

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

KIMBERLY HUBBARD,)
)
 Plaintiff,)
)
 -vs-)
) Case No. 09-2266-CM/JPO
 LOGI WAREHOUSING AND)
 TRANSPORTATION, LCC, et al.,)
)
 Defendants.)

ORIGINAL

PARTIAL TRANSCRIPT OF PROCEEDINGS

BE IT REMEMBERED, that on this 20th day of
July, 2010, the above-entitled matter comes on for
hearing before the Honorable James P. O'Hara, Federal
Courthouse, Kansas City, Kansas, sitting in Kansas City
with a jury.

A P P E A R A N C E S:

The Plaintiff appears by and through its
attorneys of record, Mr. Aaron C. Johnson, Summers &
Johnson, PC-Weston, 717 Thomas, Weston, Missouri 64098.

The Defendant, Logi Warehousing and
Transportation, LLC, et al., appears in person and with
its counsel of record, Mr. Donald N. Peterson, II, and

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1 Mr. Sean M. McGivern Withers, Gough, Pike, Pfaff &
2 Peterson, LLC, O.W. Garvey Building, 200 West Douglas,
3 Wichita, Kansas 67202.

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I N D E X

WITNESS	PAGE
Cross-Examination of Dr. Smith.	3
Recross-Examination of Dr. Smith.	28
Certificate	30

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CROSS-EXAMINATION

1
2 BY MR. PETERSON:

3 Q Now, Dr. Smith, you would agree with me, wouldn't
4 you, that your first report had three areas of
5 criticism of Dr. Cobb, you called them
6 deficiencies?

7 And the third one was that you criticized her
8 for having only describing this blood in the basal
9 ganglion with gross, non-microscopic features,
10 when, in fact, her autopsy did have slides, it did
11 do microscopic examination?

12 A That's correct, I mis-said in my original reading
13 of the autopsy report.

14 Q Okay. Now, you testified a little bit about your
15 background, I wanted to review some of that.

16 I think you testified, didn't you, that you do
17 some medical legal work?

18 A I do.

19 Q Wouldn't you agree with me that you do a whole lot
20 of medical legal work?

21 A I don't know what a whole lot is. I told you how
22 many cases I do --

23 Q Okay.

24 A -- per year.

25 Q I think you said that you testified three or four

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1 times a year?

2 A Correct.

3 Q Okay. What time frame does that apply to, when did
4 you start testifying three to four times a year?

5 A I'd say in the mid-90s or before.

6 Q All right. And you said that you get about 10 or
7 12 cases each year, and you testify in three or
8 four of them?

9 A Correct.

10 Q So how many of that 10 or 12 do you give a report
11 in?

12 A Very few, actually.

13 Q Okay. So if you give a report, you usually end up
14 testifying in a deposition at least?

15 A If I give a report, I may not testify in
16 deposition. If I don't give a report, I may
17 testify in deposition. Each case is different.

18 Q I am just trying to get a handle on what percentage
19 of cases that you are contacted about, overall, you
20 end up testifying.

21 And I think prior you said you get contacted 10
22 to 12 times a year, and you testify three to four
23 times a year.

24 So could we conclude that you end up testifying
25 in a about a third of the cases you are contacted

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1 in?

2 A Yes.

3 Q Okay. Now, you submitted to me, to the attorneys
4 that retained you, you submitted a CV, and it had a
5 list of cases that you testified in; is that right?

6 A Yes.

7 Q And we have just put this up here, is this your CV?

8 MR. PETERSON: Is the CV admitted?

9 THE COURT: No.

10 MR. PETERSON: Okay.

11 Q (By Mr. Peterson) Well, I am going to go ahead and
12 ask you if this is your CV.

13 And then also, and I will just hand this to you
14 here in a minute, but is this your list of cases
15 also? Does that look familiar?

16 A Yes.

17 Q Okay. And let me just hand it to you for a minute,
18 and you can confirm that that is what you submitted
19 to counsel.

20 A Okay.

21 Q Is that an accurate list of your cases?

22 A Yes.

23 Q In fact, did you prepare that?

24 A Yes.

25 Q Okay. Thank you.

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1 MR. PETERSON: I would move to admit
2 Defendant's Exhibit 437.

3 MR. JOHNSON: No objection.

4 THE COURT: Exhibit 437 is admitted.

5 Q (By Mr. Peterson) And I don't want to go through
6 this extensively, but on the list for 2002, I am
7 just going to count these, you count with me, okay?

8 One -- every one of these is a case that you
9 either testified in or gave -- testified in at a
10 deposition or a trial; correct?

11 A Correct.

12 Q And if it has a D next to it, that is a deposition,
13 and if it has a T, that is trial; right?

14 A Right.

15 Q Okay. One, two, three, four, five, six, seven,
16 eight, nine, ten, 11, 12, 13, 14, 15, 16, 17, 18,
17 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30.

18 So is it true that in 2002, you gave testimony
19 under oath where you had been retained by an
20 attorney 30 times?

21 A Some of those are work comp, some of them personal
22 injury. And some are others, like forensic, like
23 these.

24 Q Okay. But 30 cases where you gave testimony for a
25 court proceeding; correct?

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1 A Well, is a deposition considered a court
2 proceeding?

3 Q I am including that, yeah.

4 A Okay. Well, then that is true.

5 Q All right. And you were paid in every one of those
6 by the attorney that retained you?

7 A Actually, in California, you were paid by the
8 person that is requesting the deposition.

9 Q Right, whoever is asking for you to give the
10 testimony, they pay you?

11 A Yes.

12 Q Okay. And that is the case here, I mean, the
13 plaintiffs have asked you to give testimony, and
14 they are going to pay you to do that, for your
15 time; right?

16 A Yes.

17 Q All right. And we could flip through, would you
18 agree that 2003 looks comparable? Do you have the
19 same list in front of you?

20 A I think he took it back.

21 Q Did you keep a copy in your file or --

22 A I didn't bring it with me.

23 Q Okay. Well, if I just set this so you can see,
24 2003, it looks like there are three pages of it and
25 it carries over to the next page.

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1 And you would agree with me, it looks like 2003
2 was a comparable number of cases that you testified
3 in; right?

4 A Yes.

5 Q I mean, it is a long list, isn't it?

6 A Yes.

7 Q And this is really what you do for a living, isn't
8 it?

9 A No, I do, for a living, 90 percent of the time is
10 treat patients.

11 Q Now, you hold yourself out as a neurosurgeon;
12 correct?

13 A Yes.

14 Q But you don't do many surgeries, do you?

15 A Not anymore, no.

16 Q And you haven't for a long time, have you?

17 A That's correct.

18 Q Okay. Have you been the lead surgeon on a single
19 neurosurgery in the last 25 years?

20 A No.

21 Q In 2006, you would agree with me, wouldn't you,
22 that you assisted in only two to three surgeries?

23 A I can't remember. Between two and five.

24 Q Okay. And like in '03, maybe it was two, would you
25 agree that is about right?

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1 A No, in 2003, I was more surgery assist than that.

2 Q Do you remember giving testimony in a case called
3 the Bryan versus Gomez, where you said that you
4 only gave two surgeries in 2003?

5 A Well, it is possible.

6 Q Okay. Is it true you are not on-call at any
7 hospital?

8 A That's correct.

9 Q Okay. And isn't it true that one of the reasons
10 you quit taking the lead in surgeries was because
11 your malpractice insurance was non-renewed?

12 A I'm sorry, what was the question?

13 Q Your carrier did not want to renew your malpractice
14 insurance in 1984?

15 Has any medical malpractice carrier ever used
16 your insurance?

17 A Yes.

18 Q Okay. And was that a large part of the reason that
19 about 25 years ago you quit being the lead surgeon
20 on neurosurgeries?

21 A I did not wish to pay the premium that would have
22 been entailed by renewing.

23 Q Okay. On at least one occasion, your surgical
24 privileges were suspended at a hospital; is that
25 true?

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1 A That is correct.

2 Q And I think you testified, let me see if I can get
3 it right here, you know, when lawyers call you, you
4 look and see, you are open to giving testimony, but
5 lawyers don't just call you, you advertise;
6 correct?

7 A Not anymore.

8 Q Okay. So you have advertised?

9 A I have.

10 Q All right. Would you disagree with me that if I
11 Googled your name, you would come up as an expert
12 witness in neurology?

13 A I won't disagree with that.

14 Q Okay. All right. And for a period of time you had
15 your own website set up for the purpose of being
16 retained as an expert in legal matters; right?

17 A Correct.

18 Q And you have gone, for example, to attorneys
19 conventions and paid to have a booth where you
20 could put out the information about you so that you
21 might be retained as an expert; isn't that true?

22 A Yes.

23 Q For example, you went to an American Trial Lawyers
24 Association conference in San Francisco in 2003;
25 right?

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1 A Correct.

2 Q And you paid \$1,700 -- \$1,750 to do that; correct?

3 A Well, you know that better than I do. I don't
4 remember how much it cost.

5 Q All right. And for a 13-year span, you advertised
6 in a publication called The California Lawyer?

7 A That's correct.

8 Q And that cost \$410 a month, at least for part of
9 that time, does that sound right?

10 A Yes.

11 Q There is an organization called TASA that you can
12 sign up to be a member of that refers experts to
13 lawyers, you have been a member of that; right?

14 A Correct.

15 Q And, in fact, testifying as an expert has proven to
16 be more lucrative for you than being a
17 neurosurgeon?

18 A Well, since I have not participated as an active
19 surgeon, yes.

20 Q Is it more lucrative than treating patients?

21 A No.

22 Q Do you remember testifying in a case called
23 Beckwith versus Columbia?

24 A I remember the name of the case, but I don't
25 remember the case.

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1 MR. PETERSON: Give me just a
2 second.

3 MR. JOHNSON: Can we have a sidebar,
4 Your Honor?

5 THE COURT: Yes.

6 MR. JOHNSON: Your Honor, I think
7 there is a pretty extensive list of testimony --

8 THE COURT: I think we should put
9 some sort of limit on what you question him about.

10 MR. PETERSON: I am just trying to
11 get his best memory. He has testified under oath
12 and --

13 THE COURT: Is that particular case
14 on the list that is an exhibit?

15 MR. PETERSON: It is, Your Honor.

16 THE COURT: Well, let's put a limit
17 on the extent of the questions you ask the doctor
18 about the case. If he doesn't remember the case,
19 he doesn't remember.

20 Q (By Mr. Peterson) Doctor, you recall a case called
21 Beckwith, you remember the name?

22 A Yeah, I remember the name.

23 Q And if you get your list out, there was a case from
24 right around 2000. Let's see here, yeah, this is
25 from Exhibit 437.

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1 If we look on the list that you provided,
2 Beckwith versus Columbia Wagoner Hospital, a
3 deposition in the case in 2000. Does that help you
4 remember anything?

5 A Only the name.

6 Q Okay. Well, do you recall being asked whether
7 testifying is more lucrative than treating patients
8 and saying yes, in 2000?

9 A I don't remember that.

10 Q Would it help you to remember if you saw the
11 testimony?

12 A Sure.

13 Q Doctor, what I want you to do is take a look at
14 this and I will just ask you, if after seeing this,
15 if that refreshes your memory at all on the
16 subject?

17 THE COURT: Doctor, at this point,
18 the question is yes or no.

19 A Yes.

20 Q (By Mr. Peterson) All right. Now that your memory
21 is refreshed, would you agree with me that, at
22 least in 2000, you testified that testifying in
23 legal matters was more lucrative than seeing
24 patients?

25 A The statement was net, as on a per-case basis, yes.

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1 Not as a matter of total income.

2 Q Okay. But you would agree that you were asked, is
3 testifying more lucrative than treating patients,
4 and you said yes?

5 A Yes.

6 Q Okay. Would you agree with me that attorneys like
7 the way you evaluate cases?

8 A Sometimes.

9 Q All right. And do plaintiff's attorneys especially
10 like the way you evaluate cases?

11 A Sometimes.

12 Q Well, do you remember ever testifying that those
13 two statements are true without the qualification
14 of sometimes? I mean, have you ever testified that
15 lawyers like the way you evaluate cases, and
16 especially plaintiff's lawyers like the way you
17 evaluate cases?

18 A Well, the way you are phrasing the question is --
19 you would have to give me a quote on that. Because
20 when I tell a plaintiff's attorney that they don't
21 have a case, did they like that? Maybe they do,
22 and maybe they don't like to be misled and start a
23 lawsuit for no valid reason. So maybe they like
24 that, I don't know.

25 When I tell attorneys they don't have a case,

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1 do they like that, I don't know.

2 Q Okay. So have you ever testified that, generally
3 speaking, plaintiff's attorneys like the way you
4 evaluate cases?

5 A Yes, I'm pretty sure I have.

6 Q Okay. Because you tell an attorney that they don't
7 have a case, that's the end of the project; right?

8 A I hope so.

9 Q So there is nothing else you --

10 A It is for me.

11 Q Right, you are not going to earn any more money if
12 that is the end of the project?

13 A That's correct.

14 Q Okay. All right. I want to get back to your
15 report. Actually, there were two reports; right?

16 A Correct.

17 Q Did you write the second report because you failed
18 to see the -- that Dr. Cobb had, in fact, given
19 microscopic examination when you, in fact -- well,
20 strike that, let me just start over.

21 Did you write the second report because you
22 realized there was an error in your first report
23 when you said that Dr. Cobb had not done
24 microscopic examination?

25 A The report speaks for itself, sir.

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1 Q All right. Well, I am asking you why you wrote it.
2 Was it because --

3 A I --

4 Q -- you made a mistake in the first report?

5 A I did make a mistake in the first report by not
6 seeing the histologic examination by Dr. Cobb.

7 If you will look at the second report dated
8 March 4th, 2010, the report was requested by
9 Mr. Johnson, because of the deposition testimony of
10 Dr. Cobb.

11 Q Okay. And because of the deposition testimony, did
12 you realize you had made a mistake in your first
13 report, and is that why you did, indeed, write a
14 second report?

15 A I wrote the second report at the request of
16 Mr. Johnson to review the deposition of Dr. Cobb.

17 Q And when you reviewed the deposition of Dr. Cobb,
18 you realized you had made a mistake and failed --
19 you had an alleged deficiency that wasn't accurate;
20 correct?

21 A That is correct.

22 Q And so did you need to write a new report to find
23 out some other thing to say?

24 A I will repeat it to you the third time, sir, if you
25 are not getting the message.

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1 Mr. Johnson asked me to write a report
2 commenting upon the deposition of Dr. Cobb.

3 This is plain English. Can I make it any
4 plainer to you, sir?

5 Q Okay. Well, is it fair to say you have what
6 amounts to new criticisms of Dr. Cobb in your
7 second report that were not in your first report?

8 A I don't believe I have criticisms of Dr. Cobb, I
9 had comments.

10 Q And you have what amounts to a detailed explanation
11 of basically a new theory of what happened, don't
12 you; isn't that true?

13 A It really wasn't a new theory, it was expansion of
14 the previous theory, taking into account what
15 Dr. Cobb had testified to. In addition to the
16 histologic findings, which I had overlooked when I
17 wrote my first report.

18 Q Now, you would agree with me that about a page and
19 a half of your first report focused on
20 survivability; right?

21 A Correct.

22 Q And in support of your conclusions that this would
23 not have been a lethal stroke, more likely than
24 not, you cited numerous studies on survivability of
25 stroke?

1 A I did.

2 Q Okay. And that is because there is literature on
3 that subject?

4 A There is.

5 Q All right. And you wanted to provide whatever
6 support you could from the medical literature to
7 show that there is, it is not just you saying it,
8 there is a basis for what you say; right?

9 A That is correct.

10 Q Okay. In your second report that talks about this
11 theory that you have that there was bleeding in the
12 basal ganglia due to trauma.

13 That doesn't cite to any studies of any kind,
14 does it?

15 A No. No, it does not.

16 Q All right. And if there was literature out there
17 that talked about that, that you could have a
18 traumatic injury that causes no bruising on the
19 exterior parts of the brain structure, but bleeding
20 deep in the basal ganglia, you would have cited
21 something, wouldn't you, if there was literature
22 that said that?

23 A The purpose of the second report was not to do a
24 literature search, it was to comment on Dr. Cobb's
25 deposition.

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1 Q But you were putting forth an explanation, just
2 like you did in the first report, and if you had
3 literature to support it, you would have included
4 it, wouldn't you have?

5 A I wasn't asked to do that.

6 Q Okay. You weren't asked to do it, but if you had
7 literature, would you have included it?

8 A That's a hypothetical statement. I was not
9 requested to do that. I don't volunteer to do
10 extra work.

11 Q All right. Well, let me ask it this way. Are you
12 aware of any literature that supports -- well,
13 strike that.

14 Can you point me to even one case of an
15 asymptomatic stroke in the basal ganglia that later
16 has blood in it from a trauma?

17 A I did not do a literature search on that.

18 Q Okay. Is that a no, you don't know of a single
19 case where that has occurred before?

20 A I did not do a literature search, therefore I don't
21 know.

22 Q Now, there is all kinds of literature, isn't there,
23 about the fact that the location of a stroke that
24 is no longer acute, but it is maybe days or weeks
25 old, that you can get a secondary bleed into that,

1 either from hypertension or from the original
2 causes of that stroke, they can bleed a second
3 time, right, that's a known --

4 A That's correct.

5 Q That's a known phenomenon?

6 A That's correct.

7 Q Okay. So Dr. Cobb's theory is that this known
8 phenomenon that everyone understands and knows lots
9 of cases of, but that's what happened here, right,
10 that is her theory?

11 A Yes, that's correct.

12 Q And your theory is that there is something that has
13 never ever happened before, to your knowledge, but
14 that is what happened here; right?

15 A Could you be a little bit more explicit?

16 Q I'm not sure, I will try.

17 Your theory is that there is this new
18 phenomenon. You have got a theory that these cells
19 are weaker and you could get this kind of blood
20 deep in the brain, the basal ganglia, from a trauma
21 at the location of a prior stroke.

22 And I think you just testified, you are not
23 aware of one other prior example of that?

24 A I have not done a literature search. Now, I am not
25 saying there is no literature on that subject.

1 You are trying to make me say, because I did
2 not do a literature search, therefore there is no
3 such literature.

4 That is a logical fallacy.

5 Q Okay. You are the one purporting that this is what
6 happened; right?

7 A I am purporting that there was a small amount of
8 blood in a previous small stroke. And one of the
9 mechanisms that I had positive, was that a trauma,
10 which was sufficient to cause over 50 ccs of
11 subarach -- of subdural blood, and a fair amount of
12 subarachnoid blood, could have easily led to a few
13 red blood cells spilling into an already weakened
14 area of the brain.

15 You just brought up another fact, that
16 hypertension can cause a hemorrhagic conversion of
17 a previous thrombotic stroke.

18 And there is plenty of literature on the
19 subject of increased blood pressure at the time of
20 trauma, given norepinephrine release and other
21 stressors.

22 So the acute elevation of blood pressure from
23 the acute trauma could certainly suffice to rupture
24 blood vessels in a weakened area of the brain.

25 Q Right.

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1 A Now, this is something that you at first --

2 Q Let me stop you.

3 A -- objected to when I was proposing it, but you
4 brought it up, and so now I am going to respond, I
5 guess.

6 MR. PETERSON: Your Honor, I would
7 like to have that stricken.

8 A, it is non-responsive, B, it is
9 beyond his report.

10 THE COURT: Counsel, approach.

11 I think if you were to rephrase your
12 question, that would probably be the appropriate
13 way to go.

14 MR. PETERSON: I am just referring
15 to this report, not to a literature search, not to
16 anything outside the report.

17 THE COURT: Please rephrase your
18 question.

19 MR. PETERSON: Thank you, Your
20 Honor.

21 Q (By Mr. Peterson) You would agree with me that
22 everything you just said is outside of anything you
23 ever said in your report; right?

24 A Yes.

25 Q Okay. Your second report talks about linear

1 injuries and rotational -- well, linear forces and
2 rotational forces; right?

3 A Yes.

4 Q And it is also the kinds of injuries that can occur
5 from those; right?

6 A Yes.

7 Q You would agree with me that those kinds of forces
8 on the brain tend to result in injuries in other
9 places other than the basal ganglia; right?

10 A They can.

11 Q Well, and they almost always do, right, when you
12 get frontal lobe injuries?

13 A That's true.

14 Q And it is the parts of the brain, the brain is
15 connected to the brainstem; right?

16 A Yes.

17 Q And it is essentially floating in fluid inside the
18 skull; right?

19 A To some degree, yes.

20 Q And when you have a linear injury, like maybe what
21 a football player gets when they collide, the skull
22 stops moving, but the brain keeps moving until it
23 impacts the skull; correct?

24 A That's true.

25 Q And that results in bleeding at, generally

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1 speaking, at the point where the impact of the
2 brain hits the skull?

3 A There is some linear acceleration, right, yes.

4 Q And you also can get, I think you have talked about
5 it, you can get a rebound effect and get bleeding
6 on the other side of the brain?

7 A That's correct also.

8 Q Okay. And you don't normally see blood or
9 something deep, deep in the center of the brain
10 like the basal ganglia from that kind of a trauma;
11 right?

12 A That is correct.

13 Q And the same thing is true with rotational; true?

14 A Rotational injuries can cause brain stem
15 hemorrhages.

16 Q Clear down to at stem?

17 A They can be in the brainstem, they can be in the
18 corpus callosum, they can be in the thalamus, they
19 can be in the hypothalamus. They can be in the
20 internal capsule, they can be in the basal ganglia.

21 Q Let's talk about what you typically see, though.
22 You don't normally see damage in the basal ganglia
23 from a rotational injury without seeing a lot of
24 other damage to other parts of the brain, do you?
25 You would agree with that?

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1 A I'm having a little difficulty with your question
2 because you are telling me that all shearing
3 injuries, all rotational injuries, therefore are
4 causing generalized diffuse hemorrhages, which is
5 not true.

6 Q I think I asked you, generally speaking, what you
7 find is injuries elsewhere, not deep in the brain
8 when you have a rotational injury. You would agree
9 with that?

10 A No, I don't.

11 THE COURT: Mr. Peterson, is this a
12 good point to let the jury --

13 MR. PETERSON: Yeah, I may be real
14 close to being done.

15 THE COURT: Okay. I am going to
16 hold you to that.

17 Q (By Mr. Peterson) Do you cite to any literature
18 about rotational injuries, rotational forces being
19 able to cause injury, deep in the center of the
20 brain, without associated other injury to the brain
21 itself?

22 A I have not done any recent literature search on
23 that, so I do not have, fresh in my memory, any
24 specific article.

25 Q In your diagram here, were you talking about the

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1 arachnoid and the subdural, I mean, these are on
2 the surface of the brain; right?

3 A Yes.

4 Q And the bruising that we were talking about that
5 you would get, like what a football player gets
6 when they have a concussion from a linear injury,
7 we are talking about bruising to the brain itself;
8 correct?

9 A Well, first of all, concussion does not imply a
10 structural lesion. And so you are mixing your
11 examples.

12 We talked about brain injury opposed to a
13 concussion you were talking about, an acceleration
14 or deceleration injury.

15 And you said that it impacts different areas of
16 the brain besides the basal ganglia. I will agree
17 with you on that.

18 But concussions don't cause any visible injury.

19 Q We are talking about, you don't get concussions
20 from subarachnoid -- we are talking about damage to
21 the brain itself; correct?

22 A You don't get concussions from subarachnoid
23 bleeding, but you may get concussions from the
24 injury that caused subarachnoid bleeding.

25 Q Right. Concussions are a brain injury; right?

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1 A Concussions are defined as transient loss of
2 neurological function.

3 Q And that is the brain, the neurological function is
4 in the brain; right?

5 A Correct.

6 Q Okay. So we have these linear injuries, we are
7 talking about where the brain impacts the skull, we
8 are talking about injuries to the brain, not to the
9 surface of the brain, but to the actual brain?

10 A Well, the surface of the brain is part of the
11 brain.

12 Q Well, other than the subarachnoid and the dura, I
13 am talking about the brain itself.

14 A Okay.

15 Q Injury to the brain, that is what we are talking
16 about when you talk about linear -- injuries
17 resulting from linear forces; right?

18 A Well, you have specified the injury, but, yes, you
19 can have brain injury from a linear acceleration or
20 deceleration injury.

21 Q And that would normally be bruising, I mean, I am
22 not using all the medical terms, perhaps, maybe you
23 would help me.

24 But bruising, for example, in the brain itself;
25 right?

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1 A You can have hemorrhage, you can have contusion,
2 you can have swelling.

3 Q And there was none of that in this case?

4 A That's correct.

5 Q All right. Thank you.

6 THE COURT: Could counsel approach
7 for just a moment, please?

8 Is this a good breaking point to
9 give the jury a recess? Mr. Peterson, how much
10 more do you think you have with the doctor?

11 MR. PETERSON: Maybe 15 minutes.

12 THE COURT: And then will there be
13 any redirect?

14 MR. JOHNSON: Very briefly, Your
15 Honor.

16 THE COURT: Okay.

17 (A recess was taken.)

18

19

20 RE-CROSS-EXAMINATION

21 BY MR. PETERSON:

22 Q Dr. Smith, your letterhead has your name and then
23 it says neurological surgery; right?

24 A Yes.

25 Q It doesn't say neurologist, you hold yourself out

1 as a neurosurgeon?

2 A I do.

3 Q Okay. Now, would you agree with the following
4 statement -- well, let me back up. Just a second.

5 You testified that so called silent strokes
6 are, in fact, fairly common?

7 A Did you say silent strokes and heart attacks?

8 Q Silent strokes are fairly common?

9 A Yes, they are.

10 Q It is a known thing?

11 A Yes.

12 Q And one way we might judge your theory is whether a
13 coroner, who does autopsies, including people who
14 have had head trauma and have died of head trauma,
15 regularly sees blood in the location of these prior
16 silent strokes; right?

17 If your theory is true that head trauma can
18 cause blood at the location of a prior silent
19 stroke, and silent strokes are pretty common, we
20 would expect to see that, at least sometimes, in
21 autopsies of people who died of head trauma; true?

22 A I suppose.

23 Q Okay. Thank you.

24 -----

25

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I, Kathryn A. Sellin, a Certified Court Reporter of the State of Missouri, do hereby certify that the foregoing is a true and correct transcript of the proceedings had in the above-entitled cause on the date as indicated.

IN WITNESS WHEREOF, I hereunto set my hand this 17th day of January, 2011.

Kathryn A. Sellin

Court Reporter