

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case No. 10-CV-22236-ASG
Division: Circuit Civil

HOWARD ADELMAN AND JUDITH SCLAWY-ADELMAN,
as co-personal representatives of the
Estate of Michael Sclawy-Adelman,

Plaintiffs,

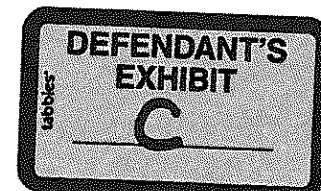
vs.

BOY SCOUTS OF AMERICA, THE SOUTH FLORIDA
COUNCIL, INC., BOY SCOUTS OF AMERICA;
PLANTATION UNITED METHODIST CHURCH;
HOWARD K. CROMPTON, individually; and
ANDREW L. SCHMIDT, individually.

Defendants.

DEPOSITION OF MANFRED C. BORGES, M.D.
Volume I of I
Pages 1 through 117
4th day of April, 2011
3:00 p.m. to 6:10 p.m.
District Twenty Medical Examiner's Office
Collier County
3838 Domestic Avenue
Naples, Florida

Stenographically Reported By:
Betty G. Althoff, FPR, RPR
Registered Professional Reporter



1 A. I have all the paperwork here. Looks like the
2 actual arrival of the body at our office. Sorry, I have
3 to go through a lot of information.

4 **Q. Take your time.**

5 A. Well, I may have to refer to an external document
6 that is in our log, if you would allow me that.

7 **Q. Sure.**

8 A. Let me do that. I am checking the log entry that
9 was made when the body comes into the receiving area.

10 **Q. Okay. And how did you know the photos were taken**
11 **at 11:20?**

12 A. Oh, I didn't say 11:20. I am saying prior to
13 11:20.

14 **Q. Oh.**

15 A. Because I examined the body, and the way that we
16 do things is the technician prepares the body for the
17 Medical Examiner, prior to the Medical Examiner looking at
18 the body, by taking the photographs. It is called working
19 up the body.

20 **Q. Okay. And when was the technician taking the**
21 **pictures of the body then, that morning?**

22 A. Yeah, I would imagine, it is prior to me doing
23 the autopsy, so yes.

24 **Q. Okay. Did you know on the 10th that you were not**
25 **going to do an autopsy?**

1 A. Well, by the time that I did this, I knew that I
2 was not going to do an autopsy, because --

3 Q. "This" meaning?

4 A. "This" external examination, I am sorry.

5 Q. Okay.

6 A. Because we had spoken to the parents, and we very
7 much wanted to do an autopsy, and that was our
8 recommendation to the parents that an autopsy should be
9 done, but the parents were adamantly opposed to an
10 autopsy. And we had extensive communication, both with
11 the parents, as well as with the sheriff's office, and as
12 well as internally between myself and Doctor Mark Coburn,
13 who you see on the wall there. That is the Chief Medical
14 Examiner.

15 And eventually, the parents were very adamant,
16 and we advised them that if they had any inkling towards
17 litigation that an autopsy would be recommended. And they
18 were adamantly opposed, and at that time said that they
19 were -- could you let that person in.

20 THE SECRETARY: Time was 12:49 a.m.

21 A. That would have been on 5-10, 2009, thanks. So
22 that is how we proceeded. And by the time, if you have
23 this --

24 Q. You said if there was an inkling towards
25 litigation, there was a knock on the door?

1 A. That we recommended an autopsy be done, and they
2 said "What litigation?," in quotation marks.

3 **Q. And when did you find out there was going to be**
4 **litigation?**

5 A. Oh, I think we found out when we started getting
6 requests for information. I can't tell you, I mean I
7 would have to go through all of this to see when the first
8 request for our file came in. And I was surprised,
9 because I had been told that there wasn't going to be
10 litigation.

11 **Q. Who told you that?**

12 A. Well, the parents. In fact, I think there was an
13 exact quote from the mother that said, "What litigation?"

14 **Q. Yeah. Do you know what made them change their**
15 **mind?**

16 A. Well, I was advised by -- I forget your name,
17 sir.

18 MR. PELTZ: Bob Peltz.

19 A. Bob Peltz, Mr. Peltz, that the family saw
20 something in regard to the number of boy scouts that had
21 passed away in different experiences, and that had made
22 them decide that they wanted to file; am I correct in
23 that?

24 MR. PELTZ: Just answer the best you can recall.

25 A. Yeah, that is what I was told.

1 to the form and predicate of the last three questions.

2 BY MR. HASTY:

3 Q. Because there was no autopsy, there was no
4 opportunity to determine, from a pathophysiologic basis,
5 if there was an abnormal heart in Michael's case; correct?

6 A. Correct.

7 Q. And you mentioned heart rate. What was it about
8 heart rate that caught your attention?

9 A. Well, I noticed his heart rate was elevated.

10 Q. And what do you call "elevated"?

11 A. He was tachycardic. I don't recall offhand. I
12 would have to go into the record, but I noticed it was
13 elevated. From what I took that to mean, he might be
14 somewhat deconditioned, he wasn't in the best of shape.

15 Q. Okay. The last office visit to his pediatrician
16 his heart rate was 114 beats a minute, and is that what
17 you are referring to as tachycardic?

18 A. Yes.

19 MR. PELTZ: Object to the form.

20 A. It is not as elevated as mine, but it is
21 elevated.

22 Q. How many 18-year-olds or 17 years and 50 week
23 autopsies have you done?

24 A. How many 18-year-old autopsies?

25 Q. Yeah.

1 A. I imagine by now I have done a lot of autopsies
2 on 18-year-olds. I haven't counted them. I have been
3 doing autopsies since I was a resident, and then I have
4 been here. So I have done a lot of autopsies, I can't
5 tell you.

6 Q. Okay. How many of them have you seen as 17 and a
7 half or 18-years-old that had heart rates of 114, if they
8 were not taking some type of illegal substance?

9 MR. PELTZ: Object to the form and predicate.

10 A. I can't tell you, I don't know that number.

11 Q. Very few, wouldn't it?

12 MR. PELTZ: Same objection.

13 A. As I said, I don't know the number. I can't give
14 you a scientific answer to that question.

15 Q. If Michael was 42 years of age and had a heart
16 rate of 114 beats per minute, and a blood pressure of 140
17 over 90, what would you say the condition of his health
18 was?

19 MR. PELTZ: Objection to form, predicate.

20 A. Well, I would say he was hypertensive and he had
21 tachycardia.

22 Q. Did you see his blood pressure the last visit he
23 was to his doctor?

24 A. I did, I don't recall it offhand now, but I did
25 review his medical records, yes.

1 Q. Was he hypertensive, based upon your review of
2 the records?

3 MR. PELTZ: Object to form and predicate.

4 A. I would have to go back and look at the record if
5 you --

6 Q. If you have it, that is fine.

7 A. Sure.

8 Q. That might be it.

9 A. This one here.

10 Q. What is the date?

11 A. This is from, yeah, 3-27, 2009.

12 Q. Okay.

13 A. Oh, shoot, this is very, very poor. Heart rate
14 is 114, blood pressure 133 over 84. So he was somewhat
15 elevated blood pressure.

16 MR. PELTZ: Just for the record, I object to the
17 form and predicate of that question, particularly
18 based on Doctor Bullard's testimony, but go ahead.

19 BY MR. HASTY:

20 Q. Okay. And the visit before March of 2009?

21 A. 137 over 88, this is from 5-13, 2008.

22 MR. PELTZ: Same objection, please.

23 BY MR. HASTY:

24 Q. What was his heart rate?

25 A. His heart rate is 114.

1 MR. PELTZ: Same objection.

2 BY MR. HASTY:

3 Q. So the last two times he went to the pediatrician
4 eight or nine months apart, his heart rate was 114 beats
5 per minute?

6 MR. PELTZ: Object to the form and predicate.

7 A. Yes.

8 Q. That is abnormal; is it not?

9 A. Yes, it is.

10 Q. In the discussions that you had with the parents
11 about your recommendation to have an autopsy performed,
12 was one of the reasons why you wanted an autopsy done,
13 because if there was a congenital problem in Michael, it
14 would be something that would be of value to know by the
15 parents, and/or for their other daughter going forward?

16 A. Absolutely.

17 MR. PELTZ: Object to the form and predicate.

18 BY MR. HASTY:

19 Q. So not only was it important to know what the
20 cause of Michael's death was, it was important, if there
21 was an abnormality, congenital abnormalities, for the
22 parents to have that information from the postmortem
23 examination?

24 MR. PELTZ: Object to the form and predicate.

25 A. Yes.

1 Q. And you told them that?

2 A. Yes, I did.

3 MR. PELTZ: Object to the form and predicate.

4 A. If you like, let me see if I can go back to my
5 exact wording.

6 Q. Is this your handwriting, doctor?

7 A. Yes, it is, that is my handwriting.

8 Q. Okay, I can't read this. Could you just read,
9 let's see if we can get to the beginning of this. All
10 right, could you just read slowly into the record, so she
11 can take it down for us once without interruption?

12 MR. PELTZ: Excuse me, can you indicate what you
13 are reading from?

14 A. Do you want to see it?

15 Q. It is his handwritten note.

16 A. It is my handwritten note.

17 MR. PELTZ: Okay. For the record, I object to
18 the form and predicate. Thank you.

19 MR. HASTY: What is wrong with it, it is reading
20 his note?

21 MR. PELTZ: Because it doesn't make the note any
22 more admissible, by reading the note into the record.

23 BY MR. HASTY:

24 Q. Go ahead, doctor.

25 A. Okay. At the very top it says re:, reference:

1 "S-C-L-A-W-Y, -Adelman Michael, one of three,
2 Sunday 5-11, 2009, at approximately 11:00 a.m., case
3 number 2009-200, Howard and Judith Adelman. These
4 were the people that I was speaking to, and the phone
5 numbers are there. I don't think I need to read those
6 phone numbers. I spoke with Judith Adelman during my
7 conference. I told her, and she was informing her
8 husband, Howard Adelman of our conversation, I could
9 hear his voice in the background."

10 "She had advised that her son had no medical
11 problems, and in fact, had recently seen a doctor.
12 She pleaded with me not to do an autopsy. I could
13 hear her husband in the background stating that he did
14 not want an autopsy."

15 "Judith Adelman advised that her son had no
16 symptoms or infections. I advised I had spoken with
17 Doctor Coburn, that is our Chief Medical Examiner, and
18 in the next of he did not want an autopsy. I
19 basically informed her that they didn't want an
20 autopsy. If they didn't want an autopsy, we would not
21 do one. I advised that without an autopsy, I would
22 not have a definitive cause of death. At best, I
23 could be able to say probable on the death
24 certificate. Without an autopsy, I could not find
25 congenital or hereditary problems."

1 Q. Okay. What do you know about the effect of
2 ephedrine, a pseudoephedrine on patients who are exposed
3 to sunlight and heat?

4 A. Well, I know it is detrimental. I know that
5 stimulants are detrimental. And again, I would defer to
6 the toxicology from Dr. Hern, which I am sure you deposed
7 extensively.

8 Q. We did. Now, what I would like for you to do is
9 to read slowly into the record.

10 A. Sure.

11 Q. Exhibit one, two, three and four.

12 MR. PELTZ: For the record, I reiterate my
13 objection, form, predicate and work product.

14 A. Okay, it is, "Case 2009 -- 200, Thursday, 3-24,
15 2011, approximately 3:30 to 4:30 p.m. one of two, and then
16 it has Mr. Peltz's card. I met with Mr. Robert D. Peltz.
17 He advised that:

18 One, family decided many months after the death
19 that they wanted an autopsy.

20 Number two, we reviewed medical records and
21 disease, elevated heart rate.

22 We discussed that the decedent was overweight,
23 number three.

24 And number four, I advised I strongly recommended
25 the autopsy to the family, but they strongly refused.

1 Q. Let me stop you for a minute. Did you say months
2 later they decided they did want to have an autopsy?

3 A. No, no, no. Oh, yes, that is a mistake, that
4 they wanted litigation. That should be litigation. That
5 was just a mistake on my part. That is just litigation
6 not an autopsy. That was a mistake on my part.

7 Q. What would be the state of his organs today, if
8 we exhume the body?

9 A. The state of the organs today, I can't tell you.
10 They would be, they would not be in good shape. I don't
11 know what you would get from them, if you exhumed.

12 That is an error on my part, and I want to show
13 it to read litigation. I will correct it, if you don't
14 mind.

15 Q. That is all right. It is your document, doctor.

16 A. Sometimes I write fast. As you can see, I write
17 faster than --

18 Q. Go ahead.

19 A. That is number four. "I advised that I strongly
20 recommended an autopsy to the family, but they strongly
21 refused."

22 Number five, "I advised that I believe 75
23 percent, let's see 75 percent true that cause of death was
24 heat stroke."

25 Number six, "I advised other causes of death are

1 possible, but there was nothing indicating another cause
2 of death."

3 Number seven, "He advised that the temperature
4 was a hundred degrees." And this is a note I made down
5 here for myself, after the fact. "I do not believe the
6 decedent was in any physical condition to hike 20-miles in
7 hundred degree temperatures. I have done several 26-mile
8 marathons at an earlier age, subsequent to intense
9 conditioning, and still they were hard." It is tough to
10 do that kind of distance.

11 In the next page, page two, I was advised that
12 the toxicology was qualitative. I was told that Doctor
13 Hern has blood sample that can be tested. And then there
14 is, in quotation marks, "There was only a few months later
15 that they, when they met with the park services," I think
16 that -- and I left that open ended?

17 "There was no call for help for an hour and a
18 half," but that doesn't factor into my cause and manner of
19 death. "Until learning that they did not think of the
20 litigation, they declined the autopsy. Three to four
21 quarts, a liter, the boys were advised to bring. All the
22 boys ran out of water except for Michael. He had some
23 left."

24 The other page, "He was disoriented, he wandered
25 off, he became incoherent." These are in quotation marks.

1 MR. SUMMERS: Objection to form.

2 A. Yes.

3 Q. Was the objection that Michael's parents had to
4 performing an autopsy based upon their religious beliefs?

5 MR. SUMMERS: Objection to form.

6 A. That is what we were advised. We were advised
7 that they were Orthodox Jewish, and they had religious
8 objections to the autopsy.

9 Q. Based on -- strike that. Is it a policy of this
10 office to respect the religious beliefs of those
11 individuals, unless there is some compelling state
12 interest in which not to do so?

13 A. We definitely, most definitely respect the
14 objections. There are autopsies that are mandated,
15 homicides and suicides are mandated. There are others
16 that are recommended. This would fall under that
17 category, and obviously, we would respect their
18 objections.

19 We have done autopsies on people who are Orthodox
20 Jewish. We have the Rabbi present, and we try to remove
21 as little blood and as little tissue as possible and
22 return it to the body with the Rabbi present. It has been
23 done and that could have been done in this case, but it
24 wasn't.

25 Q. Where there is not -- strike that. Where the

1 determination is made that homicide is not involved, and
2 an individual expresses serious religious objections to
3 performing an autopsy, does your department respect those
4 religious objections?

5 MR. HASTY: Objection, repetitious.

6 A. We respect those objections, and in fact, we
7 even, if I may add, Detective O'Neill took this case to
8 the State Attorney's Office. We were advised that there
9 was no state interest in mandating an autopsy and having
10 the Court order one.

11 Q. Okay. So both the State's Attorney, the Collier
12 County Sheriff's Department and the Medical Examiner's
13 Office all determined that it was appropriate to respect
14 the Adelmans' wishes not to have an autopsy in this case,
15 based upon their religious beliefs?

16 MR. HASTY: Objection to form, misstates his
17 testimony.

18 MR. SCHEVIS: Object, asked and answered.

19 A. The -- do I answer?

20 MR. SCHEVIS: Yes.

21 MR. PELTZ: Yes.

22 A. The State Attorney -- it was the preference of
23 the sheriff's office that an autopsy be done. It was our
24 preference that an autopsy be done. It was not mandated.
25 We did advise them to consult with the State Attorney's

1 part of the park service report?

2 A. If that is what you tell me.

3 MR. PELTZ: Okay. Thank you very much.

4 CROSS-EXAMINATION

5 BY MR. SUMMERS:

6 Q. My name is Bill Summers, I represent Boy Scouts
7 of America and the South Florida Council. I have a number
8 of questions in follow-up to what you have been asked and
9 actually a few questions of my own.

10 A. Sure.

11 Q. Okay. You said that Michael was not in condition
12 for this hike. Explain what you meant by that.

13 MR. PELTZ: Object to the form and predicate.

14 A. Okay. Again, I am not a Boy Scout Master or a
15 physical trainer or anything like that, but just in a
16 sense of common knowledge, common sense, which I think is
17 something I can apply: He was overweight, he weighed, he
18 was 5 foot, I measured him at 5 foot 6 and he weighed 225
19 pounds. He was a heavy kid.

20 And as we saw, he had a high heart rate, and he
21 had high cholesterol for his age. Now I don't believe
22 that -- at this age, I don't believe the cholesterol would
23 have caused coronary artery disease or cerebral vascular
24 disease. That is something you see in later age groups,
25 but it does indicate that he was in poor physical

1 are high regardless. When you compound that with that
2 exertion and that heat, and the fact that he was not
3 acclimated and not conditioned, he dies. Another person
4 may live, 20 persons may live, but that one person dies
5 and that person dies of heat stroke.

6 The fact that, in the statistical realm, the fact
7 that others lived and he dies, is irrelevant. If you are
8 in a hail of bullets and the bullet hits you, and there is
9 ten people around you that don't get hit, you got hit by a
10 bullet.

11 Q. You were talking about stresses. Would pain on
12 walking be an additional stress that could be a factor in
13 this?

14 MR. PELTZ: Object to the form, predicate.

15 A. Pain on walking?

16 Q. Yeah, pain on walking long distances?

17 A. Sure.

18 Q. Were you given the medical records from a week or
19 two before this hike, where Mike went to the orthopedic
20 doctors, due to pain on hiking long distances?

21 A. I was not aware of that.

22 MR. PELTZ: Object to the form of the question.

23 Q. The reason you wanted to perform an autopsy and
24 the reason you strongly recommended an autopsy to all the
25 people you talked to, was what?

1 A. I always want to generate the more data that I
2 can in a situation like this, as far as, you know, not
3 being limited to just external and so forth. Had I done
4 an autopsy, I would have had a good view of Michael's
5 heart.

6 I probably would have sent the heart to a
7 cardio-pathologist. I could have excluded cardiac
8 conditions that were occult. I could have also excluded
9 neurological conditions. I would have sent the brain to a
10 neuropathologist. I probably could have done a lot more
11 toxicologic studies.

12 I would have had access to the organs. I would
13 have had access to microscopic examination of the tissues.
14 So there would have been a considerable amount of more
15 information. And rather than being limited to saying
16 "probable heat stroke," because I still believe it is heat
17 stroke.

18 All of the terminal circumstances point to heat
19 stroke. All of the features that we are saying point to
20 heat stroke, but environmental circumstances point to heat
21 stroke. So I believe that is the cause of death. But I
22 would have been able to eliminate others. So that I would
23 have, rather than saying probable, the death certificate
24 would have said heat stroke, and we would have eliminated
25 all of those things. I was not able to do that. I was

1 precluded from doing that by not having done an autopsy.

2 Q. About how many hours would you spend on an
3 autopsy, if you were able to do it your way, your time and
4 everybody else's time?

5 A. We are talking, well, my time alone, probably
6 three or four hours, and then we are talking several hours
7 for the cardiac pathologist and several hours for the
8 neuropathologist, and looking at the slides, another half
9 hour, an hour. It would have been, yes, a lot more time.
10 But it would have been our preference, and it was strongly
11 expressed that it was our preference.

12 Q. Are you capable of being sensitive to the
13 feelings of family and the family's religious concerns?

14 A. Absolutely. I don't know if you saw it, we
15 published a paper on that very subject. We are sensitive
16 to the family's concerns. That is why we always try to
17 talk to the family, and try to work them with them. And
18 we would have certainly worked with them on the issue of
19 an autopsy considering their traditional beliefs. And we
20 have done autopsies on Orthodox Jews on accidents, and we
21 would have had a Rabbi present, and we would have abided
22 by that.

23 Q. When you talk about heat stroke, one of the
24 reasons you believe Mike might have had heat stroke where
25 others didn't, was because of his condition?