

IN THE CIRCUIT COURT FOR THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR MANATEE COUNTY, FLORIDA

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| IN RE | : |) | Case No.: 2020-DP-709 |
| | |) | |
| | |) | |
| EMMERSON | XXXXXX |) | March 11, 2021 |
| | |) | |
| | |) | Honorable Gilbert Smith, Jr. |
| Minor | |) | |
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WITNESS TESTIMONY OF DR. RUSSELL SCOTT VEGA

Transcribed by:

Lisa D. Wenger
7015 229th Street East
Bradenton, Florida 34211
(941) 704-5608

WITNESS TESTIMONY

JUDGE: All right. Dr. Vega? Can you hear me? Uh, you're on mute. There you are, okay. Can you hear me?

DR. VEGA: I can. I'd like to close my door if you'll give me one moment.

JUDGE: All right. All right. Um, tell me when you're ready.

DR. VEGA: All right. I'm ready now.

JUDGE: Okay. Mr. Sandusky has called you as a witness, so let me swear you in. Could you raise your right hand? Do you solemnly swear to tell the truth, the whole truth and nothing but the truth?

DR. VEGA: Yes, I do.

JUDGE: Okay. Thank you. You can put your hand down. Mr. Sandusky.

STATE: Thank you.

DIRECT EXAMINATION OF DR. VEGA BY STATE

Q Please state for the record your name and spell.

A My name is Russell Scott Vega. The last name is spelled V-E-G-A.

Q What is your current occupation?

A I'm the Chief Medical Examiner for the Twelfth District of Florida and that covers the counties of Sarasota, Manatee and Desoto.

1 Q Who are you, uh, employed by?

2 A I, uh, am employed by and am the Chief Medical Examiner
3 for the, um, Twelfth District of Florida, so, um, uh, technically
4 my employer is Russell S. Vega, M.D., P.A. but the District 12
5 Medical Examiner is the agency.

6 Q And, how long have you been, uh, the Medical Examiner?

7 A Since 2003.

8 Q And, what is your field of expertise?

9 A Uh, forensic pathology.

10 Q I'd like to talk to you about why you're here today.
11 Uh, did you perform an autopsy on Douglas Benefield?

12 A Yes, I did.

13 Q What date did you conduct that autopsy?

14 A Uh, that autopsy was on September the 28th of 2020.

15 Q And, overall, what was the purpose of you conducting an
16 autopsy?

17 A Well, the, uh, the autopsy was done, uh, according to
18 Statute. The Statute is what, um, authorizes and, and essentially,
19 um, obligates the medical examiner to investigate certain deaths.
20 Uh, violent deaths being among those. So the fact that this was
21 a death which was apparently caused by a gunshot wound led it to
22 be, uh, under our jurisdiction and that's what led me to autopsy.

23 Q And, um, without really stating in full, we'll dive into
24 this a little later, but, did you, as the medical examiner did

1 you, uh, form an opinion as to uh, the cause and manner of death
2 as it relates to Mr. Benefield?

3 A Yes, I did.

4 Q What degrees do you hold Dr. Vega?

5 A Uh, I got a Bachelor of Science, uh, in, uh, Physics and
6 Biochemistry at Florida State University and I got a Doctor of
7 Medicine or M.D. degree from University of South Florida.

8 Q And, how long have you, uh, been in the practice of
9 medicine and forensics?

10 A Well, and, and, I guess in a sense, I've been in the
11 practice of medicine since my graduation from medical school in
12 1990. I got my medical license in Florida in 1993. Uh, I
13 finished all of my, uh, pathology training, including my forensic
14 pathology fellowship in 1996. And then I got my board
15 certification in all three branches of pathology and atomic,
16 clinical and forensic in 1998.

17 Q And, can you briefly inform the court what a board
18 certification is and what that means?

19 A Board certification is, uh, essentially, uh,
20 documentation of a level of competence and expertise that comes
21 from having completed a training program that is, um, accredited
22 by the ACGME or American College of Graduate medical Education.
23 And then, uh, uh, after having completed that training, uh, passing
24 an exam, which is administered by, uh, the Board from which your

1 certification comes. In this case it was the American Board of
2 Pathology.

3 Q And, in terms of, uh, your experience, have you ever
4 taught or lectured in your specific field?

5 A Yes, I have.

6 Q And, what was the nature of some of that experience?

7 A Uh, I've been a, uh, professor giving lectures on
8 forensic and cardio vascular topics at University of South Florida,
9 oh, gosh, since, uh, the mid '90's, uh, continuously. I've also
10 given, um, a good number of lectures. The, uh, the educational
11 program sponsored by the Florida Association of Medical Examiners
12 and, uh, other invited lectures at, uh, organizations and agencies
13 throughout the State.

14 Q And, in terms of any memberships you hold, uh, do you
15 currently hold any board memberships, uh, related to your field?

16 A Uh, well, I'm a member of the Florida Association of
17 Medical Examiners, the National Association of Medical Examiners,
18 uh, College of American Pathologists, the American Medical
19 Association. Uh, those are my primary, uh, medical, uh,
20 organization affiliations.

21 Q And, have you testified before as an expert in other
22 litigation?

23 A Uh, many, many times.

24 Q And, how many years have you been testifying as an
25 expert?

1 A Probably my first testimony was in 1997, so, 24 years.

2 Q And the course of that experience in terms of your, um,
3 testimony as an expert, um, has that been limited to Florida?

4 A Yes.

5 Q And, has that been limited to the tri-county area you
6 testified to or where else in Florida, if you have?

7 A Uh, I've primarily done, uh, all of my testimony in the
8 two areas where I've done my medical examiner work, which is in
9 Hillsborough County, uh, and then, uh, 13th Circuit and then here
10 in uh, the 12th with Desoto, Manatee and Sarasota.

11 Q And, how does your testimony today relate to, uh, relate
12 to the underlying issues of this, uh, hearing?

13 A Well, as you...

14 MR. RAY: Objection, vague.

15 JUDGE: I'm sorry. Mr. Ray, what was that?

16 MR. RAY: I objected. The, the question is vague.

17 JUDGE: Okay. Mr. Sandusky, will you clarify that?

18 Q Uh, I can. This is merely foundational, but, uh, I'll...

19 JUDGE: Go ahead.

20 Q Um, does your testimony relate to the underlying issues
21 in this case?

22 MR. RAY: Objection, that's still vague. We have, what
23 underlying issue?

24 STATE: I'll move on, Your Honor.

25 JUDGE: Okay.

1 Q Do you believe the autopsy you conducted, uh, could have
2 been done by the average lay person?

3 A No.

4 Q Do you consider, uh, the medical examiner work that you
5 conducted, uh, could be easily interpreted by the average lay
6 person?

7 A No.

8 Q Do you feel that your testimony today will better aid
9 the court in understanding the work and opinion that you will
10 provide?

11 A Yes.

12 Q And, briefly, uh, what approach and tools do you use in
13 your determination as a medical examiner?

14 A Uh, well, the approach is one of a broad based
15 investigation. So it, uh, it includes both, uh, the sort of
16 background kind of information that may types of investigations
17 rely on, review of documents and reports, uh, uh, witness reports,
18 um, in our case, it means review of medical records and other
19 medical information and then, uh, the findings of the actual
20 investigation of the body, which can include, uh, diagraming,
21 photography, um, evidence collection, external examination of the
22 body, radiographs, uh, toxicology and other, uh, analysis of
23 biological specimens and then, uh, autopsy, which is essentially
24 the dissection and, uh, uh, internal examination of the body.

1 Q And, are such, uh, approaches that you use, uh, are they
2 subjective or objective type assessment?

3 A They're both.

4 Q And can you, uh, elaborate on that a little bit?

5 A Certainly. Um, some of the things that we do, uh,
6 description of sizes, shapes and colors are fairly objective. The
7 numbers that we look at in terms of some of the, uh, laboratory
8 analyses that we request, uh, those numbers are, uh, objective
9 pieces of data. Uh, however, taking those objective findings and
10 then using the, uh, education, training and experience that I have
11 to develop opinions, uh, regarding those findings, that's the
12 subjective part.

13 Q Do you believe, uh, today you have sufficient
14 information, uh, to come to, uh, any opinion you may offer as it
15 relates to Mr. Benefield's autopsy, uh, in your examination of
16 him?

17 A Yes.

18 Q Your Honor, at this point, I'd like to tender, uh, Dr.
19 Vega as an expert. Um,

20 JUDGE: Mr. Ray, anything?

21 MR. RAY: I'm not sure what he's an expert, what he's
22 being offered for. Is he offered, is he offering testimony
23 about whether or not the mother should be reunited with the,
24 uh, with the child or is he gonna offer testimony about, I'm
25 not sure what.

1 JUDGE: Well, Mr. Sandusky, um, I'm gonna let you proceed
2 and ask him.

3 STATE: Well, I believe, before he can offer opinion, he
4 would need to be tendered as an expert, otherwise, uh, as we
5 know with the rules of evidence, uh, his opinion really, uh,
6 would be objected to and, uh, rightly would be sustained,
7 therefore, his opinion...

8 JUDGE: Well, I'm gonna accept him as an expert. Dr.
9 Vega has testified numerous times, he's known for testifying
10 in this circuit, uh, throughout, uh, my term on the bench.
11 He's testified hundreds of times.

12 STATE: Thank you, Your Honor. I'll proceed.

13 Q And, in terms of the opinion, uh, that I'd like to, uh,
14 explore, um, in terms of an autopsy, um, first describe for the
15 Court, uh, what, cause of death and manner of death and those
16 distinctions.

17 A Sure. Um, the cause of death is the biological process
18 or the physiological process that is initiates whatever chain of
19 events occurs in the body, that eventually causes the heart and
20 the brain, the primary, uh, essential critical organs to cease
21 functioning. So, in a natural death, that would be the natural
22 disease process, which, uh, starts the, the death process. it's
23 not the very final step, but it's the thing that starts the ball
24 rolling.

1 Um, with a non-natural death, a violent death, uh, it is
2 whatever the injury or external factor was that, that caused the
3 chain of events that lead to death. So, for example, uh, in a
4 natural death, uh, you might have a, uh, a cardiac arrhythmia that
5 causes the death, uh, in, in the, or that results in the death is
6 the final step.

7 But, what we've determined the cause of death to be is,
8 is going to be what caused that arrhythmia to happen in the first
9 place. In most people, that's gonna be a, a coronary artery
10 blockage or enlarged heart of some, from some cause, so, those are
11 the things that we would look for and put on the death certificate
12 as the cause of death in a circumstance like that.

13 In injury, uh, there are multiple things which can cause,
14 uh, death. It could be from blood loss, it could be from inability
15 to breathe, it could be from, uh, direct physical damage to the
16 brain of some kind, uh, so, rather than say, uh, that it was just,
17 uh, blood loss for example, I would want to choose as the cause of
18 death, the injury that caused the blood loss.

19 And, so, cause of death is, is that injury or process
20 which starts the ball rolling and eventually ends up with, uh,
21 irreversible brain and heart function.

22 Q As it relates to Mr. Benefield's, uh, autopsy, uh, what
23 was the manner of death?

24 A Uh, the manner of death that I determined..

1 MR. RAY: Your Honor, I'm gonna object to the cause of
2 the manner of death being relevant in this proceeding,
3 especially at this time. They haven't tied that death to the
4 mother, and, I already said, the cause and manner of death
5 are just not relevant to the proceeding.

6 STATE: Again, is counsel disputing that mother shot
7 father?

8 MR. RAY: I'm not stipulating to it.

9 STATE: I, I didn't ask that. So, Your Honor, we already
10 had law enforcement testify, um, which gives the facts before
11 this case to proceed. Uh, there's more than enough in front
12 of you, uh, for him to offer this.

13 JUDGE: Okay. Objection overruled. I'll, I'll allow
14 Dr. Vega to answer the question.

15 A So, in this case, I determined the manner of death to be
16 homicide.

17 Q And what does that term homicide mean in your field?

18 A Homicide means, uh, a death caused by the actions of
19 another, uh, with some intent or, um, expectation that those
20 actions would cause harm.

21 Q Then, as to the cause of death, what did you determine
22 was the cause of death?

23 A I determined the cause of death to be perforations of
24 the lungs which hemothoraces, and hemothoraces is internal
25 accumulations of blood within the body and the chest cavities, and

1 that that was, uh, due to the underlying cause of a gunshot wound
2 to the chest.

3 Q In other words, how did that work to affect, uh, death
4 in this case?

5 A Uh, in this case, the, uh, the gunshot wound that he
6 sustained penetrated the lungs, uh, and in doing so, damaged the
7 lungs, causing those lungs to bleed, the bleeding internal to the
8 body was quite extensive and the death was caused by uh, the blood
9 loss associated with that lunch injury, which was associated with
10 the gunshot.

11 Q And, if the court will indulge me for one moment, please?
12 Thank you very much, I'm back. Can anybody see me. I can't see
13 anybody right now?

14 JUDGE: Yes, we see you.

15 Q Okay. Thank you.

16 JUDGE: Mr. Sandusky, we can see you and you're on mute
17 from here, it appears. Well, he's gone now.

18 MR. RAY: Your Honor, it appears that Mr. Sandusky is
19 disconnected, so it may be appropriate to call a short recess
20 while we wait for him to return?

21 JUDGE: Okay. That'll be fine. We'll be on a short
22 recess. Yeah, we'll be on, we'll be on a short recess and
23 we'll come back as soon as Mr. Sandusky connects.

24 MR. RAY: Thank you.
25

1 JUDGE: Okay. Here he comes. All right. Mr. Sandusky's
2 coming back in.

3 STATE: Okay. Can you hear me now?

4 JUDGE: Yes.

5 STATE: Okay. I had to reset my internet. I don't know
6 what happened there, I apologize.

7 JUDGE: Dr. Vega? There you are, thank you.

8 DR. VEGA: Yep.

9 JUDGE: Okay. Go ahead Mr. Sandusky.

10 STATE: Great, thank you.

11 Q Uh, Dr. Vega, I think we left off, um, uh, yes, I'd like
12 to, uh, now turn your attention to, um, the nature of your
13 investigation and the specifics. Uh, we'll get into specifics.
14 What injuries did you discover on Mr. Benefield overall?

15 A Uh, I found two, uh, very clear gunshot wounds and a
16 third injury, which was probably a gunshot wound, but was simply
17 a grazing or tangential wound, so it didn't leave a, you know, uh,
18 two holes, one entrance and one exit and a track through the body.
19 It was just like a, uh, a narrow scrape along the surface of the
20 body. Uh, in addition to that, there was a, uh, an abrasion and,
21 uh, contusion on the back of the scalp. Um, those were the, uh,
22 those were the principal injuries.

23 The two clear injuries that were caused by gunshot
24 wounds, one was at the chest and the other was of the right leg.

1 Q And, as to the injuries, uh, I'd like to turn your
2 attention to the wound, uh, that relates to the chest. Uh, what
3 was significant about where it was located and what did you find?

4 A Uh, the, uh, wound uh, entered the body on the front
5 right side of the chest. Um, if, uh, you can see in my photograph
6 here, it's right where I'm pointing with my, or not photograph,
7 video, where I'm pointing with the finger there, so, it's the, the
8 right side front of the chest, uh, that would track that the bullet
9 created went through the chest wall there and then went through
10 the right lung and, uh, it, uh, ended inside the body. So, it did
11 not exit, there was no, uh, exit wound, which means that there was
12 a, uh, projectile that I could recover from, um, from the skin, or
13 just underneath the skin in the back.

14 The, um, track caused a lot of bleeding around it and
15 into the chest cavities next to that wound track, uh, I eluded to
16 that, when I, when I described the cause of death, uh,
17 specifically. Those, uh, volumes of blood, in total were almost
18 three liters, uh, 2,900 liters, I believe, uh, in, in sum, and
19 that's quite a significant blood volume.

20 Q And, in the course of, uh, evaluating the injuries, were
21 you able to identify, uh, in your opinion, what wound was likely
22 the fatal wound?

23 A Yes.

24 Q Which one was that out of the ones you've indicated to
25 us?

1 A Yeah. Of the three wounds, uh, by far the most
2 significant of them was the chest wound. Uh, and that's why, in
3 my cause of death opinion, that's the injury that I listed, the
4 gunshot wound to the chest. The injury to the right leg, did
5 cause, uh, significant tissue damage and did cause bony injury.
6 Uh, it would have caused, and did cause some bleeding. It would
7 have caused more bleeding if he had survived for longer. But in
8 comparison to the wound to the chest and the injuries to the lungs,
9 the amount of bleeding that it caused was relatively minor. And
10 that is why, um, I did not list it as the cause of death, uh, that
11 I listed the, uh, chest wound instead.

12 Q As we turn to the, uh, right leg gunshot wound, uh, how
13 did that, how did the strike Mr. uh, Benefield?

14 A Uh, so it, it entered the body on the back, essentially
15 on the back of the calf and then, uh, it exited, uh, near the knee,
16 uh, on the, on the outside of the knee. So, the, um, the chest
17 wound as a, as a comparison, um, you know, entered the body on t
18 he, the front right side and then it ended in the back, so, it
19 was, uh, from front to back and it was from right to left. Uh,
20 whereas the, um, the wound of the right leg was from back to front
21 and it was from left to right, a little bit, uh, going outward
22 instead of inward.

23 Q And, in terms of how, uh, what you determined the track
24 of the wound being, what does that, how does that inform you in
25 terms of, uh, cause of death or a manner of death?

1 A It, it doesn't really add to my, um, determination of
2 those two opinions. But, certainly it adds information to those
3 who, uh, use that information to determine say the relative
4 positions of, uh, the shooter and the victim at the time the gun
5 was fired causing those injuries. Uh, you know, one other thing
6 that can be determined from wounds of this type, uh, in some cases,
7 at least, is an estimation of the range of fire, uh, in this
8 particular case, the findings that might be present on the body
9 that would, uh, uh, allow for some estimation of range of fire
10 were not present. Uh, that can be for two reasons. Number one
11 that there was something in between the gun and the skin at the
12 time the weapon was fired, or it could mean that the gun was more
13 than a few feet away at the time that the weapon was fired.

14 The most common thing we see that's causing that kind of
15 obstruction is something that sits between the weapon and the skin
16 is clothing. And, when I examined him, uh, there was no clothing
17 with him, so I didn't have any clothing to examine.

18 Q And, would this be what is often referenced as stippling
19 or suiting?

20 A Yes, that's right.

21 Q And, did you, uh, in your examination of Mr. Benefield,
22 did you, uh, find any of this into the chest injury or the leg
23 injury?

1 A I did not. And nor did I find any of those things
2 associated with I, with what I, um, uh, opined to be the tangential
3 injury of his, uh, of his, uh, right, uh, arm / shoulder area.

4 Q And you indicated, uh, he had a superficial injury about,
5 um, a grazing on the scalp. Uh, why, why did you note that?

6 A The injury on the scalp was not a grazing, the grazing
7 injury was the one to the arm. The scalp had, uh, a typical blood
8 impact injury, uh, the kind that we see very commonly, uh, when,
9 uh, someone falls and strikes their head against a surface, like
10 a hard floor.

11 Q And, in your examination and identification of this, uh,
12 scalp injury, uh, did you feel it pertinent to, uh, Mr. uh, Mr.
13 Benefield's, uh, death, that it, it was a current injury?

14 A Well, I do feel that the findings of that wound were uh,
15 suggestive of it being contemporaneous to the time of death, in
16 other words that it occurred very near to the same time as the
17 gunshot injuries did. Uh, there's no way to determine that with,
18 uh, certainty, I can't tell you it occurred exactly the same time,
19 uh, but the findings were suggestive of that. Um, that does not
20 tell me exactly how the wound was sustained, um, but as I said, it
21 is the kind of wound that we typically see from a fall and the
22 head, the head striking a hard, solid object. Uh, so finding this
23 kind of injury when the lethal injury was some other mechanism is
24 not uncommon in my experience.

1 Q What did you find that was significant about the, uh,
2 the grazing, uh, gunshot wound to the right arm?

3 A Uh, because it was relatively superficial, the nature of
4 the wound was a little difficult to determine, but it had features
5 more suggestive of a back to front trajectory across the outside
6 of the arm, uh, than, uh, than the opposite meaning going from a
7 front to back. Otherwise, it was superficial, so there wasn't
8 much tissue damage, wouldn't have been much bleeding associated
9 with it. Uh, that's, that's probably about as much as I can say
10 about that injury.

11 Q So, based on, did you find, uh, did you find where the
12 injuries, and where, at least, the, uh, bullets had, the
13 projectiles had injured, uh, Mr. Benefield uh, in terms of how
14 that contributed to his death or how, how he was confronting, uh,
15 the shooter?

16 A Well, I, I mean, I think what you can, and what I made
17 an opinion of, from, from my examinations is, uh, sort of similar
18 to what I said before, that the location of the injury on the body
19 and the direction of the wound through the body, give you the
20 relative position of the weapon and the victim at the time the
21 weapon was fired. So, for example, for the chest wound, the weapon
22 would have had to have been pointing to his chest from, from the
23 front, from his front and from his right side. The leg wound
24 would have been, uh, such that it was, uh, the shot was fired when
25 the gun was, uh, behind him and angled somewhat toward the right

1 side from, uh, you know, his right side, from, uh, from that
2 position. The same for the arm wound, it was fired, uh, in all
3 likelihood from, uh, the position where the weapon was behind him
4 when it was fired, uh, and, uh, relatively, uh, straight at him
5 from, uh, from back to front.

6 Q And, are these the type of injuries, in your experience,
7 uh, that would be indicative of, um, self-defensive, when it's
8 from back to front?

9 MR. RAY: Objection, that's a trier of facts conclusion.

10 JUDGE: Yeah. I'm gonna sustain that. Doctor doesn't
11 have to answer that.

12 Q Are you able to opine, uh, in terms of, are you able to
13 determine from your examination, uh, whether Mr. Benefield, um,
14 any of these are indicative of him being in a self-defensive
15 posture?

16 A Um, none of these injuries are what I think would
17 typically be classified, uh, by, by people who use the term, as a
18 defensive injury. Um, the, the sum total of injuries as we've
19 described, uh, aren't really consistent with, uh, a struggle with,
20 uh, another individual or with, uh, fending off some kind of wound
21 with the arms or hands. And that's, that's typically how the,
22 the, um, "defensive injuries" are sustained.

23 Q In your full examination of Mr. Benefield's body, did
24 you find any substantial or significant scratches?

25 A Uh, no, I did not.

1 Q Did you note of, uh, or find any significant, uh,
2 bruising?

3 A The only bruise that I saw was accompanying that abrasion
4 on the back of his scalp, uh, that we've already talked about.

5 Q And, in the course of, uh, when you do an autopsy, is it
6 often that you run, uh, toxicology report on the decedent?

7 A It is.

8 Q Why is that informative to you?

9 A Uh, sometimes the substances present in the body can
10 play a role in causing the death, even when the cause of death
11 might seem, uh, obviously or likely based on a preliminary
12 examination. Probably even more likely than that though, uh, the
13 presence of intoxicants in the blood is, um, uh, a frequently, uh,
14 needed piece of information for other aspects of an investigation
15 and so, in any violent death, uh, we're going to be looking for
16 the presence of blood and other drugs and intoxicants. And, and
17 as an aside, uh, not only do I think it's the right thing to do,
18 and we want to do that as part of our investigation, it's required
19 by Florida Administrative Code in violent deaths when possible to
20 do this kind of analysis.

21 Q And, for that toxicology, uh, test that was run on Mr.
22 Benefield, uh, was anything noted as it related to his, uh, tox
23 results?

24 A No. We, we analyze, or at least, we collected specimens
25 that included blood and urine and submitted them for analysis, uh,

1 for comprehensive, uh, list of drugs and alcohol and the results
2 were that no alcohol or drugs were identified.

3 Q And, during the course of, uh, your role as a medical
4 examiner, uh, what are the procedures for, uh, records, how you
5 prepare them?

6 A Uh, fairly routinely, we, uh, start gathering
7 information on a case and producing, uh, preliminary notes, uh,
8 that, uh, go into our case file, along with entries into our
9 electronic database. As the case progresses and information is
10 gathered, the investigator assigned to a case, and the one who's
11 doing the, uh, lions share of that information gathering, produces
12 a narrative summary, which is called the case summary that goes
13 into our case file.

14 The medical examiner who does, uh, an examination in the
15 case, uh, then creates a report of that examination that summarizes
16 his or her opinions along with the findings, and, in addition to
17 that, the case file includes the, uh, the case diagrams, the chain
18 of custody documents and, uh, the photographs and other, um,
19 records that are produced as a part of the investigation.

20 Q And the report that you uh, produced as a result of your
21 examination for Mr. Doug Benefield, uh, were these done in a normal
22 and ordinary course of, uh, business, when the information was
23 written?

24 A Yes, they were.

1 Q And, uh, did the entries in your medical examiner record
2 and report accurately reflect, uh, what you've reported and
3 testified to here today?

4 A They do.

5 Q And, after you've, uh, done your report, uh, and
6 completed it, um, what, what happens to that report and record?

7 A Well, by, uh, by statute a copy of it goes to the State
8 Attorney. And, then, um, the, the report goes into our case file
9 where it sits until somebody requests a copy of it. Uh, anybody
10 is welcome to a copy because it's a public record, uh, that is, of
11 course, unless the case is under an active investigation, uh, we
12 leave that determination to law enforcement, and, if the law
13 enforcement agency involved tells us that it's case, they're still
14 investigating and they request that we not release the information
15 yet, then we do not release it as part of any public records
16 request, but otherwise, um, that, that's what happens to the
17 report.

18 Q And, for what approximate period of time, uh, do these
19 records, must these records be maintained?

20 A Uh, we, we maintain these records forever.

21 STATE: And, Your Honor, at this time, I would like to
22 turn the Court's attention, uh, the Department asked that the
23 Medical Examiner records uh, be pre-marked for the purposes
24 of identification. I was ask for pre-marking of Department's
25 Exhibit, uh, "A".

1 JUDGE: Well, I don't have anything here.

2 STATE: I'm merely laying the foundation and then I will
3 ask to share screen.

4 JUDGE: Okay. Go ahead.

5 STATE: Thank you, Your Honor. If you'll give me a
6 moment here.

7 MR. RAY: Your Honor, I'm gonna object his trying to put
8 in the medical examiner's report. It's full of hearsay.
9 It's, uh, we got him here today to testify. Um, once he's
10 gone, we won't have, we won't be able to cross examine it and
11 it's full of hearsay from other individuals, it's got
12 photographs that are, that are not, uh,

13 JUDGE: Well, have you seen it Mr. Ray?

14 MR. RAY: I don't think I've looked at the, no, I haven't
15 looked at it.

16 STATE: But, to be more clear..

17 MR. RAY: I think he sent it over yesterday.

18 STATE: it has been shared. It has been shared with
19 counsel and well in advance to this trial.

20 JUDGE: Okay. So, are, um, objection overruled. You
21 can put it up. Are you gonna share it on the screen?

22 STATE: Uh, yes, Your Honor, and this would be under
23 90.803, Records of Regularly Conducted Business Activities,
24 uh, and, uh, additionally, uh, that also permits, uh, opinion
25 and, um, statements made for diagnosis purposes by an expert.

1 If the expert testifies, and then they identify and, uh, the,
2 the person asking, that would be us, uh, can overcome the
3 record of regularly business, uh, foundation is laid, uh,
4 that is proper and that is, uh, that is, um, uh, that is not,
5 uh, hearsay.

6 JUDGE: Okay. It's gonna be admitted and received, but,
7 um, are, are you able to share it now?

8 STATE: Um, it says I'm disabled right now.

9 JUDGE: You're disabled?

10 STATE: Yeah, it says participant has you disabled for
11 share screen.

12 JUDGE: Okay.

13 MR. RAY: Your Honor, I'm still gonna object that this
14 is not a business record, this is a record, uh, record that's
15 prepared in the ordinary course of preparation for the
16 litigation. It doesn't meet the exception as a business
17 record. This is not accounts and receivables.

18 Q Then I would ask Dr. Vega, is an autopsy report always
19 done for the purpose of litigation?

20 A The autopsy report is done regardless of whether
21 litigation is known, planned or considered. It's done in every
22 case that we have, uh, jurisdiction over that we do an
23 investigation on.

24 Q And, specifically, as it relates to this record, Mr.
25 Benefield's, uh, autopsy and medical examiner report, uh, did you

1 conduct that report, um, in preparation for any litigation at the
2 time you conducted it?

3 A In preparation for anything specific? No. Knowing that
4 such reports can undergo legal scrutiny and be involved with
5 litigation. I certainly write them so that they will be
6 appropriate for that purpose, but, not with the sole intention of
7 being used for that purpose.

8 STATE: At this time, Your Honor, I believe that would,
9 uh, overcome that small, uh, objection as it relates to the,
10 uh, business records, uh, exception and foundation that is
11 required, uh, and would permit the court to admit them.

12 JUDGE: Yeah. I'm gonna overrule the objection and you
13 can, I think I disabled you. You want to check?

14 STATE: All right. Let me give it a try. Ah, yes. Is
15 everyone able to see this?

16 JUDGE: Yes.

17 Q And, Dr. Vega, can you see, uh, what's on your screen
18 currently?

19 A No, but let me, um,

20 Q See if I can make it bigger for you.

21 A Now I can. Okay. I just had to exit full screen.

22 Q And, I will slowly scroll for it as I scroll through
23 this. I want you to, uh, uh, be able to just look at and then
24 I'll ask you a question in a moment after we've, uh, scrolled

1 through it. Few more moments here. And, Dr. Vega, as I scrolled
2 through that and you were reviewing, uh, did you recognize that?

3 A I did.

4 Q And, how did you recognize it?

5 A Uh, I recognized that as, uh, copies of documents that
6 are in my case file that include the reports that we previously
7 described, the case notes that accompany that report and, the, um,
8 uh, the first document which you scrolled through, which was a
9 summary of the database entries for the case.

10 Q And, did you identify, uh, any identifying features, uh,
11 that further inform you that this, uh, your report from the Medical
12 Examiner's Office?

13 A It has the, uh, the name of the decedent, it has the
14 label that we print, uh, that we put on the paperwork, these are
15 diagrams that have our specific, um, uh, District 12 title across
16 the top. These are not diagrams or documents that you get anywhere
17 else in the world, except for the District 12 Medical Examiner's
18 Office.

19 Q And, I will also, want to turn your attention to, um,
20 this Report of Autopsy and, uh, on the screen, uh, you identify
21 what you're looking at right now?

22 A Uh, that is the second page of my autopsy report. It's
23 the, the only thing on this second page is a signature line. And,
24 uh, that has my signature and the date that I signed the report.

1 Q And, so, after your review of, of these documents and
2 identifying characteristics and, uh, your signature as you
3 recognize it, um, does this report appear to be in the same,
4 substantially same condition as when you produced it and, uh,
5 maintained it as a record in the medical examiner's office?

6 A Yes.

7 STATE: Uh, at this point, Your Honor, I would ask to
8 move this, uh, Department's Exhibit, uh, "A" as, uh, as
9 evidence and ask to publish it to the Court.

10 JUDGE: Mr. Ray?

11 MR. RAY: Okay. So, now I'm objecting on the basis that
12 business records often pose a double hearsay problem. The
13 records themselves are, are one level of hearsay, the separate
14 statements in the records are a second level. When double
15 hearsay problem exists, the party offering the Exhibit must
16 prove that each part of the combined statement conforms with
17 an exception to the hearsay rule. So, there are statements
18 in here from a Dr., a Ms. Blackmore, uh, a Dr. James, um,
19 relating, apparently to the history of what happened, but
20 these are not the thoughts and, of Dr. Vega, and so they're
21 hearsay and they're double hearsay. So, I would ask that any
22 hearsay not be admitted and that it, uh, either be redacted
23 or, well, it probably should just be redacted.

24 STATE: And, Your Honor, I, I will agree, agree in part
25 to Mr. Ray's assertion. Uh, the Department acknowledges there

1 is some hearsay. Uh, hearsay that would not be covered by
2 Dr. Vega's opinion. Some of it does have informational
3 background, uh, that he did not testify to. We merely want
4 the Court to accept this document as evidence, uh, with the
5 idea, with the understanding that what the Department is
6 asking to be admitted and should be accepted by the Court and
7 the Court should be able to review as anything as it relates
8 to, uh, Dr. Vega's uh, autopsy, uh, medical findings and
9 opinions as it relates to that.

10 Anything else, uh, we would agree, uh, we're not trying
11 to, uh, uh, pass in under any, any, exception.

12 JUDGE: Okay. And, Mr. Houghton, anything from you?

13 GUARDIAN: Uh, I think they have it, that has it covered,
14 Your Honor.

15 JUDGE: Okay. All right. Well, here's what I'm gonna
16 do. I'll admit and receive it, however, it'll only be
17 admitted and received as to those, um, those statements,
18 opinions and examination by Dr. Vega.

19 STATE: Thank you, Your Honor. And, Your Honor, will
20 the Clerk be calling this then, uh, State's Exhibit "A"? Or
21 what would the Clerk prefer?

22 CLERK: I'm not sure, Judge. Are they gonna send over
23 a hard copy for me to mark?

24 JUDGE: That has not been filed, has it?

1 STATE: No, I was very unclear on how to address this,
2 so I will be at the mercy of the Court on how the Clerk or
3 Your Honor would prefer that this gets transmitted.

4 CLERK: They normally bring the stuff over before the
5 trial and it's all marked and brought to court with us.

6 JUDGE: You're right.

7 CLERK: So, I don't know.

8 JUDGE: Well, here, um, I'm gonna ask you on this, uh,
9 document to, um, have it, um, uh, let's see. I'm trying to
10 think through this with, uh, well. Here's what I'm gonna ask
11 you to do. Um, I'm going to ask you to, um, um, based on
12 what my ruling is and what I'm allowing to be admitted, um,
13 you can either send, uh, what we, uh, pursuant to my ruling,
14 to Mr., uh, Ray and Mr. Houghton, and, then, um, email it to,
15 uh, my office and then I will have my assistant print it out
16 and I will bring it to court tomorrow.

17 GUARDIAN: Uh, I already have a copy of it, Your Honor,
18 and I believe Mr. Ray does as well.

19 STATE: And, to be clear, I believe the Court is asking
20 if you would like me, I do have PDF Pro, are you asking me to
21 exclude uh, cut out what is necessary..

22 JUDGE: Yes, I...

23 STATE: Share with the parties...

24 JUDGE: Yes...

25 STATE: uh, based on your ruling and then, okay.

1 JUDGE: Yes.

2 STATE: I understand. Yes, Your Honor, then I will pass
3 it to the parties with your office.

4 JUDGE: Right, okay.

5 MR. RAY: And, for simplicity sake, I'm just looking to
6 exclude pages one, two, and three of the case summary. Uh,
7 document in and of itself. It was the, it's authored by
8 Investigator Shawn O'Connell.

9 STATE: We'll, we'll agree and stipulate to that.

10 JUDGE: Okay. All right.

11 STATE: Thank you, Your Honor. Uh, and at this time, I
12 do not have any further questions for Dr. Vega.

13 MR. RAY: And also page three of the investigation
14 summary. I, I'll work with counsel on it.

15 JUDGE: Okay. Thank you.

16 MR. RAY: All right.

17 JUDGE: So, let me ask a question before we, um, uh,
18 continue and, of course, um, because, um, we have a doctor on
19 the stand, but, but, also because we're on Zoom, um, we, um,
20 it is 5:10 and, um, we have, um, um, we have, uh, possible
21 direct by Mr. Houghton and then cross examination uh, by, uh,
22 Mr. Ray. Um, what is our timeframe for proceeding.

23 MR. RAY: I will need five minutes only.

24 JUDGE: Okay. Mr. Houghton?

1 MR. RAY: I don't think I'll need much more than, Your
2 Honor.

3 JUDGE: Okay. All right. And, uh, are you gonna take
4 this document down, Mr. Sandusky?

5 STATE: Uh, yes, unless counsel would like me to leave
6 it up?

7 JUDGE: Oh.

8 STATE: Otherwise, I'll take it down.

9 MR. RAY: Oh, no, I don't need it. Thank you.

10 STATE: Okay. I will stop.

11 JUDGE: Okay. All right.

12 STATE: All right. Thank you.

13 JUDGE: Okay.

14 GUARDIAN: So, Mr. Sandusky, you are completed?

15 STATE: Uh, yes.

16 GUARDIAN: Thank you.

17 CROSS EXAMINATION OF DR. VEGA BY GUARDIAN

18 Q Dr. Vega? Uh, you had indicated that the wound that
19 caused, uh, Mr. Benefield's death was the wound to the chest, is
20 that correct?

21 A Yes.

22 Q But that was not immediately fatal, was it?

23 A Uh, no, not immediately.

24 Q Um, and, in fact, Mr. Benefield did, uh, arrive at a
25 hospital prior to this death, is that correct?

1 A Yes.

2 Q And, given the, uh, location and severity of that wound
3 in comparison to the other wounds, um, I believe Mr. Sandusky asked
4 you, uh, what that could tell you about the location of the
5 shooter, is that correct?

6 A Uh, we had some con, we had some testimony in that
7 regard. I don't remember exactly what the question was that led
8 to it. But I think, essentially you're, you're correct.

9 Q Thank you sir. Um, with, with respect to that, uh, is
10 there any way for you to determine the order that Mr. Benefield
11 received those wounds?

12 A Uh, I am not able to tell with certainty. But, I can
13 tell you that, because of the nature of the leg wound, uh, that it
14 was a wound that not only went from, uh, back to front, uh, as we
15 described, but, also, it traveled upward in the leg and, that is
16 a, it's an unusual direction for a wound track to travel in
17 somebody who's uh, say upright and, if someone was upright and
18 that was the first shot that was fired, again, that would be a
19 pretty unusual direction absent maybe somebody who's actually
20 running and the legs are, are well out of the regular, you know,
21 close to vertical position.

22 Uh, so, based on that, I, I think it's more likely in
23 most scenarios that the chest wound would have come first, but,
24 just based on the nature of the injuries themselves, um, there's
25 no way to tell with any certainty which one came first.

1 GUARDIAN: Okay. Thank you, sir. No further questions.

2 JUDGE: Mr., Mr. Ray?

3 MR. RAY: Yes.

4 CROSS EXAMINATION OF DR. VEGA BY MR. RAY

5 Q Um, Dr. Vega, um, is self-defense still considered
6 homicide?

7 A Yes.

8 Q So, if somebody was tried and they were, um, acquitted
9 based on self-defense, the, uh, the death certificate would still
10 read homicide?

11 A Uh, I wouldn't change my death certificate based on the,
12 uh, the outcome of a court proceeding, that's right.

13 Q Okay. Um, and you're not here to give us any opinions
14 on any abuse or neglect of a child?

15 A No, I'm not.

16 Q And, sitting here today, you have no idea who inflicted
17 these wounds?

18 A I, I certainly couldn't tell that just based upon my
19 examination of, of the decedent.

20 Q And he died at the hospital, not on the scene?

21 A He was pronounced at the hospital. Uh, how, how likely
22 it is that he had, uh, survivability at the scene, but died, uh,
23 before that or, was essentially dead at the scene, but still
24 transported, I think both of those are, are reasonable, uh,
25 likelihood's here. I'd have to review his EMS records to sort of

1 distinguish those two, but, but, technically, uh, you're correct,
2 that the death was not pronounced until he made it to the hospital.

3 MR. RAY: Thank you, Dr.


4 JUDGE: Mr. Sandusky, anything else?

5 STATE: Nothing further. Uh, this witness can be
6 excused.

7 JUDGE: All right. Dr. Vega, you are excused and
8 released. Thank you for being here.

9 DR. VEGA: Thank you, Your Honor.

10
11 I, Lisa D. Wenger do hereby certify that the foregoing 33 pages of
12 this transcript fairly and accurately represent the Witness
13 Testimony of Dr. Russell Scott Vega recorded on March 11, 2021 in
14 the case of In Re: Emerson Canney, Case Number 2020-DP-709.

15 
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9/14/22

17 Lisa D. Wenger

Date