

Here, the experts sharply disagree on those mechanisms. The Hills' autopsies were inadequately documented and, because Plaintiffs did not provide Ford with notice of their intention to exhume the Hills' bodies and perform autopsies on them, Ford cannot independently assess the most vital pieces of evidence at issue. Moreover, because the bodies of the Hills were irreparably altered during the exhumation and destructive autopsies, and have been subjected to further decomposition, Plaintiffs actions have forever prevented Ford (and the other Defendants) from presenting their own counter-autopsy evidence. The jury is entitled to know the whole story and why the evidence is what it is.

The Hills are not entitled to mislead the jury and present their evidence free of any of the surrounding circumstances that have placed Ford on an uneven playing field. Plaintiffs' autopsy evidence and Ford's lack thereof is directly relevant to the credibility of the experts' opinions concerning what the Hills' fatal injuries were and whether they are attributable to the design of the Ford Super Duty truck at issue. Plaintiffs' motion in limine should therefore be denied.

II. RELEVANT CHRONOLOGY OF EVENTS

On April 3, 2014, Melvin and Voncile Hill were involved in a fatal automobile accident. The coroner, Greg Hancock, pronounced both dead at the scene and released their bodies to the Watson-Matthews Funeral Home. No autopsies were performed. Cause of death was listed as "multiple trauma." Approximately eight months later on December 22, 2014, the first of two lawsuits was filed. The first lawsuit was filed in Cobb County under Civil Action No. 14A3455-3. (hereinafter the "Cobb County lawsuit").¹ The surviving children of Melvin and Voncile alleged that their parents' deaths were caused in part by defects in the roof strength of their

¹ The Cobb County lawsuit was voluntarily dismissed on July 14, 2016 and re-filed in Gwinnett County State Court on July 15, 2016.

parents' truck—a 2002 F-250. According to the Plaintiffs, those defects “resulted in Melvin Hill and Voncile Hill’s deaths.”

On August 17, 2015—some eight months after the Cobb County lawsuit had been on file and fifteen months after the burials of Melvin Hill and Voncile Hill—Ford received copies of two autopsy reports prepared by Jonathan Eisenstat, M.D. The reports reflect that on July 3, 2015, Dr. Eisenstat autopsied the bodies of Melvin Hill and Voncile Hill. That was Ford’s first notice that their bodies had even been exhumed.

III. THE SECRET AUTOPSIES OF MELVIN AND VONCILE HILL

Based upon limited discovery allowed in the Cobb County lawsuit, Ford has since learned that on July 2, 2015, the bodies of both Melvin Hill and Voncile Hill were exhumed and that the next day a “private” autopsy was performed by the current chief medical examiner for the Georgia Bureau of Investigation, Jonathan Eisenstat, M.D.—but not in his official capacity. The autopsies were “unofficial” and “private.” Dr. Eisenstat had been hired by the Hills’ counsel to perform the autopsies. The Hills’ counsel also hired Joseph Burton, M.D., the former coroner for the City of Atlanta to be present during the autopsies.

The events leading up to the July 3, 2015 “private autopsies” will forever be obscured by a suspicious haze. What did Plaintiffs seek in exhuming the bodies and why was it important to conduct the autopsies in secret at an undisclosed location?

The decision and arrangements for the autopsies were made by the Hills’ counsel:

Q. Okay. And *who exhumed Mr. and Mrs. Hill?*

A. That as well, I don’t recall. *All of that was taken care of by the attorneys and family.*

Q. Do you know when Mr. and Mrs. Hill were exhumed?

A. *I believe they were exhumed the day before I did the exams so that would be July 2nd –*

Q. Okay.

A. -- but I can't be 100 percent sure.

(Exhibit A, May 26, 2016 Deposition Transcript of Jonathan Eisenstat, M.D., ("Eisenstat Depo."), p. 25:6 to 25:14 (emphasis added).

A "secure" facility was selected:

A. So there was -- *One of the reasons I use Atlanta Mortuary Services for my private autopsies is that they're a secure facility.* The manager there confirms everything is secure. He notifies me when the bodies arrive, where they're located. And so they were within Atlanta Mortuary secured until I started my exams the following morning.

Id. at p. 28:12 to 28:18 (emphasis added).

Whether notice of the exhumation and autopsies was required was a matter for the Hills' attorneys, not the doctors performing the autopsy. Dr. Eisenstat professed to not know what it means to ask for permission before conducting such an autopsy:

Q. *Have you ever advised anyone that, when a case is pending, permission should be sought from the judge?*

MR. PEAK: Objection to the form. Calls for a legal conclusion.

BY THE WITNESS:

A. *Yeah, I don't understand what that means.*

Id. at p. 123:1 to 123:7.

When pressed, the Hills' counsel instructed Dr. Eisenstat to refuse to answer:

A. *I had no part in requesting the exhumations.*

Q. *In this case, did you rely upon the lawyers who hired you to decide whether to ask permission from the judge that presided over this case?*

MR. PEAK: Objection to the form. *Don't answer the question.*

BY MR. BOORMAN:

Q. *You're not going to answer that question?*

A. *No, sir.*

Id. at p. 125:1 to 125:9 (emphasis added).

In his own words, he just autopsied the bodies as requested:

Q. But do you have a professional responsibility to ask whether the other parties who may be affected by this have been notified about upcoming autopsies?

A. Oh, no. That's -- *That has nothing to do with me. I'm the physician who just does the autopsy. So, no, I have -- I did not.*

Id. at p. 127:19 to 127:24 (emphasis added).

Dr. Eisenstat was not randomly selected:

Q. Dr. Eisenstat, I have a few questions for you, sir. Will you please just *tell the jury what your current title is.*

A. *So currently I'm the chief medical examiner for the Georgia Bureau of Investigation.*

Id. at p. 141:8 to 141:12 (emphasis added).

Given his position, his answer to the question on whether other parties to the case should have received notice is interesting:

Q. *My question is very specific. Prior to your autopsies, did you ask the plaintiffs' lawyers who hired you if other parties were notified about the upcoming autopsies?*

MR. PEAK: Objection. Asked and answered. You can answer the question the same way again if you want to.

BY THE WITNESS:

A. Yeah, I mean, I don't have any part in that, so, I mean, I didn't ask them that because *I didn't even think about it.*

Id. at p. 126:11 to 126:21 (emphasis added).

If the shoe were on the other foot, so to speak, he would have wanted notice:

Q. Yeah, I understand you said what your experience has been. My question is, *if an autopsy's going to take place in a*

couple weeks and you're involved in the case, do you want to be there?

MR. PEAK: Objection to the form. Asked and answered. He just answered this same question. You just asked it again. You can reanswer it.

BY THE WITNESS:

A. So basically what I'll say is -- is, *if I'm called and notified that there's an autopsy being done, would you like to be there, I will be there.*

Id. at p. 139:12 to 139:23 (emphasis added).

Both Drs. Eisenstat and Burton were paid handsomely for their services that day:

Q. And *how much did you charge for these autopsies?*

A. So I charge \$4,500 *per exhumation* when I do an exhumation, so the two together equated to \$9,000.

Id. at p. 21:14 to 21:17 (emphasis added).

* * *

Q. And *how much were you being paid an hour to stand there, according to Dr. Eisenstat?*

A. *I had a flat day rate. It was five grand.*

(Exhibit B, June 7, 2016 Deposition Transcript of Joseph Burton, M.D. ("Burton Depo."), p. 111:15 to 111:17).

Given the issues at stake and the amounts they were paid, the choice of equipment to document what took place that day was rather surprising:

Q. Okay. And *did you bring your camera with you?*

A. Yes. Well, I'll -- So what I'll tell you is I've tried a number of cameras and dictation systems over the years, and, *surprisingly, the iPhone is the most--has the best resolution* from what I've done. So I use that for both my dictation and these photographs. And I've tried everything from a really expensive single lens reflex to a digital recorder, and this has always given me the best images.

Q. *You took every one of these photos on an iPhone?*

A. *Yes.*

(Exhibit A, Eisenstat Depo., p. 66:10 to 66:22 (emphasis added)).

There was no “real” protocol for what would take place that day:

Q. Understood. D, *the protocol for the autopsies. Do you have any documents related to that?*

A. *There’s no real written protocol* within the forensic pathology world. There are some standards and suggestions. So there’s really no protocol. I’ve been doing autopsies for at least 12 years – forensic autopsies for 12 years, and I follow the same method each time.

Id. at p. 11:1 to 11:8 (emphasis added).

What actually occurred that day largely resides in the recollections of those who were present:

Q. Did you make any other investigative *notes*?

A. *No.*

Q. Did you make any *worksheets*?

A. *No.*

Q. Did you make any *diagrams*?

A. *No*, there was no need.

Id. at p. 36:7 to 36:12 (emphasis added).

* * *

Q. A few questions about video. Were *any video recordings made*?

A. *No.*

Id. at p. 42:2 to 42:4.

Even Dr. Eisenstat’s dictated notes were later discarded:

Q. How *did you take notes during your autopsy*?

- A. I don't take them during -- well, once I'm in the body. When I'm doing my external examination, *I dictate what I see externally. Then I photo document.* And then what I do is I do my evisceration. So I take out the organs and I do my incisions, etc. And then as I weigh them, I have a little piece of paper that I'm not afraid to get bloody, and I wrote just the weights down. And if there's something that I found of importance on that, when I'm done with the exam, *I dictate the -- everything else that I have written there.* Now, that's a blood piece of paper, and so that gets thrown away, and everything has now been dictated into my dictation system.

Id. at 35:1 to 35:14.

* * *

- Q. Okay. *Where is that audio recording?*

- A. Oh, once I get -- once I get the report back and I make any corrections or additions that I need, *that gets discarded.*

Id. at 36:3 to 36:6 (emphasis added).

Even the emails pertaining to the transcription were discarded:

- A. Well, I -- *I complete my dictations the same day as doing the autopsy. So I sent it to her either that day or the next morning.* I don't recall the date that she had transcribed it and sent it back to me.

- Q. *Did you save those e-mails?*

- A. *No.*

Id. at p. 37:5 to 37:10 (emphasis added).

The few selective photographs and slides that Dr. Eisenstat took and made are really it. And those photographs did not follow any protocol, but were instead taken based upon the "feel" of the autopsies:

- Q. And what -- *how do you decide whether to take a photograph or not?*
- A. *If it has bearing on the overall feel of the case* or if it's a significant enough injury that it caused death or led to the death. So if I have someone who ran through the woods and

got little scrapes on their legs, I wouldn't focus in on every single one of those. But if they fell down and had a skull fracture, I would take a photograph of the skull fracture.

Q. A few questions about video. *Were any video recordings made?*

A. *No.*

Id. at 41:18 to 42:4 (emphasis added).

Dr. Burton did not take notes, pictures or make any record of what occurred:

Q. *I was just asking if you created any record.*

A. *I did not.*

Q. *No photographic record, no written record, no video record?*

A. *Just a mental record.*

Exhibit B, Burton Depo. p. 152:19 to 152:23 (emphasis added).

The value of having a videotape would later become apparent. Dr. Eisenstat could not remember what all he did:

Q. *Did you cut into her cervical spine at all?*

A. *I believe I did.* Let me take a look. It looks like I didn't state it as I did in his. But if I -- I documented in the report that the underlying brainstem and spinal cord are markedly liquified. I have to be honest. *I don't -- I didn't -- I didn't write down that I removed her spine. So I -- I'm embarrassed to say I don't remember* if I completely removed it and removed the spinal -- the cervical spine or not.

Exhibit A, Eisenstat Depo. pp. 88:21 to 89:5 (emphasis added).

The two medical doctors in attendance gave vastly different reports of their roles and what they did. According to Dr. Eisenstat, Dr. Burton stood quietly in the corner:

Q. Okay. *What was Dr. Burton's role during this -- during these autopsies?*

A. I was just told he was going to be there, and *he stood in the*

back and had no -- no role in actually doing the case. He had no input and no statements or guidance or anything. He essentially just sort of stood here.

Id. at 56:9 to 56:15 (emphasis added).

Dr. Burton, however, remembers the events of that day differently:

- Q. Now, Dr. Burton, I don't think this is hard. Take into account whatever the autopsy photographs showed and the autopsy report and everything else. I'm simply asking, once the autopsy's done, tell me why you're able to definitely state that Mr. Hill died of head and neck injuries. That's all.
- A. Because *I personally observed his spinal cord* from about C6 all the way to C2 and C1. *I touched the spinal cord after the doctor removed it. I could feel a soft area.*

Exhibit B, Burton Depo. p. 47:24 to 48:8.

* * *

- Q. -- bruise, *did you physically touch this yourself?*
- A. *Yes.*
- Q. Okay. And the rest of the cervical spine, *you physically laid hands on it?*
- A. What I did is -- if I could find that picture you had.
- Q. I think it's right here. And you're talking about 11.
- A. *I take my finger, run it down the front of it like I'm doing now. When I got to this area, I could feel like a dimple, very slight, but I could feel it.*
- Q. *That's nothing that we can see in the photographs.*
- A. *No, sir.*
- Q. That's just something that if you were there --
- A. You --
- Q. -- and you could have the opportunity, *you could feel it.*
- A. *Right.*

Q. *Which I guess that'd only be you and Dr. Eisenstat that would be able to verify that; right?*

A. *I guess so.*

Q. I mean, it was cut out.

A. No, it was not cut out. A section was taken of it. If I cut it out, I'd have to kind of cut from here to here. What was cut was a tiny little like 2 or 3 millimeter piece of the cord at that area.

Q. In -- *Where you felt the indentation?*

A. *Yes.*

Id. at pp. 151:6 to 152:11 (emphasis added).

Notably, as the above exchange reflects, a number of material autopsy findings were made that will not be reflected in any picture:

A. ...But at the same time when I was in -- when we take the brain out and we look at the base of the skull, one of the things we do -- and *I know this sounds odd -- but I will put my finger inside the opening, which is the foramen magnum. It's the opening from the skull down to the spine. And I will sort of move it around like this.*

If I move it around and there's no compression of my finger, it means that it's intact, and that's how it should be. *If I move it around and it pinches my finger or the skull comes backwards, then I know that there has been a disarticulation or a dislocation of the atlanto-occipital joint.* And that's the skull going to the first vertebra. At that time I'm looking in to see if I see blood in the brainstem or the upper cervical spinal cord. *I'm feeling at the same time.*

Exhibit A, Eisenstat Depo. pp. 90:2 to 90:17 (emphasis added).

* * *

A. ...So after I felt that abnormality and then I looked at the back of her neck and saw the hemorrhage, *I don't document that I unroof the spinal cord -- excuse me -- unroofed the spine.*

So I probably -- *As I was feeling down, the hemorrhage was*

down lower on her. I probably did not remove her spine to look at her cervical spinal cord. I did dissect down to it and feel and look, but I didn't remove it.

Id. at 91:7 to 91:16 (emphasis added).

* * *

Q. *Did you document with photographs the injury to the -- the A-O injury?*

A. *You can't because it's one of those things that you sort of move around and you feel. Now, if it was something where there was -- there was a fracture or the A-O dislocation caused the spinal -- the spine itself to pop into the skull, which is rare but could happen, then I would have photo documented that. But you can't -- you can't document by photograph a standard A-O dislocation.*

Id. at 92:1 to 92:10 (emphasis added).

* * *

Q. On page 6 you note on Mrs. Hill as well that the vertebrae are without fracture, and *tell us how you came to that conclusion.*

A. *By looking and feeling them.*

Id. at 93:24 to 94:2 (emphasis added).

Important aspects such as bruising cannot be adequately documented:

Q. I believe you said that *the bruising that you found on the spinal cord you actually documented that with photos?*

A. *Well, you can't document the bruise because it's -- it's just a softening. But then what I did is I took -- what I did document with photos was the bleeding around the spinal cord and the bleeding in the soft tissues. But it's a palpable thing.*

Id. at 82:12 to 82:19 (emphasis added).

One of the more odd things that occurred was the decision to not take x-rays of the bodies:

Q. *And were any x-rays created as a result of these autopsies?*

A. *No, there was none needed.*

Q. And why were there none needed?

A. Because an x-ray can't supplant an actual autopsy, and I did an actual autopsy. And autopsy, the definition itself means to see for oneself. So I visualized the injuries that were there. So this -- Doing an -- excuse me. Doing x-rays on a case that is a motor vehicle accident case, *that's not part of any protocol that I know of or standard that I know of.*

Id. at 45:20 to 46:5 (emphasis added).

Visualization by Dr. Eisenstat was, according to him, sufficient:

Q. Understood. Do you agree that Mr. Hill could have had a fracture in his cervical spine that you did not see?

MR. PEAK: Objection to the form. Vague.

BY THE WITNESS:

A. *I would say that he didn't have a fracture in his cervical spine because I looked at his cervical spine.*

Id. at 51:7 to 51:14 (emphasis added).

When the autopsies were complete, Dr. Eisenstat reported the following findings in his reports:

This 74 year old man, Melvin Hill, died of blunt impact he sustained to his neck, torso and extremities. The most significant of these injuries included a contusion of his C2 spinal cord, with surrounding epidural hemorrhage, as well as multiple fractures of his left sided ribs. The cervical spinal cord injury would be lethal and the rib fractures painful and possibly lethal if medical intervention was not sought quickly. The manner of his death in this situation is accident.

This 62 year old woman, Voncile Hill, died of blunt impact injuries to her head, neck, torso, and extremities. The most significant of these injuries consisted of a disarticulation of her atlanto-occipital joint, essentially separating the neck from the head. This would result in an immediate death. Contributing injuries included multiple fractures of her sternum, right clavicle, and ribs. The fracture of the right clavicle and sternum is

consistent with a right sided passenger seatbelt injury. The manner of death in this situation is accident.

Exhibit C, Autopsy Reports for Mr. and Mrs. Hill.

IV. THE CIRCUMSTANCES OF THE AUTOPSY EVIDENCE BEAR DIRECTLY ON THE EXPERT WITNESS TESTIMONY ON CAUSE OF DEATH

Dr. Nightingale, Ford's expert in injury biomechanics, has explained that while his initial thoughts were that the Hills' injuries were unusual in a typical rollover accident, he "was struck that there was not a lot of information [in Dr. Eisenstat's autopsy report] that would help us determine the mechanism" of the Hills' deaths. See June 7, 2017 Deposition Transcript of Roger Nightingale at pp. 53:13–59:24. He explained that it was difficult to verify Dr. Burton and Dr. Eisenstat's findings:

A: I needed a more detailed dissection of the cervical spine right down to the ligament level to see which ligaments were torn, if any. It would have been nice to have photographs of Mrs. Hill's cervical spine, which we didn't have any of. The photographs we had of Mr. Hill's were limited. So it was -- it was really hard to determine from the photographs whether or not we agreed or disagreed with Dr. Burton and Mr. Eisenstat's findings.

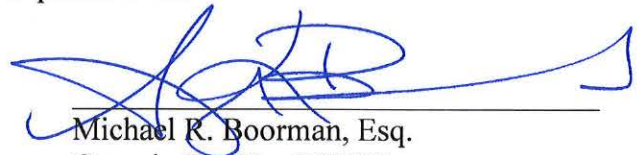
Id. at pp. 59:25–60:10.

Plaintiffs' suggestion that Ford could have re-exhumed the Hills' bodies and then re-autopsied them, more than a year later, is meritless. That would not have cured the prejudice Ford faces, as the bodies would have been in an even more advanced state of decomposition from being exposed to oxygen during the first autopsy and also from the sheer passage of time. Id. at p. 61:15–19. Regardless, the bodies had already been irreparably altered during Plaintiffs' private autopsy—especially the Hills' cervical spines, on which Plaintiffs experts performed a complete dissection. Id. at pp. 61:5–61:19. There is no question that Ford does not have equal footing with regard to the most crucial physical evidence in this case.

There are no x-rays of the Hills' bodies. Ford's experts were not present at the autopsy and the autopsy was insufficiently performed and documented. *Id.* at p. 166:3–17. Ford's experts are thus forced to rely on Eisenstat's autopsy report (consisting of self-selected photographs and self-serving "objective" findings) because it is the only data that exists about the signs of injury. *Id.* at p. 157:17–158:11. Plaintiffs should not further benefit from this advantage by misleading the jury and shielding them from the full story concerning the most crucial biomechanical evidence in this case.

The jury must know what happened so that it can sufficiently examine the credibility of the Hills' experts' testimony. The jury is entitled to know *why* only the Hills conducted the autopsy and had superior access to the physical evidence. The jury is entitled to know *why* Ford's experts are limited to the insufficient autopsy report. The jury is entitled to know *why* certain things were done and certain things were not done during the autopsies, and that Ford was not given an opportunity to be present. The jury is entitled to know *why* the past cannot be remedied or changed—because Plaintiffs dissected and then literally buried the evidence. For these reasons, Plaintiffs' Motion *In Limine* to prevent the full story about the Hills' exhumations and autopsies should be denied.

Respectfully submitted this 22nd day of September 2017.

A handwritten signature in blue ink, appearing to read "Michael R. Boorman", is written over a horizontal line.

Michael R. Boorman, Esq.
Georgia Bar No. 067798
Audrey K. Berland, Esq.
Georgia Bar No. 591485
HUFF, POWELL & BAILEY, LLC
999 Peachtree Street, N.E., Ste. 950
Atlanta, Georgia 30309
Telephone: (404) 892-4022
Facsimile: (404) 892-4033
mboorman@huffpowellbailey.com
aberland@huffpowellbailey.com

Paul F. Malek, Esq.
Admitted Pro Hac Vice
D. Alan Thomas, Esq.
Admitted Pro Hac Vice
HUIE, FERNAMBUCQ & STEWART, LLP
2801 Highway 280 South, Ste. 200
Birmingham, Alabama 35223-2484

Michael W. Eady, Esq.
Admitted Pro Hac Vice
THOMPSON COE COUSINS & IRONS
701 Brazos, Suite 1500
Austin, Texas 78701

J. Randolph Evans, Esq.
Georgia Bar No. 252336
DENTONS
303 Peachtree Street NE
Suite 5300
Atlanta, Georgia 30308
Telephone: (404) 527-8330
Facsimile: (404) 527-4198
randy.evans@dentons.com

***Attorneys for Defendant
Ford Motor Company***

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the within and foregoing upon counsel of record via U.S. Mail, postage pre-paid as follows:

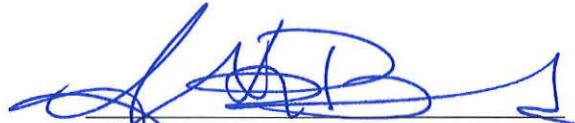
James E. Butler, Jr., Esq.
Brandon L. Peak, Esq.
David T. Rohwedder, Esq.
Chris B. McDaniel, Esq.
BUTLER WOOTEN & PEAK, LLP
105 13th Street
Post Office Box 2766
Columbus, Georgia 31902

Michael G. Gray, Esq.
WALKER, HULBERT, GRAY & MOORE, LLP
909 Ball Street
P.O. Box 1770
Perry, Georgia 31069

Gerald Davidson, Jr.
MAHAFFEY PICKENS TUCKER, LLP
1550 North Brown Road
Suite 125
Lawrenceville, Georgia 30043

John E. Hall, Jr., Esq.
Walter J. Bibbins, Jr., Esq.
R. David Ware, Esq.
HALL BOOTH SMITH, P.C.
191 Peachtree Street
Suite 2900
Atlanta, Georgia 30303

This 22nd day of September, 2017.


Michael R. Boorman, Esq.
Audrey K. Berland, Esq.