

1 MS. BRAUN: The State calls Mona Colca.

2 THE BAILIFF: Your Honor, this witness has
3 not been sworn.

4 THE COURT: Come forward, ma'am. Please
5 raise your right hand.

6 (Whereupon the witness is sworn by the
7 Court.)

8 THE COURT: You may proceed when you're
9 ready.

10 **MONA COLCA,**

11 having been first duly sworn, testified as follows:

12 **DIRECT EXAMINATION**

13 BY MS. BRAUN:

14 Q. Ms. Colca, is that how you pronounce your last
15 name?

16 A. Yes.

17 Q. Can you go ahead and state your name and spell
18 it for the record?

19 A. My name is Mona Colca, M-o-n-a, C-o-l-c-a.

20 Q. Mona, where are you currently employed?

21 A. I'm a criminalist with the Houston Police
22 Department Crime Laboratory.

23 Q. And you say criminalist. What does that mean?

24 A. A criminalist, specifically in the control
25 substance section, is someone that receives and analyzes

1 evidence and test it for the presence of controlled
2 substances. I've also come to court when subpoenaed.

3 Q. And how long have you been with HPD crime lab
4 for?

5 A. Eight years.

6 Q. And can you tell us your background, you know,
7 what brought you here?

8 A. I have a degree in chemistry from Texas Tech
9 University; and I've also received training with the
10 Houston Police Department crime lab specifically in the
11 controlled substance section; I've also received training
12 with the DEA and FBI.

13 Q. Have you been found or been qualified as an
14 expert before testifying in court?

15 A. Yes.

16 Q. As it relates to identifying controlled
17 substances?

18 A. Yes.

19 Q. On few or many occasions?

20 A. Many.

21 Q. Misdemeanor courts, felony courts?

22 A. Misdemeanor courts and felony courts, yes.

23 Q. It's fair to say you've testified a lot?

24 A. Yes.

25 Q. As an expert?

1 A. Yes.

2 Q. And as a criminalist or as an analyst, are you
3 able to take an unknown substance and identify it?

4 A. Yes.

5 Q. And are these -- how do you go ahead and do
6 that?

7 A. In our laboratory, in order to make a
8 confirmation, we have to perform two tests. The first
9 test is a presumptive test, and that test would get us an
10 indication of what substance may be present. Our second
11 test is a confirmatory instrumental test, and that test,
12 like I just mentioned, will confirm what the actual
13 substance is.

14 Q. So, in other words, you take an unknown
15 substance and you subject it to testing?

16 A. Yes.

17 Q. And is that testing standardized?

18 A. Yes.

19 Q. And did you -- how do you determine what, in
20 fact, you test and what you don't? Because I imagine you
21 get bags with substances in it and things of that nature.

22 A. Correct. We will first do a visual examination
23 of the evidence submitted, and then, based on my
24 expertise, I would then select which items need to be
25 tested.

1 Q. So, do you kind of look at the charge, what the
2 charge -- what the charged offense is to help determine?

3 A. Yes.

4 Q. So, for example, in a case where it's a
5 possession of a controlled substance, if you have a bag
6 and then the substance is inside the bag, are you going to
7 test the bag?

8 A. No, we do not.

9 Q. Okay. But you test the pills or substance
10 inside the bag?

11 A. Yes, the contents.

12 Q. And in terms of officers on the scene, what --
13 why do they even have to additionally submit substances to
14 the crime lab as opposed to just, you know, identifying it
15 at the scene?

16 A. Can you rephrase that?

17 Q. In other words, your testing is quite involved
18 to be able to say definitively what a substance is?

19 A. Yes.

20 Q. Unlike officers who are on the street, they
21 don't have that ability?

22 A. Correct.

23 Q. And can you go ahead and look at your report
24 for this case to tell us what tests you used in the lab
25 for these particular substances?

1 A. For this case, 138133712, I performed analysis
2 on the tablets submitted inside of State's Exhibit 5.

3 MS. BRAUN: Judge, may I approach the
4 witness?

5 THE COURT: Yes, ma'am.

6 Q. (By Ms. Braun) When you are saying inside of
7 State's Exhibit 5, that's the bag that was containing all
8 the evidence; is that correct?

9 A. This envelope, yes.

10 Q. So, inside of State's Exhibit 5, the envelope,
11 you had State's -- sorry, State's Exhibit 10?

12 A. Yes.

13 Q. And then State's Exhibits 11, 12 and 13 were
14 inside of State's Exhibits 10?

15 A. Yes.

16 Q. Now, how do we know that is -- these are the
17 exact items that you came into contact with for this
18 particular case?

19 A. They have the HPD incident number, which is
20 also our identifier, 138133712, and my handwritten
21 initials, which are MC.

22 Q. So, the case number corresponds to this
23 particular case?

24 A. Yes.

25 Q. And then you initial when you receive the

1 evidence?

2 A. Yes.

3 Q. And when you're handling it?

4 A. Yes.

5 Q. And then when you're done handling it, what do
6 you do with it?

7 A. I then place all the items -- in this case, I
8 placed the items in these separate ziplocks and placed it
9 back inside this ziplock, sealed it, and placed the
10 contents back in this envelope, and it is sealed here.

11 Q. And this envelope being State's Exhibit 5?

12 A. Yes.

13 Q. And on State's Exhibit 5, are your markings, as
14 well, on that?

15 A. Yes.

16 Q. And is that to indicate that this was for this
17 case on October 31st, 2012?

18 A. Yes.

19 MS. BRAUN: State tenders State's Exhibits
20 5, 10, 11, 12, 13 to defense counsel and offer it
21 into evidence.

22 MR. POPE: Judge, we renew our previous
23 objection to this evidence.

24 THE COURT: It's overruled. It's admitted.

25 (Whereupon State's Exhibit Nos. 5,

1 10-13 are admitted into evidence.)

2 Q. (By Ms. Braun) Now, I'm also going to show you
3 State's Exhibit 6. Do you recognize this?

4 A. Yes.

5 Q. And what is that?

6 A. It is a copy of my laboratory report.

7 Q. And it's the lab report that corresponds with
8 this case, of course?

9 A. Yes.

10 Q. And is this a fair and accurate representation
11 of the report as you made it?

12 A. Yes.

13 Q. For this case?

14 A. Yes.

15 MS. BRAUN: State offers State's Exhibit 6
16 to defense counsel for inspection and offer into
17 evidence.

18 MR. POPE: Judge, I would object under the
19 previous objection regarding any testing of the pills
20 that have already been admitted.

21 THE COURT: It's overruled. It's admitted.

22 (Whereupon State's Exhibit No. 6 is
23 admitted into evidence.)

24 MS. BRAUN: Judge, may I publish?

25 THE COURT: Yes, ma'am.

1 Q. (By Ms. Braun) So, I'm going to ask you about
2 what you have in your report. And this is just indicating
3 that you're the criminalist, the one that was assigned to
4 analyze this substance?

5 A. Yes.

6 Q. And then right here, this is just the person
7 that is assigned to review your work?

8 A. Yes.

9 Q. She doesn't actually test it?

10 A. No.

11 Q. And that's just standard procedure?

12 A. Yes.

13 Q. You guys always have someone double-check your
14 work?

15 A. Correct.

16 Q. Now, I want to talk about what you actually
17 tested in this case. Can you walk us through it?

18 A. Yes. I first tested what I labeled as 2.1.1,
19 which is eight yellow tablets and -- eight yellow tablets
20 with a weight of 1.2 grams, and it contains oxycodone.
21 And I also performed analysis on what I labeled as 2.1.2,
22 which were nine pink tablets, and the weight of 1.4 grams.
23 It contains oxycodone.

24 Q. And, so, in terms of the total weight combined
25 for both of those pills, are we talking about more than 1

1 gram, less than 4 grams?

2 A. Yes.

3 Q. Within that range?

4 A. Yes.

5 Q. And does that include any adulterants and
6 dilutants?

7 A. Yes.

8 Q. And, so, getting to adulterants and dilutants,
9 so that we can all be on the same page with what that
10 means, what does that mean?

11 A. Adulterants and dilutants are substances that
12 are added to a controlled substance to either increase the
13 bulk, quantity of that substance, or to increase its
14 effect.

15 Q. And, so, obviously, in this case, the amounts
16 that the weight was, the results, it includes adulterants
17 and dilutants between 1 and 4 grams is what we kind of
18 come up with?

19 A. Yes.

20 Q. Again, you found that the controlled substance
21 in both sets of pills was oxycodone?

22 A. Yes.

23 Q. Now, can you describe what oxycodone is?

24 A. Oxycodone is an analgesic. It's a pain
25 medication for -- to treat moderate to severe pain.

1 Q. Does it have a high potential for abuse?

2 A. Yes.

3 Q. And in terms of oxycodone, what you find and
4 what you indicate in your report is Oxycontin, what is the
5 difference? What is the significance of the two?

6 A. Oxycodone is actually the ingredient; the
7 Oxycontin is a brand name that pharmaceutical companies
8 have used.

9 Q. Someone identifies it as Oxycontin, it's
10 essentially the same thing, just a brand name for it?

11 A. Yes.

12 Q. What's significant is the ingredient, which is
13 what you indicate in your report?

14 A. Correct.

15 MS. BRAUN: Pass the witness, Judge.

16 THE COURT: Cross?

17 MR. POPE: Yes, Judge. Thank you.

18 **CROSS-EXAMINATION**

19 BY MR. POPE:

20 Q. One can legally possess oxycodone, correct?

21 A. With a prescription, yes.

22 Q. In fact, it's a popular and regularly
23 prescribed drug; is that true?

24 A. Yes.

25 Q. And you didn't test each and every pill that's

1 in the bag, did you?

2 A. No, I did not.

3 Q. Why is that?

4 A. Because the tablets are pharmaceutically
5 manufactured. So, what we do in our laboratory is we take
6 one tablet, and I will actually perform my confirmatory
7 test on that one tablet, and based on the homogeneity of
8 all the tablets, they all look similarly the same, they
9 have the same logo, because there's no indication to me
10 that they were clandestinely made, then it appears that it
11 was pharmaceutically provided.

12 Q. How many of them did you test?

13 A. I tested the one tablet that actually had --
14 for the confirmatory test.

15 Q. And is that a yellow tablet or pink tablet?

16 A. I tested one pink and one yellow.

17 Q. How much did each of those pills individually
18 weigh; can you estimate?

19 A. No. I would need a calculator.

20 Q. But, certainly, those two pills would be less
21 than 1 gram?

22 A. Yes.

23 Q. And you said that you don't test them all
24 because they all look alike. It's possible to counterfeit
25 these pills?

1 A. There are counterfeit pills out there, yes.

2 Q. As a matter of fact, you've probably tested
3 them before; is that correct?

4 A. I have had some, yes.

5 Q. So, you have tested pills in the past which you
6 have presumed to be Oxycontin or hydrocodone, or lots of
7 different kinds of pills that have, in fact, not been the
8 controlled substance at all; is that correct?

9 A. Correct.

10 MR. POPE: No further questions, Judge.

11 THE COURT: Redirect?

12 **REDIRECT EXAMINATION**

13 BY MS. BRAUN:

14 Q. In terms of testing one out of the eight pills
15 and one out of the nine pills, is that standard operating
16 procedure?

17 A. For pharmaceutically made tablets, yes.

18 MS. BRAUN: Nothing further, Judge.

19 THE COURT: Recross?

20 MR. POPE: Just one, Judge.

21 **RECROSS-EXAMINATION**

22 BY MR. POPE:

23 Q. Suppose you tested one of the pills that you
24 tested and it came back that it was not a controlled
25 substance, what would you have done at that point?

1 A. For one tablet?

2 Q. Uh-huh.

3 A. Out of the remainder?

4 Q. Uh-huh.

5 A. Test another tablet.

6 Q. So, if it comes back positive, you don't test
7 any other ones, but if it comes back negative, you're
8 certainly going to test it again until you get one that
9 you think is a good result?

10 A. Well, there was no indication that these
11 tablets were clandestinely made.

12 Q. What would indicate to you that they were
13 clandestinely made?

14 A. Sometimes the coating will flake off when you
15 scrape it -- sometimes if they are clandestinely made,
16 when you scrape it, some of the powder will also flake
17 off. Some of the pharmaceutically made tablets are
18 compressed with a hydraulic press so it would indicate
19 that it was made pharmaceutically.

20 Q. But you didn't test any other pills to
21 determine that?

22 A. Visually, yes, I did.

23 Q. But you said that a lot of times it will scrape
24 off. When it's compressed, you can't tell if it will
25 scrape off or it's been compressed; you would have to test

1 it visually?

2 A. With a visual examination.

3 Q. Can you look at a pill and tell it's going to
4 flake off?

5 A. If I touch the texture of it, yes.

6 Q. Touching it is not visually inspecting it, is
7 it?

8 A. That's part of my analysis.

9 Q. But that's a different analysis than just
10 visually looking at the pill?

11 A. Correct.

12 MR. POPE: No further questions.

13 THE COURT: Thank you, ma'am. You may step
14 down. We'll take a morning break. We'll pick up in
15 about 15.

16 (Whereupon the Court stood in a brief
17 recess.)

18 MR. STILL: Judge, can we do our little
19 admonishment on the record before the jury comes back
20 in?

21 THE COURT: Yes, sir. Go ahead, sir.

22 MR. STILL: We are here outside the
23 presence of the jury. I'd just like to put on the
24 record my conversation. I've talked to Mr. Clark
25 about his absolute right to testify in this