

Is Exhibit... D... to in the
affidavit of The Honorable Patrick W. Dunn
sworn before me, this... 19th
day of... December... 2007

[Signature]
COMMISSIONER FOR TAKING AFFIDAVITS

Can it be made based on swabs? Sure, but I'm not the person who can testify to that because I have not done the test. That's not my evidence. I've simply taken samples for another person to analyze.

JO: But let me go back to this, I know it's a very complicated case, but in the case, if you find a girl who's seven and naked,

DS: oh obviously, the first thing you think of is that some guy has done something which he shouldn't have done.

JO: And then you have that circumferential hemorrhage in your report, which you don't refer to in your final report.

DS: Well, the final report answers that question. If you read the microscopic examination you'll see that I took sections from those areas to look for evidence of injury and microscopically there was none.

JO: I think you also said you didn't take any pictures of them.

DS: Microscopic or gross?

JO: Microscopic and gross.

DS: The microscopic are glass slides.

JO: Right, so they are still there.

DS: Yeah, oh yeah. And as far as the gross photographs, I mean I don't take the gross photographs, the police take those.

JO: I know but my understanding is from talking to every pathologist I've talked to, essentially, although the police are certainly directing what they want to direct, it's the pathologist's job to point out every major injury and if anyone finds a child found in that position.

DS: Yeah, those are standard photographs.

JO: Those are standard photographs.

DS: Well, I don't have the police photographs. I can't tell you four years later what photographs were taken. I don't know. I don't have the police photographs.

JO: Yeah, although I've seen some of them I haven't seen, apparently there wasn't one of that, it's just a question that has sort of lingered in my mind. That was all.

Uh, Dr. Smith, I found some, and I really would have honestly loved to have some of your general comments in the story, but I was interested in something you said about the Timmins case, otherwise known as the "S" case.

DS: Oh, Amber [REDACTED]

JO: Yeah, There you're talking about Judge Dunn and that you met him, a couple of years ago, so you met him and if in fact had the case gone to trial in the late 90s as opposed to the early 90s the uncertainties would have been obviated.

DS: Yes, that's what the nature of our discussion was.

JO: Okay now somewhere along the line when I was doing my research, somebody mentioned to me that during the trial that you had said and I'm not sure you had said it but that the judge apparently told you during the trial that S [REDACTED] was guilty.

DS: That's right.

DS: He told me that on several occasions

JO: Was that in open court?

DS: No, I'll tell when it first occurred and this is all off the record.

JO: Sure.

DS: I testified, I flew up there, being told I would be on the stand for a few hours. And I can't remember the days of the week but I ended up there on a Friday or something and then so I was flying back to Toronto for the weekend. And at that time both Canadian and Air Canada or Air Ontario flew up to Timmins. Umm at lunch time, just as we were going to break Judge Dunn asked me how I was returning to Toronto and I indicated to him unbeknownst to me, he was aware that the Canadian flight I was on was cancelled and he made arrangements for me to have my ticket moved to the other airline and then he had made arrangements for me to sit with him on the airplane. And I walked onto the airplane and was stunned when I found myself sitting next to this man, who immediately began discussing the case with me.

JO: At this point you're flying back down to Toronto?

DS: Yeah, I'm in the middle of my testimony. And I felt extremely uncomfortable discussing the case with him and he said it's fine, because I will base my decision on the evidence in court. He said I can be hearer of the fact and trier of the fact and this is fine. And that was the first occasion in which he told me that S [REDACTED] was guilty as sin. And he made arrangements when I flew back Sunday afternoon to go back and testify some more, I found myself once again sitting beside him on the airplane which I found extremely, extremely unusual. So that was yeah, the conversation came from there. I didn't know how to handle the man or the situation. It was absolutely bizarre. As soon as I got there to Timmins on the Sunday night and the crown attorney, not the one who was prosecuting the case, but the senior crown a guy named Dave Thomas met me at the airport. I said this thing has happened to me I don't know how to interpret it, what does it mean. And I told Thomas this and I said do I continue, what do we do here? And he said there's

been a number of problems in the case and that he would simply take it under advisement, that I was simply to go on and testify.

JO: Wow, I think that's dynamite. Were you actually blown away when you read the judge's 75-page judgment?

DS: I never bothered reading the judgment.

JO: You didn't?

DS: No, no I couldn't believe it. Dunn when he spoke to me a couple of years ago or whenever it was, his first question to me was tell me about the monkey doctor. I said it's interesting, you picked up on the fact that Ommaya had falsified his CV. I said I found out where he was working at the time and Dunn said oh, where's that? And I said he was actually working for the CIA. Another pathologist friend of mine, who's now an elderly man, told me that. Because he couldn't believe the way the case worked out. He was a man who used to be chief medical examiner from Philadelphia and he was stunned when he saw the case turn out that way. And he said who testified for the defense and he said 'Oh he works for the company.' And I said he was a department of defense researcher at the university of

Pennsylvania and now he lives in Arlington Virginia and he has a falsified CV. And the man said, 'of course, most people who work for the company who live in Arlington Virginia have a falsified curriculum vitae.'

JO: What exactly was falsified.

DS: He had himself as, what I picked up on, now help me here cause this is now ten years ago what I picked up on was the fact that he had himself listed as the head of the department of neurosurgery at Arlington Memorial Hospital or something like that. Well, it doesn't matter. A quick phone call, because I thought that's unusual that they'd have a department of neurosurgery in a community hospital like that. A quick phone call revealed the fact that there was no department of neurosurgery. There was sort of a division of neurosurgery but he did not have full admitting privileges and there was no department of neurosurgery and so.....

JO: But he did do all that experimental work on the monkeys though.

DS: Oh yeah. So, you know, Dunn asked me about Ommaya and then he said tell me about the neuropathologist, the woman. And I said she has now changed her opinion and she has made a statement that she will go anywhere in the United States to testify on cases of shaken baby system wherein people have misinterpreted the original article by Tina Duhaime. Tina Duhaime testified against me. When I presented my

research on Shaken Baby Syndrome at the 1st national conference on Shaken baby syndrome in the United States, she came up to me afterwards and congratulated me on the work. And then she herself presented her more recent research and her first comments to the audience were 'Many people misinterpret our original paper.' And during the course of presentation it became very clear that her interpretation of her paper was different. And she acknowledged that though her initial paper suggested that shaking alone couldn't kill—and she testified to that extent in court in Ontario—she reversed that opinion. So justice Dunn..

JO: And what year was that?

DS: Oh, 97-98 something like that.

JO: And the paper you're referring to is The axonal injury.

DS: Yeah, the axonal injury paper.

JO: Is that the one with the 18 cases?

DS: I don't remember how many cases. Yeah, it's like a dozen and a half. Or two dozen, something like that.

JO: In that paper, don't you in fact have Amber [REDACTED] listed as one of your....

DS: No, we specifically excluded her.

JO: OK, because I guess I saw a draft of that and there were a couple of other kids in there that were kind of dubious on the Shaken baby thing. But maybe I just saw a draft of the paper.

Is Acta Neuropathologica peer-reviewed.

DS: Oh absolutely, yeah. All of the study... if you have my curriculum vitae which I presume you do

JO: Yeah, I do.

DS: Well you have an out-dated copy if it's only 22 pages long.

JO: Mine is from 99

DS: Yeah,

JO: How long is it now?

DS: Another two or three pages

JO: With more papers?

DS: Yeah and many more coming down the line. Since I stopped doing medical-legals I think I've finished off six more papers.

JO: Speaking of that why did you decide not to do any more cases until these are cleared up.

DS: You shouldn't say until. I've stopped doing cases. I've asked for a review. I've made no commitment to return into this work whatsoever.

JO: Really.