

Evaluating the Scientific Foundation of Medico-Legal Death Investigation

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Hydrostatic Test Use

17 Q. And what is, for your purposes in determining whether
18 this child was alive, what is significant about this
19 photograph?

20 A. Well, the mere fact that they float. That's all
21 we're testing here, to see if the lungs float. Again,
22 indicating that there was aeration of the lungs.



Continued Use of Hydrostatic Test

3 Q. Where did you learn to do the lung float test?

4 A. That's part of our training. I learned it as a
5 pathology resident and then certainly utilized it more so as a
6 forensic pathology fellow and as a forensic pathologist.

7 Q. And how were you taught to procedurally do it?

8 A. Multiple people do things differently. Some people
9 tie off the lungs, some people would clamp off the lungs and
10 float them in water. Some people actually would just take
11 pieces of the lung and float them in water. So I just take the
12 techniques that I felt work for me and utilize those. So
13 everyone has a different style of doing it but the idea is the
14 same.



Confirmation Bias

19 Q. Okay. In this case you would agree that there were
20 issues with the placenta. It was not normal. It wasn't
21 healthy in every sense.

22 A. Well, we had infection. We had chorioamnionitis and
23 funisitis. But there were parts of it that were normal. And
24 there were parts that were abnormal.



Confirmation Bias

9 it's totally normal. So, I mean, you have both sides of the
10 spectrum there. So to me having an infection there just means
11 I have an infection. It doesn't imply that the fetus or the
12 infant was necessarily impacted by it.



Referencing Physician Statements in Argument

19 It is also worth noting, Your Honor, that babies are
20 not just randomly stillborn. There has to be a reason that
21 they die. There was no medical reason for the death of this
22 child. No medical reason for the death of this child existed
23 other than it was smothered in a towel immediately upon birth,
24 placed in a plastic bag, and left unattended in a closet under
25 clothing.



Diagnoses of Exclusion: Failure to Provide Expected History

Q. And how did you rule on the manner of death?

What was your finding?

A. The manner of death was homicide. Based on, again, the findings that I had at autopsy and the circumstances that were provided to me, they were inconsistent with the circumstances that were provided and the findings.



Diagnoses of Exclusion: History Deviates from Expectation

Q. Okay. All right. But that's not the evidence that you had?

A. No.

Q. And that's why you ruled that the manner of death was homicide?

A: Correct. Again, the information provided to me of the surrounding circumstances did not match the degree of the injuries.



Confirmation Bias

Q: Do a significant number of children, in your experience, die from streptococcal pneumonia before they are able to get all four shots because they are not fully immunized?

A: “It’s very rare. In the five years that I ran the Child Death Review, when we reviewed every death in the state, we had not one single child die from streptococcal pneumonia.” TR at A1625



Referencing Physician Statements in Argument

- You've read the indictment; manner and means unknown. Fact of the matter is, we don't know. Did he shake her? And you heard what that would do to her. It's like turning off a light switch. Shake and it scrambles the brain and they're rendered in a state of unconsciousness and you heard they will never be the same again. (Vol 46, 62)
- You've seen the autopsy report. The experts agree. There's seven doctors that wrote off on it as homicide. Intentionally inflicted injuries is what they characterize it as. Shaken impact syndrome. (Vol 46, 63)
- He picked her up then and he violently shook her like has been described. On and on and on and nobody's there to break it up. That's what he did. And then he threw her down on the floor where he says he found her. (Vol 46, 66)
- And then, ladies and gentlemen, you heard the testimony from the doctors, that after this injury Nikki wouldn't have been normal. She would have been laying on the ground. She would have been ever been unable to walk, talk, conscious, unconscious, difficulty breathing, murmuring, gasping, gurgling, moaning, muffled cries is what he heard. And the last thing that she saw before he killed her was the hate in her dad's eye when he was shaking her to death is what she saw. Her last memory, 'Mommie, Mommie', as Daddy kills her. (Vol 46, 66)

