Witness: Esther Tow-Der

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Called by: People (prosecution)

Phase: Guilt

Examinations: Direct – David Harris; Cross – Mark Geragos; Redirect – David Harris

Day 1 of 1 for this witness

Court: San Mateo County Superior Court, Redwood City (People v. Scott Peterson)

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Direct Examination by David Harris

JUDGE: Go ahead.

HARRIS: Thank you.

HARRIS: Doctor, we're calling you by your title, but, for the record, can you tell us what your occupation is.

TOW-DER: I'm board certified in obstetrics and gynecology.

HARRIS: And that means that you're an MD?

TOW-DER: I'm a physician, yes.

HARRIS: Do you have a practice in the City of Modesto?

TOW-DER: Yes.

HARRIS: And what's the name of your practice

TOW-DER: Hera Medical Group.

HARRIS: Taking you back to December of 2000 and 2, did -- were you working in that practice at that time?

TOW-DER: Yes.

HARRIS: And did you have a patient by the name of Laci Peterson?

TOW-DER: Yes.

HARRIS: I'd like to show you a medical file that's been previously marked as People's number 63. Give you a chance to look at that. Does that appear to be a copy of Ms. Peterson's medical file from your practice?

TOW-DER: Yes.

HARRIS: I want to go through this real quickly. In there there's a note page or kind of a progress page where it has notes when the patient comes in and is seen by the physicians or the staff?

TOW-DER: Yes.

HARRIS: And does it indicate there was an appointment or a visit on December 23rd of 2002?

TOW-DER: Yes.

HARRIS: Who was the doctor that saw Ms. Peterson on that date

TOW-DER: Myself.

HARRIS: So I want to go through this process. When a woman is pregnant and they come into your -- into your practice, at some point in time early in the pregnancy do they go through kind of an ultrasound or sonogram kind of screening process?

TOW-DER: Yes. They get an early ultrasound during the first trimester.

HARRIS: And then is there a second one a few weeks or some weeks later to try and see how the pregnancy is progressing?

TOW-DER: Yes. Usually there's one about 20 weeks.

HARRIS: And in this particular case, was that the standard practice that was followed with Ms. Peterson?

TOW-DER: Yes.

HARRIS: And do you have another doctor in your office by the name of Dr. Endraki?

TOW-DER: Yes, I do.

HARRIS: Okay. Moving forward to the December 23rd visit, Ms. Peterson -- try that again. Ms. Peterson comes in to see you. Was this just a standard visit at that point in time

TOW-DER: This was a routine prenatal visit.

HARRIS: When you say "routine prenatal visit," can you explain to the jury what goes on

TOW-DER: Usually during a woman's pregnancy we see them at specific intervals to see how she's doing and how the pregnancy is progressing.

HARRIS: And so this was just one of those visits?

TOW-DER: Yes.

HARRIS: When you have one of those visits, from the doctor's point of view what do you check for, what do you look for

TOW-DER: Basic things we look for is weight gain, blood pressure, how the baby is doing in terms of movement, fetal growth by measuring the woman's fundal height.

HARRIS: I'm sorry, I couldn't hear that last part.

TOW-DER: We evaluate fetal growth by measuring the woman's fundal height, of the growth of her abdomen.

HARRIS: And did you go through those standard things on the 23rd?

TOW-DER: Yes.

HARRIS: What did you find

TOW-DER: We did a weight measurement. She had adequate weight. Blood pressure was normal, her fundal height development was very normal for that time. The baby had good fetal heart tones. Baby was noted to be in vertex fetal position, meaning head down. Patient had very slight swelling. I put down trace. Considered a low-risk pregnancy. I told her follow-up in three weeks.

HARRIS: Now, when you say good fetal heart tones, what does that mean

TOW-DER: A normal fetal heart tone is usually between 120 to 160, average. At that visit her heart rate -- baby's heart rate was 150. That is considered normal fetal heart rate.

HARRIS: So that means that the baby was doing okay at that point in time

TOW-DER: The baby was doing fine. Also the baby -- patient had reported that the baby was very active, active fetal movement, meaning the baby was moving well.

HARRIS: Now, with all that taken into consideration, what was occurring, the baby moving, the fetal heart tones, the active movement that you found, would this baby have been a viable baby on 23rd of December of 2002?

TOW-DER: Yes.

HARRIS: The People have no other questions.

Cross Examination by Mark Geragos

JUDGE: Mr. Geragos.

GERAGOS: Thank you, your Honor.

GERAGOS: Good morning.

TOW-DER: Good morning.

GERAGOS: How are you?

TOW-DER: Good.

GERAGOS: Good. The -- you said there was a -- the baby was in a vertex presentation?

TOW-DER: Correct.

GERAGOS: That was the first -- you had seen -- or somebody, I guess, had seen Laci, what, a month before, approximately?

TOW-DER: I had seen her a month, approximately one month prior.

GERAGOS: Okay. What date was that?

TOW-DER: November 25th, 2002.

GERAGOS: And on November 25th, was the baby in a vertex position?

TOW-DER: At that point I could not determine that by Leopold's maneuver.

GERAGOS: Okay. Could you explain what the vertex -- vertex position is?

TOW-DER: Vertex means that the baby is now head-down inside the pelvis. Where we call it breach when it's anything other than that. It's just the buttocks is down or it's feet down. In a normal vaginal delivery we would ideally want the baby's head down so the head comes out first.

GERAGOS: Could you -- is there a way for you to describe if the baby is in a vertex position -- and that's how you saw the baby on the 23rd; is that correct?

TOW-DER: I determined that by doing what we call Leopold's maneuver. We actually palpate, to see if we can determine where the head position is at that time, on the abdomen.

GERAGOS: Okay. And does that mean that the head is facing down?

TOW-DER: It doesn't say which way the face is facing. The head is actually pointing downward.

GERAGOS: Okay. Were you able to determine on the 23rd which way the face was -- or which direction –

TOW-DER: That you cannot determine just by Leopold's maneuver.

GERAGOS: Okay. So on the 23rd, all you could determine is that the baby was in a vertex position?

TOW-DER: Head down.

GERAGOS: Head down, which would mean buttocks up?

TOW-DER: Correct.

GERAGOS: We just don't know whether it was basically this way, with the face out, or this way, as I'm demonstrating, with the face towards the mother?

TOW-DER: Correct.

GERAGOS: Okay. And when the baby is in the vertex position, can you describe how the baby is actually in the womb? Is the baby in a position like this? Is the baby standing? Are the legs drawn closer to the chest? Is there a standard way?

TOW-DER: That I cannot determine.

GERAGOS: Okay. Would you need an ultrasound in order to do that?

TOW-DER: Yes.

GERAGOS: Okay. And the vertex position, is that something that happens -- you go from what's called a breach position to a vertex position as line you go farther along in the pregnancy?

TOW-DER: We would -- hopefully that would happen with each pregnancy, but it can move at any time during the pregnancy.

GERAGOS: Okay. And when you say hopefully that's what would happen, that's so that when you do the delivery, that we can -- presumably, the normal course of things in a normal, healthy baby and a normal, healthy pregnancy, you want the head down so that the head is the first thing that gets delivered if you do a vaginal delivery, correct?

TOW-DER: Correct.

GERAGOS: Okay. Once the baby goes into a vertex position, is that something where it can return to a breach position?

TOW-DER: That is possible, yes.

GERAGOS: Okay. And do you know -- how would you know if that -- would the mother know that that happened?

TOW-DER: Not necessarily.

GERAGOS: Okay. Now, the vertex position the day before, that would have been at -- approximately what time did you see Laci the day before?

TOW-DER: Are you referring to the 23rd?

GERAGOS: The -- I'm back on the 23rd. I'm sorry.

GERAGOS: Okay. Her appointment was in the afternoon.

GERAGOS: Do you know what time?

TOW-DER: I think -- her appointment time I think was approximately 2:45.

GERAGOS: Okay. Now, the -- in addition to that, she made no complaints on the 23rd; is that correct?

TOW-DER: I have no noted complaints from the patient.

GERAGOS: All right. And you did note that there was -- you noted some weight -- some swelling and weight gain, but she previously had made some complaints on other visits; is that correct? About the patient out of breath? Or at least phoning it in, I think, in November?

TOW-DER: Okay. Reviewing the records, there's some notation that she had complained of that.

GERAGOS: Right. But she did not do that on the 23rd when you saw her?

TOW-DER: No.

GERAGOS: Okay. And she did not say that she was unable to walk or take walks or anything like that on the 23rd when you saw her, correct?

TOW-DER: I have no notations to that.

GERAGOS: Okay. And you generally are -- one of the interviews that I saw in here, did you describe yourself as being very compulsive about putting anything in the reports or making notations if a patient says anything out of the ordinary or makes complaints; is that a fair statement?

TOW-DER: I try to record anything that the patient complains of.

GERAGOS: Okay. So is it -- is it also a fair statement that if there are no complaints noted in the file, that that's a pretty good indication that she didn't make any complaints to you?

TOW-DER: Fair statement.

GERAGOS: Okay. The -- did you make a determination at any point as to -- on the 23rd what the expected date of birth was going to be?

TOW-DER: You mean the estimated date of delivery? –

GERAGOS: Yes.

TOW-DER: for the patient? That was already determined previously.

GERAGOS: And what -- and what was it?

TOW-DER: February 10th.

GERAGOS: And did you have another notation in there for February 16th in the file?

TOW-DER: There is a notation in the file.

GERAGOS: And how was the February 16th date calculated?

TOW-DER: That was calculated by her second ultrasound that was done in the office.

GERAGOS: Okay. And that was not something that you did; is that correct?

TOW-DER: No.

GERAGOS: And did she give you any urine or blood sample on the 23rd?

TOW-DER: Yes, she did.

GERAGOS: And did you get urine results back on the 23rd?

TOW-DER: Yes.

GERAGOS: Okay. And do you have those in the file I could take a look at?

TOW-DER: The ones...

GERAGOS: You basically have blood work, or –

TOW-DER: That's urine.

GERAGOS: You do a urine workup; is that correct?

TOW-DER: When the patient comes in, we ask for a urine sample. And from that sample we tested for glucose and protein. And that's what the notations are in the chart.

GERAGOS: Okay. And once you did that, there was nothing out of the ordinary in her sample; is that correct?

TOW-DER: Correct.

GERAGOS: And the -- the visit on the 25th, that was also -- is that your handwriting that is in your notes?

TOW-DER: November 25th?

GERAGOS: November 25th.

TOW-DER: Yes.

GERAGOS: And that's the day that she told you she had completed the Lamaze class?

TOW-DER: Correct.

GERAGOS: And that's the date that you discussed weight gain with her?

TOW-DER: Correct.

GERAGOS: And there's a little notation on the 23rd, I apologize, I can't quite read it. The one I've got yellow highlighted, right there. That's from the 23rd?

TOW-DER: Yes.

GERAGOS: "Positive fetal movement, active."

TOW-DER: "Active."

GERAGOS: Okay. And the -- you have the -- at that point -- well, thank you. I have no further questions. Thank you.

Redirect Examination by David Harris

JUDGE: Any other –

HARRIS: Just real briefly

HARRIS: Dr. Tow-der, just to, I guess, expand on this a little bit. The vertex position that counsel was talking about, as a woman in a healthy pregnancy goes through a regular process, as the baby gets bigger, does it start to run out of room in the womb?

TOW-DER: Run out of room?

HARRIS: The baby gets bigger so it starts taking up as much of the room in the woman's womb as possible?

TOW-DER: Yes.

HARRIS: And as part of the normal birthing process, does the baby usually turn to that head-down position?

TOW-DER: Ideally, yes.

HARRIS: Sometimes, if there's something that's either abnormal or there's some complication, it might be in a breach position, but normally it's the -- in that vertex position?

TOW-DER: Yes.

HARRIS: And that's something that you start to see in the latter stages of pregnancy?

TOW-DER: Yes.

HARRIS: Now, with regards to the -- the estimated date of delivery -- and I think that's the term that you use in your practice?

TOW-DER: Delivery date. Estimated date of confinement.

HARRIS: And you had two notations in the file, one -- the first one was February 10th?

TOW-DER: Correct.

HARRIS: And that was a gestational measurement based on the last menses, and that's calculated when they first come in?

TOW-DER: Correct.

HARRIS: And then the second date was the February 16th, and you indicated that was based on the second ultrasound?

TOW-DER: Correct.

HARRIS: And that was done by Dr. Yip in your office?

TOW-DER: Correct.

HARRIS: The -- when they're only six days apart, do you change the estimated due dates based on that?

TOW-DER: For clinical purposes we usually base it on the original due date, if it's within seven days. Which in this case was 2/10/03.

HARRIS: So it's really -- there's kind of a window; babies are going to come when they decide to come, and within six days that's pretty close to a normal range for pregnancy?

TOW-DER: Very normal range.

HARRIS: The People have no other questions.

JUDGE: Mr. Geragos, any questions?

GERAGOS: No further questions, your Honor.

JUDGE: All right, Doctor, thank you very much.