

1 previously been sworn.

2 THE COURT: Good morning, sir. Please have a
3 seat.

4 THE WITNESS: (Complies.)

5 THE COURT: You may proceed.

6 DR. TIMOTHY W. HARKNESS,

7 after having been first duly sworn testified as follows:

8 DIRECT EXAMINATION

9 BY MR. HONG:

10 Q. Good morning, Doctor.

11 A. Good morning.

12 Q. Can you please introduce yourself to this jury.

13 A. My name Dr. Timothy W. Harkness. I'm the chief
14 veterinarian for the Houston Humane Society.

15 Q. How long have you been a veterinarian?

16 A. 36 years.

17 Q. Where did you go to school?

18 A. Colorado State University.

19 Q. And how long have you worked for the Houston Humane
20 Society?

21 A. 11 years.

22 Q. And what kind of animals do you deal with in your
23 practice?

24 A. All species.

25 MR. HONG: Approach, Your Honor?

1 THE COURT: Yes.

2 Q. (BY MR. HONG) Dr. Harkness, I'm going to show you
3 what's been marked as State's Exhibit 14 and 15. Could you
4 please take a look through them.

5 A. (Complies.) I recognize the subject.

6 Q. Okay. Have you had a chance to examine that subject?

7 A. Yes. I have.

8 Q. And are these pictures a true and accurate copy of
9 what you saw that day?

10 A. Yes, they are.

11 MR. HONG: Tender to opposing counsel, Your
12 Honor.

13 MR. MILLEDGE: No objections, Your Honor.

14 THE COURT: They're admitted and maybe published
15 to the jury.

16 MR. HONG: Thank you, Your Honor.

17 Q. (BY MR. HONG) Let me show you State's Exhibit No.
18 14. Do you recall ever examining this animal?

19 A. Yes, I do.

20 Q. And approximately what date did you exam that animal?

21 A. 12th of October 2011.

22 Q. Okay. And I see that there's a number right there,
23 No. 48. What's that number used for?

24 A. That's the identification number for our radar
25 program so we can help identify animals in our possession.

1 Q. Does that identification number tell you that this
2 dog came from 12010 Kitty Brook?

3 A. Yes, it does.

4 Q. Now, when you examine an animal, do you generally
5 produced a veterinary report?

6 A. That is correct.

7 Q. And do you recall making that report for this
8 particular animal?

9 A. Yes, I do.

10 Q. And was that report generated close to the time when
11 you examined that animal?

12 A. That is correct.

13 Q. I'm going to show you State's Exhibit No. 16. Can
14 you go and take look through that.

15 A. (Witness complies.)

16 Q. Okay. Now, could you tell us what No. 16 is.

17 A. No. 16 is the intake chart when we receive animals at
18 the Humane Society. In addition to that, we run a complete
19 blood cell count and blood chemistries on the subjects. And
20 the third page is my synopsis of our veterinarianian report.

21 Q. And is this an exact copy of the report you
22 originally produced?

23 A. That is correct.

24 MR. HONG: Your Honor, I'd like to go ahead and
25 offer State's Exhibit No. 16 as a certified business record.

1 The affidavit has been on file for 14 days.

2 MR. MILLEDGE, II. I'd like to see that. No
3 objection.

4 THE COURT: Admitted. Maybe published.

5 MR. HONG: Thank you.

6 Q. (By MR. HONG) Now, I'm going to show parts of State's
7 Exhibit No. 16. Now, on the patient information, what animal
8 is listed there?

9 A. It's a female dog, tag number 48.

10 Q. And that's the same animal that was in the picture
11 previously?

12 A. That is correct.

13 Q. And is there an address that correlates with this
14 dog?

15 A. Yes, there is 12010 Kitty Brook Drive.

16 Q. Okay. Now, I'm showing you State's Exhibit No. 14.
17 I want to go over some of the general observations for this
18 animal.

19 What did you notice about this dog?

20 A. Initial observation, via of the dog, to be lacking
21 muscle mass with a pronounced skeletal structure noticed.

22 Q. What is your medical opinion as to the cause of the
23 decreased muscle mass?

24 A. The cause of the decreased muscle mass -- initially,
25 the dog was totally infested with fleas externally. On fecal

1 examination, I found the dog to be heavily infested with
2 hookworms, woodworms and tapeworms. On blood analysis, I found
3 the dog to be acutely anemic.

4 Q. Let me stop you right there. I want to show you
5 State's Exhibit 16, Page 2. What is Page 2?

6 A. This is the complete blood cell count.

7 Q. Okay. Now, before I cut you off, you were talking
8 about the dog's anemia?

9 A. Correct. The cause of the anemia would be a
10 combination of external parasites, which suck blood. And also
11 internal parasites, which consists of the hookworms and
12 whipworm. The dog was also become apparently heartworm
13 positive and third stage heartworm disease.

14 Q. Now, are there different levels of infection for
15 parasites?

16 A. You can have a moderate level. You can have a
17 chronic to moderate. You can have acute.

18 Q. And what level of infection did this dog have based
19 on parasites?

20 A. Based on the anemic status of the dog, I found the
21 animal to be acutely anemic.

22 Q. Now, Doctor, have you brought any kind of diagram or
23 pictures that would help demonstrate to this jury what we're
24 talking about when we talk about parasite infections?

25 A. I took two x-rays, two chest x-rays, to help check

1 the status of the lungs and the heart.

2 Q. And do you think that it would aid this jury when we
3 talk about the heartworm infestation?

4 A. Yes, I do.

5 MR. HONG: Your Honor, I'd like to go and offer
6 this into evidence as a demonstrative. They would be marked as
7 State's Exhibits, I believe, 14 and 15.

8 Sorry, Your Honor, it would be State's Exhibit
9 16 and 17.

10 Q. (BY MR. HONG) Are you certified to read an x-ray?

11 A. Yes, I am.

12 MR. MILLEDGE: No, objections.

13 THE COURT: Admitted. Maybe published.

14 Q. (BY MR. HONG) I show you State's Exhibit No. 16.
15 Now, could you tell the jury what we're looking at.

16 A. Okay. This is a -- or what we term a VD, shooting
17 from the ventral aspect or the dorsalis aspect of the chest.
18 What I'm observing is more of the roundness of the heart. On
19 the lungs, the darkened area, that area should be dark and not
20 infiltrated with these white lines, which is an indication of
21 scar tissue and a secondary pneumonia situation of commenting.

22 Q. I'm going to show you State's Exhibit No. 17.

23 A. This would be a lateral or a side view of the chest.
24 I noticed that the heart is assuming a more round shape. We
25 have increased interstitial pattern in the posterior lobes as

1 opposed to the anterior lobes, which are darker, indicating an
2 acute progression of the heartworm disease.

3 Q. Is heartworm -- can you prevent heartworm infection?

4 A. Yes, you can.

5 Q. Is that a complicated procedure or a simple
6 procedure?

7 A. It's a simple procedure. Heartworm prevention comes
8 from a topical or pill form, which is administered once a
9 month.

10 Q. Would it be safe to say, it's fairly easy to prevent
11 heartworm infection --

12 A. Yes, it is.

13 Q. -- or heartworm prevention?

14 Now, is it possible that there was something
15 that can cause a quick loss of muscle mass like disease?

16 A. Based on the results of the blood cell and blood
17 chemistry, there's no indication of any form of cancer or
18 internal disease that would contribute to this dog's concurrent
19 condition.

20 Q. So, is it your professional opinion that either --
21 that -- sorry. What is your professional opinion as to the
22 dog's appearance? What caused that?

23 A. My professional opinion is a combination of the
24 internal parasites to include hookworms tapeworms and whipworms
25 and a third-stage heartworm disease. In addition, I would feel

1 the dog was not fed properly in regards to quality and quantity
2 of feed.

3 Q. In your professional opinion, do you believe that
4 this dog was denied adequate nutrition?

5 A. Yes, I do.

6 Q. For how long?

7 A. A period of several months.

8 Q. Do you believe that this dog was denied adequate
9 veterinarian care?

10 A. I believe --

11 MR. MILLEDGE: Your Honor, I'm going to object
12 to him leading this witness now.

13 THE COURT: Overruled.

14 Q. (BY MR. HONG) In your professional opinion, do you
15 believe that this dog was denied adequate veterinarian care?

16 A. Yes, I do.

17 Q. And for how long?

18 A. Based on the results of the blood work and the
19 overall observation, it would be greater than six months.

20 Q. Thank you.

21 MR. HONG: Pass the witness.

22 THE COURT: You may inquire.

23 **CROSS-EXAMINATION**

24 **BY MR. MILLEDGE:**

25 Q. Doctor, would you say this was a very sick dog?

1 A. Pardon, sir?

2 Q. Would you say this was a very sick dog?

3 A. Yes, I would.

4 Q. And most of its -- would you also say that most of
5 its illnesses came from this infestation of worms and so forth
6 that you listed in your report?

7 A. Yes, I do.

8 Q. Would you also agree with me, if this dog was sick,
9 no matter how we watered him or her or fed her, unless we got
10 rid of these parasites, all the food in the world wouldn't have
11 helped?

12 A. With proper nutrition even a sick dog in an anemic
13 state can be maintained.

14 Q. I understand that, but would that have stopped the
15 muscle mass from deteriorating?

16 A. It would have slowed it down.

17 Q. But it wouldn't have stopped it?

18 A. It wouldn't have stopped it.

19 Q. Okay. And no matter what we did, how much water we
20 gave to this dog, this was a sick dog?

21 A. That's correct.

22 Q. Okay. You don't know who owned this dog?

23 A. No, sir.

24 Q. Okay. Were there any tags or anything on the dog to
25 identify?

1 A. No, sir.

2 Q. Okay.

3 MR. MILLEDGE: No further questions of this
4 witness, Your Honor.

5 THE COURT: Any redirect?

6 MR. HONG: Nothing further, Your Honor.

7 THE COURT: May the witness be excused?

8 MR. HONG: Yes, sir.

9 MR. MILLEDGE: Yes, sir.

10 THE COURT: Doctor, you maybe excused. Thank
11 you. Call your next witness.

12 MR. HONG: Your Honor, at this time, the State
13 will rest.

14 THE COURT: What says the Defense?

15 MR. MILLEDGE: Your Honor, at this time, the
16 State rests. Your Honor, at this time, we would like to make a
17 directed verdict outside the presence of the jury.

18 THE COURT: Excuse the jury.

19 THE BAILIFF: All rise for the jury.

20 (Jury panel exits the courtroom.)

21 THE COURT: You may proceed.

22 **MOTION FOR DIRECTED VERDICT**

23 **MR. MILLEDGE:** Your Honor, in looking at the
24 elements, we would ask that a verdict of not guilty be handed
25 down by, Your Honor. Based on the grounds, the State has