Deposition of:

Lyndsey Emery, M.D.

May 11, 2021

In the Matter of:

Greenberg, Joshua v. Osbourne, M.D., Marlon et al.

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IN THE COURT OF COMMON PLEAS
PHILADELPHIA COUNTY, PENNSYLVANIA

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JOSHUA M. GREENBERG and SANDRA GREENBERG, Administrators of the ESTATE OF ELLEN R. GREENBERG	:	OCTOBER TERM, 2019
Plaintiffs	:	
vs.	:	
MARLON OSBOURNE, MD and CITY OF PHILADELPHIA OFFICE OF THE MEDICAL EXAMINER	:	
Defendants	:	NO. 01241

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TUESDAY, MAY 11, 2021

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Video-recorded deposition of LYNDSEY EMERY, MD, taken remotely via Zoom, at Philadelphia, Pennsylvania, commencing at 10:02 a.m., by Kimberly A. Wornczyk, a Registered Professional Reporter, New Jersey Certified Court Reporter (Certificate No. 30X100223500), and Notary Public in and for the Commonwealth of Pennsylvania.

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ALSO PRESENT:

Robert Leventhal, Videographer

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(It is stipulated by and between counsel for the respective parties that the signing, sealing, filing, and certification are hereby waived and that all objections, except as to the form of the question, be reserved until the time of trial.)

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THE VIDEOGRAPHER: Good morning. We are going on the record at 10:02 a.m. on May 11, 2021. Please note that the microphones are sensitive and may pick up whispering, private conversation, and cellular interference. Please turn off all cell phones or place them away from the microphones as they can interfere with the deposition audio. Audio and video recording will continue to take place until all parties agree to go off the record.

This is media unit number one of the video recorded deposition of Dr. Lyndsey Emery, taken in the matter

of Joshua M. Greenberg versus Marlon Osbourne, MD, filed in the Court of Common Pleas, Philadelphia County, Pennsylvania, Docket Number 01241.

This is a Zoom dep. My name is Robert Leventhal from Veritext. The court reporter is Kimberly Wornczyk from Veritext. I am not authorized to administer an oath, I am not related to any party in this action, nor am I financially interested in the outcome.

Counsel attending remotely will now state their appearances and affiliations for the record.

MR. PODRAZA: Joe Podraza on behalf of the plaintiffs.

MS. BERKOWITZ: Ellen Berkowitz for the City of Philadelphia.

THE COURT REPORTER: I am going to do my brief Zoom read-on and then will administer the oath.

THE VIDEOGRAPHER: Would the court reporter please swear in the witness.

THE COURT REPORTER: The attorneys participating in this deposition acknowledge that I am not physically present in the deposition room and that I will be reporting this deposition remotely.

They further acknowledge that in lieu of an oath administered in person, I will administer the oath remotely.

The parties and their counsel further agree that the witness may be in a state where I am not a Notary and stipulate to the witness being sworn in by an out-of-state Notary.

If any party does have an objection to this manner of reporting, please state so now.

Hearing no objection, I will administer the oath.

– – –

LYNDSEY EMERY, MD, having been duly sworn, was examined and testified under oath as follows:

MR. PODRAZA: Before we proceed with questioning, Ellen, are we going to have usual stipulations?

MS. BERKOWITZ: Yes, we can. Dr. Emery, you are muted.

THE WITNESS: I am not muted according to my screen. Can you hear me?

MS. BERKOWITZ: Yes.

MR. PODRAZA: All right. So we'll have usual stipulations?

MS. BERKOWITZ: Yes.

MR. PODRAZA: Very good.

EXAMINATION

BY MR. PODRAZA:

Q. Good morning, Dr. Emery.

A. Good morning.

Q. My name is Joe Podraza and I represent the plaintiffs in litigation involving the medical examiner's office, the City of Philadelphia, and Dr. Osbourne. Today

is a deposition. Have you ever been deposed before?

A. Yes.

Q. How recent has it been since you had your last deposition?

A. It's been a while, a couple years.

Q. All right. So why don't we just review some of the general frameworks of a deposition.

The first thing is, it's a question and answer format. Counsel will have an opportunity to ask you a question and once they are completed with the question you'll be expected to provide an answer to that question. Understand that?

A. Yes.

Q. Very importantly, even though you're being videotaped, the court reporter is capable of taking down one person at a time and what they are saying. So it will be very important for you to wait for counsel to complete their question and counsel will do their best to discipline themselves to allow

you to answer it and fully answer it before asking further -- proceeding further with questioning.

This is not a test of endurance. If at any time you need to use the facilities, just stretch your legs, you know, feel free to let us know and we'll certainly accommodate any reasonable request.

Is there any reason today that you would be incapable of understanding a question or responding to it truthfully because of a mental state or medication you may be taking, things of that nature?

A. No.

Q. All right. Then why don't we start with a little bit of your background. Where did you go to medical school?

A. I went to medical school at Boston University School of Medicine in Boston, Massachusetts.

Q. And from when to when were you at the school?

A. The total time I spent there was from 2003 to 2011 and that eight years was

spent doing a combined MD/Ph.D. program.

Q. And did that include -- did the Ph.D. program include the residency fellowship?

A. No. Those are separate.

Q. Okay.

A. Separate training. So eight years just in Boston, four years in, like, tradition medical school, and four years pursuing a Ph.D. in a program called Molecular Medicine.

Q. Very good. At some point, I take it, you specialized in pathology?

A. Yes. I actually came to Philadelphia to the University of Pennsylvania in -- it would have been July of 2011 to start a combined residency and fellowship program that was four years in duration. The residency program was in something called Anatomic Pathology, that's basically diagnostic pathology, autopsies, things that -- looking at things under the microscope, et cetera, and then a two-year fellowship program in neuropathology.

Q. And you would have completed that, your studies at the University of Pennsylvania, by when?

A. It was May or June of 2015.

Q. And, incidentally, while -- when you were at the University of Pennsylvania, were you predominantly studying at HUP or CHOP or both?

A. Exclusively -- well, fair question. Mostly at HUP, I mean, that is where the program is associated and where my training is accredited to, but they had a relationship with CHOP whereby we did some rotations, a few months worth of rotations doing some pediatric pathology, et cetera, at CHOP, but the -- my residency certificate comes from the Hospital of the University of Pennsylvania.

Q. Then at any time between July 2011 to when you completed the program, as I understand it, in May of 2015, did you study under Dr. Rorke?

A. I did interact with Dr. Rorke on occasion. She was, I believe, on her way

to retiring, so she was not there the entire time I was there, but I interacted with her peripherally.

Q. All right. So would it be more social versus professional?

A. No, it would have only been professional, but I was never directly under her training.

Q. I see. Did she have any role or participation at all in any -- I'm going to call them projects or clinical performances that you performed?

A. No.

Q. Who did you predominantly study under when you were associated with the Penn program?

A. For residency or for neuropathology fellowship?

Q. We can break that down. Let's start with residency and then you can talk about the fellowship.

A. So there are 20 to 30 pathologists at HUP, so there were lots of people whom I studied under. The program

director -- there was actually several in my time, but that would be who anointed me a pathologist, her name was Kathy Montone. She's still there. I don't believe she is still the program director. This is the residency program director.

Q. Okay?

A. And then in my time as a neuropathology fellow, the director -- I was under lots of neuropathology faculty I trained with, but the director of the program is -- his name is Zissimos Mourelatos. Rolls right off the tongue.

Q. That's a challenge. Can you help the court reporter, perhaps, on the spelling of that name?

A. For Zissimos, sure. His first name is Z-I-S-S-I-M-O-S, and then Mourelatos is M-O-U-R-E-L-A-T-O-S, close to that anyway.

Q. At any time when you were studying, either medical school, residency, or fellowship, did you have any criticisms of your work or anything of that nature, anything that would have been less than satisfactory?

A. No.

Q. And after you graduated the fellowship in May of 2015, what did you do?

A. I then went back to Boston for a year-long -- a 12-month long forensic pathology fellowship.

Q. And where was that at?

A. That was at the Boston -- they call it the office of the chief medical examiner. It's a state-wide system serving the state of Massachusetts, but it's located in Boston.

Q. And you studied from what period of time to when?

A. That was from July 2015 to June 2016.

Q. Were you within the medical examiner's office in Massachusetts when their accreditation was under attack?

A. No. I don't think -- I believe they were fully accredited with -- I am assuming you mean name accreditation, National Association of Medical Examiners?

Q. Yes.

A. I believe -- my recollection is that they were accredited without issue while I trained there.

Q. Did the attack on the accreditation in Massachusetts occur prior to or after your time within the Massachusetts system?

A. It was well before my time there.

Q. And what was your understanding of the nature of the attack on the accreditation?

A. I honestly have no idea. I don't know anything about it.

Q. If I suggested to you it was sloppy work and failure to timely perform autopsies and reports, would that help refresh your recollection?

A. No. I don't -- I really don't know anything about it.

Q. And when you were with the Massachusetts program, who predominantly was in charge of the program?

A. Again, there were several

forensic pathologists who are, you know, medical examiners at that office, but the program director's name is Kimberly, spelled normally, Springer, S-P-R-I-N-G-E-R.

Q. And the facility at the medical examiner's office in Massachusetts, was that based in Boston?

A. Yes, Albany Street.

Q. Did you ever work in the western part of the state of Massachusetts?

A. I did not.

Q. And after you completed additional fellowship studies in Massachusetts, what did you do then?

A. I came back this way geographically to take my first job out of training for the State of Delaware as an assistant medical examiner.

Q. And who was the medical examiner when you were the assistant in Delaware?

A. The chief -- he is still there -- his name is Gary Collins, C-O-L-L-I-N-S.

Q. So you have familiarity with Dr. Collins; is that correct?

A. I do. I know him and he was my boss for a little while.

Q. Did he ever do performance reviews for you as an associate medical examiner?

A. I don't remember any, but he should probably have been, but I don't recall them specifically.

Q. Do you have any recollection of any of the reviews being critical of any aspect of your services?

A. If they happened, they were not critical.

Q. Okay. Well, that's good to know.

A. Best I got.

Q. Did you have a lot of respect for Dr. Collins?

A. Yes. He's a great pathologist.

Q. When did you first get involved in any aspect of the Ellen Greenberg matter?

A. It was the summer -- sometime

in the summer of 2019, and I do not know the exact day or time or, you know, even week.

Q. Okay.

A. And I was approached with a case number. You know, I didn't know any names. I didn't know any information about the case.

Q. Okay. Well, before we get into the details of what you did and, you know, some of the specifics of the exam, am I correct that you do not perform neuropathology services for the medical examiner's office in Philadelphia?

A. Correct.

Q. All right. But you are trained and certified as a neuropathologist, correct?

A. Yes.

Q. Now, who does the neuropathology work for the medical examiner's office in Philadelphia?

A. Currently, they have two consultants. One's name is Juan Troncoso. I have no idea how to spell that. He's somewhere in Maryland. He comes up here

physically to Philadelphia to do the trauma brains, so the injury related brains. And then there is a pathologist -- neuropathologist at Jefferson named Larry -- Lawrence is his first full name -- Kenyon. He does the nontraumatic brains for the office.

Q. Okay. And I'm sorry. I neglected -- before I just jump right into the Greenberg matter, you're in Delaware, you're an assistant medical examiner?

A. Yes.

Q. Forgive me. I did not write down when you started there. What year did that start?

A. That was immediately following fellowship, so it was July 2016, is when I started, and I left there October 2017.

Q. And when you left there in October of 2017, is that when you began your association with the medical examiner's office in Philadelphia?

A. Yes. I left the job in Delaware to start my job here.

Q. All right. And from 2017 to

present, the neuropathology has been performed by third parties for the medical examiner's office in Philadelphia?

A. Yes.

Q. And that's the pathologist you're talking about at Jefferson as well as the one down in Maryland, correct?

A. Correct. Yes.

Q. And the one down in Maryland is associated with Johns Hopkins; isn't that correct?

A. I believe so, yes.

Q. Now, are you aware whether the neuropathologists at Jefferson or the neuropathologists associated at Johns Hopkins, have they with been asked to consult on the Greenberg case?

A. I do not -- I don't know.

Q. Okay. All right. We are in the summer of 2019. You get a case number. Just tell me what you remember what you were told and what you were asked to do.

A. Yeah. It's -- I would describe it as what I call a curbside -- like the

curbside of a road -- whereby, like, one medical professional asks for some informal advice, opinions in an area that is more of an expert -- area of expertise for them than themselves, right. So, basically, the question was posed to me: "Hey, would you mind taking a look at this case from 2011, just the neuropathology relevant material, and let me know what you think about it?" And that was the extent of the conversation.

Q. Who asked you that?

A. Dr. Gulino.

Q. And Dr. Gulino, who is and remains the medical examiner of Philadelphia?

A. Yes.

Q. All right. Was there a specific aspect of the neuropathology that Dr. Gulino was interested in possible ramifications of that anatomic consideration?

A. Not that he expressed to me. I was just asked to take a look without bias and offer an opinion, what I saw and what I thought about what I saw.

Q. All right. So you had no idea

what you were going to be looking at or what the purpose was --

A. No.

Q. -- besides just, "Here it is. Tell me what you see"?

A. Yes.

Q. Okay. Now, you refer to it as a curbside. Dr. Gulino has kind of referred to examinations and, as I understand it -- and correct me if I'm wrong -- he differentiated between a curbside and a thorough, full examination. Do you also have that differentiation?

A. Yes.

Q. Okay. Would a curbside be -- well, rather than I tell you, tell me, materially, what's the difference between a full, thorough neurological -- neuropathological exam and a curbside neuropathological exam?

A. So -- and it can apply to anything in medicine, right, any aspect of medicine, but whereby, again, somebody has additional expertise or experience in some

aspect of that field and a colleague -- this is describing a curbside -- and a colleague asks for your advice, your input, your experiential knowledge and expertise about a given thing. It's informal. There's not -- there's just no -- it's a level of formality, is the difference. Whereas, I would say a consultation is -- there is an understanding and an agreement about what the examination is and will require and then what the output of that is, usually in the form, at least in my experience as a neuropathologist, a formal written report.

Q. Okay.

A. And, generally, in a formal situation that person is compensated for their time and experience.

Q. All right. So is there a qualitative difference between a curbside exam and a thorough exam?

A. There does not have to be qualitative difference, no.

Q. I understand that, but I am asking you, with respect to what Dr. Gulino

was asking you to do, was there a qualitative difference between how you approached it if it had been, for instance, a consultation versus an informal request?

A. I treated the material the same way I would have if I was formally consulting on the case.

Q. Were you aware if a neuropathological exam had previously been performed with respect to the Ellen Greenberg matter?

A. No. What I remember in discussion was that it was unclear if there had ever been a neuropathologic evaluation --

Q. And what discussions --

A. -- formal or otherwise.

Q. Okay. What discussions are you referring to now regarding whether a neuropathological exam had been performed prior to yours?

A. It was in the same conversation where I was approached to look at the material and was, you know, something to the effect of "I don't know if anybody has ever looked at

this or not," is my memory.

Q. Had it been shared with you that there was a request to revisit the Greenberg case and potentially reassess the original determination and manner of death?

A. Not at that time.

Q. Again, without getting into the specifics -- and we'll get into them, believe me -- how long does it take to perform this informal examination --

MS. BERKOWITZ: Objection.

BY MR. PODRAZA:

Q. -- in this case?

BY MR. PODRAZA:

Q. Well, you did an informal examination, correct?

A. I did.

Q. Yes. How long did it take you to perform it?

A. I would say, the gross examination, probably 45 minutes or an hour.

Q. Okay. Was there any other aspect of the examination besides gross?

A. Yep. I took some sections to

look at under the microscope.

Q. And why did you do that?

A. It's one way of maintaining the material, number one, so that it can be looked at in perpetuity and, two, it could potentially have answered other questions that I had about the -- about the material that I was looking at, gross.

Q. What were the questions?

A. Were these -- were these disruptions in the tissue that I was seeing, was there cellular consequences to that. So at the cellular level, me being able to look at them under the microscope, were they damaged or not.

Q. Now, 2019, I guess we can agree that there is approximately -- well, more than eight years since Ellen's death you're being asked to perform this examination, correct?

A. Yes.

Q. All right. And you mentioned that you did sections because -- one of the things is to maintain the material, correct?

A. Yes.

Q. All right. What sections had been done prior to your performance of sections in 2019 in the Ellen Greenberg case?

A. I did not have that material and I don't know if there were sections ever taken or not.

Q. Did you ask?

A. No.

Q. If sections existed that had been done prior to your examination, would they be of any help or assistance at all to you in the examination you were being asked to perform?

A. Not in the examination I was being asked to perform.

Q. In comparison between you doing sections and then evaluating the sections for -- I think you -- strike -- let me do a little bit better with this question.

In an exam that doesn't take sections versus one that does sections and, I presume, has a better aspect of disruption of tissues, et cetera, which exam would you give more credence to?

A. That depends completely on the case, on a case-by-case --

Q. How about in Ellen's case?

A. Reask it with regards to this case, please.

Q. Sure. As to the findings that you made when you did your examination in Ellen's matter, having taken and performed the sections and looked at them under the microscope, in comparison to an exam that may have been done that didn't take sections or do a microscopic exam, from your vantage point as a professional, which examination would you give more credibility to?

A. I don't think that there's any difference in credibility. I think that by looking at something under the microscope in this particular case may have had some useful information.

Q. And what useful information might that be versus an exam not done with sections or with microscopic evaluation?

A. Were the things that I was seeing grossly with the naked eye impacting

the underlying tissue and involved tissue at a cellular level.

Q. And can you explain, how is it that by doing the sections with the microscopic examination you feel more comfortable or confident that you can make that assessment of, you know, the anatomical consequences, et cetera?

A. Because I am able to see it at a cellular level. I'm able to assess things that I can't, obviously, do with a regular old human eye. So it's just looking at it at a finer level of detail. But there are plenty of questions that can be answered without histology, without looking at them under the microscope.

Q. And yet you still felt compelled to take sections and perform a microscopic examination?

A. I did.

Q. What motivated you to take that extra step?

A. Curiosity about the question at hand, which was, does that -- did that

disruption have significance.

Q. Would you have felt as comfortable about your examination if you had not done sections, the microscopic examination, and just relied on a gross or naked eye review?

A. In this case, the microscopic sections helped me form an opinion.

Q. And you're not aware of any other pathologists or neuropathologists having performed sections or microscopic examination in the Greenberg case prior to yours; is that correct?

A. I do not know one way or the other. The tissue that I examined is only -- is the tissue that I examined. I don't know what other, you know -- what happened to the rest of it or who looked at the rest of it, you know, to your point, eight years earlier.

Q. Okay. Now, what were your conclusions?

A. So, I mean, generally speaking, there are some injuries to -- of what I had to evaluate, which was a limited amount of

material. There was a sharp force injury to the dura matter, which is the covering of both the brain -- one of the coverings of the brain and the spinal cord -- and I'm talking about in the spinal cord specifically -- and that there was also disruption of the same -- coverings that directly covered the tissue itself, so directly covered the spinal cord itself, and that in those areas of what are injury there's no reaction to it. So there's no hemorrhage around it. There appears to be no response of the surrounding environment. There is further disruption -- and I am using that word on purpose -- of the spinal cord parenchyma. So the tissue itself, the spinal cord itself in this area, that is what I wanted to interrogate microscopically by looking at it under the microscopic examination. Both the gross findings -- so what I could see with my eye and what I saw under the microscope -- was that there was no vital reaction to these things that -- in this area of the spinal cord, of what I had of the spinal cord to evaluate.

So my conclusions about that are -- essentially, there are three possibilities. One is that the sharp force injury to what would have been the back of her neck entered into the vertebral column, the cervical vertebra, and pierced or went through that dura, that layer of covering I was taking about, and just didn't go any farther and maybe that there wasn't sort of a long enough survival interval for there to be reaction hemorrhage, et cetera.

The second possibility, of which there are two arms to, are that those injuries happened postmortem, after her death. One is that the sharp force injury in and of itself happened period, point blank after she had been deceased, so that there would be no reaction to it, or that -- again, and this is kind of in line with my first explanation -- that, while there may have been a sharp force injury to her neck and to the dura, that that disruption I'm seeing in the spinal cord was a postmortem artifact introduced during the autopsy.

Q. Okay. Now, I want you to pretend you're a layperson. Are you telling -- do I just understand what you just said is there that Ellen suffered wounds after she died?

A. I'm saying either the wound didn't -- that's one possibility, yes. Another possibility is that that sharp force injury, or something caused by a sharp object, did not disrupt or injure tissues enough to cause any sort of reaction to it, hemorrhage, cellular death, again, response. There is no reaction to it. The injury itself, then, if it happened while she was alive, is minor.

Q. But you can't conclusively differentiate as to whether the wound was administered before she died or after? It's just a possibility?

A. Based on what I am seeing in the spinal cord.

Q. Now, if I understood you -- and, again, I am not trying to put words in your mouth, so please feel free to correct what I am saying. I thought I understood you

to say that there was no reaction, such as hemorrhage, et cetera, and I thought you said that that could have been because she was already dead?

A. That is a possibility, correct.

Q. And from your examination, did the spinal column at all have any type of cut or wound?

A. What part of the spinal cord?

Q. Well, I guess -- there's the two wounds to the back through the neck. Either one of them, did they indicate any trauma of cutting or piercing or anything of that nature to the spinal column in addition to the dura?

A. There is a corresponding defect of the vertebral column. So, yes, there is injury to the bone -- excuse me -- the bone and ligaments of the back of the spinal -- the actual spinal column, the vertebral column, and then there is also a corresponding cut of the dura. So those two things are there.

Q. And based on your experience, what are the anatomical consequences of that

type of wound?

A. If those injuries -- which is what it appears to be based on what I have examined -- stopped there, right, so they go -- the sharp object, whatever it is, gets through the dura and doesn't do anything else, doesn't go deeper than that, there would be no consequences to that.

Q. Well, there would be a hell of a lot of pain, wouldn't there be?

A. Possibly.

Q. Yeah. Well, there's a lot of nerves within the region of that dura that were severed as a result of that blow, correct?

A. So the dura is actually not innervated by anything, so --

Q. Around it?

A. But if it didn't strike anything around it, nothing was injured along the way, there could have been minimal pain. I don't know about the pain.

Q. Are you suggesting that there were no nerves that were implicated in either

of those two wounds?

A. There doesn't necessarily have to be, no.

Q. But you don't know? Is that your answer?

A. I don't know for sure.

Q. And if the nerves had been involved, can we agree that that would, from your experience and understanding, result in pain?

A. Sure.

Q. In fact, we are going to show you some testimony from Dr. Gulino in a little bit here. He even agreed that it could be incapacitating pain. You agree with that?

A. I don't -- I don't -- not necessarily, no.

Q. All right. Well, then, based on your conclusions, could we agree that homicide is not ruled out based on your conclusions?

A. Based on my conclusions, I have no opinion about the manner of death.

Q. You need more information, is

that what you're saying?

A. Yes.

Q. But based on what you saw and as I understand how you've testified here today, somebody else could have administered the wounds that you examined to Ellen, correct?

A. That's a possibility, yes.

Q. And you couldn't rule that out based on your examination, right?

A. Correct.

Q. Now, are you suggesting that it's also possible that Ellen was still able to move?

A. Yes.

Q. And did you recreate the wounds?

A. In what way do you mean that?

Q. In other words, did you actually try to recreate anatomically and from a physiological standpoint the nature of the wounds as described by Dr. Osbourne and the knife and whether it is practical or impossible for her to have self administered?

A. No, I did not go into any degree of that sort of detail.

Q. And do you know when the wounds to the back of Ellen occurred in the sequence of wounds? In other words -- let me ask it this way: Presuming there is 20 wounds in total that were found by Dr. Osbourne, in the sequence of those wounds, where did the ones in the back, the tissues for which you examined, occur?

A. I don't know. I don't know enough about the rest of the wounds to make a determination about that.

Q. What would you need to know in order to perhaps make that assessment?

A. I mean, I would need to review the case in its entirety and there may not be an answer. I may not be able to tell.

Q. Would the biopsy of the region of the wounds assist in possibly determining the timing of the occurrence of each one?

A. Throughout the body?

Q. Yes.

A. Not necessarily. If there's

hemorrhage, right, if there is bleeding around the injury, she had a pulse to some degree in order to hemorrhage from those injuries. So I don't know that microscopically looking at all of those would be useful in determining a sequence of injury.

Q. Have you ever done that, though, in a stabbing case or in an injury case, biopsied the wound in an effort to ascertain the sequencing of the wounds?

A. I have not personally, no.

Q. Do you know other pathologists or neuropathologists who do?

A. In neuropathology specifically, one thing that we do commonly is date to the best we can, so give an age, for a type of intracranial hemorrhage called a subdural hemorrhage, which is not involved in this case. And that's a matter of, "Is it acute?" Meaning new, "Is it subacute?" sort of new, or "Is it old?" you know, months to years, and that's about the best we can do even with those. That's the only thing that I personally routinely date in my pathology

career.

Q. Okay. Walk me through what happened after you reach -- you're done your examination. What did you do after you reached your conclusions?

A. Discussed them with Dr. Gulino.

Q. Do you recall about when that discussion took place?

A. No, I have no idea when that was.

Q. Would it be fair to say, though, that you shared with Dr. Gulino your view that Ellen could have been dead at the time one or both of the wounds in the region that you were examining occurred? Did you share that with him?

A. Are you asking if I shared that with him? I believe so, because it would have been one of my conclusions then.

Q. Did you put your conclusions or any aspect of your examination in a writing?

A. No.

Q. Would I be correct, though, that the examination that you performed and

evaluation of Ellen was done during business hours?

A. Yes.

Q. Okay. So it was while you were being paid by the taxpayers to perform the service, right?

A. Yes.

Q. Okay. And traditionally, when you are in your official capacity being paid to perform a service, do you generate a report?

A. I do.

Q. Why did you not -- I will try English this time. Why did you not do so in this case?

A. Because one of my official capacities here is not neuropathology.

Q. I am not understanding. Does that mean you don't consider yourself competent enough to do a neuropathological examination as requested by Dr. Gulino because it's not your official capacity?

A. What I am saying is that I was curb-sided, I was asked to do an informal

examination, and the discussion that Dr. Gulino and I had was that he would -- we would discuss my opinions and he would incorporate them into his own summary report and that was --

Q. I'm sorry. I violated my own rule of not interrupting the witness. I apologize. Did you want to --

A. No. I am good. I am all set. Thank you.

Q. Did Dr. Gulino ever do a quote, summary, end quote, report?

A. I don't know.

Q. Have you ever seen one?

A. No.

Q. Give me one second, if you don't mind.

A. Sure.

Q. The samples that were made available to you for examination, were they the ones that were, for lack of a better statement, collected by or under the supervision of Dr. Osbourne?

A. I would assume that, but I

don't know. It was what was in the stock jar, which is something that we retain on every case, you know, representative portions of organs, and so this was just what was available to me. I don't know who procured that. I mean, typically, it's the performing pathologist.

Q. Now, the trauma to the regions that you examined both from a gross as well as microscopic standpoint, was that caused at all by any actions done during the autopsy?

A. It could have been.

Q. How?

A. So, specifically, the injury to the vertebral column itself, to the bony structure of the spinal cord and that spinal cord dura, subtracting that, that -- those are injuries. They are sharp force injuries that the decedent had.

Q. All right. So those are not associated with the autopsy?

A. Yes.

Q. And those, we can agree --

MS. BERKOWITZ: Objection. Is

she finished?

BY MR. PODRAZA:

Q. And those, we can agree, could have been administered to Ellen after she had already died?

A. Or while she was still alive, but, yes.

Q. Either way?

A. Right.

Q. Okay. Now, which ones, then, did you have a question as to whether the performance of the autopsy itself resulted in damage?

A. So the actual disruption of the tissue of the spinal cord itself, so the parenchyma, again, the tissue structure of the spinal cord, had a surface defect on it that was sort of irregular looking, kind of jagged in appearance and almost cylindrical in shape, if you're following me. And that was strange to me for two reasons, number one, it just didn't look like a sharp force injury, and, number two, it was not in perfect correlation with -- if you did line up and realign the

injuries of the vertebral column and the dura, this defect of the spinal cord itself wasn't in direct continuity with that.

Q. Now, presuming that this disruption we are talking about now was not attributed to the actual performance of the autopsy, what would you anticipate the physical consequences of that injury to be to Ellen?

A. Right. So microscopically, again, histologically, what I saw under the microscope was that there was no response. So I don't have any way to know how that would have affected her. Where it is in the spinal cord, things that are affected by that are sort of -- coordination of movements, being able to -- like, fine motor skills, that kind of thing, and then pain, pain can be involved in that too, and sensory perception, so your ability -- your body's knowledge of where it is in space and time.

Q. All right. So assuming that the disruption that we are talking about was non-autopsy related, can we agree, then, that

the possibility remained open that Ellen, just through the consequences of that injury, might have had coordination of movement problems, maybe not even been able to move at all as a result of that injury, correct?

A. I think if there were coordination problems there would still be able -- she would still be able to move and make non-fine -- unfine motor skills.

Q. All right. But her skills would be -- you would anticipate it to be reduced or impaired?

A. Maybe.

Q. And possibly even eliminated?

A. I don't think that the injury is severe enough or the disruption is severe enough to be incapacitated.

Q. But we agree that we would expect pain?

A. If there's deficit, there could be pain, yes.

Q. What I would like to show you now is what we are going to mark as Emery-1. And, as I told you, this is going to be

testimony that Dr. Gulino provided in this case.

A. Okay.

Q. We are just going to go over it and, to the extent that you can, I am just going to ask you if you agree or disagree.

A. All right.

_ _ _

(Whereupon, Exhibit-1 was marked for purposes of identification.)

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BY MR. PODRAZA:

Q. All right. And, Doctor, we are going to put this up on the screen, so let us know, one, that you can see it.

A. I can see it.

Q. Okay. And then, two, as we scroll through, you know, you'll be able to tell my colleague when you need him to move up or down or however to, you know, familiarize yourself.

A. Okay.

Q. We are not going to ask you

today to read the entire deposition.

A. Thank you.

Q. I am going to focus on Page 55, we are going to start. And if I could draw your attention -- and you're welcome to read whatever you'd like, but I am going to draw your attention to Line 10 on Page 55. Do you see that there?

A. Line 10, Page 55, yes.

Q. And there's a question: "All right. Now, Doctor, in your experience, a cut dura, can that be painful?" And his answer was "Yes." And my question to you is: Do you agree or disagree with Dr. Gulino's testimony?

A. I disagree.

Q. And why do you disagree with his testimony?

A. I just think a blanket statement of a cut dura being painful is not something I agree with. Could it be, yes.

Q. Then I asked -- okay. And then the next question was: "How painful?" And his response was: "I don't know, but, generally speaking, the area surrounding the

meninges --"

A. Meninges, yes.

Q. -- "meninges," okay, "which is collectively the name of the coverings of the brain and spinal cord, have nerves in them and so disrupting them will be painful." Do you agree or disagree with that testimony?

A. I disagree.

Q. And why do you disagree?

A. Because the dura itself is not innervated or is innervated to a very -- a much lesser degree. There are multiple layers of the meninges which he's referencing, some of them which sit right on top of the brain, those could certainly be painful if they are disrupted or injured, but the dura itself, I disagree.

Q. Then on Page 56 at Line 13 Dr. Gulino was asked: "And would the cut of the dura affect an individual's mobility?" And his answer was: "It would not affect their mobility from a neurologic standpoint. If it was so severe that it was debilitating and the person just couldn't do anything else, then,

yes." Do you agree or disagree with Dr. Gulino's testimony?

A. I agree with the first part -- the first sentence of that answer, which is that it would not affect their mobility.

Q. And why do you disagree with the remainder?

A. I just don't really understand the rest of that.

Q. Okay. Then on Page 57, Dr. Gulino was asked at Line 17: "Doctor, has it been your experience that a cut of a dura could render somebody incapable of feeling so that they could self inflict or harm themselves without even feeling it?" And his answer is: "I can't say that I have ever had a case in which that question has been posed." The question then was: "Well, I'm posing it right now. Based on your experience and the cut of the dura, are you aware of any circumstance where the cut rendered a person such that they would feel no pain from that point forward?" And his answer was "No."

A. Can I see the next part of

that? It's just not on the screen.

Q. Certainly.

THE VIDEOGRAPHER: Up or down?

MR. PODRAZA: Page 58. I think you're going to have to --

THE WITNESS: I'm sorry. Down. Can you just reread for me the second part of that, the second question, where you say, "I'm posing it now" and then -- that question?

BY MR. PODRAZA:

Q. Sure. It was: "Doctor, has it been your experience that a cut of a dura could render somebody incapable of feeling, so that they could self inflict or harm themselves without even feeling it?" And his answer was: "I can't say that I have ever had a case in which that question has been posed." The question then was: "Well, I'm posing it right now. Based on your experience and the cut of the dura, are you aware of any circumstance where the cut rendered a person such that they would feel no pain from that point forward?" And his answer was: "No."

Do you agree or disagree?

A. I agree.

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(Whereupon, Exhibit-2 was marked for purposes of identification.)

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BY MR. PODRAZA:

Q. Now, in discovery -- hold on one second here. Did we cover everything there, Will? Yes, we did.

In discovery, counsel recently supplied to us a form that we are going to mark as Emery-2. It's a neuropathology examination. And I am going to ask if you can identify the form and then if you could walk us through it.

A. I can see the form and I can identify it. It is my chicken scratch of notes that I took when I examined the material, the neuropathology material applying to Case 11-420.

Q. All right. And the date is August 29, 2019, at least that's what has been

put in by handwriting?

A. Correct.

Q. Does that correspond to when you recall performing the evaluation in the Greenberg case?

A. If that's what I dated it, that's when we did it.

Q. All right. You have no reason to question that, right?

A. No.

Q. I'm sorry?

A. No, no reason to question that.

Q. All right. Then, if you could, you can help us by deciphering your handwriting --

A. Sure.

Q. -- and what the significance of the recorded information is.

A. Sure. So I basically put it into sections -- well, my versions of categorizing the material that I was looking at. I believe it was eight pieces of tissue in total, just of all-comers that I evaluated on August 29, 2020. There were some -- I

would have to look at a picture to remember -- some coronal sections. So when a brain is dissected by anybody, whether it's a neuropathologist or an autopsy pathologist, we section the brain in the same way and that is to -- so dissect the brain in the same way and that is to make something called coronal sections. It is the same -- you can imagine it as the same plane that a CT scan or an MRI can see it in. So sometimes that can be from head down, like head to toe, or sometimes it can be from front to back, forward to the back of the head. In this case, in neuropathology it's from the front of the head to the back of the head, that is what coronal means. So of what I had of coronal sections to evaluate, that "NL" means normal, so they were unremarkable, "SC" is spinal cord, so I am saying that there's an 8.5 centimeter segment of spinal cord that is available for me to evaluate, I describe a 1.1 centimeter defect of the posterior part of that spinal cord. The next part of that is no hemorrhage," so the "O" with the line through it, no

hemorrhage, and then in parentheses I write, "Above" because there is some soft tissue hemorrhage above that. It's actually in the vertebral column, but I know what my notes mean. And then I describe, I think it's 0.3 centimeter area of disruption, so that's what we have been talking about, which is that disruption of the actual parenchyma itself, so on the surface of the spinal cord. And those are just my measurements of those things. "Vert" means vertebral column, so the actual bones, I had just a portion of it. I did not have the whole thing. And I am stating that there is 1.1 centimeter defect between C2 and C3, so that's where it is in the vertebral column and then in parentheses posterior, "Post," so it's the back of the spinal cord.

Q. All right.

A. I took sections. That's my chicken scratch of a section key so that anybody who looks at my -- at the slides that were made knows what's in what, what's in what block. So there are one, two, three -- looks like six total and should be lettered A

through F. I just -- it's just my designation for neuropathology, just microscope stuff, that I use an alphabet instead of numbering them. So from -- in cassettes A through D, so the first four, is the section of spinal cord in question, of the actual spinal cord, where that 1 -- I'm sorry -- that 0.3 centimeter defect was, surface defect, I sectioned them in a specific way to be able to see those -- see that defect under the microscope, and I'm saying I submitted that -- in what plane I cut it in, so in the sagittal plane, I submitted it in toto, meaning in total, and I'm going from left to right, so in -- if you're looking -- if you're reviewing the slides, if you're moving from side A to B to C to D, you're going from the left side of the spinal cord to the right side of the spinal cord.

Q. Okay.

A. Then E is "HC," which is hippocampus. On one of the coronal sections I had, there was a part of the brain, it's part of the temporal lobe -- I don't even know what side it was on, because I only had one side --

but it had a structure called the hippocampus, which I wanted to look at under the microscope. So that's in block E or slide E. And then F is cerebellum -- and "CB" stands for cerebellum -- plus dentate, which is one of the deep nuclei of the cerebellum. So that is the summary of my notes.

Q. Was there a reason why you wanted to take a look at the specimens -- and I am going to call them E, as in Edgar?

A. Yes. So both E and F are -- so there is a process in the brain when the brain is deprived of oxygen by either a low oxygen amount in the blood itself or just decreased blood flow to the brain. It's called hypoxia, is the process. It's on a spectrum from hypoxia to ischemia. The cells -- certain cells in the brain are injured sooner, they die sooner from lack of oxygen than other cells in the brain and it happens in a fairly predictable way and in a fairly predictable order. In adults, the most -- the first things to be affected by decreased blood flow are the hippocampus and the cerebellum. So,

because I actually had those to look at, you know, even evaluate, I thought it would be potentially helpful to assess this brain for whether or not there had been some prolonged hypoxia, was the brain cut off from oxygen for some degree of time.

Q. And what were your findings?

A. That there were no histologic abnormalities in any of the material I looked at and that there was no evidence of hypoxic ischemic injury.

Q. And in layperson's language, what significance in the overall review of the case did that have to you?

A. That there was not a prolonged period of time that her brain did not have oxygen.

Q. And does that have any relevancy as to the determination as to whether Ellen was dead at the time one or more of the posterior wounds was administered?

A. No.

Q. What was Dr. Gulino's reaction when you shared your conclusions with him?

A. I don't -- I mean, he made sure that he understood, you know, what I was trying to explain or convey and what I -- what my conclusions were and that was it. I mean, there was not really a reaction or a response.

Q. Did you speak with anybody else or have you spoken with anybody else regarding the Greenberg case except --

A. No.

Q. -- for you what you described already with Dr. Gulino?

A. No.

Q. There were some photographs that have been produced. I would like to go through them and we are going to separately mark them and I'm going to just ask you just some questions as to, one, when were these photographs taken, were you part of it or were they back in 2011, you know, things of that nature --

A. Sure.

Q. -- and what are they depicting.

MR. PODRAZA: So we'll start with Emery-3, correct?

BY MR. PODRAZA:

Q. We have one exhibit of all the photos, so maybe the way to do it, we'll call it Emery-3 and then we'll use the alphabet as to each photo, just so the record is clear as to what we are making reference to.

A. Okay. I am not seeing anything. Should I be seeing that already?

Q. Yes. We are going to put it up for you.

A. All right.

\- - -

(Whereupon, Exhibit-3A was marked for purposes of identification.)

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BY MR. PODRAZA:

Q. We are going to call this Emery-3A.

A. Okay.

Q. And what are we looking at?

A. So this is my photo. I took it. That's my hand in the frame. So this would have been August 29. And we are looking

at the back of -- we are looking at a portion of the vertebral column that has been dissected, not by me, at the time of the autopsy, I presume, and it is -- so -- okay. Bear with me. On the right of the -- on the right of the tissue that we are looking at is the first cervical vertebrae. So that's C1. And then as you're going down towards where my fingers are, we are going down towards the toes, if you will, if this was in a standing position. So it's oriented -- it should be flipped -- like, if you wanted it to be in sort of anatomic position, you would put the right side up at the top of the screen.

Q. Just so people understand, as you're looking at the photograph, to the right would be where the head would ultimately be found?

A. Right. Flip that.

Q. Right. You're going down to your lower back?

A. Exactly. And the portion that we are looking at right now is the neck, what would be the neck.

Q. Very good.

A. And this is the inside surface of it. So what we are looking at right now from, you know, this viewpoint is where the spinal cord would be. Okay. So this is the -- it's the posterior aspect of the spinal column, but we are looking at the inside of that. So the other side, if you were to flip that piece of tissue over, would be the actual back side of the spinal cord, okay -- or spinal column, I should say, the vertebral column. And what the silver probe is pointing at is a 1.1 centimeter -- because I just read that off of my notes -- defect. You can see it. See where there's sort of that black discoloration on the right side?

Q. Yes.

A. Right below that is that linear line-like defect in that tissue, in the vertebral column. So I am pointing that out with the probe and that is what I describe as, again, that 1.1 centimeter defect between C2, C3.

Q. And is this the injury or the

trauma that you don't know whether it was caused by autopsy or through a wound administered to Ellen?

A. So this I can be confident is a sharp force injury, a bona fide sharp force injury, you will. This is not an autopsy-related finding. And I can say that because I have seen the photos from the full autopsy, where I can see the injury to the skin.

Q. Let me ask you this, Doctor: The outside -- well, is there any dura present in this photograph?

A. No.

Q. Okay. This is just pure spinal column?

A. Right. The bone, ligaments, you know, the stuff that holds the bone together, but there is no central nervous system here. There is nothing related to the central nervous system in this photo.

Q. All right. And what you called, I believe, the 1.1 centimeter defect is that cut?

A. Yes.
Q. That the spatula is highlighting?
A. Correct.
Q. So that cut cut through the outside of the spinal column?
A. Uh-huh.
Q. Into the spinal column itself?
A. Yes.
Q. Almost to the point of -- well, it goes through, like, half of the spinal column, would we agree, maybe a little more than half the spinal column, that defect?
A. So I'm not sure I understand where the half is coming from. I got it. Half of the width you can see or the height of this it's going through?
Q. Sure.
A. Right. So --
Q. Just so I am understanding what you're saying, where that spatula is --
A. Yes.
Q. -- would be the right side of the spinal column of Ellen, correct?

A. Correct.
Q. And the penetration is where the spatula is and it goes 1.1 centimeters in across the spinal column towards the left side of Ellen's spinal column, correct?
A. Correct.
Q. And it crosses the midline correct?
A. It does cross the midline, yep.
Q. And in your opinion, that would not debilitate a person, that wound by itself?
A. No.
Q. Would you, though, say it would be painful?
A. Yes. It would -- this would probably be painful.
Q. Yes. Beyond just simply, like, a stubbed toe? Can we agree on that?
A. Sure.
Q. Can you quantify it? Can we quantify that a wound of this nature and severity would be extreme pain?
A. No, I cannot quantify it.
Q. Well, would you anticipate that

the pain would be severe?

A. No.

Q. No? Would it be unrelenting?

A. I don't know.

Q. Well, in your experience and based on your knowledge, a wound of that nature, would you just expect it to be an instantaneous source of pain and then that pain would go away and stop?

A. I honestly don't know what degree of pain this would cause and what the quality of that pain would be and the duration of that pain. I don't know.

Q. Well, can we at least agree that that's pain that you and I wouldn't want?

A. Yes.

Q. And we know that this cut was caused by a knife that was used to wound Ellen, correct?

A. I have no idea what implement was involved in the making of this injury.

Q. Except that it wasn't caused at autopsy; is that correct?

A. This one was not caused at

autopsy, correct.

Q. Now, is there anything else -- let me ask here: Is there any evidence of hemorrhage with this injury?

A. So there is hemorrhage in this photo -- that's what that black discoloration is -- but it's not in the usual distribution to be associated with this cut. It's above it.

Q. Okay. And the absence of hemorrhage where the trauma is actually situated suggests that Ellen was dead at the time this wound was administered?

A. That is one explanation, yes.

Q. All right. Is there any other significance that you're trying to depict with this photo?

A. No.

_ _ _

(Whereupon, Exhibit-3B was marked for purposes of identification.)

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BY MR. PODRAZA:

Q. Okay. Then let's take a look at Emery-3B.

A. So this is that same block of tissue that we had seen before flipped over, turned over. So this would be, basically, the spinous processes, the bumpy part of your back that you can feel, and I am pointing out to the same defect, again, on the right side of the back of the vertebral column. You can see it, but not very well. But it's the same thing, just, you know, the mirror image, basically. They are flipped, the inverted image.

Q. This is that 1.1 centimeter defect?

A. Exactly.

Q. Is there any other significance of the photo besides what you just described?

A. I mean, I think, again, what is significant here is that there is no hemorrhage.

Q. And in your experience, no hemorrhage, can it equate to the person having

been deceased at the time of the administration of the trauma?

A. Yeah. I mean, lack of hemorrhage means no pulse.

Q. All right. And is there any other significance right now or am I missing something else that --

A. No, I don't think there is anything else important in this photo.

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(Whereupon, Exhibit-3C was marked for purposes of identification.)

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BY MR. PODRAZA:

Q. All right. Then let's go to Emery-3C.

A. Same positioning of the tissue. It's actually just me putting the spatula of the probe through the defect.

Q. So --

A. It's a demonstration of, like, this is an actual through-and-through defect.

Q. Right. So that spatula

portion, the tip, fits through the 1.1 centimeter trauma or cut, correct?

A. It does, yes.

Q. And it's -- the width of the spatula is smaller than the width of the 1.1 centimeter defect, correct?

A. Yes.

Q. Okay. Is there any other significance in this photo?

A. Nope.

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(Whereupon, Exhibit-3D was marked for purposes of identification.)

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BY MR. PODRAZA:

Q. All right. Then let's look at Emery-3D. Now, what is depicted here?

A. A blurry picture of the spinal cord, but, yes. So this is the portion of spinal cord that I had access to. At the top of the photo is the top of the cervical spinal cord, so the very beginning -- or the base of the head beginning into the neck and then the

rest of it is going down towards the feet, if you will.

Q. Okay. And as we are looking at this specimen of the spinal cord, the posterior portion of the cord is not facing us; is that correct?

A. Is now facing us. The posterior portion of the cord is facing us.

Q. Okay. All right. And what looks like to me skin, what does that reflect?

A. Right. So I should say also that this specimen, like, this, what we are looking at is exactly how I received it. So the disruption or the way it's cut and dissected, I have not intervened on anything. This is the way I received the material. So those sections going down, those cuts going down, that was done before me. So what the spatula is again pointing out is -- and that's exactly what it looks like, is skin, that is the dura.

Q. Okay. I'm sorry. Let me just explore with you a little bit --

A. It's okay.

Q. -- because every time I hear somebody say, "Well, let me just say that I didn't do this. This is somebody else," my antenna always goes up to say, all right, well, are there any problems with what was done that -- when the sample was given to you?

A. Nope. This exactly how I do my own examination.

Q. Okay. So whoever took it, whether it was Dr. Osbourne or somebody under his supervision, as far as you're concerned, it was appropriately done at autopsy?

A. Yes.

Q. All right. Now, is this depicting again but from a different vantage the 1.1 centimeter trauma or is this a different wound?

A. It is the same -- it would correspond with that defect in the vertebral column that we were just looking at. What's a little confusing about it is that it looks like it's on the left side, but, actually, if you wrapped that dura around, which is how they would be in the body, it would actually

connect to the little flappy part that looks like it's on the right side, that would then line up to be on the right side.

Q. I got it. So if you actually -- where the spatula is, if you wrapped that portion of the dura around the spinal column, you will see not only the trauma to the dura but it would then align with the trauma that we just discussed with the spinal column?

A. Exactly.

Q. Is there any other significance to this photo?

A. No.

Q. Now, up to this point are these all recall photos that you directed to be taken or were they provided to you from autopsy?

A. I took these photos myself. These are my photos.

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(Whereupon, Exhibit-3E was marked for purposes of identification.)

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BY MR. PODRAZA:

Q. Okay. Then let's see what Emery-3E depicts.

A. So this is the other side of the spinal cord and I'm trying to show the alignment of that defect that we saw in the dura to the correct anatomic, like, how it would have been in the body. It's -- I am not doing a very good job of that in this photo. I am trying to. So it's dura. The same 1.1 centimeter defect is where the probe is pointing. You just cannot see it very well. And, again, no hemorrhage. There is a defect in the dura that corresponds with the spinal cord -- or the spinal column injury, but there is no hemorrhage around it.

Q. Let me ask you this, Doctor, because that raises the point, at least in my mind: When you're talking about the hemorrhage, would you have expected separate hemorrhage to the dura, separate hemorrhage to the spinal column, that both would show indications of hemorrhage?

A. I would expect that, yes. Yes.
Q. And by the fact that now the dura is not demonstrating hemorrhage, as you found also that the spinal column didn't, would that weigh a little bit more in suggesting that Ellen was dead at the time that this wound was administered?
A. Yes.
Q. Is there any other significance to what has been marked here as Emery-3E?
A. I don't think so.

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(Whereupon, Exhibit-3F was marked for purposes of identification.)

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BY MR. PODRAZA:
Q. I think we have an Emory-3F. Yes, we do. Okay.
A. So, again, so that's -- it's reoriented with the back of the spinal cord facing up towards us in the photo. And I am again just redemonstrating that that defect in the dura is a full thickness defect. It goes

through entire thickness of the dura and I'm just showing that again with the probe like I did with the vertebral bone.

Q. All right. And this photo really is demonstrating the dura puncture or the dura wound?

A. Exactly. Yes, there is a cut in the dura.

Q. All right. And, again, there is no indication of hemorrhage?

A. Correct.

Q. Is there any other significance to this photo?

A. In my eyes, because I took them and I remember -- you know, I did the examination, I can start to see this defect in the spinal cord that -- or the disruption, let's say, in the spinal cord itself and that the tip of the probe is actually almost pointing directly to it.

Q. Was this that disruption that you felt could have been attributed to the performance of the autopsy?

A. Yes.

Q. All right. But that has nothing to do with the wound associated with the dura and spinal column, correct?

A. Correct.

Q. That's something separate and distinct?

A. Correct.

Q. Okay. Is there any other significance?

A. No.

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(Whereupon, Exhibit-3G was marked for purposes of identification.)

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BY MR. PODRAZA:

Q. All right. Then let's look at Emery-3G, as in girl.

A. And so -- yep, this is a close-up photo of what we were just looking at, you know, and the top part of the tissue specimen itself. And what the point of that probe is pointing to is that irregular little surface defect. It almost looks like a

little, like, cylindrical curve-out, cut-out, chunk of missing tissue, is grossly what it looks like, kind of raggedy, as opposed to rest of the surface of the spinal cord. That's what I am seeing with my eyes.

Q. And you can't definitively say what caused that?

A. I can't and what -- so two things. What's unusual is that, again, no -- appears to be no reaction to it, right, no vital reaction, hemorrhage, whatever, and what starts to become interesting to me is that, again, if we were to imagine that dura wrapped around and where it should be, that disruption in the spinal cord tissue itself loses its continuity with the defects in the dura and in the vertebral column.

Q. So if I can just state in layperson terms, what you're saying is where you see the defect where the 1.1 centimeter trauma occurred through the dura, when you wrap the dura around the spinal column this defect that you're making reference to you do not see a similar penetration or trauma on the

dura leading to it?

A. It's at the same level, but it's on the wrong side of the spinal cord.

Q. But, similar to both the dura and the 1.1 centimeter injury, there's no hemorrhage?

A. Yes. Correct.

Q. Any other significance?

A. No.

_ _ _

(Whereupon, Exhibit-3H was marked for purposes of identification.)

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BY MR. PODRAZA:

Q. Okay. Now, we are looking at Emory-3H and I will ask you if you could describe to us the significance of the photo?

A. Yes. So, again, same orientation as the one we just saw. And I'm trying to point out that surface irregularity on the posterior aspect of the upper cervical spinal cord with the probe. So the defect itself is right above the probe. The

irregularity that I'm talking about and curious about is above that probe, right above it, in the same -- you know, millimeters above the probe.

Q. If that irregularity was not due to the performance of the autopsy, based on your professional experience, what would you anticipate could cause that irregularity?

MS. BERKOWITZ: Objection. You can answer.

THE WITNESS: But, I'm sorry, what could cause that?

BY MR. PODRAZA:

Q. Sure. If it wasn't -- let's say it wasn't due to the performance of the autopsy and here's this irregularity, what potential explanations, particularly given the situation here, where somebody has been stabbed, what would you think would be a reasonable explanation for it?

A. I would be left with -- without considering or consideration for autopsy artifact, I would have to conclude that that was related to the sharp force injury. It

doesn't look like that, but it could be.

Q. Okay. And when you say the sharp force, is that that 1.1 centimeter?

A. Yes.

Q. And how could the 1.1 centimeter wound potentially explain this irregularity that's being shown by your spatula in Emory-3H?

A. I mean, the same -- it would be cutting the posterior surface of the spinal cord.

Q. Would that all be in one strike?

A. Based on -- yes, based on what I have here and what I -- you know, what I can evaluate, yes, it is one injury.

Q. All right. Now, if you take -- if you accept that the blade or the trauma, the 1.1 centimeter trauma also accounts for the irregularity that's being shown with the spatula here in Emory-3H, what would you anticipate the consequences to Ellen being able to have, you know, normal motor skills or being able to move? What impact would that

have, if any?

A. The problem is or the issue is is that I don't have any evidence that there was a vital response to this injury. So I don't think that this injury would have caused any symptoms, because there's no response to it, there is no reaction to it.

Q. What does that mean?

A. There is no hemorrhage. There is no tissue injury, which I know, then, by looking at it under the microscope. So I have all of this evidence that says there is no -- there's no hemorrhage or reaction to any of these changes in the spinal cord.

Q. So what you're saying is, Ellen would have been dead when this was administered?

A. Yeah.

Q. Any other significance to this photograph?

A. No.

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(Whereupon, Exhibit-3I was marked for purposes of

identification.)

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BY MR. PODRAZA:

Q. Is there an Emory-3I?

A. More of the same thing. It's just trying to illustrate -- the disruption of that part of the spinal cord, it was very subtle and it was very hard to photograph, so I am just doing my best to take, you know, appropriate photographs to kind of demonstrate the defect that I am trying to demonstrate. At least in this one, it's kind of nice, because you can see the defect to the dura also. And, again, but -- so right above the tip of that probe is what is in question here in the spinal cord.

Q. Okay. And, again, this picture is showing no hemorrhage to the defect or irregularity that's above the spatula?

A. Yes. For the spinal cord itself or for the dura still, you know, no evidence of hemorrhage.

MR. PODRAZA: If we could take maybe a five-minute break. I think

that may be all the questioning I have at this time. Is that okay?

THE WITNESS: Yes. Thank you.

THE VIDEOGRAPHER: The time is 11:24 a.m we are going off the video record.

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(Off the record)

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THE VIDEOGRAPHER: The time is 11:41 a.m. This is the beginning of media unit number two.

BY MR. PODRAZA:

Q. Dr. Emery, the questions and the answers that you -- well, strike that. The answers that you supplied to me here today, was that information also shared with Dr. Gulino after you completed your evaluation of the Greenberg case?

A. Yes.

MR. PODRAZA: At this time, I don't have any further questions. Perhaps I will have some follow-ups after opposing counsel is through.

THE WITNESS: Okay.

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EXAMINATION

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BY MS. BERKOWITZ:

Q. Dr. Emery, you testified that when you began this case you were given a case number. What other information did you receive at that time?

A. None. It literally was, like, "Here is a case number. Would you mind taking a look at the neuropathology relevant material of the brain and spinal cord and let me know what you think?"

Q. At some point did you look at the photographs from the autopsy?

A. I have seen, yes, the full case photographs.

Q. And when did you look at them?

A. I don't recall exactly when, but it would have been after -- it was after I evaluated the gross tissue, you know, the gross material, and it may have been even after I had the microscopic material back. It

was after the fact.

Q. Did you ever read the report?

A. I did not read Dr. Osbourne's report, no.

Q. You testified that you conducted an informal exam and you also testified that you did not treat the material differently from a consultation. Could you explain what you mean?

A. Meaning that with what I had I did it the way I would have done it if I had done it in a formal consultative role. I took photos. I documented exactly what I did. I have at least a paper record of what I did in terms of the material and what sections I took with a section key and so for that I documented what I did.

Q. Did you cut any corners in terms of how you conducted the examination?

A. No. I mean, I had limited material to evaluate, you know, to examine in the first place, so I examined thoroughly what I had to examine.

Q. Okay. Regarding the cut to the

dura that went into the -- into the vertebra that we've been discussing, earlier in your testimony you said that there were two possibilities for why there wouldn't be hemorrhage, I think?

A. Right. So the main point is that I don't have any evidence of there being hemorrhage in direct association with the injury to that defect, that 1.1 centimeter defect of the vertebral column itself and the dura, that there was reaction to it, right, so that there was blood or the ability to bleed as a result of those injuries.

Q. Right.

A. With what I have to examine, I don't see that. So one conclusion is that those injuries happened when the decedent no longer had a pulse.

Q. And what's the other possibility?

A. The other possibility is that I can't see or I'm not seeing that hemorrhage because it washed away during fixation, washed away during the autopsy. Not so much with the

spinal column itself, I would still be able to see that grossly, but the dura, if there was subdural hemorrhage, it could be gone and I'm just not able to see it. So, again, with what I have available to evaluate, I don't have that info -- I don't have that evidence.

Q. Okay. Did you -- did you conclude from your examination that this was a homicide?

A. I made -- I have no opinion in any shape or form about the manner of death in this case.

Q. Did you -- when you were discussing it with Dr. Gulino, did you tell him that -- that it was a homicide?

A. No.

Q. Okay. Did you find anything incapacitating in what you looked at, anything that --

A. Not definitively incapacitating in the material I examined.

Q. Okay. Were you able to -- just backing up for a minute. So can you determine from what you looked at that another person

inflicted that wound?

A. No.

Q. Okay. Did you find anything in your examination that would have made it impossible for Ellen to -- assuming that wound was not the last wound, is there anything that you learned from your examination that would make it impossible for Ellen to continue stabbing herself?

A. No.

Q. Okay. Were you able to rule out suicide?

A. I do not have an opinion about the manner of death. I don't know enough about the full complement of information. I don't have -- I have no opinion about how those injuries occurred.

Q. Okay. So is it fair to say that you didn't learn anything that invalidates the prior determination?

A. I think -- yeah, I think that's true.

Q. Okay. Did Dr. Gulino attempt to influence your examination or your

conclusions at any time?

A. No.

MS. BERKOWITZ: I don't have any further questions.

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EXAMINATION

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BY MR. PODRAZA:

Q. Doctor, I just have a couple. When you were performing the examination of the 1.1 centimeter wound, am I correct that you expected there to be hemorrhage if, in fact, it was administered before Ellen was dead?

A. I would expect there to be hemorrhage, yes.

Q. When you were answering counsel's question, I thought you differentiated between the dura and the spinal column when you talked about this washed away effect. Am I correct about that?

A. You are correct.

Q. And, as a matter of fact, you would not expect with the spinal column the

hemorrhage to be washed away over time, correct?

A. Correct.

Q. And, in fact, in the samples that you showed there was hemorrhage that still existed in the spinal column, just in a different area than where the 1.1 centimeter wound was, correct?

A. Exactly.

Q. And, Doctor, you're an intelligent woman and a very competent professional. Given what you see here, could you say that homicide is not a possible or respectful -- or respectable consideration that happened to this woman here?

A. I have no opinion about the manner of death.

Q. All right. But if the 1.1 centimeter wound was administered after Ellen was dead, can we agree that she couldn't have administered that wound, correct?

A. That is true.

MR. PODRAZA: I have nothing further. Thank you.

MS. BERKOWITZ: No further questions. Thank you, Dr. Emery.

THE WITNESS: Thank you all.

THE VIDEOGRAPHER: The time is 11:51 a.m. This is the end of media unit number two, the end of the deposition.

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(Deposition concluded. Time noted, 11:51 a.m.)

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C E R T I F I C A T E

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I do hereby certify that I am a Notary Public in good standing, that the aforesaid testimony was taken before me, pursuant to notice, at the time and place indicated; that said deponent was by me duly sworn to tell the truth, the whole truth, and nothing but the truth; that the testimony of said deponent was correctly recorded in machine shorthand by me and thereafter transcribed under my supervision with computer-aided transcription; that the deposition is a true and correct record of the testimony given by the witness; and that I am neither of counsel nor kin to any party in said action, nor interested in the outcome thereof.

WITNESS my hand this 14th day of May, 2021.

_____

Kimberly A. Wornczyk
Notary Public

Commonwealth of Pennsylvania Rules of Civil Procedure

Title 231, Chapter 4000

Depositions and Discovery

Rule 4017

(c) When the testimony is fully transcribed a copy of the deposition with the original signature page shall be submitted to the witness for inspection and signing and shall be read to or by the witness and shall be signed by the witness, unless the inspection, reading and signing are waived by the witness and by all parties who attended the taking of the deposition, or the witness is ill or cannot be found or refuses to sign. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the person before whom it was taken with a statement of the reasons given by the witness for making the changes. If the deposition is not signed by the witness within thirty days of its submission to the witness, the person before whom the deposition was taken shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the refusal to sign together with the reason, if

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