

1 **JENNIFER CLAY,**
2 having been first duly sworn, testified as follows:

3 **DIRECT EXAMINATION**

4 BY MS. MERIWETHER:

5 Q. Could you please introduce yourself to our
6 jury?

7 A. Yes, ma'am, it's Jennifer Clay.

8 Q. And how are you employed?

9 A. I work for the Houston Forensic Science Center
10 formerly known as the Houston Police Department Crime
11 Laboratory.

12 Q. And what part of the Houston Forensic Science
13 Center do you work for?

14 A. I am assigned to the forensic biology section
15 and specifically in the DNA.

16 Q. And how long have you been in that department?

17 A. A little over nine and a half years.

18 Q. What did you do prior to that?

19 A. I worked for a biotech company in The Woodlands
20 doing DNA purification at Sigma Genosys and then I got
21 hired in with the crime lab.

22 Q. And the work that you did at the biotech
23 company, was that also involving DNA work?

24 A. It was. It was DNA purifications for them.

25 Q. What's your education background that allows

1 you to do this type of work?

2 A. I graduated with a Bachelor's degree from the
3 University of Houston in Clear Lake.

4 Q. And have you gone through any particular
5 training in this field as well?

6 A. Yes, I have, when I first initially started
7 with HPD, I received training as a screener. Screeners
8 specifically test for blood and semen and also retain
9 contact DNA samples for DNA. I did that for a few
10 months; and about a year after I was there, I trained as
11 a DNA analyst. I received training in-house, which
12 included basically like modules that I had to learn, had
13 a written exam. I had to take mock trial. I had to do
14 a lab practical meaning that they gave me samples to
15 test, and I had to give the appropriate results. And
16 then also what's required of us is we have to do minimum
17 mandatory eight hours of continuing education training,
18 whether we bring somebody in or we go out to training.
19 And also we stay on top of, like, scientific articles
20 once a month at a minimum.

21 Oh, and also we get proficiency tested
22 twice a year, meaning that there's an outside agency
23 that submits tests to the analysts and we don't know the
24 results and we submit it back to that agency and they
25 tell us that if we came up with the appropriate results

1 for the test or not.

2 Q. Do you hold any particular certifications or
3 accreditations in your field?

4 A. The laboratory is accredited. We're accredited
5 by FQS. And we became accredited for screening of
6 serology in 2005 and for DNA in 2006.

7 Q. Have you testified as an expert in the field of
8 DNA on previous occasions?

9 A. Yes, I have.

10 Q. On few or many?

11 A. Approximately, I think it's between 35 or 40
12 times approximately.

13 Q. I want to talk to you about DNA work that you
14 did in a particular case, HPD Case No. 181795510?

15 A. Yes, ma'am.

16 Q. In particular, there was a number of items that
17 were submitted to the Houston -- well, I guess back then
18 it was the Houston Crime Lab for analysis; is that
19 correct?

20 A. Yes, that's correct.

21 Q. And some of the work was done under both names,
22 right?

23 A. Right, so some of the initial reports will be
24 Houston Police Department Crime Laboratory; and then
25 some of the reports will be under Houston Forensic

1 Science Center.

2 Q. And I just want to walk you through some of the
3 different pieces of evidence that were tested; but
4 before I do that, can you give the ladies and gentlemen
5 a general idea of what DNA is?

6 A. Sure. DNA, it stands for deoxyribonucleic
7 acid. It's basically our genetic blueprint. You
8 receive half your DNA from your mother, half from your
9 father, and it is determined at conception. Your DNA is
10 the same throughout your body, meaning that if you
11 donate a blood sample or a saliva sample or serum sample
12 or sweat, it would have the same DNA profile.

13 Q. And do people have the same -- do, I'm sorry,
14 that was poorly worded. Does each person have their own
15 DNA, it's unique to them?

16 A. With the exception of identical twins, yes,
17 your DNA profile would be unique to you. We're not
18 looking at your entire DNA sequence. We look at very
19 specific regions on the DNA that are highly variable
20 from one individual to another.

21 Q. And in this particular case, were you given
22 known samples?

23 A. Yes, I was.

24 Q. And what are known samples?

25 A. Known samples are samples that come directly

1 from an individual. So, that can be either a buccal
2 swab, a buccal swab is just taking a cotton swab and
3 swabbing the inside of somebody's cheek, or it could be
4 a blood sample, like a bloodstain card when they'll draw
5 blood from an individual and then spot it on some FTA
6 paper and we will take a cutting of that for DNA.

7 Q. And in this case, what known samples were you
8 working with?

9 A. Saturnino Argueta, and Edgar Padron, Mark
10 Deleon, Jose Castillo, and Ariel Donamaria.

11 Q. Now, I want to talk to you about the evidence
12 in particular that was tested. Did you test the swab as
13 it related to, I guess it was titled the north of entry
14 door on sidewalk swab?

15 A. Yes, this was our Item 1.1.2. It was a north
16 of entry door on sidewalk swabs, yes.

17 Q. And did that appear to be a blood swab?

18 A. Yes, it tested positive for the presence of
19 blood at screening; and then it was sent on to DNA for
20 analysis.

21 Q. And when the DNA analysis was conducted, were
22 you able to determine whose blood that was?

23 A. Yes, we developed a full single-source male DNA
24 profile from this item. A full single-source DNA
25 profile just means it did not look like it was a mixture

1 of anybody else. It just appeared to be originating
2 from one individual. Saturnino Argueta cannot be
3 excluded as a possible contributor to the DNA profile
4 from this item.

5 Q. Were any of the other four individuals included
6 in that swab?

7 A. No, the other four individuals were excluded as
8 possible contributors.

9 Q. And generally with these results you're also
10 able to render a statistical outcome; is that correct?

11 A. Yes, that's correct. When we say that somebody
12 cannot be excluded from a profile, we have to calculate
13 statistics in order to provide weight to say that they
14 cannot be excluded.

15 Q. And what is the level of positivity that you
16 have with regard to Saturnino being the contributor to
17 that swab?

18 A. Do you mean just what the statistics?

19 Q. Yeah, in essence.

20 A. Okay. I calculated the statistics for the
21 single-source profile and they were approximately,
22 sorry, the probability that a randomly chosen, unrelated
23 individual would be a possible contributor to this DNA
24 profile is approximately 1 in 44 quintillion for
25 Caucasians; 1 in 160 sextillion for African Americans;

1 and 1 in 180 quintillion for southwest Hispanics.

2 Q. So a lot of 0's in quintillions?

3 A. Correct.

4 Q. And in sextillion?

5 A. Yes.

6 Q. So in all likelihood that is Saturnino's blood
7 that's found on the north of the entry door on sidewalk?

8 A. These numbers are very high. The estimated,
9 the current world population is just over 7 billion.
10 So, these numbers are significantly higher than that.

11 Q. Did you also have an opportunity to look at
12 Item 1.2.2, which is a swab from the floor north of the
13 north end counter?

14 A. Yes, we did.

15 Q. And were you able to develop a profile from
16 that item?

17 A. We were not. The data that was obtained was
18 insufficient for interpretation.

19 Q. And what does that mean?

20 A. It means that there wasn't enough DNA present
21 on the item in order to develop a DNA profile.

22 Q. What about a black cap that was recovered from
23 the crime scene, were you able to do any DNA analysis on
24 it?

25 A. Do you happen --

1 Q. Oh, that's Item 3.11?

2 A. That also was insufficient and not suitable for
3 interpretation.

4 Q. So, again, not enough DNA present for any
5 conclusions to be drawn?

6 A. Correct, it wasn't suitable for me to compare
7 anybody to it or describe the profile at all.

8 MS. MERIWETHER: May I approach the
9 exhibits, Your Honor?

10 THE COURT: You may.

11 Q. (BY MS. MERIWETHER) I want to show you Item 4.
12 Were you able to do any DNA analysis on this item, which
13 I believe is marked as 4.11?

14 A. We did test this item for DNA for Item 4.11,
15 and no DNA profile was obtained from this item.

16 Q. Okay. As parts of this case, there was also a
17 number of masks submitted for DNA analysis; is that
18 correct?

19 A. Yes, that's correct.

20 Q. In particular, Item 23.111 was a swab from a
21 ski mask. Were you able to obtain a DNA profile from
22 that item?

23 A. No DNA profile was obtained from that item.

24 Q. And is that what we have here, which I believe
25 is marked as 23.1, which was State's Exhibit No. 70?

1 A. Yes, that's correct.

2 Q. So no DNA profile was obtained from this item?

3 A. Correct.

4 Q. And showing you State's Exhibit No. 71, which I
5 believe -- which is Item 23.2, were you able to do DNA
6 analysis on this item?

7 A. Yes, we took swabs of this mask as well; and no
8 DNA profile was obtained from this item.

9 Q. Okay. Was there also a blue mask that you
10 tested as well, which I believe is listed as 33.7.1.1?

11 A. Yes, we did test 33.7.1.1.

12 Q. And that was the swab from the front of a mask;
13 is that correct?

14 A. Yes, that's correct.

15 Q. And were you able to develop any DNA profile
16 from it?

17 A. It was insufficient for interpretation.

18 Q. Now, did you also test a Item 33.6, which was
19 from the collar and front lining of a vest?

20 A. We did, and that was also insufficient for
21 interpretation.

22 Q. Item 29.1.1 was also a mask that was recovered.
23 Were you able to develop any DNA on that item?

24 A. We were able to determine that there was a
25 partial male DNA profile of unknown origin obtained.

1 However, it was not sufficient for comparison.

2 Q. Now, I want to talk to you about a couple of
3 other items. There were some gloves that were submitted
4 for testing as well; is that correct?

5 A. Yes, ma'am.

6 Q. Okay. In particular, this one here, which is
7 marked as Item 33.3, were you able to do any particular
8 DNA testing on that item?

9 A. Yes, we took a swabbing of this item and, of
10 course, we took a portion of that swab as 33.1, I'm
11 sorry, 33.3.1.1, we did obtain a mixture of at least two
12 individuals from this item.

13 Q. So, I think maybe this is the first time we've
14 heard the word "mixture." What does that mean?

15 A. So we can obtain, as I said earlier, a full or
16 a single-source profile, meaning it's only originating
17 from one individual; or we can obtain a mixture. And
18 then there are different types of mixtures. So, we have
19 mixtures that are undistinguishable, meaning that the
20 two or three or however many people may be contributing
21 are contributing in similar amounts. So, there's not
22 one person contributing anymore than the other. Then
23 what we have major/minor mixtures, meaning that there
24 appears to be more than one individual, but there's one
25 individual who's contributing significantly more DNA, a

1 secondary individual, or if there's three individuals.

2 Q. And State's Exhibit 104 that I'm showing you on
3 the screen, did you test this item for the presence of
4 DNA and return a mixture sample?

5 A. Yes, we obtained a mixture of DNA from at least
6 two individuals, at least one of whom was male from this
7 item.

8 Q. And were you able to draw any conclusions as it
9 relates to your known individuals?

10 A. Yes, Jose Castillo and Mark Deleon could not be
11 excluded as possible contributors to this DNA mixture.

12 Q. And what are the statistics that came out of
13 this item?

14 A. The probability that a randomly chosen,
15 unrelated individual would be included as a possible
16 contributor to this mixture is approximately 1 in 300
17 thousand for Caucasians; 1 in 5 million for African
18 Americans; and 1 in 100 thousand for southwest
19 Hispanics.

20 Q. Now, those number are a bit lower than what we
21 heard with the sample as it related to Mr. Argueta.
22 Why is that?

23 A. Well, we're comparing that -- his profile was a
24 single-source profile, so we don't believe that there's
25 anybody else contributing. Whereas, this is a mixture

1 profile meaning we have to take into consideration that
2 anybody would be contributing, so any combination of the
3 numbers. There's more possibility that people could be
4 contributing to this profile because it is a mixture of
5 more than one person.

6 Q. Now, I want to show you State's Exhibit 103,
7 which is Item No. 33.5. Did you perform any DNA
8 analysis on this item?

9 A. Yes, there were swabs taken from the inside of
10 this glove.

11 Q. And were you able to draw any conclusions about
12 it?

13 A. We did. This, the swabs taken from this glove
14 also generated a mixture from at least two individuals,
15 at least one of whom was male.

16 Q. And were you able to draw any conclusions about
17 who those contributors might be?

18 A. Yes, Jose Castillo and Mark Deleon could not be
19 excluded as possible contributors to this DNA profile.

20 Q. So, again, a mixture of DNA similar to what we
21 saw in 103, or excuse me, in 104?

22 A. Yes, they were mixtures, both obtained
23 mixtures, two of them, both Jose and Mark could not be
24 excluded.

25 Q. And then State's Exhibit 103, what were the

1 statistical results on it?

2 A. It was approximately 1 in 270 for Caucasians; 1
3 in 960 for African Americans; and 1 in 180 for southwest
4 Hispanics.

5 MS. MERIWETHER: I'll pass the witness,
6 Your Honor.

7 MR. CORTEZ: If it please the Court?

8 THE COURT: Uh-huh.

9 **CROSS-EXAMINATION**

10 BY MR. CORTEZ:

11 Q. Just to be certain from your testing, none of
12 Mr. Castillo's DNA showed up on any of the material from
13 the scene?

14 A. Well, I don't know exactly where all of the
15 items were collected from. I don't have that
16 information with me. So, from -- he could not be
17 excluded from the gloves that we discussed.

18 Q. Those gloves right there on the screen?

19 A. Correct. He was excluded from the Item 1.1.2,
20 which were the north of entry door on sidewalk swabs.

21 Q. Well, let me ask it to you this way. The only
22 thing you found his DNA on were those work gloves?

23 A. That is correct.

24 Q. And those work gloves came from his house?

25 MS. MERIWETHER: Objection, calls for

1 speculation.

2 THE COURT: Sustained.

3 MR. CORTEZ: I'll rephrase.

4 Q. (BY MR. CORTEZ) Do you know where those work
5 gloves came from?

6 A. No, I do not.

7 Q. Do you know that those work gloves did not come
8 from the scene?

9 A. I do not know that.

10 MR. CORTEZ: May I approach, Your Honor?

11 THE COURT: You may.

12 Q. (BY MR. CORTEZ) Do you remember handling the
13 blue mask?

14 A. No, I don't actually handle the large items as
15 they come in the door.

16 Q. So, you didn't handle, I'm going to show you
17 what's marked as State's Exhibit 106 and 102, did you do
18 the testing on this cap?

19 A. So, when the items come into the laboratory,
20 they get assigned to a screener. A screener will test
21 for the presence of blood or semen, depending on the
22 specifics of the case, and then also swab or take
23 cuttings of items that may have contact DNA. In this
24 particular case, Katie Foster, one of our analysts, it's
25 her initials that are on the tag here, she was the

1 initial person to receive the items. So, she will
2 receive the items and like I said, either swab or take
3 cuttings from the items and put a portion of those swabs
4 or cuttings into a tube for the DNA analysis to be done.

5 Q. So you didn't actually handle this ski mask?

6 A. That's correct.

7 Q. But you can see the ski mask, right?

8 A. I can see the ski mask and her initials and the
9 incident number associated with the case.

10 Q. And you see those holes right there?

11 A. Yes, I see it looks like it's torn.

12 Q. Torn, right. Does that look big enough to
13 stick your face through?

14 A. I don't know.

15 MS. MERIWETHER: Objection, calls for
16 speculation.

17 THE COURT: Sustained.

18 MR. CORTEZ: I pass the witness, Judge.

19 **REDIRECT EXAMINATION**

20 BY MS. MERIWETHER:

21 Q. Just briefly, Ms. Clay, I forgot one other
22 item. Item 33.4, which was a glove. Showing you
23 State's Exhibit 105. Was this item tested for DNA as
24 well?

25 A. Yes, swabs from the inside of this glove were

1 tested. It was Item 33.4.1.1. No DNA profile was
2 obtained from that item.

3 Q. Thank you. I'm sorry. I forgot.

4 A. That's okay.

5 MS. MERIWETHER: I'll pass the witness,
6 Your Honor.

7 MR. CORTEZ: Nothing further, Your Honor.

8 THE COURT: You may stand down.

9 Call your next, please.

10 MS. MERIWETHER: Your Honor, may we
11 approach?

12 THE COURT: Yes.

13 (Bench conference.)

14 MS. MERIWETHER: We have been anticipating
15 calling Edmar Argueta as the son. He has had an
16 incident with his daughter at school and is unable to
17 get here. So another son, Abner Argueta, is present;
18 and the State wishes to call him.

19 THE COURT: Let's take a short break,
20 ladies and gentlemen. Please go with the bailiff back
21 to the jury room.

22 (Jury exits courtroom.)

23 THE COURT: Y'all may be seated in the
24 courtroom.

25 (A recess was taken.)

1 THE COURT: We're on the record.

2 MS. MERIWETHER: Your Honor, I believe that
3 there was testimony offered by the clerk, Mr. Sarfraj,
4 regarding the spelling of his name, material variance
5 was observed. The correct spelling should be
6 M-A-K-N-O-J-I-A.

7 THE COURT: Okay. That's done. So we
8 anticipate we're going to put this witness on; but
9 before he testifies, I am going to tell them about the
10 rest of it. Tell them it's going to be very brief.
11 We're going to be closing thereafter and see what they
12 want to do. It's going to take me awhile to read this,
13 how many pages do we have?

14 MR. ORTIZ: 15.

15 THE COURT: That will take me awhile.
16 Seriously, about 35 minutes?

17 MS. MERIWETHER: Yes, Judge.

18 THE COURT: 35 minutes to side.

19 THE BAILIFF: All rise for the jury.

20 (Jury enters courtroom.)

21 THE COURT: Please be seated.

22 Ladies and gentlemen, I'm going to let you
23 know the direction we're going in right now. For
24 several different reasons, we were delayed from what we
25 were originally telling at least Panel No. 1 that

1 started on Monday, the first one we only qualified 23
2 people out of the first panel and had to go to the next
3 day, we didn't get started with testimony in the
4 morning, we got started, I think, about 2 o'clock on
5 Tuesday.

6 Then we've had some other issues including
7 this morning, which nobody could help, in fact, there
8 were at least two Judges -- who was the lady that was on
9 the bus that got stuck? There were at least two Judges
10 who were in the same fix you were in this morning. So
11 that can't be helped. Anyway, we're running later than
12 we thought. What is about to happen is we anticipate
13 this will be the last witness. He is not going to be on
14 the stand for very long. I anticipate that thereafter
15 both sides will be closing, at which time we can charge
16 the jury.

17 My jury charge is about 15 or 16 pages
18 long. It's going to take awhile for me to read that.
19 We have cut down their argument to about an hour and 10
20 to 15 minutes total. That still puts us pretty late.
21 So, we agreed, well, I am anyway, depends on what y'all
22 are going to say, to go on this evening and charge you
23 at least and get you started deliberating; or we can
24 stop after both sides have closed and all we have to do
25 is charge you when you come in the morning and let you

1 immediately begin deliberating. Would y'all like to
2 turn to each other and talk about that?

3 (Discussion amongst the jurors.)

4 THE COURT: What are y'all thinking?

5 JUROR: Keep going, sir.

6 THE COURT: You want to keep going for a
7 while?

8 JURORS: Yes, Your Honor.

9 THE COURT: Y'all have been very agreeable
10 so far. I didn't know if any of you had issues with
11 tomorrow since we were hoping to be through by today
12 with work or not. Now, I am anticipating that if we
13 keep going, it will be somewhere close to 7 o'clock
14 probably before you would be able to be back
15 deliberating the case. That's just to give you an idea.
16 Of course, like I told y'all, I think both panels, I
17 have no idea how long you'll be back there deliberating
18 once you get started, and I do not never, in any way,
19 intend to rush a verdict.

20 So, I don't know if that changes anything
21 or not. It's okay with me whichever way you want to go,
22 but I don't want to work too late tonight because they
23 have some other -- everybody has something else to do.
24 And I don't know what your bus schedules are for those
25 of you who are riding the bus, some routes stop at a

1 certain hour. Who all is riding the bus right now? Do
2 you know your route times? The last bus is when.

3 JUROR: For mine, it's right about 9:30.

4 JUROR: I don't know what mine is.

5 JUROR: Mine is 9:00 p.m.

6 THE COURT: And yours?

7 JUROR: I have no idea.

8 THE COURT: We have a garage closing at
9 8:00. We couldn't work past 8:00 anyway. I'm really
10 kind of changing my mind and kind of thinking the other
11 people would kind of like to argue it tomorrow morning.

12 JUROR: Yes.

13 THE COURT: Can you-all try to be here
14 about 9:45? Some things we have no control over.

15 Okay. That's what we'll do.

16 Call your next witness, please.

17 MS. MERIWETHER: Your Honor, the State
18 would call Mr. Edmar Argueta.

19 THE COURT: This witness has previously
20 been sworn and will be using the interpreter.

21 Proceed, please.

22 **EDMAR ARGUETA,**
23 having been first duly sworn, testified through an
24 interpreter as follows:

25 **DIRECT EXAMINATION**

1 BY MS. MERIWETHER:

2 Q. Good afternoon. Could you please state your
3 name for the record?

4 A. Edmar Argueta.

5 Q. And how old a man are you?

6 A. 32.

7 Q. And do you have any brothers or sisters?

8 A. Yes, five, five brothers and one sister.

9 Q. Okay. Who are your parents?

10 A. Corina Morales and Saturnino Argueta.

11 Q. Saturnino Argueta is your father?

12 A. Yes.

13 Q. What kind of father was he?

14 A. In short words, excellent.

15 Q. And did he have any grandchildren?

16 A. Yes, five.

17 Q. And what kind of grandfather was he?

18 A. A grandfather that his life reflect, all his
19 life reflect around his grandchildren.

20 Q. And your father was 57 when he was murdered; is
21 that correct?

22 A. Correct.

23 Q. What type of work did your father do?

24 A. Remodeling.

25 Q. Was he still working up until the time of his