

The Importance of Autopsies in Drug Delivery Resulting in Death Cases: Assessing the Uncertainty of Fentanyl Intoxication through the Lens of Commonwealth v. Sisco

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Abstract

On August 17, 2021, Bernard Sisco was arrested in Philadelphia County for drug delivery, resulting in death, possession with intent to deliver narcotics, and related charges.¹ The allegations were that Mr. Sisco sold narcotics laced with Fentanyl to the decedent.² The decedent was never autopsied, yet the assigned medical examiner, Dr. Julia De La Garza,³ concluded that he died from a Fentanyl overdose, testifying at trial that the quantity of Fentanyl in the decedent *was fatal in all circumstances*. Under § 2506, a person commits “drug delivery resulting in death if s/he intentionally administers, dispenses, delivers, gives, prescribes, sells or distributes any controlled substance or counterfeit controlled substance ... and another person dies as a result of using the substance.” There are two elements to § 2506 that must be proven beyond a reasonable doubt: 1) that the Defendant sold/provided drugs to the decedent; and 2) that the decedent died *as a result of ingesting those drugs*.⁴ Defendant’s forensic pathologist⁵ testified that, first, without an autopsy, there was no way to determine what caused the decedent’s death, and second, the amount of Fentanyl in his system was not necessarily lethal. Mr. Sisco’s verdict of not guilty to the homicide charge underscores the importance of autopsies in *all* suspicious deaths, but, more importantly, brings to light general misconceptions of Fentanyl toxicology and the disjuncture between medical examiner reports and the scientific literature that should guide their interpretations.

¹CP-51-CR-7737-2021 (MC-51-CR-15440-2021). Dr. Yacoubian was court-appointed counsel and represented the Defendant throughout all trial proceedings.

²Mr. Neil Boris.

³Dr. de la Garza resigned from the Philadelphia Office of the Medical Examiner shortly after this trial.

⁴See, e.g., *Commonwealth v. Burton*, 234 A.3d 824 (2019).

⁵Dr. Lindsey Thomas was retained by the defense as an expert pathologist.

Keywords

Autopsy, Drug Delivery Resulting in Death, Fentanyl Intoxication, Forensic, Drug-Related Homicide

1. Introduction

On August 17, 2021, Bernard Sisco was arrested in Philadelphia County for drug delivery resulting in death,⁶ possession with intent to deliver narcotics (PWID),⁷ criminal use of a communication facility,⁸ and drug possession.⁹ Under Pennsylvania law, drug delivery resulting in death is a first-degree felony homicide. While there is no mandatory minimum punishment for this offense, it carries a maximum penalty of twenty to forty years' incarceration.¹⁰ Criminal use of a communication facility is a third-degree felony, carrying a standard, maximum punishment of 3.5 - 7 years' incarceration.¹¹ Under Pennsylvania law, penalties for drug crimes, including PWID and simple possession, vary based on a variety of factors, including substance, weight, and previous convictions for drug-related offenses. Under § 2506,¹² a person commits "drug delivery resulting in death if s/he intentionally administers, dispenses, delivers, gives, prescribes, sells or distributes any controlled substance or counterfeit controlled substance ... and another person dies as a result of using the substance." There are two elements to § 2506 the Commonwealth must prove beyond a reasonable doubt: 1) that the Defendant sold/provided drugs to the decedent; and 2) that the decedent died because of ingesting those drugs.¹³ The applicable *mens rea* for § 2506 is two-fold. First, the delivery, distribution or sale of the contraband must be intentional.¹⁴ Second, the actual death must be the reckless result of the actions of the defendant.¹⁵ As such, the crime is an intentional act in providing contraband, with a reckless disregard of death from the use of the contraband.

Decedent, Neil Boris, died on 9/21/20.¹⁶ The Final Report from the Philadelphia Office of the Medical Examiner, authored by associate medical examiner Dr. Julia de la Garza Jordan, indicated five final diagnoses for the decedent: substance use disorder; diabetes mellitus; cardiovascular disease, including recent stroke; obesity; and early putrefactive decomposition.¹⁷ No autopsy was performed,¹⁸ so we

⁶Pennsylvania Crimes Code, 18 Pa. C.S. § 2506, Drug Delivery Resulting in Death.

⁷Pennsylvania Crimes Code, 18 Pa. C.S. § 1330, Possession with Intent to Deliver (PWID).

⁸Pennsylvania Crimes Code, 18 Pa. C.S. § 7512, Criminal Use of a Communication Facility.

⁹Pennsylvania Crimes Code, 18 Pa. C.S. § 1316, Drug Possession.

¹⁰*Supra* note 7, at § 2506(b)(1).

¹¹101 Pa. Code § 15.66(a)(4).

¹²*Supra* note 7, at § 2506(a).

¹³*Supra* note 5; *Commonwealth v. Kakhankham*, 132 A.3d 986, 991 - 92 (2015).

¹⁴*Id.*

¹⁵*Id.* at 995.

¹⁶*Supra* note 2, NOT 6/21/23.

¹⁷*Id.*

¹⁸*Id.*, NOT 6/21/23, p. 121, line 17 through p. 123, line 5.

believed the Commonwealth could not determine, to any degree of medical certainty, what caused the decedent's death (Nashelsky & Lawrence, 2003). Pursuant to a defense petition, the Court allocated funds for a forensic pathologist to review discovery and the decedent's medical records. Dr. Thomas's two primary conclusions were that, first, without an autopsy, there was no way to determine what caused Mr. Boris' death, and second, the amount of Fentanyl in his system was not necessarily lethal,¹⁹ as Dr. De La Garza ultimately testified.²⁰ Mr. Sisco was acquitted of the homicide charge and convicted of PWID and criminal use of a communication facility. This verdict of not guilty to the homicide charge underscores the importance of autopsy in all suspicious deaths, but, more importantly, brings to light general misconceptions of Fentanyl toxicology and the disjuncture between medical examiner reports and the scientific literature that should guide expert conclusions and interpretations from the Philadelphia Office of the Medical Examiner.

2. Autopsies and Forensic Toxicology

Founded in 1966, the National Association of Medical Examiners (NAME) (2019) is the "premier professional organization for medical examiners, forensic pathologists, and medicolegal affiliates and administrators" (thename.org). Comprised of physician medical examiners, investigators, and death investigation system administrators, NAME fosters the professional growth of physician death investigators and disseminates "professional and technical information vital to the continuing improvement of the medical investigation of violent, suspicious and unusual deaths" (<https://pathologytraining.org/societies/national-association-of-medical-examiners/>). Since its creation nearly six decades ago, NAME has provided "leadership and advocacy for best practices and excellence in forensic pathology and death investigation"; developed and promulgated "forensic autopsy standards"; offered "accreditation of medicolegal death investigation systems in the United States and internationally"; provided "education to its members and stakeholders"; and "promoted research and advanced knowledge" (thename.org). NAME is the "foremost authority promoting the highest quality forensic pathology practice and medicolegal death investigation in the world" (thename.org).

NAME has a rigorous Accreditation Program whose purpose is to improve "the quality of the medicolegal investigation of death in this country" (<https://www.thename.org/inspection-accreditation>). NAME accredits specific medical examiner officers, not individual pathologists. The standards "emphasize policies and procedures, not professional work product," and "represent minimum standards for an adequate medicolegal system, not guidelines" (<https://www.thename.org/inspection-accreditation>). NAME accreditation is "an endorsement indicating that the office or system provides an adequate environment for a medical examiner in which to practice his or her profession and provides reasonable assurances that the office or system well serves its jurisdiction"

¹⁹ *Supra* note 2, NOT 9/22/23.

²⁰ *Supra* note 2, NOT 6/21/23.

(<https://www.thename.org/inspection-accreditation>). The Accreditation Program is intended to help medical examiner offices around the country maintain a “high caliber of medicolegal investigation of death for the communities and jurisdictions in which they operate” (<https://www.thename.org/inspection-accreditation>). At the time of the decedent’s death, and through trial, the Philadelphia Office of the Medical Examiner was *not* NAME-accredited.

To standardize forensic practices involving illicit drugs, NAME “convened an expert panel” that yielded six conclusions/recommendations for the investigation, diagnosis, and certification of deaths related to opioids and other drugs (NAME Expert Panel on Evaluating and Reporting Opioid and Other Drug Deaths, 2019). The most salient conclusion was that autopsy “provides the best information about a decedent’s medical condition for optimal interpretation of toxicology results, circumstances surrounding death, medical history, and scene findings” (NAME Expert Panel, p. 3). Autopsy, the panel concluded, was “essential” to investigating overdose deaths and “provides the most accurate means of determining the cause of death” (NAME Expert Panel, p. 4). This conclusion is grounded in more than a century of research illustrating that autopsy provides the most accurate data to determine the factors that caused or contributed to death (Sarode et al., 1993; Cabot, 1912). In addition to autopsy, the NAME panel recommends “toxicological analyses to identify and quantify controlled and illicit substances” when the decedent has a “known history of prescription drug or illicit drug use” and “when there is “evidence of opioid or illicit drug or substance use revealed by scene investigation” (NAME, p. 7). NAME presumes, and common-sense dictates, however, that when expert pathologists conduct toxicological analyses, they have the requisite training and skill to interpret those results.

The importance of autopsy is supported by a plethora of scholarly forensic literature going back several decades. Nashelsky and Lawrence (2003: p. 315), for example, examined case files from the Department of Forensic Medicine in Sydney, Australia, and “retrospectively reviewed investigative information of all cases in a 6-month period that were initially considered natural deaths.” The authors accepted 261 cases as “appropriate for certification without autopsy” and assigned a cause of death to each (Nashelsky & Lawrence, 20013: p. 315). The actual causes of death, as determined by autopsy, were then compared with the presumed causes of death. The presumed cause of death was wrong in 35% of the cases (Nashelsky & Lawrence, 20013: p. 3158), which emphasizes the importance of autopsies in all suspicious deaths. Using 2005 data from the Norwegian Cause of Death Register, Alfsen and Maehlen (2012) ascertained from death certificates the underlying cause of death for which a medical autopsy was performed. They then investigated whether the underlying cause of death was changed when we took account of the autopsy findings. Autopsy findings led to changes in the underlying cause of death in 1077 (61%) of the cases (Alfsen & Maehlen, 2012: p. 151).

Fentanyl

Fentanyl, a Schedule II controlled substance, is a synthetic opioid approved by

the Food and Drug Administration (FDA) for use as an analgesic (pain relief) and anesthetic. It is 100 times more potent than morphine and 50 times more potent than heroin. Under the supervision of licensed medical professionals, fentanyl has legitimate medical use. Illicit fentanyl, primarily manufactured in foreign clandestine labs and smuggled into the United States, is being sold across the country on the illegal drug market. Fentanyl is often mixed with other illicit drugs to enhance potency, sold as powders and nasal sprays, and increasingly pressed into pills made to look like legitimate prescription opioids. Like other opioids, the effects of fentanyl include relaxation, euphoria, pain relief, sedation, and drowsiness. Because of its potency and low cost, drug dealers mix fentanyl with other drugs, including heroin, methamphetamine, and cocaine, which then increases the likelihood of fatality. According to the Centers for Disease Control (CDC), synthetic opioids, like fentanyl, are the primary driver of overdose deaths in the United States. Fentanyl deaths tripled between 2016 and 2021.²¹

3. Commonwealth v. Sisco

We elected a waiver trial because of specific legal issues that required particularized attention. The Defendant's bench trial began on May 17, 2023, before the Honorable Barbara McDermott. The relevant testimony was as follows. Police Officer Gabrielle Swart testified that she and her partner arrested the Defendant on the 1200 block of North 59th Street in Philadelphia, pursuant to an outstanding warrant.²² The defense elicited from Officer Swart that the Defendant stopped immediately upon request from the police,²³ that he was cooperative,²⁴ that the name he provided for himself was accurate,²⁵ that he never attempted to leave the scene after being stopped by the police,²⁶ and that he had no drugs or drug paraphernalia on this person when searched by the police.²⁷ The trial was then continued to June 21, 2023.

On June 21, 2023, the Commonwealth called the decedent's uncle, Neil Boris,²⁸ who provided general background information about the decedent, including his age at the time of death (36) and details of significant health problems, including multiple strokes.²⁹ On direct examination, Mr. Boris testified that, after not hearing from the decedent for several days, he went to his apartment at 3901 Conshohocken Avenue, entered the apartment by force, and found the decedent on the bed.³⁰ Mr. Boris testified that after calling the police and medics, he took the

²¹<https://blogs.cdc.gov/nchs/2023/05/03/7338/> (accessed February 12, 2024).

²²NOT 5/17/23, p. 19, line 23, through p. 20, line 10.

²³NOT 5/17/23, p. 23, lines 2 - 8.

²⁴NOT 5/17/23, p. 23, lines 9 - 12.

²⁵NOT 5/17/23, p. 23, lines 13 - 15.

²⁶NOT 5/17/23, p. 23, lines 16 - 19.

²⁷NOT 5/17/23, p. 23, lines 20 - 23.

²⁸NOT 6/21/23, p. 8, lines 15 - 17.

²⁹NOT 6/21/23, p. 9, line 7 through p. 10, line 3.

³⁰NOT 6/21/23, p. 13, line through p. 14, line 9.

decedent's phone,³¹ but otherwise left the apartment undisturbed.³² Mr. Boris testified that three days later he gave this phone, which was not operable at the time, to a friend of the decedent.³³ Mr. Boris then authenticated several text messages he had exchanged with the decedent in the days leading up to the decedent's death.³⁴ On cross-examination, Mr. Boris testified about the debilitating effects of multiple strokes his nephew had suffered, the decedent's length time in rehabilitation, and his other serious medical conditions, including drug addiction.³⁵ Mr. Boris testified that he saw no drugs or drug paraphernalia in the apartment,³⁶ which would be atypical for someone who died in his bed after overdosing from illicit drugs.

The Commonwealth called the decedent's friend, Zachary Wischnia, to confirm that he had been given the decedent's phone by Mr. Boris.³⁷ Mr. Wischnia powered up the phone, accessed the contents, read messages from "BISEME," took photographs of the messages, and subsequently turned over those messages and the phone to the police.³⁸ The communications between "BISEME" and the decedent were about illicit drugs.³⁹ In addition, Mr. Wischnia accessed the decedent's Uber ride history and appreciated several trips from his Conshohocken Avenue address to West Philadelphia,⁴⁰ during which time there were several text message exchanges between the decedent and "BISEME" about the procurement of illicit drugs.⁴¹ On cross-examination, Mr. Wischnia testified to a variety of serious health problems suffered by the decedent, including an addiction to heroin.⁴² Mr. Wischnia further testified that although the Uber records indicated multiple trips between the decedent's home address and West Philadelphia, there were blocks of time *between* trips that could not be explained.⁴³

The Commonwealth then called Matthew Gremo, an investigative analyst with the Philadelphia office of the District Attorney, who performed an extraction of data from the phone of the decedent.⁴⁴ The data were a combination of incoming and outgoing calls and instant messages on September 18, 2020, between the decedent and "BISEME" regarding the procurement of illicit drugs.⁴⁵

Detective Christopher Godfrey then testified to receiving the decedent's phone

³¹NOT 6/21/23, p. 15, lines 11 - 15.

³²NOT 6/21/23, p. 33, lines 13 - 20.

³³NOT 6/21/23, p. 16, lines 12 - 20.

³⁴NOT 6/21/23, p. 17, line 17 through p. 18, line 7.

³⁵NOT 6/21/23, p. 20, line 13 through p. 27, line 19.

³⁶NOT 6/21/23, p. 33, line 24 through p. 34, line 16.

³⁷NOT 6/21/23, p. 45, lines 18 - 22.

³⁸NOT 6/21/23, p. 46, line 13 through p. 49, line 10.

³⁹NOT 6/21/23, p. 49, lines 18 - 19.

⁴⁰NOT 6/21/23, p. 50, line 17 through p. 51, line 3.

⁴¹NOT 6/21/23, p. 51, line 15 through p. 54, line 9.

⁴²NOT 6/21/23, p. 57, line 6 through p. 58, line 13.

⁴³NOT 6/21/23, p. 63, lines 9 - 25.

⁴⁴NOT 6/21/23, p. 67, line 8 - 10.

⁴⁵NOT 6/21/23, p. 68, line 23 through p. 76, line 19.

from Mr. Wischnia on October 4, 2020.⁴⁶ Detective Godfrey served a search warrant on T-Mobile to determine the owner of the cell number with whom the decedent had been communicating about drugs, and that cell number was associated to the Defendant.⁴⁷ The Detective ascertained that Mr. Sisco's address was 4110 Cambria Street in Philadelphia and executed a search warrant at that address.⁴⁸ The Defendant was arrested and taken to Southwest Detectives, where he was Mirandized⁴⁹ and questioned by Christopher Godfrey.⁵⁰ He identified himself as "BISEME"⁵¹ and acknowledged that the number attributed to "BISEME" was his.⁵² During cross-examination, Detective Godfrey reviewed the references to drugs in the text messages exchanged between the decedent and the Defendant and agreed that Fentanyl (i.e., "Fetty") was referenced only one time throughout all of the communications between the decedent and Mr. Sisco.⁵³ He further testified that no illicit drugs were found at the Defendant's home when the search warrant was executed,⁵⁴ and that, with the exception of baggies, no items related to drug sales were seized at the Defendant's home, including scales, cash, or firearms.⁵⁵ Lastly, Detective Godfrey testified that he never subpoenaed Uber to obtain the decedent's travel records,⁵⁶ never accessed the Uber application on the decedent's phone personally,⁵⁷ never tracked the decedent's phone through cell tower data,⁵⁸ and never attempted to obtain any video of the decedent leaving his home and September 18, 2020, or purchasing drugs.⁵⁹

Dr. Julia de la Garza was qualified as an expert in forensic pathology.⁶⁰ Her education and experience purportedly included academic training at Columbia University,⁶¹ medical school at St. George's University,⁶² residency at Mount Sinai Medical Center (New York City, NY) and Jackson Memorial (Miami, FL),⁶³ approximately five years as a medical examiner in New York City between 2006 and 2011),⁶⁴ and three other medical examiner positions between 2011 and 2019.⁶⁵ At

⁴⁶NOT 6/21/23, p. 86, lines 10 - 20.

⁴⁷NOT 6/21/23, p. 89, line 4 through p. 93, line 1.

⁴⁸NOT 6/21/23, p. 93, line 9 through p. 94, line 17.

⁴⁹NOT 6/21/23, p. 95, lines 23 - 25. A Motion to Suppress the Defendant's statement had been previously litigated and denied.

⁵⁰NOT 6/21/23, p. 94, line 18, through p. 95, line 9.

⁵¹NOT 6/21/23, p. 95, lines 17 - 19.

⁵²NOT 6/21/23, p. 96, lines 20 - 23.

⁵³NOT 6/21/23, p. 100, lines 5 - 14.

⁵⁴NOT 6/21/23, p. 105, lines 8 - 11.

⁵⁵NOT 6/21/23, p. 106, lines 2 - 9.

⁵⁶NOT 6/21/23, p. 107, lines 13 - 18.

⁵⁷NOT 6/21/23, p. 107, lines 19 - 21.

⁵⁸NOT 6/21/23, p. 108, line 24 through p. 109, line 4.

⁵⁹NOT 6/21/23, p. 109, lines 5 - 14.

⁶⁰NOT 6/21/23, p. 117, lines 17 - 21.

⁶¹NOT 6/21/23, p. 112, lines 14 - 15.

⁶²NOT 6/21/23, p. 112, lines 18 - 19.

⁶³NOT 6/21/23, p. 112, lines 19 - 23.

⁶⁴NOT 6/21/23, p. 113, lines 3 - 4.

⁶⁵NOT 6/21/23, p. 113, lines 7 - 13.

the time of this trial, she had been a medical examiner with the Philadelphia Office of the Medical Examiner for approximately four years.⁶⁶ During cross-examination on *voir dire*, Dr. de la Garza testified that she was required to do continuing medical education through NAME.⁶⁷ When asked whether she was “fully compliant with whatever requirements you have,” Dr. de la Garza testified, “I think so.”⁶⁸ When asked to clarify her “I think so” response, her response was, “I hope so.”⁶⁹ She ultimately testified that, at the time of her trial testimony and in September 2020 when she conducted the autopsy in the instant case, she was fully compliant.⁷⁰

Dr. de la Garza did not conduct an autopsy on the decedent, but rather completed an “external examination” only.⁷¹ She testified that the immediate cause of death was “drug intoxication: cocaine, fentanyl, and heroin.”⁷² Drawing from the decedent’s toxicology report, Dr. de la Garza testified that the decedent has cocaine, heroin, and Fentanyl in his system at the time of his death.⁷³ On direct examination, she testified that a lethal amount of Fentanyl in the human body is 3 micrograms per liter, and the decedent had 29 micrograms per liter of Fentanyl at the time of his death.⁷⁴ She specifically cited Baselt,⁷⁵ the leading toxicology reference book, as indicating that any level of Fentanyl above 3 micrograms per liter was lethal.⁷⁶ When asked why an autopsy was not conducted on the decedent, Dr. de la Garza attributed the decision to being in the height of the COVID-19 pandemic, being overworked at the Philadelphia Office of the Medical Examiner, the Defendant’s poly-substance use history,⁷⁷ and the fact that the decedent’s Fentanyl level was 10 times as high as a lethal limit.⁷⁸ Lastly, on direct examination, Dr. de la Garza was asked whether someone who could survive the amount of Fentanyl found in the decedent’s system, and her response was “No.”⁷⁹

Dr. de la Garza’s testimony under direct examination by the Commonwealth was mercilessly shredded on cross-examination. On cross-examination, Dr. De la Garza acknowledged that NAME is the premier professional organization for medical examiners and forensic pathologists in the United States.⁸⁰ When asked whether she was a member of NAME, her response was that she could be, but was not “because the application process is onerous” and she “has a very busy sched-

⁶⁶NOT 6/21/23, p. 112, lines 5 - 6.

⁶⁷NOT 6/21/23, p. 115, lines 12 - 18.

⁶⁸NOT 6/21/23, p. 117, lines 3 - 6.

⁶⁹NOT 6/21/23, p. 117, lines 7 - 8.

⁷⁰NOT 6/21/23, p. 117, lines 9 - 16.

⁷¹NOT 6/21/23, p. 117, lines 5 - 9 and 15 - 17.

⁷²NOT 6/21/23, p. 119, lines 10 - 14.

⁷³NOT 6/21/23, p. 119, line 18 through p. 120, line 6.

⁷⁴NOT 6/21/23, p. 120, lines 21 - 25.

⁷⁵NOT 6/21/23, p. 121, lines 1 - 2.

⁷⁶NOT 6/21/23, p. 121, lines 3 - 5.

⁷⁷NOT 6/21/23, p. 121, line 2 through p. 123, line 5.

⁷⁸NOT 6/21/23, p. 125, lines 5 - 7.

⁷⁹NOT 6/21/23, p. 130, lines 17 - 23.

⁸⁰NOT 6/21/23, p. 132, lines 2 - 11.

ule.”⁸¹ Despite not being a member of name, Dr. de la Garza testified that she has full access to all of their resource materials.⁸² She testified that the Philadelphia Office of the Medical Examiner was not accredited by NAME at the time she arrived to the office, was not accredited at the time of Mr. Boris’ external examination, and had not achieved accreditation as of September 2020.⁸³ As of this writing, the Philadelphia Office of the Medical Examiner is still not accredited by NAME.⁸⁴ This lack of adherence to accreditation, taken collectively with Dr. de la Garza’s misinformed testimony and inability to grasp basic toxicological literature, suggests that this “expert” testimony was not grounded in medical expertise.

Dr. de la Garza was then questioned about the Forensic Autopsy Performance Standards published by NAME. Section B of the Standards “establishes minimum standards for the selection of cases requiring forensic autopsy, who should perform the autopsies, need for special dissection or testing, and who is responsible for interpretations and formation of opinions.”⁸⁵ The Standards indicate that there are specific types of circumstances in which a forensic autopsy provides the best opportunity for a competent investigation, including those needing identification of the deceased and cases involving bodies in water, charred or skeletonized body, intoxicants or poisonings, electrocutions and fatal workplace injuries.⁸⁶ Dr. de la Garza agreed that the NAME Standards provide guidance to medical examiners for *when* to conduct autopsies⁸⁷ and that, according to those Standards, an autopsy should have been conducted in a death like the decedent’s.⁸⁸ When pressed about the decedent’s long medical issues, she testified that, in addition to drug overdose, it was possible that Mr. Boris died from complications related to his stroke and or diabetes and or unspecified heart problems.⁸⁹ Moreover, Dr. de la Garza testified that the decedent’s history of stroke, which included a stroke in August 2020,⁹⁰ could have been fatal,⁹¹ that his hyperthyroidism could have been fatal,⁹² that his coronary arteriosclerosis could have been fatal,⁹³ that his diabetes could have been fatal,⁹⁴ that his obesity could have been fatal,⁹⁵ and that his smoking could have been fatal.⁹⁶ Given the significant and varying health problems Mr. Boris suffered

⁸¹NOT 6/21/23, p. 132, lines 15 - 23.

⁸²NOT 6/21/23, p. 133, line 24, through p. 134, line 4.

⁸³NOT 6/21/23, p. 137, lines 4 - 7.

⁸⁴See https://www.thename.org/index.php?option=com_mcdirectorysearch&view=search&id=12295#/ (accessed May 5, 2024).

⁸⁵See <https://www.thename.org/assets/docs/2016%20NAME%20Forensic%20Autopsy%20Standards%209-25-2020.pdf> (accessed May 5, 2024).

⁸⁶*Id.* at p. 9.

⁸⁷NOT 6/21/23, p. 148, lines 12 - 17.

⁸⁸NOT 6/21/23, p. 159, lines 2 - 7.

⁸⁹NOT 6/21/23, p. 182, lines 17 - 22.

⁹⁰NOT 6/21/23, p. 205, lines 1 - 8.

⁹¹NOT 6/21/23, p. 189, lines 18 - 21.

⁹²NOT 6/21/23, p. 196, lines 11 - 15.

⁹³NOT 6/21/23, p. 196, line 25 through p. 197, line 1.

⁹⁴NOT 6/21/23, p. 197, lines 16 - 22.

⁹⁵NOT 6/21/23, p. 199, lines 2 - 7.

⁹⁶NOT 6/21/23, p. 200, lines 7 - 11.

from, there was no way to conclude what caused his death *without* an autopsy, which is why the NAME standards required one in these circumstances. Lastly, Dr. de la Garza insisted that 29 micrograms of Fentanyl was lethal in all situations,⁹⁷ and that according to Baselt (1978), any ingestion of Fentanyl greater than three micrograms is lethal.⁹⁸ Her conclusions were grossly erroneous and completely contradicted by the literature. Trial was continued to September 22, 2023.

On September 22, 2023, Dr. Lindsey Thomas was qualified as an expert forensic pathologist and testified for the defense.⁹⁹ Dr. Thomas earned a bachelor's degree from Oberlin College and a Medical Degree from the University of Michigan. She undertook four years of residency in anatomic and clinical pathology at the University of Michigan and a one-year fellowship in forensic pathology at the Hennepin County Medical Examiner's Office in Minneapolis.¹⁰⁰ Dr. Thomas worked at the Hennepin County Medical Examiner's Office as a deputy and assistant medical examiner for a number of years and, for 15 years, was the assistant and then chief medical examiner for regional office in Minnesota, for eight counties.¹⁰¹ Dr. Thomas had published multiple academic articles in forensic pathology,¹⁰² and had testified in 18 civil and criminal trials as an expert witness.¹⁰³ Her final report was based on a review of discovery from the District Attorney's Office, reports from the Philadelphia Office of the Medical Examiner, photographs of the decedent, and the decedent's medical records.¹⁰⁴ After reviewing Mr. Boris' medical history for the Court, and the relevance of the NAME standards, Dr. Thomas testified that an autopsy should have been performed on Mr. Boris,¹⁰⁵ and "because he did have a significant medical history, it would be crucial to do an autopsy to see if any of those conditions could have caused his death or did, in fact, cause his death."¹⁰⁶ Most importantly, Dr. Thomas cited multiple scholarly articles for her primary conclusions that, first, because of "post-mortem distribution," the level of Fentanyl in the decedent's body was not 29 micrograms at the time of his death, and second, that even if it was, that quantity of ingestion was not a lethal dose.¹⁰⁷ Her two primary expert opinions were that, absent an autopsy, there was no way to know with any reasonable degree of scientific certainty what caused Mr. Boris' death, and that 29 micrograms of Fentanyl was not necessarily a lethal dose.¹⁰⁸ In support of her opinion, Dr. Thomas cited several academic publications where living persons had Fentanyl levels up to 157 micrograms in their bodies.¹⁰⁹ Mr.

⁹⁷NOT 6/21/23, p. 230, line 24 through p. 231 through p. 12.

⁹⁸NOT 6/21/23, p. 232, lines 15 - 17 and. p. 234, lines 1 - 4.

⁹⁹NOT 9/22/23, p. 12, lines 17 - 21.

¹⁰⁰NOT 9/22/23, p. 6, lines 1 - 10.

¹⁰¹NOT 9/22/23, p. 6, line 20 through p. 7, line 7.

¹⁰²NOT 9/22/23, p. 8, lines 4 - 10.

¹⁰³NOT 9/22/23, p. 9, line 17 through p. 10, line 13.

¹⁰⁴NOT 9/22/23, p. 14, lines 1 - 5.

¹⁰⁵NOT 9/22/23, p. 23, lines 17 - 20.

¹⁰⁶NOT 9/22/23, p. 25, lines 3 - 7.

¹⁰⁷NOT 9/22/23, p. 37, line 13, through p. 44, line 11.

¹⁰⁸NOT 9/22/23, p. 49, line 15, through p. 50, line 8.

¹⁰⁹NOT 9/22/23, p. 37, lines 2 - 7.

Sisco declined to testify,¹¹⁰ after which the defense moved into evidence all relevant exhibits and rested.¹¹¹ Judge McDermott declined closing arguments and found the Defendant not guilty of the homicide charge, but guilty of the remaining charges.¹¹²

4. Conclusion

Mr. Sisco's verdict of not guilty to the homicide charge underscores the importance of autopsies in *all* suspicious deaths, but, more importantly, brings to light general misconceptions of Fentanyl toxicology and the disjuncture between medical examiner reports and the scientific literature that should guide their interpretations. In Sisco, the reliance on scientific literature was critical to the defense. Dr. de la Garza's insolence for medical authority led to expert conclusions that were at best misinformed, at worst, perjurious. That she ignored the NAME guidelines and standards and had no expertise of the effects of Fentanyl toxicity in humans demonstrates that independent expert testimony is often needed to rebut "expert" Commonwealth testimony.

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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¹¹⁰NOT 9/22/23, p. 67, lines 2 - 7.

¹¹¹NOT 9/22/23, p. 66, lines 10 - 25.

¹¹²NOT 9/22/23, p. 68, lines 15 - 17.