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Rocky Mountain News (CO)

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Section: **City Desk/Local**Edition: **Final**Page Number: **18A****CHEMIST TESTIFIES AT HEARING****Source:** Mike Patty, Rocky Mountain News

An Arapahoe District Court judge won't rule on a defense motion to dismiss the case against a father accused of giving his two children a lethal dose of cough syrup until just before the trial begins next week.

Robert "**Raffie**" **Henderson**, 30, is charged with two counts each of assault and child abuse. He allegedly gave his son, Robert "Killian" **Henderson**, 5, and daughter, Rhapsody, 4, a fatal dose of a cherry-flavored, adult cold medicine on Aug. 8, 2002. At a hearing Monday, defense attorney Jim Castle challenged the findings and methods of toxicologist Joseph A. Levisky, a key prosecution witness. Castle questioned Levisky for several hours Monday at the hearing before District Court Judge J. Mark Hannen.

Hannen took Castle's motions to dismiss Levisky's testimony and the case against **Henderson** under consideration until May 10, when jury selection is scheduled to begin in the trial.

"I will rule on outstanding motions at 8 a.m. on Monday, but until then I want everyone to be ready to go ahead with trial," Hannen said.

Castle attempted to show that Levisky's made the wrong finding that four chemical compounds in the cough medicine caused "acute intoxication" in the children and caused their deaths.

He also accused Levisky of "outrageous government conduct," in deliberately using most of the blood samples and all tissue samples so they wouldn't be available to defense expert witnesses.

Levisky, who said Monday he was confused by medication he was taking for a recent illness, admitted he "was in retirement mode" when he conducted the initial test of the children's blood and tissue in August 2002.

He denied reanalyzing his findings on March 17, 2004, more than a month after his retirement. "I went to the office that day, but don't remember doing anything with this case," he testified. "I'm not astute or sharp enough right now to remember."

Under questioning about some of his methods, Levisky said "chemistry is an interpretive science, not an exact science."

Levisky said he mistakenly assumed tissue samples sent to him by the coroner's office were all from the children's livers.

"I'm a chemist, not a pathologist," Levisky said. "I wouldn't be able to distinguish liver tissue from that of the heart or a gonad."

Levisky also admitted inadvertently throwing out some of the blood samples and all of the tissue samples of the children.

"When you do a thousand cases a year, things get misplaced and lost," he said. "I focus on generating data relating to the cause of death, not administering or preserving samples."

More samples aren't available to defense witnesses because the children's bodies were cremated.

If the judge does not dismiss the case on Monday, the trial is expected to take at least two weeks to complete.

INFOBOX**Defense challenges**

Attorneys for Robert "**Raffie**" **Henderson** are challenging crucial chemical analysis for his trial next week in the deaths of his two children, alleging:

- * Chemist Joseph Levisky mistakenly combined four types of tissue because he thought they were all from the liver, unaware that the Arapahoe County coroner had sent him liver, heart, kidney and muscle tissue from the two dead children.

- * Levisky intentionally withheld information about tests that showed lower levels of chemicals in the children than he addressed in a preliminary hearing.

- * Levisky used up nearly all of the biological samples taken from the children's bodies, making it impossible for the defense to conduct its own examinations.