

1 IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT,

2 IN AND FOR MARION COUNTY, FLORIDA

3 CASE NO.: 81-170-CF

4

5 STATE OF FLORIDA

6 vs.

7 IAN DECO LIGHTBOURNE,
8 Defendant.

8 _____/

9 VOLUME IV, PAGES 483-611

10 PROCEEDINGS: Evidentiary Hearing
11 concerning lethal injection
(Diaz issue)

12 BEFORE: Honorable Carven D. Angel
13 Circuit Judge
14 Fifth Judicial Circuit
In and For Marion County, Florida

15 REPORTED BY: Noelani J. Fehr
16 Stenographic Court Reporter
Notary Public
State of Florida at Large

17 DATE AND TIME: May 21, 2007; 2:15-5:10 p.m.

18 PLACE: Marion County Judicial Center
19 Court Room 3A
110 N.W. 1st Avenue
20 Ocala, Florida 34475

21 APPEARANCES: SUZANNE KEFFER, Esq., and
22 ANNA-LIISA JOSELOFF, Esq., and
ROSEANNE ECKERT, Esq., and
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19 ALSO PRESENT: Gail Watson, Judicial Assistant
20 Robert McLean, Law Clerk

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1 I N D E X

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4 State's Witnesses

5 Mark Dershwitz
 Direct Examination (Mr. Nunnelley) 477
 6 Voir Dire (Mr. Dupress) 484
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 7 Cross Examination (Mr. Dupree) 521
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11 Certificate of Reporter 611

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13 E X H I B I T S

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15 State's Exhibit Number 2 479
 CV of Dr. Dershwitz
 16 State's Exhibit Number 3 493
 Chart on Thiopental concentration
 17 State's Exhibit Number 3 493
 Chart on Probability of consciousness
 18 State's Exhibit Number 4 493
 Chart on Thiopental concentration, 200 minutes
 19 State's Exhibit Number 5 513
 AVMA Press release

20

21 ***REPORTER'S NOTE: Transcript continued to Volume V.

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1 AFTERNOON SESSION

2 May 21, 2007 2:15 p.m.

3 (Thereupon, the Honorable Judge Carven D. Angel entered the
4 courtroom and the following proceedings were had:)

5 THE COURT: Okay. We're resuming our
6 hearing. Let's call the next witness.

7 MR. NUNNELLEY: Your Honor, pursuant to
8 agreement, the State calls Dr. Mark Dershwitz out
9 of order.

10 THE COURT: Okay.

11 MARK DERSHWITZ,
12 having been produced and first duly sworn by the Clerk of
13 the Court as a witness on behalf of the State, was
14 examined and testified as follows:

15 THE WITNESS: I do.

16 DIRECT EXAMINATION

17 BY MR. NUNNELLEY:

18 Q State your name, if you would, sir?

19 A Mark Dershwitz.

20 Q How are you employed, sir?

21 A I work for the University of Massachusetts Medical
22 School and UMass Memorial Health Care.

23 Q What is your educational background, sir?

24 A I have a bachelor's degree in chemistry, a medical
25 degree, and a Ph.D. in pharmacology.

1 MR. NUNNELLEY: May I approach, your Honor?

2 THE COURT: Sure.

3 BY MR. NUNNELLEY:

4 Q Dr. Dershwitz, I am showing you what is marked as
5 State's Exhibit 2 for identification. And for the record,
6 that would be the CV of Dr. Dershwitz that was previously
7 provided to opposing counsel.

8 Do you recognize that document, sir?

9 A Yes.

10 Q What do you recognize that document to be?

11 A That's the CV that I prepared on February 5th,
12 2007.

13 Q Does the document fairly and accurately relect
14 your training, education, and professional experience?

15 A Yes.

16 MR. NUNNELLEY: I would offer the CV into
17 evidence at this time, your Honor.

18 MR. DUPREE: I don't have an objection, I
19 just want to find out, if I could ask a question,
20 whether or not it's updated. He said this was of
21 February of 2007, so since February of 2007 if
22 there's any additions to that CV?

23 THE WITNESS: There are none.

24 MR. DUPREE: Then I have no objection. No
25 objection, Judge.

1 THE COURT: Admitted.

2 (Thereupon, the above-referred-to item was
3 marked for identification as State's Exhibit
4 Number 2 and was received in evidence.)

5 BY MR. NUNNELLEY:

6 Q Dr. Dershwitz, you're an anesthesiologist; is that
7 correct?

8 A Yes.

9 Q If you could, sir, tell us, I guess maybe in fifty
10 words or less, what an anesthesiologist does?

11 A Many lay people think that anesthesiologists just
12 put people to sleep; but, in fact, we are in charge of the
13 entire peri-operative care of the patient. So we do
14 pre-operative evaluations, we take care of the patients in
15 the operating room, and then we take care of the patients
16 afterward, either in the recovery room or the Intensive Care
17 Unit. And many anesthesiologists also are intensive care
18 physicians and or pain management physicians.

19 Q Okay. Are you familiar with the drug from your
20 work as an anesthesiologist known as sodium thiopental?

21 A Yes.

22 Q Does that drug have another name?

23 A Well, there's a trade name, Pentothal Sodium, and
24 the official name is actually thiopental sodium.

25 Q Okay. Are you also familiar with the drug known

1 as pancuronium bromide?

2 A Yes.

3 Q Does that drug also have a trade name that's used
4 with it, or to refer to it?

5 A Yes, the trade name Pavulon.

6 Q And I'm assuming you're also familiar with the
7 drug -- with potassium chloride?

8 A Yes.

9 Q Does -- that probably does not have a trade name,
10 does it?

11 A Not that I'm aware of.

12 Q Okay. Do you use, or have you used in the past,
13 those three drugs in your practice as an anesthesiologist?

14 A Yes.

15 Q Are you familiar with the effects of these three
16 drugs on a human being?

17 A Yes.

18 Q What is the use of, Dr. Dershwitz, thiopental
19 sodium?

20 A Typically, in an anesthetic it would be used as
21 the induction agent, which means that the medication is
22 given intravenously to put the patient to sleep. It is
23 possible, although very unusual, to give further doses of
24 thiopental to keep the patient asleep. But far more often
25 it's just used to put the patient to sleep.

1 Q And when you're using thiopental sodium to put the
2 patient to sleep what is the next step that an
3 anesthesiologist will take in that operative process?

4 MR. DUPREE: Your Honor, I apologize for
5 interrupting. I've got an objection to predicate
6 at this point in time, because we have not
7 established this man's expertise. The State has
8 not tried to qualify him as an expert, and he's
9 going on about drugs and what their effects are.
10 I think we need to establish a predicate as to
11 what his expertise would be.

12 BY MR. NUNNELLEY:

13 Q I'll go back into it. Dr. Dershwitz, how long
14 have you been practicing as an anesthesiologist?

15 A Since 1986.

16 Q And in connection with your training as an
17 anesthesiologist have you had occasion to use the drug
18 thiopental sodium?

19 A Yes, many times.

20 Q In connection with your work as an
21 anesthesiologist have you had occasion to use the drug
22 pancuronium bromide?

23 A Yes.

24 Q In connection with your work as an
25 anesthesiologist since 1986, was it?

1 A Yes.

2 Q Have you had occasion to use the drug potassium
3 chloride?

4 A Yes.

5 Q Are you a board certified anesthesiologist?

6 A Yes.

7 Q How long have you been a board certified
8 anesthesiologist?

9 A I was first board certified in 1987, and I
10 voluntarily recertified in 2005.

11 Q And you are a faculty member of the University of
12 Massachusetts?

13 A Yes.

14 Q What do you teach at the University of
15 Massachusetts?

16 A I have two primary teaching responsibilities. I'm
17 responsible for the educational program for our residents
18 who are in training to be anesthesiologists. I'm also the
19 course co-director of the second year medical pharmacology
20 course that's given to all of the medical students.

21 Q In addition to your medical degree as an
22 anesthesiologist you also have a Ph.D. in pharmacology; is
23 that correct?

24 A Yes.

25 MR. NUNNELLEY: Your Honor, I would offer the

1 witness as an expert in the field of
2 anesthesiology at this time.

3 MR. DUPREE: I'm sorry, in the field of what?

4 MR. NUNNELLEY: Anesthesiology.

5 MR. DUPREE: Is that it? If it's as to
6 anesthesiology, I have no objection, your Honor.

7 THE COURT: Proceed.

8 MR. DUPREE: Thank you.

9 MR. NUNNELLEY: Also pharmacology, your
10 Honor, given his training, education, and
11 experience. I misspoke.

12 MR. DUPREE: Your Honor, I would object to
13 predicate on that -- on those grounds.

14 THE COURT: Do you want to voir dire the
15 witness?

16 MR. DUPREE: Thank you, Judge.

17 MR. NUNNELLEY: Your Honor, again, I renew my
18 objection to Mr. -- I know the Court's ruled. I
19 don't want to call cat the judge's rule, but
20 again, I renew my objection to Mr. Dupree acting
21 both as an advocate and a witness. It's a clear
22 violation of the ethical rules.

23 MR. DUPREE: Whoa, whoa.

24 THE COURT: I overrule the objection. Go
25 ahead.

1 A Well, my understanding is it's not written in the
2 protocol. My understanding is that the inmate would be
3 stimulated by --

4 MR. DUPREE: Objection, hearsay. If it's not
5 in the protocol it's hearsay, your Honor.

6 MR. NUNNELLEY: He's an expert, your Honor.

7 MR. DUPREE: Your Honor, it's not -- it's not
8 in the protocol, he just said that. It's got to
9 be coming from somewhere else. It's got to be
10 hearsay.

11 THE COURT: Overrule the objection. You may
12 answer.

13 THE WITNESS: My understanding is that the
14 inmate will be tested for presence of reflexes,
15 like the lash reflex. A conscious person, if you
16 touch their eyelashes very lightly, will blink; an
17 unconscious person typically will not.

18 That's probably the most common first
19 assessment that we use in the operating room to
20 determine when a -- when a patient might have
21 crossed the line from being conscious to
22 unconscious.

23 I understand, also, that the -- that the
24 inmate will have his name spoken and -- and be
25 told to do something like, open your eyes, or

1 something like that.

2 BY MR. NUNNELLEY:

3 Q You also, I believe, teach Basic Life Support, do
4 you not, or advanced life support?

5 A I actually don't teach it, but I am certified in
6 BLS and I have taken the course many times.

7 Q And just for the record, BLS is Basic Life
8 Support, correct?

9 A Yes.

10 Q And Basic Life Support is CPR, right?

11 A And other things, but that's the typical thing
12 that the Red Cross or the Heart Association teaches
13 nonprofessional people who may be in a position to be first
14 responders.

15 Q And just for the record, BLS or Basic Life Support
16 is intended for persons other than medical professionals,
17 isn't it?

18 A It's intended for everybody, actually.

19 Q Okay. And in the context of Basic Life Support
20 are lay people taught how to undertake to determine whether
21 or not someone is unconscious?

22 A Yes. The first step when one activates BLS, and
23 the way they teach it in the course is the mannequin is
24 lying on a table. The student is taught to run up to the
25 mannequin, shake her, and say, Annie, Annie, are you okay?