

1 questions.

2 MR. SANCHEZ: No further questions.

3 THE COURT: Is he to be excused?

4 MR. SANCHEZ: Yes, Judge.

5 THE COURT: Any objection?

6 MR. VAN BUREN: No, Your Honor.

7 THE COURT: You are excused, sir. Thank  
8 you for your testimony.

9 Next witness, please.

10 MR. SANCHEZ: State calls LaToya Binder.

11 THE BAILIFF: This witness has not been  
12 sworn in.

13 THE COURT: Very well, thank you.

14 Could you raise your right hand, please.

15 Thank you.

16 *(Witness sworn.)*

17 THE COURT: All right. From the State,  
18 please?

19 **LATOYA BINDER,**

20 having been first duly sworn, testified as follows:

21 **DIRECT EXAMINATION**

22 BY MR. SANCHEZ:

23 Q. Good afternoon.

24 A. Good afternoon.

25 Q. Could you state your name for the record,

1 please.

2 A. LaToya Binder.

3 Q. Ms. Binder, how are you employed?

4 A. I am a forensic chemist at the Harris County  
5 Institute of Forensic Sciences.

6 Q. And how long have you been employed as a  
7 chemist there?

8 A. Over nine years.

9 Q. And what does the Harris County Institute of  
10 Forensic Sciences do?

11 A. Well, I work in the drug chemistry section.  
12 And what my job duties are is I performed analysis on  
13 suspected control substances, dangerous drugs, plant  
14 material, unknowns, testify in court, anything that's  
15 submitted by law enforcement agencies and do random  
16 proficiency tests, internal and external.

17 Q. And how do you conduct that analysis?

18 A. The analysis in this case or just in general?

19 Q. Just in general, how do you conduct drug  
20 analysis?

21 A. It depends on the case.

22 Q. Okay. Let's say for this case.

23 A. Okay. On this -- well, I'm the evidence  
24 processor on this case. So basically what my job duty  
25 is: To describe the evidence, to weigh the evidence and

1 to take the derivative samples to load on the  
2 instrumentation.

3 Q. And what is a derivative sample?

4 A. A derivative sample is basically a small  
5 portion of the evidence that's used for testing in order  
6 for us to perform -- to compare results on the  
7 presumptive and confirmatory instrument.

8 MR. SANCHEZ: Your Honor, may I approach?

9 THE COURT: You may.

10 Q. (BY MR. SANCHEZ) Ms. Binder, I'm showing you  
11 what's been premarked as State's Exhibit 4 and State's  
12 Exhibit 5. Do you recognize these?

13 A. Yes, I do.

14 Q. And how do you recognize these?

15 A. Well, we have a unique IFS number; also, by the  
16 bar code which has my initials which matches to the  
17 descriptions of what I have described. Also, my outer  
18 initials with the date of when I sealed the evidence.

19 Q. Okay. And that's true for both State's  
20 Exhibits 4 and 5?

21 A. Correct.

22 Q. Okay. So suffice it to say you were the one  
23 who handled and weighed the drugs in this case, is that  
24 right?

25 A. That's correct.

1 Q. Now, after handling and weighing the drugs,  
2 what happens to them?

3 A. After I described what's in the package, I  
4 weigh it. And then like I said before, the derivative  
5 samples were taken, they're loaded on what we call a  
6 presumptive and also a confirmative instrument, which is  
7 a GCFID, which is a gas chromatography flame ionization  
8 detector. That's what we consider our presumptive  
9 instrument. And then our confirmatory instrument is a  
10 gas chromatography mass spectrometer.

11 Q. And that instrument essentially tells us what  
12 the drugs are, is that right?

13 A. The gas chromatography flame ionization  
14 detector is a presumptive instrument. So it basically  
15 gives us an indication of what may be in the sample.

16 We take two separate samples, two  
17 derivative samples. So, one goes on one instrument and  
18 then the other one goes on the other instrument to  
19 actually confirm that drug is present.

20 Q. Okay. And you weighed the drugs in this case,  
21 right?

22 A. Yes.

23 Q. And how much did those drugs weigh?

24 A. Well, for which item?

25 Q. For the -- for State's Exhibit No. 4, which is

1 the crack cocaine. That's going to be item number --

2 A. 1-A?

3 Q. It is Item No. 1-A?

4 A. Okay. Item No. 1-A was a net weight of 26.753,  
5 plus or minus 0.006 grams, with a 99.73 percent level of  
6 confidence.

7 Q. And that was, like I said, State's Exhibit  
8 No. 4; is that right? Is that Item 1-A that you're  
9 referring to?

10 A. Yes.

11 Q. Okay. Now, Item 1-B also contained some  
12 substance, but that wasn't -- that wasn't analyzed. Can  
13 you tell us why?

14 A. Based on our standard operating procedure, we  
15 basically weigh up to a penalty range. So with Item 1-A  
16 we had more than 4 grams and we didn't have more than  
17 200 grams, so we didn't analyze the second bag of  
18 cocaine.

19 Q. Okay. Now, Item 2 -- actually, Item 1-B, how  
20 much did that weigh?

21 A. It was a gross weight, which means it contained  
22 the outer packaging of 22.462, plus or minus 0.006  
23 grams, with a 99.73 level of confidence.

24 Q. And just to be clear, both of those items are  
25 located in State's Exhibit 4; correct?

1 A. Correct.

2 Q. Okay.

3 A. One of the items -- Item 1-B is a gross weight.  
4 Item 1-A is a net weight.

5 Q. So at first you said around 26 grams and then  
6 you said around 22, right?

7 A. Item 1-A is a net weight.

8 Q. Okay.

9 A. Which means it doesn't include the outer  
10 packaging of the 26.753, plus or minus 0.006 grams,  
11 with a 99.73 percent level of confidence. Item 1-B is a  
12 gross weight which includes the outer bag and that was  
13 22.42, plus or minus 0.006 grams, with a 99.73 level of  
14 confidence.

15 Q. So with both items we are looking at close to  
16 50 grams, is that right?

17 A. Approximately, yes; but one is a net and one is  
18 a gross.

19 Q. Right, okay.

20 Now Item No. 2 is State's Exhibit No. 5.  
21 How much did that weigh?

22 A. That was also a gross weight of 4.995, plus or  
23 minus 0.006 grams, with a 99.73 percent level of  
24 confidence.

25 Q. And that was an off-white powdery substance,

1 right?

2 A. It was described as one clear, knotted plastic  
3 bag containing an off-white chunky, powdery substance.

4 Q. Now, what do you mean by the 99.73 percent  
5 confidence?

6 A. Well, the 99.73 level of confidence has to do  
7 with the actual weight. It has plus or minus 0.006  
8 grams uncertainty. So basically, if you were to weigh  
9 it, 99 out of a 100 times you would get that weight  
10 between that plus or minus 0.006 range.

11 Q. So that level of confidence doesn't correspond  
12 to whether or not it's cocaine, it corresponds to the  
13 weight?

14 A. It corresponds to the level of confidence that  
15 the weight would fall within that range.

16 Q. So just to sum everything you did, altogether  
17 we are looking at approximately 55 grams total of that  
18 substance; is that right?

19 A. Give or take a little more, approximately, yes.

20 Q. But you didn't test all of it because it went  
21 over the 4 grams penalty group, is that right?

22 A. Correct. I only tested Item 1.

23 Q. So you're not saying the rest of it is not  
24 cocaine?

25 A. No, I don't know. It wasn't tested.

1 Q. Okay. It just didn't need to be tested, right?

2 A. Based on our standard operating procedure, we  
3 had over a weight range for that penalty group of over  
4 4 grams. If I would have tested the other items, the  
5 combined weight together would not have been close to  
6 the later part of the range, which is 200 grams. So  
7 there was no need, based on our standard operating  
8 procedure, to test the other items.

9 MR. SANCHEZ: Pass the witness.

10 MR. VAN BUREN: No questions, Your Honor.

11 THE COURT: All right. Ma'am, you're  
12 excused. Thank you so much for your testimony.

13 Next witness, please.

14 MR. SANCHEZ: State calls Donna Williams.

15 THE COURT: Very well.

16 MR. VAN BUREN: Your Honor, may we  
17 approach?

18 THE COURT: You may.

19 MR. VAN BUREN: I'm sorry.

20 THE BAILIFF: This witness has not been  
21 sworn in, Judge.

22 THE COURT: Would you please raise your  
23 right hand, please.

24 *(Witness sworn.)*

25 THE COURT: From the State, please.



1 DONNA WILLIAMS,

2 having been first duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. SANCHEZ:

5 Q. Good afternoon.

6 A. Good afternoon.

7 Q. Could you state your name for the record?

8 A. Donna Williams.

9 Q. Ms. Williams, how are you employed?

10 A. I'm a forensic chemist at Harris County  
11 Institute of Forensic Sciences.

12 Q. And how long have you been employed there?

13 A. I've been employed there for about eight and a  
14 half years.

15 Q. What is your job at the Harris County Institute  
16 of Forensic Sciences?

17 A. Simply put, my job is to identify controlled  
18 substances or any drug evidence that's submitted to the  
19 laboratory, either through processing, analysis,  
20 technical review and to provide expert witness  
21 testimony.

22 Q. Now, what is the process for you identifying a  
23 controlled substance?

24 A. It's a two-step process. The first process is  
25 the actual processing of the evidence, which in this