



Blog posts on the daily happenings inside the Lethbridge, Alberta courtroom. Writings by NHPPA Vice President, Ian Stewart. David and Collet Stephan are being defended by NHPPA's President, Shawn Buckley. Learn the facts as they develop at stand4truth.ca

At the time of this printing:

Court has been adjourned until April 11, 2016 at 10:00am

Wednesday March 23, 2016

The Crown closes its case, Defense opens theirs.

The Crown closed their case today with their final witness, Dr. Gamble, who they first called yesterday. Defense counsel began their cross-examination late yesterday and concluded today.

Dr. Gamble is responsible for writing Ezekiel's death summary. He was the doctor that took over his care from Dr. Burkholder on March 14, 2012. He is also the other of two physicians that performed the brain death examination. It takes two over a period of 12-24 hours. The doctor acknowledged that Ezekiel's heart improved when stimulus drugs were reduced, and that his other vital organs likely had not been too severely injured. The type of death he pronounced was "Brain Death". So the big question is this: If Ezekiel's brain suffered a hypoxic injury sufficient to cause brain death during the 8 ½ minutes of oxygen deprivation, would he be alive today if

the EMT/Paramedics had been equipped with the standard emergency airway devices necessary to get oxygen into Ezekiel? His mother was performing mouth to mouth when the ambulance arrived. No one performed mouth to mouth in the ambulance. That's what the missing devices were for.

The Crown presented a series of symptom hypotheticals to the doctor, with their version of the facts. Of course, the doctor opined an ever-dire prognosis as the Prosecutor piled on symptom after symptom into this hypothetical story. When Defense counsel offered these same facts in clarified and reasonable scenarios, more inline with what Dave and Colette say actually happened, the doctor's concerns for this hypothetical patient dropped from "dire", to "no concern", to "maybe a concern", except for the obvious day when Ezekiel stopped breathing. The doctor was like an "Etch A Sketch" toy; who ever turns the knobs creates the picture. When the Crown turns them the "Etch A Sketch" says: Symptoms present as Meningitis. When the Defense turns the knobs the "Etch A Sketch" said: Symptoms present like a common cold or flu!

To the doctor's credit, he was objective and honest in his opinions when presented with the two versions of facts. He also restated what all of the doctors have agreed: Meningitis is difficult for doctors to diagnose. In addition, he agreed that if Ezekiel's diaper pulling was seizure activity related to meningitis, and the stiffness an ascribed symptom of meningitis, they both would have continued to increase in frequency and severity. The fact that these symptoms ceased all together questions any diagnosis going forward. Remember, it is the Medical Examiner's Report (the autopsy) that has doctors projecting backwards the diagnosis of meningitis. There never was a spinal tap performed, and the CT Scan showed diffused swelling of Ezekiel's brain consistent with Hypoxic Injury (no oxygen).

Defense Opening Statement included a request of the jury to attentively weigh the evidence Defense will present. What witnesses will be called was reviewed, as well as the anticipated evidence those witnesses will present. An acknowledgment was made to the fact that details of this Defense case will be familiar to the jury. However, jurors were asked to pay close attention to the clarifying of those details and the presentation of events from the Stephan's actual account. Counsel usefully stressed the nature of the law as follows:

1. A failure to provide charge must be weighed against the Reasonably Prudent Parent Test. Basically, what would a reasonably parent have done?
2. The test must be objective not subjective, given the differing

opinions generations and cultures can create. You might not see things as others do.

3. Whatever that Reasonably Prudent Parent expectation, is the action of the accused a Marked Departure from the expectation. Would, for example, a reasonably prudent parent call 911 if their child stopped breathing? If the answer is yes, then is it a marked departure from the test if a parent does not call 911? Most would say it is. However, what if the parent lives in a rural area and chooses to rush the child to the hospital instead of waiting for the 911 processes and ambulance to respond? Is that a Marked Departure from the test?
4. Were the needs of the child observable? Was what was urgent clear to the reasonably prudent parent, or are degrees of uncertainty reasonably common?

Tuesday March 22, 2016

Court resumed at 10 am this morning, but without the jury. The Judge heard various concerns from both the Crown and Defense on proceeding with the Prosecution's next witness, Dr. Jonathan Gamble and the evidence they wished to lead. Of course, the jury was separated from the court during this process, and the details cannot be made known through this publication due to publication bans. We can report that this is the Crown's last witness before closing their case, and they had every intention of maximizing the influence this witness could be on the jury. However, Defense counsel reminded the court that trial fairness for Dave & Colette could only be

maintained with redactions, editing, or outright denial of certain subjects and documents proposed by the Crown as evidence.

Generally, justice is like a tent, requiring equal tension on each side to keep it upright. Unfortunately, the Prosecution has far more ropes and pegs pulling on its side of the tent than does the Defense. The Judge does not maintain equilibrium between the competing tensions unless objections are raised. If unaware, one side could lose control to the other's advantage. Defense counsel in this case is one man against the vast resources of the government. Their abundance of staff lawyers, paralegals and office assistants bolsters their tugging exploitations. This isn't just one small family against the mighty medical machinery; it's also one man against the Crown.

The jury joined the court at 1:30 pm and the CV of Dr. Gamble was reviewed and a lengthy background of his expertise established him as an expert. This the Crown used to launch into their retelling of details we have heard from many other doctors during this trial. We will dispense with details of the Crown's direct examination tonight, and conclude tomorrow when Defense counsel completes their cross-examination of Dr. Gamble. Check in tomorrow as we report on how the Crown's case concluded.

Monday March 21, 2016

**"My son's not breathing"
"My son's not breathing"**

It's 9:24 pm on March 13th, 2012 and these are the words recorded on the first 911 call made by David Stephan. Carroll Moore, the 911 operator asks him whether he needs police, fire or ambulance. David is audibly desperate as he twice relays "my son is not breathing", "my son is not breathing". He tries to answer Ms. Moore's questions, at the same time trying to help Colette with Ezekiel. The operator asks for their address, but its difficult to describe. "We're in the small town of ... well what used to be the town of ... next to the old church ... 4 miles west of..." We can hear David frantically searching for something that has their

rural land address to give to the operator. He finds it and relays the lot and rural road numbers twice. She continues with questions about CPR, and then suddenly Ezekiel starts breathing on his own. David then says "you know what, I think we are just going to drive him into the hospital". The operator isn't certain that he is breathing, and his dad puts the phone next to his son. We all hear the croupy sounds as Ezekiel breaths and moans. The operator questions which hospital, and says, "If you need us - call back, ok?" The 3-½ minute call ends. At 9:52 pm, David calls 911 again. Joel McDonald is the new operator who asks the same question with regard to police, fire or ambulance. This time dad is driving, and mom is in the back of their silver 2002 Chevy Trail Blazer en route to the hospital - emergency flashers on. David asks for an ambulance to meet them on Highway #2 north of Cardston. Joel is heard asking if they are performing CPR. They are, but he asks if Colette can hear him. David puts him on speaker and Joel begins coaching Colette on the number of compressions and breaths to give Ezekiel. Colette sounds very competent, and responds very well to Joel's instructions. He counts aloud to mom: "27, 28, 29, 30. Ok, now two breaths, ok, now another 30 pumps". This continues until the ambulance arrives approximately 11 ½ minutes from the start of this second 911 call. The paramedic takes Ezekiel from the vehicle into the ambulance to begin emergency treatment. How could mom and dad have known that the ambulance, regardless of its caring and competent paramedics, was not stocked with the life saving equipment necessary for a child Ezekiel's age. Both the prosecuting and defense counsels question these 911 operators with little to probe aside from the protocols handling calls and verifying the accuracy of the transcripts. The entire courtroom was emotional as we all wept along with David and Colette as this traumatic event is replayed. Will these parents ever be allowed to heal?

Note: The Crown Prosecution called the ER doctor and paramedic witnesses to the stand today before the 911 operators. However, todays report will be written in the sequence relative to the night of Ezekiel's crisis, rather than the order they appeared in court.

Kenneth Cherniawsky is the Alberta Health Services paramedic that first responded to the scene on the side of the highway 4 kilometers north of Cardston 4 years ago. He gave testimony related to his observations during the entire treatment attempts and transportation of Ezekiel to the Cardston Hospital. Although there were several emergency medical personnel who assisted, Kenneth is the author of the report. He describes Ezekiel's color as ashen, which means grey color with a blue tinge. He detailed for the court the Emergency Care Report as having a range of colors to select, from pink to mottling, from ashen to pale. Ezekiel was not at the extreme of pale. Ashen meant that he was in circulatory and respiratory distress. He wasn't breathing and had no pulse or heartbeat.

At 10:03 pm, Kenneth did not think it appropriate to declare Ezekiel dead. The paramedics start BVM (Bag Valve Mask) attempts to establish an airway. They try several times over three minutes with no success. The BVM is not the right size for a child younger than 8-10 years old. Ezekiel is 18 months old. They could not get air into Ezekiel because the mask was too big. "No seal compliance", is how Kenneth describes it. The air would blow past the mask, and his chest would not rise or fall. If you recall, an earlier witness taught, "If it isn't rising, it isn't working" in relation to proper oxygen in and CO2 out.

They next attempted to establish an airway with a LMA (Laryngeal Mask Airway). This is inserted into the mouth down into the throat. This too was the wrong size. Size 1 was too small, size 3 too big, and size 2 was incapable of sealing. Half sizes were destocked and not available in these ambulances. Five minutes are used up attempting this form of airway. Next, they try to intubate with an endotracheal tube. They use a special measuring tape and it indicates a #4 should be used. However, only a size 3 is available, so it is inserted and a poor but functioning airway is established. A total of 8 ½ minutes elapse where Ezekiel is without air. The one EMT must hold the tube in a specific way to even make it work en route to the hospital. While all of these airway attempts are being made,

chest compressions did not cease. The EMT's also insert an I.O. needle into Ezekiel's lower leg to push a 200 ml bolus of normal saline. This is done for multiple reasons like hydration, but mostly to increase blood volume to assist with cardio recovery.

Once Ezekiel arrives at the hospital his color has improved to somewhere between ashen and pink (this is important to remember). He is not breathing on his own, nor is his heart spontaneously beating. They arrive at the hospital at 10:13 pm, 21 minutes from David's second 911 call. The size 3 tube is switched immediately to the appropriate #4.5.

Dr. Lloyd Clarke was the attending physician when Ezekiel arrived at the Cardston Hospital. He called in Dr. Cunningham to assist (who testified last Wednesday), and the two met the ambulance and had Ezekiel moved into the ER. Now, Dr. Clarke is a bit of a contradiction in himself. Last Thursday he was called to be a witness for the Crown. He wasn't at the stand long before he said two words that caused a two-day hiatus for the jury. They were asked to go home till Monday (today). This enabled the court to hear and give a ruling on an objection raised by defense concerning those two words that morning. Because of the publication ban, we cannot report on the contest before the court. What we can share is that when the jury commenced sitting this morning, they were charged by the judge to disregard the doctor's two words: "extreme dehydration". Can you imagine the prejudice this fiction may have caused with the jury with regard to the character of these parents? So here is the contradiction. When the EMT's arrived at the hospital, Ezekiel's color had improved. When Dr. Clarke was questioned during the preliminary inquiry last June, he said Ezekiel had no more mottling (better than ashen) and his color had improved and no mention of dehydration. However, when he gave testimony last Thursday morning, he broke into a less than convincing emotional observation of Ezekiel as "ghostly white" & "ghostly pale", indicative of "extreme dehydration". At no time in all of this process since investigation to trial has hydration ever been in question. It has never been commented on by any

of the attendants or reported in their initial observations. What? Where, Dr. Clarke, did you come up with this entirely new rendition of the events of March 13th, 2012? And why did you contradict your earlier testimony and even your own ER report for that night. We question, “can a rat really be detected through smell”, as the saying goes? Many commented after Dr. Clarke’s faux pas led to an early recess that the doctor had been coached to his own embarrassment. One can only hope that the jury dismisses his testimony as easily as he dismissed the truth.

The errors of the Alberta Health Services (AHS) equipment transition and the refusal to respond to EMT/Paramedic requests for a full stock of equipment is no small matter in Ezekiel’s outcome and this trial. There has not been an internal inquiry or charges of negligence leveled against AHS for their failures. Why charge parents when your own actions are in question. Is there a cover up? Are these not double standards? Even the medical examiner, Dr. Adeagbo changed his testimony from what he stated in the preliminary inquiry to be the cause of Ezekiel’s brain injury. His Medical Examiner Report is now in question.

At one time the ambulances were stocked with neonatal, infant, toddler, child, and 8-10 year old sizes. These units were destocked due to government confusion when Cardston Emergency Medical Service was transitioned over to Alberta Health Services central control. The paramedic assured the court that he had tried numerous times to have adequate equipment in place, but was ignored by management. He also acknowledged that he served part-time in other ambulance centers where all of these items are well stocked in the “trucks”, as he calls them. Some additional things of interest arose during Kenneth’s testimony:

1. One week after this incident with Ezekiel the necessary equipment that would have prevented his hypoxic injury was restocked in all the Cardston ambulances.
2. Sometime later Kenneth required back surgery. While

recovering in hospital he contracted meningitis. It was finally diagnosed after his wife insisted the doctors do further tests, because of the sickness and convulsions he was experiencing inconsistent with his recovery. When this information came out today, the Crown Prosecution strongly objected on relevance. The judge allowed the evidence. If doctors can miss meningitis, even when their patients are in their care in the hospital, how are parents expected to be held responsible if it is missed?

3. Kenneth was strongly directed by his employer Alberta Health Services not to speak with defense counsel leading up to the preliminary inquiry.

Thursday March 17, 2016

Restriction on Publication

Defense counsel raised two objections early this morning requiring the jury to separate from the courtroom and its proceedings. They were not called back today and may not be called back until Monday, March 21, 2016. Counsels on both sides are awaiting the Judge’s decision on the objections raised. A publication ban is in effect as per Criminal Code Section 648 stated below:

648 (1) After permission to separate is given to members of a jury under subsection 647(1), no information regarding any portion of the trial at which the jury is not present shall be published in any document or broadcast or transmitted in any way before the jury retires to consider its verdict. Marginal note: Offence(2) Every one who fails to comply with subsection (1) is guilty of an offence punishable on summary conviction.

Wednesday March 16, 2016

“No Crystal Ball”

Those were the words of Dr. Barbara Ross, the Pediatric Intensivist first called by the Crown yesterday, as she responded to Defense questions under cross-examination today. But before we report on her answers from today, lets explore what she likely meant by not

having a crystal ball. According to Webster’s, a crystal ball is: a sphere, especially of quartz crystal, traditionally used by fortune-tellers as a means or method of predicting future events. With all of Dr. Ross’s impressive qualifications, she herself is not a crystal-lomancist: one who discerns through crystal balls. This is not to be silly. It is part of the court transcript, and its good to remind us of the implication. What the doctor is saying, is technical advances in modern diagnostic tools today still can’t prove with certainty what a symptom observed indicates, or what it will progress into tomorrow. Well doctor, neither can parents, and neither could David & Colette as they attentively responded to Ezekiel’s needs. Its fine to work backwards from an autopsy, hindsight is 20-20 as they say, but “it’s harder to go forward” in recognizing and assessing symptoms. “Symptoms vary”, said the doctor. There is no way of knowing with certainty which of Ezekiel’s symptoms before the 911 calls meant he was gravely ill with bacterial meningitis.

And this is the sum of Dr. Ross’s evidence. Bacteria Meningitis presents differently depending on the type or strain of bacteria. It also differs between patients. The symptoms can come and go. In fact, the symptoms resemble so many other possible infections such as colds and flu’s. This is why doctors frequently will see a child and send them home with a general diagnosis, offering the parent the option of coming in later if symptoms worsen. Dr. Ross acknowledged that sometimes children in her intensive care unit had been seen by a prior physician with no general alarms. Doctors get it wrong too. Or, as the doctor also advanced, maybe the highly aggressive and opportunistic bacteria associated with meningitis move in and take over where a minor viral or bacterial infection has been active. She said Meningitis often starts from a blood stream infection. First, a lung, sinus or throat infection sets in (usually viral), then bacterial infection establishes, which moves into the blood stream and cerebral fluid, and then the meninges. The doctor went

as far to say: “meningitis could not have been diagnosed with certainty prior to the Medical Examiner Report (autopsy); it would only have been on her differential list”, even after viewing the CT Scan of Ezekiel’s brain.

Dr. Ross also helped the court understand a few points with regard to the process of resuscitation. When trying to establish Ezekiel’s airway it was important to get sufficient air into his lungs to raise his chest. The exhaling of carbon dioxide, or ventilation, takes place when the elastic nature of the lung cavity returns to the pre-inhalation state. “If it’s not rising, it’s not working” as it relates to the chest is a good rule she agreed. The attempts to resuscitate using various types and sizes of masks or tubes by EMT’s suggested to the doctor that a good airway had not been successful before EMS got Ezekiel to the Cardston Hospital. The doctor also confirmed that Ezekiel was resuscitated back to spontaneous heart beating and spontaneous breathing, which brain signals come from the brain stem. This means his brain stem was not dead when the Rescue Team from Calgary prepped him for flight.

The court also heard from Dr. Tracey Tannis today, the Lethbridge Naturopathic Doctor that has been part of the RCMP’s investigation into this case. When Colette called her office 4 years ago to inquire about something natural to boost Ezekiel’s immune system she spoke with Dr. Tannis’ assistant. The assistant inquired with Dr. Tannis and was told a product called Blast would be advisable. Colette did pick up the Blast and used it according to Dr. Tannis’ dosing instructions. Then when a criminal investigation involved her clinic, Dr. Tannis and her assistant were asked specific questions that even in today’s examination seem contrived and are inconsistent with previous statements, and with each other. Their compounded tale always concludes with some form of assertion that nothing other than “get your child to the ER” was ever offered. Since the news of Ezekiel’s death and this trial the Tannis clinic has come under heavy criticism and even death threats. Dr. Tannis likely wanted to

help Colette with Ezekiel 4 years ago. However, today it appears the doctor and her staff seek only to help themselves.

Last to be heard today was Dr. Frederick Cunningham, a Family Medicine/Emergency Doctor with expertise in anesthesia and airway management. He was called in by Dr. Clark, the Emergency Room Doctor on duty the night Ezekiel was brought in after the 911 calls. Dr. Cunningham immediately switched out the size 3 breathing tube to a 4 necessary to establish a better airway. Two I.V.'s were put into Ezekiel's legs to enable hydration and drugs used to recover his heartbeat. There was no pulse at the time he first sees Ezekiel, and chest compressions were continuing. By the time he was transported to Lethbridge via ambulance, Ezekiel had spontaneous heartbeat, but they continued to bag breath for him because they didn't think it appropriate to check if he had any spontaneous respiratory effort. Dr. Cunningham travelled to Lethbridge Regional Hospital with Ezekiel to direct his care until the STARS team took over. The STARS team reported Ezekiel was breathing on his own.

Tuesday March 15, 2016

"Cumulative Evidence"

Unfair prejudice, Confusing the issues, Misleading the jury, Undue delay

Cumulative evidence was the subject of a defense counsel objection, raised at the onset of proceedings this morning. The issue at hand is the continual presentation of similar, if not identical evidence through different witnesses. For an example, lets say 20 people see the same occurrence with little to no difference in their observations. And, lets say that the nature of the event witnessed is distressing to listeners when it is retold. After one or two retellings of this same evidence, the facts just repeat and repeat with no additional value. To continue calling on more and more witnesses to give the same evidence is what is called cumulative evidence, or piling-on. The tactic in this case might be used to prejudice the jury against David & Colette; subjecting the jury to the telling and

retelling of how sick and distressed Ezekiel was through each doctors' perspective. Every time eliciting an emotional response that prosecutors could use to saturate the jury's deliberations. The defense counsel referred the judge to several cases where appeal courts ruled this practice as prejudicial and non-probative; meaning not adding to the finding of facts. New trials have been ordered for such cumulative tactics.

The Crown argued vehemently that they require each expert doctor to witness on some unique perspective in the case. However, to those listening, its more like each doctor is given a new line to read into the same story; telling the same story from beginning to end each time. "He was very sick ... and he died". And so far, the new lines read into the same story are restating facts, just using different words (a matter of semantics).

Defense counsel seemed correct in raising this objection. However, it was late afternoon when the judge ruled to allow the Crown to continue calling on their next expert witness. The Crown then called Dr. Barbara Ross, a Pediatric Intensivist, expert in the same areas of yesterday's witness, Dr. Shawna Burkholder. And yes, Dr. Ross read to the jury the same story, in a slightly different tone. It seems clear to some, that the Crown Prosecutors have two strategies in play while they seek for a conviction. One is to make an example out of Dave & Colette; to implant in all parents the notion that doctors are the best judge of the health and treatment matters of their children. This plays well for the medical establishment. They already overstep their consulting and treatment roles, into more authoritative and enforcement roles. Is it the obligation of parents to live subordinate to medical professionals? What is never asked of these doctors, as their CV's are read aloud in court, is: "how many patients have died or become hindered under your care"? We only hear the sales pitch, never their performance stats. Second, is the effort on the part of the Crown to distance or disprove the fact that when EMS arrived to help Ezekiel, after the 911 call from his parents, they were not equipped to resuscitate Ezekiel who was under respiratory arrest. Likely, no fault of the

technicians but Alberta Health Services who have taken a lot of heat already over the way they have structured emergency services in the province.

Monday March 14, 2016

"Spontaneous Respiratory Effort"

... he could breathe !!

Finally the truth! We now know what Ezekiel's state was prior to arriving at the Alberta Children's Hospital: He could breath. Yes, he was intubated and an airway was established and his heart was pumping again when the critical care response team arrived from Calgary. In their real-time action report the team writes that Ezekiel had spontaneous respiratory effort and muscle movement sufficient that the team thought it necessary to paralyze him during flight. So testified Dr. Burkholder.

Dr. Shawna Burkholder is a Pediatric Intensivist and was the team leader arranging the critical response protocols in Cardston and Lethbridge from Calgary. She directed her expert team to fly to Lethbridge to receive Ezekiel, prep him for flight, and monitor his trip to the Pediatric Intensive Care Unit (PICU) at the Alberta Children's Hospital in Calgary. She promptly ordered a CT Scan for him and the Radiologist's report stated results consistent with hypoxic insult. Those 8.5 minutes of oxygen deprivation that occurred when initial EMS arrived unequipped for an 18-month-old child did injure Ezekiel's brain. Dr. Burkholder concurred that his cranial edema could not be attributed only to meningitis. The scan also showed no tonsillar herniation around the brain stem which questions the hypothesis prosecutors are attempting to build. So if Ezekiel could breathe and move muscles once resuscitated, he wasn't experiencing brain -stem-pressure related distress. Dr. Burkholder concluded that she could not say with certainty the cause of Ezekiel's respiratory stoppage. Hiding in this trial is the truth. Please God shine your light.

Our hearts are breaking today that David and Colette had to hear for the first time of their son's efforts to live 4

years to the day – only through this grievous and unjust prosecution.

"Life hurts a lot, but only love can hold you up forever" Cuddy

Friday March 11, 2016

Today was a short court day because of the late sitting the night before. Court was in session from approximately 1pm – 4:30pm. The Crown brought forward their witness Dr. Jennifer D'Mello. Dr. D'Mello is a pediatrician with a specialty in emergency room pediatrics. Her primary role, however, is to work with the child welfare abuse assessment team. In this case, her motive in visiting Ezekiel and his parents was to assess if Ezra was in any risk. She admitted doing a general assessment of Ezekiel (having read the medical chart before), but mainly came to gather information as part of an abuse investigation. The doctor may have had a stethoscope, and introduced herself as there on a consult for another doctor, but her intention was to investigate David and Collett. While Ezekiel's parents have nothing to hide or to be ashamed of, it's a word of caution to parents that the doctor asking questions may be an agent of the state, an investigative authority, gathering Intel that may be used against you in criminal proceedings.

If this sounds alarming, it should. Given the way these investigative doctors work, it's a sketchy process not to be trusted. Here's why. The doctor comes in presenting themselves as on a consult; there for your child. They ask a few child focused questions, and then proceed to inquire regarding you, the parent. Dr. D'Mello admitted in court that she takes a kind of short-hand style of note taking. She doesn't actually write verbatim the parent's words. If she hears something that could require further questioning to make certain she understands, well, she doesn't. She merely interprets. Days later, maybe 2-3 or 8-10, she expands her brief notes into a lengthy narrative. Once completed, the report may appear to others as a very comprehensive and actual word-by-word interview with the parents. This, she passes on to police. Can you see the risk here of human error if not

biases finding their way into the report? Oh, and this is important: The parents never get to read or correct the report before it is filed as true evidence. So the doctor's other information gathering (with other doctors and social workers), and her interpretations and opinions all get rolled together several days later into something subjective, and most likely inaccurate to some degree. Remember that game where someone tells you a piece of a story and you pass it on and on, with a little more added each time? By the time it gets to its final audience (court) it does not accurately resemble the original. The same goes for Dr. D'Mello's report. So what can the doctor recall about that evening while David and Collett clung to hope for Ezekiel? Not very much; unless she reviews her report.

However, to her credit, the doctor admits under cross-examination that while most of her time was spent with Collett, David and Collett were both very attentive to Ezekiel, and very cooperative in helping the staff to attend to their son. She also admitted that meningitis is very difficult to diagnose without invasive (spinal tap) lab reporting. She confirmed what Dr. Adeagbo testified that symptoms resemble those of many childhood diseases like flu, cold, croup etc. She also restated the waxing and waning is how those symptoms present. From her experience, the difference in clinically observing viral vs bacterial meningitis is in the presentation of fever. Ezekiel presented no serious temperature changes. Dr. D'Mello stated that the younger the patient, the harder it is to diagnose meningitis. Earlier illnesses such as croup and flu can make way for a rapid onset of an aggressive form of bacterial meningitis. She too, as Dr. Adeagbo also testified, said there is no certainty as to when Ezekiel developed the infection. There is also no certainty that had he been diagnosed days earlier could have been successfully treated. Many simply do not survive even aggressive treatment once diagnosed.

Thursday March 10, 2016

The courtroom was aghast when defense counsel asked investigating pathologist Dr. Adeagbo if anyone from his office had interviewed

David & Collett Stephan. After a long pause the doctor asked: "Who is David & Collett Stephan"?

The Crown called their expert witness today, Dr. Adeagbo, who is the pathologist that performed the forensic autopsy on Ezekiel. Dr. Adeagbo is an Assistant Chief Medical Examiner. He is highly qualified in his medical education and specialty, which is forensic pathology: the science of interpreting evidence to provide a knowledgeable opinion as to the cause of injury or death. While he has over 5000 death exams to his name, interpretation and opinion is all that can be said to describe his testimony today. For the record, it is important for objective readers to know that Dr. Adeagbo is employed by Alberta Justice and Solicitor General. The same Ministry that employs the Crown Prosecutors who are prosecuting David and Collett Stephan. It is also Alberta Justice who would only make Dr. Adeagbo available for one day of examination, cross-examination, and re-examination. The Crown took almost the entire regular court day to introduce and present their witness (examine), and left the defense little time and energy to cross-examine. The court went on until after 9 pm. Some would consider this a tactic by Alberta Justice to fatigue the jury and the defense counsel, and hamper a proper examination of the Doctor's interpretations and opinions.

After he was sworn in and his CV read aloud, the court accepted his credentials as an expert in his field. The Crown asked for his overview of the story pertaining to Ezekiel's death. He was free speaking using the details the Crown asserts led up to Ezekiel's death as though they are facts (facts that are in question in this trial); just another way the prosecutors have attempted to establish as truth what has not yet been proven to the jury. He gave a lengthy rendition of his autopsy findings, which had a visible effect on the jury. Because of the continual use of the word pus to describe the substance on the exterior of the right lung's bottom lobe, and the lining of the brain (the meninges), the sympathy for this young child grew to a countenance that was filled with disgust over such an appalling condition.

When the defense finally got to cross-examine the doctor, he became less free with his answers as he had been with the Crown. Instead, he became argumentative and would avoid or forestall the answers to the questions asked by defense counsel. It is certain to have been obvious to the jury he was warding off penetrations into his interpretations and opinions. As a result of the continual attempt to "pin the tail on the jackass", defense counsel was cautioned during one of the raised objections by the Crown that the answers the doctor was giving, while not aligned with the questions asked, may be all that the defense was going to get. "You know how expert witnesses can be", said the Judge.

Most of this academic averting was specific to contradictions between what the doctor testified to in the Preliminary findings, to what he was testifying in trial today. Dr. Adeagbo had earlier testified under oath that the cause of Ezekiel's death could have been the result of several factors. Today however, he insisted on just one: Meningitis. In the Prelim, the doctor testified that Ezekiel's brain death could have been the result of the 7-8 minutes of oxygen starvation he experienced when the EMS arrived ill equipped to intubate an 18-month-old child. Today, the doctor embellished his previous answers with several long and complex jargonistic lectures that would dull even the sharpest mind. As a result, in his professional opinion the contradictions were nothing more than variations of the same factual interpretations. In a nutshell – his evidence is less clear and to some looking more and more contrived to fit the prosecutor's case. Remember Alberta Justice employs them both. That being said, here are several facts the doctor shared today that he didn't obfuscate:

1. Viruses, bacteria and fungi are all around and in our bodies. We are all under constant attack
2. Symptoms of meningitis are inconsistent and may manifest or not. They may vary and even wane or disappear.
3. Many diseases manifest as similar symptoms

4. Sometimes the only indication of meningitis is found through laboratory proof
5. Viruses and bacteria did not cause Ezekiel to die – a disease did
6. Sometimes a viral infection can compromise the immune system making way for or enabling a bacterial infection that could lead to disease
7. There is no way to pinpoint the time of Ezekiel's infection or the time it took to progress to the state discovered in autopsy
8. The pathology could not determine the type of bacterial infection on the outside of Ezekiel's right lung, or the type of Haemophilus influenzae: A, B, C, D, E, F, or the unknown number of types that have morphed beyond classification. This means Ezekiel may have had an extremely aggressive form leading to a rapid progression of meningitis.
9. There was no sign that Ezekiel was immune-compromised
10. There were viruses in Ezekiel's nose and throat consistent with the earlier suspected case of croup
11. Spinal taps are the only way to determine certain types of meningitis but are not to be taken lightly because of the potential complications such as bleeding, infection, severe pain and even paralysis. Parental reluctance is understandable especially if symptoms are waning
12. There is no way to determine if Ezekiel would have benefited from earlier or any of the treatments for meningitis especially because of the unidentified form. Many die even with aggressive treatment. Treatments can and do fail
13. The pus was too thick to have allowed antibiotics to have penetrated the infection
14. Even if Ezekiel went to the doctor with croup symptoms, there is no way of identifying meningitis clinically, or preventing with certainty his death
15. Although Ezekiel's right lung was infected, it is very possible that it wouldn't have been apparent until discovered during autopsy