

DA's office "rolled"

Defense's pathologist witness provides bizarre testimony - often

by Dave FEATHERLY

In the recent vehicular homicide trial, I did not sit through the several days of testimony but I did hear the summations (closing arguments) of both the prosecution (DA's office) and the defense (public defender's office).

Based on the two closings, I thought the verdict reached by the jury would be the most likely one. But, in truth, testimony could have influenced my opinion had I sat through the multiple days of it.

Briefly, the closings were nothing to write home about. It seems like the DA's office tries to use props for persuasion and, in the two jury trials I've attended at least some of, they've failed. Sitting behind the overhead-retracting screen, I couldn't see what was being described but I could get an idea of what was on the Power Point presentation from the words of the young female prosecutor - the same one who lost the other case I watched presented.

You have to wonder if pushing into the face of a jury the horrific images of a badly injured accident victim and allowing it to remain on the screen for a long period is productive. Jurors have no choice but to look at the screen because it's over the head and shoulders of the prosecuting attorney. To look away would appear to not be paying attention.

The daily newspaper presented the trial's verdict as a "guilty" verdict. It wasn't. It was a verdict of "not guilty" on the charge being tried and "guilty" of a lesser charge to which the defense attorney agreed in his summation. You probably will never see such a strong plea for a guilty verdict - "No. 11 on the jury instruction sheet" - as the public defender argued. It was a "don't find my client guilty of that, find him guilty of this."

It was a tactic that worked.

From the two summations, it sounded like the only person the prosecutor had to contend with, in order to gain a guilty verdict, was the defense's pathologist, who was identified repeatedly as "Dr. Bennett."

Not being present for the testimony or evidence portion of the trial, and hearing and seeing the derision of the prosecutor,

I concluded the pathologist might be worth investigating. For one person to appear at a trial and differ from other physicians, a personal physician and the State's pathologist - either he's something special or the others weren't very capable.

He's special, all right, but it ain't a good kind of special.

Expert witnesses are a special breed. I have qualified as an expert witness in court. It isn't as though one has to have extensive education in a field - just appreciable experience or knowledge. In my case, it was for leases and franchising. An attorney asks a few questions to establish some expertise, the other attorney accepts it, and off you go.

Highly educated "experts" have diametrically opposite opinions on the exact same evidence. Juries have to decide which expert to believe. Who is credible.

In this case, the defense (public defenders) brought in an expert - a forensic pathologist from Montana, with a past in Mississippi, North Carolina and Iowa - to testify that the victim did not die as a result of the massive injuries she sustained in the car crash, in which the defendant was driving drunk (by his own attorney's admission in the summation) and ran head-on into the car the victim was driving but that she died as the result of a gall bladder disease which was chronic, not acute from the accident.

The pathologist's name is Thomas L. Bennett and he is, today, assistant medical examiner for the State of Montana as well as a well-traveled "expert" witness appearing in courtrooms around the country and even recently in Monrovia, Liberia.

To say that his testimony in other cases has been bizarre and unpredictable would be an understatement. And to say he will sell himself to the highest bidder is very descriptive, in my opinion.

He has been highly criticized, professionally and personally. I'll get into some of the cases he's testified in and some of his personal behavior that has generated criticism and accusations of professional misconduct. Yet, in Cheyenne, his testimony seemed to trump the testimony of others in the medical field who do not have

a similar questionable past.

His "Have Testimony, Will Travel" has not been limited to just the United States.

And he's not new to the testimony for sale game. Controversy follows him. If you thought Dr. Henry Lee, Dr. Cyril Wecht and Dr. Michael Baden get themselves in hot water for their sold testimony, this guy does the same, albeit on a smaller scale.

In no particular order, the following represent some of the cases in which this Dr. Thomas L. Bennett has been involved:

476 F.3d 545 Morales v. Ault -- In November of 1995, Morales reported that his two year-old son had fallen down a stairs and was having difficulty breathing. A CT scan revealed a skull fracture and a large hematoma on the boy's brain. The boy died during surgery to remove the hematoma. Initially, the neurosurgeon, the trauma physician, and the radiologist who interpreted the CT scan, agreed "that the boy's death was caused by an existing, or chronic, hematoma on his brain that was re-injured by some event that day."

Enter Dr. Thomas L. Bennett, then Iowa State Medical Examiner. The day following the incident, Bennett conducted an autopsy of the boy. He concluded that the hematoma was acute, not chronic, and all his injuries had happened on the day of the incident. His conclusion was, "Blunt traumatic head injuries from blow to head, due to Shaken-Slammed Baby Syndrome." The father was arrested and charged with first degree murder.

Morales hired an attorney who requested a second autopsy be done. The Deputy Medical Examiner of Kansas City, Missouri

conducted that autopsy. "This pathologist had access to Dr. Bennett's autopsy report, the microscopic slides and the body. Because prosecutor Melodee Hanes had given instructions not to release the boy's medical records to the defense team, however, this second pathologist did not at that time have the medical reports of the emergency room physicians who diagnosed the hematoma as chronic in nature. He concurred with Dr. Bennett that the injuries to the boy's brain were acute."

Remember that name, Melodee Hanes.

The following month, Prosecutor Hanes arranged a meeting between four prosecutors, the neurosurgeon, the trauma physician and Dr. Bennett. The defense was not invited and did not attend the meeting. Dr. Bennett "reported that the microscopic autopsy slides showed that the boy's brain hematoma was acute, not chronic." Without examining the slides themselves, the two other doctors "changed their opinions to align with Dr. Bennett's opinion that the injury was acute."

Morales was convicted and his appeals were denied. The United States Court of Appeals, Eighth Circuit, was critical of the handling of the prosecution. They called the withholding of medical records from the defense "suspicious at best" and the meeting to get the other doctors to change their opinions to concur with the M.E. "questionable."

And, they wrote, the defense "failed to make an adequate offer of proof regarding the romantic relationship between a prosecutor and the Medical Examiner." Melodee Hanes and her "romantic relationships" would later become national.

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Dr. Thomas L. Bennett (continued from page 6)

Dr. Bennett's questionable behavior was consistent with a pattern of similar behavior he exhibited in other cases. The Court of Appeals did not grant the writ sought by Morales, but wrote: "Like the courts preceding us, we are troubled by these incidents and add our condemnation of such practices."

Bennett is not selective about what groups or causes he will sell his testimony to. He has testified for an airline and tobacco companies.

In **101 F.3d 702, Porcelli v. US Air**, a case about denial of benefits to a next of kin in an airplane crash in 1992, Bennett worked for US Air and the records show: "Under the pretrial agreement by the parties, the district court ordered that no evidence on the issue of whether Porcelli was trapped in the wreckage would be presented. The expert, [Dr. Thomas] Bennett, concluded that Porcelli must have been unconscious at the time of her death because she did not walk away as did Mr. Simon, who sat next to her. When counsel for the estate attempted to cross-examine Bennett regarding the possibility that Porcelli was conscious but trapped in the wreckage, he was stopped by the court. Bennett did not know whether Porcelli was trapped; therefore the court ruled that testimony as to whether Porcelli was trapped would have been speculative. Bennett's only conclusion was that Porcelli drowned because she was knocked unconscious when the plane crashed. The district court did not err in restricting the cross-examination, because Bennett did not know the answer."

Bennett was allowed to speculate that the victim must have been unconscious because she did not walk away but could not speculate that the victim could have been trapped, not unconscious.

More recently, Dr. Bennett and compatriots from Nebraska Institute of Forensic Sciences were brought into a murder trial in Monrovia, Liberia. Foster parents were accused of murdering their 13 year-old foster daughter. It was alleged that the man had been molesting the girl and when the woman found them together, she strangled the girl and staged a suicide by hanging from a bathroom shower rod. According to news reports, "The American team, after their autopsy, concluded that Angel (the girl) died of suicide. Dr. Thomas L. Bennett, a member of the team who testified to his findings, told the court that Angel died by non-total suspension. According to him, one could commit suicide by hanging even lying on the floor. Dr. Bennett said for strangulation to be determined, there would be a breakage in the hyoid bone which is located in the neck of every human being. He further stated that the hyoid bone does not break in the case of suicide."

Another pathologist testified that, while "he agreed with Dr. Bennett that the hyoid bone is often broken during strangulation, that is very uncommon in children."

The foster parents were found guilty.

The trial judge condemned Dr. Thomas L. Bennett by saying, "the testimony of

Dr. Thomas L. Bennett contradicted the entire defense of the Defendants. According to Judge Dixon, the defendants were contending that Angel hanged herself and was swinging and suspended, which he (Judge Dixon) described in other words as 'total and absolute hanging.' The Judge in his judgment indicated that Dr. Bennett testified to non-total suspension. 'Dr. Bennett contradicts the defense of the defendants that the deceased was fully suspended which prompted the using of a knife to cut the rope/belt, the galvanized pipe, and from around the neck of the deceased. The issue of the breakage of the hyoid bone of the deceased, coupled with its removal by the American Pathologist; and having same entrusted to the Ministry of Justice (MOJ) in a container for safe keeping; or the wind pipe or esophagus being present and intact on her body before her burial or not; and the issue of non-total suspension introduced in this case by Dr. Bennett are all irrelevant and immaterial to the case, ...'

This is the pathologist who came to Cheyenne and testified that it wasn't the automobile crash that killed a woman, it was her gall bladder eight months later.

In **3-995 / 02-2003, Rhode v. State of Iowa**, Bennett's name again came up in a negative way. In 1989, a four month old nephew left in Rhode's care suffered fatal injuries. She was convicted of first degree murder and child endangerment. In her post-conviction appeal, she claimed ineffective assistance of trial counsel. Her criticism of her counsel had to do with "deficient performance of autopsy," performed by Thomas L. Bennett. The Appeals Court found that her two physicians allegations against Dr. Bennett were time-barred. In other words, beyond the time window.

"At the postconviction hearing, Dr. Stephens testified to what he regarded as deficiencies in the autopsy performed by Dr. Thomas Bennett. Dr. Stephens' complaints included there being no microscopic examination of Matthew's brain, no adequate gross photographs available of the brain, and an overall poorly documented autopsy."

In **Robinson v. Maschner (U.S. Court of Appeals for the Eighth Circuit) 00-1185SI**, Robinson had been convicted of first degree murder and attempt to commit murder. His appeal was on the argument that, "his trial had been ineffective in failing to depose the State medical examiner, Dr. Thomas Bennett, who changed his pretrial opinion about the nature of one of Burkhalter's bullet wounds ..."

In a 2000 \$102 million wrongful death lawsuit against R.J. Reynolds Tobacco Co, the widow of a three pack a day smoker claimed her husband's death was caused by smoking. A 37 year-old man died ten months after being diagnosed with lung cancer. He had three tumors on his right lung despite three years earlier an x-ray of his lungs showed no tumors. He had smoked from the age of eight. "In testimony Monday, Dr. Thomas L. Bennett, a forensic pathologist and former Mississippi medical examiner, testified the large

tumor was more likely a sarcoma than a carcinoma." Sarcomas are not thought to be related to smoking, but carcinomas are. "Bennett, who has testified in two previous tobacco cases and served as a consultant in two more, said he receives \$150 an hour for reviewing documents and \$250 an hour for his testimony."

Just to clear up that Dr. Bennett is not the only testimony for sale "expert." A Shreveport psychiatrist said he had performed a 'psychological autopsy' by reading depositions given by family members, friends and the deceased's associated, including his fifth grade teacher. The shrink said this was his 10th or 12th tobacco case he'd testified in, always for tobacco companies. He was paid \$250 an hour for "studying" and \$350 an hour for testifying. He discounted nicotine as an addictive drug, contending that nicotine leaves the body after 10 hours without smoking.

Any further questions as to what these whores will testify to if paid enough?

In 1992, **Kirk Vanderbur** was a 2nd Lt. in the USMCR - 24 years old. At a local shooting range in Hubert, North Carolina, he was shot in the stomach with his shotgun, then in the head with his rifle. Two days afterward, without even testing Vanderbur's hands for gunshot residue, Sheriff Ed Brown decided the death was a suicide. The NCIS agreed.

A psychological autopsy issued by the Navy a year later cited a breakup with a girlfriend as motivation for the alleged "suicide" even though the breakup had occurred three years prior to the shooting, and Vanderbur had no history of psychological problems.

His parents were concerned by inconsistencies in the NCIS investigative report and "one person they turned to was Thomas L. Bennett, M.D., the Medical Examiner in their home state of Iowa. Instead of helping them, without the parents knowledge or approval, he wrote a letter to the NC town's sheriff's department and agreed that the death had been a 'suicide.' He did not indicate how he reached that conclusion and 'the letter overflows with irrelevant and subjective comments on the parents.' Vanderbur's mother's questions regarding inconsistencies and lack of logic by NCIS and Sheriff's investigations were dismissed as her "grief." Bennett did not provide a copy of the letter to the parents - they were able to obtain it four years later via a FOIA request.

An 18 year-old girl gave birth to a baby in December of 2000 and was accused of murdering it shortly after birth. The Iowa State Medical Examiner at the time ruled that death was caused by strangulation and exposure. The young mother was initially charged with first degree murder. She pled guilty to felony child endangerment and involuntary manslaughter.

"Prosecutor Richard Vander May said he agreed to the involuntary manslaughter charge, a lesser included offense to first-degree murder, because of a dispute over whether the baby was born alive or dead. Former state medical examiner Dr. Thomas Bennett was expected to testify that the baby was stillborn, but the current state M.E. was going to testify the baby was born alive." Also, "the judge allowed court payment of up to the sum of \$5,000 for the expert witness fees of Thomas Bennett, a forensic pathologist."

In a 2003 trial in Billings, a defendant and his wife attacked their landlords and an 83 year-old woman with knives and a stick and, allegedly, tried to scalp her.

In this case, "forensic pathologist Tom Bennett also testified for the defense that the Logas' wounds were numerous but not immediately life-threatening and, when asked specifically by defense lawyers, that the kitchen knives used in the attacks were not the 'most lethal' of weapons. He did answer prosecutors, though, that while not as lethal as a hunting knife, both of the knives found at the scene could have been used to kill someone."

There are more, many more, but these give readers a flavor of the kind of "expert" witness Dr. Thomas L. Bennett is. He is notorious for finding child abuse when treating physicians have found none. His paramour, Melodee Hanes, had become a child abuse advocate and he supported her every charge with his testimony - perjured or true.

Remember Melodee Hanes, Bennett's mistress in Iowa? They tried a case together in Iowa and he did not disclose their romantic relationship. That pretty much drove them from Iowa.

They moved to Montana together and were later married. After a dozen years, they divorced. She then became infamous as the mistress of Montana Senator Max Baucus, who nominated her to be U.S. Attorney in Montana. Baucus defended his action but Ms. Hanes withdrew her nomination.

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