

(The following is the ruling by the Court in State v. Peter R as given in open court by Judge John Telleen on October 3, 2014, with all counsel and the defendant present.)

THE COURT: Okay. Folks, I've been thinking about this case and I think I'm ready to rule and I'll follow it up with a written opinion, findings of fact and conclusions of law at another time.

It's a very difficult case and it's a very medically intensive case. We know for a certainty that there was an acute subdural hematoma-- pardon me, subacute, dated anywhere from two to three days to ten days before November 5, 2012. That's a very important finding here. There wasn't any dispute in the medical evidence about that.

All of the State's evidence or the vast majority of it related to the 12 hours before admission on November 5. Frankly, I believe it's clear that nothing happened on or about November 4 or November 5 that could possibly have caused a subacute subdural hematoma that had been in existence from anywhere from three days to ten days prior to that. There's virtually no evidence as to what happened previously other than some of defendant's own statements and the text message that he might have squeezed him too tightly.

We have a child here that is very ill since birth. Constant crying, crying when it's not sleeping or eating, it's crying.

Something is clearly medically not right with this child. He had diarrhea, bad vomiting. The fracture findings in this case date well, well beyond or prior to November 5, some of them date back to birth.

The Court did not find Dr. O to be a particularly credible or persuasive witness. I'm very troubled by the fact that she authored letters to law enforcement and put in her opinion letter that it was an acute subdural hematoma when the UIHC radiologist report clearly listed it as subacute. There's a vast and crucial difference to law enforcement and to the parents and to every one about that.

I'm frankly not buying here her testimony, she does seem to engage in blame and finger pointing, I'm not buying her testimony that the radiologist told her previously that it was acute and not subacute and he must have changed his mind. I'm not buying into that, that sounds like hog wash to me and I'm also troubled by the fact that she never revised her letter or her opinion or offered an addendum to that report to correct the record. I do believe the evidence shows that she rushed to judgment in this case. When asked about why she hadn't asked for a consult which was clearly indicated in this case in a number of different areas by a pediatric radiologist, maybe by a hematologist, oh, that's not my job. I recommended Ms. D do that but that's not your job. Well, hog wash. I think when she's

putting the opinion of the UIHC which is considered the gold standard in this area on the line and when, you know, various accusations are being made, I think there's an obligation to do a thorough evidence based workup.

With regard to the issue-- I'm not going to address each one of them individually but the confessions/ admissions or whatever statements by Mr. R, yeah, I gather and I assume that a person who had done something to his child might be hesitant to admit it, certainly would be. However, I think it's common experience that it is not unusual for a parent to search for something, anything to explain or answer what they might possibly have done to contribute to their child's situation especially after being told as early as Genesis East that, well, we only find these findings in child abuse. I mean most lay people take the statements by doctors as gospel. So they are told by the doctors, we only find this in child abuse, so the parents are naturally searching their minds for something, anything they might have done to contribute to that. I think that's only natural.

I frankly tend to-- nobody has actually given me the medical literature, it is my understanding from the testimony that I found credible that there are no scientific studies that support or document that shaking causes brain hematoma or brain bleeds much less rocking.

Dr. L was a credible witness. He was a straight shooter. He said he couldn't place it beyond 51 percent, his opinion that he thought it was caused by non-accidental trauma. However, he freely acknowledged as a honest witness that with increased intracranial pressure can cause retinal hemorrhage, he couldn't rule that out. Couldn't rule that out. He gave some other examples that he couldn't rule out and it is true and I made this note to myself before Mr. Simmons brought it up, that had he removed the subdural hematoma and the fractures from the equation he couldn't even say that it was more likely than not that the retinal hemorrhages was caused by non-accidental trauma.

We get to Dr. B. I frankly found Dr. B to be one of the nation's preeminent experts in this field, pediatric neuro-radiology and investigation of child abuse, co-founder of the Child Abuse Task Force for Northern California, author of many books, treaties, articles, too numerous to count, works side by side with law enforcement, public defenders and social workers, all parties concerned. I thought he was a very credible medical witness, one of the best I've ever seen. The opinions of Dr. B come in unrebutted by the State, he was the only radiologist to testify in this case. Dr. O is not a radiologist. His opinions in this case are unrebutted. Some of them being 40 percent of all newborns have subdural hematomas. Frankly that

number was shocking to me but it was his testimony and he was a credible witness. 40 percent of newborns have retinal hemorrhage. Again the number frankly as a common sense was a rather shocking to me but he had articles to back up those statement, peer review journal articles to back up those statements.

The data shows that thrombosis causes retinal hemorrhage and subdural hematoma and venous thrombosis are more of a cause of retinal hemorrhage and subdural hematoma than trauma in this age group. His opinion was kind of extensive and persuasive to me that there is a great deal of medical literature emerging now on vitamin D deficiencies in mothers or newborns and the factors it has on bone findings just as we have here but also its effect on hemorrhages and he testified convincingly that the national standards now require assessment for these risk factors. He went in detail on the CT's and MRI's, he went through chapter and verse, specific findings on the imaging findings. The CT at Genesis, that allows you to date the subdural hematoma between-- anywhere from hours old to seven to ten days. That doesn't help us much in this case. He did say there was no evidence of an impact site, no evidence of him striking his head on something. He did point out a finding on the CT scan in the white area, my notes, that was exceedingly rare and exceedingly unusual in child abuse. Rather it was indicative of some type of life

threatening event such as heart stoppage, breathing stoppage, breathing or clotting disorder or venous thrombosis. Of course trauma could not be ruled out but it was exceedingly rare. From the CT scan no reason to conclude non-accidental injury. He clearly testified and I found his testimony backed up by medical literature to be convincing that a vitamin D deficiency can definitely have a role in causation, a vitamin D deficiency in the mother or the neonate. Workup for bone fragility was required, bone fragility or rickets was required and it was not done.

Dr. B is a leading researcher nationally on vitamin D deficiency and I think the actual research started at the University of Iowa Hospitals and Clinics.

Turning to the MRI findings, Dr. B pointed to the MRI, vein abnormality, make him think of something other than a tear associated with a trauma, some type of clotting, or thrombosis both non-accidental causes. He saw hematoma or hemorrhages that were at least seven to ten days old, subacute, some of it he testified could be up to 14 days old. This child was a child that was crying since birth. There was something going on in my opinion with this child. I am not a doctor, there was something medically wrong not caused by trauma that was going on with this child since birth or shortly after birth. Again Dr. B said retinal hemorrhage can be due to a rapid increase in brain

pressure. There's an 80 percent association between rapid increase in brain pressure as you would find with venous thrombosis, something like that, subdural hematoma and retinal hemorrhage, so the brain problem could very well have caused the findings in the eye that Dr. L saw.

We turn to the area on the MRI which showed the baby continued to bleed after, even after it was being cared for at UIHC, very unusual for trauma. Basically a further workup was required and referral to a specialist, this was not done. We have a baby that suffered diarrhea, vomiting, fluid loss, less fluid in the blood results in dehydration, dehydration contributes to clotting, clotting can cause bleeds or hemorrhage, a cause for this subdural hematoma that was not addressed or ruled out. The baby has been crying since birth potentially from these fractures. Potentially from the intracranial hemorrhage.

Again going to the MRI, the enlarged chambers, fluid buildup that we saw even increased, I can't remember what the exact date of the MRI, after the child had been at UIHC for a while, enlarged chambers, something was blocking the fluid. Dr. B testified unrebutted by the State's evidence that is exceedingly rare in trauma.

On the MRI taken November 28 after the shunts were put, the hydrocephalus was gone, Dr. B believed the way this responded

would be rare if it was due to trauma. Hydrocephalus may have causes that go back before birth. More likely related to a birth condition than non-accidental injuries.

The fractures again I won't belabor the rickets or vitamin D deficiency but the fractures, the clavicle fractures, common in delivery and labor. Even Dr. J agreed it's not uncommon to have a clavicular fracture even in a C-section. The fractures are consistent with rickets. Consistent with fragility bone disorder. Even ordinary handling can cause these fractures. I mean parents commonly burp their child by patting or even firmly patting the child on its back, to make them burp, that's where the fractures occur.

The cranial bones, the suture bones are wider, he said could be caused by a finding with the vitamin D deficiency. The leg bones, osteopenic, meaning not enough bones, missing growth plates in an infant, symptomatic potentially caused by vitamin D deficiency. He was vomiting and even if he's on Similac, even if it's taking the Similac that has 60 i.u.'s of vitamin D, I noticed, 60 i.u.'s is not near enough anyway but he was vomiting it up.

Right arm bones, bowing, can see that in a bone fragility disorder. You can see that in neonatal rickets. Specific findings he pointed in the arrows showing me where the bones bowed, frankly they looked like they were bowed to me. Dr. B

testified that fracture can be caused by very little force with bone fragility disorder. To a reasonable degree of medical certainty this child had neonatal rickets according to Dr. B. I found his testimony to be credible and he is an eminently qualified physician and his testimony was unrebutted. To say that these conditions were due to non-accidental injury is unsupportable.

Dr. P, I also found her to be eminently qualified. She is certainly subject to criticism that she works entirely for defense counsel at this time, however, there was no question but what she was an expert and rather eminent in her field and frankly I thought her testimony made sense and that she was a good witness. I frankly as much as I hate to say with regard to the University of Iowa Hospitals and Clinics I think there was a lack of evidence based medicine in this case. It does appear that Dr. O came up with a non-accidental injury as a default diagnoses. I mean what evidence is there, they have to consider metabolic bone disease, that full workup wasn't done. You must ask what evidence was done to rule out a bone fragility disorder, that was not done. What evidence exists to evaluate coagulation problems, that wasn't done. A full workup -- was there a full workup on the potential causes of the subdural hematoma, the bleeds or rebleeds, no workup on clotting abnormalities. This baby went on to have problems with

hydrocephalus indicating that he may well have had problems from birth or pre-birth. Again Dr. B addressed this by venous thrombosis not ruled out, seems quite likely. No workup by a hematologist to evaluate blood clotting.

Jennifer's testimony, she felt threatened just like-- threatened, accused, looking for answers, searching for answers just like Mr. R. She matter of fact left that voice mail message to her primary pediatric, Doctor, I can't remember his name, more or less I'm being accused myself of child abuse and that you better get a good lawyer if anything happens to me or my kids or something to that effect. I don't think Jennifer was an unbiased neutral witness in this matter. She probably, I'm sure was angry at Peter of what she thought he had done. I'm not-- her credibility was not quite the best in my mind. She initially denied saying Max had been fussy since birth, then later admitted telling the doctors fussy since birth. I did find it to be somewhat argumentative and evasive, quite eager to testify for the prosecution. I think she was impeached on a couple of points which I won't go into great detail. I have sympathy for Jennifer too. Like Mr. Simmons suggested, she was in quite a situation herself. She did make some statements later on to Families First to the extent that she might have caused-- to the effect that she might have caused some of the fractures.

Folks, this is a very intensive medical case and a complex case. I am just not convinced that the State has met its burden of proof in any respect and frankly I have some serious doubt whether a crime was even committed here much less than the defendant did it. No evidence in the record to establish a time frame, who did what, when or how, very little, no reliable medical evidence of non-accidental injury as these other very plausible, if not likely explanations, have not been ruled out and so I find the State has failed in its burden of proof and I'm going to enter a verdict of not guilty.

(The trial concluded on October 3, 2014, at 4:05 p.m.)