

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
3 WESTERN DIVISION

4 JEFFREY HAVARD PETITIONER
5 VS. CIVIL ACTION NO. 5:08-CV-275-KS
6 CHRISTOPHER EPPS, et al. RESPONDENTS

7 *****

8 DEPOSITION OF DR. STEVEN HAYNE

9 Taken at the offices of
10 Watkins & Eager,
11 400 East Capitol Street,
12 Jackson, Mississippi,
13 on Tuesday, November 23, 2010,
14 beginning at approximately 8:57 a.m.

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1 MR. MAGEE: Good morning. This is the
2 videotaped deposition of Dr. Steven Hayne taken by
3 counsel in the matter of Jeffrey Havard versus
4 Christopher Epps, et al., in the District Court of the
5 Southern District of Mississippi, Western Division.
6 Today's date is November 23rd, 2010. The time is
7 approximately 8:57 a.m. Counsel may now introduce
8 themselves on record.

9 MR. JICKA: I am Mark Jicka, and I represent
10 Jeffrey Havard.

11 MR. CARNER: Graham Carner, also for
12 Mr. Havard.

13 MR. McNAMARA: Pat McNamara representing the
14 Attorney General and Christopher Epps.

15 MR. MAGEE: The court reporter may now swear
16 in the witness.

17 (Witness sworn.)

18 THE WITNESS: I'll waive and may I have a
19 copy?

20 DR. STEVEN HAYNE,
21 having been duly sworn, was examined and testified as
22 follows:

23 EXAMINATION

24 BY MR. JICKA:

25 Q. Good morning, Dr. Hayne.

1 A. Good morning, Counselor.

2 Q. I'm going to ask you some questions today,
3 and if you don't understand my questions, will you
4 please let me know that?

5 A. I will do that, sir.

6 Q. And I will probably butcher some of these
7 terminologies and pronunciations. So if you'll help
8 me, if I say it in the wrong way, you're certainly
9 welcome to correct my pronunciations.

10 A. Thank you, Counselor.

11 Q. Will you please provide the Court with your
12 professional qualifications, sir?

13 A. I'm a pathologist. I work in the fields of
14 anatomic, clinical, and forensic pathology. I've
15 worked in the field for some 35 years. I'm certified
16 in anatomic pathology, clinical pathology, forensic
17 pathology, forensic medicine, forensic physician.
18 I've worked in the state of Mississippi for some 20
19 years in different capacities in relationship to
20 medical-legal investigation of death, including acting
21 State Medical Examiner, designated State Pathologist,
22 and Chief State Pathologist.

23 Q. And tell me a little bit about your
24 education, sir.

25 A. I did the predominant of my undergraduate

1 work at North Dakota State, spent two years at the
2 University of North Dakota School of Medicine, and
3 transferred to Brown University in Providence, Rhode
4 Island, where I completed my medical degree, and then
5 I went to San Francisco at Letterman Army Medical
6 Center, where I trained in pathology. I rotated at
7 numerous institutions in the San Francisco Bay area,
8 including Children's Hospital, University of
9 California Moffitt Hospital, Union Memorial Blood
10 Bank, the Medical Examiner's Office for the City and
11 County of San Francisco, as well as others, and then
12 the last six months, I spent in nuclear medicine.

13 Q. Can you list for the Court your
14 qualifications in the area of child sexual abuse
15 investigation and diagnosis?

16 A. It's part of the field of forensic
17 pathology. I've also authored in the field. I wrote
18 a paper with Dr. Hammer, also a resident at the time,
19 at -- stationed at the Presidio with Letterman Army
20 Medical Center, in conjunction with my chief, Colonel
21 Starkey, and the Chief of OBGYN, Colonel Ansbacher.
22 We published that. It was a requirement for
23 graduation of a residency program that you submit and
24 have accepted a paper for publication. So Dr. Hammer
25 and I were pretty good friends, so we co-authored that

1 paper, and published it. And it was basically
2 identification, collection of evidence, treatment, and
3 the like. It was a comprehensive paper, and it had a
4 long checklist, so it could be posted in an emergency
5 room somewhere, you can go right down the list. And
6 also, when I was in the military, not by choice, but I
7 had to do a lot of sexual assault work-ups in the
8 United States Disciplinary Barracks at Fort
9 Leavenworth, which, as you know, homosexuality in a
10 military institution like that is a major offense
11 under the Uniform Code of Military Justice. So I had
12 to go in night after night and do that work. And many
13 times we have had cases of sexual assault involving
14 death of a human being that we've done medical-legal
15 postmortem examinations on.

16 Q. Have you been accepted as an expert in this
17 field in courts?

18 A. Yes, sir.

19 MR. JICKA: Pat, I know the procedure here is
20 a little different than a typical case, and I don't
21 know if you would have any objection, but -- and I
22 don't know if you have any questions, but we would
23 tender him as an expert witness.

24 MR. McNAMARA: He's already been accepted as
25 an expert in this case.

1 MR. JICKA: Okay. And I would agree with you
2 on that.

3 BY MR. JICKA:

4 Q. Dr. Hayne, you performed an autopsy on Chloe
5 Britt; is that correct?

6 A. Yes, Counselor. You pronounce it Chole
7 Britt.

8 Q. I think it's Chloe.

9 A. Chloe?

10 Q. But I'm not sure.

11 A. Because it is an Hispanic name. It would be
12 Chole (sic) if it was in Spanish. Maybe it would be
13 Chole.

14 Q. Why don't we call her Miss Britt? And that
15 was part of your duties in your profession; is that
16 correct?

17 A. That's correct. Now, on that date of 2002,
18 actually, it was the 22nd of February when the
19 postmortem examination was conducted.

20 Q. And do you have a copy, Dr. Hayne, of your
21 final report of autopsy with you today, sir?

22 A. I do, Counselor.

23 MR. JICKA: Okay. And, Pat, I'm going to
24 mark that final report of autopsy as an exhibit to his
25 deposition.

1 (Exhibit 1 marked.)

2 BY MR. JICKA:

3 Q. Dr. Hayne, what was the purpose for you doing
4 an autopsy on Miss Britt?

5 A. It was to come to conclusions as to cause and
6 manner of death, cause of death being the medical
7 reason Miss Britt died, and the manner of death is the
8 classification of the death. And one has to come to a
9 conclusion, if it's suicide, accident, homicide,
10 natural, pending, or undetermined. Of course,
11 sometimes, cause of death, one cannot come to a
12 conclusion.

13 Q. Okay. And were you asked to do that by the
14 coroner of Adams County, sir?

15 A. The county coroner, medical examiner,
16 investigator is his official title, and it was James
17 Lee.

18 Q. And as part of his request for you to do an
19 autopsy on Miss Britt, was there documentation or a
20 permit that was issued to you by the Adams County
21 Coroner?

22 A. Yes, Counselor, there's a State form called a
23 ME-1, Medical Examiner 1 form, and that I made part of
24 the postmortem examination as a routine practice of
25 business.

1 MR. JICKA: And I'm going to mark that, Pat,
2 as Exhibit 2, the permit from the Coroner of Adams
3 County.

4 (Exhibit 2 marked.)

5 BY MR. JICKA:

6 Q. What is the purpose when you receive this
7 permit, as you use it in your work?

8 A. Well, it's the request from the County in
9 writing to perform a medical-legal or forensic autopsy
10 the remains so identified on the paperwork, the ME-1
11 -- or ME-17 form.

12 Q. And on the permit that involves Miss Britt,
13 it lists different circumstances, I believe, for you
14 to, I guess, determine or to look at as you're
15 conducting your autopsy; is that correct?

16 A. That's correct.

17 Q. And one of those I see there is a note about
18 sexual assault. Do you see that located?

19 A. I do.

20 Q. And as part of your autopsy, even from the
21 beginning of the autopsy, was it part of your work to
22 determine whether there could be shown that there was
23 a sexual assault in this case?

24 A. In fact, to come to a conclusion, that -- or
25 not come to a conclusion, final conclusion.

1 Q. All right. But even from the beginning of
2 your work in this case, you knew that sexual assault
3 was at least an issue, at least in the minds of the
4 coroner and the district attorney, as presented to
5 you?

6 A. Not only from the paperwork, Counselor, but
7 also from telephonic communication from the County
8 Coroner, Medical Examiner, Investigator.

9 Q. You did conduct an autopsy on Miss Britt; is
10 that correct?

11 A. I did, Counselor.

12 Q. And in the report, there's no mention of a
13 sexual battery on this child; is that correct?

14 A. That is correct.

15 Q. And why is that not listed as something in
16 your final report of autopsy?

17 A. I could not come to a final conclusion as to
18 that, Counselor.

19 Q. Okay.

20 A. There was one injury that I indicated would
21 be consistent with the penetration of the anal area,
22 but that, in and of itself, I didn't feel was enough
23 to come to a conclusion that there was a sexual
24 assault in this particular death.

25 Q. Okay. When you did your autopsy, you were

1 not able to find any tearing of the anal area on this
2 child; is that right?

3 A. No, there was not.

4 Q. If that is something that you had noted or
5 found, then would you have noted it in your report,
6 correct?

7 A. I would have.

8 Q. And you also would have had photographs that
9 would have shown that on this child, correct?

10 A. I would have.

11 Q. All right. And it's mentioned -- sexual
12 assault or battery is not mentioned anywhere in this
13 report; is that correct?

14 A. No, I did not see evidence of that,
15 Counselor. I was asked in court, but I did not see
16 evidence in the autopsy, and, therefore, did not
17 reflect it in the report.

18 Q. You did find a one-centimeter contusion; is
19 that correct?

20 A. That's correct.

21 Q. Just for the record, how big is a
22 one-centimeter contusion?

23 A. Approximately like that, Counselor.

24 Q. Okay. Now, but that was not listed in the
25 list on the autopsy report as a traumatic injury; is

1 that correct?

2 A. It wasn't, but it was listed in the body of
3 the report, and also in the illustration body diagram.

4 Q. In other words, you noted it in your report,
5 but did not list it as a traumatic injury to this
6 child?

7 A. That's correct.

8 Q. And is that because there could be many
9 possible alternative causes for a contusion such as
10 this found on this child?

11 A. It's probably a typo error, Counselor,
12 because I'm sure I dictated it, but the typist skipped
13 it.

14 Q. All right. The photographs we mentioned
15 didn't show any tearing; is that correct?

16 A. That is correct.

17 Q. All right. And, further, no tearing was
18 listed or noted in the autopsy report?

19 A. No lacerations or abrasions were identified,
20 only a single contusion.

21 Q. In this case, Dr. Hayne, you had prepared
22 earlier a declaration. Have you had an opportunity to
23 look at that?

24 A. I have.

25 MR. JICKA: I'm going to mark this, Pat, as

1 the next numbered exhibit to Dr. Hayne's deposition,
2 which will be Exhibit 3.

3 (Exhibit 3 marked.)

4 BY MR. JICKA:

5 Q. Dr. Hayne, were you able to review this
6 declaration and correct it for any errors prior to
7 executing it on March 5th, 2009?

8 A. Well, sir, I'm looking to see if I can find
9 in my file here what you're addressing.

10 Q. I've got an extra copy.

11 A. Thank you.

12 Q. In this declaration, Dr. Hayne, it, first of
13 all, involves your work and your opinions in the
14 Jeffrey Havard matter, correct?

15 A. That's true.

16 Q. And you state, again, and forgive me, Pat,
17 I'm going to try not to be too redundant on this in
18 this deposition today, but, in there, you state that
19 you found no tears -- this is in paragraph seven,
20 Dr. Hayne.

21 A. Yes, sir.

22 Q. No tears to the rectum, anus, anal sphincter
23 or perineum; is that correct?

24 A. That's correct.

25 Q. And it's not possible that tears would have

1 healed between the time that Miss Britt was seen in
2 the emergency room and that you performed the autopsy?

3 A. They would not.

4 Q. I want to ask a little bit about this area of
5 the human body. Do you agree that there's a delicate
6 tissue lining of the anus rectum that can be damaged
7 easily in a child of this age?

8 A. It can. It is a squamous mucosa lining, not
9 skin.

10 Q. Okay.

11 A. And that is more easily injured, traumatized,
12 than skin surface.

13 Q. And an injury can occur in a child like this,
14 even by the application of a rectal thermometer; is
15 that correct?

16 A. That could happen, but, Counselor, I think
17 that would be highly unlikely to see an injury of such
18 size as secondary to the placement of a thermometer by
19 medical personnel.

20 Q. Okay. All right. And in reviewing the
21 medical records, did you see where her temperature was
22 taken by rectal thermometer on multiple occasions
23 while she was in the emergency room?

24 A. I did see that, sir.

25 Q. As part of the final autopsy report, there's

1 also a mention of a sexual assault kit.

2 A. An RSVK 1111 kit was employed to collect
3 evidence that was subsequently submitted to the
4 Mississippi Crime Lab under chain of custody.

5 Q. And as part of your work here, and as a
6 result of the sexual assault kit, isn't it true that
7 there was no semen found after a serological
8 evaluation conducted on this child?

9 A. Actually, by microscopic examination, but no
10 spermatozoa were identified.

11 Q. Okay. And swabs -- I guess what happens is
12 that you will take swabs from different areas of the
13 child's anatomy; is that correct?

14 A. That's correct.

15 Q. And then you will look under a microscope for
16 any evidence that there might be sperm; is that
17 correct?

18 A. That's correct. We look both oral, anal, and
19 vaginal.

20 Q. And on this, it looks like, from the oral
21 swab, the vaginal, and the rectal swab, that there was
22 no evidence found of spermatozoa; is that correct?

23 A. That's correct. There are additional tests
24 that can be performed, serological tests, and I
25 believe those were performed, too, and they were also

1 negative.

2 Q. Okay. And the serological evaluation was
3 done with -- from an oral standpoint, a vulvar
4 standpoint, a vaginal standpoint, and a rectal
5 standpoint; is that --

6 A. I believe that is correct, sir.

7 Q. Dr. Hayne, what are the signs of brain death
8 or lack of brain function in a child like this?

9 A. If you have brain death, first, there would
10 be flaccidness. There would be unconsciousness.
11 There would be muscle relaxation. There would be lack
12 of breathing, unless there was artificial respiration
13 being delivered. Body functions would essentially
14 cease, either at that time or shortly thereafter.
15 Eventually, there would be breakdown in tissue,
16 lysis, purification, and the like.

17 Q. Okay. Reviewing the medical records for
18 Miss Britt, I noted certain things, and I want to just
19 mention and ask if these are signs or could be signs
20 of lack of brain function, some of which you've
21 already mentioned. Dilated pupils, sir?

22 A. That would be.

23 Q. Fixed pupils?

24 A. That would be.

25 Q. Lack of muscle tone?

1 A. That would be, also.

2 Q. Asystole?

3 A. Asystole?

4 Q. Asystole, thank you.

5 A. Yes. That would be if the heart is no longer
6 functioning. You can have brain death and still have
7 functioning of the heart. Cardiovascular
8 functionality could remain for a period of time, and
9 respiratory could for a period of time, too.

10 MR. McNAMARA: I would have to interject and
11 object at this time based on this is outside the scope
12 of what we're here for as far as the sexual assault
13 goes, without it being tied together as it is, and I
14 would object to the continuing leading of the witness.

15 MR. JICKA: Okay. And I'll -- I will try not
16 to lead. Dr. Hayne has a kind of interesting position
17 in this case, so I'm not sure exactly what witness he
18 would be considered by the Court, but I'll -- I don't
19 mind asking nonleading questions.

20 A. May I interject one part to my -- one last
21 part to my answer?

22 BY MR. JICKA:

23 Q. Sure.

24 A. There are many definitions of death. It
25 could be cardiovascular, respiratory, central nervous

1 system, somatic, cellular, and they all vary, you
2 know, as to response of an individual.

3 Q. Based upon -- you've reviewed the medical
4 records for Miss Britt in this case; is that correct?

5 A. I have, Counselor.

6 MR. JICKA: I'm going to mark those as
7 Exhibit 4 to your deposition.

8 (Exhibit 4 marked.)

9 BY MR. JICKA:

10 Q. Based upon the information available to you,
11 Dr. Hayne, was Chloe Britt brain dead or lacked brain
12 function at the time that her anal dilation was first
13 noted?

14 A. It was.

15 Q. And this was after she was successfully
16 intubated; is that correct?

17 A. That's correct.

18 Q. And is this an opinion within a reasonable
19 degree of medical certainty, sir?

20 A. As reflected in the medical record, yes.

21 Q. Okay. Do you commonly encounter dilated anal
22 sphincters during a postmortem examination?

23 A. It can occur, but it's not as common as I
24 think people think.

25 Q. Is that a recognized finding in the

1 postmortem period?

2 A. It can be, yes.

3 Q. And do children who have died of brain
4 injuries have an increased likelihood of having a
5 dilated anus postmortem?

6 A. It's possible. I think you supplied me with
7 one article from the Orange Journal, '97, "American
8 Journal of Forensic Medicine and Pathology." In that
9 particular article, there were 65 cases of which only
10 a handful were involving children of less than one
11 year of age, and of those --

12 MR. McNAMARA: I object again. This is not
13 relevant to what we're speaking about. This is a
14 general study. This is not the case that we're
15 talking about.

16 BY MR. JICKA:

17 Q. Go ahead, sir.

18 A. And of all those, only one had suffered a
19 traumatic death. In that particular case, the anus
20 was described as slit-like. So in that case, there
21 was no dilatation in a violent death that
22 Dr. Lauridson is referring to in his opinion of 65
23 cases published in the Orange Journal.

24 MR. JICKA: And, Pat, I don't -- certainly
25 I'm not dismissing your objection, but this goes

1 directly to what we believe to be an issue in this
2 case and allowed by Judge Starrett in his order.

3 BY MR. JICKA:

4 Q. Can resuscitation efforts result in a large
5 amount of gas accumulating in the gastrointestinal
6 tract?

7 A. Ineffective resuscitation, cardiopulmonary
8 resuscitation. I do not believe that was the case in
9 this particular individual, in that there was stool in
10 the large bowel, and that would have effectively
11 blocked the passage of air going down the
12 gastrointestinal tract and dilating the distal part of
13 the GI tract.

14 Q. So can this gas, the air and the amount of
15 pressure on the bowel and colon, facilitate the
16 passage of stool?

17 A. It's possible, yes, ineffective
18 cardiopulmonary resuscitation.

19 Q. And isn't that what they had at the emergency
20 room here, they had an ineffective CPR with this
21 child?

22 A. It would only be my impression. They are
23 medically-trained personnel to deliver cardiopulmonary
24 resuscitation in an adequate manner.

25 Q. But this child was not revived at any point

1 in time that you reviewed in the medical records?

2 A. No, sir, was not.

3 Q. Okay. If the gas enters into the colon,
4 could that cause distention of the colon, and the
5 rectum, and promote further dilation of the anus?

6 A. If that had occurred, yes sir. I saw no
7 evidence of that occurring, but if -- in a general
8 sense, if gas is pushing stool, it can dilate, pack
9 the stool, enlarging the distal bowel, yes, it could
10 do that.

11 Q. Okay. And could a spontaneous bowel movement
12 also contribute to anal dilation?

13 A. Only if they're very hard stool would I
14 expect to see that, if there's enough pressure with
15 force with the chest or enema, you can -- even in
16 cases of acute appendicitis, in patients that have
17 survived. So that can occur, but that's pushing stool
18 down into the space of the vermiform appendix, but I
19 didn't see evidence of that in this particular case.

20 Q. If Chloe Britt was oxygen deprived for 45
21 minutes to an hour before the anal dilation, is it
22 possible that she was -- was located, is it probable
23 that she lacked brain function?

24 A. Forty-five minutes?

25 Q. Forty-five minutes to an hour?

1 A. That would be reasonable that she would have
2 been dead.

3 Q. Okay.

4 A. You can survive for a few minutes with oxygen
5 deprivation, if it's total oxygen deprivation. The
6 brain has a store of glucose and oxygen for
7 approximately 15 to 30 seconds, then unconsciousness
8 will commence, and shortly after that, within two to
9 three minutes, death will intervene.

10 Q. In your autopsy report, Dr. Hayne, you note,
11 several times, congestion. If you'll look -- you see
12 on your finding, sir?

13 A. Yes, sir.

14 Q. Can congestion cause contusions?

15 A. No.

16 Q. Okay. The congestion that you found with
17 Chloe Britt, where was it located?

18 A. It was in the viscera, the major organs.
19 That's not to be unexpected. I don't think this death
20 was an immediate death, and there would be a period of
21 time, an agonal phase of death where the
22 cardiovascular activity would be diminishing, pumping
23 efficiency would also diminish, and blood would have a
24 tendency to pool in the different organs, the lungs,
25 spleen, kidneys, and the like, the liver.

1 Q. The inner mucosa of rectum, is it sometimes
2 visible after death in an autopsy?

3 A. It could be. It's unusual. You would have
4 to spread the buttocks to look and see that.

5 Q. And what would it look like? Would it have a
6 pink or red coloring to it?

7 A. Usually be a pinkish color, where there would
8 be congestion, usually dependent from the geographic
9 or the gravitational pull of blood downward.

10 Q. And if that inner mucosal lining was observed
11 even by physicians, could it be confused as an anal
12 injury?

13 A. I would think not, Counselor. I can't speak
14 for them, but a contusion is usually fairly-well
15 circumscribed and outlined, while congestion would not
16 be, but I would hate to speak for them.

17 Q. Okay. Flaccid, that's the same as limp; is
18 that correct?

19 A. That's correct.

20 Q. Could a flaccid or limp muscle condition
21 contribute to anal dilation?

22 A. That could, yes.

23 Q. Okay. And a dilated anal sphincter is not,
24 on its own, evidence of anal sexual abuse; is that
25 correct?

1 A. It is not by itself, no.

2 Q. Okay. To determine that sexual abuse is a
3 probability, you would need additional evidence than
4 just the dilated anus; is this correct?

5 A. I would like to see more evidence as to
6 traumatic injuries, also clinical history, and,
7 hopefully, by laboratory testing.

8 Q. Okay. And we don't have here in your
9 analysis, and your autopsy of Miss Britt, that
10 additional type of evidence; is that correct?

11 A. Do not. I only have a contusion, which is a
12 traumatic injury. We do not have abrasions,
13 lacerations, presence of seminal fluid, spermatozoa,
14 and the like.

15 Q. And, Dr. Hayne, can you say from your autopsy
16 evidence, and from the coroner's inquest, the medical
17 records that you reviewed, the photographs, and the
18 laboratory findings, that this child, Miss Britt, was
19 sexually assaulted?

20 A. I could not come to that final conclusion,
21 Counselor. As I remember in trial testimony, I said
22 that the contusion would be consistent with a sexual
23 abuse, but I couldn't say that there was sexual abuse,
24 and, basically, I deferred to the clinical examination
25 conducted at the hospital.

1 Q. And so from your standpoint and from your
2 expertise, you cannot say that this child was sexually
3 abused, to a reasonable degree of medical certainty;
4 is that correct?

5 A. I could not now and I could not then, either;
6 at the trial, or when I wrote the report, or discussed
7 the case with the coroner.

8 Q. Okay. Is physical sexual abuse of a child a
9 medical diagnosis?

10 A. Well, there's a component of a medical
11 diagnosis. You're describing also a legal issue, too.

12 Q. Right.

13 A. The diagnosis could come from laboratory
14 testing. It could come from physical exam by a
15 treating physician. It could also come from a
16 pathologist in a case where there's death, also from
17 scene investigation. So it's a combination of things,
18 but it's also a legal, and as you notice, I never used
19 the term, "rape." That is a legal term, not a medical
20 term.

21 Q. Yes, sir. Are you familiar with the
22 expertise of the doctors and nurses that treated this
23 child at the emergency room?

24 A. I'm not.

25 Q. Do you know --

1 MR. McNAMARA: Object to anything along this
2 line. The doctor has stated he is not familiar with
3 their qualifications. He'd be completely incompetent
4 to answer any questions regarding that.

5 BY MR. JICKA:

6 Q. Do you know what, if any, experience they had
7 ever treating children that had had sexual abuse?

8 A. I don't know that, Counselor.

9 Q. Would you agree that it takes a certain
10 medical expertise to determine whether a child has
11 ever been sexually abused?

12 A. I would agree with that, yes.

13 Q. And in this case, from your work, hired by
14 the State, you could not make a determination that
15 sexual abuse was a probability in this case, correct?

16 A. I could not come to a final conclusion,
17 Counselor. I could only come to the conclusion I so
18 testified in court, that the contusion was consistent
19 with what I've seen in a sexual abuse case. And also,
20 just technically, I was contracted not with the State,
21 but by the County.

22 Q. Thank you.

23 A. Adams County.

24 Q. And I appreciate it. Thank you for
25 correcting that. Dr. Hayne, you testified at Jeffrey

1 Havard's trial, correct?

2 A. I did, sir.

3 Q. And you were not asked, actually, about
4 sexual battery during that trial, were you, sir?

5 A. Not specifically, no.

6 Q. But you were aware, from even from the
7 coroner's permit, that that was an issue in the case,
8 correct?

9 A. Oh, yes, and I knew before I even stepped on
10 the witness stand that was going to be an issue.

11 Q. Okay. And prior to the trial, you discussed
12 this with the district attorney whether you could say
13 to a reasonable degree of medical certainty or even to
14 a probability that sexual abuse occurred, correct?

15 A. That's correct. But all I could tell the
16 district attorney, prior to trial, was that there was
17 a contusion, and that would be consistent with sexual
18 abuse, but I'd like to see more evidence before I made
19 that next and more significant evaluation and
20 conclusion.

21 Q. Okay. You -- if you had been asked the same
22 questions we -- that I've been asking you today in
23 court about sexual abuse, would you have answered them
24 in the same manner, sir?

25 A. Exact way. I think I at least touched on

1 some of those, and I have not changed my opinion, and
2 it would make no difference whether defense or
3 prosecution was asking me, the answer would be the
4 same.

5 Q. That leads me to my next question. Did you
6 ever meet with Gus Sermos or Robert Clark,
7 Mr. Havard's attorneys about this case?

8 A. I don't remember that, Counselor, but I --

9 MR. McNAMARA: And I object. This is off the
10 subject, not relevant.

11 BY MR. JICKA:

12 Q. If requested by them, would you have met with
13 the attorneys for Mr. Havard in this case?

14 A. I always honor those requests, either
15 prosecution or defense.

16 Q. And would you have answered their questions
17 in a meeting the same way you have today, if asked?

18 A. If they were asking the same questions, I
19 would respond the same way.

20 Q. Dr. Hayne, you can't say, or can you say,
21 that Chloe Britt was sexually penetrated to a
22 reasonable degree of medical certainty in this case?

23 A. I cannot. All I can say is the injury
24 sustained would be consistent with that, but that's
25 not a definitive diagnosis. And maybe I should

1 explain.

2 Q. Sure.

3 A. I use a series of qualifiers, with reasonable
4 medical certainty, I can say exclude, suggestive of,
5 may fit, consistent with, and diagnostic of.

6 Q. Okay. Let's go off the record for a second.
7 Let me review my notes and see what else I have.

8 A. Sure.

9 MR. MAGEE: Off the record. The time is
10 9:30.

11 (Recess.)

12 (Exhibit 5 marked.)

13 MR. MAGEE: Back on the record. The time is
14 9:40.

15 BY MR. JICKA:

16 Q. Dr. Hayne, thank you for helping me through
17 this information today. What I'd like to do is show
18 you what I've marked as Exhibit 5, and ask you if you
19 can identify what that document is, sir?

20 A. This is a report from the Mississippi Crime
21 Lab, their facility in Jackson, concerning samples
22 that were collected. This would be -- appears to be
23 from the hospital, including clothing, and then
24 there's also a pillow case, and there's a purple-top
25 tube of blood, and then it discusses the results of

1 the studies that --

2 MR. McNAMARA: I'll have to object. It
3 sounds like the doctor is not familiar with this
4 document.

5 MR. JICKA: All right.

6 BY MR. JICKA:

7 Q. Go ahead, sir.

8 A. And then remarks that some of the specimens
9 were retained for DNA testing, also on an Eddie
10 Walker. From an Eddie Walker, I should say.

11 Q. And, basically, in Exhibit 5, we have some
12 results from a sexual assault evidence collection kit
13 labeled Jeffrey Havard; is that correct?

14 A. Yes, sir.

15 Q. And in your work, are you familiar what makes
16 up these sexual assault evidence collection kits?

17 A. I am, sir. We use them routinely.

18 Q. And what is that, sir?

19 A. RSVK 1111 kit, that would be for collection
20 of saliva, collection of vaginal in fluid, rectal
21 swabs, vaginal swabs, vulvar swabs, oral swabs, any
22 clothing, hair samples, and the like, also, DNA tube
23 of blood.

24 Q. And in all of the evidence that you had
25 mentioned and that's shown here on Exhibit 5, was

1 there any evidence or DNA connecting Jeffrey Havard
2 with a sexual abuse of Miss -- of the child, Miss
3 Britt?

4 A. In this particular one, I do not see evidence
5 of that. This is basically clothing and other items
6 involving the defendant and the decedent. This is not
7 the material, that I can determine, that was submitted
8 from the autopsy itself.

9 Q. So this would be additional materials that
10 were tested with -- under the sexual assault evidence
11 kit, in addition to the swabs that you've already
12 testified about; is that correct?

13 A. That's correct. It indicates such items as
14 clothes removed at Natchez Community Hospital.

15 MR. McNAMARA: And for the record, I continue
16 to object. This is not a document that the doctor is
17 familiar with or was generated by the doctor.

18 A. And fitted sheet beside a stove, and a used
19 baby diaper, and items like that, Counselor.

20 BY MR. JICKA:

21 Q. Thank you, sir. All right. That's going to
22 be Exhibit 5. Dr. Hayne, I usually start with this,
23 but I guess I'll end at least your direct examination
24 with this. We had noticed your deposition and asked
25 you to bring anything that you had with you regarding

1 this matter. What do you have in your possession
2 involving this Jeffrey Havard matter, sir?

3 A. This is the complete file, and I also brought
4 a tape. This the complete file that I have,
5 Counselor.

6 MR. JICKA: Okay. Thank you, sir. All
7 right. I'm going to make Exhibit 6 his notice of the
8 videotaped deposition. All right. We will tender the
9 witness, Pat.

10 (Exhibit 6 marked.)

11 EXAMINATION

12 BY MR. McNAMARA:

13 Q. Doctor, let's start off real quickly and just
14 ask you, is your -- in your opinion, the testimony
15 that you've given today, is it consistent with the
16 testimony that you gave at trial?

17 A. It is, sir.

18 Q. Have you had any change of heart? Would you
19 change your testimony?

20 A. I've seen no new facts to change my
21 testimony, Counselor.

22 Q. Okay. I'll ask -- I have here -- have you
23 seen the pictures you took at the autopsy --

24 A. Not since the trial, sir.

25 Q. -- in review? Okay. I'll pass you these

1 three -- what I have here is a copy of the three, and
2 we'll ask that that be substituted as an exhibit. And
3 can you identify those pictures or do you recall
4 those? They have your markings on there.

5 A. Yes, Counselor, I do recognize these.

6 (Exhibit 7 marked.)

7 BY MR. McNAMARA:

8 Q. Okay. One question I'd ask, as you see those
9 injuries to the child's anus there, do you find that
10 to be consistent with the insertion of a child's
11 rectal thermometer?

12 A. I did not think that was an insertion injury
13 from a rectal thermometer by medical personnel. I
14 could not exclude it, but I think it was unlikely,
15 Counselor.

16 Q. Okay. That is an abnormal anus, isn't it?

17 A. It is, Counselor.

18 Q. Did you -- to the question of the lack of
19 semen or DNA evidence, is there a requirement that
20 someone else's DNA or semen be present?

21 A. No, sir.

22 Q. They're just cause for penetration, is that
23 correct?

24 A. That's correct, sir. It does not necessarily
25 mean that a penis was the device used to penetrate.

1 It could be some other object.

2 Q. There are several references throughout the
3 trial, something about 12 o'clock, there was an injury
4 at 12 o'clock of the anal area?

5 A. Yes, Counselor.

6 Q. Where exactly is 12 o'clock on that?

7 A. May I point, Counselor?

8 Q. That would be at the top, where --

9 A. Yes, Counselor.

10 Q. -- there's sort of a slender -- it's round in
11 one area, and then it goes up and it's sort of
12 slender?

13 A. That's correct, sir.

14 Q. Is that normal for a child to have that --
15 that wouldn't be a tear, that would just be -- what
16 would that be?

17 A. For what?

18 Q. I'm sorry. The -- at 12 o'clock, it shows --
19 the pictures you're holding, there is a picture of the
20 baby's anus?

21 A. That's correct.

22 Q. And it's rounded; is that correct?

23 A. It's elliptical.

24 Q. Well, toward the top of that 12 o'clock area,
25 does it -- it peaks, it goes up, and comes to a point;

1 is that -- that's how I'm looking at it.

2 A. Yeah, it points towards the perineum, yes.

3 Q. Is that indicative of that's not a tear, that
4 would be just a stretch?

5 A. I did not see a tear, Counselor, no.

6 Q. What is that indicative of, that 12 o'clock
7 injury?

8 A. There was dilatation at that site, Counselor.

9 Q. Okay. But it was dilatation of the entire
10 anus, correct?

11 A. Yes, but more pronounced at that point.

12 Q. Okay. In describing that in your report, you
13 say, on page 6 of your report, section F,
14 gastrointestinal system, do you see that one? I'm
15 sorry, I may be --

16 A. Yes.

17 Q. You've got it?

18 A. Yes.

19 Q. Is it says, "A section of anus reveals
20 submucosal hemorrhage."

21 A. Yes.

22 Q. Where did you explain submucosal hemorrhage?

23 A. That is in the microscopic, "A section of
24 anus reveals submucosal hemorrhage," yes, Counselor.
25 That would be the contusion.

1 Q. And a contusion is?

2 A. Located at the point that I indicated to you.

3 Q. Okay. The definition of a contusion, what
4 would that be?

5 A. Contusion is a tearing of blood vessels
6 underneath the skin or mucosa with collection of blood
7 at that site manifested by an area of discoloration,
8 when one's looking at the injury, external to the
9 injury itself. The lining, either the skin or mucosa,
10 remains intact, and usually there's no bleeding on the
11 skin or mucosal surface.

12 Q. Okay.

13 A. If one takes a microscopic section, you can
14 see bleeding outside the vessels into the soft tissue,
15 which would separate congestion from a traumatic
16 injury, is a contusion.

17 Q. Okay. Final question, so -- being redundant,
18 but you're saying, your testimony today is it's still
19 consistent with what you testified to at trial, and
20 you wouldn't change it?

21 A. No, sir. I would only change it if I saw
22 additional information. And I'd like to point out, I
23 did not come to a final conclusion.

24 Q. Okay. But you would agree with your
25 testimony then that the injuries were consistent with

1 an object being inserted or penetration?

2 MR. JICKA: Object to the form.

3 A. Yes, they were consistent with that.

4 MR. McNAMARA: That's all I have.

5 MR. JICKA: Just one second. Let's go off
6 the record.

7 MR. MAGEE: Off the record. The time is
8 9:53.

9 (Recess.)

10 MR. MAGEE: This concludes the deposition.
11 The time is 9:56.

12 (Whereupon the deposition was concluded at
13 9:56 a.m., the same day.)

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CERTIFICATE OF COURT REPORTER

I, Catherine M. White, C.S.R. and Notary Public, Hinds County, Mississippi, do hereby certify:

That on the 23rd day of November, 2010, there appeared before me, pursuant to notice and the Federal Rules of Civil Procedure, Dr. Steven Hayne as a witness in the above-mentioned cause;

That said witness was duly sworn by me to tell the whole truth, and nothing but the truth in said cause;

That counsel appeared on behalf of the respective parties as hereinbefore set forth;

That the foregoing deposition was taken by me by means of Stenograph machine and translated into transcript form by me, and that the foregoing 38 pages contain a full, true and correct transcription of the testimony of said witness;

That I am not in any way associated with any of the parties to said cause of action, or their counsel, and that I am not interested in the event hereof.

IN WITNESS WHEREOF, I have hereunto set my hand this the 29th day of November, 2010.

Catherine M. White
CSR No. 1309
My Commission expires: 2/1/2014

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