

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK : PART 23

DIANNE DROSCOSKI, -----X

Plaintiff,

Index No.
10398/97

-against-

GEORGE RICE and DARBY M. RICE,

Defendants. -----X

Criminal Courts Building
February 8, 2006
Riverhead, New York

B E F O R E: HON. EMILY PINES
Supreme Court Justice

TESTIMONY OF DR. MICHAEL LIPTON

A P P E A R A N C E S:

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Reported By:
GAIL E. GAZSY, R.P.R.
Official Court Reporter

1 MR. FLOMENHAFT: Okay. Thank you, your
2 Honor.

3 DR. MICHAEL LIPTON, having
4 been first duly sworn by the Clerk of the Court,
5 testified as follows:

6 DIRECT EXAMINATION

7 BY MR. FLOMENHAFT:

8 Q. Dr. Lipton, if you could try and keep your voice
9 up.

10 A. Yes, I will.

11 Q. Dr. Lipton, are you a physician licensed to
12 practice in the State of New York?

13 A. Yes, in New York and New Jersey.

14 Q. And when were you licensed?

15 A. I was originally licensed in 1991.

16 Q. And did you practice in any particular medical
17 specialty?

18 A. I am a neuroradiologist. I'm actually a
19 diagnostic radiologist and also a neuroradiologist.

20 Q. Again, try and speak up. Can you tell the jury
21 what you mean by a neuroradiologist.

22 A. So as a neuroradiologist -- can you hear me now?

23 So as a neuroradiologist I evaluate the patients to
24 determine whether they have abnormalities of the nervous
25 system by using diagnostic imaging modalities. What I

1 MR. FLOMENHAFT: Your Honor, as a our first
2 witness, we call Dr. Michael Lipton.

3 (Witness approaches.)

4 THE OFFICER: Step up to the witness stand.

5 Remain standing a moment.

6 THE WITNESS: Thank you.

7 THE CLERK: Sir, face me. Raise your right
8 hand.

9 THE WITNESS: I actually don't raise my
10 right hand.

11 THE CLERK: All right. Do you affirm?

12 THE WITNESS: Affirm.

13 THE CLERK: Do you affirm that the
14 testimony you are about to give this court is
15 the truth, the whole truth, and nothing but the
16 truth?

17 THE WITNESS: Yes.

18 THE CLERK: Okay. Please state your name
19 and address.

20 THE WITNESS: Michael Lipton, L-I-P-T-O-N.

21 THE CLERK: And your business address?

22 THE WITNESS: 111 East 210th Street, Bronx
23 New York 10467.

24 THE CLERK: Thank you. Please be seated.

25 THE COURT: All right. You may proceed.

1 mean by that is we use things like x-ray, CAT scan, MRI,
2 angiography, different techniques to image the nervous
3 system, which includes the brain, the spinal cord, other
4 nerves, and to evaluate ask make determinations of the
5 presence and type of disease in the nervous system.

6 Q. And how does that differ, if at all, from the
7 regular radiologist?

8 A. So as a diagnostic radiologist -- and I'm also a
9 Board Certified diagnostic radiologist; that's a
10 prerequisite to become a neuroradiologist -- you do
11 training in all aspects of diagnostic manages. So I as
12 any diagnostic radiologist was trained in the whole array
13 of managing tests, x-rays, mammography, CAT scans, MRI,
14 etcetera, but don't have any specific expertise in one
15 field or another. One of the subspecialties as they're
16 termed is neuroradiology. And what that means is that I
17 did additional training and took additional examinations
18 to say that I was qualified to specialize in imaging the
19 nervous system, and that's all that I do. So the
20 radiology that I do is strictly limited to the nervous
21 system.

22 Q. And the nervous system includes the brain?

23 A. The brain, the spinal cord. It actually
24 includes pretty much the entire body above the shoulders
25 and also the peripheral nerves throughout the body.

1 A. Correct.

2 Q. Now, you also in summarizing your findings
3 referred to abnormalities in white matter. What were you
4 referring to?

5 A. Well, the brain is composed of two major types
6 of tissue which are called grey matter and white matter.
7 They get those names because if you cut open a human
8 brain, one of them looks white, and we call it white
9 matter. One of them looks grey and we call it grey
10 matter. It turns out that the segregation has to do with
11 the parts of the nerve cells, and nerve cells are unique
12 in the body because they have what you might think of
13 when we talk about a cell, a little round thing with a
14 nucleus in the middle of it. But, in addition, nerve
15 cells have very long processes that extend out of them.
16 You might think of it as a wire. And the way I like to
17 explain that is if the nerve cell -- if you think about a
18 computer network, the nerve cell is the CPU. That's
19 where the computation occurs. And the -- what's called
20 the axon or this wire that extends out of it, that's how
21 the information is relayed to and from that computer. So
22 the grey matter in the brain is laid out as a sheet over
23 the surface of the brain that is, oh, less than a quarter
24 of an inch thick. And that's where all those nerve cells
25 are, and then they send their wiring down to both other

1 parts of the brain that they interact with, as well as
2 parts of the body. So, for example, when you move your
3 hand, when I move my right hand, we know that what's
4 allowing me to do that is that there are a group of nerve
5 cells on the left side of my brain that initiates the
6 electrical impulse that makes my hands move. And that
7 impulse is carried through these nerve processes. And
8 some of those can actually be more than a meter long that
9 goes all the way through the spinal cord to the muscles
10 that actually do the action. So when we talk about grey
11 matter and white matter, the grey matter is the stuff
12 that does the processing and the white matter is how the
13 information gets relayed. The finding of damage to white
14 matter means that those wires have been disrupted or
15 damaged. So the communication between the computational
16 source and where the action or thought or wherever it's
17 going to be or take place has been impaired or
18 interrupted so damage to white matter essentially means
19 that there's a disconnect between the processing ability
20 of the brain and its ability to carry that out.

21 Q. Okay. I'd like to review your MRI of 2004 where
22 you made these findings. I'd like to show you what's
23 been marked as 1-A for Identification (handing) and
24 perhaps you can tell us --

25 A. Sure.

1 Q. -- what that represents.

2 A. Should I put this on the screen?

3 Q. Well, before you put it on, let's put it into
4 evidence first.

5 A. Okay. These are two views of a 3-dimensional
6 rendering of the MRI scan that was done on Dianne Droscoski
7 on the date, July 23rd, 2004, as indicated here.

8 THE COURT: This was done under your
9 direction?

10 THE WITNESS: This was actually done by me.

11 THE COURT: Done by you, okay.

12 THE WITNESS: This was actually done by me.

13 THE COURT: Okay.

14 THE WITNESS: And then there are -- both
15 creating the rendering as well as everything you
16 see here was done by me. The little red circles
17 are pointing out a couple of areas of
18 abnormality, and then there are some call-outs
19 here that give some quantitative information
20 about some measurements.

21 MR. FLOMENHAFT: Okay. I'd like to offer
22 that into evidence, your Honor.

23 MS. BELLOVIN: Can I see it?

24 THE COURT: Absolutely.

25 COURT OFFICER: (Handing.)

1 MR. BELLOVIN: Could I just have a short
2 voir dire?

3 THE COURT: Absolutely.

4 VOIR DIRE EXAMINATION

5 BY MR. BELLOVIN:

6 Q. Doctor, you explained actually -- where are the
7 actual films.

8 A. Like I said, there are no films. If you want me
9 to explain that, I could explain how that is.

10 MS. BELLOVIN: I'm just asking. Normally
11 when I see MRIs, normally I see films.

12 THE COURT: Well, that's the question. The
13 question is --

14 MS. BELLOVIN: Where's the film?

15 THE COURT: -- where did that come from?

16 MS. BELLOVIN: Yes. Where's the film?

17 THE WITNESS: Okay. An MRI scanner creates
18 an image that is displayed on a computer screen.
19 It's not an x-ray. So film is not involved in
20 the taking of an MRI scan. It just isn't
21 involved. Putting the images on film is
22 something that is artificially done for people
23 that like to look at images on film which years
24 ago is what we did.

25 THE COURT: Okay.

1 THE WITNESS: But it's a more efficient way
2 to look at the images.

3 MR. FLOMENHAFT: We've already put the MRI
4 data into evidence, your Honor. It's -- I
5 forget what number it is. It's already marked
6 into evidence.

7 THE COURT: I believe it is.

8 MR. FLOMENHAFT: No, it's right there.

9 I --

10 THE COURT: I thought it was 7.

11 MR. FLOMENHAFT: Yes, 7.

12 COURT OFFICER: "7."

13 THE COURT: It's in evidence. Okay. Fine.
14 All right.

15 Q. Okay. And these photographs were taken from
16 that (indicating)?

17 A. Those photographs were made from these images,
18 correct.

19 MS. BELLOVIN: Okay.

20 THE COURT: 1-A in evidence.

21 MR. FLOMENHAFT: Okay. Let's show 1-A.

22 THE COURT: Hold on one second.

23 MR. FLOMENHAFT: Judge, they were all
24 marked A, B, C, D. So do you want to put all,
25 A to D, into evidence?

1 THE COURT: Well, I think that makes sense.
2 Are 1-A through D all from 7?

3 MR. FLOMENHAFT: No, no. We'll start 1-A
4 and -B first because 1-C and -D are comparisons
5 with other --

6 THE COURT: (Indicating.)

7 MR. FLOMENHAFT: Okay. So 1-A and -B are
8 first, your Honor.

9 MS. BELLOVIN: So 1-A and -B are from the
10 2004?

11 THE COURT: Is it your plan at some later
12 point to seek to have admitted 1-C and -D both
13 from 7?

14 MR. FLOMENHAFT: No, no 1-C and 1-D are
15 from prior scans.

16 THE COURT: Oh, okay. All right.

17 (Whereupon Plaintiff's Exhibit Nos. 1-A
18 and 1-B were so marked into Evidence by the
19 Court Officer.)

20 COURT OFFICER: 1-A and 1 B- marked and
21 received into evidence being handed to the
22 witness (handing.)

23 **DIRECT EXAMINATION**

24 **RESUMED BY MR. FLOMENHAFT:**

25 Q. Okay. Let's look at 1-A.

1 A. On the screen?

2 Q. That's "1." Let's go to 1-A. What is 1-A
3 showing us about Dianne Droskoski?

4 A. Okay. So we are now looking at two views of a
5 3-dimensional rendering of her brain that comes entirely
6 from this July 2004 MRI scan. So in looking at these
7 images, if you -- am I able to use this?

8 THE COURT: Yes, you may.

9 A. So to have a sense of what we're looking at, if
10 we take this model, (demonstrating) this is the head and
11 the skull. We take it off. So this is an approximation
12 of what the surface the brain looks like and, in fact, we
13 can actually just take out the whole thing. Usually you
14 can take it out, okay.

15 So this is the brain, all right. So when you
16 look at the brain, one of the things that you have to
17 notice about the surface of the brain is that it has
18 these what we call convolutions or folds, and there are
19 fissures, and there are sort of thick ridges in between
20 them. And covering the surface of the --

21 MR. FLOMENHAFT: Excuse me, your Honor.

22 Would it be helpful if the witness came closer
23 to the jury box?

24 THE COURT: That's all right. I don't want
25 him to get too -- you can stand if you want and