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GARY CLAYTON,

having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. HARVEY:

Q. Would you tell the jury what your name is?

A. Gary Clayton.

Q. And how are you currently employed?

A. By the Harris County Sheriff's Office.

Q. How long have you worked with the Harris County Sheriff's Office?

A. Approximately 22 years.

Q. What are your duties with the Harris County Sheriff's Office?

A. I'm currently assigned to the Crime Scene Investigation Unit.

Q. How long have you been with the Crime Scene Investigation Unit?

A. Fifteen years.

Q. What specific training do you have with respect to your job duties at the Crime Scene Unit?

A. I've taken numerous forensic courses over the years from FBI, local, and state agencies.

Q. Have any of your courses dealt in the detection of blood?

A. Yes.

1 Q. And what kinds of things have you learned
2 regarding the detection of blood?

3 A. Well, I've taken several courses in latent
4 print development using chemicals and blood. And I've
5 also taken the basic advanced and what's called a level
6 three blood spatter course.

7 Q. Have you testified in court before as a blood
8 spatter expert?

9 A. I have.

10 Q. On -- back on March 22nd of 2011, were you
11 working in the Crime Scene Unit at the Harris County
12 Sheriff's Office?

13 A. I was.

14 Q. And did you receive a request to do something
15 over at the address of 12911 New Cypress Drive?

16 A. Yes.

17 Q. And what was it that you were called out to do
18 over there?

19 A. Investigator Quintanilla called me out to use
20 chemicals to process a residence.

21 Q. Who is Investigator Quintanilla?

22 A. He's a homicide investigator for the sheriff's
23 office.

24 Q. What was it that he asked you to do?

25 A. He wanted me to use the chemical known as

1 fluorescein and another chemical, leuco crystal violet,
2 to try to detect blood inside the residence.

3 Q. Now, were you able to enter the residence on
4 March 22nd?

5 A. Yes.

6 Q. And was a search warrant required to do that?

7 A. Yes.

8 MS. HARVEY: Your Honor, at this time,
9 State offers into evidence State's Exhibit 114, which is
10 the search warrant in this case.

11 **(State's Exhibit No. 114 Offered)**

12 MR. VARELA: No objection to Exhibit 114.

13 THE COURT: State's Exhibit 114 is
14 admitted.

15 **(State's Exhibit No. 114 Admitted)**

16 Q. (By Ms. Harvey) And even though we had
17 previously gotten consent to be in this house on March
18 20th, when we returned on March 22nd, we did it under a
19 search warrant; is that right?

20 A. That's correct.

21 Q. So, as you entered -- or as you began
22 processing the residence for the presence of blood, what
23 was the first location that you tested?

24 A. The kitchen, kitchen floor.

25 Q. And why were you testing the kitchen floor for

1 the presence of blood?

2 A. I was advised by Investigator Quintanilla that
3 the suspect may have walked barefoot on the floor and
4 may have transferred blood patterns onto that floor.

5 Q. And what -- what chemical did you use to test
6 for blood on the kitchen floor?

7 A. I used leuco crystal violet.

8 Q. What is leuco crystal violet?

9 A. It's a chemical that reacts to the hemin of
10 blood and it turns it purple.

11 Q. And when you say that it reacts to blood, will
12 it show me blood that isn't otherwise visible to the
13 naked eye?

14 A. Yes. It reacts to latent and patent blood,
15 which is blood that's not visible to the naked eye.

16 Q. So, if you have an area that is -- that there
17 is no blood visible to the naked eye, how does one apply
18 this leuco crystal violet?

19 A. Once it's mixed, you apply it by a light mist
20 or a spray over the area and it brings up -- it starts
21 to enhance the blood that you see and the blood that you
22 don't see. It turns it a bright purple.

23 Q. And on this particular occasion when you did
24 that on the kitchen floor, were there any areas that
25 turned purple?

1 A. No.

2 Q. After processing the kitchen floor, what area
3 did you go to next?

4 A. We went to the master bath.

5 Q. And in the master bath, were there areas that
6 there were apparent blood?

7 A. Yes.

8 Q. And where were those areas of visible blood?

9 A. On the base of the tub.

10 Q. And if we look at the photographs that have
11 already been admitted into evidence, the first one I'm
12 going to show is State's Exhibit 4. Can you show the
13 jury where in that picture we see the visible blood?

14 A. That area right there (indicating).

15 Q. And then, again, if we look at State's Exhibit
16 No. 63 -- this is sort of a more directly overhead view
17 of that blood -- is this the same visible blood there as
18 was in the other photograph?

19 A. Yes.

20 Q. Now, did you spray the leuco crystal violet on
21 those areas?

22 A. Yes.

23 Q. And did those areas then become bright purple?

24 A. Yes.

25 Q. Did you also spray the inside of the tub?

1 A. Yes.

2 Q. Did -- was there any visible blood on the
3 inside of the tub?

4 A. Nothing illuminated.

5 Q. So, there was nothing visible to the naked eye
6 and nothing illuminated; is that fair to say?

7 A. That's correct, yes.

8 Q. Okay. Did you process any other locations?

9 A. The master shower.

10 Q. And what chemical did you use to process the
11 master shower?

12 A. We used fluorescein.

13 Q. Now, tell me what fluorescein is.

14 A. Fluorescein is a chemical that uses a catalyst
15 to react to blood. So, it breaks down from fluorescein
16 to fluorescin (phonetic) and then starts a catalyst to
17 react and then it fluoresces under a UV light, an
18 ultraviolet light.

19 Q. So, what is the process by which fluorescein is
20 used in order to make the blood fluoresce?

21 A. Well, what you do, you use an ultraviolet light
22 and you go in and you examine the area with the UV light
23 to see what fluoresces on its own. You mark it with a
24 colored marker, then you go back, spray the area, dry it
25 with a hair dryer, and use the UV light again to see

1 what now fluoresces new. And then you mark it with a
2 different color marker. Once it's marked, you go back
3 and collect DNA swabs from all these areas and submit
4 them to the Harris County Institute of Forensic Science
5 for DNA analysis.

6 Q. Did you, in fact, spray the master shower
7 for -- with the fluorescein?

8 A. I did.

9 Q. And did any areas fluoresce?

10 A. We had 24 areas that fluoresced.

11 Q. Where were those areas located?

12 A. On the floor, the walls. It was just
13 throughout the master shower.

14 Q. And when we're talking about this process, is
15 it something that you do by yourself or do you do that
16 with assistance?

17 A. With assistance. Because the process is
18 normally videotaped as well as photographed before,
19 during, and after. So, you need -- like I say, you're
20 using a hair dryer, you're using chemicals, you have to
21 mix the chemicals. So, it's a long process. So, you
22 need two or three people to help you out.

23 Q. When you're talking about being in an area as
24 enclosed as the master shower was in this particular
25 case, how many guys were back in that master shower?

1 A. It was three of us.

2 Q. And you did take photographs of that; is that
3 right?

4 A. That's correct.

5 Q. Did you and I look at those photographs before
6 court?

7 A. We did.

8 Q. And because what we're looking at is pictures
9 that are taken in the dark, did you feel like there was
10 anything in there that would be particularly
11 demonstrative or instructive for the jury?

12 A. No.

13 Q. So, in terms of these different areas that
14 fluoresced, what did you then do?

15 A. Once we took the DNA swabs, we were pretty much
16 done with that area and then we moved onto another area.

17 Q. Okay. I want to show you what has been marked
18 as State's Exhibit 123. This is a brown evidence bag
19 and inside the bag are 27 individual little white boxes.
20 And our bag is noted on the outside -- I guess is it
21 fair to say that each of these barcoded labels
22 corresponds to one of those boxes that's in the inside
23 (indicating)?

24 A. That's correct.

25 Q. Okay. Do you recognize this?

1 A. Yes.

2 Q. And how do you recognize it?

3 A. It has my initials and the date that I packaged
4 it.

5 Q. And the boxes that are inside, what are those?

6 A. Those are DNA swabs taken from the shower and
7 from the second bathroom inside the residence.

8 Q. And when you talk about DNA swabs, what is a
9 DNA swab?

10 A. A DNA swab is actually a sample of possible DNA
11 taken from certain areas within that shower.

12 Q. Well, what does it look like?

13 A. It's just an oversized Q-tip.

14 Q. After you take these swabs and package them up
15 in an evidence bag, where does it go?

16 A. To the Institute of Forensic Science.

17 Q. And is it kept in a secure chain of custody
18 throughout its life span?

19 A. That's correct.

20 MS. HARVEY: At this time, State offers
21 into evidence State's Exhibit 123, which is the brown
22 evidence bag and the 27 individual boxes inside, which
23 are the DNA swabs.

24 (State's Exhibit No. 123 Offered)

25 MR. VARELA: No objection to 123.

1 THE COURT: State's Exhibit 123 is admitted
2 as well as its contents.

3 **(State's Exhibit No. 123 Admitted)**

4 Q. (By Ms. Harvey) When we're talking about what's
5 inside State's Exhibit 123, what is it that we have here
6 (indicating)?

7 A. It's a DNA swab. Can you flip it? One more
8 time. And it says -- one more time -- swabs from
9 shower.

10 Q. Okay. And they're all swabs from the shower,
11 right?

12 A. The majority, yes.

13 Q. Okay. But what we have here is a Q-tip in a
14 box?

15 A. There actually should be two Q-tips in a box.
16 It's two to a package and we used both.

17 Q. Okay. So, two Q-tips in a box?

18 A. Yes.

19 Q. And 27 different boxes?

20 A. Yes.

21 Q. Now, when you have three guys inside a shower
22 stall, one spraying a chemical, one doing some swabbing,
23 and one doing some photography, do you do your best to
24 keep the area as free from your own DNA as you possibly
25 can?

1 A. We try.

2 Q. And are there occasions when despite your best
3 efforts, your own DNA does get mixed into -- or
4 transferred onto an individual swab?

5 A. It has happened, yes.

6 Q. Because there are -- because there are
7 instances when despite our best efforts that happens, is
8 your DNA then -- has the sheriff's department taken your
9 DNA?

10 A. Yes. My DNA is on file at the Institute of
11 Forensic Sciences.

12 Q. And why is your DNA on file at the Institute of
13 Forensic Sciences?

14 A. For just that purpose. In case there's a -- an
15 accidental transfer of DNA at the scene, then they have
16 ours on file for elimination purposes.

17 Q. All right. So, after you process the master
18 shower and take the swabs, where did you go to process
19 next?

20 A. Quintanilla asked that we go to the second
21 bathroom in the residence and process it with LCV.

22 Q. And did you go, in fact, process that area with
23 LCV?

24 A. We did.

25 Q. And what did you discover, if anything, in that

1 second bathroom?

2 A. We had some positive reactions from the basin
3 in the tub.

4 Q. Was there any visible blood in that second
5 bathroom?

6 A. I don't think so.

7 Q. But after the application of LCV, did you, in
8 fact, see some areas that illuminated positive for
9 blood?

10 A. There were several positive areas.

11 Q. I'm showing you what's been marked as State's
12 Exhibits 115, 116, 117, 118, 119 and 120. Would you
13 take a look at those photographs, please (indicating).

14 A. (Witness complies).

15 Q. Do you recognize them?

16 A. Yes.

17 Q. And are they fair and accurate depictions of
18 things that you saw during the time that you were
19 spraying LCV in that second bathroom?

20 A. That's correct.

21 MS. HARVEY: At this time, State offers
22 into evidence State's 115, 116, 117, 118, 119, and 120,
23 and tenders to opposing counsel.

24 (State's Exhibit No. 115 through 120

25 Offered)

1 MR. VARELA: No objections.

2 THE COURT: State's Exhibits 115 through
3 120 is admitted -- are admitted.

4 (State's Exhibit No. 115 through 120
5 Admitted)

6 Q. (By Ms. Harvey) Now, if we look at State's
7 Exhibit 115, can you tell us which bathroom this was
8 taken in?

9 A. It's from the second bathroom.

10 Q. And is there an area that, after being
11 processed with LCV, showed a presumptive positive for
12 blood?

13 A. Yes, this bright purple or semi-bright purple
14 was a positive (indicating).

15 Q. And if we look at State's Exhibit 116, is that
16 then a close-up of that bright purple that you just
17 circled on 115?

18 A. That's correct.

19 Q. If we move to State's 117, what is this a
20 picture of?

21 A. The same type of positive results on the side
22 of the tub.

23 Q. And when you say it's a positive result,
24 positive for what?

25 A. For blood.

1 Q. And State's Exhibit 118?

2 A. A close-up of that same area.

3 Q. And State's Exhibit 119?

4 A. That's the shower wall.

5 Q. And was there an area -- I was trying to turn
6 on the light and shut it off.

7 Okay. Was there an area on the shower wall
8 that fluoresced after being -- not fluoresced rather,
9 but just turned purple --

10 A. Yes.

11 Q. -- after being processed with LCV?

12 A. Yes.

13 Q. And where is that area?

14 A. Right in that area (indicating).

15 Q. And then State's Exhibit 120.

16 A. That's a close-up of that area that I just
17 circled.

18 Q. After processing the second bath, did you have
19 any other dealings with the home at 12911 New Cypress?

20 A. Well, we took the DNA swabs from that area and
21 then we were done.

22 Q. And when you say you took DNA swabs from that
23 area, contained within the 27 different swabs that we
24 entered into evidence earlier as State's Exhibit 123,
25 this contains both the swabs from the master shower and

1 the swabs from the second bathroom --

2 A. That's correct.

3 Q. -- is that correct?

4 A. Yes.

5 Q. When you packaged them all together in a big
6 brown bag like that, what do you need to make sure that
7 one swab doesn't touch another swab?

8 A. That's why they're packaged individually in
9 those boxes so they will not cross-contaminate.

10 Q. I want to talk to you a little bit about the
11 blood that we see in State's Exhibit 63. Now, is there
12 any specific pattern or anything notable to you about
13 the blood that we see on the step there in State's
14 Exhibit 63?

15 A. Most of these drops are 90-degree drops with no
16 directionality. So, it's just giving an indication that
17 they were dropped straight down onto the surface.

18 Q. And can you quantify the level of disturbance
19 that has been to that area? Does the area seem very
20 disturbed or relatively undisturbed?

21 A. As far as blood patterns, relatively
22 undisturbed.

23 Q. If someone had taken a bath in that bathtub
24 there and then stepped over that blood area, would you
25 expect it to be in this state or more disturbed?

1 A. Probably more disturbed.

2 MS. HARVEY: Pass the witness.

3 **CROSS-EXAMINATION**

4 **BY MR. VARELA:**

5 Q. But if a person threw a towel down to cover up
6 that blood before they went out of the bath, then it
7 would be much less disturbed than you would expect from
8 your initial analysis, correct, sir?

9 A. Well, it depends on the state the blood was in
10 when they threw that towel down. If the blood was
11 fairly fresh, then I think that towel would have
12 absorbed probably more of this blood, but if it was
13 dried in the state that it was, then, yeah, it would
14 have been the same.

15 Q. It just depends on how much time had passed,
16 correct?

17 A. That's correct.

18 Q. Okay. Let's talk about the search warrant.
19 You got a search warrant to go back and draw some of
20 these swabs or do some of this testing, correct?

21 A. Well, the search warrant was obtained by the
22 Homicide Division.

23 Q. You didn't personally seek a warrant?

24 A. No, sir, I did not.

25 Q. Okay. Let's talk about the second bathroom

1 where there was a -- I guess we can describe that as a
2 trace of blood found?

3 A. Yes, sir.

4 Q. Again, nothing was visible to the naked eye
5 when you went into that second bathroom, right?

6 A. No, sir, it was not.

7 Q. You had to develop that through the use of the
8 chemicals and the techniques that you used?

9 A. That's correct.

10 Q. And that doesn't tell you when that blood was
11 deposited?

12 A. It does not.

13 Q. It doesn't tell you how the blood was
14 deposited?

15 A. It does not.

16 Q. And until you should analyze that for DNA, it
17 wouldn't tell you whose blood it is, correct?

18 A. That's correct.

19 Q. It could be from the blood you found -- the
20 trace blood that you found in the second bathroom could
21 be from a homicide, couldn't it?

22 A. It could be.

23 Q. It could be cutting yourself shaving?

24 A. It could be.

25 Q. It could be bandaging a cut that's bleeding?

1 A. Yes, sir.

2 Q. It could be any number of causes or origins,
3 correct?

4 A. That's correct.

5 Q. As opposed to State's Exhibit 63 in the master
6 bathroom where there is a -- I guess those blood drops
7 that are being displayed right now on that screen,
8 that's a fairly large quantity of blood, correct?

9 A. It is.

10 Q. It's obviously visible to the naked eye?

11 A. That's correct.

12 Q. Even a layman can tell that someone was injured
13 and actively bleeding from that blood, that position in
14 State's --

15 THE REPORTER: From that blood what?

16 Q. (By Mr. Varela) Even a layman could tell by the
17 naked eye that a person was injured and actively
18 bleeding from State's Exhibit No. 63, the picture,
19 correct?

20 A. That's correct.

21 MR. VARELA: Okay. Pass the witness.

22 **REDIRECT EXAMINATION**

23 **BY MS. HARVEY:**

24 Q. The very small quantity of blood that is
25 deposited on the vanity in the second bathroom, could

1 that be consistent with someone scratching their arms
2 over the sink?

3 A. It could be, yes.

4 Q. The very small quantity of blood that was found
5 on the edge of the tub, could that be consistent with
6 someone sitting on the edge of the tub and scratching
7 the inside of their thighs?

8 A. Yes.

9 MS. HARVEY: Pass the witness.

10 **RECROSS-EXAMINATION**

11 **BY MR. VARELA:**

12 Q. But in reality, you don't know -- have the
13 slightest idea based on your examination how any of that
14 blood got deposited in any of those places, do you?

15 A. I do not.

16 Q. All right. It's just as likely that it could
17 be from some other mechanical action than somebody
18 scratching their arms or scratching their thighs,
19 correct?

20 A. That's correct.

21 Q. So, if we were to indulge the prosecutor's
22 version of events, that would be just sheer speculation
23 from your standpoint, correct?

24 A. Yes.

25 MR. VARELA: All right. Pass the witness.