

1 swabs by any chance?

2 A. When I collect fingernail swabs, I put them in
3 the dryer. And then after they dry, I put them into a
4 box. I seal those boxes, I put them into an envelope
5 that I seal and initial. And then that goes into the
6 kit. And once I seal the kit and that kit is released
7 to the crime lab -- to the police. After that, that's
8 all I do.

9 Q. So, you conduct no analysis of any kind on the
10 swab from the fingernails; is that correct?

11 A. That's correct.

12 Q. You do not know if anybody else would have done
13 that; is that correct?

14 A. No one that I know of.

15 Q. Okay. And, certainly, no one at your direction
16 would have done? You didn't say: Do an analysis of
17 these swabs?

18 A. That's correct.

19 MR. GREENLEE: No further questions at this
20 time.

21 MR. McCLEES: Very briefly, Judge.

22 **REDIRECT EXAMINATION**

23 **BY MR. McCLEES:**

24 Q. Mr. Greenlee was talking to you about evidence
25 of sexual assault outside of what she had told you. We

1 do have things that you found that corroborate what she
2 had told you, correct?

3 A. That's correct.

4 Q. Such as?

5 A. The abrasions on her neck is consistent with
6 the strangulation that she told me about.

7 Q. Okay. And there were abrasions on both sides
8 of the neck, correct?

9 A. There was abrasions on the right side of the
10 neck. And on the left side of the neck, there was point
11 tenderness.

12 Q. That would be consistent with a thumb, would it
13 not?

14 A. It's possible.

15 Q. Just like the abrasions would be consistent
16 with fingers, correct?

17 A. Correct.

18 MR. McCLEES: Pass the witness.

19 **RE-CROSS-EXAMINATION**

20 **BY MR. GREENLEE:**

21 Q. Could it be possible, Ms. Oldham, that those
22 scratches and/or abrasions could have gotten there some
23 other way?

24 A. It's possible.

25 Q. So, your testimony is not saying this is

1 absolutely how it got there?

2 A. That's correct.

3 MR. GREENLEE: No further questions.

4 MR. McCLEES: Nothing further from this
5 witness.

6 MR. GREENLEE: She may be excused as far as
7 I'm concerned.

8 THE COURT: You are excused. Thank you,
9 ma'am.

10 Call your next witness.

11 MR. McCLEES: Sergeant Cliff Blomberg.

12 THE BAILIFF: This witness needs to be
13 sworn, Judge.

14 (Witness sworn)

15 **C.S. BLOMBERG,**

16 having been first duly sworn, testified as follows:

17 **DIRECT EXAMINATION**

18 **BY MR. McCLEES:**

19 Q. Please introduce yourself to the jury and spell
20 your name for our court reporter.

21 A. I'm C.S. Blomberg. I'm a retired sergeant from
22 the Houston Police Department. Last name is
23 B-l-o-m-b-e-r-g.

24 Q. And currently do you work for the Houston
25 Police Department?

1 A. No, I do not.

2 Q. Okay. Why not?

3 A. I decided to retire in October of 2011.

4 Q. Okay. How long had you been with HPD?

5 A. Thirty years.

6 Q. Now, during your 30 years, let's break that
7 down. Where were you? You started off in patrol, I
8 presume?

9 A. Right. Well, you start off in the academy and
10 you're a cadet and then graduate from there. I spent
11 the first 11 years as a patrol officer working the
12 streets. Just about all of that was nightshift. After
13 that, I promoted in July of 1990 to sergeant and spent a
14 year in the jail as a supervisor in the jail at
15 Westside. And after that year, I became a -- went back
16 to patrol and was a patrol sergeant for another six
17 years. And in August of 1998, I became an investigative
18 sergeant in the Family Violence Unit and spent about six
19 years there. And another six years I finished up in the
20 Sex Crimes Unit.

21 Q. And let me ask you if you can give the jury
22 kind of a thumbnail sketch as to the type of training
23 you had for investigating things like sex crimes?

24 A. We attend in-service training throughout every
25 year. And after -- even in patrol, we're exposed to

1 some of that. And there was continuing in-service
2 training, as I was an investigator also. Plus, there
3 were other officers and sergeants when you first came in
4 that gave you some training also.

5 Q. And in the interest of full disclosure, you and
6 I have worked together before?

7 A. Yes.

8 Q. Let's go through the basics of a sexual assault
9 investigation. In any sexual assault investigation,
10 usually you have a patrolman that shows up first, right?

11 A. That's right.

12 MR. GREENLEE: May we approach?

13 THE COURT: You may.

14 (At the Bench, on the record)

15 MR. GREENLEE: I'm going to object to this
16 line of questioning. I don't think this officer was
17 involved in this case. I thought he was the buccal swab
18 person.

19 MR. McCLEES: He did an investigation on
20 it, but the main thing is the buccal swab.

21 MR. GREENLEE: I think any other testimony
22 with regard to talking about sexual assault, I think
23 it's irrelevant from this witness.

24 MR. McCLEES: Judge, this is my witness.

25 MR. GREENLEE: He can still give irrelevant

1 testimony and I can object to that. I don't think that
2 precludes that, the objection anything.

3 MR. McCLEES: I think that how a sexual
4 assault investigation works in a sexual assault case is
5 relevant.

6 THE COURT: I think he's right. Overruled.

7 (Open court, defendant and jury present)

8 Q. (By Mr. McClees) Usually the first person to
9 respond is a patrol officer; is that correct?

10 A. That's correct.

11 Q. He makes a report?

12 A. Correct.

13 MR. GREENLEE: This is leading. I'd ask
14 that he ask a question.

15 MR. McCLEES: I'll rephrase.

16 THE COURT: Overruled.

17 Q. (By Mr. McClees) When a report is generated,
18 what happens next?

19 A. It's -- usually by the next day it shows up in
20 the sex crimes office after it's been printed out
21 overnight.

22 Q. Okay. And from there, what happens?

23 A. All the cases that are made from the previous
24 day are gathered up, they're taken to our -- what we
25 call the admin sergeant and he looks through the reports

1 and divides them up amongst the two squads we had at the
2 in our unit.

3 Q. You were not the admin sergeant?

4 A. No, I was not.

5 Q. You were a sergeant of one of the two squads?

6 A. One of the squads.

7 Q. Okay. And from there, the report goes from the
8 admin sergeant to you and what do you do?

9 A. I get the reports and I divide them up amongst
10 my officers. I had at the time five or six officers.
11 I'd normally keep one for myself. If I wasn't too busy
12 supervising their cases, I would work one of the cases
13 also.

14 Q. So, you get the initial information from the
15 report and then you decide how much further
16 investigation is necessary depending on a case-by-case
17 basis?

18 A. That's correct.

19 Q. Okay. Now, in this situation, you got the
20 report, correct?

21 A. Yes, I did.

22 Q. Did you assign it out or did this one stay with
23 you?

24 A. This one I decided to keep for myself.

25 Q. Any particular reason or is it --

1 A. No. It just helps distribute the workload.

2 Q. And in doing that, did you see there was
3 potentially the need for a buccal swab?

4 A. Yes, I did.

5 Q. And we'll go over that in just a minute. Don't
6 go into anything he said, but did you have an
7 opportunity to meet, albeit briefly, with Brittane
8 Rivers?

9 A. Yes, I did.

10 Q. Okay. That had to be re-scheduled a couple of
11 times?

12 A. It did.

13 Q. Was that because of kids or --

14 A. Mostly --

15 MR. GREENLEE: This is leading, Your Honor.

16 MR. McCLEES: I'll ask it open-ended. I'm
17 sorry.

18 THE COURT: Please.

19 Q. (By Mr. McClees) So, I believe you said you
20 needed -- well, let me ask you this. A buccal swab --

21 A. Right.

22 Q. -- what is a buccal swab?

23 A. It's basically you take a Q-tip. I would use
24 two normally. And it's a long Q-tip about that long
25 (indicating). And you swab the inside of somebody's

1 mouth.

2 Q. Let me ask you this. For purposes of the
3 record, you said about that long.

4 A. Right.

5 Q. You held your fingers out. Would that be
6 about --

7 A. About 8 inches or so.

8 Q. So, you take it. Does it come in certain
9 packaging?

10 A. It comes in like a sterile white package.
11 There's two in a package. It's paper.

12 Q. And you're shown how to do this?

13 A. Yes.

14 Q. Have you done a buccal swab or two in your day?

15 A. Yes, I have.

16 Q. Do you have an idea of how many?

17 A. No, I don't. A few hundred.

18 Q. You open it up and it's this long Q-tip. What
19 do you do with this long Q-tip?

20 A. We put on gloves, for one thing, sterile
21 gloves. And then we'll ask the person we need the
22 buccal swab from to open their mouth and we insert the
23 buccal swab -- I do it one at a time -- and rub the
24 inside of their cheeks in the upper pallet and below
25 their tongue to collect skin cells, basically, is what

1 we're doing.

2 Q. You collect the skin cells. What's the purpose
3 of collecting those?

4 A. Later on for DNA comparison and analysis.

5 Q. That would be to compare the known sample from
6 the person you took to the sample of whatever you're
7 trying to get DNA from?

8 A. That's correct.

9 Q. So, now in this case you spoke to Brittany
10 Rivers. And after speaking with her, did you come to
11 the conclusion that you needed to get buccal swabs from
12 one person or multiple?

13 A. Two people.

14 Q. Okay. Was one of those people a --

15 MR. GREENLEE: This is leading, Your Honor.

16 Q. (By Mr. McClees) Who were the people?

17 A. I determined, after speaking to her, that I
18 needed to get a buccal swab from a consensual -- what
19 she described as a consensual sex partner.

20 MR. GREENLEE: Objection.

21 THE COURT: What's your objection, sir?

22 MR. GREENLEE: First of all, this is
23 nonresponsive. It's hearsay.

24 THE COURT: Sustained.

25 Q. (By Mr. McClees) All right. How many buccal

1 swabs did you get?

2 A. I obtained two sets of buccal swabs.

3 Q. Okay. Who were they from?

4 A. One was from Kevin Queeny and Mr. Penright,
5 Carlton Penright.

6 Q. What made you think you needed a buccal swab
7 from Kevin Queeny?

8 A. He was a consensual sex partner of Ms. Rivers.

9 MR. GREENLEE: Objection. That's hearsay.

10 MR. McCLEES: Judge, this is not hearsay.
11 May we approach?

12 THE COURT: You may.

13 (At the Bench, on the record)

14 MR. McCLEES: Hearsay goes to the truth of
15 the matter asserted, regardless if the statement was
16 true or not true. This puts him on notice as to why he
17 needed to get the buccal swab. Otherwise, people would
18 question why did he do it.

19 MR. GREENLEE: The problem is this: He
20 said he was told this was consensual sex, which
21 immediately suggests that one person was consensual, but
22 the other person it was not. I think he can testify
23 that he had information that he should get it, but he
24 can't get into whether it's consensual. That is hearsay
25 and that is not an -- there's no exception for that.

1 There's nothing to do with -- it does go to the issue of
2 the truth of the matter asserted.

3 THE COURT: It does, yes.

4 MR. GREENLEE: You are right --

5 MR. McCLEES: Judge, the purpose of this is
6 not for the truth of the matter -- Steven, may I finish?
7 It's not for the truth of the matter asserted. It is
8 because -- and this happens in every criminal case --
9 the officer is put on notice of something. Otherwise,
10 the jury is left to wonder why on earth does he pick
11 this random person. And it doesn't matter --

12 THE COURT: I have to agree.

13 MR. GREENLEE: But it's a conclusion that
14 does go to the truth. It sets up the paradigm one was
15 consensual, one was not. That's the problem with making
16 that statement. He can say based on information he
17 received --

18 THE COURT: Isn't that already out?

19 MR. GREENLEE: What?

20 THE COURT: One was consensual and one
21 wasn't?

22 MR. McCLEES: That came out through
23 Ms. Rivers.

24 MR. GREENLEE: That's not a true statement.
25 Because when I tried to get into the nature of the

1 relationship, the State objected and you sustained the
2 objection. That never came out.

3 MR. McCLEES: That's not true. It did come
4 out that she had consensual sex with him. I asked her
5 the question of around the time of January 13th and she
6 said that she did.

7 MR. GREENLEE: What she said was the
8 relationship was two weeks old. I asked what was the
9 nature of the relationship. She said normal. I then
10 asked -- the State objected, we came up here. You
11 sustained their objection. So, that question was never
12 raised. All she said was it was normal.

13 MR. McCLEES: That's not true, Judge.

14 MR. GREENLEE: We have the record here.

15 MR. McCLEES: We do. And she said, when I
16 was questioning her -- not when Mr. Greenlee was -- that
17 she had sex with him around that time.

18 MR. GREENLEE: I don't remember the
19 testimony being that way.

20 MR. McCLEES: Regardless, Judge, that
21 puts -- it's not for the truth of the matter asserted.
22 If it's not for the truth of the matter asserted --

23 THE COURT: Any reason we're going through
24 this at all?

25 MR. McCLEES: So the jury can understand

1 why he took it from one person and why he took it from
2 another.

3 MR. GREENLEE: Why is it relevant?

4 MR. McCLEES: It's relevant because there's
5 a mixture of DNA in there, Judge, and the jury has to
6 understand what the purpose of that is.

7 THE COURT: I'm going to overrule the
8 objection. I'll allow it in.

9 (Open court, defendant and jury present)

10 Q. (By Mr. McClees) You took how many buccal
11 swabs?

12 A. Two sets.

13 Q. Okay. First, you said, from?

14 A. Kenneth Queeny.

15 Q. Okay. And that was because why?

16 A. He was a consensual sex partner.

17 Q. Okay. The second one you took was from whom?

18 A. Carlton Penright.

19 Q. All right. Do you see Carlton Penright in this
20 courtroom?

21 A. Yes, sir.

22 Q. Can you identify him by something he's wearing?

23 A. The man with -- it's like a gray or black plaid
24 shirt.

25 MR. McCLEES: Judge, may the record reflect

1 he's identified the defendant?

2 THE COURT: The record will so reflect.

3 Q. (By Mr. McClees) Did you get a buccal swab from
4 Carlton Penright?

5 A. Yes, I did.

6 Q. And that was -- you actually -- the process of
7 doing that, you came to court to do that?

8 A. Yes. I got a court order. I believe it was
9 here in the courtroom or the next room over.

10 Q. You got that done through the basic same
11 process that you mentioned earlier, did you not?

12 A. Yes. There was a court order and I obtained it
13 through the same process I would normally do that.

14 Q. I'm asking it poorly. It's after lunch and I'm
15 crashing.

16 Did you put on the gloves?

17 A. Yes.

18 Q. Did you open up the sterile part from the
19 buccal swab?

20 A. Yes.

21 MR. McCLEES: May I approach the witness,
22 Your Honor?

23 THE COURT: You may.

24 Q. (By Mr. McClees) I show you State's Exhibit
25 No. 9 and State's Exhibit No. 8. Do you see these, sir

1 (indicating)?

2 A. Yes, I do.

3 Q. Okay. Let's start in chronological order.

4 What is State's Exhibit No. 8 (indicating)?

5 A. Those are buccal swabs from -- 8 -- that's 9.
6 No. 8 are the suspect -- buccal swabs from
7 Carlton Penright.

8 Q. Okay. What is Exhibit No. 9?

9 A. No. 9 are the buccal swabs from Kenneth Queeny.

10 MR. McCLEES: Your Honor, I tender State's
11 Exhibit No. 8 and 9 to opposing counsel and offer into
12 evidence.

13 **(State's Exhibit No. 8 and 9 Offered)**

14 MR. GREENLEE: No objections.

15 THE COURT: Admitted without objection.

16 **(State's Exhibit No. 8 and 9 Admitted)**

17 Q. (By Mr. McClees) Okay. After you obtained the
18 buccal swabs in Exhibits 8 and 9, what did you do with
19 them?

20 A. I put them in the boxes that you see now. And
21 from there, I'd take them and tag them and place -- or
22 have them placed in our property room.

23 Q. All right. Do you submit them for further
24 analysis?

25 A. What is done -- yes, sir -- submitted through a

1 form on the computer as part of the report that goes to
2 the crime lab. And from there, the crime lab will pick
3 those up from the property room.

4 MR. McCLEES: Pass the witness.

5 **CROSS-EXAMINATION**

6 **BY MR. GREENLEE:**

7 Q. What is the procedure in order to get a buccal
8 swab?

9 A. It can be either voluntarily, asking the person
10 for the buccal swabs, or there could be a court order
11 involved.

12 Q. In this case, that was done voluntarily; is
13 that correct?

14 A. On Mr. Penright?

15 Q. Yes, sir.

16 A. Yes, sir.

17 Q. I was standing there when you did it, was I
18 not?

19 A. Yes, sir.

20 Q. So, there was no resistance on anyone's part in
21 order to get the buccal swab, was there?

22 A. No, sir.

23 Q. And other than a relatively brief conversation
24 that you had with Ms. Rivers, did you have any other
25 involvement with this case?

1 A. I talked to an Alvin Miller, I believe.

2 Q. Other than that, did you have any other
3 involvement in this case?

4 A. Other than reading the reports and the report
5 from the hospital.

6 Q. Nothing else?

7 A. That was it.

8 Q. I assume you did not make the scene of this
9 alleged incident; is that correct?

10 A. I did not.

11 Q. Did you ever speak with Officer Casas?

12 A. No, I did not.

13 Q. Have you ever spoken with Ms. Oldham?

14 A. Oldham?

15 Q. Yes, sir.

16 A. I don't recall speaking to anybody by that
17 name.

18 Q. Did you speak with any medical people of any
19 kind?

20 A. Not on this case.

21 Q. And I assume the only reason you say the swab
22 from Mr. Queeny was consensual is that is what you were
23 told; is that correct?

24 A. The question again?

25 Q. You testified that you have one swab that was