Galen suffered an injury to the outer surface of the liver, as well as a deep injury within the liver. Galen's injury was more likely caused by a blow to the liver, though it could be caused by compression.

¶ 51        According to Dr. Ralston, his best estimate, based on the slide of the liver tissue, as to when the injury occurred before Galen's death, was several hours, but more likely a couple of days. He agreed it was possible the injury was two to three hours old, but stated "there is nothing that specifically indicates it's two to three hours old" due to the presence of the dead tissue.

¶ 52        Dr. Ralston opined cold medicine with a painkiller could reduce the amount of pain a child felt and make him more functional. A child with liver injuries would be expected to develop a fever, and an analgesic like Motrin would blunt that fever. Dr. Ralston believed Galen, after sustaining his injuries, could have moved around and his pain could have been masked by ibuprofen.

¶ 53        Paul Lowther, a paramedic, testified he and Danny Cox were dispatched at 9:42 a.m. on January 20, 2006, to 1660 North 27th Street in Decatur because a person was not breathing. The two arrived at 9:44 a.m. They entered the residence. No one was present. While there, Lowther noticed a fairly strong scent of cannabis.

¶ 54        Gayla Cooper, Galen's maternal grandmother, testified she did not regularly babysit Galen, but she babysat for him on the morning of January 19, 2006. On that day, Ebony brought Galen to Gayla's residence around 6 a.m. Galen stayed until 9 or 9:30 a.m. Gayla did not observe anything wrong with Galen that morning. She believed he may have had "a little cold or something." Galen had respiratory problems most of his life. While at Gayla's residence, Galen slept in the bed with her. He moved around a lot.

¶ 55        On cross-examination, Gayla testified when Ebony brought Galen over that morning, Gayla was still in bed and Ebony put Galen in bed with her. Galen fell back to

sleep. Gayla knew Ebony had been giving Galen over-the-counter medication.

¶ 56        According to Gayla, at approximately 9:30 a.m. the following day, Ebony stopped by Gayla's house. Ebony told Gayla she was going home. Ebony took her 4-year-old nephew with her to have the boys' photographs taken. Ebony stated Galen was with defendant. Gayla was surprised by that information, because Galen was usually in day care on Fridays.

¶ 57        Ebony testified Galen had a good relationship with his father Cole. When Galen was an infant, he had bronchitis for which he needed breathing treatments. Around the time of his death, Galen did not have respiratory problems. He snored loudly, but did not have the same breathing problems he had when he was an infant. Galen only needed breathing treatments when he was sick.

¶ 58        According to Ebony, Galen was a shy child who liked to be held. He knew some words and could hum songs. He was able to walk and run; he was not clumsy. Galen would cry when he would not get his way. He was easily comforted and did not need discipline.

¶ 59        Ebony testified she met defendant six months before her son's passing. She believed it was in the winter of 2005. While they were dating, defendant stayed at Ebony's residence three or four nights a week. In January 2006, Ebony was 20 years old. She was working in a group home for adults who had mental disabilities. Typically, Ebony worked Monday through Friday from 6 a.m. until 9:30 a.m. On an as-needed basis, Ebony worked eight-hours shifts beginning in the afternoons. During this time, Galen attended Wee Folk Daycare.

¶ 60        Ebony testified, in the week before Galen's death, Galen had a fever and runny nose. It began on Monday or Tuesday. He experienced no other symptoms. To treat his symptoms, Ebony gave Galen Children's Motrin. That week, Galen slept a lot. He would not eat. On Thursday, Galen's symptoms improved. He was humming songs and eating. On Thursday, January 18, Ebony took Galen to her mother's house instead of to day care because Galen was sick. When Ebony picked up Galen from her mother's house around 9 or 9:15 a.m., Galen was lying awake in Gayla's arms. Gayla was playing with Galen. Upon leaving Gayla's house, Ebony went to a friend's residence. Then, Ebony took Galen to Long John Silver's restaurant to get something to eat. He ate his entire kid's meal. After stopping at Long John Silver's, Ebony took Galen to Dawn yell's house. Dawn yell had agreed to watch him. At this point, Galen was acting normally.

¶ 61        Ebony testified she then picked up defendant from his mother's house. Defendant then dropped Ebony at her hair appointment, which lasted 3 1/2 hours. Defendant picked up Ebony. Ebony dropped defendant off and then picked up Galen from Dawn yell's house. Cole, at that time, lived with Dawn yell, his sister. From there, Ebony and Galen went to defendant's house. At this time, it was near 6 p.m. Galen and Ebony stayed in the living room. Defendant was talking with some friends and family members in the dining room. Galen and Ebony fell asleep. Defendant woke them to see if they were ready to go home. The three went to Ebony's house. On the way, they stopped at McDonald's to get Galen a chicken-nugget Happy Meal. He may have eaten one or two pieces of chicken. Galen did not appear to be in any pain or discomfort as he ate.

¶ 62        According to Ebony, at her house, the three sat on the couch and watched

television. Ebony gave Galen some Motrin to make sure he would feel better. Galen threw it up, because he always threw up the medicine. Galen fell asleep in Ebony's arms. She placed Galen on the couch and they both went to sleep. Defendant told Ebony he was about to leave. At some point, Ebony put Galen in his bed. She placed his head on his pillow and covered him.

¶ 63        During this day, Ebony saw no signs indicating Galen was suffering from injuries. Ebony lifted Galen by picking him up underneath his arms. Galen did not express any pain or discomfort. He was not running a fever or crying more than usual that day.

¶ 64        On Friday, January 20, 2006, Ebony woke for work around 5:30 a.m. She went to dress Galen. Ebony decided to let Galen sleep. Galen was sleeping so peacefully, she did not want to wake him. Also, she did not have any clean clothes for him and he had been sick all week. Ebony checked on him to see if his fever was gone. She gave him more medicine "to make sure he was completely well" and put Carmex on his lips, which were a little dry. Ebony gave him some orange drink. Galen did not really wake up. He whined but did not open his eyes. Ebony observed no bruises or marks on Galen's face.

¶ 65        According to Ebony, that day she was planning to take Galen and her four-year-old nephew to have their photos taken together at Wal-Mart. Ebony woke defendant and asked him if he would keep an eye on Galen while she was at work. Defendant was asleep in Ebony's bedroom. Defendant had returned to Ebony's at maybe 2 a.m. Defendant agreed. Ebony went to work, arriving at almost 6:15 a.m.

¶ 66        Ebony left work before 9:30 a.m. She went to Gayla's house to pick up her nephew. Ebony was there two or three minutes. When Ebony arrived at her house, she

walked in the door. She saw defendant sitting on the couch with his coat on. Defendant was smoking a blunt and watching television. He told Ebony Galen had awakened and was crying. Defendant said he gave Galen the juice she left for him, and "blew his nose," and Galen "had a little blood coming from his nose." Ebony sent her nephew to wake Galen. Her nephew returned, saying Galen would not awaken.

¶ 67        Ebony then entered and found Galen lying at the foot of the bed on his stomach; a position she had never seen Galen sleeping in before. Ebony rubbed his back and urged him to get up. She noticed he was not breathing. Ebony yelled to defendant that Galen was not breathing. Defendant "thought [she] was playing at first." Ebony called the ambulance. Defendant picked up Galen and started shaking him and then attempted to give him cardiopulmonary resuscitation (CPR). Because it seemed like the ambulance was taking too long, they decided to drive to the hospital. On the way, defendant was praying out loud. When they arrived at the hospital, defendant, carrying Galen, ran into the emergency room. Nurses took Galen from defendant and performed CPR. At this point, Ebony was led to a different area. While they waited, defendant was screaming for his mother. When she learned Galen had died, Ebony was with defendant and Cole. Defendant responded by "hollering and hugging" Ebony and Cole. He also was "hollering at the top of his lungs and asking for his mom."

¶ 68        When Ebony was shown photographs of Galen that were taken as part of his autopsy, she testified he did not have the marks and bruises on his head when she checked on him before she left for work on January 20, 2006. There was a large area, colored red or orange, on the floor of Ebony's bedroom that was not present when she left for work

that morning. It was near her side of the bed, which is the side of the bed Galen would approach when he awoke in the middle of the night. Ebony testified it looked like juice.

¶ 69        Ebony testified, in January 2006, she wore acrylic fingernails. She had her nails done professionally every two to three weeks. Before Galen died, she had last gotten her nails done about three weeks earlier. She still had an acrylic nail on each finger as of that date. A detective photographed Ebony's hands and fingernails at the police station on January 21, 2006. Ebony was unable to make tight fists because her nails were too long.

¶ 70        Ebony testified she did not strike Galen in the week before his death or shake him violently. She did not squeeze him tightly around his abdomen.

¶ 71        On cross-examination, Ebony testified the morning of January 20, 2006, was the first time she left Galen with defendant while she went to work. She left Galen with defendant for short periods of time before, but not for more than 15 or 20 minutes, usually to run to the store. This occurred maybe 10 times. Once, Ebony left Galen with defendant, defendant's mother, and some other children while she got her hair done. She was gone "a couple of hours."

¶ 72        According to Ebony, defendant was good to Galen. Galen ran to defendant when defendant arrived at their house, watched television with defendant, and hugged him, but Ebony testified he did those things with everyone. Galen loved everyone, including defendant. Ebony did not observe defendant playing with Galen. Defendant did not buy Galen Christmas presents and did not ask Ebony why she was a strict disciplinarian. Ebony denied an incident with an ashtray. Ebony did not see defendant injure Galen or strike him.

¶ 73        Ebony testified she recalled a number of times during late 2005 or early 2006 when Galen injured his head after hitting it on a headboard. Ebony removed the headboard from Galen's bed to protect Galen. She denied defendant had told her to remove it. In the week before he died, Galen went to day care on Monday and Tuesday.

¶ 74        Ebony testified Galen had once consumed some cleaning fluid, like liquid soap, while at Gayla's house. Ebony took Galen to the hospital and was told it would pass. Ebony denied Galen was having a hard time breathing in the week before his death. She believed she gave him Motrin once a day to treat his fever and cough. She denied giving it to him all day long. Ebony stated she remembered she did not give Galen Motrin that morning as she had testified an hour before. She gave it to him Thursday night.

¶ 75        According to Ebony, she did not know defendant was going to a nightclub when he left. She denied being angry he was leaving. She denied trying to keep him from going and stated defendant must have been lying to counsel. Ebony stated they never had an argument while Galen was alive. The two had a good relationship. Ebony and defendant continued to date for a few months after his arrest, despite being told by law enforcement that no one else could have killed Galen. She did not recall telling Ramona Harper, her best friend, she knew defendant did not hit Galen.

¶ 76        Ebony testified Galen was not a morning person. In the mornings when she took him to day care, he would stay asleep while she dressed him. She believed Galen would not wake while she was gone to work on January 20.

¶ 77        Larice Manns, Ebony's coworker in January 2006, testified she worked with Ebony about five days a week. On January 20, 2006, Ebony arrived at work about 20

minutes late. She "was dressed nice." Ebony was in good spirits that morning. There was nothing unusual in her demeanor. Ebony told Manns she was planning to take Galen and her nephew to have their pictures taken that morning.

¶ 78        Dr. Mary Case, a pathologist, testified she had been licensed to practice medicine in Missouri since 1969. She attended medical school at St. Louis University. Dr. Case's residency was in pathology at St. Louis University hospitals. She completed her residency in 1973. She completed a fellowship in neuropathology, which is the study of disease and injuries specifically of the nervous system. Dr. Case was board certified in anatomical pathology, neuropathology, and forensic pathology. At the time of her testimony, Dr. Case served as a medical examiner for St. Charles County, Jefferson County, and Franklin County, Missouri. She also worked directly for St. Louis County as its chief medical examiner since 1988. Dr. Case also traveled around the country giving lectures and teaching regarding death investigations. Dr. Case regularly attended "educational training." Dr. Case was also involved with professional organizations that related specifically to child death and abuse. Dr. Case testified as an expert in pathology approximately several hundred times. She also personally performed "somewhere around 11,000 autopsies," several hundred of which were autopsies of children.

¶ 79        Dr. Case testified she was retained by the Macon County State's Attorney's office to review Galen's death. She reviewed the autopsy report, the autopsy photographs, the microscopic sections, Dr. Ralston's report, Dr. Bowman's testimony from the initial trial, the police department records, the hospital records, and other medical records from Galen's life.

Dr. Case opined Galen died from blunt trauma to the chest and abdomen and was the victim of homicide. The injuries inflicted upon Galen were not injuries he would have sustained in any type of normal activity. Someone caused many injuries to Galen by blunt trauma to his chest and abdomen, causing Galen to die. In her opinion, Dr. Case concluded, based on the bruises on Galen's chest, Galen was struck with fists. Dr. Case compared Galen's liver injury to the type of injury that she would see in motor-vehicle accidents. Galen's injuries could not have been caused by another child and could not have been caused by resuscitation efforts.

¶ 80        According to Dr. Case, Galen's injury of greatest significance was the maceration of the liver. He suffered a massive liver injury that could not be repaired. Galen's injuries occurred contemporaneously. From what Dr. Case observed microscopically, the injuries had identical ages. Because all of Galen's injuries were not examined microscopically, she could not determine how old those injuries were. Dr. Case believed the internal injuries were caused by the impacts to the chest and abdomen, which caused the external injuries.

¶ 81        Dr. Case opined the type of injury that occurred to Galen's liver usually caused death within an hour, maybe less. She believed the injuries that caused Galen's death were inflicted the morning of his death and he died within an hour of those injuries. The injuries would have caused immediate pain. The internal injury to the liver would have caused "very considerable pain," and the rib injuries would be extremely painful. The child would not have been able to eat. He would be conscious, but he would not "be running around playing in any normal fashion because there is very significant pain here." The pain would not go away. Over-the-counter medications would not have any effect in

decreasing or masking this sort of pain.

Pointing to the photographs of Galen, Dr. Case opined the bruises on Galen's chest were similar to those she has seen with knuckle marks. The coloration of the bruises did not allow her to date the bruises with any accuracy. According to Dr. Case, the literature developed in the past 10 or 12 years demonstrated one could not accurately predict the age of bruises by looking at them.

Age could only be determined by a microscopic examination.

¶ 82        Dr. Case testified it is extraordinarily painful when there are large amounts of vascular injury and nerve damage. The rib injuries appeared fresh and all had the appearance of occurring at or about the same time as the fatal internal injuries to Galen's abdomen.

¶ 83        According to Dr. Case, the gross appearance of Galen's liver revealed nothing regarding the age of the injury. The injury looked fresh, but the only way to tell the age of the injury was to look at it microscopically. Dr. Case could not tell by looking at the photograph of the liver whether necrosis existed. To see the details of necrosis, one would have to look at the injury microscopically. Looking at a slide containing liver tissue, Dr. Case opined she saw individual liver cells and neutrophil cells, a type of white blood cell. Neutrophils cause an individual to elevate his temperature, aiding in the inflammatory process. Neutrophils are present in a liver within 20 minutes of injury. The influx of neutrophils is "one of the very earliest things that happens" after an injury. Dr. Case opined the neutrophils were in small numbers.

¶ 84        Dr. Case defined macrophage as a cell that engulfs dead tissue and bacteria and then removes them. As an example, Dr. Case explained if there is a hemorrhage, the

pigment of the red blood cell will be broken down and ingested by the macrophage.

Macrophage cells occur later in the inflammatory process, usually in the second or third day after an injury. Dr. Case opined Galen's liver did not have macrophage cells.

¶ 85        Dr. Case testified when she looked at the sections of Galen's liver, she saw the very earliest stages. Microscopically, Dr. Case observed the liver was in the very early inflammatory process. Dr. Case opined Galen's liver injury was a massive injury. Dr. Case agreed children may die by having been squeezed, but such squeezing would not cause the liver laceration.

¶ 86        On cross-examination, Dr. Case testified she was contacted by the State's Attorney's office regarding this case. Dr. Case reviewed Dr. Ralston's letter of opinion before she rendered her opinion. Dr. Case performed 250-300 autopsies a year. She continued to go to court for "a lot for those cases." Regarding her consultation cases, Dr. Case testified most of those did not lead to trial. Dr. Case stated she testified very few times for the defense. As a medical examiner, she was usually called to testify for the State. Dr. Case estimated she testified for the defense one or 2% of the time. Dr. Case charged the State \$9,000 for her time, which included reviewing the case and two days at court.

¶ 87        Dr. Case testified, even without the microscopic review, she could say, with his liver injury alone, the child would not survive very long. Dr. Case testified "[t]hat is just something that is known" by individuals "who look at children that are dying from abdominal injuries." According to Dr. Case, "there are certain injuries that are known that if you don't get into the trauma surgeon within an hour you're going to be dead." Dr. Case opined the injuries to the skin and the other individual injuries could not be dated

without microscopic sections of those areas. She opined "because those injuries on the outside of the chest and the abdomen were made in conjunction with the internal injuries, \*\*\* we do have evidence that they are very acute, recent injuries \*\*\*."

¶ 88      Defense counsel asked Dr. Case "if you see a macrophage in Defendant's 6E, what does that tell you about the length of time that the injury occurred prior to death?" Dr. Case testified to the following:

"When you're talking about if you see a macrophage, if you saw one macrophage, that wouldn't make any difference at all. In looking at a piece of tissue to determine the degree of aging on it, you would look at how many cells are there, what kind of a mix of cells. If you actually saw one macrophage, that would not make any difference at all. You'd have to see a whole lot of other cells like that. By that time, you would have a whole lot more neutrophils. They would be going through fragmentation. You would have a whole lot of changes that would tell you something about the aging, not just a few macrophages."

¶ 89      Dr. Case stated she reviewed the slides in July 2010. When asked whether she saw a macrophage, Dr. Case testified: "I would have to go through that entire thing and see if I see a single macrophage. In a normal liver, without a laceration, you could have a macrophage. That doesn't mean anything. It is the totality of the picture." Defense counsel asked Dr. Case to look at the exhibit again and tell him if she saw macrophages. Dr. Case testified, "I do not identify any macrophages on there. There are liver cells that

are undergoing necrosis that could be misidentified as a mononuclear inflammatory cell. There are not large numbers of macrophages there. There are not even a few there." For this injury to have been present for several days, Dr. Case opined there would be "many more neutrophils and one would begin seeing the influx of some mononuclear cells, lymphocytic cells, macrophages." Dr. Case opined, "[T]his liver does not show that."

¶ 90        Defense counsel asked Dr. Case if she saw the slide "up there." After counsel asked if she would like to walk up and take a closer look, Dr. Case declined. Defense counsel asked if Dr. Case saw any macrophages in that slide. She replied she could not identify any. Dr. Case testified the injuries to Galen could not have been there for two or three days.

¶ 91        Dr. Case testified she observed hemosiderin in the leptomeninges. The hemosiderin may have been present in Galen since birth. It may not have resulted from injury. The presence of hemosiderin had no effect on Galen's death. Dr. Case testified:

"If we had an injury that had been made, and that was—that was part of an injury to the brain, this child would have been immediately rendered unconscious. There would be a very significant head injury, and we do not have evidence of that. So if you're suggesting that this child lived with a very significant head injury for a three- or four-day period, that would be absurd because we know that not to be the fact. This child would have to be on a ventilator in the hospital. It could not survive. You can't injure the brainstem at the level and produce an injury of this type. This is

why I say this. It's undoubtedly from just the process of birth."

¶ 92        Joe Patton, a detective for the City of Decatur police department, testified he was off duty and working security in the emergency room at Decatur Memorial Hospital on the morning of January 20, 2006. While at work, he observed a defendant carrying a limp, small child into the emergency room. Ebony was behind him. Detective Patton immediately took them to the emergency area. A nurse took control of the child and immediately began CPR. Detective Patton escorted defendant and Ebony to a waiting area. Ebony "was tearful but stoic." Defendant told Detective Patton Galen had a slight cold and had taken Triaminic and Motrin. Defendant further stated Galen awoke and was fine at 8 a.m. Defendant gave him his juice bottle and put him back to bed. He also told Detective Patton Galen was fine when Ebony left the residence. Defendant "was very upset." He continued calling out the Lord's name and stating things like, "Oh, baby, baby." Detective Patton did not see any tears, but defendant acted "as though he was crying."

¶ 93        Detective Patton testified he was present when the family was informed of Galen's death. Defendant "[c]ontinued to wail." He threw himself to the floor and called out. Ebony was "very tearful but quiet." The rest of the family that was present behaved in a manner Detective Patton called typical. The family members were tearful, hugging, and consoling each other.

¶ 94        Ronald Borowczyk, a police detective with the City of Decatur, testified he searched Ebony's residence on January 20, 2006. Detective Borowczyk testified the residence was well kept. In the master bedroom, Detective Borowczyk observed a red,

sticky substance on the floor near one side of the bed. The bed was clean. A sippy cup was found on the bed in Galen's bedroom. It was approximately half full with a red liquid.

¶ 95 Diane Beggs, a detective with the City of Decatur police department, testified, on January 20, 2006, she went to Decatur Memorial Hospital to begin an investigation into Galen's death. On that day, Detective Beggs and Coroner Day met with Ebony in a family room at the hospital. Ebony was very upset. She cried. This first interview lasted approximately 30 minutes. Detective Beggs also spoke with defendant. Defendant stated Galen snored loudly when he slept and had been running a fever in the prior few days. Defendant stated he left the residence around 10:30 or 11 p.m. on January 19, 2006. Galen had been acting better the day before than he had been acting on previous days. Defendant returned to Ebony's home around 2 a.m. on January 20. Defendant watched some television before he headed to bed. Ebony woke him about 6 a.m. to tell him she was leaving. Defendant was not awake enough to remember Ebony asking him to watch Galen. Defendant reported Galen awoke defendant at approximately 8 a.m. Galen was crying. Defendant walked Galen back to his own bedroom, gave him a juice cup, wiped Galen's nose, and Galen went back to sleep. Galen cried until he was given juice. Galen was lying on his stomach. According to defendant, no one else was at the residence until Ebony returned with her nephew. Defendant attempted CPR on Galen. When defendant breathed into Galen's mouth, Galen sighed and his eyes rolled back in his head. Defendant also told Detective Beggs, a thick yellow mucus came from Galen's nose. During this time, defendant cried. He was wailing. Defendant called Ebony an excellent mother.

¶ 96 Detective Beggs testified she interviewed defendant on January 21. He was considerably calmer. Defendant told Detective Beggs Galen appeared sick and had no energy on Thursday, January 19, when they were at an address on West Leafland. They left that address around 10 p.m. and stopped at a McDonald's before returning to Ebony's residence. Galen would not eat. Defendant stayed at Ebony's a short time. He then went to Club Zero. Defendant told Detective Beggs he did not drink alcohol or use drugs while there. Defendant returned to Ebony's around 1:30 a.m. During the interview, Detective Beggs left the room to speak to Dr. Bowman. When Detective Beggs told defendant he was the only person with Galen at the time the injuries were most likely to have occurred, defendant told her "not to put this on him." Defendant stated he did not hurt Galen and he did not know how Galen was injured. After Detective Beggs confronted defendant with the information from Dr. Bowman, defendant became "very much more emotional." He was crying, yelling, and wailing. At one point, he got on his knees. Detective Beggs told defendant he was under arrest.

¶ 97 Detective Beggs testified she did not notice any bruising on Ebony's hands.

¶ 98 The State introduced a transcript of defendant's testimony from the first trial by reading it to the jury. Defendant loved Galen and believed Galen loved him. He had observed Ebony hit Galen. Defendant told her to stop.

¶ 99 Defendant testified at his first trial, on Thursday, January 18, he drove Ebony and Galen home around 10 p.m. Ebony did not want him to leave. She expressed anger by attempting to lock defendant in the house and take his car keys. Defendant went to a

nightclub, where he consumed one or two drinks. Defendant also smoked marijuana, which he did every day. He returned around 2 a.m. Friday morning and told Ebony he returned. Ebony did not say anything about asking defendant to watch Galen or about getting Galen's pictures taken. Defendant went to sleep around 2:30 a.m. Ebony woke defendant to ask him for his keys. After telling her where to find the keys, defendant went back to sleep. He did not recall Ebony's asking him to watch Galen.

¶ 100        Defendant described himself as a sound sleeper. He next awoke just before 8:15 a.m. when Galen entered the bedroom crying like something was wrong with him. Defendant took Galen, who was screaming, to his bedroom. Defendant gave Galen juice from a cup left on the television. Galen stopped crying. Defendant placed him in his bed on his back. Galen's head was on the pillow. Defendant covered him with a blanket. Although it was daylight at this time, the house was dark because the shades were drawn. Defendant began watching television and fell back to sleep. He awoke when Ebony arrived home with her nephew.

¶ 101        Defendant testified at the first trial Ebony's nephew went to wake Galen. When he returned, he said Galen would not awaken. Ebony went into Galen's room. She returned and said Galen was not breathing. Defendant, with no medical training, attempted CPR by giving mouth-to-mouth resuscitation and pressing on Galen's chest. Although Ebony had received CPR training, she did not attempt to resuscitate Galen. Some mucus came out of Galen's mouth. Defendant drove to the hospital while attempting to revive Galen. Galen, at some point, opened his eyes and spit out something. At the hospital, defendant handed Galen to a doctor, who attempted to resuscitate him.

Upon learning Galen had died, he was devastated. Defendant was emotional, crying loudly. He continued crying until he was escorted from the room.

¶ 102        According to defendant's testimony at the first trial, defendant denied beating Galen. Galen had done nothing to anger defendant. He did not see Ebony strike Galen that morning.

¶ 103        Defendant called two witnesses to testify: Ramona Harper and Dr. Ralston. Harper testified Ebony was her best friend in 2006. Harper was also friends with members of defendant's family. Harper testified she and Ebony discussed in the fall of 2006 who may have killed Galen. Ebony told Harper she knew "for a fact" defendant did not do it. When Ebony made this statement, she was still in a relationship with defendant.

¶ 104        Dr. Ralston testified he disagreed with Dr. Case's conclusion Motrin would have no affect on the pain Galen felt from the liver injury. Dr. Ralston said Motrin was a pain-relieving medication to relieve the sensation of pain throughout the body. Dr. Ralston agreed no scientific method existed to interpret accurately an age of a bruise by its color. Dr. Ralston opined, however, one could make a ballpark estimate. When asked what he would say to the forensic pathologist who did not see macrophages in the slide, Dr. Ralston testified he would ask the doctor to review it again and he "would like to know what they [sic] think these cells are" if he or she did not see macrophages. Defense counsel asked Dr. Ralston to circle "as many [macrophages] as [he felt] comfortable drawing around." Dr. Ralston circled six. Defense counsel, after recognizing Dr. Ralston circled six, stated that was sufficient. Dr. Ralston stated, if another expert questioned the

identity of the cells, that expert should use "immunohistochemical staining," a process to look at specific markers on the cell surface to determine what type of cell a cell is. The staining was developed in the 1990s.

¶ 105        Dr. Ralston testified regarding the presence of hemosiderin. Dr. Ralston stated it would be impossible to determine whether the hemosiderin occurred from an injury or from birth.

¶ 106        On cross-examination, Dr. Ralston testified he was unable to use immunohistochemical staining in this case because he did not have access to the original tissue.

¶ 107              B. Jury Deliberations

¶ 108        After deliberations began, juror Fallon Robbins sent a note to the trial court. The note stated the following:

"On Tuesday or Wednesday in the courtroom, this writer observed several members of the audience were standing up looking in this writer's direction. Later on in the evening, I received a phone call from my daughter's father saying your child's mother is on the jury in this case. This writer does not know the defendant or the members who participated in the trial. This is just a security issue. This writer had a question about it."

The court read the note to counsel. It is difficult to ascertain what the note meant. It would appear the note suggests some unknown person called her child's father and said "your child's mother is on the jury," and the father then reported this phone call to Robbins. The court

proposed replying with a note describing the security arrangements for the jury. Both parties agreed to this approach.

¶ 109        The jury found defendant guilty of first degree murder.

¶ 110              C. Defendant's Posttrial Motion

¶ 111        In May 2011, defendant filed a posttrial motion arguing juror Robbins had a personal connection with Ebony's family and an evidentiary hearing was needed to determine whether Robbins was subject to any improper outside influence. Defendant alleged Robbins was a friend of Latasha Cooper, Ebony's sister, as evidenced by the fact Robbins is a Facebook friend of Latasha's. Defendant further alleged Robbins failed to disclose she and Ebony's first cousin, Russell Brady, were also Facebook friends. Defendant argued Robbins failed to disclose either of these relationships in *voir dire*. Defendant emphasized Robbins refused to respond to contacts attempted by the defense investigator, but Robbins communicated with the State and signed an affidavit prepared by the State.

¶ 112        The State filed three affidavits by Robbins, Ebony, and Latasha. Robbins, in her affidavit, averred she recognized Ebony as someone she had seen at events and in passing in Decatur. Robbins further averred she did not know Ebony or consider her to be a friend or associate and had never communicated with her. Ebony, in her affidavit, averred she recognized Robbins as someone she had seen in the community. Brady averred she did not know Robbins and had neither communicated or associated with Robbins. Latasha averred, during elementary school, she was acquainted with someone named Fallon Robbins. Latasha averred she had no contact, other than incidental contact,

with Robbins since elementary school. Latasha further averred she had become Facebook friends with Robbins in the previous year. She had, however, no personal direct communications with Robbins through Facebook.

¶ 113        In June 2011, a hearing was held on defendant's posttrial motion. Defense counsel clarified he did not intend to imply Robbins engaged in any misconduct because he had no evidence of that. Defense counsel stated the issue was more of a "juror notification issue" or a "juror *voir dire* issue." Defense counsel maintained he had not exercised all of his peremptory strikes. Defense counsel maintained had he known Robbins had any relationship or knowledge of Ebony or her first cousin Russell, he would have exercised a peremptory strike. Defense counsel also learned that Robbins's child's father, Corey Laster, is a first cousin of Cole, the father of Galen. Defense counsel argued it was difficult for him to believe during *voir dire*, the name "Ebony Brady" did not "ring a bell."

¶ 114        In response, as a proffer of evidence, the State called Cole to testify. Cole testified he did not have a cousin named Corey Laster and had never heard of him. Cole also did not know Robbins. Cole did not know Russell Brady.

¶ 115        The trial court found no credible evidence suggesting Robbins knew Russell was related to Ebony and no evidence showing she knew of a connection between Laster and Galen's father. Based on the affidavits, the court found the juror was not Ebony's friend and did not communicate or associate with Ebony. The juror recognized her from having seen her in the community but that was insufficient to show any denial of due process and

no further inquiry was needed. In addition, the court found Robbins did not fail to make any disclosures. The court denied defendant's motion.

¶ 116

#### D. Sentencing

¶ 117 After a hearing, the trial court sentenced defendant to 60 years' imprisonment.

¶ 118 This appeal followed.

¶ 119

### II. ANALYSIS

¶ 120 A. Reasonable Doubt

¶ 121 Our task, when a defendant challenges the sufficiency of the evidence of his criminal conviction, is to consider the evidence "in the light most favorable to the prosecution" and determine whether "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *People v. Ward*, 215 Ill. 2d 317, 322, 830 N.E.2d 556, 558-59 (2005). In completing this task, we carefully examine the record, "while giving due consideration to the fact that the court and jury saw and heard the witnesses." *People v. Smith*, 185 Ill. 2d 532, 541, 708 N.E.2d 365, 369 (1999). This court will reverse a conviction only when the evidence is so unreasonable, improbable, or unsatisfactory it justifies a finding of reasonable doubt. *Smith*, 185 Ill. 2d at 542, 708 N.E.2d at 370. We are mindful that "[t]he simple fact that a judge or jury accepted the veracity of certain testimony does not guarantee reasonableness" and "while a fact finder's decision to accept testimony is entitled to deference, it is neither conclusive nor binding." *People v. Wheeler*, 226 Ill. 2d 92, 115, 871 N.E.2d 728, 740 (2007). We are also mindful of the fact that "a conflict between experts does not necessitate a finding that the evidence was insufficient to support a conviction; the trier of fact may either accept or

reject an expert's conclusion." *People v. Lind*, 307 Ill. App. 3d 727, 735-36, 718 N.E.2d 316, 322 (1999).

¶ 122        The parties agree on certain key facts: (1) Galen was killed by blunt-force trauma inflicted by an adult; (2) the injury causing Galen's death was the one to his liver; and (3) defendant was alone with Galen for approximately three hours before his death. Both acknowledge the critical issue in defendant's trial was the timing of the injury to Galen's liver. According to defendant, if the injury occurred within three hours of Galen's death, defendant inflicted that injury. If, however, the injury was older than three hours, he could not be the perpetrator.

¶ 123        Defendant argues no reasonable jury could have disbelieved Dr. Ralston's testimony Galen's fatal injury occurred at least 24 hours before Galen died. In support, defendant emphasizes Dr. Ralston's conclusion macrophages were found in Galen's liver and the presence of these macrophages indicated the injury occurred more than 24 hours before he died. Defendant maintains Dr. Ralston's position is "manifestly more persuasive" than Dr. Case's conclusion there were no macrophages. Defendant highlights Dr. Case's refusal to take a closer look at the image and contends Dr. Case did not explain what the cells were. Defendant maintains Dr. Case's position amounted to an assertion no macrophages existed "because she said so."

¶ 124        Given the evidence in this case, the jury's acceptance of Dr. Case's opinion was not unreasonable. Dr. Case was a certified forensic pathologist. She was the St. Louis County chief medical examiner, and she had performed approximately 10 times the number of autopsies as Dr. Ralston, around 11,000 autopsies, and of those, several

hundred were on children. There is no evidence in the record showing Dr. Case did not know what macrophages are or their role in the healing process. Dr. Case described how neutrophil cells appear early in the inflammatory process, within 20 minutes of an injury. She described macrophages and their role in the inflammatory process, stating they usually occur in the second or third day after an injury. When Dr. Case looked at a slide of the liver tissue, she saw liver cells and neutrophil cells, in small numbers. When questioned by defense counsel, Dr. Case stated she saw liver cells undergoing necrosis and those could be misidentified as a mononuclear inflammatory cell, but she saw no macrophages. The record does not support the conclusion Dr. Case's opinion is simply based on the statement macrophages do not exist because she said so.

¶ 125        Dr. Case further testified the presence of "a few macrophages" would make no difference in her conclusion regarding the length of time separating the injury and Galen's death. She responded to defense counsel's question regarding what a macrophage, if present in the tissue from Galen's liver, as follows:

"In looking at a piece of tissue to determine the degree of aging on it, you would look at how many cells are there, what kind of a mix of cells. If you actually saw one macrophage, that would not make any difference at all. You'd have to see a whole lot of other cells like that. By that time, you would have a whole lot more neutrophils. They would be going through fragmentation. You would have a lot of changes that would tell you something about the aging, not just a few macrophages."

The record shows Dr. Ralston only identified six macrophages. While defendant argues Dr. Ralston was not asked to identify all of the macrophages he saw, the record shows Dr. Ralston was asked to circle "as many [macrophages] as [he felt] comfortable drawing around." Dr. Ralston did not opine that he saw more than six and six was all he circled. In the light most favorable to the prosecution, even if Dr. Ralston observed six macrophages, those six would, according to Dr. Case, be insufficient, given the other cells in the slide, to age the injury at two to three days.

¶ 126            Defendant attempts to explain the difference of opinion based on the fact Dr. Ralston more recently graduated from medical school and was better suited for identifying macrophages. This was unpersuasive. Testimony established Dr. Case's extensive experience, which included attending educational training, and her ability to describe macrophages, neutrophils, and the inflammatory process. It is reasonable for the jury to have accepted Dr. Case's conclusion over Dr. Ralston's.

¶ 127            Defendant next argues Dr. Case's conclusion is undermined by her conclusion, based on the type of injury Galen sustained, he would have died in approximately one hour. Defendant states, when asked for the basis for this opinion, Dr. Case simply replied, "[i]t is known by people who look at children that are dying from abdominal injuries." Defendant argues Dr. Case compared Galen's liver injury to one as would be seen in a car crash, but Dr. Ralston found a published medical study in 2008 concerning 55 cases of liver injury from car accidents in which only one victim died within one hour.

¶ 128      Defendant's argument is misguided. Dr. Case, when asked about the amount of *force* necessary to cause the injuries to Galen, testified the liver injury is one that "could be seen in a motor vehicle accident." Dr. Ralston, in referencing the published medical study, did not describe the types or severity of the liver injuries involved in those car crashes. From the record before us, we do not know how many of those cases involved a child with the type of injury Galen sustained. The jury's decision to disregard such study was not unreasonable.

¶ 129      Defendant further argues Dr. Ralston's opinion Galen's injuries were not contemporaneous was strongly supported by the different coloration of some of Galen's bruises. Defendant argues Dr. Case did not explain how the different colored bruises could be squared with her opinion the injuries were contemporaneous.

¶ 130      Dr. Case testified one could not ascertain the age of a bruise by its coloration. In support, Dr. Case referred to the literature in the last decade supporting this conclusion. Dr. Ralston essentially admitted Dr. Case was correct when he was called to testify by the defense. He agreed if he examined a bruise he could predict or make a ballpark estimation, but it would not be scientific in that it could not be proved without microscopic review.

¶ 131      In the light most favorable to the prosecution, the testimony of the lay witnesses supports the jury's decision to accept the opinion of Dr. Case and Dr. Bowman over Dr. Ralston and find defendant guilty of first degree murder. In addition to the microscopic evidence, both Dr. Case and Dr. Bowman testified Galen would have been in an extreme amount of pain and would not have been able to act normally upon having sustained such

injuries and would not have recovered. While Ebony testified Galen was sick with a cold on Monday and Tuesday, witness accounts, including testimony by Cole and a statement by defendant to Detective Beggs, Galen was better on Thursday. Cole, consistent with Ebony's testimony, testified Galen was running and playing and acting normally that Thursday afternoon. He showed no signs of injury until after he spent a morning with defendant.

¶ 132

#### B. Juror Impartiality

¶ 133

Defendant argues the trial court erroneously denied his request for an evidentiary hearing. Defendant argues Robbins failed to disclose social connections to Ebony's family. This, according to defense counsel, was especially problematic because Ebony was a witness, the mother of the victim, and the individual whom the defense accused of killing Galen. Defendant maintains Robbins's "one-sided allegiance rendered the prosecution as the sole arbiter of deciding what information made it to court." Defendant further argues the hearing on the posttrial motion did not resolve the question of who contacted Robbins or her child's father.

¶ 134

The State contends the trial court did not abuse its discretion in denying defendant's request for an evidentiary hearing. The State contends defendant did not meet his burden of introducing "specific, detailed and nonconjectural evidence in support of his position." *People v. Towns*, 157 Ill. 2d 90, 102, 623 N.E.2d 269, 275 (1993).

¶ 135

Defendant maintains the proper standard of review is *de novo*. Defendant contends the argument the circuit court is the better reader of documents prepared by lawyers is illogical. Defendant compares the circumstances to proceedings under the

Post-Conviction Hearing Act (725 ILCS 5/122-1 to 122-7 (West 2010)), in which the first- and second-stage dismissals without an evidentiary hearing are reviewed *de novo*, while third-stage dismissals after an evidentiary hearing are reviewed under the manifestly erroneous standard.

¶ 136        Defendant's argument is not convincing. The decision whether to grant or deny defendant's motion for an evidentiary hearing was not based solely on considerations of words in a document, as defendant suggests. Instead, the trial court also considered testimony by Cole, recalled the *voir dire*, and determined it never specially directed the jurors to make the disclosures defendant contends Robbins should have made. It is not at all clear any disclosure was required. We need not, however, decide the issue because defendant's argument fails under any standard.

¶ 137        A defendant's fundamental right to a jury trial guarantees a trial by a panel of impartial jurors. *People v. Kuntu*, 188 Ill. 2d 157, 161, 720 N.E.2d 1047, 1049 (1999). When a defendant learns of facts that might support a finding of partiality by a juror after a verdict, an evidentiary hearing may be necessary. *Towns*, 157 Ill. 2d at 102, 623 N.E.2d at 275. In seeking an evidentiary hearing, the defendant bears the burden of introducing and offering "specific, detailed and nonconjectural evidence in support of his position." *Towns*, 157 Ill. 2d at 102, 623 N.E.2d at 275. When defendant fails to provide such evidence, an evidentiary hearing is not warranted. *Towns*, 157 Ill. 2d at 102, 623 N.E.2d at 275. "[A]ny doubt should be resolved in favor of granting the evidentiary hearing." *People v. Witte*, 115 Ill. App. 3d 20, 30, 449 N.E.2d 966, 974 (1983).

¶ 138      Defendant has not shown specific, detailed and nonconjectural evidence supporting his contention that Robbins was not impartial. The trial court explicitly found Robbins did not fail to disclose any information requested of her. The uncontradicted affidavits establish Robbins did not communicate with or know Ebony personally. Latasha and Robbins did not communicate since elementary school, other than being Facebook friends. Defense counsel in argument admitted he was not alleging Robbins did anything improper. He asserted a *voir dire* issue existed, and he would have sought a peremptory challenge had he known this information. Defendant recognizes Robbins would not have been excused for cause. This supports the conclusion defendant has no specific and detailed evidence to prove Robbins's alleged partiality. See generally *People v. Munson*, 171 Ill. 2d 158, 177, 662 N.E.2d 1265, 1373 (1996) (observing challenges for cause allow a party to reject jurors on a narrowly specified, provable, and legally cognizable basis of partiality, while peremptory challenges allows rejection for real or imagined partiality that is less demonstrable or easily designated).

¶ 139      We further note defendant's concern Robbins foreclosed any opportunity for defense counsel to talk with her and investigate the matter more fully, particularly over the issue of who contacted Robbins's daughter's father. These arguments fail. Defendant cites no rule mandating jurors speak to either side. As for the issue regarding juror contact, we note defense counsel did not object to how the trial court handled the matter when the court brought this to counsel's attention during deliberations, but in fact agreed with the trial court's handling of the matter. Defendant forfeited this argument by not objecting at trial. See *People v. Enoch*, 122 Ill. 2d 176, 186, 522 N.E.2d 1124, 1130

(1988) (concluding an objection at trial and a written posttrial motion are required to preserve an issue for review on appeal). Defendant has made no attempt to invoke the plain-error rule.

¶ 140 Defendant's case law is distinguishable. Defendant emphasizes *Witte*'s admonishment that any doubts should be resolved in defendant's favor. We do not disagree with this pronouncement. However, there is no doubt defendant did not meet the threshold requirements for an evidentiary hearing. In *Kuntu*, 188 Ill. 2d at 159-60, 720 N.E.2d at 1048, the defendant presented evidence of a communication from the jury foreman to State's Attorney Richard Devine, indicating the foreman knew the State's Attorney. The two-page letter began with a salutation reading "Dear Dick," and the foreman concluded with the following: "Once again congratulations on being where I can write this letter to someone I know and please consider a lengthy tenure in office because, if I ever get into a jury selection for a capital crime again, I'm going to tell the judge that you're my brother." (Internal quotation marks omitted.) *Kuntu*, 188 Ill. 2d at 159-60, 720 N.E.2d at 1048.

This special and detailed evidence of potential prejudice is absent here.

### III. CONCLUSION

¶ 142 For the stated reasons, we affirm the trial court's judgment. As part of our judgment, we award the State its \$75 statutory assessment against defendant as costs of this appeal.

¶ 143 Affirmed.