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SUPREME COURT OF VIR
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RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 77-1830

HELEN E. LANE,
Appellant,

v.

COMMONWEALTH OF VIRGINIA,
Appellee.

JOINT APPENDIX

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OCA 4

COMMONWEALTH OF VIRGINIA,
CITY OF VIRGINIA BEACH } TO-WIT:

In the Circuit Court of the City of Virginia Beach:

The Grand Jurors of the Commonwealth of Virginia, in and for the body of the City of Virginia Beach, and now attending the said Court, upon their oaths, present that

HELEN E. LANE A/K/A Elayne Summerell Lane

on or about the 8th day of May in the year 19 76 in the said City of Virginia Beach, Virginia, did feloniously kill and murder one infant.

Va. Code 18.2-30

PH 7/20/76
GJ 8/2/76

3

FORM OCA 4

COMMONWEALTH OF VIRGINIA

Vs. } FELONY,

HELEN E. LANE

INDICTMENT FOR MURDER

Yes A TRUE BILL

Helen Kanoy FOREMAN

8-2-76 DATE

WITNESSES:

~~SGT. HADEN~~

Def. E.E Marrow OK Bank

INSTRUCTION 11

The Court instructs the jury that involuntary manslaughter is the killing of one accidentally, contrary to the intention of the defendant, accompanied by such carelessness or recklessness on the part of the defendant as is incompatible with a proper regard for human life.

6/7/77
Comm v Lane

Proved

INSTRUCTION NO. 14

The gist of the crime of involuntary manslaughter is criminal negligence; it must be shown that the negligence of Helen S. Lane was gross or culpable negligence; culpable or gross negligence is that which indicates a callous disregard of human life and of the probable consequences of her act; criminal liability cannot be predicted upon every act carelessly performed merely because such carelessness results in the death of another, but in order for criminal liability to result from negligence, it must necessarily be reckless or wanton and of such a character as to show disregard for the safety of others under the circumstances likely to cause injury or death; and unless you believe from the evidence beyond a reasonable doubt that the infant was born alive and that Helen E. Lane was guilty of negligence so culpable or gross as to indicate a callous disregard of human life and the probable consequences of her acts and that such negligent acts were the direct cause of the death of the infant, you shall find the defendant not guilty of involuntary manslaughter.

6/7/77

Comm v Lane

BWV.

INSTRUCTION NO. 14A

Involuntary manslaughter is the killing of one accidentally, contrary to the intention of the defendant, while in the prosecution of some unlawful, but not felonious act; or in the unlawful performance of a lawful act, accompanied by such carelessness or recklessness on the part of Elayne Lane as is incompatible with the proper regard for human life.

Refused
Comm v Lane
4/7/77 JMW

Covered in # 11

Aug. 9, 1977 - Judge Vakos

COMMONWEALTH OF VIRGINIA)
D 4230
vs.) Upon an indictment for Murder
HELEN E. LANE)

The court doth order for the recording verbatim of the evidence and incidents of the trial of this case by Phyllis Dobrinsky, a court reporter of Jaime & Browning.

Whereupon, came Larry Slipow and Edward Hanson, the assistant attorneys for the Commonwealth, and the accused, Helen E. Lane, who pleaded not guilty to said indictment, tendered in person by the accused, and was on the 7th day of June, 1977, found guilty of Involuntary manslaughter, and her case referred to the Probation Officer of this court for a report, again appeared in court pursuant to her recognizance heretofore entered into, and also came Steven Swain, attorney for the accused, said attorney being of the accused own choosing, and also came the Probation Officer and rendered his report in open court, which report was ordered filed as part of the record in this case, and after considering said report, and hearing evidence and argument of counsel, the court doth enter up judgment on the jury verdict of June 7, 1977.

It being demanded of the accused if anything for herself she had or knew to say why the court should not now proceed to pronounce judgment against her according to law, and nothing being offered or alleged in delay thereof, it is adjudged, ordered and decreed by this court that the said Helen E. Lane, aka Elayne Summerell Lane, age 18 years (8-21-58) be sentenced as an adult, be and hereby is sentenced to confinement in the penitentiary of this Commonwealth for the term of 5 years.

Whereupon, the defendant by counsel, informed the court of her ntention to apply to the Supreme Court of Virginia, for a writ of error nd moved the court to allow the defendant to remain on bond pending said ppeal, and over the objection of the assistant Commonwealth attorneys, he court doth grant said motion, and the accused is continued on her bond or her appearance in court.

The court doth further order that the transcript of the trial of his matter be made part of the record when filed with the Clerk of this ourt.

ASSIGNMENTS OF ERROR

1. The Court erred in permitting the case of involuntary manslaughter to go to the jury where the Commonwealth failed to establish that the infant died as a result of some criminal agency.

2. The Court's instruction of the definition of involuntary manslaughter was an incomplete statement of law and the Court failed to give the proper instruction offered by the Defendant.

is obvious that such meconium was expelled during the death process, as noted by the experts, and proved the infant was alive when wrapped and put in the pail. Therefore, because the photographs were representative of facts in issue and were supported by the evidence, they were properly admitted to the triers of fact.

III. THE COURT'S INSTRUCTION OF THE LAW OF INVOLUNTARY MANSLAUGHTER WAS COMPLETE.

Involuntary manslaughter can be one of two major classifications of crimes. It is the killing of one accidentally, contrary to the intention of the parties, either in the prosecution of some unlawful but not felonious act, or in the improper performance of a lawful act. When the Commonwealth predicates the charge upon the violation of a statute (an unlawful but not felonious act), it must show that such violation was the proximate cause of the homicide. Beck v. Commonwealth, 216 Va. 1, 216 S.E. 2d 8 (1975) If, however, the Commonwealth predicates the charge upon an improper performance of a lawful act, it must show that the performance was so improper as to constitute negligence so gross and culpable as to indicate a callous disregard of human life. Beck, supra.

In the instant case, the facts reveal the Commonwealth's reliance only upon the theory of the improper performance of a lawful act, the giving of birth. There is no allegation that any act of the defendant was unlawful, but that her conduct during the birth process and immediately thereafter was so improper as to constitute negligence so gross and culpable as to indicate a callous disregard for human life. In limiting Instruction No. 11 as given, the Court insured

that the jury could find the defendant guilty of involuntary manslaughter only if it believed her negligence conformed to that severe standard. And when considered in conjunction with Instruction Nos. 14 and 15, it is clear that the instructions as a whole state the law applicable to the particular facts which the evidence tends to prove, Hawkins v. Edwards, 117 Va. 311, 84 S.E. 654, and that the rights of the defendant have been protected. Accordingly, defense argument should be dismissed.

IV. DEFENDANT'S OFFERED INSTRUCTION 16C WAS PROPERLY REFUSED BY THE TRIAL COURT.

The instruction, as offered, contains no language requiring defendant to comform to any standard other than her own. The concept of negligence is that a person's actions and conduct are to be viewed and judged against the standard of a reasonable man under the existing circumstances. This is the concept of what can be termed simple negligence. Simple negligence, however, is not sufficient for criminal liability. The negligence required in a criminal proceeding must be more than the lack of ordinary care and precaution and more than mere inadvertence or misadventure. It is a recklessness or indifference incompatible with a proper regard for human life. Bell v. Commonwealth, 170 Va. 597, 195 S.E. 675. In order to find this degree of negligence, the defendant's conduct must be judged against the reasonable man standard, and her deviation must be so great as to show recklessness or indifference incompatible with a proper regard for human life. There is no provision in the law of negligence for defendant's conduct to be viewed against no existing standard.

1 things.

2 Q And what would you do with the bottles?

3 A And we'd take them in and cash them in

4 for the money.

5 Q Okay. All right. Did you go over to

6 this bag for a reason?

7 A Yes.

8 Q What did you do once you got over

9 there?

10 A I opened it up with a long pole.

11 Q How did you open it up?

12 A I stuck the pole in and just opened

13 up the bag.

14 Q All [redacted]

15 opened it up? [redacted]

16 A Well, a white trash can fell out of it

17 and a whole bunch of trash and things. [redacted]

18 Q Okay. And then what did you do? [redacted]

19 A And then [redacted]

20 Q Now, when you say body would you [redacted]

21 tell the [redacted]

22 A [redacted]

23 Q Just fell out? [redacted]

24 A Yeah. [redacted]

25 things. [redacted]

1 Q In what?
2 A In the towels and the bucket.
3 Q Okay. Pat, when you saw that what
4 did you do?
5 A I ran home and called the police.
6 Q All right. Was anybody with you over
7 there by the scene?
8 A No.
9 Q Did you tell anybody about it when you
10 got home?
11 A Oh. Yeah, I told my parents about that.
12 Q Who called the police?
13 A I did.
14 Q And what did you do after you called the
15 police?
16 A Well, me and my dad went over to the
17 scene.
18 Q Um-hum.
19 A And then he stayed there and I ran back
20 home to direct the police over.
21 Q Okay. Did the officers respond?
22 A Yes.
23 Q About how long was it?
24 A About five minutes.
25

12

until we know what he is -- we will interpose the objections when we see what he has to say.

------oOo------

DR. CHARLES SPRINGATE, called as a witness on behalf of the Commonwealth, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SLIPOW:

Q Doctor, tell us your name and spell your last name for us, please?

A Dr. Charles Springate, S-P-R-I-N-G-A-T-E.

Q Doctor, it is a little difficult to hear back here. I heard the response to it. In the future could you speak up just a little bit.

Now, directing your attention to a year ago May 11, 1976, by whom were you employed at that time?

A Commonwealth of Virginia.

Q In what capacity, sir?

A Deputy chief medical examiner.

Q Now, where are you presently employed, Dr. Springate?

1 A I am not.
2 Q Okay, where are you residing at?
3 A In Maryland.
4 Q You are not employed by the Commonwealth
5 of Virginia any longer. Is that correct?
6 A Right.
7 Q You indicated that you are a doctor.
8 What is your specialty, sir?
9 A Forensic pathology.
10 Q What is forensic pathology?
11 A Forensic pathology is sort of a super-
12 specialty in pathology which is concerned with performance
13 of autopsies of a coroner's nature or medical examiner's
14 nature, autopsies which have medical-legal importance for
15 determining cause and manner of death. That would include
16 autopsies which are of homicide victims, accident victims,
17 that sort of thing, as well as victims of sudden, unexpected
18 death.
19 Q Was that one of your duties, to perform
20 autopsies, when you were in fact employed by the Commonwealth
21 of Virginia, sir?
22 A Yes.
23 Q Now, would you be kind enough to give
24 us your medical background and how you arrived in your field
25 of expertise?

1 A After obtaining a bachelor's degree in
2 general science I attended medical school in St. Louis at
3 Washington University, graduating in 1961. I then had
4 five years training in pathology, which consisted of
5 anatomic pathology; that's performance of autopsies and
6 examinations of colons, other surgical specimens which
7 are removed by surgeons.
8 Clinical pathology is essentially laboratory
9 medicine. I had training in that also, which is hospital
10 laboratory type medicine, which is chemistry, bacteriology,
11 hematology or the study of blood and blood banking. Then
12 I had training also in forensic pathology which I have
13 already described.
14 Q Now, after you received this additional
15 five years of training, doctor, where did you proceed with
16 your medical endeavors?
17 A I served as assistant medical examiner
18 for the State of Maryland for over six years before I came
19 to Virginia.
20 Q And in that performance of those duties
21 did you perform autopsies as well in Maryland?
22 A Yes.
23 Q How long were you employed by the
24 Commonwealth of Virginia?
25 A About four years.

1 Q And did you have occasion to be
2 qualified in the courts of the State of Virginia as an
3 expert in forensic pathology?
4 A Yes.
5 Q Have you been qualified in the City of
6 Virginia Beach previously?
7 A Yes.
8 Q What other jurisdictions in the state
9 have you been qualified in?
10 A Norfolk, Hampton, Newport News, all
11 over Tidewater; all the counties and cities I believe of
12 Tidewater.
13 Q Okay. Could you estimate for us the
14 number of times that you have been qualified as an expert?
15 A Oh, I have testified I suppose two
16 hundred times, two hundred fifty times. I don't really
17 know.
18 Q Doctor --
19 MR. SLIPOW: Excuse me, your honor, I
20 would ask the court to accept and acknowledge
21 Dr. Springate as an expert in the field of
22 forensic pathology.
23 THE COURT: Any questions?
24 MR. STANT: No questions about that,
25 but, your honor, we would like to ask some-

1 questions relative to the ultimate questions
2 that are going to come up here that we will
3 make.
4 THE COURT: We are talking about at
5 this point an expert in his field.
6 MR. STANT: Just in his field,
7 that's right.
8 Just a second, your honor.
9 Your honor, we would like to ask --
10 all right, let Steve go ahead.
11
12 VOIR DIRE EXAMINATION
13
14 BY MR. SWAIN:
15 Q Dr. Springate, were you an intern after
16 you finished medical school?
17 A Yes.
18 Q Where did you do internship?
19 A In Cleveland.
20 Q And what did you study while you were
21 there or what did you do as an intern?
22 A Pathology.
23 Q Only pathology?
24 A Yes.
25 Q Do you have any degree in obstetrics? 17

1 A No.
2 Q Have you delivered any children?
3 A Yes.
4 Q How many?
5 A Somewhere between -- oh, around fifteen
6 or twenty, in medical school.
7 Q In medical school?
8 A Yes.
9 Q Is that with the assistance of other
10 doctors there?
11 A Yes.
12 MR. SWAIN: No further questions.
13 THE COURT: You may proceed.
14 MR. SLIPOW: Thank you, your honor.
15
16 DIRECT EXAMINATION (Cont'd.)
17
18 BY MR. SLIPOW:
19 Q Now, Dr. Springate, directing your
20 attention to May 12, 1976, did you have occasion to come
21 in contact with the body of a newborn infant baby at that
22 time?
23 A Yes.
24 Q Now, I am going to show you a three-page
25 document that counsel for the defendant has a copy of, and

1 ask you if you can identify that document?
2 A Yes.
3 Q What is the document itself?
4 A It is a copy of the autopsy protocol.
5 Q Did you perform an autopsy on that body,
6 sir?
7 A Yes.
8 Q And that is your findings there?
9 A Yes.
10 Q Now, I am going to show you a
11 photograph that both counsel for the defendant and the
12 accused have had an opportunity to examine and ask you
13 if you can identify that photograph?
14 A Yes.
15 Q What is the photograph, sir?
16 A It is a photograph of the baby on
17 whom I did the autopsy.
18 MR. SLIPOW: If the court please,
19 at this time I would move to introduce the
20 photograph into evidence as Commonwealth's
21 Exhibit Number 17, the autopsy report as
22 Commonwealth's Exhibit Number 18.
23 THE COURT: You gentlemen have
24 seen it?
25 MR. STANT: Yes, your honor. I

1 object to the introduction.

2 THE COURT: Ladies and gentlemen

3 of the jury, you may step into the jury

4 room for a moment, please.

5 (The jury withdrew from the courtroom.)

6 MR. STANT: Now, your honor, take

7 them up as to the report first.

8 The doctor is here and he can

9 testify as to his findings. The Commonwealth

10 attempts to introduce that to do by indirection

11 what they can't do directly, and that is to

12 have an opinion of the doctor relative to the

13 cause of death. And in that respect, your

14 honor, the doctor's qualifications as a

15 pathologist I don't believe qualifies him

16 to make a judgment relative to the judgment

17 that the jury has to make. He can tell them

18 what he found, but he cannot tell them his

19 opinion as to any cause of death by --

20 THE COURT: We don't know that

21 at this point.

22 MR. STANT: Pardon?

23 THE COURT: Do we know that at this

24 point?

25 MR. STANT: This is what's in this

1 paper, your honor; that's why I am
2 objecting to it.
3 MR. SLIPOW: We will take the cover
4 sheet off.
5 MR. STANT: Got to look at the rest
6 of it. I haven't seen it.
7 MR. SLIPOW: If you will look in
8 the file you will find. The statute makes
9 it admissible.
10 MR. SWAIN: Your honor, the facts
11 are admissible, but opinions given I don't
12 think are admissible in the front page. I
13 think the facts exactly what is found would
14 be, but not his opinions.
15 THE COURT: You say he is not
16 qualified to give an opinion as to the
17 cuase of death?
18 MR. SWAIN: I don't know what
19 facts it is based on. I am not saying
20 he can't in this particular case. But
21 he can give the facts as he found them,
22 but the opinions contained in that report
23 should not be given, because -- only the
24 facts that are contained in that report.
25 MR. STANT: See the --

MR. SLIPOW: Judge, if a forensic pathologist --

THE COURT: What is the section of the code that we are looking for?

MR. SLIPOW: 19.2-135 rings a bell, but I couldn't swear to it. It says that if the report has been filed for seven days with the court that it is admissible. And that report's been filed for seven months with the court.

MR. SWAIN: Similar to an automobile accident --

THE COURT: I am still looking. It wasn't 135. You have had access to this report, have you not?

MR. STANT: I have had access to the report, your honor, at least Mr. Swain has. But --

MR. SWAIN: We have no quarrel with the report itself, but I think the only time this report can come in is when the doctor's not available to testify.

Number two, your honor, we don't quarrel with the facts that are contained in what he found in his examination. The

1 point is the opinion that he gives as to
2 the cause of death should not be included
3 in that report, and let him testify about
4 that whatever his opinion is based on and
5 to let him give that so we can cross-
6 examine him instead of it going to the
7 jury.
8 MR. SLIPOW: 18.2-268 -- no.
9 That's blood alcohol.
10 Certificate of analysis 19.2-187.
11 That may be drug analysis.
12 MR. HANSON: I got it. 19.2-188.
13 MR. STANT: Just a second. Judge,
14 I don't think he ought to talk with the
15 witness while he is on the stand. I am
16 sorry.
17 MR. SLIPOW: Was it relative to
18 testimony?
19 WITNESS: No.
20 MR. STANT: Well, let's wait till
21 the doctor gets off the stand.
22 THE COURT: It appears that our
23 court of appeals has held that the cause
24 of death is merely an expression of opinion
25 and the statute does not include or accord

1 that the same dignity as other evidence.
2 Now, the lab report itself I
3 will take is admissible under the statute?
4 MR. STANT: Yes, your honor.
5 THE COURT: But not the opinion
6 expressed in the report?
7 MR. STANT: Right.
8 Now, your honor, as to the picture
9 of the child again.
10 THE COURT: I don't have any
11 problem at all about that. It is not
12 even in color. If you are arguing, as
13 your previous motion, it will inflame the
14 jury --
15 MR. STANT: Yes.
16 THE COURT: No problem.
17 MR. STANT: Okay, note my
18 exception.
19 MR. HANSON: Judge, did you admit
20 the report? I am sorry.
21 THE COURT: Only the findings,
22 not the opinions. He's here.
23 MR. SLIPOW: Would you mark that
24 in evidence?
25 THE COURT: Let's bring the jury

1 back.

2 THE COURT: You-all ready?

3 MR. SWAIN: Yes, your honor.

4 THE COURT: Bring the jury in, please.

5 (The jury returned to the courtroom.)

6 THE COURT: The photograph will be

7 introduced marked Commonwealth's Exhibit

8 Number 17, and the lab report Commonwealth's

9 Exhibit Number 18.

10 (So marked by the court.)

11 THE COURT: Autopsy report.

12

13 BY MR. SLIPOW:

14 Q Doctor, I ask you to refer to document

15 that's been introduced into evidence as Commonwealth's

16 Exhibit Number 18. I believe you previously testified

17 that this is the -- your findings with reference to that

18 autopsy report. Is that correct?

19 A Yes.

20 Q Would you describe the infant that

21 the autopsy was performed on?

22 A It was an infant measuring twenty

23 inches in length and weighing seven pounds. The umbilical

24 cord and placenta were attached. It was received in some

25 towels and plastic bags. There was no odor of decomposition.

1 The cord and placenta were moist, and the placenta had
2 been wrapped in a paper towel with numerous adherent
3 fragments of twigs and vegetation.
4 Q Doctor, I was thinking about something
5 else. Did you give the weight of the infant?
6 A Yes; seven pounds.
7 Q Thank you. What color hair did the
8 infant have?
9 A Black.
10 Q And what color were the eyes?
11 A Blue.
12 Q Now, doctor, you testified that there
13 was no notable decomposition. Is that correct?
14 A Yes.
15 Q Have you had occasion to perform
16 autopsies on other newborn infants?
17 A Yes.
18 Q Would you relate to us the importance
19 or the reason that there is no decomposition in this infant?
20 A Well, newborn infants -- dead newborn
21 infants do not decompose in the same way as other bodies,
22 that is, children or adults, because there's essentially
23 no bacteria in an adult -- I am sorry, in a newborn dead
24 infant. It is the bacteria in the intestinal tract which
25 spread from the intestine into the blood vessels and then

1 throughout the body which is responsible for much of the
2 postmortem decomposition.
3 Q Good. Doctor, did you notice any
4 outward markings of violence?
5 A No.
6 Q What is a congenital abnormality?
7 A That's an abnormality which is present
8 at birth.
9 Q Did you notice any congenital abnormalities?
10 A No.
11 Q What was the condition of the heart
12 of the infant?
13 A It was a normal heart for a newborn
14 baby.
15 Q What about all of the vital internal organs?
16 A They appeared normal.
17 Q Did you ascertain when you received the
18 child if there were any obstructions or any respiratory
19 blockage?
20 A I did not find any, no.
21 Q Did you have occasion to perform some
22 tests on the lungs?
23 A Yes.
24 Q Now, would you describe for these
25 ladies and gentlemen what tests you performed on the lungs?

1 A The tests on the lungs of an infant in
2 a case like this is to put the lungs in water together,
3 then separately, then separate them into the five lobes,
4 and then put pieces -- small pieces of the lobes into
5 water to see if they sink or float.
6 Q Well, doctor, how many lobes does a
7 human being have in their lungs?
8 A Five.
9 Q What is the purpose of determining
10 whether the lobes sink or not?
11 A To determine if there's air in the
12 lungs.
13 Q How would air get into the lungs?
14 A In a newborn --
15 Q Yes, sir.
16 A By breathing.
17 Q By breathing.
18 And did you float the lungs in their entirety?
19 A Yes.
20 Q What was the result when you did that,
21 sir?
22 A Both lungs floated well in water.
23 Q And were they fragmented into lobes?
24 A Yes.
25 Q What was the result with each of the

1 five lobes, doctor?
2 A They all floated well.
3 Q And did you divide them into subfragments?
4 A Yes.
5 Q And what was the result there?
6 A The same.
7 Q What degree of aeration was sustained
8 in that infant concerning the lungs, doctor, in your
9 opinion?
10 A I said that they were rather well aerated.
11 Q What were the color of the lungs, doctor?
12 A They varied from pink to medium red.
13 Q Now, what are the color of lungs in an
14 infant before he is born and before he has had oxygen in
15 his lungs?
16 A They are dark red color.
17 Q Now, what is the color of lungs in a
18 human being who has lived for a period of time after he
19 has died?
20 A After birth, you mean?
21 Q An older human being after death?
22 A They are ordinarily pink except for the
23 lower part of the lungs. Ordinarily, if a body lies on
24 its back for a period of time the blood settles to the lower
25 part of the lungs or the back part of the lungs and those

1 parts of the lungs then became a medium to a dark red color
2 because of the presence of the blood. But if it were not
3 for the presence of the blood they would be ordinarily pink,
4 say, in a ten-year-old child.
5 Q Doctor, were any tests performed on
6 the infant's stomach?
7 A Yes.
8 Q Would you relate to these ladies and
9 gentlemen what you did in that capacity?
10 A The stomach was opened under water and
11 there was air in the stomach, about 3 ccs.
12 Q How would air get in the stomach,
13 doctor?
14 A It ordinarily in a newborn is swallowed
15 in the process of breathing.
16 Q Based on your observations did the
17 placenta appear to be normal, doctor?
18 A Yes.
19 Q And what about the umbilical cord?
20 A It appeared to be normal, also.
21 Q Doctor, was there any discoloration
22 on the back of the baby? Was there any lividity? Excuse
23 me.
24 A There was lavidity, yes.
25 Q How about telling us what lividity is?

1 A Lividity is a term meaning postmortem
2 settling of the blood.
3 Q How does it occur?
4 A Well, after a person dies the blood
5 simply because of gravity tends to settle over a period
6 of time to those parts of the body that are lowest,
7 regardless of what position the body is in. And this
8 is -- those parts of the body then become normally a kind
9 of a dark red to a bluish red or reddish blue or purplish
10 color, which becomes more and more intense with the passage
11 of time.
12 Q Was there lividity in this infant?
13 A Yes.
14 Q Okay. Would there be lividity in any
15 human being that has died and laid for a while?
16 A Yes, unless, say, all of the blood
17 were drained out at the time of death, in which case it
18 would be very little, if any, lividity.
19 Q Then the lividity that you observed was
20 not a congenital abnormality of any type, was it?
21 A No.
22 Q Doctor, can you tell us to a reasonable
23 degree of medical certainty if this baby took a breath on
24 its own after it came out of its mother's wound?
25 A Yes.

1 Q Can you tell us to a reasonable degree
2 of medical certainty, if this baby took several breaths?
3 A Yes.
4 MR. SLIPOW: Answer counsel's
5 questions.
6
7 CROSS-EXAMINATION
8
9 BY MR. SWAIN:
10 Q Dr. Springate, you said that there
11 was as far as you could tell no bacteria found in the
12 infant. Is that correct?
13 A There was no bacteria -- I didn't see
14 any microscopically in the lungs. There was some on the
15 surface of the placenta.
16 Q On the outside of the baby's body?
17 A Unh-unh, the placenta.
18 Q You don't say that's part of the baby,
19 do you?
20 A I am sorry, maybe I misunderstood the
21 question or was trying to answer it too completely. I
22 was referring to the autopy's protocol.
23 Q Okay. And you found no bacteria in
24 the baby. Is that correct?
25 A That's right.

1 Q All right. And you determined that
2 microscopically, did you not?
3 A Yes.
4 Q By examining the cells in the lungs?
5 A By looking at sections of the various
6 organs, yes.
7 Q All right, sir. Do you have any report
8 that you prepared about the lungs and your microscopic
9 examination?
10 A That's on page 3 of --
11 Q You don't have a separate sheet and
12 report that you prepared which you compiled into this
13 report, do you?
14 A No.
15 Q No reports of any sort were made of
16 each individual microscopic examination of slides?
17 A That's in the report on page 3.
18 Q All right. You are talking about
19 right here, are you not?
20 A Yes.
21 Q Okay. Now, how does bacteria normally
22 get into an infant?
23 A They come in through nose and mouth,
24 through breathing or contact with some object or surface
25 harboring bacteria.

1 Q Doesn't the fact that there's no
2 bacteria found in the lungs suggest this baby took very
3 few breaths, if any?
4 A No.
5 Q How many breaths would it be necessary
6 for a baby to take before any bacteria would probably
7 enter?
8 A Well, many times no bacteria even
9 in an adult get into the lungs. It depends upon whether
10 an inhalation of mucus or material from nose, mouth,
11 and throat are inhaled into the lungs at the time of
12 death. And many times this does not happen, even in an
13 adult, so if I were to take sections of an adult I might
14 not find any bacteria in many, many cases.
15 Q And it would take mucus in the lungs
16 to cause the bacteria. Is that what you are saying?
17 A Yes. There are many bacteria ordinarily
18 in an adult in nose, mouth, and throat, and if one aspirates
19 that material shortly before death or while dying then
20 microscopically we can see bacteria in the lungs.
21 Q Now, in your opinion did -- the fact
22 there is no bacteria has no significance, doesn't show
23 how many breaths the baby took?
24 A That's right.
25 Q Doctor, you also indicated I think that

there was no respiratory blockage of any sort. There was some amount of mucoid fluids found in the trachea and in the mouth of the baby. Is that not correct?

A That's right.

Q And do you know how long it takes for these mucoid materials to dry up or to become crusty or to evaporate?

A Well, of course that would -- you mean in a dead body?

Q Yes, sir.

A Well, that would depend upon the conditions. It would depend upon where it was located. It would depend upon whether there is something over the head, whether the mouth was open. There are many factors that could influence it, really.

Q So you wouldn't know how long it takes for that to evaporate, would you?

A No, not without a lot of other information.

Q All right. And generally or I would say ninety-nine percent of the time when an infant is born in a hospital, isn't the mouth usually suctioned and cleaned out?

MR. SLIPOW: Objection. Not within the doctor's field of expertise as Mr. Swain brought out in his examination.

MR. SWAIN: I think he has testified that he --

THE COURT: I overrule the objection. He said he assisted in the delivery of what, fifteen or twenty babies?

BY MR. SWAIN:

Q Is that not correct, doctor?

A Yes.

Q And what is the purpose of suctioning out the mouth and the trachea? Isn't it to clear the airways to facilitate breathing?

A Yes.

Q And isn't this done with a mechanical device down the baby's throat, to clean that out?

A Yes, a little -- ordinarily a rubber bulb.

Q Suction?

A Suctioning bulb, yes.

Q And I think you said that there was no mucus or mucoid fluids or anything found actually in this baby's lungs, were there?

A Well, I didn't mention the lungs themselves. I said that -- in the protocol I say the airway contains a small amount of mucoid fluid.

Q Did you find any in the lungs?

36

A Well, if there had been a large quantity I would have said so in the protocol.

Q Well, I am asking you did you find any in the lungs?

A I don't recall.

Q If someone were gasping for breath wouldn't that mucoid fluid go down or be drawn into the lungs?

A It would depend upon where it was. If it were in some part of the airway it would. If it were, say, far up into the nose or if it were a very thinly layered over a mucosal surface it might not necessarily go into the lungs.

Q Well, you found this mucoid fluid in the airway, didn't you?

A Yes.

Q Okay. Doctor, I think you also indicated there was no trauma found on the baby at all. Is that correct?

A Yes.

Q What do you mean by trauma?

A Trauma meaning evidence of blunt injury, gunshot wound, stab wound, injuries of that type.

Q Blow on the head?

A Yes.

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1 Q Strangulation?

2 A Yes.

3 Q Didn't find any of them?

4 A No.

5 Q All right. Doctor, can you say with

6 a reasonable degree of medical certainty beyond a reasonable

7 doubt how long this infant lived?

8 A Not in a -- I can't give you a specific

9 number, no.

10 Q Now, the five lobes of the lungs each were

11 floated in the water?

12 A Yes.

13 Q And didn't they all have differing

14 degrees of aeration? Some were only partially filled?

15 A There might have been some slight

16 variation from one lobe to another. If there had really

17 been an unusual or a significant variation I would have

18 said so.

19 Q Doctor, you have stated in your report

20 that they are rather well aerated. That doesn't mean they

21 are completely aerated. Right?

22 A That's right.

23 Q If that were a grown person who had

24 lived for quite some time wouldn't you have found the lungs

25 well aerated?

1 A Would I -- I am sorry, I am not sure
2 I understand the question. Would I have found them
3 aerated in an adult?
4 Q Yes.
5 A Yes, yes.
6 Q And in a small child also they would
7 have been well aerated, wouldn't they?
8 A Yes.
9 Q Doesn't the fact that these were
10 only -- not completely aerated suggest there were only
11 very few breaths taken?
12 A Well, there were a number of breaths
13 taken in order to get this degree of aeration.
14 Q Now, doctor, isn't it a fact that infants
15 when born might take a gasp or a certain number of gasps
16 during the birth process?
17 A Yes.
18 Q And is it also a fact that sometimes --
19 oftentimes even though they take a certain -- few breaths
20 during the birth process they die relatively -- right after
21 that, after the birth process is over?
22 A Well, I think I am getting beyond my
23 level --
24 Q You don't know?
25 A -- of -- no, I really think I am getting

1 beyond my level of expertise or into a different field.

2 Q Well, then you are saying that this

3 child for all you know, could have taken some breaths during

4 the birth process and you wouldn't know whether it could

5 have stopped right after that or not?

6 A Well, let me put it this way: I have

7 heard that this occurs. I have not seen it myself, nor --

8 I mean I have never had evidence of breathing during birth

9 in any case that I have had, nor in no autopsy that I have

10 done did I have evidence that aeration that I saw in lungs

11 was solely or even partially due to inhalation or attempts

12 at breathing during birth, that is, before complete

13 expulsion occurred.

14 Q Doctor, you noted -- let me put it

15 this way, doctor: If there are any pressures on the

16 respiratory center in the head, couldn't such [illegible] --

17 I mean the pressure on the respiratory center in the brain

18 cause an infant to stop breathing?

19 [illegible]

20 little bit beyond my level of expertise.

21 Q Well, have you ever studied any neurology

22 or any of the studies of the brain, any of that while you

23 were in medical school?

24 A Oh, yes --

25 You mean pathology studies of the brain?

1 Q Pathology, medical school, wherever you
2 went?
3 A Yes, we studied many things about the
4 brain --
5 Q And do you know --
6 A -- function.
7 Q Do you know where the respiratory center
8 is located in the brain?
9 A Roughly.
10 Q Where would that be?
11 A It is in the brain stem.
12 Q In the brain stem?
13 A Uh-huh.
14 Q Isn't the brain stem between a hole in
15 the skull with the spine coming out of that, that hole in
16 the back of the skull?
17 A It is above that hole that you are
18 referring to through which the brain communicates with the
19 spinal cord, yes.
20 Q It is very close to the skull, isn't it,
21 the respiratory center?
22 A Yes.
23 Q If there is a movement of the brain
24 won't that affect the respiratory center occasionally?
25 A Well -- you are talking about now during

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birth?

Q I am talking about anytime you get a blow on the head or --

MR. SLIPOW: Objection.

BY MR. SWAIN:

Q -- during birth either one.

MR. SLIPOW: Those are not the facts we are dealing with and I would think the question would have to be confined to the facts.

THE COURT: Cross-examination.

A I am sorry, now?

MR. SWAIN: Would you read back? I am sorry, I forgot my own question.

(The reporter read the question.)

A It is -- I suppose it is possible that the respiratory center could be affected, say, by a blow to the head.

BY MR. SWAIN:

Q It would cause a depressed infant, would it not?

A Well, this is ordinarily referred to as concussion, if you are talking about impact to the head, and

1 sometimes cessation of respiration does occur during an
2 impact or as a result of an impact to the head.
3 Whether this is a direct effect on the respiratory
4 center or some other part of the brain affecting respiration
5 I don't know. But persons can stop breathing as a result
6 of blunt trauma to the head.
7 Q And can a subdural hemmorrhage cause
8 this?
9 A If it is large enough to significantly
10 distort the brain causing herniation of part of the brain
11 down so that it presses against the brainstem. This is
12 a severe -- really a severe head injury or a result of a
13 severe head injury.
14 Q Would that have to be because of a blow
15 to the head in your opinion?
16 A Subdurals are ordinarily due to an
17 impact. Although they can occur during the birth process.
18 Q And how do they occur during the birth
19 process?
20 A Tearing of a vein on the surface of the
21 brain.
22 Q Do you know what would cause this?
23 A Molding or change in the shape of the
24 head during birth.
25 Q Could that be caused during a precipitant

delivery?

A Yes.

Q Precipitant delivery is a very rapid delivery, is it not?

A Yes.

Q Infant baby's very soft, isn't it?

A Beg pardon?

Q Infant baby's brain's very soft, is it not?

A Yes.

Q And I think you noted in your medical report that there was a subdural hemorrhage, did you not?

A A thin layer of subdural hemorrhage.

Q Would you attribute that subdural hemorrhage to the birth process?

A Yes.

Q The changing of the shape of the head?

A Yes, it probably occurred in that way, yes.

Q Doctor, when you noted on your report the brain is soft and is within normal limits, what do you mean by the brain is soft?

A That it is soft.

Q Like in any other infant?

A Well, it had the normal consistency of a

1 brain, which is soft.

2 Q You meant it is normal, then; you didn't

3 mean anything by "soft"?

4 A Right.

5 Q Now, doctor, when an infant is born,

6 immediately after it comes from its mother before it is

7 disconnected from the umbilical placenta in the mother, do

8 you know where the baby is kept in relation to the mother?

9 A Where it is kept?

10 Q In relation to the mother's body position.

11 A You mean in a delivery room? What the

12 normal procedure is in the delivery room?

13 Q Yes, sir, right, on the operating table.

14 A I think that would probably vary with the

15 facilities and the obstetrician and his philosophy what he

16 does with the baby.

17 Q Until that baby's been disconnected and

18 the umbilical cord's clamped isn't it supposed to be kept

19 below the level of the mother's body?

20 A Ordinarily, yes.

21 Q Do you know what the purpose of that is?

22 A To let as much blood flow into the baby

23 as possible.

24 Q If that baby's picked up and raised above

25 that position won't the blood flow the other way?

1 A A small amount might, yes.
2 Q Do you know how much?
3 A I don't.
4 Q Would it be -- go ahead.
5 A A small amount, I mean you'd like the
6 baby to have it if possible rather than leaving it behind
7 in the placenta, but the quantity is not very significant.
8 Q Now, doctor -- have you looked at these
9 towels?
10 A Some towels came with the baby.
11 Q Is that the baby's blood on the towels?
12 A No. I don't see how it could be.
13 Q None of the baby's blood was on those
14 towels?
15 A I don't see how it could be.
16 Q Did you make that test?
17 A The baby had no stab wounds. The
18 placenta was intact, and the umbilical cord was intact.
19 Therefore the blood couldn't get out of the baby.
20 Q Couldn't get out of the placenta?
21 A It couldn't come out of the baby.
22 Q Could it go into the placenta from the
23 baby's umbilical cord?
24 A I think very little of it would have
25 leaked from the placenta onto the towels.

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Q Are you saying that all the blood that is found on the towels was from the mother?

A I would think that most of it was, if not all of it, yes.

Q A large loss of blood then?

A Well, it is difficult to quantitate blood on a towel. There's some blood.

Q Doctor, are you familiar with the term of fetal anoxia?

A Yes.

Q And do you know what that is?

A The term means a lack of oxygen in a fetus.

Q Lack of oxygen you said?

A Yes.

Q Do you know the causes of that?

A Well, I don't think I would be able to enumerate them all. I am afraid I would have to say that's out of my area of expertise.

Q Isn't it a fact that could be caused by strong, vigorous uterine contractions?

MR. SLIPOW: Your honor, I am going to object. The doctor's responded he is out of his field, he isn't qualified to respond. Then Mr. Swain continues to pursue it.

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1 MR. SWAIN: He said he couldn't
2 enumerate them. I am trying to help him
3 out.
4 THE COURT: If you know.
5 A I don't think I could completely answer
6 a question of that type.
7
8 BY MR. SWAIN:
9 Q In other words, you don't know whether it
10 would be caused by vigorous uterine contractions or not, do
11 you?
12 A I don't think I really know enough about --
13 about the birth process or the labor process to be able to
14 answer very many questions about it.
15 Q All right, doctor -- one second, please.
16 Do you know what the manifestations of fetal
17 anoxia are?
18 A I am sorry, I feel that answering
19 questions like that is really out of my -- I don't think I
20 can completely answer your question.
21 Q All right, sir. You noted a good deal of
22 meconium -- I think that's the right pronunciation -- on the
23 towels and on the baby?
24 A Yes.
25 Q And inside the baby there was a large

amount found also, was there?

A There was some in the large intestine, yes.

Q And isn't that -- meconium was found all over the lower part of the body, was it not?

A There was some on the -- yeah, I said a moderate amount of meconium on the lower extremities, and there was also a large deposit of meconium on one surface of one of the towels.

Q Isn't the finding of meconium consistent with fetal anoxia?

A Well, finding feces in the -- or in this case meconium, in or around a dead body is not unusual, because during the dying process feces is many times expelled from the body.

Q Meconium's not feces, though, is it?

A No, but it is in the same place and it is -- would come out of the body in the same way.

Q [illegible]

usually discharged?

A [illegible]

Q Is that usually the case?

A It frequently is. There frequently is feces discharged from the large intestine.

Q Most of it?

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1 A Well, some. I don't know whether it is
2 most of it. No, I wouldn't say most, no.
3 Q Well, doctor, in any event, you said on
4 your report that the distal large intestine contained a large
5 amount of meconium. That's inside the baby, isn't it?
6 A Yes.
7 Q Doctor, are you familiar with obstetric
8 anesthesia in this book right here by John Bonica?
9 A No.
10 Q Have you ever studied the problems of the
11 birth of a newborn?
12 A Well, in medical school we studied a lot
13 of things.
14 Q Let me ask you this: Would it be fair to
15 say that there is frequently --
16 MR. SLIPOW: Judge, I have got an
17 objection at this point. If I could approach
18 the bench I think we can clear it up in just
19 a second.
20 THE COURT: I think you have gone
21 outside even what the prosecution has qualified
22 Dr. Springate for.
23
24 BY MR. SWAIN:
25 Q Doctor, do you know what the effect on an

1 infant would be after birth to being exposed to much cooler
2 air than what it was used to in the mother's body?
3 A Well, it comes as a shock to the infant
4 to suddenly be exposed to what normally is a lower temperature.
5 Q Isn't it a fact that going into shock can
6 cause the respiration to stop in an infant?
7 A I use shock in a little bit different
8 way. I said coming outside the mother is a shock for the fetus,
9 but I didn't say that put the fetus into shock. We are using
10 shock in two different ways.
11 Q If the baby's exposed -- the body's
12 exposed to cold air for a while can it not go into shock,
13 hypothermia causing shock?
14 A (Pause.)
15 MR. SLIPOW: Judge, I am going to
16 object. I don't think there has been a
17 sufficient foundation as to what cold is or what
18 we are dealing with here. If we are talking
19 about fifteen degrees below zero I think we'd
20 go along with the question.
21 THE COURT: You will have a chance
22 to redirect.
23 If you know, doctor.
24 A I think here again we may be getting into
25 things -- if not now, we might be getting into things that

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1 are in a different area of expertise.

2

3 BY MR. SWAIN:

4 Q All right. Doctor, do you recall back on
5 July 20, 1976, a hearing, me asking you this question: All
6 right, isn't it a fact that an infant looses its body heat
7 extremely fast if it is not well wrapped up immediately after
8 birth and put in a heater?

9 THE COURT: You haven't asked that question
10 yet on direct.

11 MR. SWAIN: No, sir, your honor.

12 THE COURT: And I don't think you
13 should be referring to that.

14

15 BY MR. SWAIN:

16 Q All right, isn't -- do you have an
17 answer for that question? I am sorry.

18 A Yes, it could lose body heat.

19 Q Would that be --

20 A If --

21 Q Go ahead, I am sorry.

22 A If exposed to a cold environment, yes.

23 Q Wouldn't that be very rapidly?

24 A Well, this would depend upon if the baby
25 were covered with something or uncovered, but even more

1 importantly, the temperature to which it is exposed. A
2 room temperature of seventy-eight degrees, for instance,
3 would be of course far different from a room temperature
4 of forty degrees, for instance.
5 Q All right. Doctor, as a result of a
6 baby losing heat very rapidly will it not go into shock?
7 A It could eventually.
8 Q And once it goes into shock wouldn't
9 that affect its respiratory system and cause the child to
10 stop breathing?
11 A Well, again, depending upon the
12 temperature and how it is wrapped. Perhaps over a period
13 of hours.
14 Q It would take a period of hours at a cold
15 temperature to go into shock?
16 A Well, what do you mean by "cold temperature"?
17 Are we talking about zero degrees? We talking about sixty
18 degrees?
19 THE COURT: I think you have got to
20 lay a foundation. You are calling on him
21 for an expert opinion, and you have got to
22 lay the proper foundation.
23
24 BY MR. SWAIN:
25 Q Doctor, what is the temperature of an

1 infant at birth?

2 A 98.6.

3 Q Do you know what the suitable temperature

4 would be for an infant after it is born?

5 A A suitable temperature I would imagine

6 would be seventy-two to seventy-five degrees. But I am not

7 an expert on the care of newborn infants.

8 Q So you don't know what would be necessary

9 to save the life of an infant or to keep a baby alive after

10 it is born, do you?

11 A I don't know what the critical temperature

12 might be in a room, no.

13 MR. SWAIN: Doctor, thank you.

14

15 REDIRECT EXAMINATION

16

17 BY MR. SLIPOW:

18 Q Doctor, I am afraid it is required that

19 I ask you a few more questions.

20 Doctor, in the testimony of the last witness,

21 Detective Sergeant Haden, he indicated these were the two

22 towels that were submitted to you with the baby's body. My

23 question is to you, doctor, if the baby, the seven-pound infant

24 boy was wrapped in those two towels would those two towels

25 cause the baby's body temperature to maintain a closer

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1 constant, would it keep warmer as a result of being wrapped
2 in the towels?
3 A Yes.
4 Q Now, Mr. Swain asked you a series of
5 questions about decomposition in a newborn infant, and you
6 indicated it is not uncommon for there to be no bacteria
7 even in an adult's lungs.
8 Now, would the fact that the infant was maintained
9 in wet towels in a sealed plastic bag slow down decomposition
10 process as well?
11 A Now, you are talking about a dead infant
12 wrapped in these towels would it? Yes, it -- well, again,
13 it depends upon the circumstances. The towels and the plastic
14 bags would keep bacteria or fungi from getting to the baby,
15 tending to keep it cleaner and protect it from the environ-
16 ment than if it were, say, completely uncovered and in the
17 same condition or in the same place.
18 Q Now, Mr. Swain asked you a series of
19 questions with reference to damage to the respiratory
20 center in the brain stem as a result of a blow on the head.
21 Now, in your findings did you find any evidence
22 that this infant had ever received a blow on the head?
23 A There were some -- a few small scalp
24 hemorrhages, but -- and of course the subdural, but I could
25 not say that they were due to blunt trauma, or that is, an

1 impact to the head.

2 Q Now, doctor, now, these few, thin, small

3 partially confluent subdural hemorrhages in the parietal

4 regions, are they not consistent with a newborn infant? Don't

5 most newborn infants have those?

6 A Well, usually the newborn infant has one

7 large hemorrhage where the head impacts on the [illegible] side

8 is usually one [illegible] with [illegible]

9 fluid.

10 Q Now, this particular edema you observed

11 in the autopsy report -- do you see where I am reading?

12 A Yes.

13 Q Did you attach any particular significance

14 to this?

15 A Well, I don't know what caused it. I did

16 see these small hemorrhages, as I said, with the surrounding

17 edema, but I couldn't tell if one of them was due to the birth

18 process or labor or whether they all were or what they were

19 due to.

20 Q But was the edema by itself significant

21 to cause brain damage?

22 A No.

23 Q Was there any damage to the brain, doctor?

24 A To the brain itself, no, I did not see any.

25 Q And to the best of your observation the

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1 respiratory center in the brainstem was not affected?
2 A Well, I saw no hemorrhage in that region
3 of the brain.
4 Q Now, doctor, do you know what vernix is?
5 A Vernix, yes.
6 Q What is it, doctor?
7 A It is a material -- kind of a whitish-
8 gray material frequently found over the surface of a newborn.
9 Q Would you describe the texture of it for
10 us?
11 A It is kind of greasy and slippery.
12 Q Does it come off readily at birth, or
13 does it have to be cleaned off if it is present?
14 A It has to be cleaned off.
15 Q Did you find any vernix on the body of
16 this infant, doctor?
17 A No.
18 Q Now, Mr. Swain asked you when a newborn
19 baby is brought into the world if the cooler temperatures
20 in a room might not act as a shock.
21 Do the cooler temperatures also act as a stimulus
22 to induce breathing?
23 A Yes, I would think so.
24 Q Have you ever seen a case where an infant
25 bled to death through the umbilical cord?

A No.

Q Now, doctor, if an adult died of suffocation, not with any type of violence, but let's say placed in a vacuum where there were no air --

MR. SWAIN: Objection, your honor. I think we are asking for speculation now on the part of the doctor.

THE COURT: Overrule the objection. Redirect in response to cross examination.

MR. STANT: Your Honor, isn't this a hypothetical question?

THE COURT: There were quite a few of those on cross-exam. Overrule your objection.

BY MR. SLIPOW:

Q Now, Dr. Springate, my question is to you, if an adult was placed in a room that was in a vacuum where there was no air and the person suffocated to death, would there be any external signs that would show up in your autopsy report?

A There might not be, no.

MR. SLIPOW: Thank you, doctor.

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RECROSS-EXAMINATION

BY MR. SWAIN:

Q Doctor, you said there might not be. Are there ever any manifestations of suffocation?

A Well, the presence of petechia is sometimes seen in --

Q What is petechia?

A Petechia are tiny hemorrhages. They are sometimes seen in cases of suffocation.

Q You didn't notice any petechia in this infant, did you?

A No.

Q And that would have been in the lungs on which you did microscopic tests on, wouldn't it?

A Pardon?

Q Petechia would be in the lungs, would it not?

A No, they are really -- before I let this go too far, they are really a nonspecific finding that are talked a lot about in the textbooks, but don't mean very much except under very unusual circumstances, such as being found in the -- on the surfaces of the eyes or inside the eyelids in the case of strangulation, for instance.

Q In any event, you didn't find any petechia

in this case?

A (No reply.)

Q Now, doctor, you stated also that being cold would stimulate the respiratory system?

A I think I kind of qualified it to some extent, that I thought that might be a stimulus, but again, I don't want to go outside my area of expertise, which is pathology and those things associated with it. I don't --

Q Doctor, I wish you'd qualify it when you told Mr. Slipow, also.

A I am sorry. I tried to answer the questions in exactly the same way for both of you. If --

Q Now, then, so you don't know whether cold air would stimulate or not. Is that correct? Because it is outside of your expertise?

A Yes.

Q Doctor, if there is a subdural hemorrhage caused by precipitant birth delivery which might affect the brainstem, isn't it a fact that you still wouldn't find hemorrhages around the brainstem itself?

A Yes, that's true, but you would need a bigger subdural than this was. This was a small one, and [illegible] th.

Q Doctor, you don't know how long the baby lived, if it lived at all, after the birth, do you?

JUROR: Your honor, we can't hear him.

BY MR. SWAIN:

Q Sorry.

You don't [redacted] lived?

A I [redacted]

MR. SWAIN: All right, sir. Thank you.

REDIRECT EXAMINATION

BY MR. SLIPOW:

Q Well, doctor, Mr. Swain said if the baby lived. Did the baby live according to your findings?

A Yes.

Q Doctor, now, I think you answered this and I was trying to do three things at one time. You talked about petechia in suffocation cases. Isn't that most prominent in strangulation cases where there has been an artificial cutting off of wind or air?

A Yes.

MR. SLIPOW: No further questions. Thank you.

RECROSS

BY MR. SWAIN:

Q Doctor, did you determine that there was an independent circulation on the [illegible] that the baby's heart was beating and that the blood flowed in the baby [illegible] born?

MR. SLIPOW: Objection. It wasn't within the scope of the redirect.

THE COURT: Overrule the objection.

A I can't determine if there was a flow.

MR. SWAIN: All right, sir. Thank you.

THE COURT: Doctor, in your area of expertise were you able to make a determination to a reasonable medical certainty as to the cause of death?

WITNESS: No, your honor.

THE COURT: I saw someone jump. Did you hear that?

JUROR: Yes, sir.

THE COURT: Anything else?

MR. SWAIN: No, sir.

THE COURT: Thank you, Dr. Springate. You may step down.

May he be excused, gentlemen?

MR. SWAIN: Yes.

MR. SLIPOW: Yes, sir, judge.

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1 Exhibit Number 20.

2 (So marked by the court.)

3

4 BY MR. HANSON:

5 Q Detective Marrow, I would like you to

6 read Commonwealth's Exhibit Number 20 to the jury, please.

7 A Starts out in the left corner, Helen

8 Elayne Lane, 416 Garrison Place, Virginia Beach, Virginia,

9 white female, seventeen, eleventh grade education. Social

10 Security 224-86-8153. In the right corner is the date,

11 5-12-76, and the time 2:52 P.M.

12 "Question: You are Helen Elayne Lane? Answer:

13 Yes.

14 "Question: You live at 416 Garrison Place,

15 Virginia Beach, Virginia? Answer: Yes, sir.

16 "Question: How old are you? Answer: Age seventeen.

17 "Question: Are you married? Answer: Yes.

18 "Question: How long have you been married?

19 Answer: Four days.

20 "Question: What are your parents' name? Answer:

21 Carl and Maxine Summerell.

22 "Question: Where do they live? Answer: 416

23 Garrison Place, Virginia Beach.

24 "Question: Were you pregnant? Answer: Yes.

25 "Question: Have you had your baby? Answer: Yes.

1 And it is signed: "Helen Elayne Lane, 5-12-76
2 at 3:19 P.M."
3 Q All right. Detective Marrow, did you
4 then release Mrs. Lane to her parents?
5 A Later on that evening she was released,
6 yes, sir.
7 Q Detective Marrow, how long have you been
8 a police officer in the city of Virginia Beach?
9 A Fourteen years.
10 Q Are you familiar with the area of 416
11 Garrison Place?
12 A I know where Garrison Place is in the
13 Plaza.
14 Q Are you familiar with the scene at Old
15 Wolfsnare Road and Great Neck Road?
16 A Yes, sir.
17 Q Do you know the approximate distance
18 between those two points?
19 A Approximately four miles, five miles.
20 MR. HANSON: Will you answer Mr.
21 Swain, please.
22 MR. SWAIN: Mr. Stant, please.
23
24
25

"Question: When you went into the bathroom what did you have on? Answer: A green shirt, pants, and white top.

"Question: Did you have underwear on? Answer: Yes, sir.

"Question: If you were not aware you were going to have a baby, why did you take your clothes off? Answer: I was having real bad pains. I have trouble going to the bathroom. I tried to go to the bathroom, but couldn't.

"Question: Then what did you do? Answer: I took a hot bath and while I was in the bath tub it started. Then I got up real quick and sat back on the toilet seat and then that is when it came.

"Question: Did it go into the toilet? Answer: No.

"Question: Did you want the baby? Answer: Yes.

"Question: Have you been made any promises by Detective E. E. Marrow? No, sir.

"Have you been threatened by Detective E. E. Marrow? Answer: No, sir.

"You gave this statement of your own free will and knew exactly what you were doing? Answer: Yes.

"You were advised of your legal rights by Detective E. E. Marrow and understood each of them? Answer: Yes, sir."

65

1 "Question: When? Answer: Saturday May 8, 1976.
2 "Question: Where did you have your baby?
3 Answer: In the bathroom at my mother's house.
4 "Question: Was this at 416 Garrison Place in
5 the city of Virginia Beach, Virginia? Answer: Yes.
6 "Question: What did you do when the baby was
7 born? Answer: He wasn't breathing and it scared me so I
8 wrapped him up in towels as fast as I could and put him in
9 a garbage pail and then got a garbage bag and put him in it
10 and took him to a road off First Colonial Road, got out of
11 my car and put the garbage bag on the side of the road.
12 "Question: What did you do next? Answer: I
13 waited five minutes to see if he was still alive.
14 "Question: Then what did you do? Answer: I
15 realized he was dead so I got back into my car and drove
16 away.
17 "Question: Where did you go? Answer: I went
18 back home.
19 "Question: What time of the day was this?
20 Answer: About 5:30 P.M. in the afternoon.
21 "Question: What did you do after you got home?
22 Answer: I took a bath and got myself cleaned up.
23 "Question: Then what did you do? Answer: I
24 stayed around the house all evening, because I was getting
25 married Sunday.

1 "Question: Did you have the wedding Sunday,
2 5-9-76? Answer: Yes, sir.
3 "Question: What color was the towels? Answer:
4 Green; orange; it was an NFL towel; white towel; and blue
5 bath mats.
6 "Question: What color was the garbage pail?
7 Answer: It was white.
8 "Question: Was it wood or plastic? Answer:
9 Plastic.
10 "Question: What color was the garbage bag?
11 Answer: Green.
12 "Question: Did you tie the top of it? Answer:
13 Yes, sir.
14 "Question: With what? Answer: A white twist
15 tie.
16 "Question: Who was the father of the baby?
17 Answer: Eugene Ashton Lane.
18 "Question: Is that your husband? Answer: Yes,
19 sir.
20 "Question: Was it a boy or girl? Answer: I
21 think it was a boy.
22 "Question: When did you know you were pregnant?
23 Answer: Saturday, May 8, 1976.
24 "Question: Did you ever feel the baby move?
25 Answer: I don't ever remember feeling him move. 67

CROSS-EXAMINATION

BY MR. STANT:

Q Detective Marrow, approximately what time did you pick Elayne up?

A I did not pick her up, Mr. Stant.

Q When did you first see her at the station house?

A 5-12-76 at 2:35 P.M. I entered the interview room 113 and advised Miss Lane of her Constitutional rights.

Q 2:35. And at that time she was in there by herself. Correct?

A Yes, sir.

Q And she had been separated from her husband?

A Yes, sir.

Q And at that time you had information, did you not, that she was an extremely nervous young lady?

A Yes, sir.

Q And did you at that time then before you began your interrogation of her get a social worker or some other lady to come into the room with you?

A I called for a social service worker. The social service worker did not arrive until after I had

1 the reasons stated.
2 THE COURT: Bring the jury out,
3 please.
4 (The jury returned to the courtroom.)
5
6 DIRECT EXAMINATION
7
8 BY MR. SLIPOW:
9 Q Doctor, tell us all your name, please?
10 A Nelson Turner Gray.
11 Q I understand you are a physician. Is
12 that correct?
13 A That's correct.
14 Q What's your field of expertise, Dr. Gray?
15 A Pediatrics.
16 Q Would you define pediatrics for the ladies
17 and gentlemen of the jury?
18 A Care of infants and children.
19 Q And would you be kind enough to give
20 us your educational background, please?
21 A Four years Randolph Macon, four years
22 Medical College of Virginia, three years residency Medical
23 College of Virginia.
24 Q What field?
25 A Pediatrics.

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1 Q How long have you practiced in the field
2 of pediatrics since graduation from college? Go ahead and
3 give us --
4 A Graduated in '62, had three years of resi-
5 dency, so actually private practice since '65.
6 Q Been in private practice since 1965?
7 A Yes.
8 Q How long have you practiced in this area?
9 A For that full length of time with the
10 exception of the years in the Navy.
11 Q Where is your office located?
12 A 1100 First Colonial Road.
13 Q It is my understanding you are also
14 employed by the state as well. Is that correct?
15 A That is correct.
16 Q In what capacity are you employed by
17 our state?
18 A Regional medical examiner for the
19 Commonwealth of Virginia with jurisdiction in the city of
20 Virginia Beach.
21 Q Now, Dr. Gray, in the general delivery
22 process of an infant, at what point in time do you as a
23 pediatrician come in contact with the infant?
24 A Once the baby is delivered.
25 MR. SLIPOW: Your honor, at this point

1 I would ask the court to accept Dr. Gray's
2 qualifications as an expert in the field
3 of pediatrics.
4 THE COURT: Any questions?
5 MR. SWAIN: As long as we are confining
6 it to pediatric work and pediatric care and not
7 to pathology and pathological causes.
8 THE COURT: Any question about his
9 expertise in pediatrics?
10 MR. SWAIN: Not about pediatrics,
11 no, sir.
12 THE COURT: All right. You may
13 proceed.
14 MR. SLIPOW: Thank you, your honor.
15
16 BY MR. SLIPOW:
17 Q Now, Dr. Gray, I am going to direct your
18 attention to the evening of August 11, 1976. Did you receive
19 a phone call?
20 A I did.
21 Q As a result of that phone call where did
22 you respond, Dr. Gray?
23 A To Old Wolfsnare Road.
24 Q What city is that in?
25 A Virginia Beach.

1 Q Approximately what time did you arrive
2 there?
3 A 8:40 P.M.
4 Q Would you be kind enough to describe
5 to the ladies and gentlemen what you observed when you
6 arrived at the scene on Old Wolfsnare Road?
7 A When I arrived there were multiple police
8 vehicles and detectives and uniformed officers there, and
9 they showed me into the scene where they had found a body of
10 an infant on the side of the road.
11 Q Now, I am going to direct your attention
12 to a photograph that has been marked for identification
13 purposes as Commonwealth's Exhibit Number 2. Ask you if you
14 can identify that, Dr. Gray?
15 A I can.
16 Q What is it?
17 A It is a picture of the infant that was
18 found partially wrapped in towels.
19 Q Is that the way the infant was depicted
20 when you arrived at the scene?
21 A It was.
22 Q I notice a reddish material in the
23 photographs interwoven into the towels. What did that sub-
24 stance appear to be to you, Dr. Gray?
25 A It was visually compatible with blood.

MR. SLIPOW: If the court please, at this time I would move to introduce this photograph into evidence as Commonwealth's Exhibit Number 21 I think.

THE COURT: Commonwealth's Exhibit Number 21.

(So marked by the court.)

BY MR. SLIPOW:

Q Now, Dr. Gray, in the course of your stop on Wolfsnare Road that evening, did you have occasion to examine the body of this infant child?

A I did.

Q Now, I am going to show you a photograph that has been marked for identification purposes as Commonwealth's Exhibit Number 4 and ask you if you can identify that photograph?

A It is a photograph of me holding the infant.

Q And how is the infant facing the camera?

A He is facedown or in the prone position with his back toward the camera, his left posterior lateral side.

Q Dr. Gray, in that photograph it appears to be some discoloration in the infant's back. What is that

discoloration?

A Liver mortis.

Q What is liver mortis, Dr. Gray?

A Liver mortis is the discoloration from the settling out of the blood, gravitational settling of the blood in the body.

Q Is this any type of birth abnormality?

A It is not.

MR. SLIPOW: If the court please, Commonwealth's Number 22.

THE COURT: It will be Commonwealth's Exhibit 22.

(So marked by the court.)

BY MR. SLIPOW:

Q Now, Dr.Gray, directing your attention back to the photograph that is now marked as Commonwealth's Exhibit Number 22, would you be kind enough to tell us all what vernix is? And excuse my pronunciation.

A Vernix or the total term is vernix caseosa, which is a whitish material that is adherent to the baby's skin. It is a cheesy residue.

Q Is adherent to the baby's skin?

A In utero and right after birth.

Q Would you describe the texture of the

material for us?

A It is greasy, it is sticky. It is rather thick.

Q Is it a substance -- I am sorry, complete your answer.

A It is sort of thick.

Q Is it a substance that will evaporate by itself?

A Not evaporate. It will dry.

Q Now, Dr. Gray, directing your attention to Commonwealth's Exhibit Number 22, is there any vernix on that child's body?

A There was none obviously on it. It wasn't covered with it.

Q If you recall from your examination did you find any on the child?

A Well, I didn't look in all the creases and under the armpits and these areas like this. But there certainly wasn't any on the trunk or the head.

Q Okay. Now I am going to direct your attention to a photograph that has been marked for identification purposes as Commonwealth's Exhibit Number 5 and ask you if you can identify that, sir?

A I can.

Q What is that?

1 A The entire picture?
2 Q Yes, sir.
3 A It is a baby laying in the supine position
4 on a towel with the cord attached and the placenta attached
5 to the cord, placenta laying on another towel.
6 Q Did you have occasion to turn the infant
7 to that position in your --
8 A I placed the infant in that position.
9 Q In your examination of the child?
10 A (Indicates yes.)
11 MR. SLIPOW: If the court please,
12 move to introduce this photograph as
13 Commonwealth's Exhibit Number 23.
14 THE COURT: All right, formerly
15 Commonwealth's 5 for identification will be
16 marked Commonwealth's 23.
17 (So marked by the court.)
18
19 BY MR. SLIPOW:
20 Q Now, Dr. Gray, you have in front of you
21 an exhibit that has been introduced into evidence as
22 Commonwealth's Exhibit Number 20, which is purported to be
23 a statement signed by the defendant Helen Elayne Summerell
24 given to Detective Ernest Marrow of the Virginia Beach Police
25 Department. Haveyou had an opportunity to read and review

1 that statement?

2 A I have.

3 Q Now, Dr. Gray, you indicated that the

4 red substance on the two towels that the baby was laying

5 in when you arrived appeared to be what?

6 A Blood.

7 Q What effect would blood have on those towels,

8 Dr. Gray?

9 A Make them wet, heavy.

10 Q Okay. Now, predicated on your reading

11 of the words in the statement and your observations of the

12 infant as it was found when you arrived on the scene, what

13 effect could those towels have on the respiratory processes

14 of the infant?

15 MR. SWAIN: Objection, your honor.

16 MR. STANT: Objection. There is

17 no evidence that the blood which is now on the

18 towel --

19 MR. SLIPOW: Judge, could we approach

20 the bench on this?

21 (The court and counsel for both sides

22 conferred out of the hearing of the jury.)

23 THE COURT: I am going to sustain the

24 objection. I think first you better lay some

25 foundation.

1 BY MR. SLIPOW:

2 Q Dr. Gray, directing your attention to
3 Commonwealth's Exhibit Number 21, what is the infant's
4 facial position with reference to the towel?

5 A The face is buried in a portion of the
6 towel.

7 Q Now, I redirect your attention to my
8 prior question. Taking into consideration the statement --
9 and to refresh your memory, if you would read part of the
10 statement that says "What did you do when the baby was born?"
11 And then the response?

12 A "Answer: He wasn't breathing and it
13 sounded to me -- it scared me, so I wrapped him up in towels
14 as fast as I could and put him in a garbage pail, and then
15 I got a garbage bag and put him in it and took him to a
16 road off of First Colonial Road, got out of my car, and put
17 the garbage bag on the side of the road."

18 Q Now, Dr. Gray, predicated on the statement,
19 on the towels, and on the baby's facial position when you
20 found it, what effect could this have on the respiratory
21 system?

22 A It could prevent him from breathing.

23 MR. STANT: Now, your honor, I ask that
24 be stricken, "it could." We are not dealing with
25 could.

THE COURT: Can you state with reasonable medical certainty and go from there, Mr. Slipow. The answer is to be stricken. The jury's to disregard it as it was stated.

BY MR. SLIPOW:

Q Doctor, my question is can you say with a reasonable degree of medical certainty if --

MR. STANT: Now, your honor, I object to "if." We are not dealing with "ifs" here. We are dealing with what the factual situation was.

THE COURT: Overrule the objection. He is qualified as an expert.

MR. STANT: Note my exception.

MR. SLIPOW: Thank you. I will strike the "if," if it will please Mr. Stant.

BY MR. SLIPOW:

Q My question is can you say to a reasonable degree of medical [illegible] upon the statement [illegible] face [illegible]

A [illegible]

1 MR. STANT: And again I object to
2 "could."
3 THE COURT: Overrule the objection.
4 A Yes.
5
6 BY MR. SLIPOW:
7 Q Thank you, Dr. Gray.
8 Now, Dr. Gray, let me direct your attention to
9 Commonwealth's Exhibit Number 23. There appears to be a
10 black, thick, greasy sub -- substance beside the right hip
11 of the infant. What is that substance, Dr. Gray?
12 A That substance is meconium.
13 Q Dr. Gray, would you be good enough to
14 define meconium for us?
15 A Meconium is a thick mucilagenous substance
16 that makes up the stool of a newborn infant. It consists
17 of secretions from the many intestinal glands and from
18 other glands such as the liver, pancreas, and sometimes
19 amniotic fluid.
20 Q Dr. Gray, from prior examination of
21 prior witnesses it is my understanding occasionally when
22 there is distress in the delivery processes can meconium
23 be discharged in the womb of the mother?
24 A Yes.
25 Q Now, that is referred to as intrauterine

meconium. Right?

A Right.

Q Is that type of meconium distinguishable from the meconium depicted in the photograph?

A Yes.

Q Now, would you describe the meconium that would be involved in intrauterine meconium?

A Usually that meconium is thinner because it is mixed with amniotic fluid.

Q What is amniotic fluid?

A That's the fluid in which -- fills the chorion and amniotic sacs that the baby swims in or is contained in in utero.

Q What about coloration?

A It usually discolors this to a yellowish or yellowish green appearance and will also stain the baby.

Q Will also stain the baby, how you mean?

A Stain certain parts of the baby, the skin, umbilical cord.

Q Did you observe any intrauterine meconium stain on this child?

A There was none apparent, no.

Q Now, would you distinguish that from the meconium that is present in that picture?

A This is a rather large amount of thick,

1 tenacious meconium that looks like it was passed extrauterine.
2 Q Can you say with a reasonable degree of
3 medical certainty if this meconium was passed while the
4 infant was alive?
5 A Yes.
6 Q Why do you say that?
7 A Because if the infant were dead he
8 wouldn't pass meconium, certainly not in this quantity.
9 Q [illegible] could be passed
10 [illegible] dead infant?
11 A I would say, yes.
12 Q Now, Dr. Gray, in your examination of the
13 infant at the scene did you have an opportunity to examine the
14 infant's umbilical cord?
15 A I did.
16 Q Did there appear to be any abnormalities?
17 A There were none.
18 Q Did you have occasion to examine the
19 placenta that was attached to the umbilical cord?
20 A I did.
21 Q Did you observe any abnormalities there?
22 A I did not.
23 Q And, Dr. Gray, since I brought up the
24 term, would you be kind enough to define placenta for us,
25 please?

1 A Placenta is the nutritional organ of
2 the intrauterine infant. It attaches to the mother to the
3 wall of the uterus and provides the infant with oxygen and
4 nutrition and removes waste products -- some waste products
5 from the infant by way of the mother's system.
6 Q Dr. Gray, have you ever known -- strike
7 that question.
8 Now, I understand as a pediatrician when you
9 receive an infant do you make a determination as to whether --
10 as to whether -- as to what period of gestation the infant was
11 delivered in?
12 A Yes.
13 Q What is the normal gestation period?
14 A Forty weeks.
15 Q And predicated on these photographs,
16 your examination of the infant, and the photograph that has
17 been introduced into evidence as Commonwealth's Exhibit
18 Number 17, can you tell us if this was a full-term infant?
19 A I would consider this infant compatible
20 with a normal gestational period.
21 Q Now, predicated on the autopsy report and
22 your examinations, did you determine any congenital abnormali-
23 ties?
24 A I did not.
25 Q Predicated on the autopsy report and your

1 examination, did you determine if there was any respiratory
2 blockage?
3 A I did not. I determined that there was
4 none.
5 Q What were your findings with reference
6 to any outward markings of violence, Dr. Gray?
7 A There were no external marks on the
8 infant indicating any such violence.
9 Q Now, have you had an opportunity to
10 examine Commonwealth's Exhibit Number 18, which is the
11 autopsy protocol submitted by Dr. Springate?
12 A I have.
13 Q Now, that protocol indicates that there
14 were three ccs of air found in the infant's stomach. What
15 does that mean, Dr. Gray?
16 A It means that air entered the GI track.
17 Q What is the GI track?
18 A The gastrointestinal track.
19 Q How would it enter the gastrointestinal
20 track?
21 A By mouth or nose, by the upper airway.
22 Q Could this be done while the infant was
23 still inside of the mother?
24 A No.
25 Q Now, also the autopsy protocol reflects

1 that there were five lobes of the lungs and all five lobes
2 of the lungs floated. What does that mean to you, Dr. Gray?
3 A That they contained air.
4 Q What about the fact that five lobes
5 floated?
6 A There are five lobes to the lungs and
7 all five floated. We would consider that complete aeration.
8 Q Now, I believe you already testified that
9 this meconium did not appear to be intrauterine meconium.
10 Is that correct?
11 A That's right.
12 Q Now, predicated upon the statement,
13 was this a vaginal birth?
14 A It was.
15 Q Now, when a baby is delivered in a
16 vaginal birth what effect does the air when the baby comes
17 into the world, what effect does this have on the child?
18 A I don't understand your question.
19 Q What effect does the shock of coming into
20 the cold air have on the child's respiratory system?
21 A It usually causes the child to begin to
22 breathe.
23 Q Now, predicated upon the statement does
24 there appear to be any depressant narcotics to eliminate the
25 pain at the time of delivery?

1 A Predicated on the statement there were
2 none.
3 Q Now, doctor, can you tell us to a
4 reasonable degree of medical certainty what life signs
5 this baby would exhibit when it was born?
6 A Well, the baby begins to cry almost
7 immediately provided he is normal.
8 MR. SWAIN: Objection.
9 MR. STANT: Objection, your honor.
10 Are we talking about this baby or is this
11 an ordinary birth?
12 THE COURT: An ordinary birth.
13 MR. STANT: Ordinary birth.
14
15 BY MR. SLIPOW:
16 Q Go ahead, doctor.
17 A Ordinary birth with no complications
18 usually the baby begins to cry, it moves all its extremities
19 and its head, and there is a heartbeat.
20 Q Do they occasionally urinate?
21 A They do.
22 Q In your findings in your examination
23 and evluation haveyou found anything to indicate that this
24 was anything other than an ordinary birth?
25 A I have not.

1 Q Dr. Gray, can you tell us with a
2 reasonable degree of medical certainty if this child was
3 born alive?
4 A Based on the pathology report I would say
5 it was born alive.
6 Q Can you tell us with a reasonable
7 degree of medical certainty if this child would have
8 survived with proper attention?
9 MR. STANT: Now, I object to that,
10 your honor.
11 THE COURT: Sustain the objection.
12 MR. SLIPOW: May I approach the bench,
13 your honor.
14 THE COURT: All right.
15 (The court and counsel for both sides
16 conferred out of the hearing of the jury.)
17 THE COURT: Ladies and gentlemen of
18 the jury, step into the jury room, please.
19 (The jury withdrew from the courtroom.)
20 THE COURT: I am not going to allow the
21 question, but I will allow questions as to what
22 should be done with a child in order to assure
23 survival in a case like this.
24 MR. SLIPOW: N[illegible]
25 in[illegible]

1 prove causation [illegible] have to be able
2 to prove that the mother's negligence
3 caused the infant's death if [illegible]
4 proceed on involuntary manslaughter, and
5 to prove that the [illegible] negligence
6 caused the infant's death we have to prove
7 the child could have survived with proper
8 medical care or [illegible] have survived with
9 proper medical care.
10 THE COURT: All right, then your
11 question is what is proper medical care?
12 MR. SLIPOW: First we have to
13 establish the child would have survived.
14 Next question is what should be done. Third
15 question is would the baby survived if it
16 had been done.
17 THE COURT: I am not going to allow
18 it.
19 MR. SLIPOW: Judge, how can we show
20 causation?
21 MR. STANT: The doctor has already
22 testified, if I might say, that he does not
23 know whether this baby was alive or dead at
24 the time it was put into the towels. So how
25 can we get into the question --

1 THE COURT: You are distinguishing
2 between the time he was put in towels and
3 time he was born.
4 MR. STANT: Yes, your honor, and if
5 the baby was dead at that time how can we get
6 into the question of what she should have done
7 if some other situation had obtained? There
8 is no way to know what the situation was at
9 that time based on what the doctor has already
10 said. So how can we go further?
11 THE COURT: As I stated, I will allow
12 questions as to what should be done.
13 MR. SLIPOW: Well, judge, may I
14 inquire?
15 THE COURT: And what evidence he has
16 to indicate whether or not that particular
17 thing was done. But whether or not the child
18 would or would not have lived -- do you have
19 an opinion as to whether or not the child would
20 have lived?
21 WITNESS: Based on everything that
22 we have got here I do.
23 THE COURT: To a degree of reasonable
24 medical certainty?
25 WITNESS: Well, that is a difficult--

1 thing to say, but predicated upon experience
2 of past births, normal children, normal infants,
3 they usually survive.
4 MR. STANT: Judge, your honor, we are
5 not --
6 WITNESS: Without any congenital
7 malformation or any complications of pregnancy.
8 MR. STANT: We are not asking for that.
9 We are asking for the doctor -- he has to first
10 know how this child was born, the circumstances
11 under which it was born, what happened to the
12 mother just prior to the birth of the child, and
13 what happened to the child as it exited the
14 mother's body. Otherwise the doctor doesn't
15 even know what occurred. And he has never had
16 any of that background.
17 THE COURT: You will be able to cross-
18 examine. I will allow the question.
19 MR. SLIPOW: Thank you, judge.
20 MR. STANT: I note my exception, your
21 honor.
22 THE COURT: Bring the jury out.
23 (The jury returned to the courtroom.)
24
25

BY MR. SLIPOW:

Q Dr. Gray, what medical -- what techniques should have been used when this infant was born?

A To clean out the upper airways certainly first and foremost to make sure the baby can breathe, that it is not obstructed.

Q What about with reference to the cord and the placenta in an unattended birth?

A Well, there is no reason to cut the cord, actually. The infant's circulation is contiguous with the placenta, but it is a closed system. When the placenta breaks off from the mother then that's the maternal side that bleeds. But everything being normal the baby wouldn't bleed back through the placenta.

Q What else should have been done for natal care or postnatal care of the infant?

A Warmth, baby should have been kept warm.

Q Where should the baby have been taken?

A To a hospital.

Q Now, doctor, did these things appear to have been done based on the statement and the things you had an opportunity to examine?

A Not based on the statement.

Q Now, Dr. Gray, can you tell us to a reasonable degree of medical certainty if this child would

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have lived had it received proper attention?

MR. STANT: Your honor, I object to that. My objection is a continuing objection to all these questions.

THE COURT: I understand that. Overrule the objection.

BY MR. SLIPOW:

Q Okay, my question to you, Dr. Gray, is can you tell us to a reasonable degree of medical certainty based on your experience if this child would have lived had it received proper attention?

A Based on my experience and my examination of the infant without any congenital anomalies or problems the baby should have lived.

MR. SLIPOW: Thank you. Answer counsel's questions. Just one second. Dr. Gray, thank you.

CROSS-EXAMINATION

BY MR. SWAIN:

Q Dr. Gray, when you made your initial examination of the baby when you submitted your official report of the cause of death and manner of death didn't you

1 report the manner of death after consulting with the
2 pathologist as undetermined?
3 A I did.
4 Q And you don't know how this baby died,
5 do you?
6 A Literally, no.
7 Q All right, sir. Now, doctor, you don't know
8 for a fact whether [illegible]
9 after it died, do you?
10 A I do not.
11 Q And, doctor, you don't know whether the
12 blood on the towels that you have indicated was on the towels
13 before or after the death of the baby, do you?
14 A That's correct, I do not.
15 Q And, doctor, you have stated that you
16 felt that the towels could have affected the respiration
17 and you have assumed a number of things, haven't you?
18 A I have.
19 Q And you have also taken into account the
20 statement of Miss Summerell -- Lane, my client, haven't you?
21 A Say that again?
22 Q You took into account in your assumptions
23 the statement that this --
24 A Oh, I did.
25 Q All right, sir. And in that statement

did you read the portion -- I am sorry, I have got it right here -- "He [illegible] That's one of the assumptions [illegible] into account, isn't it?

A Right.

Q So if your assumption is that he wasn't breathing at the time the towels were wrapped around it, couldn't have had any effect on the respiration, could it?

A That's true.

Q So then the assumption you gave a little while ago was somewhat incorrect if you assumed all those facts you stated you did. Is that not correct?

A I don't think it is quite that simple.

Q Doctor, are you only assuming one part of the statement and leaving out other parts?

A No.

Q Pardon me?

A No.

Q Do you take for a fact the baby wasn't breathing when and if any towels were wrapped around its head?

MR. SLIPOW: Objection.

May I approach the bench and be heard on the objection, please?

(The court and counsel for both sides conferred out of the hearing of the jury.)

BY MR. SLIPOW:

Q Now, doctor, the question was again, you have assumed certain things and you also in your assumptions took in -- you read a part of the statement said "He wasn't breathing and it scared me, so I wrapped it up in a towel as fast as I could and I put it in a garbage pail and then got a garbage bag and put him in it and took him over to a road off First Colonial Road and got out my car and put him on the side of the road." That is a statement you took for a fact. Is that not correct?

A Correct.

Q That's the facts you used to base your assumptions?

A I did.

Q So [illegible] towels [illegible] would [illegible]

A [illegible]

Q And, doctor, there is nothing in the statement that indicates that the baby's head was wrapped in the towels [illegible] on them, is there?

A [illegible]

Q [illegible] or [illegible]

A No.

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1 Q Doc[redacted] cannot say how long that
2 bab[redacted] birth, can you?
3 A [redacted].
4 Q Doctor, I want you to tell me if you
5 can what the -- what an Apgar test is, an Apgar score?
6 A An Apgar score was devised by Dr. Apgar
7 several years ago, and it is a method of scoring the
8 condition of the infant at one minute and five minutes after
9 birth.
10 Q And what different criteria do you take
11 into effect?
12 A There are five things: Heartbeat,
13 reflex, irritability, muscle tone, color, and respirations.
14 Q And assuming that a baby was bluish gray
15 in color, purplish, cyanotic looking, and didn't appear to
16 be breathing and not moving, but assume there was a heart
17 rate and some breathing, what would the Apgar score be?
18 A You are talking about one, two, three on
19 a full score of ten. Ten would be a perfect. I would say
20 up to a four.
21 Q At the most four?
22 A I guess so.
23 Q And would that baby then be considered
24 a severely depressed baby?
25 A For that moment it was, yes; it would be,

1 yes.

2 Q And when a baby's born severely

3 depressed, what steps are taken in the hospital by the

4 physicians?

5 A Well, usually resuscitative efforts at

6 that moment to make sure, as I say, the airway's open and,

7 if the baby's blue and having difficulty breathing or not

8 breathing, giving it some positive-pressure oxygen in order

9 to help it breathe.

10 Q Pure oxygen?

11 A Yes.

12 Q What else?

13 A Stimulation, physical stimulation,

14 usually sprinkle a little cool water on the back and rub

15 your hands up and down the spine and pluck on the feet, that

16 type of thing.

17 Q Now, doctor, when a baby's severely

18 depressed what is the shock of cool or cold air?

19 A The immediate? Usually makes them cry

20 or breathe.

21 Q Do you recommend that?

22 A No.

23 Q Why?

24 A Because it will cool the baby down, and

25 you don't want the baby to become hypothermic, low temperature.

1 Q What is the effect of hypothermia?
2 A Depression.
3 Q Further depression?
4 A Of all systems, yes.
5 Q Including the respiratory?
6 A Yes.
7 Q Baby doesn't breath as well?
8 A Yes.
9 Q And what temperature should a baby be
10 kept at?
11 A Thirty-seven degrees centigrade.
12 Q What is that Fahrenheit?
13 A 98.6.
14 Q I am sorry?
15 A 98.6, body temperature. I am talking
16 about the body temperature, not the ambient.
17 Q What should the air temperature be for a
18 severely depressed baby?
19 A It is usually a little more. You talking
20 about a normal baby?
21 Q Severely depressed.
22 A If you keep -- the object is to keep
23 his body temperature normal, so if it is down the ambient
24 temperature's going to be high in order to bring it up. If
25 his temperature is normal, then the ambient temperature is

1 going to be normal.

2 Q The effect of sixty degrees air is a

3 deleterious effect on the baby?

4 A For a long period of time.

5 Q And so the thing you want to do is try

6 to wrap the baby up and keep it warm around its body. Right?

7 A Right.

8 Q Doctor, you have talked a minute ago about

9 the things that should be done for an infant when it is born,

10 and you said that this girl should have wrapped the baby up,

11 but she didn't do that?

12 A Are you asking me or telling me?

13 Q Didn't you say that is some of the things

14 she should have done?

15 A That it would be normal care of the baby,

16 yes.

17 Q To wrap the baby?

18 A Right.

19 Q Didn't she indicate in her statement that

20 she wrapped the baby?

21 A Yes, she did.

22 MR. SWAIN: Your honor, at this time

23 I would like to introduce the climatological

24 data for the day of the birth of the baby,

25 temperature of the air around --

MR. SLIPOW: Judge, I don't --

MR. SWAIN: -- showing it was sixty degrees that day.

MR. SLIPOW: Judge, I have got an objection, and I am afraid I am going to have to border on a motion at this point right here.

THE COURT: I don't think it is proper, not now.

MR. SWAIN: All right, sir.

BY MR. SWAIN:

Q Now, besides resuscitation, and I guess that means positive pressure of air being forced in the lungs by the doctor; that would be ventilation, wouldn't it?

A Probably.

Q You also should keep the baby warm. You should also use pure oxygen?

A Not necessarily.

Q Higher percentage of oxygen?

A Actually, no. Mouth-to-mouth would do -- often gets the baby breathing.

Q And if these steps are not done, you run the risk of dying -- the baby dying, don't you? Grave risk?

1 A Certainly there may be an increase, if
2 it is a depressed baby you are talking about.
3 Q Yes.
4 A There certainly would be increased risk,
5 increased chance the baby would not make it.
6 Q Now, doctor, what indications do you
7 have if there is a precipitous birth and the baby appears
8 blue and cyanotic?
9 A This particular case? Are you talking
10 about this particular case?
11 Q In general.
12 A In general, in any case?
13 MR. SLIPOW: Your honor, I would
14 object.
15 MR. SWAIN: Cross-examination.
16 MR. SLIPOW: Let's strike the question.
17 THE COURT: Overrule the objection.
18 A What indications? Say that again?
19
20 BY MR. SWAIN:
21 Q What are the indications when a baby is
22 delivered precipitantly, very rapidly, and the baby looks
23 blue and is not respiring or appear to be respiring?
24 A That would be one right there, if it were
25 blue and not breathing.

1 Q What does it mean usually?

2 A It could mean anything. It could mean

3 something as serious as bleeding in the head.

4 Q Subdural hemorrhage could do it?

5 A Yeah, severe subdural hemorrhage.

6 Q What does subdural hemorrhage do?

7 A Floods the brain with blood.

8 Q And what happens?

9 A The brain ceases to function properly.

10 Q Does that have an effect on the respiratory

11 center?

12 A It could.

13 Q And how is that done?

14 A Well, the baby with a severe subdural

15 hemorrhage could die.

16 Q Doesn't the subdural hemorrhage cause

17 pressure on the brain and push the respiratory center close

18 to the skull?

19 A Could.

20 Q Doctor, do you know what the state of

21 the umbilical cord was when it came out of the baby -- out of

22 the mother in this case?

23 A Do [redacted]

24 ou[redacted]

25 Q [redacted]

A Absolutely not.

Q Do [illegible] not?

A No.

Q What would be the effect of coiling around the baby's head?

A Coiling around the neck? Probably nothing.

Q And do you know what percentage of babies have the coil and have the -- percentage?

A No.

Q Have it coiled around their neck?

A No.

Q Would it be as much as twenty-four?

MR. SLIPOW: Objection.

A I pass on that.

BY MR. SWAIN:

Q Is it quite often?

A I pass on that.

Q Doctor, you have never seen this?

A I don't deliver children.

Q So you don't know -- you haven't studied the delivery and the birth of children. Is that correct?

A I have.

1 Q But you don't normally do that sort of
2 thing?
3 A I don't do that.
4 Q Now, [redacted]
5 umbilical [redacted]
6 A Yes.
7 Q [redacted]
8 A It [redacted]s
9 circulation [redacted]
10 Q And of course when that occurs -- it can
11 occur during the birth process, can't it?
12 A It can.
13 Q There is no way of telling from your
14 viewing of this baby, is there?
15 A No.
16 Q [redacted]
17 a compressed [redacted]
18 shortly after birth [redacted]
19 A Or in the process of being born.
20 Q And at the time of birth it would be
21 [redacted]
22 A Yes.
23 Q And [redacted]
24 anoxia?
25 A Death.

Q Okay.

A Cy[illegible]

Q Ear[illegible]?

A [illegible].

Q Cy[illegible]?

A De[illegible] rate.

Q Baby not [illegible]ing?

A Baby [illegible]oving.

Q And as the baby dies from such an event it would discharge some meconium, wouldn't it?

A Possibly a small [illegible].

Q Small amount. And in fact, usually when a child dies --

Let me put it this way: After the birth of children there is always a discharge of meconium, isn't there?

A No.

Q Usually?

A Many times.

Q Many times. Small amount or large amount?

A Small.

Q Doctor, in the report of Springate he said there was a [illegible] baby and still a large amount of meconium [illegible] the

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baby?

A (Indicates yes.)

Q And what does that indicate?

A It indicates there is a small amount on the outside and large amount inside that the baby hasn't expelled yet and probably will [illegible] for days.

Q It is no evidence the baby was suffocated, is it?

A To me it isn't.

Q And, doctor, do you know what the effect of a very strong high pressure or a high contractural pressure is upon the baby, the baby's being delivered?

A Yes.

Q Uterine contractions.

A Sure.

Q What is that?

A Depressed heart rate is the main thing.

Q And does it have an effect on the profusion of the blood from the placenta and from the --

A It does.

Q -- the mother?

And do you know how strong contractions it takes to reduce the blood?

A I do not.

Q If it -- when I say profusion, would you explain what profusion is?

A Generally, circulation.

Q Circulation between mother and placenta?

A Just general circulation, I mean anybody's circulation, we are profusing.

Q With very strong contractions of the uterus during delivery, this profusion [illegible] off, can't it?

A It can certainly be reduced, anyway.

Q Pardon me?

A It can be reduced and compromised.

Q What is the effect on the infant? Anoxia?

A Anoxia would be the main thing.

Q And what is the -- what manifestations do you see in the baby after it is born? Would it be blue?

A It would not be [illegible] blue, [illegible].

Q Not breathing?

A If it occurred continuously and at the time of birth. But if it occurred two hours earlier, no. It is a momentary thing.

Q I am talking about at the time of the birth.

1 And when the child is born in this state then
2 it is considered depressed, isn't it?
3 A It is.
4 Q And you have to take positive medical
5 steps to come to the aid of the baby, don't you?
6 A Right.
7 Q And wouldn't you -- first thing you do
8 would be clean out the airways and passages with a suction
9 cup?
10 A Yeah.
11 Q And then you say positive air, bag the
12 baby, as they say, and give the baby oxygen?
13 A Right.
14 Q Stimulate it in some way if you possibly
15 could?
16 A Right.
17 Q And would you possibly stimulate it with
18 drugs of some sort?
19 A Yes.
20 Q And wouldn't you try to ventilate the
21 baby's chest?
22 A Yes.
23 Q If the baby were born in this state and
24 held in a mother's arms, would that not push the head forward
25 like that down against the chest?

1 A I guess it would.
2 Q Would that in any way interfere with
3 the air passage?
4 A It could be.
5 Q Would that prevent the baby from
6 breathing?
7 A It could.
8 Q So you take special courses and learn how
9 to hold the baby's neck when it is born then after you
10 receive it from the obstetrician?
11 A I do not.
12 Q You have been taught to?
13 A I have been taught that. But we don't
14 take special courses.
15 Q That is not really general knowledge,
16 I suppose, is it?
17 A What, how to --
18 Q Those positive measures I have spoken
19 about that is necessary that are performed in a hospital,
20 aren't they by qualified physicians usually?
21 A To the extent that you say, yes.
22 Q And that knowledge is not generally
23 known, I wouldn't think, by all your patients who come to
24 you for the first time?
25 A Not all the things that I do, no.

1 MR. SWAIN: Excuse me a second,
2 doctor.
3
4 BY MR. SWAIN:
5 Q Doctor, vernix -- is it vernix --
6 A V-E-R-N-I-X, vernix.
7 Q Vernix, I am sorry, the vernix is found
8 on most babies or I guess all babies when they are born?
9 A To a certain extent on all babies.
10 Certainly is much heavier on some than others.
11 Q Sometimes it is very light?
12 A Right.
13 Q And doesn't this vernix dissipate or be
14 absorbed into the baby's skin very rapidly over a twenty-four-
15 hour period?
16 A No.
17 Q You are sure of that?
18 A Well, it will dry and flake off, and it
19 is usually washed off in the nursery.
20 Q How long does it take for it to dry
21 and flake off?
22 A Probably somewhere between twelve and
23 forty-eight hours. I don't know, something like that. We
24 don't usually allow it to do that.
25 Q Baby's -- four days after the birth of a

1 baby you'd expect not to see it, wouldn't you?
2 A Yes.
3 MR. SWAIN: Thank you, doctor.
4 THE COURT: Any other questions?
5 MR. SLIPOW: Yes, sir.
6
7 REDIRECT EXAMINATION
8
9 BY MR. SLIPOW:
10 Q Dr. Gray, you gave a physical examination
11 to the infant, didn't you? Or external examination to the
12 infant. Is that correct?
13 A I did.
14 Q Did you see any puncture wounds or any
15 outlets the blood in the towels may have been the infant's
16 blood?
17 A There were none.
18 Q When a woman delivers an infant,
19 particularly without assistance, are there lacerations?
20 A To the mother?
21 Q Yes.
22 A Frequently there are.
23 Q Is there generally a considerable degree
24 of bleeding?
25 A Yes.

1 Q Now, you have indicated to us that this
2 meconium that was secreted by the infant was done while the
3 infant was alive, was it not?
4 A I feel it was.
5 Q While the infant was defecating the
6 meconium would it have a heartbeat?
7 A If the infant was alive it would have a
8 heartbeat. If the infant was alive and passed meconium it
9 would have a heartbeat, yes.
10 Q And in your opinion the infant was alive
11 when it passed meconium?
12 If the infant had a heartbeat would the blood be
13 circulating in the infant?
14 A It would.
15 Q Okay. Now, this cyanotic coloring
16 that you have discussed, the bluish color, is that a fairly
17 regular occurrence in newborn infants?
18 A Many infants are born that way.
19 Q Even infants that do not have any --
20 MR. STANT: Please your honor, I
21 object to the question.
22 MR. SLIPOW: I will rephrase it.
23 MR. STANT: I don't think this is
24 rebuttal, though.
25 MR. SLIPOW: I think it is proper.

1 rebuttal.

2 THE COURT: It is redirect based

3 on cross-examination.

4

5 BY MR. SLIPOW:

6 Q How often do you see the cyanotic coloring

7 in birth?

8 A I can't really give you a percentage,

9 but many babies, perfectly normal infants, will be blue

10 at the moment that they come out.

11 Q How long does it generally take for

12 this coloring to disappear, doctor?

13 A Everything being normal, a nice healthy,

14 normal baby who breathes immediately, anywhere from fifteen

15 to thirty seconds, maybe as much as a minute.

16 Q Now, Mr. Swain asked you a series of

17 questions about a depressed birth, a depressed infant. He

18 asked you a series of questions about a depressed birth and

19 a depressed infant. In these situation this intrauterine

20 meconium is a common symptom?

21 A Yes. They --

22 Q Go ahead.

23 A If it is depressed in utero.

24 Q Okay. Now, generally, in depressed

25 births are there not narcotics administered to the mother?

A In some of them there are. I wouldn't say that generally this is true, no.

Q Could a narcotic being administered to the mother affect the child?

MR. SWAIN: Your honor, I object. What has this got to do with this case? No evidence of narcotics in this case. It is not based on cross.

MR. SLIPOW: Can I be heard on this for just a second?

(The court and counsel for both sides conferred out of the hearing of the jury.)

THE COURT: Sustain the objection.

BY MR. SLIPOW:

Q [redacted] depressed [redacted]

A [redacted] reason. [redacted]

Certainly narcotics can do so. And other medications.

Q Now, you have indicated in prior testimony you have had a chance to examine the autopsy protocol. Is that correct?

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1 A Yeah.
2 Q Mr. Swain asked you about severe cerebral
3 hemorrhages?
4 A Right.
5 Q Is there any indication of a severe
6 cerebral hemorrhage?
7 A There is none.
8 Q It does indicate some subdural hemorrhage.
9 Is that correct?
10 A Yes.
11 Q Is that uncommon in a newborn infant?
12 A Absolutely not.
13 Q Why not?
14 A Because just in the process of being
15 born small vessels are torn inside the skull as the skull
16 molds. Since the skull bones are not attached and rigid as
17 they are in an adult, small vessels will tear and there will
18 be a small amount of subdural and epidural and sometimes
19 subarachnoid hemorrhage.
20 Q You indicated in response to Mr. Swain's
21 questions that the vernix might dry and flake off after a
22 period of time. What effect would moist towels wrapped
23 around the infant in a plastic bag have on the vernix drying
24 up and flaking off?
25 A It would have a tendency to prevent that.

Q Now, doctor, Mr. Swain asked you on cross-examination if it would be proper care for a mother to wrap her infant in towels.

Now, would it be proper care for a mother to put her infant in a garbage pail?

A I would say no.

MR. SWAIN: Your honor, I object to the question.

MR. SLIPOW: Judge, he opened the door.

THE COURT: I don't think it is proper. Sustain the objection.

BY MR. SLIPOW:

Q Now, Dr. Gray, in response to Mr. Swain's question as to listing a cause of death, he asked you [illegible] cause of death you [illegible] recollection?

MR. SWAIN: Objection.

MR. STANT: I object to that, your honor.

THE COURT: Sustain the objection.

MR. SLIPOW: Judge, may I approach the bench on this?

THE COURT: Um-hum.

(The court and counsel for both sides conferred out of the hearing of the jury.)

THE COURT: Sustain the objection. Note your exception.

MR. SLIPOW: Note our exception, please.

No further questions, thank you, doctor.

RECROSS-EXAMINATION

BY MR. SWAIN:

Q Doctor, you said that the moist towels would have a tendency to keep the vernix on the child. Wouldn't they also have a tendency to wipe it off the child?

A Vernix is a very adherent, tenacious material. Active wiping would. I doubt towels wrapped around it would take off very much.

Q In a severely depressed child isn't it a fact that it is recommended that the nurses only pat dry the baby so they don't lose all their moisture too quickly and become cold, to wipe the vernix off?

A That might be in the delivery room, but in the nursery that's not true. Baby's are brought rapidly

1 to the nursery.

2 Q Now, isn't it also a fact that when you

3 have got anoxia, asphyxia of a baby after birth, won't the

4 meconium be discharged sometimes after it is out of the

5 uterus instead of in utero?

6 A Surely it will in a small amount.

7 Q Dr. Springate's report said moderate

8 amount in the pathology?

9 A I would take exception to that, because

10 I saw the towels.

11 Q You don't agree with the medical

12 examiner's report?

13 A Not the deputy medical examiner.

14 MR. SWAIN: Thank you, doctor.

15 MR. SLIPOW: That's all the

16 questions we have.

17 THE COURT: Thank you, Dr. Turner;

18 you may step down. I mean Dr. Gray. You may

19 be excused.

20 Ladies and gentlemen, we will take

21 a five-minute recess.

22 (At 12:12 P.M., June 3, 1977, the

23 court recessed, and reconvened at 12:25

24 P.M., June 3, 1977.)

25 THE COURT: Commonwealth ready to

1 call its next witness?
2 MR. SLIPOW: Yes, sir.
3 THE COURT: All right, bring the
4 jury out.
5 (The jury returned to the courtroom.)
6 THE COURT: All right, the Commonwealth
7 may call its next witness.
8 MR. SLIPOW: Dr. Leslie Wasserman.
9
10 ------oOo------
11
12 LOUIS LESLIE WASSERMAN, JR., called as a witness
13 on behalf of the Commonwealth, having been first duly sworn,
14 was examined and testified as follows:
15
16 DIRECT EXAMINATION
17
18 BY MR. SLIPOW:
19 Q Doctor, tell us your name, and spell your
20 last name for the record, please?
21 A Louis Leslie Wasserman, Jr., W-A-S-S-E-R-
22 M-A-N.
23 Q What is your profession, Dr. Wasserman?
24 A I am a physician specializing in
25 obstetrics and gynecology.

1 Q What is the field of obstetrics?
2 A That's the field of medical specialty
3 that cares for the pregnant mother and the delivery of the
4 newborn baby.
5 Q Where are your offices located?
6 A In the professional building next door
7 to Virginia Beach General Hospital, 1100 First Colonial
8 Road.
9 Q Doctor, would you be kind enough to go
10 into your educational background for us?
11 A Yes. I was educated, both premedical
12 training and medical school training, at Duke University.
13 I did a year of rotating internship at Norfolk General
14 Hospital. I did a four-year residency specializing in
15 obstetrics and gynecology at Duke University.
16 Q How long have you been practicing in
17 this area, doctor?
18 A Since 1973.
19 Q In the course of your practice do you
20 have occasion to deliver infants?
21 A Yes, I do.
22 Q How often?
23 A We deliver -- I am in a group practice,
24 we deliver thirty to thirty-five babies a month, so I
25 deliver probably ten to twelve babies a month.

1 MR. SLIPOW: Your honor, if the
2 court please, at this time I would ask that
3 Dr. Wasserman be qualified as an expert
4 witness in the field of obstetrics.
5 THE COURT: Any questions?
6
7 VOIR DIRE EXAMINATION
8
9 BY MR. SWAIN:
10 Q Doctor, in your studies at Duke did you --
11 how often -- how many courses did you take in pathology?
12 A In pathology?
13 Q Yes, sir.
14 A Did a six-month rotation in GYN pathology
15 in my specialty training, and had a six-month course in
16 general pathology in medical school.
17 Q GYN pathology would be the pathology of
18 a mother, would it not?
19 A It would be of the mother and also of the
20 numerous pathological conditions of reproductive organs that
21 don't have anything to do with pregnancy.
22 Q Or childbirth?
23 A Right.
24 Q You taken any courses in forensic
25 pathology; that would be into the cause of death?

1 A None at all.
2 THE COURT: You may proceed.
3
4 BY MR. SLIPOW:
5 Q Doctor, I am going to ask you to speak
6 just a little bit louder for us.
7 What is the normal gestation period for a full-
8 term baby?
9 A Forty weeks.
10 Q Now, I am going to show you four
11 photographs that have been marked and introduced into evidence
12 as Commonwealth's Exhibit Number 22, Commonwealth's Exhibit
13 Number 21, and Commonwealth's Exhibit Number 23, and ask
14 you to study those photographs, and can you make a determination
15 if the infant depicted appears to be a full-term infant?
16 MR. SWAIN: Your honor, I would have
17 an objection. I think that the best evidence
18 would have been the infant. I don't think the
19 pictures should be the basis for the doctor's
20 medical opinions. He didn't actually examine
21 the baby himself.
22 THE COURT: The question is does the
23 infant in the picture appear to be. Overrule
24 the objection.
25 MR. STANT: Note an exception, your honor.

1 A The baby appears to be full term.
2 Q What do you base that determination on,
3 Dr. Wasserman?
4 A Two things. The size of the head in
5 relation to the size of the shoulders. This is something
6 that changes as a baby develops to be full term, the head
7 being much larger than the shoulders in premature stages of
8 gestation and being nearly equal to the shoulders at the
9 time of birth.
10 The second is that a premature baby would be
11 covered by a substance called vernix, which is a white,
12 waxy substance that protects the baby. Very often at term
13 this will be gone, and certainly when the baby is past
14 term it would be gone, and there is none evident on this
15 baby in the pictures at all, so I would say the baby is at
16 least term.
17 Q Now, with reference to this substance
18 vernix, which you have raised, will the substance disappear
19 by itself if it is present on the baby when the baby's born?
20 A No.
21 MR. STANT: Your honor, I object to
22 "if it is present." Seems to me that's
23 completely speculative.
24 MR. SLIPOW: The question was would it
25 disappear, not if it was present. I haven't

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1 asked the doctor to speculate on whether it
2 was born with it or not.
3 MR. SWAIN: What is the relevancy?
4 MR. STANT: That wasn't what I
5 understood the question to be.
6 THE COURT: If the baby's born
7 with vernix would it disappear? I believe
8 that's the question. Is that right?
9 MR. SLIPOW: Yes, sir.
10 THE COURT: All right.
11 A No, not by itself.
12
13 BY MR. SLIPOW:
14 Q How would it have to be done, doctor?
15 A It would have to be manually cleaned off.
16 Q Dr. Wasserman, at what stage is it common
17 that you first come in contact with an expectant mother, at
18 what stage in the pregnancy?
19 A Most pregnant women contact an obstetrician
20 at about three to four months of pregnancy.
21 Q Now, doctor, during these early stages
22 of pregnancy, three to four months, what physiological
23 changes does a woman go through that would be apparent to
24 the mother?
25 MR. STANT: Now, I object to that,

1 your honor. Not all mothers -- it is
2 not apparent to all mothers. That's a
3 universal question, and I would object
4 to it. Quite obviously --
5 THE COURT: You will have an
6 opportunity to cross-examine. Overrule
7 the objection.
8 MR. STANT: Note my exception,
9 your honor.
10 A Other than some slight weight gain,
11 which is variable from woman to woman, most women will
12 notice some problems with nausea and perhaps vomiting at
13 certain times of the day.
14 There will be some breast enlargement and
15 tenderness in a high percentage of pregnant women during
16 the first three to four months of pregnancy. Some
17 problems -- not problems but change of frequency of
18 urination which is unusual for her.
19
20 BY MR. SLIPOW:
21 Q What about with reference to the
22 menstrual cycle?
23 A In general the woman would have no
24 bleeding after the last normal menstrual period before she
25 became pregnant.

1 Q What about the three- to six-month
2 period? What physiological changes would there be at
3 this point?
4 A Beginning at about eighteen weeks, which
5 is about four and a half months, the mother would begin to
6 feel some movement from the baby, what we call quickening.
7 It is a fairly inflexible rule that she will feel this
8 movement, and we use it very often to date when the baby
9 is due, as well as the last menstrual period and the size
10 of the baby as it grows.
11 Q And during the latter stages of pregnancy
12 what signs become apparent to the mother?
13 A No additional changes other than the
14 large increase in her abdominal girth.
15 Q What about the quickening or the movement
16 of the infant inside? Does that stay the same or --
17 A In general it increases as the pregnancy
18 goes along, so that it cannot only be felt but can be
19 seen by the pregnant woman.
20 Q Now, doctor, in your experience and
21 in your opinion have you handled a mother up until birth
22 and delivery of the infant that did not know that she was
23 pregnant?
24 MR. STANT: Your honor, I object to
25 that. I certainly don't think that's --

1 if the doctor has been practicing three or
2 four years, as I understand it. Now, if
3 he wants to ask the doctor whether or not
4 there are reported cases on that, but his
5 personal experience as against the general
6 experience of the medical profession, I
7 would object to, your honor.
8 MR. SLIPOW: Judge --
9 THE COURT: You will have a chance to
10 cross-examine. I will allow it.
11 A I have had a number of women who --
12 not ones that I have followed throughout their pregnancy,
13 but ones that I have delivered, who have stated that they
14 did not know they were pregnant until they went into labor.
15 However, in my opinion --
16 MR. STANT: Now, I object to the
17 opinion, your honor.
18 MR. SWAIN: It is a personal
19 opinion.
20 MR. SLIPOW: The question was in
21 his opinion did he feel that they did not
22 know, and he was about ready to continue
23 to answer the question before the interruption.
24 THE COURT: I think his opinion has
25 to be to a degree of reasonable medical

1 certainty.

2

3 BY MR. SLIPOW:

4 Q All right, in your opinion to a
5 reasonable degree of medical certainty what is your
6 feeling?

7 A My feeling was this was not the case
8 in any of the patients that I had experience with, and this
9 was based on their emotional reaction after the delivery of
10 the baby.

11 Q Could you explain that to the ladies
12 and gentlemen of the jury, please?

13 A I think that if in fact a woman kept
14 secret a pregnancy for nine months from her family and
15 friends and in fact did not know that she was pregnant
16 suddenly went into labor and had a baby, I think she would
17 be appalled and terribly frightened. And in the patients
18 that I have had that have claimed this their response has
19 been one of happiness, and inappropriate to a woman who
20 has been looking forward to that birth, and so I think
21 that there has been some psychological repression of the
22 facts going on during the pregnancy and in fact she did
23 know that she was pregnant, and I have had four or five
24 cases of this sort.

25 Q Doctor, are you familiar with the term

"meconium"?

A Yes.

Q What is meconium?

A Meconium is a blackish green substance that fills the lower intestinal track of a newborn infant.

Q Now, you had the four photographs that are in front of you that I have previously given you an opportunity to examine. Is meconium present in any of those photographs, doctor?

A Yes; I see meconium in all four.

Q Now, have you had an opportunity, Dr. Wasserman, to examine the autopsy protocol that has been introduced into evidence, Commonwealth's Exhibit Number 18, on a prior occasion to today?

A Yes, I have.

Q And you have had an opportunity to examine these photographs in the past. Is that correct?

A That's correct.

Q Now, I make reference to Commonwealth's Exhibit Number 20, which has been introduced into evidence. Have you had an opportunity to examine a copy of that statement between the defendant and Detective Ernest Marrow?

A Yes.

Q Can you tell us, doctor, to a reasonable degree of medical certainty whether the meconium depicted in

1 those photographs was defecated while the child was alive?
2 A Yes.
3 Q What do you base that opinion on, Dr.
4 Wasserman?
5 A It is obvious that the baby had to be
6 alive to expell that much meconium.
7 Q Now, what's the term "cyanotic coloring"
8 mean?
9 A It is a bluish discoloration of the skin
10 which indicates a lack of oxygen in the circulatory system,
11 in the bloodstream.
12 Q How long does it generally take for this
13 coloring to disappear?
14 A This is present in most babies immediately
15 at the time of birth and will usually disappear within sixty
16 seconds.
17 Q Now, in the photographs that are in
18 front of you, have you had an opportunity to -- well,
19 obviously you have not had an opportunity to see the child.
20 Do you observe any irregularities in the umbilical cord?
21 A No. This is not an ideal way to examine
22 the umbilical cord, but I don't.
23 Q What about with reference to the placenta,
24 doctor?
25 A Placenta looks normal.

1 Q Doctor, would you explain to me and the
2 ladies and gentlemen of the jury and the court what sometimes
3 are involved in the progression of labor and delivery of a
4 child?
5 A With a first baby a woman goes into a --
6 the first stage of labor when she begins to have uterine
7 contractions that are five minutes apart or closer, and this
8 can last, again with a first baby, anywhere from three to
9 four hours at a minimum up to sixteen to eighteen hours at
10 a maximum.
11 When she becomes fully dilated, that is, when the
12 mouth of the uterus opens up so that the baby's head can
13 pass through it, she is said to have entered the second
14 stage of labor. This usually last one to two hours and is
15 terminated when the baby is delivered to the outside.
16 And the third stage of labor is from the delivery
17 of the baby to the delivery of the placenta, and usually
18 takes three to ten minutes.
19 Q So the second stage are the actual
20 delivery of the head, body, and feet of the child. Is
21 that correct?
22 A Yes, it terminates with that.
23 Q And how long does that stage take,
24 doctor?
25 A It can take anywhere from up to two hours

1 or as little as five minutes.

2 Q If there has been no pain killer administered

3 to the mother what physical effects could it have on the

4 mother's comfort, I guess would be a good term?

5 A Labor hurts a lot, and no woman has

6 labor without a fair amount of pain, which is just intense

7 pain of an on-and-off nature in the abdomen and the low

8 back during the first stage of labor. During the second

9 stage of labor she continues to have that, but she develops

10 an urge to bear down which has to do with the baby's head

11 becoming so low it presses on the perineum and rectum, so

12 she would have that feeling of discomfort as though she

13 needed to bear down as if she were having a bowel movement.

14 Q Now, doctor, in your experience have you

15 ever known a baby to -- once the baby -- the umbilical cord

16 and the placenta have been delivered intact, have you ever

17 known the baby to bleed to death through the umbilical

18 cord?

19 A No.

20 Q Whose blood is the blood that is --

21 who does the blood belong to that is in the umbilical cord?

22 A That's the baby's blood.

23 Q Now, you have indicated that you have had

24 an opportunity to examine the autopsy protocol. Is that

25 correct?

1 A Yes.

2 Q Did you observe that there were 3 ccs of

3 air in the stomach?

4 A Yes, I did.

5 Q What meaning does that have to you,

6 Dr. Wasserman?

7 A That the baby swallowed some air after

8 it was born into an airy environment, which would be outside

9 of the uterus and the vagina.

10 Q With reference to the lungs it is

11 indicated that all five lobes of the lungs floated.

12 What does that mean to you, Dr. Wasserman?

13 A It means that the baby took one or several

14 breaths immediately upon being born or sometime after being

15 born.

16 Q Would the pink textures -- let me direct

17 your attention to this section of the autopsy report.

18 Doctor, are you aware what color the lungs of an

19 infant child are before the infant is born?

20 A No.

21 Q Well, strike the next question.

22 Now, you have already stated that this was a

23 full-term infant. Now, based on your observations of the

24 photographs and reading the autopsy protocol, were you able

25 to determine any congenital abnormalities in the child?

1 A No.
2 Q Were you able to determine any respiratory
3 blockage?
4 A No.
5 Q Were you able to determine any outward
6 marks of violence?
7 A No.
8 Q And you also indicated you have had an
9 opportunity to read the statement. Would this appear to be
10 a vaginal birth predicated upon the statement?
11 A Yes.
12 Q Now, Dr. Wasserman, when a baby is
13 delivered through a vaginal birth what effect does the cold
14 air in a room have on the baby as it comes into the world?
15 A It is one of the factors that stimulates
16 the baby to take its first breath.
17 Q Now, can you tell us to a reasonable
18 degree of medical certainty if this child was born alive?
19 A Yes. In my opinion it was.
20 Q Now, to a reasonable degree of medical
21 certainty what life signs would this child exhibit upon
22 coming into the world?
23 A The actual taking of the breath should
24 have been visible. The baby swallowed some air, which is
25 obvious from the air in the stomach, and so a swallowing

motion or movement of the head and throat should have been visible, and probably movement of the arms. It is hard to say.

Q What about the legs?

A The same as the arms. This could be variable.

Q Is it often also or do they have a tendency to urinate as well?

A In at least half the cases at time of birth, yes.

Q Now, doctor, in an unattended birth what should have been the procedure that was used with reference to an infant?

MR. STANT: Now, if it please your honor, doesn't that presuppose a person who is the unattended person knows something about this thing and has read or been exposed to it?

THE COURT: You will have a chance to cross-examine.

MR. STANT: Note my exception.

A Repeat the question if you would, please?

BY MR. SLIPOW:

Q What steps should be taken for the child's

1 well-being upon delivery in an unattended birth?
2 A The simple process of picking the
3 baby up and cleaning it off, not only cleaning off its
4 skin but cleaning out its mouth -- there is a great deal
5 of mucus in the baby's mouth, because it has been in a
6 watery environment the whole time it was in the uterus --
7 should often be enough -- would usually be enough to
8 stimulate the baby to breath and get its respiratory
9 system working enough to be alive.
10 Q What should be done with the temperature,
11 in other words, the body heat of the child, how should that
12 be preserved?
13 A The body temperature of a newborn
14 infant, which is 98.6 or the same as the mother when it
15 is born, drops very rapidly, so the baby needs to be covered
16 and protected so that its body temperature won't drop. It
17 can become depressed very quickly based on dropping body
18 temperature.
19 Q At the earliest convenient opportunity
20 what should be done with the child after it is delivered?
21 A I am not sure what you mean. You mean in
22 addition to what I have already said?
23 Q Yes.
24 MR. SWAIN: Your honor, objection.
25 May I approach the bench?

(The court and counsel for both sides conferred out of the hearing of the jury.)

BY MR. SLIPOW:

Q Doctor, you have indicated you have had an opportunity to read the statement. In your opinion did this child receive proper attention upon birth?

MR. STANT: Your honor please, my objection is a continuing objection in that field.

THE COURT: Based on the statement.

MR. SLIPOW: Yes, sir.

A No.

BY MR. SLIPOW:

Q Doctor, can you tell us to a reasonable degree of medical certainty if the child would have survived had it received proper medical attention?

A Based on everything I have in my opinion it would have survived had it received proper medical attention.

Q Now, Dr. Wasserman, predicated upon your reading of the statement and your observation and examination of the photographs and the autopsy protocol can you tell us

to a reasonable degree of medical certainty what the cause of death of the infant was?

A Yes, [redacted]

Q [redacted]

A I don't know.

Q Doctor, what effect would the infant being placed -- wrapped in the towels as indicated in the statement and being placed in a plastic bag [redacted] on the infant?

MR. STANT: I object to it, your honor, unless the doctor knows the condition of the child before it was placed.

THE COURT: Are you saying the child was alive or dead at that point?

MR. SLIPOW: If the child was alive.

MR. STANT: That's based on conjecture, your honor.

THE COURT: Overrule the objection.

MR. STANT: Note my exception.

BY MR. SLIPOW:

Q What effect would that have on the child [redacted]

A The [redacted]

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1 any outside air. That would mean there would be only a
2 limited amount of air in the bag.
3 Q What would be the eventual result?
4 A Suffocation.
5 Q Doctor, are you familiar with the term
6 an Apgar Test?
7 A Yes.
8 Q What is an Apgar Test?
9 A An Apgar Test is a score which was
10 developed by Dr. Apgar, a pediatrician, to evaluate the
11 newborn baby at birth where different aspects of the baby's
12 well-being, such as its color, its breathing, its crying,
13 its muscular movement is given a score with a maximum of
14 two per physical sign and a per score of ten.
15 Most newborn babies -- normal newborn babies will
16 have an Apgar score of eight to ten.
17 Q How significant is the Apgar score to you
18 in your work with the infant?
19 A It is simply a shorthand means of
20 informing my colleagues and those that will be taking care
21 of the mother and infant of the baby's condition immediately
22 at birth.
23 Q Are you familiar with meconium staining of
24 an infant?
25 A Yes.

1 Q What is that, doctor? What is
2 meconium staining or when an infant has meconium stain?
3 A Meconium staining of the infant at the time
4 of birth is one of the indicators of distress of the infant
5 in the uterus.
6 Q Does there appear to be any meconium
7 staining on the infant?
8 A Meconium stain on the infant that I see
9 is only localized around the buttocks where the stool would
10 have been passed. There is no generalized staining of the
11 skin.
12 Q If there was intrauterine passing of
13 meconium and it was passed while the baby was still inside
14 the mother would the entire body be stained?
15 A Yes.
16 MR. SLIPOW: Dr. Wasserman, thank you
17 very much.
18
19 CROSS-EXAMINATION
20
21 BY MR. SWAIN:
22 Q Dr. Wasserman, I gather from what you
23 said you don't know why the baby stopped breathing?
24 A No, I don't.
25 Q Now, doctor, you don't know when the baby

stopped breathing?

A No, [redacted].

Q Now, [redacted] baby [redacted]

was [redacted]

A [redacted] made

is [redacted]

quiet [redacted]

Q You [redacted]

or [redacted]

A No, [redacted]

Q Now, doctor, you noted several things that should be done for a baby when it is born, problematical care. That included I think the cleaning out of the throat, and how is that accomplished?

A It can be done with a washcloth. We usually use a suction apparatus in the delivery room. But home deliveries it can be done simply by putting the babies head down and cleaning out the mouth with a washcloth or any sort of cloth.

Q And is that done by -- is that getting down in the tracheal areas?

A Oh, no.

Q Still in that area?

A The baby usually takes care of getting that up.

1 Q If what is done?
2 A If it is stimulated. Usually stimulation
3 is enough for the baby to clear out the trachea.
4 Q And, doctor, if the baby is cradled in
5 the mother's arms its head tilted forward like that, held like
6 that as you cradle a baby how their head sort of falls
7 forward --
8 A With the back down.
9 Q -- back down, buttocks down, head sort of
10 braced, pushed forward like that, would that affect
11 respiration?
12 A Immediately upon delivery it might in
13 that mucus would not be able to by gravity run out of the
14 trachea and mouth, because it would have a tendency to run
15 back down the trachea, if I am understanding the position
16 you are describing.
17 Q Could that suffocate a baby?
18 A It is possible.
19 Q We have talked about meconium stains.
20 I think your questions were mostly confined to in utero. Don't
21 most babies after they are born discharge some meconium?
22 A No, not most. Some.
23 Q Some. And, doctor, what is the effect
24 of a precipitant rapid delivery of a baby on the skull
25 oftentimes?

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A [illegible] say a delivery which happens in a very rapid fashion, causes a sudden release of pressure on the baby's head as it is delivered which can cause depression of the baby.

Q Can cause depression of the baby. And what causes that depression? What happens to the baby's head that causes the depression? Does it change the shape of the baby's head, pressure on the brain?

A [illegible] baby's head [illegible] pressure on the head.

Q [illegible] when it [illegible]?

A Yes.

Q [illegible] depression [illegible] baby [illegible]?

A [illegible]

Q And if that occurs what would you say the Apgar score of the baby would be at that time, if you have got cyanotic --

A If the baby's blue and has very little respiration and it is arms and legs are flacid, then its Apgar would be three or four.

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1 Q Would that be a severely depressed baby?
2 A The one we have described, yes, would
3 be.
4 Q And what steps would you take?
5 A We would stimulate the baby.
6 Q How?
7 A By rubbing it off. Some doctors spank
8 babies, but that's not in too good of vogue now, so we
9 stimulate the babies other ways. We suction out the mouth
10 and nose and we give the baby oxygen.
11 Q And don't you occasionally -- of course
12 you keep the baby warm in a circumstance like that instead
13 of letting the baby lose any temperature. Losing temperature
14 would be very serious and dangerous to a baby in that state,
15 wouldn't it?
16 A Yes.
17 Q And you wouldn't give the baby -- or you
18 might give the baby some respiratory drug stimulation also,
19 would you not?
20 A If it had received narcotics during the
21 labor you might give it something to reverse those narcotics.
22 We don't have any respiratory stimulants I am aware of we can
23 give to babies.
24 MR. SWAIN: I am sorry. Just one
25 second, doctor.

BY MR. SWAIN:

Q Now, if these steps aren't taken with the baby severely depressed, doesn't that -- wouldn't that possibly produce death?

A It is possible.

Q Baby would die without medical assistance at that time?

A It is possible, yes.

Q You wouldn't leave a baby to die there; you would have to take positive steps to revive it, wouldn't you, to resuscitate it?

A Absolutely.

Q Doctor, what is meant by a coiling of the umbilical cord?

A Coiling?

Q Yes, sir.

A I am not sure what that term means.

Q All right. What is meant by the compression of the umbilical cord?

A Compression of the umbilical cord would be pressure on the cord during the process of labor and/or delivery, usually by the baby's head or by its shoulders, which would cut off the blood supply.

Q Would that be in the second stage?

A Could be. Could be throughout labor.

1 Q And the effect of umbilical compression
2 would be to --the baby would be somewhat asphyxiated or
3 anoxic, wouldn't it, at birth?
4 A Yes, it does depress the baby, both
5 before birth and at the time of birth.
6 Q And at the time of the birth it
7 would not be -- a baby in that state, anoxiated I suppose
8 you'd say, wouldn't the baby possibly pass off meconium at
9 that time?
10 A Yes.
11 Q After birth?
12 A Yes.
13 Q And all these different manifestations would
14 be evident, the cyanotic appearance, flacid, arms not moving,
15 and no respiration apparent?
16 A (Indicates yes.)
17 Q And, doctor, [redacted]
18 baby [redacted]
19 [redacted]
20 A [redacted]
21 Q Now, another question is this -- I am
22 sorry. I thought I had it.
23 THE COURT: Redirect?
24 MR. SWAIN: Your honor, I am sorry,
25 I haven't finished.

1 THE COURT: I am sorry, I thought you
2 said that's all you had.
3
4 BY MR. SWAIN:
5 Q Doctor, you said in this baby that you
6 couldn't tell whether it had one or several breaths based
7 on the pathology?
8 A In my opinion, yes.
9 Q Doctor, this pressure in the secondary
10 stage which causes the woman to press down, is that a
11 pressure which is similar to having a bowel movement, I
12 think you said?
13 A Yes.
14 Q And if the woman had been constipated
15 for a while she might assume she was having a bowel movement
16 almost unless she knew she were having a baby?
17 A Feels very similar, yes -- I am told.
18 Q Pardon me, I didn't hear you.
19 A I said I am told it feels very similar.
20 I couldn't from my own experience tell you.
21 Q Doctor, when you examine a woman when she
22 is pregnant do you conduct a pelvic examination, also?
23 A Yes.
24 Q And what does that pelvic examination
25 reveal?

1 A The pelvic examination tells us not only
2 about the health or disease state of the vagina and cervix,
3 but tells us about the state of the uterus, and in the
4 pregnant woman could show an enlargment of the uterus that
5 would be parallel with the degree of pregnancy that she
6 was at.
7 Q Would a pelvic exam -- okay.
8 Is it possible to conduct a pelvic examination
9 and realize that a woman is pregnant during the pelvic when
10 that's being done?
11 A To make the diagnosis of pregnancy?
12 Yes. From six weeks on.
13 Q So normally with a pelvic it would be
14 revealed to a physician --
15 A That's correct.
16 Q That the woman is pregnant? If she was
17 seven months pregnant?
18 A No question about it.
19 Q Now, I think you said that you don't
20 believe the women who have told you they are pregnant.
21 Could you tell us what a phantom pregnancy is?
22 A Pseudocyesis is what you are referring to.
23 This usually is a psychological state that occurs in a woman
24 who wants very much to be pregnant and in ways that are not
25 quite clear to medical science is able to mimic that pregnancy.

to the point that she actually has growth of her abdomen, cessation of periods, growth of her breasts, sometimes with lactation.

Q And [redacted]

A Ye[redacted]

Q But if I understand you, couldn't that happen in reverse, a woman would not think she was pregnant?

MR. SLIPOW: Judge, I am going to interpose an objection. I think we are getting into psychiatry at this point.

MR. SWAIN: I think he has testified to psychiatry, your honor.

THE COURT: What is that?

MR. SWAIN: I think he's testified to some psychiatry. He didn't believe based on certain women's --

THE COURT: It is cross-examination.

A Repeat that, if you would, please?

BY MR. SWAIN:

Q Well, we have talked about the phantom pregnancy and a woman believing she was actually pregnant. Don't you think the reverse could be true also, the woman would not think she was pregnant?

A "Believe" is a funny word, but I have to answer that question yes. I think that she would be convinced that she wasn't by a series of psychological steps to not face a fact that was too painful to face.

Q Therefore she wouldn't realize she was pregnant?

A (Witness nodded.)

Q And if the doctor had told her she weren't pregnant or she had had pelvic examinations fairly far along during her pregnancy, that would reinforce that belief she wasn't pregnant, wouldn't it?

A Yes, it would.

Q And if a woman then had a baby in that state I think you indicated she would be appalled, frightened, probably bewildered, and I guess dazed or whatever you call it?

A Yes. A woman having a baby is frightened anyway, but when she didn't expect it she would be very frightened.

Q Women are also very frightened when they have miscarriages and don't know what to do about it at that time, aren't they?

A That's exactly true.

Q They don't always use the best judgment at that time, do they?

A No.

Q Do you think that those psychological changes affect them psychologically, also?

A Yes, I do.

Q Doctor, do you know [illegible] what percentage [illegible] medical assistance or some medical assistance at birth?

A I would have to approximate that from my own experience, which has been approximately a thousand deliveries at this point in my career, and I would say no more than one in twenty-five or thirty.

Q About five percent [illegible] would be?

A (Indicates yes.)

Q Doctor, do you know what percentage of infants die at childbirth?

A We talking across the board now or in a hospital situation or --

Q I am talking across the board, hospitals and to children born with midwives and born without any care at all, total?

A Yeah, the mortality rate for newborns is about .4 to .5 percent in this country.

Q And that includes being born in the hospital with assistance?

A Yes.

Q Or with a midwife?

A Yes.

Q And would you say the percentage would be much higher when a child is born without any medical assistance by the mother and nobody else around it?

A (Indicates yes.)

Q Lots of things can cause death but nobody can kill. Is that correct?

A That's correct. It would be higher.

MR. SWAIN: Thank you, doctor.

REDIRECT EXAMINATION

BY MR. SLIPOW:

Q Doctor, you indicated that when a baby is born in a depressed state one thing that you do is try to stimulate the child.

Now, would holding the child upside down and spanking the child have a tendency to stimulate the child?

A Yes, it would.

Q Doctor, in your experience in treating pregnant mothers, with what degree of frequency does a woman have a regular menstrual cycle at regular intervals each month, from four to six days with a heavy flow on the second

1 day, for the first six months of pregnancy?
2 A This is very infrequent. I don't know
3 what the figures would be on it, but I have again only seen
4 one in my experience.
5 Q One in a thousand in your experience?
6 MR. SWAIN: Your honor -- I am sorry.
7 Is that your answer?
8 A Um-hum.
9
10 BY MR. SLIPOW:
11 Q Now, Mr. Swain asked you about a certain
12 psychosomatic syndrome and you gave a name for it which I am
13 not going to begin to pronounce. What was it?
14 A I am going to have to spell it for
15 her, too, I bet you. Pseudocyesis.
16 Q He asked you if it would be possible to
17 have a psychological regression in the opposite extreme,
18 believing you don't want to be pregnant and coming up with
19 that belief.
20 Now, with the syndrome that you suggested there
21 are actually physiological changes. Is that correct?
22 A Yes.
23 Q Okay. Now, to your knowledge you do not
24 or do you -- can a woman who does not want to believe she is
25 pregnant regress the physiological changes of pregnancy?

1 A No, she can't.

2 Q Now, doctor, if there was any mucoid

3 substance in the tracheobronchial tree and the child was

4 held upside down and spanked would this have a tendency to

5 drain the substance?

6 A Yes.

7 MR. SLIPOW: Thank you, doctor.

8

9

10 RECROSS-EXAMINATION

11

12 BY MR. SWAIN:

13 Q You indicated that some women have some

14 spotting or bleeding even after -- or menstrual cycles even

15 after they are pregnant?

16 A Yes.

17 Q I think you said one you had seen like

18 that. Is that correct?

19 A I was talking about the type of period

20 that Mr. Slipow was describing, which is a full menstrual

21 flow lasting four to five days.

22 It is not unusual to see a woman have some

23 bleeding for say a day on a monthly basis through all or part

24 of her pregnancy. Certainly we see that much more commonly

25 than one in a thousand.

1 Q And, doctor, if a woman is pregnant,
2 six, seven months pregnant, and begins to take birth
3 control pills what effect would that have?
4 A None on her or the pregnancy at all.
5 Possibly effects on the newborn.
6 Q What sort of effects?
7 A The birth control pills, one of the
8 hormones in that can have masculinizing effects on a female
9 infant.
10 Q All right. And don't -- doesn't birth
11 control pill when it is started in a woman who is in the
12 latter part of pregnancy also give an onrush of more profused
13 bleeding?
14 A I don't see why it would, Mr. Swain. I
15 have no experience with birth control pills being started in
16 the latter part of pregnancy at all.
17 Q It is very unusual?
18 A It is much more common that a woman would
19 not know she is pregnant so she would continue to take pills
20 during the early part of her pregnancy, but birth control
21 pills do not cause bleeding during any part of pregnancy.
22 Q ~~All right. What are the symptoms of~~
23 ~~birth control pills once you start taking them? What does~~
24 ~~a woman feel like?~~
25 A ~~Very similar to those of pregnancy.~~ 155

1 Q She would feel like she was pregnant when
2 she started taking them. Would that be sort of engorged
3 breasts; would that occur?
4 A Usually a woman doesn't have all the
5 signs I described for early pregnancy, but it is not uncommon
6 for her to have one of the signs of breast engorgement or
7 nausea.
8 Q One or the other?
9 A Um-hum.
10 Q Doctor, you have answered to Mr.
11 Slipow that a woman cannot stop any manifestations of the
12 pregnancy. I have forgotten how you phrased it.
13 A I have forgotten how he phrased it. But --
14 Q That can't be repressed, those manifesta-
15 tions that occur?
16 A (Indicates yes.)
17 Q But isn't it true that in large, heavy-
18 set women they aren't apparent or not as readily apparent?
19 A The physiologic changes of pregnancy?
20 Q To look at a woman, yes.
21 A The growth of her abdomen would not be
22 apparent until the late stages of pregnancy.
23 The other signs that I described that would be
24 more apparent to the woman herself should be just as real.
25 Q Would that be the breasts?

1 A And the movement of the baby.
2 Q And could that movement of the baby
3 be attributed to -- let me ask you this: Aren't the lower
4 intestines and upper intestines in the same location as the
5 baby?
6 A Yes.
7 Q Could those pains or those feelings
8 have been attributed to terrible gas pains or constipation
9 pains and a woman be mistaken?
10 A (Indicates yes.)
11 Q Your answer is yes?
12 A Especially during the first stages of
13 pregnancy it is not unusual at all to mistake it both ways.
14
15 REDIRECT EXAMINATION
16
17 BY MR. SLIPOW:
18 Q Doctor, what about the last half or later
19 stages of pregnancy, the child's movement, could they be
20 mistaken for gas pains during the seventh, eighth, ninth
21 month of pregnancy?
22 A In my opinion, no.
23 Q Doctor, what if the birth control pills
24 were not initiated until the eight month or seven and a half
25 month of pregnancy? What effect would that have on a male

child?

A None.

MR. SLIPOW: Thank you, doctor.

MR. SWAIN: Thank you. Thank you, Dr. Wasserman.

THE COURT: You may step down. You may be excused.

Ladies and gentlemen of the jury, we will recess for lunch. Be back at 2:30.

Please do not discuss this case with anyone, and when you come back to this area come directly to the jury room.

(At 1:15 P.M., June 3, 1977, the court recessed, and reconvened at 2:37 P.M., June 3, 1977.)

THE COURT: Bring the jury out, please.

(The jury returned to the courtroom.)

THE COURT: Commonwealth may call its next witness.

MR. SLIPOW: Dr. David Sarrett.

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1 DAVID SARRETT, called as a witness on behalf
2 of the Commonwealth, having been first duly sworn, was
3 examined and testified as follows:
4
5 DIRECT EXAMINATION
6
7 BY MR. SLIPOW:
8 Q Doctor, would you be kind enough to
9 tell us your name and spell your last name for us?
10 A David Lee Sarrett, S-A-R-R-E-T-T.
11 Q Doctor, what type of physician are you?
12 A I am a board certified obstetrician/
13 gynecologist.
14 Q Could you speak a little louder?
15 A I have got a paralyzed vocal cord.
16 I will do the best I can.
17 Q Doctor, would you be kind enough to
18 tell us what your educational background and your medical
19 training has been?
20 A I graduated from Hahnemann Medical College
21 in 1959 and had a year of internship and three years specialty
22 training in obstetrics and gynecology at the Medical College
23 of Virginia in Richmond.
24 I was an obstetrician in the Army, assistant
25 chief of obstetrics Fourth Yukon Command in Alaska, and I

have practiced as a private physician in obstetrics for eleven years; and at this point I am not practicing obstetrics because I had a medical problem which has sort of made me give up surgery.

Q Okay. But do you still keep current with the periodicals?

A Yes, I do.

Q What is the field of obstetrics, Dr. Sarrett?

A It is the care of women who are pregnant or trying to get pregnant or who are delivering babies and the immediate care thereafter.

Q And you are certified to practice obstetrics in the State of Virginia, are you not?

A Yes -- well, yes.

MR. SLIPOW: Answer any questions Mr. Swain or Mr. Stant has at this time.

VOIR DIRE EXAMINATION

BY MR. STANT:

Q Doctor, your expertise in the field of pathology, have you had any of that recently?

A I had training as a resident in pathology. The official part of that was in 1964. I do some work with

1 the microscope now in one form of pathology, but as a
2 pathologist, I don't do pathology.
3 Q Now, as to forensic pathology, doctor,
4 you have not been in that --
5 A No.
6 Q -- at any time.
7 MR. STANT: I haven't any other
8 questions, your honor.
9 THE COURT: You may proceed.
10 MR. SLIPOW: Thank you, your honor.
11
12 DIRECT EXAMINATION (CONT'D)
13
14 BY MR. SLIPOW:
15 Q Now, Dr. Sarrett, I am showing you a
16 handwritten document which is a statement and I want you
17 to take a look at the statement and I ask you if you had
18 an opportunity to read the statement in a typewritten form
19 on a prior occasion?
20 A Yes.
21 Q Okay. This is the statement of the defend-
22 ant to Detective Ernest Marrow of the Virginia Beach Police
23 Department.
24 Now, I show you this two-page document that is
25 the autopsy protocol performed by Dr. Charles Springate and

1 I ask you if you had an opportunity to examine this autopsy
2 protocol on a prior occasion?
3 A Yes.
4 Q Now, I direct your attention to four
5 photographs that have been introduced into evidence,
6 Commonwealth's Exhibits Number 17 and 21, 22, and 23. Have
7 you had an opportunity to examine these photographs on a
8 prior occasion?
9 A I have, yes.
10 Q Now, Dr. Sarrett, what is the normal
11 gestation period for a full-term baby?
12 A It is two hundred eighty days, give or
13 take two weeks.
14 Q Okay. Now, based on your observation,
15 the photographs, and reading the autopsy report, are you
16 able to determine if the infant depicted in the photographs
17 was in fact a full-term baby?
18 A The baby looks full-term.
19 Q What do you base this observation on, Dr.
20 Sarrett?
21 A The weight was seven pounds. The baby
22 does not have the look of a premature baby, and if you
23 would like for me to describe what a premature baby looks
24 like I will try to do that for you.
25 Q If you would be kind enough to?

A Premature babies look like little old men is the classification, and the photography may not be good enough, but -- to make a statement about body hair, but prematures have more body hair, have less subcutaneous fat tissue than this baby appears to have, and it looks mature.

Q Okay. Now [illegible] a child [illegible] present on and around the body of the [illegible] of the delivery [illegible]

A There might be fluid. There may be a whitish substance which is generally thought to be a lubricant for delivery. There may be some blood. There may be a greenish [illegible] meconium.

Q Okay. Now, disregarding the fourth substance, the meconium, for a second, do you see any of these other substances present on the body of the infant depicted?

A I see some blood and some meconium, and that's all.

Q All right. Now, the whitish substance that you refer to, would that be vernix?

A Vernix, yes.

Q Dr. Sarrett, what is cyanotic coloring?

A That's blue -- a bluish color.

Q And is it a fairly common occurrence for

1 a baby to be born with a bluish tint?
2 A It is fairly common for all newborns to
3 be bluish.
4 Q In your experience how long does it
5 generally take for this coloration to disappear?
6 A Well, we like to see it disappear from
7 the body within a few seconds and from the hands and feet
8 within two or three minutes.
9 Q Now, Dr. Sarrett, would you explain to
10 us the steps involved in labor and delivery of a child?
11 A Well, labor --
12 Q What sensations the woman goes through
13 is what I am primarily concerned with.
14 A She would go through sensations of
15 cramping in the abdomen. She may have some frequency and
16 urgency and feeling that she needs to empty her bladder.
17 She may have an urge to -- the feeling of need to move the
18 bowels. And later on in labor when the baby's on the path
19 down the birth canal to be actually born she would have a
20 very strong urge to push, bear down, strain.
21 Q Now, for a first-born child could you
22 give us a time range that labor is going to take place in?
23 A Not less than three hours, normally, and
24 not more than twenty hours, normally.
25 Q What degree of pain is involved during

1 these labor processes?
2 A This varies from individual to individual,
3 but I would say it would be rather uncomfortable.
4 Q Now, you have indicated that you have had
5 an opportunity to observe the photographs. Based on this
6 examination -- and I realize all you have in front of you is
7 the photographs -- can you see any impingements or any
8 difficulties with the umbilical cord on the child?
9 A No.
10 Q Okay. Does the placenta appear to be
11 normal to you, doctor?
12 A The placenta is normal, but a normal
13 variation.
14 Q Is the cord attached to the placenta?
15 A The cord is attached to the placenta.
16 Q So there was no premature withdrawing of
17 the cord from the placenta, then?
18 A No.
19 Q Now, you have indicated you have had an
20 opportunity to examine the autopsy protocol. And I direct
21 your attention to the part that indicates that there are
22 3ccs of air in the baby's stomach. What does that mean to
23 you, doctor?
24 A It means that the baby swallowed some
25 air.

1 Q When could the baby have swallowed the
2 air?
3 A Only after it was outside the mother.
4 Q Now, does the autopsy report in your
5 examination of the photographs reflect any congenital
6 abnormalities in the child?
7 A No.
8 Q Does it reflect any respiratory blockage?
9 A No.
10 Q Does it reflect any outward markings of
11 violence?
12 A I am not sure what you mean?
13 MR. SWAIN: Your honor, I have got an
14 objection. We have heard what's in the medical
15 report three or four times now already, and
16 I don't see any need to go over it again and
17 again with another physician, what's written in
18 the report. It is part of the evidence now.
19 I don't see why we should continue to go over
20 it, and I object to continuation of going over
21 it.
22 THE COURT: He says he has reviewed
23 the report, so if you have specific questions
24 they should be asked.
25

BY MR. SLIPOW:

Q Doctor, predicated on all the information that's available to you are you able to say with a reasonable degree of medical certainty if the child was born alive?

A I believe the baby was born alive.

Q What do you base this belief on, doctor?

A The medical report said that both lungs floated in water. It is the habit to see if lungs float to see if the baby took a breath when doing a postmortem examination on babies. And if the baby has not breathed the lungs should not float. If the baby has breathed the lungs should float.

Q Now, you indicated that two of the photographs or several of the photographs depict meconium?

A Yes.

Q Can you tell us with a reasonable degree of medical certainty if the baby were alive when it defecated the meconium?

A I would say the baby was alive when it passed this meconium. If that's the towel that was around the baby, then I would say he was alive when the towel was wrapped around him.

Q What do you base that on, doctor?

A Well, there's a large volume of meconium -- looks like a large volume in the picture, and

the large volume would have to be I would say passed after. I mean I can see where a small amount might be on the outside of the baby before it was wrapped in, but this looks like a large amount, so I would say he had to pass it.

Q Okay. Now, doctor, if as you indicated that the baby was alive when it was wrapped in the towel and it was sealed in a plastic bag subsequent to that, what would be the cause of the death of the infant, doctor?

MR. STANT: Your honor, I object to this question. There is no evidence of that --

THE COURT: Sustain the objection.

BY MR. SLIPOW:

Q [redacted]

MR. STANT: With reasonable medical --

BY MR. SLIPOW:

Q [redacted]?

A I would say that the -- under those circumstances I would say that this was an anoxic -- a lack of oxygen death.

Q Okay. Are you in a position to tell us

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1 [redacted]

2 A [redacted]

3 [redacted]

4 MR. STANT: If it please your

5 honor, I ask that be stricken.

6 THE COURT: You may cross-examine

7 on it.

8 MR. SLIPOW: Thank you very much,

9 doctor.

10

11 CROSS-EXAMINATION

12

13 BY MR. STANT:

14 Q Doctor, you state that newborn babies

15 are bluish. Is that correct?

16 A Yes.

17 Q And what does that indicate at that

18 point?

19 A There is a -- they are about -- they are

20 not well oxygenated in terms of the outside environment at

21 the time of birth. But they are somewhat less oxygenated

22 inside the mother.

23 Q All right, sir. Now, at that point

24 when they come out of the mother if they continue to remain

25 blue what cause do you attribute that to?

1 A Poor oxygenation.
2 Q All right, sir. And what do you do to give
3 them good oxygenation?
4 A You clear the airway and give them oxygen
5 and give them stimulation.
6 Q All right, sir. And if somebody has a
7 baby that they are holding in their arms lying on a towel
8 and that baby is not getting any oxygen and they don't know
9 what to do with that baby, what would occur to that baby?
10 A If the baby were --
11 MR. SLIPOW: Judge, excuse me. I
12 think Mr. Stant is probably doing what he
13 objected to me doing. He's included the
14 fact that we can't make a determination as
15 to whether this baby was getting any oxygen
16 or not.
17 Now, he can ask him a question as
18 to what would happen if the baby was
19 wrapped in towels and held in the mother's
20 arms.
21 THE COURT: Are you objecting?
22 MR. SLIPOW: Yes, sir.
23 THE COURT: Why don't you just
24 state, "Judge, I object"?
25 MR. SLIPOW: I object.

THE COURT: I overrule your objection. Otherwise you are arguing.

BY MR. STANT:

Q Would you go ahead answer that question, doctor?

A What would happen if the baby -- would you mind --

Q I ask you if a mother who had just had a baby by herself held the baby in her arms lying on a towel and that baby was not getting any oxygen, what would occur to that baby?

A If the baby were not getting any oxygen the baby would not live.

Q It would die. And at that time would it pass the meconium that was inside of it?

A Not necessarily, but possibly some.

Q Well, does that indicate that some meconium was passed?

A This picture?

Q No, the one on the right? Or either that one.

A I guess those --

Q This black spot here and this black spot here, does that indicate meconium to you?

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A It looks like meconium, yes.

Q All right, sir. And I ask you at that time won't the baby pass the meconium?

A It could possibly pass meconium, yes.

Q All right, sir. Now, you don't know whether or not that is what occurred, do you?

A No.

Q And any speculation -- any statement by you that the baby stopped breathing after it were placed in a green plastic bag would be strictly speculation on your part, wouldn't it?

A I am moot and I guess if I have to answer yes or no I have to -- I didn't say anything about a green bag, but I would say it would be speculation if I can only answer yes or no.

Q I think that is a yes-or-no answer.

Now, doctor, let me ask you this: How many babies have you ever seen after they were born to a mother who was seventeen years of age and was alone in a home by herself? How many have you then attended to?

A I don't know.

Q Any?

A I would say yes.

Q Did those babies have their mouths cleaned out of the mucus that's usually found in the mouth

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1 of the baby?

2 A No.

3 Q Did you have to clean the mucus out of

4 their mouth?

5 A It is an obstetrical move to check airways

6 on newborns.

7 Q And, doctor, if the airways are clogged

8 with mucus what would that do to a baby?

9 A It would -- how clogged? If it is somewhat

10 clogged it would cut down oxygen flow. If it is totally

11 clogged it would cut off oxygen flow.

12 Q And what would occur if a girl who

13 doesn't know she is pregnant in nine months is in the

14 bathtub taking a hot bath and she feels like she is terribly

15 constipated and she goes to the toilet, which is within a

16 few feet, and immediately a baby comes out of her body, what

17 occurs to the baby with the precipitous birth like that?

18 A I would have to speculate on that, I

19 guess.

20 Q Well, doctor, you have been speculating

21 so far, so --

22 A Well, I don't think I can answer that

23 question with a specific answer.

24 Q All right, sir. Let me ask you this:

25 When a baby comes out almost instantaneously from a mother's

1 body without anything further, does anything occur to its
2 head as it is pressed between the contractions of her body?
3 A Generally the baby's head forms to the
4 birth canal over a labor situation. Generally it is what you
5 call molded, molded to the pelvis.
6 Now, I don't know if I have seen molding or not.
7 Q Now, doctor, a precipitous birth, does
8 that usually cause a depressed baby?
9 A Well, you can't ever say never.
10 Q Have you ever seen a precipitous birth
11 that occurred while a girl was going to the hospital or
12 arriving in an ambulance?
13 A Yes.
14 Q And have any of those babies had what
15 we call depression?
16 A I would say that generally they'd either
17 be dead or alive.
18 Q Well, in your own words, because of that
19 precipitous birth and the birth while they are on their way
20 to the hospital they either live or they die. Is that correct?
21 A No, sir, not because of the precipitous
22 birth.
23 Q Well, what -- because of what, doctor?
24 A There are many potentials for paranatal
25 fatalities, most of which have to do with problems in the

1 pregnancy, not necessarily with problems during labor and
2 delivery.
3 Q Well, is it more likely that these
4 problems occur in a person who has never received any
5 advice or help from a doctor --
6 A More likely.
7 Q -- during the entire pregnancy? It
8 is more likely, is it not?
9 A Yes.
10 Q And, doctor, as a baby comes out of the
11 mother, if the umbilical cord is squeezed or compressed by
12 reason of the birth, what then occurs to the baby?
13 A A situation called fetal distress.
14 Q And when fetal distress happens does that
15 baby come out appearing blue?
16 A As --
17 Q And the loss -- the lack of blood flowing
18 from the mother's body to the baby's body, is that part of
19 the fetal distress -- the cause of the fetal distress?
20 A I am not sure I understand that.
21 Q Well, doctor, when this pressure builds
22 up on the umbilical cord what causes fetal distress?
23 A Unless a piece of cord is attached as
24 abnormally presenting there is no abnormal pressure on the
25 cord.

1 Q But let's suppose that in this birth
2 there was pressure on the cord. What causes the fetal
3 distress?
4 A Okay. The blood from the placenta can't
5 return to the circulation of the fetus.
6 Q All right, sir. And does that hurt the
7 respiratory system of the child?
8 A Early it may [illegible]
9 of the child [illegible] respiration of the
10 child.
11 Q All right, [illegible] don't know
12 whether that occurred in this child or not, do you?
13 A No.
14 Q And, doctor, you don't know whether or
15 not when the mother was holding the child in her arms the
16 child had stopped bleeding, breathing or not, do you?
17 A No.
18 Q When the mother says -- and I assume you
19 read all of the statement; you said you did.
20 When the mother said that the child stopped --
21 "He wasn't breathing and it scared me," if he wasn't breathing
22 what does that indicate to you, doctor, in all fairness?
23 A If she said it wasn't breathing or if
24 it wasn't breathing?
25 Q Doctor, we are just -- you took this 176

1 statement and you made a definitive statement on the basis
2 of that statement and those pictures. In that statement --
3 I want the same courtesies for her -- she said the child
4 wasn't breathing. Now, if it wasn't breathing what does
5 that mean to you? You have assumed everything else was
6 true. Now, what does that mean to you?
7 A If the baby in fact wasn't breathing it
8 wasn't breathing.
9 Q And that means it was dying or it had
10 died, doesn't it, doctor?
11 A That would mean that that would be one of
12 the possibilities.
13 Q Is that a possibility or if you are not
14 breathing is that a probability?
15 A If you are a baby it is one of the
16 possibilities.
17 Q You mean if you don't breathe it is
18 possible you are still going to live, doctor?
19 A It is under these circumstances. If
20 it didn't have its airway clogged, which the pathologist
21 said it didn't.
22 Q Well, it didn't four days later, doctor,
23 after it had been turned around and turned upside down and
24 what have you. But I am talking about at the time in the
25 house. You have no way of knowing whether the throat was

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1 clogged or the nose was clogged so the baby couldn't breathe
2 or not, do you?
3 A Only by what I read in the path report.
4 Q I am asking you, doctor, outside of that
5 you yourself don't know, do you?
6 A I have no way of knowing outside of
7 what I read in this piece of paper.
8 Q All right. Now, when you say that it
9 is indicated that the baby swallowed air, the baby could
10 have taken one breath or several breaths. Is that correct?
11 A I think if it swallowed air it would have
12 swallowed air. If it took several breaths it would expand
13 its lungs.
14 Q You differ from some of the other doctors
15 then? You say it had to take several breaths before the
16 lungs could be expanded?
17 A I said if it swallowed air it swallowed
18 air.
19 Q You mean to go down in the stomach?
20 A Yes.
21 Q Let's say it took one deep breath. Can't
22 one deep breath fill my lungs?
23 A One deep breath could fill your lungs.
24 Q Could it fill the baby's lungs?
25 A Probably not.

1 Q Well, could two deep breaths fill a
2 baby's lungs?
3 A The lungs usually expand over a period of
4 hours I understand.
5 Q Over a period of hours?
6 A But I don't see any statement that says
7 how full they were. Just said they floated in water.
8 Q So you don't know how full they were at
9 all?
10 A That's right.
11 Q All right, sir. Now, doctor, do you
12 know of your own knowledge and can you tell this jury that
13 you know the time of the death of that baby?
14 A You mean -- time, what you mean? You
15 mean immediately after birth or what?
16 Q Doctor, based on these pictures and
17 that statement can you under oath tell us when that baby
18 might have died?
19 A I can't tell you when the baby might
20 have died.
21 Q All right, sir. Now, if you say the
22 baby died from lack of oxygen, outside of the fact the
23 baby is dead what other factors tells you that the baby
24 died of a lack of oxygen?
25 A I believe the meconium staining on the

towel.

Q How does that tell you, doctor -- and this is of great interest to me -- how [redacted] being [redacted] of [redacted]

A An[redacted]

Q How about babies that die because their heart isn't beating? They pass meconium too, don't they?

A Anoxic babies pass meconium. If --

Q [redacted] a b[redacted]g?

A [redacted] meconi[redacted]

Q All right, sir. So there could be two causes then, a lack of oxygen or the fact the heart wasn't beating. Correct?

A No. The fact that the heart isn't beating is the cause of anoxia.

Q All right, sir. And I am asking you if the heart had stopped beating and it caused anoxia, then meconium would pass, would it not?

A Probably so.

Q All right, sir. Now, doctor, you have no idea how long this girl may have held that baby, do you?

A Are you talking about sitting holding the

1 baby?

2 Q Yes, sir.

3 A No, I don't have any idea.

4 Q And you have no idea whether or not

5 while she was holding that baby it died because of the

6 fact its head was tilted forward and it might have had mucus

7 in its mouth, do you?

8 A No, but can I refer back to this report

9 that she said?

10 Q This report that she said? Yes, sir.

11 A Well, she said she wrapped it immediately

12 in a towel I thought.

13 Q All right, doctor, what does that mean

14 to you? Does that mean she wrapped it with its head in the

15 towel or does that mean she just put a towel under it and

16 covered it so it wouldn't be warm -- wouldn't be cold? You

17 see, anything in there that says "I covered its head up"?

18 MR. SLIPOW: Objection; he has

19 asked a question that the doctor hasn't

20 had an opportunity to respond to.

21 MR. STANT: Fine. Let the doctor

22 answer, then I will --

23 A Says "He wasn't breathing, I was scared,

24 so I wrapped it in a towel fast as I could and put it in

25 the garbage pail."

1 Doesn't say "I wrapped it up and held him"; says
2 "I put it in a garbage pail."
3
4 BY MR. STANT:
5 Q I understand that, but we will go into
6 that what the officer didn't ask or didn't write down later.
7 A Okay.
8 Q But when they said that the baby was
9 wrapped in swaddling clothes and laid in a manger, did that
10 mean that they had covered its head up so it would smother
11 to death?
12 A I wouldn't think so.
13 Q Well, aren't you reading --
14 MR. SLIPOW: Judge --
15 THE COURT: Cross-examination.
16
17 BY MR. STANT:
18 Q Aren't you reading something in here
19 that doesn't appear here?
20 A I was reading the statement.
21 Q Doctor, read it again and tell me where
22 it says his head was covered up? Or does it say it was
23 wrapped in a towel?
24 A It says "It wasn't breathing and it scared
25 me, so I wrapped it up in a towel as fast as I could and I

1 put it in a garbage pail and then got a garbage bag and put
2 it in it and --"
3 Q All right, sir. And where in there,
4 doctor, does it say that she wrapped it in a towel to keep
5 it from breathing?
6 A Doesn't say that.
7 Q All right, sir. It does, however, say
8 that the baby was not breathing before she did anything else
9 with it, doesn't it?
10 A That's what the statement says.
11 Q All right, sir. And you can't take the
12 part you might like and disregard the other, can you, doctor?
13 A Well, I --
14 Q Pardon?
15 A I don't think that you can tell me that
16 I like one part of it as opposed to another part. I don't
17 particularly like any of it.
18 Q I understand that. But you are basing
19 your statements on one part and ignoring the other part,
20 aren't you?
21 A No, sir; you said I took a part that
22 I liked, and I don't like any of it.
23 Q Well, I am asking you once more then if
24 the baby had stopped breathing what does that indicate to
25 you?

1 A Well, I don't mean to make anything
2 funny out of this, but it means that the baby stopped
3 breathing.
4 Q Well, what does that do, doctor, in
5 medical terms? If a baby stops breathing what does that
6 indicate to you?
7 A It indicates a problem with the baby.
8 Q All right, sir. And that's what doctors
9 are for, isn't it?
10 A Yes.
11 Q And they need a doctor then to see what's
12 wrong with the baby and to see if you can start it breathing
13 again, doesn't it?
14 A We feel -- in the medical business we
15 feel that's a help.
16 Q All right, sir. Well, doctor, let me ask
17 you, what about all these crib babies that have died over the
18 years and mothers have gone to jail about them? Have you
19 ever determined why they stopped breathing?
20 A No.
21 Q You are still trying to find out why
22 crib babies die, aren't you?
23 A Well, that's not exactly in my field.
24 Q I understand that.
25 A That's pediatrics.

1 Q I understand, but babies die and people
2 have gone to jail and now you have --
3 MR. SLIPOW: Objection.
4 THE COURT: I don't think the question
5 is quite proper.
6 MR. STANT: Well, it is certainly
7 logical cross-examination.
8 THE COURT: Are you implying to the
9 witness that babies die without cause and
10 people go to jail?
11 MR. STANT: Yes, sir.
12 THE COURT: I sustain the objection.
13 MR. STANT: Let me just ask this
14 question --
15 MR. SLIPOW: Judge, I think this is
16 something we are going to have to do outside
17 the presence of the jury.
18 THE COURT: I have already sustained
19 the objection.
20 MR. STANT: May I ask this question,
21 judge?
22 And before you answer give opportunity
23 to these folks to object.
24
25

BY MR. STANT:

Q [redacted] in the [redacted] medical science [redacted] dying?

A [redacted].

Q Now, doctor, if we don't know why these babies die in the crib you don't know when or why this baby died, do you?

A Is that a cause and effect, sir?

Q Sir?

A You said --

Q Do you know when that baby died, doctor?

A No. I don't know for sure when this baby died.

Q All right, sir. And you can't say for sure when it died?

A (No reply.)

Q Pardon?

A I don't -- I can't say for sure when it died, no.

Q [redacted] then [redacted] any [redacted]

A [redacted]

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1 Q All right, sir. Now, doctor, when
2 you said that a newborn baby has vernix on it, do all
3 newborn babies have vernix on it?
4 A No.
5 Q Some babies do and some babies don't?
6 Is that a fact?
7 A That's right, yes.
8 Q Well, then, there is a difference of
9 opinion between you and some of the other doctors. Is
10 that logical or tell me the reason for that?
11 A Well, I don't know about the differences
12 of opinion that have been expressed.
13 Some babies are cleaner than others. Some may
14 not have vernix, some have vernix.
15 Q Okeydoke. Now, doctor, when you have
16 stated that these babies that are unattended at the time
17 of birth either live or die, is there a higher percentage
18 of babies that are unattended at birth die than those that
19 are attended in a hospital?
20 A Yes.
21 Q And that's for a number of causes,
22 including the proper positioning of the baby at the time
23 of birth?
24 A Proper positioning?
25 Q Yes, sir.

A I am not sure that proper positioning is essential.

Q Doctor, when a baby is delivered is it delivered so the head is down and the buttocks is up so the mucus will run out of its mouth?

A As a rule.

Q All right, sir. And is it then the best practice to have the baby's head a little bit back so that the air passage is straight and the baby can breathe easier?

A In an obstetrical situation, yes.

Q All right, sir. And would you expect a seventeen-year-old to know all these things?

A No.

Q And [illegible] year-old who does not even know she is pregnant to know the proper things to do with a baby at the time of delivery?

A [illegible]

Q And, doctor, if that happened to a person after nine months and they never knew they were pregnant and they had been to a doctor who told them they were not pregnant, what would be the shock to the lady that had that type of a delivery?

A I would say it would be rather shocking. But I think you would have to know the person.

1 Q Well, if it is a stolid person and a
2 person who is well orientated you are saying the shock
3 wouldn't be as great as it would be on somebody who is
4 highly emotional. Is that correct?
5 A I think if a person all of a sudden
6 had a baby and didn't know she was going to have one it would
7 be rather shocking most likely.
8 Q All right, sir. Now, doctor, have you
9 ever had anything like that in your practice?
10 A Yes.
11 Q And was that shocking to that lady?
12 A Surprising.
13 Q And, doctor, I would like to laugh, but
14 I have a serious problem.
15 A Okay, I understand.
16 Q So I am sorry if you think I am stone-
17 faced, but --
18 A That's all right.
19 Q I am usually a happy person, but not when
20 I am trying a case.
21 Now, a lady under those conditions normally doesn't
22 act as natural as the lady who is waiting to have the baby
23 and happy that it is going to come into the family and all
24 that sort of thing. Isn't that correct?
25 A Are you talking about --

1 Well, I would say that it would probably be
2 true, sure.
3 Q All right, sir. Doctor, going back to
4 the time that the mother had the pains that indicated that
5 something was wrong with her and she went to the bath seat --
6 A Um-hum.
7 Q At that time what would be the strength
8 of the contractions on this baby as the baby is emerging
9 from the mother's body? What would that do to the baby?
10 This person is sitting on a bath seat.
11 A Normally labor pressures would probably
12 do no harm to the baby. They don't usually.
13 Q All right, sir. I mean as the usual.
14 Now, how many babies are hurt that way and do
15 become anoxic?
16 A Where are you talking about?
17 Q Right at the time that the baby emerges
18 from the mother's body?
19 A You are not talking about position or
20 anything like that?
21 Q Well, I am talking about the head being
22 squeezed by the mother's body as it comes out -- and I know
23 that most of them are normal, but there are some who don't
24 sustain coming out of the mother's body as well as other
25 babies. Is that correct?

1 A That's correct.
2 Q All right, sir, and if this baby then
3 is shocked and has even somewhat of a hemorrhaging
4 situation around the top of the head what occurs to the
5 baby at that point? Is it possible that the baby becomes --
6 has its respiratory system affected?
7 A I am sorry, shocked and bleeding around
8 the head?
9 Q No, no. The report says that there were
10 "subcongeal" hemorrhages, I guess it is. I don't think it
11 is spelled properly.
12 A Okay, subgaleal?
13 Q Subdural this says. I don't want to
14 be accused of misreading it.
15 A Well, there is a difference between the
16 galeal and the dural, but it is not uncommon for there to
17 be small hemorrhages in the baby's eyes and places that
18 you can see. I think hemorrhage to one person means a
19 great amount of blood; hemorrhage to another person means a
20 little bit of blood.
21 Q All right. If the baby for any reason
22 then stops breathing what do you-all do to make it start
23 breathing again?
24 A We clear an airway. Probably use positive-
25 pressure oxygen, maybe mouth-to-mouth resuscitation.

1 Q All right, sir. And if a mother doesn't
2 have sense enough to do all those things what happens to the
3 baby?
4 A Doctors take steps before --
5 Q This girl is alone by herself. I am
6 saying if the mother is alone and she doesn't have knowledge
7 to do all these things and the baby has stopped bleeding
8 what happens to the baby -- breathing what happens to
9 the baby?
10 A I was going to answer.
11 Q Well, I said "bleeding" instead of
12 "breathing."
13 A I say I was going to answer; but physicians
14 would take steps before an emergency arose.
15 It would be hard to say which baby would not
16 make it if nothing were done and which one would make it
17 if nothing were done.
18 Q But the chances are if nothing's done
19 that a lot less would make it. Correct?
20 A The chances are that less would make it.
21 Q Right?
22 A But we had babies for years without
23 physicians assisting us.
24 Q I understand that, but most of them had
25 midwives who knew something about it, didn't they, doctor? 190

1 A Well, that one you mentioned earlier
2 as far as I know didn't.
3 Q I haven't read whether it did or didn't
4 either.
5 Doctor, let me ask you this: Hasn't the rate of
6 infant mortality since the fact that most people in America --
7 hasn't the infant mortality dropped sharply as opposed to
8 other countries where you do not have hospitals and doctors?
9 A The paranatal mortality in the United
10 States has dropped sharply. It is now approximately thirty
11 per thousand live births.
12 Q Thirty deaths in a thousand live?
13 A Well, that's total paranatal mortality.
14 Q Thirty deaths in a thousand live births.
15 Is that right?
16 A That's about right.
17 Q Doctor, if a baby then died under those
18 conditions of no oxygen that baby would then pass meconium,
19 would it not?
20 A Not necessarily. It is not necessarily
21 cause and effect.
22 Q Well, I understand, but you said this
23 baby passed it because it had no oxygen.
24 Now, the other baby that I am talking about, the
25 hypothetical question I just asked you, wouldn't that baby

do the same as this baby? You have said both of them died for lack of oxygen.

A I thought that's the point you made already with me. You said if the heart stopped outside it would be anoxic, would it not, and I said yes.

Q All right, sir, and you said that baby would pass meconium. Now I am saying to you if the heart stops because it got no oxygen, again, wouldn't it pass meconium?

A Possibly so.

Q All right, sir. So it is no difference then under any of those conditions; a baby can or cannot pass meconium. Is that what you are saying?

A [redacted]

Q [redacted] In this case it says that within the large intestine there was a [redacted]

A Right.

Q And what does that indicate?

A Well, the large intestine is filled with meconium, and --

Q That's where it comes from, is it not?

A That's where it comes from, but it would be conceivable to pass, relatively speaking, a large amount

without passing a large amount -- with leaving a large amount inside.

Q That doesn't indicate any foul play, the fact a baby at death passed meconium, does it?

A I don't believe I can answer that.

Q All right, sir. Now, doctor, again, you made a statement that you felt this baby had been placed in the -- in a bag, and I asked you did you know the exact time of death. You [illegible] the baby died prior to being put in any bag or after, do you?

A No.

MR. STANT: I haven't any other questions, doctor.

REDIRECT EXAMINATION

BY MR. SLIPOW:

Q Doctor, can you answer a few more questions for me, please.

This crib baby or crib death babies that Mr. Stant made reference to, sometimes referred to -- and I might be talking about something else -- SDIS, sudden death infant syndrome?

A I know what it is. I am not an expert in that field, however.

Q Okay. But is it true that most times where you have these crib baby deaths that it occurs when the baby is two or three months old? These are not instantaneous newborns?

A Those are not newborns as a rule.

Q Now, [redacted] cross-examination [redacted] to [redacted] baby died after being placed in the [redacted]?" You [redacted] answer. Would you go ahead and explain your answer to us, please?

A Well, [redacted] if the [redacted] with the [redacted] on it were the [redacted] wrapped around [redacted] then is that -- if [redacted] would it be coincidental that it is [redacted] lower that the baby had been held in?

MR. STANT: [redacted] first place [redacted] how we can speculate on it.

THE COURT: [redacted]

BY MR. SLIPOW:

Q Now, doctor, Mr. Stant had you read part of the statement that I believe that he liked where it said

1 that "He wasn't breathing and it scared me," and he asked
2 you what that meant. Now, you indicated or you implied
3 that it didn't necessarily mean the baby would die.
4 What else could happen after the baby stops
5 breathing?
6 A Well, the baby would have an anoxic
7 situation which would probably stimulate its respiratory
8 centers to breathe. That's what would -- or it wouldn't.
9 It may be plugged up. I would think if it were plugged up
10 so tight that it died --
11 Q Well, predicated on the autopsy report
12 do you see anything to indicate it was plugged up?
13 MR. STANT: Your honor, I object
14 to it. That's four days later.
15 THE COURT: You may cross-examine.
16 MR. STANT: All right, sir, go ahead.
17 A I see nothing in the autopsy report that
18 would indicate airway obstruction.
19
20 BY MR. SLIPOW:
21 Q And if the baby was held upside down
22 by the feet and spanked on the behind would that have a
23 tendency to clear any obstruction in the airways?
24 A That's a television move.
25 Q I realize that. But if it was done would

1 that clear the airways?

2 A Well, that was brought out earlier. If

3 the baby were held upside down and the airway drained I think

4 it is reasonable that if it is held upside down it may drain

5 some mucus from the airway.

6 Q All right, sir. Now, Mr. Stant asked you

7 some hypothetical questions about the impingement on the

8 umbilical cord.

9 How often do you see these type of things?

10 A Not too often. Not too often. Not

11 very often.

12 Q Now, like I said, he asked you about a

13 certain part of the statement. Now -- okay, now, read

14 that response one more time and read the next question in

15 the response where it said "It scared me."

16 A "It wasn't breathing and it scared me, so

17 I wrapped him in a towel as fast as I could and put him in

18 a garbage pail and then got a garbage bag and put him in

19 it and took him to the road off First Colonial Road."

20 Q What is the next question?

21 A It says, "I got out of my car and put the

22 garbage bag --" I can't read the handwriting. "What did you

23 do next?" "I waited five minutes to see if he was still

24 alive."

25 Q What does that response mean to you?

1 doctor?

2 A Well, it would mean to me that if you
3 couldn't tell with it unwrapped how you could tell with it
4 wrapped in a garbage pail I don't know. That's what it
5 would mean to me.

6 Q Now, with reference to the quantity of
7 meconium here. Mr. Stant has made reference a number of
8 times to a dying infant passing some meconium.

9 Can you tell us anything from the quantity
10 that's prevalent in the photographs?

11 A I would say that this was passed by
12 a baby in distress.

13 Q But would it be a living baby?

14 A Yes, I think the baby was alive when
15 it passed the meconium.

16 Q Oh, just one other thing. Now, doctor,
17 I may well be wrong. You indicated thirty babies in a
18 thousand was the mortality rate, which I compute to be three
19 percent. Would it be thirty in a thousand or three in a
20 thousand, which is .3 percent?

21 A Thirty in a thousand.

22 MR. SLIPOW: Okay.

23

24

25

RECROSS-EXAMINATION

BY MR. STANT:

Q Doctor, let me understand this, because there's been testimony to the contrary.

You say that meconium would be passed by a baby in distress, respiratory distress or other type of distress, but not a baby that was not living. Correct?

A No, I didn't say that.

Q Tell me what you said again?

A I said that a baby -- an anoxic baby will pass meconium. I didn't say there might not be some by a baby not living. But this looks like quite a lot, and I'd say it had to be passed by a living baby.

Q By a living baby?

A Yes.

Q And if someone else said -- in fact two other people said it could only be passed by a dead baby they would be at variance with what you think. Is that correct?

A That what could -- if two other people said that it could only be passed by a dead baby?

Q It could be passed at the death of the baby at the time the bowels relaxed. Would that be an incorrect statement? I mean who is correct? Is it correct that that would only be passed by a living baby or is it

1 correct it would be passed by a baby after it had died?
2 A I would say it would be passed by a baby
3 that was living.
4 MR. STANT: All right, sir.
5 I haven't any other questions, your
6 honor.
7 MR. SLIPOW: No further questions.
8 THE COURT: Thank you, Dr. Sarrett.
9 You may step down. You may be excused.
10 MR. SLIPOW: May we approach the
11 bench, judge.
12 (The court and counsel for both
13 sides conferred out of the hearing of the
14 jury.)
15 THE COURT: We will take a five-minute
16 recess, ladies and gentlemen.
17 (At 3:35 P.M., June 3, 1977, the court
18 recessed, and reconvened at 3:48 P.M., June
19 3, 1977.)
20 THE COURT: Ladies and gentlemen,
21 what you are about to see is a short film
22 clip taken by one of the local TV stations
23 as to the wedding of Miss Summerell or Mr.
24 Lane and Mrs. Lane at Metropolitan Baseball
25 Park in May of 1976.

1 MARY CATHERINE PURYEAR, called as a witness on behalf
2 of the defendant, having been first duly sworn, was examined
3 and testified as follows:
4
5 DIRECT EXAMINATION
6
7 BY MR. SWAIN:
8 Q Ms. Puryear, would you state your full
9 name for the record, please?
10 A Mary Catherine Puryear.
11 Q You live in Portsmouth, don't you?
12 A Yes, sir.
13 Q Where are you employed at this time?
14 A Rices Nachmans.
15 Q You were employed there last year through
16 the Christmas month and on through the spring of --
17 A I have been there for the past going on
18 seven years.
19 Q What do you do for Rices Nachmans?
20 A I am the bridal buyer and consultant.
21 Q Have you ever had occasion tomeet Elayne
22 Lane, who is my client here?
23 A Yes, I have.
24 Q And when did you first meet her?
25 A I first saw her on January 17th, last

1 year.

2 Q And why did you see her at that time?

3 A We had a bridal show at the store and she

4 and her mother came.

5 Q And did you have a chance to talk to her

6 that day?

7 A Briefly. But due to us being so busy,

8 why, I wasn't able to really delve into her plans, but she

9 did make it known to me that she was being married in May

10 and it would be held at the Tidewater Tides ball park.

11 Q And did you see her again after that?

12 A Yes. She made an appointment and came

13 back on February 2nd -- February 9th.

14 Q Have you got records there to show when

15 she came in?

16 A Yes, I have.

17 Q You can look at them and it is all right.

18 On February 9th why did she come back to you?

19 What was the purpose of that?

20 A She and her mother came back at that

21 point to make a selection of a wedding gown.

22 Q And was she fitted at that time?

23 A She was.

24 Q Did you write down her measurements then?

25 A I did.

1 Q And did she appear any different from the
2 way she appeared the first time you had met her in January?
3 A No.
4 Q You I take it took the measurements for
5 the dress for the wedding. Is that right?
6 A That's right.
7 Dresses are not kept in stock. They have to be
8 special ordered. You keep samples in stock, and the sample
9 that she looked at was a size ten.
10 Q All right. And I think that you saw her
11 again later that spring, did you not?
12 A Several times during that time.
13 Q And did you see her on the day of the
14 rehearsal out at Met Park?
15 A Yes, I did. I conducted the rehearsal.
16 Q And you had seen her for several times in
17 between that?
18 MR. SLIPOW: Judge, I object at this
19 point to leading questions.
20 THE COURT: You are leading.
21 MR. SWAIN: I was trying to lead up
22 to it, your honor.
23
24 BY MR. SWAIN:
25 Q Now, Ms. Puryear, did you see her anytime

1 between the 17th of February -- I am sorry, the 9th of
2 February and the rehearsal?
3 A Yes, because she came in with her
4 bridesmaids and selected bridesmaids' gowns. We fitted
5 those, and then when the gowns arrived I called and she
6 came with her attendants for them to be fitted. And again,
7 they are fitted from samples.
8 Q Did you have any problems fitting at
9 that time?
10 A Not at all.
11 Q No changes or alterations?
12 A The only thing we did to the gown was
13 hem it and tighten the sleeves at the cuff, and I have a
14 record here to show that.
15 Q You have a record of the initial fitting?
16 A Yes, I do. That's a photostat right
17 there. You can just tear it off.
18 Q Ms. Puryear, this sheet here would be the --
19 A That's a chart that we keep on all brides.
20 Q On her sizes and that sort of thing?
21 A Everything, and anytime she calls in
22 down there it is written down. No matter whatever happens
23 it is written on that chart.
24 Q And what alterations, if any, had to be
25 made to the dress from the first time you measured it until 202

1 the wedding.
2 A Well, as I stated before they are
3 selected from a sample. We took her measurements, which
4 indicated she wore a size sixteen. I ordered the sixteen,
5 and when it came in the only thing we had to do was hem it,
6 because all gowns are designed to fit a girl five foot
7 seven and Elayne's not five foot seven.
8 Q This is the alteration sheet. Is that
9 right?
10 A That's correct.
11 MR. SWAIN: I would move this
12 introduced as an exhibit, your honor.
13 THE COURT: Defendant's Exhibit 1.
14 (So marked by the court.)
15
16 BY MR. SWAIN:
17 Q Now, Ms. Puryear, did you attend the
18 rehearsal, I think you said?
19 A Yes, sir.
20 Q And do you recall approximately what
21 time that occurred?
22 A It was about two o'clock in the afternoon
23 as best I remember, on Saturday afternoon.
24 Q Saturday afternoon. And how did Elayne
25 appear that day?

Q The date was picked either in January or early February?

A Yes, sir.

Q For May 10th or May 11th?

A May 9th as I recall. It was Mother's Day I believe, too.

MR. HANSON: Thank you, sir.

MR. SWAIN: Thank you.

THE COURT: Thank you, Mr. Rosenfield. You may step down, you may be excused.

------oOo------

DUANE A. LAWRENCE, called as a witness on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SWAIN:

Q Dr. Lawrence, would you state your full name, please, sir?

A Duane A. Lawrence, MD.

Q And are you a general practitioner?

A I am a family doctor.

Q Family physician.

And where do you maintain your office?

A 4169 Virginia Beach Boulevard.

Q All right, sir. And how long have you been a practicing physician?

A Since 1966.

Q And could you tell the jury what a family physician's practice consists of?

A Family doctors have a residency program after medical school of three years, and after that time they take their specialty boards in family practice.

Q And what kind of work does a family practice involve?

A Family doctor takes care of the entire family from the babies up to the grandparents.

Q All right, sir. Did you take care of the Summerells?

A I did.

Q Do you know when you first started seeing the Summerells?

A I do not recall for the entire family, but it was fairly soon after I opened in Virginia Beach in October '74.

Q And in 1976 -- do you know when the first time you saw Elayne in 1976 was?

1 A Yes. I have my record on Elayne
2 Summerell with me, and my office notes.
3 Q You may refer to those, doctor.
4 A In 1976 I first saw Elayne on February
5 2nd.
6 Q And could you tell me why you were seeing
7 her and what your examination consisted of and what your
8 care was for her at that time?
9 A Yes. On that date there was a
10 complaint of back pain about the waist area with frequency
11 of urination for one week. And I saw her there for what
12 sounded like a urinary tract infection.
13 I obtained a urinalysis and checked to make sure
14 the kidneys were not tender and checked for urinary tract
15 infection.
16 Her weight at that time was a hundred sixty-nine
17 pounds.
18 Q And had Elayne ever had any weight problems
19 before?
20 A Yes. I had treated her for that in
21 1975.
22 Q And at that time what was the weight?
23 A Her weight was one fifty-nine pounds on
24 February 14, 1975.
25 Q What about the time before that?

1 A The time before that I had seen her for
2 bronchitis and she weighed one hundred seventy-two and a
3 half pounds.
4 Q One seventy-two and a half?
5 A '74, November 19th.
6 Q All right, sir. So you saw her then
7 again in February of 1976 on February 2nd and her weight
8 I think you said was one sixty-nine?
9 A That is correct.
10 Q Now, did you see her again later that
11 year? When was the next time you saw her?
12 A I next saw Elayne on March 3, 1976,
13 for a complete physical because of two complaints that she
14 had.
15 Q And what were those complaints?
16 A One complaint was about one year and a
17 half of constipation. The other was a rash that had been on
18 the left shoulder for about six months.
19 Q And what was the treatment for constipation?
20 A I probably should explain what I did at
21 that time.
22 Q All right, sir.
23 A I performed a physical examination since
24 until that time I had not given her a complete physical
25 examination. And the weight at that time was a hundred

1 seventy pounds, and my findings were constipation and some
2 abdominal uterine swelling and an infection of the cervix.
3 Q All right, sir. How did you treat her
4 then?
5 A I treated her with some medications for
6 the constipation and some antibiotics for the infection of
7 the cervix.
8 Q Do you know what those medications were?
9 A Yes. There was Keflex and some ABC cream
10 and Halotex and Modane.
11 Q Would this be the prescription for Keflex
12 you prescribed right here?
13 A That is the prescription for the Keflex,
14 the antibiotic for cervicitis.
15 Q And what is that?
16 A This is the ABC cream. It is a female
17 cream for the female infection.
18 Q Doctor, of what did your examination
19 consist on February 3rd? Could you tell us what you did
20 during the examination?
21 A I believe you mean March 3rd.
22 Q I am sorry, March 3rd, yes, sir.
23 A On March 3rd the examination consisted
24 of the completion of a history form which the patient
25 completed, followed by a physical examination and then

1 discussion of the findings and treatment.
2 Q All right. Could you tell me what you
3 did during your examination?
4 A Basically my physical examinations in
5 family practice consists of examining a person from head to
6 toe. In this particular examination we did do a pelvic
7 examination, also.
8 Q All right, sir. And what is a pelvic
9 examination? What do you do in a pelvic examination?
10 A We check the female organs.
11 Q All right, sir. And how was that done?
12 A In the classic examination with
13 speculation.
14 Q I am sorry?
15 A Examination with a speculum.
16 Q I am sorry, I don't know what a speculum
17 is. I don't know what the classic examination is either, and
18 I am sure some of these gentlemen on the jury don't know
19 either.
20 A We check the abdomen and then we proceed
21 to examine the vagina, the cervix, and ovaries.
22 Q Is this done by the feel of the hand --
23 A That is correct.
24 Q -- in part?
25 A In part, yes.

1 Q And do you also feel the abdomen with
2 your hands as well as --
3 A That is correct.
4 Q -- inside and outside through the
5 uterus with your hand?
6 A That is correct.
7 Q All right, sir. And do you listen to
8 the pulse and take the heartbeat of the mother and that
9 sort of thing during the examination?
10 A I examine the patient, including, as
11 I said, from the head to the toes.
12 Q Okay. And what was your conclusions --
13 what were your conclusions based on that examination at that
14 time on March 3rd?
15 A To rephrase -- repeat, we found
16 constipation; tinea corporis -- this was the definition
17 or rash on the shoulder; acute cervicitis, which was a
18 vaginal infection; and abdominal swelling, which was felt
19 to be premenstrual, meaning just before the period.
20 Q All right, sir. When did you next see
21 Elayne?
22 A I next had Elayne come into the office
23 in two weeks for a follow-up urinalysis in order to determine
24 whether the vaginal infection had cleared.
25 In addition, we did a weight and obtained a

1 history of whether another period had been obtained, since
2 there was swelling on the last visit before that.
3 Q And did Elayne indicate that she was late
4 in her period at that time?
5 A She indicated she had had a period on
6 March 10, '76. The one prior to that previously reported
7 had been on February 2, '76.
8 Q All right, sir. And did you prescribe
9 anything besides the vaginal infection cream on March 18th?
10 A On March 18th there was also complaint
11 of no bowel movement at all for five days, so I also gave
12 her medicine for constipation.
13 Q Did she complain of pains associated
14 with bowel movement?
15 A She did not.
16 Q Now, doctor, when did you next see
17 Elayne?
18 A I next saw her on April 5, 1976.
19 At that time her weight was one seventy-one.
20 It was a recheck of the urine, which was prepared by the
21 nurse, to follow up on the infection again.
22 At that time my examination consisted of checking
23 her reflexes, because in the meantime a blood test had come
24 out abnormal. Tests for the thyroid had showed high
25 activity. And I examined the urine, and at that time the

1 urine was normal.

2 Q So she had a blood and urine test at

3 that time in April?

4 A No. She did not have a blood test.

5 She had had the blood test between -- after the physical

6 examination but before that visit. In fact, she was then

7 sent for another blood test, but I did not see her again

8 after that one.

9 Q Did you get any indication she was getting

10 married during this course of time?

11 A On April 5th she did tell me that she was

12 going to be married and we discussed premarital preparations,

13 specifically the advisibility of using birth control pills

14 before her marriage.

15 Q And did you prescribe birth control

16 pills for her at that time?

17 A I did at that time, yes, sir.

18 Q At that time did you give her any birth

19 control pills?

20 A Yes, I did, one package of Demulen 21.

21 Q I show you these pills and ask you if they

22 are Demulen 21?

23 A Yes, that is Demulen 21.

24 Q Is that a kind of sample you give in

25 your office?

1 A That is correct.
2 Q Could these be the samples you could have
3 given to her?
4 A That would be very likely. This one was
5 actually by prescription. It appears I gave them by
6 prescription for this package. Our usual course is to give
7 three packages by prescription, yes.
8 Q And, doctor, was she told to use these?
9 A Yes. As is generally the case when I first
10 precribe them I explain the use of the pills.
11 MR. SLIPOW: May I approach the
12 bench, judge?
13 (The court and counsel for both
14 sides conferred out of the hearing of the
15 jury.)
16 THE COURT: They will be marked for
17 identification. The other two items will be
18 marked Defendant's Exhibits 2 and 3.
19 (So marked by the court.)
20
21 BY MR. SWAIN:
22 Q Doctor, would you recall what drugstore
23 the prescription is called in?
24 A No, I do not. All that I recorded was
25 that I gave her Demulen 21.

1 Q And did you give her a sample in the
2 office also to start taking?
3 A This is common procedure. I do not
4 recall which way I did it at the time. The ones you showed
5 me were prescriptions, so I would assume those were the
6 ones I gave her.
7 Q Doctor, when you gave her the birth
8 control pills did you discuss with her any of the side
9 effects?
10 A Yes, I did.
11 Q And what are those?
12 A Well, depending upon what time in the
13 cycle they are taken and which pill is used and the person
14 that's taking it, there can be a number of side effects.
15 In other words, there are many different birth control
16 pills and the side effects vary. The common ones are
17 weight gain.
18 MR. HANSON: Objection, your honor.
19 He will have to testify to this specific
20 patient.
21 MR. SWAIN: That's all right, I will
22 go ahead ask that.
23 THE COURT: All right.
24
25

BY MR. SWAIN:

Q Dr. Lawrence, what would be the side effects, if any, of these particular birth control pills that you have prescribed to Elayne?

MR. HANSON: Your honor, side effects --

THE COURT: That he described to the defendant. Overrule the objection.

A I did describe to the defendant side effects in my usual way, and specifically I cautioned the patient to take the pills on the fifth night after their next period, so that they will take it in the right cycle, and then take them in sequence.

I usually explain that many things can happen as side effects and if there are any questions please come back or let me know about any problems. And particularly I caution them that I should be told if there is any bleeding other than at the right time in the cycle.

Q Did you tell her about any other side effects she might expect from birth control pills?

A I do not recall what I said, but in general I do say and I would expect that I said at that time that they could cause weight gaining and swelling?

MR. HANSON: Objection.

THE COURT: Overruled.

BY MR. SWAIN:

Q Go ahead.

A They could cause weight gain and swelling, sometimes nausea, and sometimes abdominal cramps.

Q Doctor, I show you a statement of office visits that you prepared and ask if you can identify it?

A That is my signature, yes. I have seen it.

Q And what is this I am showing you?

A This is a statement of visits between February '76 and April '76, which was asked for by the patient for insurance purposes.

MR. SWAIN: Your honor, I would move this introduced showing the time of the statements and time of the appointments.

THE COURT: One moment.

MR. SLIPOW: Judge, I have an objection and perhaps it would be best if I --

THE COURT: I sustain the objection. He is here. He can testify.

BY MR. SWAIN:

Q Doctor, read the date of visits and what your treatment was, if you will?

1 MR. HANSON: Objection, your honor,
2 he has already testified to the visits and
3 what the treatments were.
4 THE COURT: If it is to go over
5 what's already been said I sustain the
6 objection. If there are any new dates, fine.
7 MR. SWAIN: There are no new dates
8 on it.
9 THE COURT: Just reiterates what he
10 said. Nothing but emphasis, which is not
11 necessary.
12
13 BY MR. SWAIN:
14 Q Doctor, during this period of time --
15 doctor, did Elayne give you any history of menstrual cycles?
16 A Yes, she did, at the time of physical and
17 the self-history.
18 Q And is the fact there is a menstrual --
19 let me go back again, doctor. Did you ever determine she was
20 pregnant during your examinations?
21 A No, I did not.
22 Q And is it known by you for a woman to have
23 spotting or bleeding during a pregnancy?
24 MR. HANSON: Now, your honor, I am going
25 to object. Dr. Lawrence has not been --

1 got to her house?

2 MR. HANSON: Excuse me, your honor.

3 I couldn't hear the response about who did

4 you go with?

5 THE COURT: She said, "Elayne."

6 A I guess we got to her house about 3:30

7 or 4:00 o'clock.

8

9 BY MR. SWAIN:

10 Q All right. And how long were you there,

11 approximately? Do you recall?

12 A I was there until about 5:00 or 5:30.

13 Q And where did you go when you left?

14 A To my house, because I also had my prom

15 that night.

16 Q And do you recall what Elayne was doing

17 when you left?

18 A She had just gone in the bathroom.

19 Q Did she say why she had gone to the

20 bathroom?

21 A Because she had to use the bathroom.

22 She said that her stomach had hurt and that she had to use

23 the bathroom. She felt like if she could use the bathroom

24 she would feel better.

25 Q Did she make any comments about her wedding

1 step down. You may be excused.

2

3 ------oOo------

4

5 HELEN ELAYNE LANE, defendant, called as a
6 witness on her own behalf, having been first duly sworn,
7 was examined and testified as follows:

8

9 DIRECT EXAMINATION

10

11 BY MR. STANT:

12 Q Young lady, speak so I can hear you and
13 then the jury can hear you, too.

14 What is your full name?

15 A Helen Elayne Lane.

16 Q And, Helen, prior to being Lane you
17 were Helen Elayne --

18 A Summerell.

19 Q -- Summerell. And people call you Elayne
20 or Layney; is that correct?

21 A Yes, sir.

22 Q Now, will you state, when did you meet
23 Gene Lane?

24 A July of '74.

25 Q And where did you meet him, under what

circumstances?

A My little brother, he had started being a bat boy for the Tides and we went to the games then.

Q When you say "we went to the games," who is "we"?

A Me and my mother.

Q All right. And you went to the games because your brother was a bat boy. You met Gene Lane?

A Yes, sir.

Q And would you state to the jury at that time what was he doing?

A He was a member of the Tides Booster Club.

Q And what were you doing at that time?

A Me and my mother had just joined the Tides Booster Club.

Q What were you doing relative to your education?

A I was going to school at Kellam High School.

Q And is that where your brothers went to school, also?

A Yes, sir, all three of them.

Q And that's where Mark goes at this time.

1 Is that correct?
2 A Yes, sir.
3 Q And I believe you got through the
4 eleventh grade at Kellam?
5 A Yes, sir.
6 Q Now, when did you and Gene first begin
7 to date each other?
8 A In April of '75.
9 Q Now, young lady, prior to that time had
10 you dated anybody else?
11 A No, sir.
12 Q And after April of '75 did you and Gene --
13 what was the course of your dating? Did you date him steadily
14 or --
15 A Dated him every day.
16 Q And did he continue through school in the
17 fall of 1975?
18 A Yes, sir, he was a junior at Old Dominion.
19 Q All right. And would you state -- you
20 had dated him you say pretty steadily in August. What
21 occurred or in the summertime what occurred between you two?
22 A We had gone to bed with each other.
23 Q Would you state to the jury had he
24 decided then on whether or not you two would get married?
25 A Yes, sir. We started talking about it in

1 the first part of September, but then Gene was playing
2 softball at his fraternity and he hurt his finger and he
3 had to stay in the hospital for a couple days.
4 Q All right. And did he continue through
5 school then during that period of time?
6 A Yes, sir.
7 Q And would you state in September did
8 you-all discuss -- you say you discussed getting married?
9 A Yes, sir.
10 Q When did you feel you might get married?
11 MR. HANSON: Your honor, I would
12 object to the leading nature of the questions.
13 THE COURT: When did you feel you might
14 get married?
15 MR. HANSON: The beginning of it,
16 "in September you said you would get married."
17 THE COURT: Well, it was a preface.
18 MR. HANSON: I think it is somewhat
19 leading.
20 A Could you repeat the question?
21
22 BY MR. STANT:
23 Q When did you first think you-all might
24 get married? What was the first dates you thought you might
25 get married?

1 A We thought the first part of September.
2 Q Was that '75?
3 A Yes, sir.
4 Q And you stated that that became impossible,
5 and when did you kind of reset your marriage for?
6 A For the first part in the -- late April
7 or first part of May.
8 Q All right. And would you state to the
9 jury what, if anything, did he do in January of '76 so that
10 this could be possible?
11 A He quit school because he wanted to get
12 a job so he could -- so we could have a little bit of
13 income and we wouldn't be flat broke when we got married.
14 Q All right. Now, in -- directing your
15 attention to November of 1975, did you have occasion to see
16 Dr. Duane Lawrence who testified here today?
17 A I saw him in November '75 because I was
18 having really bad ear infections and he treated me for that.
19 Q All right. And when was the next occasion
20 that you had to see Dr. Lawrence?
21 A February 2, '76.
22 Q And what was that about?
23 A I was -- I had been running a real
24 high fever the couple days before and I was -- had gone
25 to the bathroom a lot and I had a little bit of back pain.

1 Q All right. And when you saw a doctor at
2 that time what did he prescribe and what did he tell you to
3 do?
4 A He gave me two kinds of medicine for it.
5 It was a big pill and a small pill. I was supposed to
6 drink a big glass of milk after I took them to help get them
7 down my throat.
8 Q Will you tell us what this pill was for?
9 A That was the Keflex pill and that was
10 the big horse-like pill I had to drink milk after I took it
11 because I couldn't get it down my throat.
12 Q And this pill here?
13 A And this was a small kind of grayish-
14 brownish kind of pill.
15 Q And this pill here?
16 A This was for my infection, too.
17 Q And did the doctor prescribe all of these
18 pills for you?
19 A Yes, sir.
20 Q All right. Now, just so we may as well
21 get them in, too, and connect them up later, I ask you to
22 look at these. Are these other pills that were -- this is
23 a vaginal cream I suspect. Do you know what that was for?
24 A After he saw me in March and gave me my
25 checkup he gave me this vaginal cream because I had a vaginal

infection and I had to use it every night before I went to bed.

Q All right. And I show you four boxes of birth control pills and ask you who prescribed those?

A Dr. Lawrence.

Q And did you have more than that and did you give them to us?

A Yes, sir.

Q And would you say what happened to them?

A I had two more, but during the course of last summer after I had gone to another doctor when I was in the hospital he was going to give me the same kind of pills, so I called Mr. Swain and Mr. Stant and asked could I have a package instead of having to go out and buy some more because we didn't have the money.

Q All right, and this pill here which is dated -- this is for identification only, your honor, but I think I am connecting it up now and ask it be admitted. Commonwealth's --

MR. HANSON: I don't think that's Commonwealth's.

THE COURT: Defendant's 4.

BY MR. STANT:

Q It is Defendant's 4. What is the date

on that, Elayne?

A April 28th.

Q And would you state how many pills you took out of that?

A Ten.

Q And when did you take those?

A In April, the last part of April, during the first week of May.

Q Is these the pills that were taken just before your marriage?

A Yes, sir.

MR. STANT: All right. Your honor, I would move these be admitted into evidence. You can mark them all together if you want to.

THE COURT: Well, I have marked this 4 for identification. Suppose I just put a band around the whole group and we will mark it Defendant's 4. I have marked one of those vials Defendant's 3. You want the other one marked 3, too? I have marked one of the vials Defendant's 2.

MR. STANT: Can you make them all 2?

THE COURT: The other two vials will be marked Defendant's 5 and 6.

1 (So marked by the court.)
2 THE COURT: It will be received.
3
4 BY MR. STANT:
5 Q Now, young lady, you spoke of seeing
6 a doctor in February. You next spoke of seeing him
7 March 3, '76, and would you state why you saw him on the
8 3rd of March?
9 A Because my mother called him up and
10 asked him to give me a complete physical before I had
11 gotten married.
12 Q All right. And did you go in for a
13 complete physical?
14 A Yes, sir.
15 Q And would you state to the jury what that
16 physical consisted of?
17 A He checked my ears, checked my eyes, he
18 did a pelvic, he checked all around. He checked my chest.
19 He checked down in my stomach area and he gave me blood
20 tests.
21 Q All right. And after he did all this at
22 sometime or another you discussed with the doctor the
23 question of whether or not you could be pregnant and you
24 stated that he didn't believe you could. Now, will you
25 state to the jury what, if any, reason there was for you

giving that answer?

A I told him I believed that I couldn't be because I had brought my sister-in-law in there two and a half months earlier and she wasn't having her period. She was sick all the time, sick to her stomach, she had been out of work because she couldn't even stand on her feet and she had aches all over her body, and I asked him, I said, "If I didn't have these symptoms how could I be pregnant?"

Q All right. Did you go through the symptoms with him?

A Yes, sir. And I told him that if he had any tests that he wanted to run to go -- to go ahead.

Q And did he take blood tests from you at that time?

A He sent me down to the Metro Lab at Pembroke Mall office and I had my blood test taken there.

Q All right. Now, when did you next go back to see the doctor?

A Two weeks later in March.

Q And that would be approximately the 18th of March, and at that time did he tell you the results of the blood test?

A Yes, sir.

Q All right. And did he tell you you had any type of infection that had to be -- something had to be

1 done about it. Told me that I had a high -- that I had a
2 thyroid condition. And I told him that that's what my
3 mother had when she was my age.
4 Q Was there anything said about a kidney
5 infection?
6 A He took another urinalysis for my kidney
7 infection.
8 Q All right. And when were you supposed to
9 go back to find out about the kidney infection?
10 A The first week in April.
11 Q During all of that time, Elayne, what was
12 the condition of your back and the question of constipation
13 and things like that?
14 A Well, I'd go five to seven days without
15 going to the bathroom, and when I had to go I would have
16 really bad cramps with it because it had been building up so
17 long.
18 Q And would you state, did you get medicine
19 from time to time to relieve that situation?
20 A Yes, sir. Dr. Lawrence prescribed,
21 which I could buy over the counter to try to save some money.
22 MR. SWAIN: May we approach the bench?
23 (The court and counsel for both sides
24 conferred out of the hearing of the jury.)
25

BY MR. STANT:

Q Now, you state you went back around to see the doctor around the first of April?

A Yes, sir.

Q And would you state what, if anything, he prescribed for you at that time?

A He had checked my stomach and told me that my swelling had gone down and he prescribed birth control pills.

Q Young lady, at anytime did not the doctor use a stethoscope and put it on your stomach and listen around to your heart and your lungs and your stomach?

A Yes, sir, he did. On March 3rd he checked up here on my chest and then he went down here, then he went right here on my stomach.

Q And at anytime did he tell you he even suspected you were pregnant?

A No, sir.

Q Now, in April the 1st or thereabouts did he prescribe any type of pills for you because you were getting married?

A Yes, sir. He prescribed birth control pills.

Q And are they the birth control pills that you see here?

1 A Yes, sir.

2 Q Now, how many boxes did he give you and

3 how many boxes did you buy and would you tell us why you

4 bought them?

5 A He gave me a little starter kit which had

6 a book on it and it had one pack. Then he gave me a pre-

7 scription for six months and we went ahead and got them

8 filled because we had the money then.

9 Q You had the what?

10 A We had the money then.

11 Q And you didn't know whether you'd have

12 it later?

13 A Yes, sir.

14 Q All right. Now, when did you start taking

15 your birth control pills pursuant to his examination?

16 A I was just finishing up my period so I

17 took them on the fifth day like he prescribed for me to do.

18 Q You have stated that Gene went to work

19 during the period of time you did, or did you not also go to

20 work?

21 A I went to work, too.

22 Q Now, will you tell the jury what kind of

23 work you did and where did you work?

24 A I was a waitress at Triton Towers and I

25 was there from 6:30 in the morning until about 12:30 every

1 day.

2 Q Why didn't you work except from 6:30 in the

3 morning until 12:30?

4 A Because we were not serving lunch or

5 dinner then. We were not going to start that until the 31st

6 of May.

7 Q And how many waitresses did they have

8 during that period of time?

9 A One. That was me.

10 Q And would you state to the jury what time

11 did you have to get up every morning to go to work?

12 A About ten after six.

13 Q And, young lady, when you would get off

14 from work at 12:30 what were your duties then at that time?

15 A I'd go home and I'd rest a little bit

16 and then I would straighten up the house, and usually I'd

17 have to take care of my three-year-old nephew because my

18 sister-in-law was sick with her pregnancy.

19 Q Did you do that every day during those

20 months?

21 A Yes, sir.

22 Q And would you state to the jury that

23 on the morning of the rehearsal for your marriage, on that

24 morning, which was the 8th, I believe, a Saturday, what --

25 what did you do that morning?

1 A Gotten up at ten after six, and got
2 my -- I had taken a bath, I got myself ready to work. I
3 was at work at twenty till seven.
4 Q And how long did you work on that day,
5 if you remember?
6 A Until 12:00, because we were supposed to
7 close at 11:30, but we had two other guys come in later so
8 I had to stay and serve them.
9 Q All right. And then did you go ahead
10 home?
11 A Yes, sir.
12 Q And what did you do when you got home?
13 A The phone was ringing when I came in the
14 front door and it was a friend of ours wanting to come over
15 to see if she could bring the wedding present and she came
16 over about quarter till one.
17 Q And what did you do after that?
18 A I had opened the present and everything
19 and I had got myself changed so I could go to the wedding
20 rehearsal and we had another person come over to bring a
21 wedding present and we didn't leave for the wedding rehearsal
22 until quarter after -- until quarter to two.
23 Q And how much was there to do at the
24 wedding rehearsal? Was there a lot to do?
25 A No, it was mostly people telling, you know,

us where to stand and, you know, what to expect.

Q All right. Now, after the rehearsal was over where did you go and what did you do at that time?

A The rehearsal was over we went to Arlene's Formal Shop at Pembroke Mall because the best man and the other people had to pick up their tuxedos.

Q And after you left there where and with whom did you go anywhere?

A After I left I went with Gene and my girlfriends Cathey Taite and Susan Overton, and we were just -- me and Cathey and Susan were supposed to go straight home but the car started acting up so Gene had to drive us home.

Q All right. And then after you got home, approximately what time did it take for everyone to clear out of the house and you were home alone?

A About 5:30, about between 5:00 and 5:30.

Q Do you recollect your mother and Mark leaving the house?

A When I was in the bathroom my mother came to the door and asked me did I need anything from the store, and I told her no, and she told me that --

Q Don't say what she told you. She has already testified. But what did she do and what did you do?

1 A She was going to the store, and she'd
2 be back in just a few minutes.
3 Q All right. Now, when your mother left
4 what did you do at that time?
5 A I was having really bad cramps and ever
6 since I started having my period when I was ten years old
7 I usually take a hot bath the first day and they would help
8 it.
9 Q All right. And at that point you say you
10 were having really bad cramps and what was -- what do you
11 mean by really bad cramps?
12 A Like I had to go to the bathroom really,
13 really bad.
14 Q And where did you go at that time to
15 help yourself?
16 A I got out of the bathtub and I sat on the
17 toilet seat.
18 Q Well, now, before you got out of the bath-
19 tub what happened that made you get out of the bathtub?
20 A The pains were really getting bad and I
21 thought before -- it felt like I was getting ready to go to
22 the bathroom. Before I went in the bathtub I thought I had
23 better get up and go on the toilet seat.
24 Q All right. Now, you stated you sat on
25 the toilet seat and will you tell the jury what did you

1 notice or what first came out of your body that attracted
2 your attention?
3 A A white bubble just kept -- as hard as --
4 the more I would bear down the bigger the bubble would get
5 and finally after a couple seconds the bubble burst.
6 Q And when this bubble burst what was your
7 initial reaction to that?
8 A I thought that since I had all these
9 infections and all that mess and everything for my infections
10 that it was clearing out and that it was, you know, building
11 up and it had just cleared out.
12 Q All right. Will you tell the jury what
13 next happened that caused you to be shocked and --
14 A I looked down and a baby's head was
15 coming out of me.
16 Q And will you tell the jury what you
17 tried to do then?
18 A I moved to the edge of the toilet seat
19 so he would not fall into the toilet.
20 Q All right. And what did you then do to
21 protect or try to keep the baby?
22 A I put my hands underneath the baby's
23 body so it would not hit its head on the seat or would not
24 fall into the toilet.
25 Q All right. And would you tell the jury

1 what you did then as you had this baby in your hands?
2 A I picked it up and I put it -- I held
3 it and it wasn't moving. It didn't breathe. It just got
4 more bluer and more purple.
5 Q All right. Would you tell the jury
6 what, if anything, you tried to do to see if you could help
7 it?
8 A I had put it in this way over here so I
9 could spank it once like you see on television to see if the
10 baby would cry, and nothing happened.
11 Q At anytime did the baby -- was the baby
12 able to move its arms or kick its feet or anything like that?
13 A No, the baby never moved once.
14 Q Now, would you tell the jury at that
15 time what was the condition of your body? Was anything
16 coming out of you? Were you --
17 A Blood was coming out as fast as I could
18 get my towels up there to help stop it.
19 Q All right. And will you state to
20 the jury what did you do with the baby to try to see if you
21 could stop the flow of blood yourself and try to help the
22 baby, too?
23 A I had gotten a towel and wrapped it
24 around its arms and its legs, and I put the placenta which
25 was attached to the baby in the towel, too, and I put it on

1 my bed so I could try to get myself cleaned up, because the
2 blood was just coming out as fast as anything.
3 Q Would you state to the jury did you
4 know what to do at that time, young lady?
5 A No, I --
6 Q Did you know anything at all? Had you
7 read any books or know anything about the birth of a baby?
8 A No, sir. The only thing I knew was
9 like you see on television. You know, when the baby first
10 comes out you are supposed to spank it.
11 Q Now, at -- after you placed the baby
12 on the bed, will you tell the jury what you tried to do
13 relative to the bathroom?
14 A I had gotten the white pail and I had
15 put the bath mat, which had all the blood on it, and the
16 towels in there, and with the towels which I had used
17 to stop my bleeding.
18 Q Now, would you state to the jury at
19 anytime did you try to put the baby in the pail?
20 A No, sir.
21 Q What went in that pail in fact?
22 A The bath mat and the towels that I had
23 used to help clean myself up.
24 Q All right. Now, did you try to wash the
25 baby off or anything like that?

1 A No, sir. I was too scared to.
2 Q Would you state to the jury at that
3 time did you try to do anything with the umbilical cord?
4 Did you even know what it was for or what you were
5 supposed to do with it?
6 A No, I didn't know what to do.
7 Q Now, after you tried to clean up some
8 and to get the room -- get some stuff up off the floor will
9 you state to the jury at anytime while the baby was lying
10 on your bed was its head covered or its mouth covered or
11 anything like that?
12 A No, sir, it wasn't.
13 Q And at anytime did the child move?
14 A No, sir.
15 Q Did it ever cry?
16 A No, sir.
17 Q Did it make any outward signs whatsoever?
18 A No, sir.
19 Q Did you ever see it open its eyes?
20 A No, sir.
21 Q Would you state to this jury, did you
22 take a baby that you had any idea was living and --
23 MR. HANSON: Objection, your honor.
24 This has got to be leading.
25 THE COURT: It is leading.

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BY MR. STANT:

Q State to the jury your feelings relative to the baby and what you would have done had that baby shown any sign of life?

A If the baby had shown any sign of life I would have most likely called for help, but it wasn't moving, it didn't never cry, and I would never put a crying, moving baby in a plastic bag.

Q Now, how long would you say from the time you got out of the tub until the time you had this baby until the time that you cleaned everything up and everything and put your clothes on, how long would that have taken?

A About twenty, twenty-five minutes.

Q And would you state during that entire period of time was there ever an outward sign concerning this baby of any type?

A No.

Q Now, when you got a green bag, Elayne, how long did you say -- approximately how long before you did that?

A It was about fifteen minutes, because I wanted to put the pail and the dirty towels in there.

Q All right. And would you state to the jury, at the time you took the baby out had you given any consideration to the towels or anything like that?

A No, sir. I didn't even think about them.

1 Q Now, your brother played ball in the NFL,
2 I believe?
3 A Yes, sir.
4 Q And one of the towels there is an NFL
5 towel, is it not?
6 A Yes, sir.
7 Q And it has the names and everything of all
8 of the ball teams on it. Is that correct?
9 A Yes, sir.
10 Q And you knew that this was a towel that
11 would be recognized?
12 A Yes, sir.
13 Q And as to the towels with Summerell on it,
14 were all of your brothers or two of your brothers athletes
15 at Kellam High School?
16 MR. HANSON: Your honor, I have to object
17 to the continuing leading questions.
18 MR. STANT: How is that leading?
19 THE COURT: It is leading.
20 MR. STANT: Your honor, then I don't know
21 how to ask were they athletes at Kellam High School.
22 THE COURT: It is a leading question.
23
24 BY MR. STANT:
25 Q Where did your brothers go to high school?

1 A Kellam High School.
2 Q Did they participate in any type of
3 athletics?
4 A Football, baseball, and basketball.
5 Q Were they of some caliber? What was their
6 ability according to the newspapers and what have you?
7 A They had good sports ability.
8 Q And the towels there with Summerell on
9 it, do you know that many of the towels in your home have
10 Summerell on it?
11 A Yeah.
12 Q And did you look these towels over or
13 anything to hide that fact?
14 MR. HANSON: Objection, your honor.
15 He is still leading the witness.
16 THE COURT: You are leading.
17
18 BY MR. STANT:
19 Q What, if anything, did you do with the
20 towels?
21 A I didn't do anything. I just -- when
22 the blood started coming out I just reached and I started
23 grabbing towels.
24 Q All right. Now, do you remember specifically,
25 young lady, when Detective Marrow interviewed you, do you

1 know how long you were in a room by yourself with the
2 detective?
3 A For about an hour and a half.
4 Q Would you state to this jury, did you
5 tell him all of these many things that you have related to
6 the jury today?
7 A Yes, sir.
8 Q Now, specifically, when you left your
9 home you left with whom?
10 A My younger brother Mark.
11 Q And when you went out to get in the car
12 did you have any idea that you would see him at that time?
13 A No, sir.
14 Q Now, would you state to the jury when
15 you took him to wherever you took him to, where was that
16 located?
17 A Took him to the Hobby Hut in London Bridge
18 shopping center.
19 Q All right. And when you got there what
20 did you do with him?
21 A I dropped him off. I told him I'd be
22 back in just a few minutes.
23 Q All right. And would you state --
24 after that you went down Wolfsnare Road?
25 A Yes, sir.

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1 Q Now, would you state to the jury what
2 you did at that time?
3 A I got out of my car and I put the bag
4 in the wooded area.
5 Q All right. And how long, Elayne, did you
6 stay around there?
7 A Just a couple minutes.
8 Q All right. And what specific reason
9 did you stay there for?
10 A Just to look at the bag.
11 Q Pardon?
12 A Just to look at the bag.
13 Q All right. And when you looked at the
14 bag for what -- was it a dual purpose or did you expect any
15 movement in the bag?
16 MR. HANSON: Objection, your honor.
17 It is still leading.
18 THE COURT: You are leading. Why
19 did you look at the bag?
20 MR. STANT: Pardon?
21 THE COURT: A leading question is one
22 that suggests an answer.
23 MR. HANSON: Your honor, it has happened
24 continuously. He asked a leading question and
25 the objection is sustained by the time the witness

knows what he wants.

THE COURT: I have sustained the objection.

BY MR. STANT:

Q Young lady, for what purposes, if any, did you look at the bag?

A I just looked at the bag. I just looked at the bag.

Q All right. And at that time what, if anything, did you feel the condition of the baby was?

A I felt that the baby was dead.

Q Now, you heard a statement read here that took approximately five and a half minutes. Is that the only thing you ever said to Detective Marrow?

A No, sir.

Q How long did you talk to him?

A I talked to him for an hour and a half.

Q And during that period of time did you tell him you would like to have -- what, if anything, did you say to him relative to what you would like?

A I kept asking could I see my husband, and he said no.

Q Did you ask him anything else?

A I just kept asking for -- I just kept

1 asking for my husband.
2 Q All right. Now, at the time that the
3 statement was written up generally in that statement did
4 that encompass everything you told Detective Marrow? That
5 means was everything in there that you told him or did you
6 tell him a lot more?
7 A I told him a lot more than what he wrote
8 up.
9 Q Now, Elayne, after you came back home,
10 will you tell the jury what people were at home that night?
11 A My mother and my brother and my aunt was
12 over there.
13 Q All right. How long did you stay up or
14 what did you do?
15 A I stayed up until about eleven o'clock.
16 Q All right. Will you tell the jury what,
17 if anything, your physical condition was that day and the
18 next day after you had had the baby?
19 A I was bleeding really heavily and I
20 could hardly walk, and when I walked it hurt very, very
21 badly.
22 Q And why did you go through with it?
23 A Because I was scared. I didn't know
24 what else to do. And I just didn't know what else to do.
25 Q All right. Now, young lady, when you 245

1 went away on your honeymoon how long were you-all going to
2 stay?
3 A Three days, but when we called my mother
4 on Tuesday night -- Tuesday afternoon she said that the guy
5 from our apartment building said that we could have the
6 apartment that night, and I wanted to go back, but my husband
7 decided we'd go ahead and stay another day.
8 Q All right. Now, once more -- I don't
9 know if I asked this question or not, your honor, and if
10 I have asked it I could be stopped -- during the entire
11 period of time what is your recollection as to whether or
12 not anyone ever told you you were pregnant?
13 A No one ever told me.
14 THE COURT: We will take a five-minute
15 recess. You-all step in the jury room.
16 (At 3:45 P.M., June 6, 1977, the
17 court recessed, and reconvened at 3:54 P.M.,
18 June 6, 1977.)
19 THE COURT: Anyone in the courtroom
20 who was summonsed here as a witness? All
21 right.
22 MR. STANT: How about Mark? I know
23 he has testified, but do you want him back
24 out? I assume people who have testified can
25 stay in the courtroom.

THE COURT: If they have been excused. I think everyone has been excused except Mrs. Summerell. Isn't that correct?

Bring the jury out, please.

(The jury returned to the courtroom.)

THE COURT: All right, sir.

CROSS-EXAMINATION

BY MR. HANSON:

Q Mrs. Lane, in September of 1975 you began to make your wedding plans. Is that correct?

A Yes, sir.

Q Sometime the month of August 1975 you and Mr. Lane first became intimate. Is that correct?

A It was back in June.

Q June of 1975 you first became intimate?

A Yes, sir.

Q And you were intimate at least several times thereafter?

A Yes, sir.

Q However, on March 3, 1976, when you saw Dr. Lawrence and he asked you if there was a possibility that you could be pregnant you replied "No." Is that correct?

1 A Yes, sir, and I told him --
2 Q Just answer the question.
3 MR. SWAIN: Now, your honor. She
4 can answer the question any way she wants
5 to I believe. Instead of yes or no.
6 MR. HANSON: Yes or no, yes.
7 THE COURT: It is cross-examination.
8 She should respond yes or no unless another
9 answer is called for. You will have another
10 opportunity on redirect examination.
11
12 BY MR. HANSON:
13 Q Mrs. Lane, when did you start birth
14 control pills?
15 MR. STANT: Note my exception.
16
17 BY MR. HANSON:
18 Q What date?
19 A First week in April.
20 Q You went to see Dr. Lawrence on April 5th,
21 and you started right afterwards?
22 A Yes, sir.
23 Q Mrs. Lane, you were home at approximately
24 5:30 on May 8, 1976?
25 A Yes, sir.

1 Q You stated that you saw the child's head
2 come out. Is that correct?
3 A Yes, sir.
4 Q And you cradled the baby?
5 A Yes, sir.
6 Q And you spanked it on its bottom?
7 A Yes, sir.
8 Q Then at sometime you went into your
9 bedroom?
10 A Yes, sir.
11 Q And laid the baby on the mattress?
12 A On the bed.
13 Q On the bedspread?
14 A Yes, sir.
15 Q And you got several towels from the
16 bathroom and attempted to stop your bleeding?
17 A Yes, sir.
18 Q It was all your blood. Is that correct?
19 A Yes, sir.
20 Q It was none of the baby's blood?
21 A No, sir.
22 Q And there was no cut on the baby?
23 A No, sir.
24 Q Mrs. Lane, if you had time to reach for
25 several towels from the linen closet and you had time to go

1 into the bedroom, you also had time to use the telephone,
2 did you not?
3 A Yes, sir.
4 Q But you called no one?
5 A I was too scared.
6 Q You called no one?
7 MR. STANT: Your honor, I think --
8 MR. HANSON: It is again a yes-or-no
9 question.
10 MR. STANT: That is not a yes-or-no
11 answer.
12 THE COURT: It isn't, really.
13
14 BY MR. HANSON:
15 Q Did you call anyone?
16 A No, sir.
17 Q Where did you get the plastic bag?
18 A You mean the green garbage bag?
19 Q The green garbage bag?
20 A From my mother's kitchen.
21 Q You went from the bathroom into the
22 bedroom leaving the baby; then went into the kitchen and
23 got the green plastic garbage bag?
24 A Yes, sir.
25 Q It already had trash in it, did it not?

1 A No, sir, it was a new one right from the
2 carton where you pulled out and have to rip the bag apart
3 from the other ones inside the carton.
4 Q Now, Mrs. Lane, the baby was wrapped in
5 these two towels. Is that correct?
6 A I don't remember which towels.
7 Q But it was wrapped in two towels?
8 A Wrapped around his arms and his legs.
9 Q And then he was put in the garbage bag?
10 A Not after I wrapped him up in his
11 towels.
12 Q Did you wrap him up in his towels before
13 he was put in the garbage bag?
14 A Yes, sir. I was trying to keep him --
15 Q And then what --
16 A I was trying to keep him warm.
17 Q Trying to keep him warm. Did you -- at
18 that time had you seen any signs of life?
19 A No, sir. He wasn't moving. He wasn't
20 breathing. He had never once cried.
21 Q Had any of his limbs, arms or legs,
22 moved?
23 A No, sir.
24 Q Had you noticed any sounds of gulping
25 for air?

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1 A No, sir.
2 Q Had you noticed the eyes open?
3 A No, sir.
4 Q Yet you wanted to keep him warm?
5 A Yes, sir.
6 Q So you wrapped him in those towels?
7 A Yes, sir.
8 Q And then what did you do with him?
9 A I put him on the bed, because I was still
10 bleeding, and I went back to the bathroom and I got the
11 towels and the bath mat and put it in the white garbage pail.
12 Q And you put the baby in the garbage pail?
13 A No, sir, the baby was never put into the
14 garbage pail.
15 Q You put the baby in the plastic bag
16 afterwards, green plastic bag?
17 A Yes, sir.
18 Q You put the garbage pail with all the
19 towels in the plastic bag?
20 A Yes, sir.
21 Q Then you sealed everything up. Is that
22 correct?
23 A Not right after. It was a couple minutes.
24 Q But you then did seal -- you sealed the
25 bag?

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1 A Yes, sir.
2 Q And you took the bag with just the baby,
3 the green -- excuse me, the trash can, and the towels and
4 the washcloths and the bath mats and you put everything in
5 the plastic bag, this green plastic bag, and you took it out
6 to your car. Is that correct?
7 A Yes, sir.
8 Q And the only foreign substance you noted
9 was the blood. Is that correct? Blood from you?
10 A Except for the placenta and the cord.
11 Q Placenta and the cord, the baby and the
12 blood that was on the towels from you?
13 A Yes, sir.
14 Q Then you went to your car, you put the
15 whole thing in the car, drove your brother down to the London
16 Bridge hobby shop -- Hobby Hut I believe it is called?
17 A Yes, sir.
18 Q Then you went over to Wolfsnare Road?
19 A Yes, sir.
20 Q You dumped the baby in the wooded area?
21 A I didn't dump the baby.
22 Q Excuse me. You took the baby in the
23 bag that was sealed and put it in the wooded area?
24 A Yes, sir.
25 Q All right. Then you went through your

1 wedding?

2 A No, I --

3 Q The next day you went through the

4 wedding?

5 A Yes, sir.

6 Q Then you left on your honeymoon?

7 A Yes, sir.

8 Q Came back on Tuesday after your call?

9 A Came back on Wednesday.

10 Q Wednesday. On Wednesday you arrived at

11 416 Garrison Place and you were met by the two detectives,

12 Detective Narducci and Detective Benson?

13 A Yes, sir.

14 Q Is that correct?

15 A Yes, sir.

16 Q You went with them, you and your husband,

17 to police headquarters?

18 A Yes, sir.

19 Q And on the way your husband, Eugene Lane,

20 asked you several times what this was all about?

21 A Yes, sir.

22 Q And you had been advised of your rights

23 and you knew what it was all about? You had been advised

24 of your rights by Detective Benson and you had been notified

25 that you were suspected in the death of an infant boy. Is

1 that correct?

2 A Yes, sir.

3 Q So you knew what it was all about?

4 A Yes, sir.

5 Q You denied to your husband several times

6 that you knew anything about it. Is that correct?

7 A Yes, sir.

8 Q All right. You got back to the police

9 department and you and your husband were separated because

10 he was at that time suspected of involvement in the offense,

11 too. Is that correct?

12 A I don't know why we were separated. I

13 never heard that.

14 Q You were not allowed to see him?

15 A Yes, sir.

16 Q You went in the room with Detective

17 Marrow?

18 A Yes, sir.

19 Q And Detective Marrow began to question

20 you about the offense, after first advising you of your

21 rights. Is that correct?

22 A I don't remember.

23 Q I show you Commonwealth Exhibit 9

24 and ask you to look at it. That's an advice-of-rights form,

25 is it not?

1 A Yes, sir.
2 Q It is your signature on it, is it not?
3 A Yes, sir.
4 Q It is your initials by each one of
5 those questions, is it not?
6 A Yes, sir.
7 Q Thank you. And the date and time is
8 2:30 P.M. 2:35 P.M. to 4:59 P.M. Is that correct?
9 A Yes, sir.
10 Q All right. And in response to Detective
11 Marrow's questions your first explanation was a complete
12 denial, that you knew nothing about it. Is that correct?
13 A No, sir. Detective --
14 Q Is that correct? Yes or no?
15 MR. STANT: Your honor, again,
16 that does not take a yes-or-no answer,
17 and she can certainly explain her answer.
18 THE COURT: You will have an
19 opportunity to redirect, Mr. Stant.
20 MR. STANT: I understand, your honor,
21 but I have never heard of a person before
22 who cannot give a qualified answer, and I
23 have never before been confronted with the
24 fact that a witness has to give a yes-or-no
25 answer.

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1 MR. HANSON: Your honor, I can't
2 believe in all these years Mr. Stant's --
3 MR. STANT: Just a second, please.
4 Let me make my objection for the record.
5 You honor, if that's the court's
6 ruling of course I must abide by it, but
7 I want to note my exception and objection
8 to it.
9 THE COURT: Note your exception.
10 A Could you repeat the question, please?
11
12 BY MR. HANSON:
13 Q Your first explanation of the offense
14 after Detective Marrow began questioning you was a complete
15 denial, that you knew nothing about it? Is that correct?
16 Yes-or-no?
17 A No, sir.
18 Q No?
19 A No, sir.
20 Q Your second explanation to Detective
21 Marrow was that a man and a woman had come pulled into your
22 driveway at 416 Garrison Place in a blue van with orange
23 flames over it, they had come to the door saying the woman
24 had to have a baby right away, you let them into the house,
25 she had the baby, and then they left. Is that correct?

1 A I didn't say that.
2 Q You never said any of that?
3 A I told him -- he asked me what did I
4 do from the time I had the baby to the time I was left
5 alone in the house. I told him when I was in the bathroom
6 a knock came at the door; it was a man looking for the
7 people next door.
8 Q So the part about the blue van with
9 the orange flames on the side and the man and woman with
10 the pregnant woman coming in to have a baby is not true;
11 you never said any of that. Is that correct?
12 A That's correct.
13 Q And then when he told you he did not
14 believe that story you refused to make any other statement
15 at first. Is that correct? At first?
16 A Could you repeat the question?
17 Q After he told you that he did not believe
18 the story of the blue van with the orange flames and the man
19 and the woman he then told you -- or you then told him that
20 you had nothing further to say?
21 MR. SWAIN: Objection, your honor.
22
23 BY MR. HANSON:
24 Q Is that correct?
25 MR. SWAIN: Objection, your honor.

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THE COURT: She has already stated she didn't tell him about the man in the van.

MR. HANSON: All right, your honor. Excuse me.

BY MR. HANSON:

Q Detective Marrow then began to tell you that he had ways -- police department had ways of tracing your blood, comparing your blood with that of the infant's and determining whether or not you were its parent?

A No, he didn't.

Q He did not tell you that?

A He did not.

Q Did he tell you anything like that?

A No, sir.

Q Did he tell you that he could do that by means of a search warrant for your person?

A No, sir, he did not.

Q Is it possible that he may have said that and you do not remember?

MR. STANT: Now, if it please your honor, possibilities as I understand are not permitted.

MR. HANSON: Laying the groundwork.

A I would remember something like that if

he'd --

MR. STANT: Young lady, please wait.

THE COURT: Are you objecting?

MR. STANT: Yes, sir.

THE COURT: Overrule the objection.

Cross-examination.

BY MR. HANSON:

Q Then you definitely would have remembered it so therefore it did not happen. Is that correct?

A That's correct.

Q All right. You finally gave Detective Marrow a statement. Is that correct?

A That's correct.

Q And the statement -- I would like to first have you look at this. Take a couple minutes.

A This wasn't all that I --

Q Is that the statement that you gave?

A Yes, sir.

Q Now, I am pointing to the first page. Is that your signature at the top?

A Yes, sir.

Q Is that your signature at the bottom?

A Yes, sir.

Q Is that your signature at the top on the

1 second page?

2 A Yes, sir.

3 Q Is that your signature at the bottom on

4 the second page?

5 A Yes, sir.

6 Q Third page?

7 A Yes, sir.

8 Q Top and bottom?

9 A Yes, sir.

10 Q Fourth page top and bottom?

11 A Yes, sir.

12 Q Did you ever go back to the scene? Did

13 you ever go back to Wolfsnare Road?

14 A After I had --

15 Q After you had deposited the green plastic

16 bag with all of its contents sealed?

17 A No, sir.

18 Q You never went back?

19 A No, sir.

20 MR. HANSON: One moment, your honor.

21

22 BY MR. HANSON:

23 Q Mrs. Lane, you heard Dr. Lawrence testify

24 as to your -- as to the history you had given him of your

25 menstrual cycle. Is that correct?

1 A Yes, sir.
2 Q Since the age of ten I believe you
3 stated that you had had four to six days, heavy on the
4 second day?
5 A Yes, sir.
6 Q Now, at the time you went to see Dr.
7 Lawrence in March, on March 3, 1976 --
8 A Yes, sir.
9 Q -- were you still having the same cycle?
10 A Yes, sir.
11 Q You had noticed no difference, no changes?
12 A No, sir.
13 Q You had not become spotty at times?
14 A After I flowed heavily on the second
15 day the bleeding would not be so heavy.
16 Q But that was true always, is it not?
17 A Yes, sir.
18 Q You still had the heavy flow on the second
19 day?
20 A Yes, sir.
21 Q Through April of 1976?
22 A Yes, sir.
23 MR. HANSON: All right. No further
24 questions.
25 MR. STANT: You finished?

REDIRECT EXAMINATION

BY MR. STANT:

Q Young lady, I want to direct your attention to the time when you placed the baby on the bed. You had wrapped the baby, you state, in towels?

A (Indicates yes.)

Q And I believe the placenta and the umbilical cord was also in amongst these towels?

A (Indicates yes.)

Q After that did you ever unwrap the baby?

A No, sir.

Q So you never again looked inside of the towels.

Now, how long was the baby lying there on the bed, would you say?

A Five or ten minutes.

Q Could it have been -- and how long after that did you get the baby to take it out of the house?

A About ten more minutes.

Q And where was the baby during that period of time?

A Still on the bed.

Q Still on the bed. And during that 253

1 whole period of time it was covered with these towels.
2 Is that correct?
3 A Yes, sir.
4 Q And did you ever cover the face of the
5 baby with the towel?
6 A No, sir.
7 Q Now, Mr. Hanson asked you a yes-or-no
8 question on your telling Dr. Lawrence you didn't think you
9 were pregnant. You started to answer that question. Would
10 you please answer it for the jury?
11 A I told him, no, I didn't see how I
12 could because I had brought my sister-in-law in there two
13 and a half months ago when she had stopped her period, she
14 was sick all the time and she had to miss work and she had
15 aches all over her body, and I never had any of those
16 symptoms.
17 Q All right. Now, did Detective Marrow
18 ever offer you when he got ready to let you out if you
19 signed a certain statement -- did he ever offer you a
20 statement that had everything in it that you had said to
21 him, the entire course of your interview?
22 A Could you repeat that?
23 Q During the period of time -- where is
24 that statement? I show you this statement, which is about
25 six-minutes duration. Is this all you ever said to

1 Detective Marrow?
2 A No, sir.
3 Q At anytime did he do you the courtesy of
4 giving you a statement that had in it everything you said?
5 MR. HANSON: Objection, your honor.
6 Leading.
7 THE COURT: Overruled.
8 A No, sir.
9
10 BY MR. STANT:
11 Q At anytime during that entire long
12 period did anyone else ever come in that room with you and
13 Detective Marrow? And if so, when?
14 A After I had -- we had gone over this
15 statement and he had asked me those questions he went
16 out of the room and about five minutes later he brought
17 in a social worker to calm me down.
18 Q To calm you down. And at that time
19 had you already signed the statement?
20 A Yes, sir.
21 Q And that social worker only arrived
22 when?
23 A After I had signed it.
24 Q All right. And why did he have to bring
25 a social worker in?

1 MR. HANSON: Objection.
2
3 BY MR. STANT:
4 Q What was his explanation of bringing a
5 social worker in then?
6 A He thought I needed someone to calm me
7 down.
8 Q And what was wrong with you at that
9 point?
10 A I was very upset and I was crying and I
11 kept asking for my husband.
12 MR. STANT: Excuse me, judge.
13 I haven't any other questions.
14 MR. HANSON: Just a couple, your
15 honor.
16
17 RECROSS-EXAMINATION
18
19 BY MR. HANSON:
20 Q After you wrapped that baby in the towels
21 you never again looked at it. Is that correct?
22 A What, when I first wrapped it up?
23 Q After you put it on the bed?
24 A I kept looking at it to make sure that
25 it wasn't -- you know, that if it had been moving or if it

1 started breathing, because up to then when I looked at the
2 baby it never had any life signs and it never did.
3 Q Was the baby still blue?
4 A Yes, sir.
5 Q Still blue at that time?
6 A Yes, sir.
7 Q Still blue five to ten minutes after it
8 was on the bed?
9 A Yes, sir.
10 Q Then the ten more minutes that you went
11 out and cleaned up after you left the baby on the bed you
12 came back and looked at him and he was still blue?
13 A Yes, sir, and he kept -- he kept getting
14 green. It was a bluish-green color.
15 Q Bluish-green. Still wrapped in the
16 towels and then you put him in the garbage bag?
17 A Yes, sir.
18 Q Was he still blue then?
19 A I didn't look.
20 Q And this is approximately twenty-five
21 minutes --
22 A Yes, sir.
23 Q -- after he has been born?
24 A Yes, sir.
25 Q And the only substances you noticed were

1 the blood, the placenta -- your blood, the baby, and the
2 placenta and the umbilical cord?
3 A Any substances?
4 Q That's what I said.
5 A Yes, sir.
6 Q Now, you stated that Detective Marrow
7 brought Ms. Davis -- I believe that's the social worker's
8 name, is it not?
9 A Yes, sir.
10 Q -- brought her in because you were very
11 upset?
12 A Yes, sir.
13 Q You had just finally told Detective
14 Marrow that it was your baby and that you had put it in a
15 plastic garbage bag. Is that correct?
16 A I never denied telling him.
17 Q That's why you were upset? Is that
18 correct?
19 A Well, I had just gone through all of
20 that. I had to go over the story, so I was upset.
21 Q You had to go over the story?
22 A My -- the questions that he was
23 asking me.
24 MR. HANSON: No further questions.
25 MR. STANT: I haven't any other

1 questions, your honor.
2 THE COURT: You may step down.
3 MR. SWAIN: I am going to call
4 the doctor.
5
6 ------oOo------
7
8 FARUK B. PRESSWALLA, called as a witness on
9 behalf of the defendant, having been first duly sworn,
10 was examined and testified as follows:
11
12 DIRECT EXAMINATION
13
14 BY MR. SWAIN:
15 Q Dr. Presswalla, would you state your
16 full name and occupation, please, sir?
17 A Dr. Faruk Presswalla, F-A-R-U-K,
18 P-R-E-S-S-W-A-L-L-A.
19 Q What is your occupation, Dr. Presswalla?
20 A I am deputy chief medical examiner for the
21 Commonwealth of Virginia.
22 Q All right, sir. And you are in the job
23 now that Dr. Springate used to hold here in the Commonwealth,
24 are you not?
25 A I am.

1 Q And how long have you been so employed
2 by the Commonwealth of Virginia?
3 A Since October of last year.
4 Q And you were not the medical examiner
5 back in May and June of 1976, were you?
6 A Not here.
7 Q Where were you medical examiner?
8 A I was the medical examiner in New York
9 City.
10 Q And for how long a period had you been
11 the medical examiner in New York City?
12 A I have been with the medical examiner's
13 office for about six -- over six years.
14 Q And in the course of your duties as
15 medical examiner in New York and in Virginia what did you
16 do?
17 A The medical examiner is authorized by
18 statute to investigate certain kinds of deaths, and these
19 include sudden, unnatural, unusual deaths; and the
20 investigation includes determining the cause and manner
21 of death and eliciting scientific evidence in order to
22 enable administration of justice, public health, and public
23 safety.
24 MR. SLIPOW: If your honor please,
25 the court please, the Commonwealth would be

1 happy to stipulate Dr. Presswalla is
2 an expert qualified to testify in the
3 field of forensic pathology.
4 THE COURT: All right.
5
6 BY MR. SWAIN:
7 Q Dr. Presswalla, where did you receive
8 your training as a forensic pathologist?
9 A I received my training in Bombay,
10 India; in London England; and in New York.
11 Q Were you in school in New York?
12 A No, I wasn't at school. I was associated
13 with the school as a staff faculty member.
14 Q All right, sir. And did you go to school
15 in London, also?
16 A Yes, I did.
17 Q All right, sir. And have you ever been
18 qualified in the State of Virginia in any other localities
19 besides here as an expert pathologist and state medical
20 examiner?
21 A Yes.
22 Q All right, sir. Now, doctor, as state
23 medical examiner when you came to Virginia did you have an
24 opportunity to view Dr. Springate's examination of the
25 Summerell infant?

1 A Yes, I had an opportunity to review
2 the case papers and the microscopic slides on this infant.
3 Q All right, sir. And when you reviewed the
4 microscopic slides could you determine if there was any
5 bacteria or decomposition in the lungs of the infant?
6 A No. From a review of the examination by
7 Dr. Springate and Dr. Gray, which was part of the official
8 record of the office, I determined that there was no sign of
9 decomposition, as mentioned by them.
10 Q And the fact that there is no decomposition,
11 what does that indicate?
12 A Well, decomposition is a change which
13 takes place in a body after death due to the activity of
14 microorganisms which are present in the person in the gut and
15 in the respiratory or breathing tubes.
16 In stillborn infants where you do not have any
17 microorganisms you do not get decomposition, or if a baby is
18 live-born, which in the case in question the baby Summerell
19 was live-born -- I determined that, both from the findings
20 of Dr. Springate and my independent review of the slides --
21 it would indicate to me that the baby did not survive for
22 any length of time in order to get microorganisms into its
23 system.
24 Q And how would the baby get microorganisms
25 into its system?

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1 A By breathing and by feeding.

2 Q And so as a result of this you determined

3 that the baby took very few breaths?

4 A Yes. With one added fact which was given

5 to me, that was that the baby was found four days after

6 death.

7 Q And would you have expected decomposition

8 from bacteria if it were in the lungs?

9 A Yes, four days after death with the

10 temperatures that would be in that month, which was May, I

11 would expect decomposition.

12 Q Doctor, you have had an opportunity to

13 review the protocol of the pathologist, have you not?

14 A I have.

15 Q And you have had an opportunity to look

16 at these photographs marked Commonwealth's Exhibits 1, 21,

17 22, and 23, haven't you?

18 A Yes.

19 Q And from these photographs and from the

20 protocol, could you tell us with reasonable medical certainty

21 what the cause of death was?

22 A No, I cannot determine what the cause of

23 death is in this case.

24 Q Doctor, can you tell whether or not this

25 baby died from a compressed umbilical cord?

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A No, I cannot tell that. STOP

Q Can you tell, doctor, if this baby could have died from a subdural hemmorhage?

A This baby did have subdural hemorrhage, which is indicative of anoxia or lack of oxygen.

Q And what can be the effect of a subdural hemorrhage, doctor, if it precedes the anoxia?

A Well, if there is an extensive subdural hemorrhage it is pressure on the brain which would kill by compressing the brain and compressing the various vital structures which the brain controls.

Q Doctor, after a review of the pictures, the protocol, and the -- your experience, you can't tell which one of those causes was the cause of death, can you?

MR. SLIPOW: Objection. He is leading.

THE COURT: You are leading.

MR. SWAIN: He is an expert, your honor.

THE COURT: Still don't suggest an answer.

BY MR. SWAIN:

Q Can you determine what was the cause of death in this situation, doctor?

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A Well, after review of the protocol and the slides what I can determine is that this is a full-term infant who was live-born, that this baby did not survive for more than a few minutes at the most for the reasons I have mentioned, that the death occurred from lack of oxygen or anoxia, but that there is no way to distinguish whether this was an intrauterine anoxia, that is, while or during the process of birth, or whether it was after the baby was delivered.

Q Could that be from the umbilical cord?

A Well, intrauterine anoxia can be from the head being compressed for some time, the umbilical cord being either wrapped around the baby's head or body or being compressed between the head and the cervix where the head engages. It could be from drugs in the mother, if she had depressant drugs in her system.

MR. SWAIN: Thank you, doctor.

Answer the Commonwealth's attorney.

CROSS-EXAMINATION

BY MR. SLIPOW:

Q Dr. Presswalla, we haven't met before. I am Larry Slipow. I have had an opportunity to talk to you on the phone.

1 You indicate that depressant drugs could of
2 course have an effect on the infant. Is that correct?
3 A Yes.
4 Q Now, of course if the mother had taken
5 no drugs then the depressant drugs would not have an effect
6 on the infant?
7 A Right.
8 Q Now, in coming to your diagnosis and the
9 testimony that you have just given these ladies and gentle-
10 men, you have not had an opportunity to review Commonwealth's
11 Exhibit Number 20, have you?
12 A What is Commonwealth's Exhibit Number 20?
13 Q Commonwealth's Exhibit 20 is a statement
14 by the defendant to a police detective telling the detective
15 what happened. Now, you have not reviewed that, have you?
16 A No, I haven't.
17 Q I understand your field of expertise is
18 forensic pathology?
19 A Yes.
20 Q You have not had extensive training in
21 obstetrics, have you?
22 A Well, I have delivered about twenty to
23 thirty babies during my training as a medical student and
24 as an intern.
25 Q Okay. You have not had extensive training

in pediatrics either, have you?

A No, except for what I did as a medical student.

Q So in both cases you are talking about when you were a student. And how long ago was that, sir?

A It was about thirteen to fifteen years ago.

Q Okay. Now, I am going to direct your attention to Commonwealth's Exhibit Number 22. The black substance in the lower left-hand corner, does that appear to be meconium?

A It could very well be.

Q Okay. Doctor, if two qualified obstetricians came in and testified that this was extra-uterine meconium, meconium defecated while the child was still alive --

MR. STANT: Your honor, I object to this question "if." I don't think this question is proper. I think if a foundation is laid it would be proper.

THE COURT: I think he is correct. You should pose your hypothesis as facts.

BY MR. SLIPOW:

Q Are you able to look at this photograph

1 and tell whether that is extrauterine meconium or intrauterine
2 meconium?
3 A From the photograph I cannot definitely
4 say whether this is meconium on the towel.
5 What I can say is it is meconium on thelegs
6 and buttocks. I can't say whether it is extrauterine or
7 intrauterine. Because if the baby had evacuated meconium
8 while still in the uterus it would perhaps -- perhaps it
9 would still smear the legs.
10 As far as the spot on the towel goes, if that is
11 meconium then it would have to be extrauterine, because --
12 unless the towel was held on the baby while the baby was
13 being delivered.
14 Q Why would you say it would have to be
15 extrauterine on the towel, doctor?
16 A Because of the quantity.
17 Q So that meconium had to be defecated while
18 the child was alive if that is meconium on the towel?
19 A Yes.
20 Q Now, isn't it true that intrauterine
21 meconium has an amniotic fluid generally mixed with it?
22 A Well, the meconium is evacuated in the
23 uterus where there is amniotic fluid around the baby.
24 Q And quite often that meconium when it
25 comes out in the uterus is thin; it is not a thick, greasy 278

substance, is it?

A It is thick and greasy as it comes out. It gets diluted by the amniotic fluid.

Q And has a tendency to get green from the amniotic fluid, does it not?

A The amniotic fluid gets green and yellow from the meconium.

Q So the two mixed together gets a kind of greenish texture?

A Meconium is green. The amniotic fluid is like water. When you get the green stuff in the water the water becomes green.

Q Now, Dr. Presswalla, you indicated that you have had an opportunity to review the autopsy protocol, but you did not discuss your findings with Dr. Springate, did you?

A I did not discuss the findings until two days back when he was in town.

Q Did Dr. Springate indicate to you that the subdural hemorrhage over the left cerebral convexity in his opinion did not affect the life or death of the child?

MR. SWAIN: Objection. To say --

THE COURT: You are asking him a hypothetical question assuming whatever the facts are, and they know whatever the facts

are, but that is hearsay.

BY MR. SLIPOW:

Q You cannot make a determination from an autopsy report whether that cerebral hemorrhage means anything or not?

A No, I can make a determination. I think it means -- it does not mean it is injury; it is not extensive. It means it was anoxia or lack of oxygen. The subdural hemorrhage is indication the child has anoxia or lack of oxygen.

Q [illegible]

A [illegible]

Q Which is what, doctor?

A [illegible] and you [illegible] fat; we [illegible] bubble-like [illegible]

Q That [illegible]

A [illegible]

Q Excuse me?

A That is seen in the slides as I saw them.

Q There is no such indication in the autopsy protocol, is there?

A No; all that is mentioned is that there is autolysis.

Q Dr. Presswalla, when a baby is born with cyanotic coloring and it dies the same color, the child -- excuse me.

A Repeat that?

Q When a baby is born with a blue coloring?

A Yeah.

Q Will it die the same color blue?

A Will it die with the same color?

Q Yes, sir.

A If the baby dies while cyanotic it should continue to stay blue, yes.

Q Now, based on what you observed in the autopsy protocol you don't see anything out of the ordinary with this child, do you?

A No. This was a full-term, healthy child with no congenital abnormalities at all.

Q [illegible]

MR. STANT: Now, your honor, I object to that. There is no evidence that this child was placed in a bag while it was living.

THE COURT: Sustain the objection.

MR. SLIPOW: Judge, can I approach the bench on that?

(The court and counsel for both sides conferred out of the hearing of the jury.)

BY MR. SLIPOW:

Q Now, Dr. Presswalla, if an infant is placed in a plastic bag while living and the plastic bag is sealed, can the plastic bag cause asphyxiation?

A Yes.

Q Now, doctor, if an infant is placed in a towel and the towel is soaked in blood and the towel --

MR. STANT: Same objection, your honor.

THE COURT: Overrule the objection. Allow the question.

BY MR. SLIPOW:

Q And the towel covers the infant's face -- this is a newborn infant -- can the bloody towel cause suffocation as well?

MR. STANT: Your honor please, "can." It is just not a proper question.

THE COURT: It is a leading question.

MR. SLIPOW: It is cross-examination, your honor.

THE COURT: I understand that.

MR. SWAIN: Your honor --

THE COURT: But he is still an expert, and you are trying to use him for the Commonwealth as an expert at this point with those questions, and it should be: Assuming so and so and so what would occur?

MR. SLIPOW: Fine.

BY MR. SLIPOW:

Q Now, Dr. Presswalla, assuming that a live infant was placed in a bloody towel -- in these two bloody towels and the towel was wrapped over the infant's mouth, face, and breathing apparatus, what affect could it have on the infant?

MR. SWAIN: I have got an objection.

MR. STANT: What effect would it have?

MR. SWAIN: Seems to me this is within the intelligence of the jury and the jury ought

to be able to make a determination like this. Anybody knows what is going to happen if you got a plastic bag put around your head, and I don't think it is a proper question for an expert.

THE COURT: Maybe not, but I will allow it.

A Yes, if a live infant has these towels wrapped around it the infant would asphyxiate.

BY MR. SLIPOW:

Q Now, you indicated that the bac -- there was no bacteria in the lungs.

Now, Dr. Presswalla, isn't it true that even adults do not have bacteria in the lungs unless they have some mucus fluid in the lungs?

A I did not say there was no bacteria in the lungs. What I said, there was no decomposition changes, and the decomposition takes place as a result of microorganisms in the gut or in the respiratory system. These are not organisms would ordinarily cause infection. These are organisms which all of us have which are normally present which do not cause infection, but after death they produce certain enzymes, et cetera, which produce decomposition. The indication there was no decomposition would indicate

there was no bacteria in the system. There were none in the gut and there was no evidence of any food or feeding and there had to be none in the respiratory, because that would otherwise have produced some decomposition after four days in a hot climate. This is therefore a presumption made on an observation.

Q I am not sure that I follow.

A If air had been breathing in for a prolonged time then there had to be organisms, unless we are alleging a person breathing in the laboratory bacteria-free air.

Q For how long? Now, are you talking about fifteen minutes? Hour? Two hours?

A I am talking for a few minutes. Any longer than a few minutes -- anything longer than a few, ten to fifteen minutes.

Q But the baby's not going to fully aerate its lungs in one breath?

A No, I think the infant may have had more than one breath.

Q As a matter of fact, it may have had more than a dozen breaths?

A Yes.

MR. SLIPOW: Okay. Doctor, thank you very much.

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1 guilty.

2 The court instructs the jury that

3 in this case you may find any one of the

4 following verdicts:

5 That the defendant is guilty of murder

6 in the second degree. Murder in the second

7 degree is punishable by confinement in the

8 penitentiary for not less than five nor more

9 than twenty years.

10 Two, that the defendant is guilty of

11 involuntary manslaughter. Involuntary

12 manslaughter is punishable by confinement

13 in the penitentiary not less than one nor more

14 than five years or, in your discretion, by

15 a fine not exceeding one thousand dollars,

16 and confinement in jail not exceeding one year,

17 or both.

18 Three, that the defendant is not guilty.

19 The court instructs the jury that murder

20 in the second degree is the unlawful killing of

21 a human being with malice. And if you believe

22 from the evidence beyond a reasonable doubt that

23 the defendant unlawfully killed the deceased with

24 malice, you shall find her guilty of murder in

25 the second degree.

to initial each of her rights twice. Detective Marrow took the time to go through it twice. And he also indicated that he called the social worker over for her. The social worker didn't come in and testify. But, you know, my friends, he also indicated that at the end of the day -- and this shows you that the man had no ax to grind, because at the end of the day the defendant was released to her parents. Now, whose word are we going to take? Are we going to take the defendant with that background or are we going to take this statement she has signed and believe the statement?

Now, there's been a great deal of argument made about what is the cause of death in this case. Five doctors have come in here and each of the five doctors have testified by themselves independently that they cannot establish a cause of death to a reasonable degree of medical certainty. Mr. Swain made much ado of it. Mr. Stant made much ado of it. But, ladies and gentlemen, they are not the sole judges.

OBJECTIONS AND EXCEPTIONS

MR. SWAIN: Defendant objects to the refusal of the court to give Instruction 16-A, because it correctly sets forth the law of the case and the facts as encompassed.

Object to the refusal of the court to give Instruction 16-B. This case encompasses facts which are uncontradicted and which would be our theory of the case and were not given.

I object to the refusal to give 16-C, which set forth our theory of the case as well, which is refused, based on the facts.

Object to giving Instruction Number 11, because it is an incomplete statement of law as set forth in previous Virginia cases, in that the first paragraph leaves out the section about an unlawful act which is committed.

And we object to the refusal to give 14-A, which should have been given in place of Instruction Number 11.

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