

1 *(Jury enters courtroom)*

2 THE COURT: Please be seated.

3 You may proceed, Counsel.

4 MS. LOGAN: Thank you, Judge.

5 **CLAY DAVIS,**

6 having been first duly sworn, testified as follows:

7 **DIRECT EXAMINATION**

8 BY MS. LOGAN:

9 Q. Good afternoon, sir. Would you please
10 introduce yourself to the folks on the jury.

11 A. My name is Clay Davis.

12 Q. All right. What is it that you do for a
13 living, Mr. Davis?

14 A. I'm a DNA analyst with the Houston Police
15 Department Crime Laboratory.

16 Q. How long have you been a DNA analyst with the
17 HPD Crime Lab?

18 A. I've been with the department nine years.

19 Q. And tell the folks on the jury what your
20 educational background is, please.

21 A. I have a master's degree in biology from
22 Louisiana Tech University and a master's degree in
23 forensic DNA and serology from the University of
24 Florida.

25 Q. Now, tell us what it means for a lab to be

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1 accredited.

2 A. Accreditation involves a team of forensic
3 scientists currently working in the field to come into
4 our lab and look at all aspects of it. They look at my
5 educational background, my training, security of the
6 lab, how we handle evidence, how reports are written,
7 maintenance logs of the machines, all aspects of the
8 lab; and we have to pass at least 150 standards before
9 we're accredited.

10 Q. Now, I know in this case your lab did some
11 testing at various points in time, one of which would be
12 January 9th of 2007, October 31st of 2007, and
13 January 31st of 2011. At each of those times when the
14 analysis on items in this case was being done, was the
15 Houston Police Department Crime Lab accredited?

16 A. Yes, we were.

17 Q. Okay. Now, give us an explanation of what DNA
18 is.

19 A. DNA is the genetic material created in all
20 nucleated cells. You get half from your mother and half
21 from your father. Unless you're an identical twin, your
22 DNA is unique to you. It's the same DNA as -- within
23 your body, as your skin cells will have the same DNA as
24 your blood cells, same DNA as your sperm cells or saliva
25 cells.

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1 Q. What are some examples of how DNA gets to be
2 present on items?

3 A. Blood is one. If you bleed on something, your
4 DNA is on it. If you touch something, kiss something,
5 lick something, hold something, wear something, then
6 your DNA can all be transferred to those items.

7 Q. All right. Now in your experience as a DNA
8 analyst, are there some situations where items will have
9 a small amount of DNA on them?

10 A. Yes, absolutely.

11 Q. Okay. And are there other situations where
12 items can have a great deal of DNA on them?

13 A. Yes, absolutely.

14 Q. Does that affect you, as the analyst, as far as
15 whether you have a large sample or a small sample of
16 DNA?

17 A. It affects me with -- low copy DNA is difficult
18 to interpret. There is just a lot of factors if you
19 have what we call drop-out. So if one of my DNA alleles
20 is dropping out, then it makes the interpretation more
21 troublesome and difficult.

22 Q. All right. So if you have a situation where
23 it's a very small amount of DNA that's present on an
24 item and you're looking to compare that sample to a
25 known sample, does it get a little more difficult

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1 whether the sample is very small?

2 A. Yes, it does.

3 Q. And sometimes is there just too little DNA
4 present to even make a comparison?

5 A. Yes, there are. And this is where there is
6 just no way to call any conclusion on those samples
7 because there is not enough DNA to include or exclude
8 anyone.

9 Q. All right. Now let's talk about mixtures
10 versus single source DNA. Tell the folks on the jury
11 what a mixture DNA is and what single source DNA is.

12 A. Okay. So, since you get half of your DNA from
13 your mother and half from your father, what I'm looking
14 at are fifteen locations of your DNA. And what I'm
15 looking for are short tandem repeats on those individual
16 fifteen sections. Each section should give me one or
17 two numbers; one number from your mom, one number from
18 your dad.

19 So if I see a sample that has two or more
20 numbers at every location, then I'm confident that is a
21 single source sample. If I see a sample with more than
22 two numbers -- because you only get two numbers; one
23 from mom, one from dad -- if I see a sample with, let's
24 say, three numbers at a location or four numbers at a
25 location, then I know that that sample is a mixture of

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1 DNA of at least two people.

2 Q. All right. So, hypothetically, if two people
3 were to wear the same item of clothing, let's say a
4 shirt in this example, and they both sweat in it and the
5 shirt is not washed prior to DNA testing, would you
6 expect to be able to locate a mixture of DNA on that
7 shirt?

8 A. Yes. Of course, the factor is also, did one
9 individual wear a T-shirt? If no, then yes. And we all
10 shed skin cells at different levels. You may be a heavy
11 shedder of skin cells, where a person that wore it after
12 you is not; but more than likely, you will indicate two
13 individuals. Now whether you can draw conclusions on
14 both of them is also based on how long each one of them
15 wore it and whether they could actually -- the shedding
16 person.

17 Q. All right. How long will DNA stay on an item,
18 and what are some factors that affect that?

19 A. If stored properly, DNA can last for years.
20 Heat, humidity, sunlight, bleach, obviously, wiping it
21 away can affect it. But if stored correctly, DNA can
22 last through the years on an item.

23 Q. So when items of evidence are submitted to your
24 lab, maybe some serology is performed, are they then
25 retained at the lab under certain circumstances that

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1 would not degrade the DNA?

2 A. Yes. The samples that were taken are usually
3 stored frozen, so they are frozen so they will retain
4 the DNA.

5 Q. Okay. Are there some people out there that
6 leave a lot of DNA when they touch items and other
7 people who leave less DNA?

8 A. Yes, there is.

9 Q. And you can't tell that by looking at us,
10 right?

11 A. No, you cannot.

12 Q. How long does it take for you to conduct DNA
13 analysis on items of evidence?

14 A. Usually about a week, it takes. There is a
15 lot -- there is a couple of overnight incubations. And
16 then, of course, there is analyzing the profiles,
17 writing the reports. And all of our reports go through
18 two reviews, which means another qualified analyst will
19 look at my report and agree with all of my conclusions,
20 exclusions and interpretation. And then once that
21 individual signs off, another person will also look at
22 it. So it goes through two other people before it is
23 final.

24 Q. And what happens if you disagree about the
25 results that another analyst got?

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1 A. If there is a disagreement, then we will
2 approach the DNA biology technical leader and the three
3 of us will talk it out. And sometimes the more
4 conservative route is to go, no conclusions.

5 If I'm trying to say, you know, excluded
6 and my review person is saying, I think he's included,
7 if we disagree to the point, then we will just meet in
8 the middle and go, no conclusions on this individual
9 within this DNA profile.

10 Q. Now with any of the analyses that you performed
11 in this case, did you ever have a situation where you
12 and your reviewer disagreed about the results on this
13 case?

14 A. There was possibly maybe one where the last
15 reviewer did not agree with -- I think it was an
16 inclusion; so we decided to go, no conclusions.

17 Q. All right. So you followed that procedure,
18 like you're talking about, where if y'all disagree,
19 we're just going to say we can't make a conclusion?

20 A. Correct.

21 Q. Okay. So you worked on Lab Number L0612486 in
22 this case, correct?

23 A. Correct.

24 Q. And that pertains to HPD Incident Report Number
25 092957606E, as in Edward, right?

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1 A. Correct.

2 Q. Now, did you create what we call DNA charts as
3 a part of your work in this case?

4 A. Yes, I did.

5 Q. And did you also issue a report pertaining to
6 your findings in this case?

7 A. Yes, I did.

8 Q. Now have you provided me with copies of both
9 the DNA chart and the DNA report that you created in
10 this case?

11 A. Yes, I have.

12 Q. And the copies that you provided me, are they
13 true and accurate copies?

14 A. Yes, they are.

15 Q. Were they kept in the ordinary course of
16 business there at the Houston Police Department Crime
17 Lab?

18 A. Yes, they were.

19 Q. And they have not been altered in any way; is
20 that correct?

21 A. That is correct.

22 Q. Now, on one of the reports -- well, I guess on
23 both of the reports, you and I met about a week ago in
24 preparation for this case, right?

25 A. Yes, we did.

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1 Q. And when we met, we discovered that there were
2 some comparisons that had not been made by someone at
3 your lab; is that correct?

4 A. That is correct.

5 Q. Okay. And essentially, what happened -- well,
6 explain to the jury kind of what happened and why it was
7 we wanted to conduct those comparisons.

8 A. We discovered while reviewing the case file
9 that we still had some unknown samples that I call
10 unknown because I did not have a reference sample to
11 compare to. I had some reference samples, but those
12 individuals were excluded from that profile. So, I
13 still had unknown profiles.

14 And so, there were two other individuals
15 that were processed that had not been compared to some
16 evidence. And then the complainant had not been
17 compared to evidence that was processed later, so we
18 decided to do a mass comparison of everybody against
19 everything that was not compared to.

20 Q. All right.

21 MS. LOGAN: May I approach the witness,
22 Judge?

23 THE COURT: You may.

24 MS. LOGAN: Thank you.

25 Q. (By Ms. Logan) I'm going to show you State's

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1 Exhibits 108 and 137 and ask you whether or not you
2 recognize those?

3 A. Yes, sir. Those are results chart and DNA
4 report.

5 Q. And these are the items you just talked about
6 you giving us copies; and they're true and accurate,
7 correct?

8 A. Yes, they are.

9 MS. LOGAN: I would offer into evidence
10 State's Exhibits 108 and 137, and I'm tendering to
11 defense counsel for inspection.

12 MR. EASTERLING: No objection, Your Honor.

13 THE COURT: Okay. State's 108 and 137 are
14 admitted.

15 And you may publish.

16 MS. LOGAN: Thank you, Judge.

17 Q. (By Ms. Logan) All right. Mr. Davis, when we
18 look at State's Exhibit 108, the first page here we can
19 see is generated -- well, just tell us what we're
20 looking at here. Sorry. Not a very good question.

21 A. So on the bottom of the page, what you're
22 looking at are the DNA profile of two known samples and
23 two evidence samples.

24 Q. Okay. And earlier when you were talking about
25 alleles and points of comparison and two numbers, are

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1 these the locations that you're looking for that DNA?

2 A. Yes. Each box is a location, and each number
3 is an allele. And so, you'll see on the knowns, which
4 are the top two samples, that you have one or two
5 numbers in each box, which would indicate a single
6 source sample, which is what you would expect. When you
7 take a known from someone, it should just be their DNA.
8 The two samples on the bottom are evidence samples, and
9 there are two numbers in most of the boxes. A couple of
10 them have three. And that would tell me that this is a
11 mixture of DNA of at least two people, because you
12 should only have one number from your mother and one
13 number from your father.

14 Q. All right. Now, to your knowledge, was testing
15 done at another lab besides the HPD Crime Lab?

16 A. Yes, there was.

17 Q. What lab is that?

18 A. Identigene.

19 Q. Tell the folks on the jury why some evidence,
20 namely, the known samples from Kevin Chaney and Charles
21 Jones, were submitted to the Identigene lab instead of
22 your lab.

23 A. The known samples were processed in 2008. In
24 January of 2008, our technical leader of DNA acquired a
25 different job and left the lab. Under accreditation

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1 standards, we are not allowed to do DNA testing without
2 a technical leader. So we had stopped testing as of
3 January, 2008, until a new technical leader was hired in
4 the summer of 2008. And so, these samples were
5 submitted. And instead of just sitting on them, we
6 decided to submit them to an outsource lab.

7 Q. Was Identigene a lab that was commonly used at
8 that point in time to help with some of the backlog in
9 testing of samples with the Houston Police Department
10 Crime Lab?

11 A. Yes, and they also have to meet certain
12 standards before they can do the testing for us.

13 Q. Tell us about that.

14 A. They had to do an accreditation, also. And
15 then we also do a site visit, review their manuals,
16 quality assurance. We're actually doing like a mini
17 audit of them, making sure security is correct, how they
18 write reports, educational background and just making
19 sure that they are following what they say and what they
20 do.

21 Q. All right. So, tell us what you can say, based
22 on your review of Page 1 of State's Exhibit 108, with
23 regard to the buccal swabs labeled Charles Jones and
24 Item F, work shirt cutting.

25 A. So this is a full single source male DNA

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1 profile, and Charles Jones cannot be excluded as a
2 possible contributor to this profile.

3 Q. All right. Now you mentioned earlier about
4 single source DNA. Is it fair to say that Item F, the
5 work shirt cutting, has the DNA of one person on it?

6 A. Yes, it does.

7 Q. Not a mixture?

8 A. Not a mixture.

9 Q. And when you say that Charles Jones cannot be
10 excluded as the source of the DNA on Item F, the work
11 shirt, what statistical numbers can you associate with
12 that comparison?

13 A. The probability that a randomly chosen,
14 unrelated individual would be included as a possible
15 contributor to this DNA profile is approximately 1 in
16 35 quintillion for Caucasians, 1 in 1.5 quintillion for
17 African/Americans, 1 in 14 quadrillion for Southeast
18 Hispanics and 1 in 190 quintillion for Southwest
19 Hispanics.

20 Q. Those are big numbers.

21 A. Yes.

22 Q. Can you kind of break down for us what that
23 means when you say that those are our odds?

24 A. It means that you would likely have to test 1
25 in 35 quintillion Caucasians before you would see this

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1 DNA profile again.

2 Q. What about African/Americans?

3 A. 1 and 1.5 quintillion. So, roughly test 1.5
4 quintillion African/Americans before you would see this
5 DNA profile.

6 Q. And how many people are on earth, roughly?

7 A. 6.3 billion, I believe.

8 Q. So there is literally not enough people on
9 earth to test in order to expect that DNA would repeat?

10 A. Correct.

11 Q. While I'm here -- I'm sorry -- with respect to
12 the buccal swabs from Kevin Chaney in Item L1, the swab
13 from the glove, were you able to make or notate any
14 determinations as far as that comparison went?

15 A. So this is a mixture of DNA from at least two
16 individuals, because we have more than two numbers at
17 any one location. Kevin Chaney cannot be excluded as a
18 possible contributor to this DNA mixture.

19 Q. What are the statistics for that comparison?

20 A. So the stats are 1 in 5.5 trillion for
21 Caucasians, one in 2.5 trillion for African/Americans, 1
22 in 74 billion for Southeast Hispanics and 1 in 2.3
23 trillion for Southwest Hispanics.

24 Q. All right. And I should have done this
25 earlier, but I forgot. So tell the folks on the jury,

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1 when we talk about a known sample such as a buccal swab,
2 which is what we see listed in your DNA chart here,
3 State's Exhibit 108, what is a buccal swab? How are
4 they taken?

5 A. A buccal swab are skin cells within the cheek.
6 And all it is is a Q-tip that's rubbed inside of the
7 cheek, cell inside of the cheek, and collect the cells.

8 Q. Now let's look at your report, which is State's
9 Exhibit 137. This is going to be the most recent and
10 updated copy of the report with all of the comparisons
11 that you and I talked about doing when we met in
12 preparation for trial; is that right?

13 A. That is correct.

14 Q. Okay. So on this report, can you list out for
15 us the items of evidence that you tested for the
16 presence of DNA from Page 1 here?

17 A. We tested a portion of swabs from inside the
18 rim of Item I, baseball hat, portion of swabs from
19 collar of Item G, T-shirt, Item A, swab from scene, Item
20 F, cutting from work shirt, Item J, swabs from stocking,
21 Item H, Stain 1 from pants, Item L1, swabs from glove,
22 Item M, swabs from glove, Item H, scraping of waistband
23 of cargo pants, Item M, swab of inside of glove.

24 Q. All right. Now I want to stop you there for
25 just a moment. Item H --

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1 MS. LOGAN: May I approach the witness,
2 Judge?

3 THE COURT: You may.

4 Q. (By Ms. Logan) Thank you. Item H that you're
5 describing there, did you go and take a scraping from
6 any portion of Item H during your testing in this case?

7 A. Yes. I took a scraping of the waistband of
8 Item H.

9 Q. Why did you do that?

10 A. To find out who wore it.

11 Q. Okay. Why would that be a good spot to scrape
12 for possible DNA evidence?

13 A. Because the pants are hitting your waist, and
14 you will -- DNA will be transferred from your skin cells
15 on your waist onto the pants.

16 Q. All right. And is there any marking here on
17 State's Exhibit No. 93 that helps you know that you were
18 the one that did that testing?

19 A. Yes. My initials and the date are on the tape.

20 Q. So when did you collect that sample?

21 A. November 6, 2007.

22 Q. Now when we talk about the glove, Item M that
23 you just mentioned, are your initials, likewise, on the
24 packaging of this container?

25 A. Yes.

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1 Q. What is the date?

2 A. So, October 9th, 2007.

3 Q. And we can see that it is labeled as Item M;
4 and we have a State's Exhibit No. 99 sticker on there,
5 right?

6 A. That is correct.

7 Q. So you went and personally took additional
8 swabs of this item?

9 A. Yes. I took three swabs from inside of the
10 glove.

11 Q. Now I'm going to turn us to Page 2 of your
12 report, which is labeled as the results and
13 interpretations portion. Talk to us about Item I, which
14 is the baseball hat. What DNA comparisons were you able
15 to make with respect to Item I, the baseball hat?

16 A. So this is a mixture of at least two people,
17 and Charles Jones cannot be excluded as a possible
18 contributor to this DNA mixture. The stats are 1 in 110
19 for Caucasians, 1 in 78 for African/Americans, 1 in 71
20 for Southeast Hispanics and 1 in 230 for Southwest
21 Hispanics.

22 Q. All right. Those numbers are much lower than
23 the numbers we talked about when you compared the known
24 sample of the defendant, Charles Jones, to the work
25 shirt. Can you tell us why those numbers are lower?

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1 A. Well, one is a mixture; so, not all locations
2 will be used in the statistical calculation based on
3 if -- if his numbers or his DNA is not completely at a
4 location, then that location is not used for stats. And
5 so --

6 MR. EASTERLING: I couldn't hear that last
7 part.

8 THE COURT: Okay. Would you please repeat
9 yourself.

10 THE WITNESS: So if his DNA is not
11 completely at one of the locations, then that location
12 is not used to calculate the stats.

13 MR. EASTERLING: Calculate the what?

14 THE WITNESS: Stats.

15 MS. LOGAN: Statistics.

16 Q. (By Ms. Logan) So let's just move on down the
17 line then to Item G, which is going to be the T-shirt.
18 Tell us what conclusions you were able to reach
19 regarding the DNA that's on the black T-shirt.

20 A. So this is a full male DNA profile. Charles
21 Jones cannot be excluded as a possible contributor. And
22 the stats are 1 in 390 trillion for Caucasians, 1 in
23 50 trillion for African/Americans, 1 in 220 billion for
24 Southeast Hispanics and 1 in 2.3 quadrillion for
25 Southwest Hispanics.

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1 Q. And tell me again approximately how many people
2 are on earth.

3 A. 6.3 billion.

4 Q. 6.3 billion. So that's going to be less than
5 the 1 in 50 trillion for African/Americans that we have
6 from Item G, the T-shirt?

7 A. The population is less, yes.

8 Q. Now let's talk about Item A, which is listed as
9 a swab from the scene. Tell us what you were able to
10 learn about that.

11 A. This is a full single source male DNA profile,
12 and Thi Nguyen cannot be excluded as a possible
13 contributor to this DNA profile.

14 Q. Can you tell us who, if anyone, was excluded as
15 a possible contributor to that profile?

16 A. Charles Jones, Kevin Chaney and Oscar Lee
17 Benjamin are excluded as possible contributors.

18 Q. Now we see Oscar Lee Benjamin in here. Is that
19 simply a known sample that was submitted to the lab that
20 you-all compared against all of the evidence?

21 A. Yes, it is.

22 Q. When we talk about the single source DNA
23 profile from the scene, Swab A, tell us what the
24 statistics for that item are.

25 A. For Thi Nguyen, 1 in 8.7 sextillion for

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1 Caucasian, 1 in 230 sextillion for African/Americans,
2 one in 810 quadrillion for Southeast Hispanics and 1 in
3 4.6 sextillion for Southwest Hispanics.

4 Q. If I were to tell you Thi Nguyen is an Asian
5 male, can you tell us, would that alter the statistics
6 that you have here?

7 A. Well, you can tell they're all relatively
8 close. And so, of an Asian decent, you would assume
9 that their stats, if you were able to plug them into a
10 database of Asian descendants, that the numbers would be
11 relatively close and within that range.

12 Q. Let's talk about Item F. I'm sorry. We've
13 already talked about Item F, the cutting from the work
14 shirt. Let's talk about Item J, the swabs from the
15 stocking. Okay. Tell us what you learned based on your
16 comparisons for that item.

17 A. This is a mixture of at least two people, one
18 of whom is male; and Kevin Chaney cannot be excluded as
19 a possible contributor. The stats are 1 in 100,000 for
20 Caucasians, 1 in 21,000 for African/Americans, 1 in
21 2,200 for Southeast Hispanics, 1 in 14,000 for
22 Southwest. Thi Nguyen and Oscar Lee Benjamin are
23 excluded, and no conclusions regarding Charles Jones on
24 this mixture.

25 Q. And why is it that we couldn't make a

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1 conclusion when it comes to Charles Jones for Item J?

2 A. Not enough DNA present.

3 Q. Let's talk about Item H, which are going to be
4 the pants that you and I discussed a moment ago. Now,
5 there was a stain from those pants and a scraping from
6 the waistband that were both -- that you did a DNA
7 analysis on for this one item; is that correct?

8 A. Correct.

9 Q. Okay. So let's talk about Stain 1 first for
10 Item H. Whose DNA did you observe to be present on that
11 item?

12 A. This is a male DNA profile, and Thi Nguyen
13 cannot be excluded as a possible contributor.

14 Q. On this item, are we talking about those big
15 numbers again, just like it was from the swab from the
16 scene?

17 A. Yes. It's the same numbers.

18 Q. Okay. And when we talk about the stain --

19 MS. LOGAN: I'm sorry. May I approach the
20 evidence?

21 THE COURT: You may.

22 MS. LOGAN: Thank you, Judge.

23 Q. (By Ms. Logan) Stain 1 from the pants, can you
24 tell the folks on the jury approximately where or which,
25 you know, which part of the pants we are seeing Thi

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1 Nguyen's DNA on?

2 A. So, left mid right where the hole is.

3 Q. Talking about this area right here?

4 A. Correct.

5 Q. Okay.

6 A. That's Stain 1.

7 Q. That's Thi Nguyen's DNA right there?

8 A. Yes. He cannot be excluded.

9 Q. All right. And I'm going to skip forward on
10 your report to the scraping of the waistband of those
11 same pants I was just holding up there. Tell us what
12 you learned during your analysis.

13 A. This is also a male DNA profile, and Charles
14 Jones cannot be excluded as a possible contributor to
15 this profile.

16 Q. What kind of statistics were we talking about
17 for the scraping of the waistband of those pants?

18 A. 1 in 800 quadrillion for Caucasians, 1 in 98
19 quadrillion for African/Americans, 1 in 370 trillion for
20 Southeast Hispanics and 1 in 2.0 quintillion for
21 Southwest Hispanics.

22 Q. And who could be excluded from the DNA sample
23 from the back of those black pants?

24 A. Thi Nguyen, Kevin Chaney and Oscar Lee Benjamin
25 are all excluded.

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1 Q. Now I want to talk to you about Item M, the
2 gloves. Now one set of swabs that you compared are
3 labeled as swabs from glove. The other swabs you
4 labeled as swab from inside of glove; is that right?

5 A. That is correct.

6 Q. Okay. Tell us which of those swabs was the one
7 that you took when you handled the evidence like we
8 talked about a moment ago.

9 A. I did the swab of the inside of the glove.

10 Q. So that's going to be the second one that we
11 see here listed in your report, right?

12 A. Correct.

13 Q. Now with respect to the first swab, the one
14 that Miss Pierce took, tell us what we learned about the
15 DNA present for that stain.

16 A. This is a male DNA profile, and Thi Nguyen
17 cannot be excluded as a possible contributor to that DNA
18 profile.

19 Q. And what were our statistics on that?

20 A. 1 in 620 quadrillion for Caucasians, 1 in 307
21 quadrillion for African/Americans, 1 in 3.9 quadrillion
22 for Southeast Hispanics and 1 in 91 quadrillion for
23 Southwest Hispanics. Charles Jones, Kevin Chaney and
24 Oscar Lee Benjamin are excluded as possible contributors
25 to this profile.

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1 Q. So we've got Thi Nguyen on the swabs from Item
2 M, the glove --

3 A. Correct.

4 Q. -- right? Now let's look at Item M from the
5 swab from inside the glove. What did you learn about
6 that?

7 A. This is a mixture of at least three
8 individuals. At least one of them is male. Charles
9 Jones cannot be excluded as a possible contributor to
10 the major component of this mixture. And the stats are
11 1 in 3.1 trillion for Caucasians, 1 in 140 billion for
12 African/Americans, 1 in 380 million for Southeast
13 Hispanics and 1 in 2.6 trillion for Southwest.

14 Additionally, Thi Nguyen cannot be
15 excluded as a possible contributor to this mixture from
16 inside the glove.

17 Q. Okay. And what are the stats regarding Thi
18 Nguyen from inside the glove?

19 A. 1 in 850 for Caucasians, 1 in 180 for
20 African/Americans, 1 in 620 for Southeast Hispanics and
21 1 in 710 for Southwest. Kevin Chaney and Oscar Lee
22 Benjamin are excluded as contributors for this mixture.

23 Q. Now we can see that the statistics for Charles
24 Jones are much higher than the statistics for Thi
25 Nguyen; is that correct?

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1 A. That is correct.

2 Q. Can you tell us why that might be?

3 A. Because I was able to determine that there is a
4 major contributor; so someone contributed more DNA than
5 the other individual, and that's based on a mathematical
6 ratio that we use when we look at the graphs when the
7 DNA is produced. And, so, based on the major component,
8 those numbers can be higher versus someone that has --
9 that's just involved within the mixture. And that's why
10 his numbers are relatively lower.

11 Q. All right. The last glove, Item L1 that you
12 conducted an analysis on, tell us what we learned about
13 Item L1.

14 A. This is a mixture of two individuals, at least
15 one male. Kevin Chaney cannot be excluded as a possible
16 contributor to the major component. His stats are 1 in
17 5.5 trillion for Caucasians, 1 in 2.5 trillion for
18 African/Americans, 1 in 74 billion for Southeast
19 Hispanics and 1 in 2.3 trillion for Southwest. Charles
20 Jones, Thi Nguyen --

21 COURT REPORTER: I'm sorry. Hold on.

22 THE COURT: You may continue. Was he
23 answering your question?

24 MS. LOGAN: I think he was. I've
25 forgotten now.

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1 THE WITNESS: I think I was doing the
2 exclusions. So Charles Jones, Thi Nguyen and Oscar Lee
3 Benjamin are excluded as possible contributors to the
4 major component. And I couldn't tell anything on the
5 minor component. It was too low DNA.

6 Q. (By Ms. Logan) Okay. So we've got Kevin
7 Chaney as the person who can't be excluded on L1, that
8 glove?

9 A. Correct.

10 Q. Okay. So in the way of conclusion here,
11 Mr. Davis, we've got State's Exhibit No. 99 here, which
12 is listed as Item M, that's going to be the glove that
13 swabs were taken from that you conducted DNA analysis
14 on?

15 A. That is correct.

16 Q. Okay. And can you tell us whose DNA was
17 consistent with the profiles that were obtained from
18 Item M, this glove?

19 A. So if you've taken swabs just from the glove --
20 that's Thi Nguyen -- he cannot be excluded. And swabs
21 from inside of the glove is a mixture of Charles Jones
22 and Thi Nguyen.

23 Q. Okay. So we've got Thi Nguyen and we've got
24 Charles Jones on State's Exhibit No. 99, Item M, the
25 glove; is that correct?

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1 A. That's correct.

2 Q. All right. Now Item F, the work shirt, which
3 is in evidence as State's Exhibit No. 94, tell us whose
4 DNA was consistent with the cutting from Item F.

5 A. Charles Jones cannot be excluded for Item F.

6 Q. And lastly, Item H, the black pants which are
7 in evidence as State's Exhibit No. 93, tell us whose DNA
8 is consistent with the samples that were taken from Item
9 H.

10 A. Item H, Stain 1, that's Thi Nguyen, cannot be
11 excluded. And Item H, scraping of the waistband,
12 Charles Jones cannot be excluded.

13 Q. Thank you, sir.

14 MS. LOGAN: I'll pass the witness.

15 THE COURT: Okay. Your cross.

16 MR. EASTERLING: Thank you.

17 **CROSS-EXAMINATION**

18 BY MR. EASTERLING:

19 Q. Hello, Mr. Davis, how are you doing?

20 A. Good. How are you?

21 Q. Good to see you again.

22 A. You, too.

23 Q. Okay. The first testing that was done was, I
24 believe, January 9th, 2007. Does that sound right?

25 A. The first testing that I did, yes.

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1 Q. That you did, okay. And the Identigene testing
2 you used as a reference, what was the date of that one?
3 March 7th, 2008?

4 A. Correct.

5 Q. Okay. So you did some testing before
6 Identigene did?

7 A. Yes, I did.

8 Q. Now when you get a request to do testing from,
9 say, a Homicide detective, do they send you a little
10 supplement narrative to give you a synopsis of the case?

11 Just generally, I was asking the question.
12 First, does that generally happen?

13 A. Sometimes there is something typed out on the
14 request, but not always. There is nothing typed out at
15 the bottom of this request indicating other than it was
16 a homicide.

17 Q. Okay. So you didn't get Supplement No. 17, the
18 date being way back on August 14th, 2006, from a
19 Homicide Officer A.D. Brown, giving you a synopsis of
20 the case and asking for items to be tested? You don't
21 recall that? The Number 0017, date again would be
22 8/14/06. It would probably be about the first thing you
23 would even get over there, because that's only about a
24 month and a little more after the -- I mean, a couple of
25 months after the incident in June.

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1 A. The first supplement that I have is No. 50,
2 requesting certain items. Supplement 17 is not in the
3 photo. So it may be in the system, but I didn't print
4 it. So, it was not actually delivered to me, no.

5 Q. And, of course, you wouldn't have any
6 independent memory, I guess, of something that long ago,
7 reading a synopsis of a case, right?

8 A. No, I'm sorry, I wouldn't.

9 Q. I could understand. So sometimes you read the
10 synopsis to kind of get a feel for where the items came
11 from and how they originated, and sometimes you don't,
12 right?

13 A. Yes. Like the swab from the scene, I may have
14 read to determine where that was actually collected; but
15 I can't tell you yes or no whether I read it or not. I
16 don't remember whether that swabbing actually was taken.

17 Q. A swab from what?

18 A. The swab from the scene.

19 Q. The scene.

20 A. So, usually I will read it if I'm trying to
21 determine where that was taken from within the scene;
22 but I don't recall where that was taken, so I don't
23 remember reading about it.

24 Q. Okay. But, I mean, you just maybe see
25 homicide; but you don't see details like, convenience

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1 store clerk is shot. We think suspect ran down a bayou
2 or ran to a bayou. You don't remember anything like
3 that?

4 A. I don't recall reading that, no.

5 Q. All you know is that you have some items that
6 come in; and you're going to test them, basically,
7 right?

8 A. Yes, that is correct.

9 Q. Now, I want to distinguish a couple of things
10 with the jury. There is something that's referred to as
11 touch DNA, and then there is bodily fluid DNA. There is
12 a distinction between the two?

13 A. There is a difference, yes.

14 Q. Let's talk about bodily fluid DNA. Would
15 bodily fluid DNA be commonly found in bodily fluids of a
16 human body, like blood, semen and maybe perspiration,
17 but particularly more blood and semen, correct?

18 A. Correct. I would say it's probably spit or
19 saliva.

20 Q. Saliva, spit. Okay. So if I bleed on an
21 object like a piece of paper and come across and swab
22 it, that's a very good source of DNA. You can get a lot
23 of DNA; and it's a high profile, right?

24 A. That is a good source of DNA. Again, if stored
25 correctly, it is a good source of DNA.

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1 Q. Particularly, if it's fresh at a crime scene,
2 right?

3 A. Correct.

4 Q. Okay. Same thing with, like, a rape scene. If
5 you get semen from a rape victim very quickly after the
6 crime occurs and it's preserved, you can get that bodily
7 fluid, excellent source of DNA, correct?

8 A. Correct.

9 Q. Same thing with spit. If for some reason
10 somebody drinks out of a bottle or a cup and they leave
11 their saliva on it, if you can get a swab quickly and
12 it's preserved and it's not out in the elements, again,
13 excellent source of bodily fluids DNA, you get a big
14 profile, correct?

15 A. Good source and good profile, yes.

16 Q. Now compare that to touch DNA. Touch DNA is
17 just exactly what it says. That is, the human body, a
18 part of it is touching something, whether it's a hand, a
19 finger, a neck, a knee; but it's perspiration and skin
20 cells that shred off -- shed off from the human body,
21 right?

22 A. Yes.

23 Q. And in very small microscopic amounts
24 sometimes, right?

25 A. Again, depending on the person. Some people

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1 shed more than others during -- while wearing an
2 article.

3 Q. That can dramatically have a dramatic variance
4 in how much some people shed and how other people don't,
5 right?

6 A. Yes. Individuals will shed differently.

7 Q. Now, if I perspire onto a shirt, do the skin
8 cells travel through the perspiration to the shirt? Is
9 that how it works?

10 A. I think the way it works is the perspiration
11 will pick up the skin cells as you perspire and then
12 deposit it on the shirt.

13 Q. I guess that's the way I meant to say it. Skin
14 cells sort of travel through and into the sweat of the
15 perspiration; and then they get deposited on the cloth,
16 right?

17 A. Correct.

18 Q. Or rubbed onto it, either way, right?

19 A. The sweat would pick them up as you sweat.

20 Q. Now for some reason, if you don't sweat, let's
21 say dry -- what if you have a dry skin situation? Can
22 you flake off skin cells that are dry, also, and can
23 those be deposited on cloth?

24 A. Yes, I believe so.

25 Q. Okay. So sometimes you'll get a swabbing of

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1 the dry skin cells, right?

2 A. Usually when we swab something, we don't know
3 whether we're picking it up from sweat or from skin
4 cells. We're just swabbing the area.

5 Q. You can't see it with your eyes most of the
6 time, right?

7 A. Yes, because I don't know if that's from sweat
8 DNA or from just wearing DNA.

9 Q. And if you put it under a microscope, you
10 probably wouldn't be able to tell then, either, right?

11 A. No, you would not.

12 Q. And these cellular things you're talking about
13 are just super tiny, right?

14 A. Correct.

15 Q. Now, so, the more reliable DNA profiles are
16 from the bodily fluids, not perspiring onto a shirt, or
17 a pair of pants or something like that, right?

18 A. I wouldn't say more reliable. I would say
19 normally you get a good quality profile from a bodily
20 fluid; but you, also, can get good profiles from skin
21 cells. I've gotten good qualify profiles from someone
22 licking someone's neck.

23 Q. Okay. That's saliva, though?

24 A. It is.

25 Q. Okay.

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1 A. But it's also -- you're also competing with a
2 person that you licked. So once you swab that area,
3 you're competing with a person that it's on and the
4 saliva.

5 Q. But it's a bodily fluid, the saliva is, right?

6 A. It is.

7 Q. All right. Now, DNA profiles and these skin
8 cells shedding, you said, can sometimes last for years
9 if properly protected, right?

10 A. If properly stored, yes.

11 Q. Yeah. So if clothing, such as a pants, shirt,
12 wig, sweatshirt, T-shirt, hat, stocking, those kind of
13 things, if they're kept out of the weather so they don't
14 get rained on and they don't get dew in the morning and
15 they're kept either in a home, inside a home, or inside
16 a car or a closet, those are the places where they could
17 be protected from the elements, right?

18 A. Yes.

19 Q. And it's going to last -- it could last days,
20 it could last months or even years in that condition,
21 correct?

22 A. Yes.

23 Q. Particularly, if you don't wash in hot water
24 and bleach and laundry detergent the items that you see
25 out here in a laundry -- excuse me -- in a washing

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1 machine, right?

2 A. Correct. If you do wash, some DNA is washed
3 away.

4 Q. Particularly, the hot water?

5 A. Any water.

6 Q. Or detergents, for sure?

7 A. Any water.

8 Q. Water will do it, too, right?

9 A. Yes.

10 Q. Okay. All right. So if you had some of these
11 items that were outside and they got a lot of rain on
12 them, that would be a very tough time keeping DNA on
13 them, right, if they got a lot of rain on them?

14 A. Rain and sunlight, stuff like that.

15 Q. All right. Direct sunlight is pretty strong,
16 too, right?

17 A. Yes, it is.

18 Q. So whenever you extracted what you did off of
19 all these items we've talked about, whether you did it
20 with a swab or Miss Pierce did it with a swab or there
21 was a cutting from any of these things, you can't tell
22 the jury when that DNA was deposited on that item, can
23 you?

24 A. No, I cannot.

25 Q. You can't even get it down to a time frame of

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1 within days, within weeks, within months or a year, can
2 you?

3 A. No, I cannot.

4 Q. So you can't give the jury an opinion that this
5 particular DNA, particularly for Charles Jones that you
6 think you had found, was deposited on this -- these
7 items on the day that there was an alleged capital
8 murder at the Happy All Store on June 15th, 2006,
9 correct?

10 A. No, I cannot.

11 Q. And you can't tell the jury that Charles Jones
12 was wearing any of these items on June 15th, 2006, can
13 you?

14 A. No. I can't tell you, like, what date he wore
15 them, no.

16 Q. You can't tell the jury that he shed these
17 things, took these things off and deposited them on the
18 ground somewhere, can you?

19 A. I'm sorry. I don't understand that question.

20 Q. I'll rephrase it. It wasn't very good. You
21 can't tell the jury that Charles Jones had these items
22 on and took them off and deposited them and threw them
23 on the ground somewhere on June 15, 2006, can you?

24 A. No. I cannot tell you that date, no.

25 Q. Now, the Toyota work shirt. You said there

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1 wasn't a mixture. Remember when you said that?

2 A. Yes.

3 Q. When you say it's not a mixture, you can't say
4 whether other people's DNA is not present there. It
5 just doesn't come up to a level at the lab that you want
6 to recognize and identify, correct?

7 A. Correct. There could be other individuals
8 there, but it was not a detectable level for us to
9 detect.

10 Q. There could be several more people, depending
11 on who came in contact with the shirt, who wore the
12 shirt, correct?

13 A. Correct.

14 Q. And so -- and you also can't tell us from the
15 testing you did who wore the shirt last before it was
16 collected and brought to the lab, can you?

17 A. No, I cannot.

18 Q. Now, touch DNA is highly susceptible to being
19 transferred from one item to another when they come in
20 close contact with each other, correct?

21 A. Yes. I would also assume bodily fluid DNA is
22 the same, and more so with blood.

23 Q. Well, let's talk about touch DNA; because we're
24 not talking about bodily -- well, let me rephrase that.
25 You never detected any bodily fluid DNA, to your

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1 knowledge, of Charles Jones on any of these items, did
2 you, blood or semen? It's all touch DNA, isn't it?

3 A. I believe it is, yes.

4 Q. I think that's the evidence. So let me go back
5 to the transfer. If --

6 MR. EASTERLING: May I approach the
7 evidence, Judge?

8 THE COURT: You may.

9 Q. (By Mr. Easterling) If I put two items
10 together, like this sweatshirt and this shirt, if I
11 somehow put them together or they're near each other and
12 they rub off into each other, then skin cells can
13 transfer back and forth between those two items, right?

14 A. Yes, I believe that's possible.

15 Q. Particularly, if you put them in the same sack,
16 right?

17 A. Oh, absolutely.

18 Q. Or if they're on the ground together on top of
19 each other or close to each other before they're
20 collected, there would be a lot of transfer there,
21 correct?

22 A. I believe it's possible. If the area where the
23 DNA is touching an area where there is not DNA on the
24 other object, I believe it could transfer.

25 Q. It's not only possible; it's probable, isn't

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1 it?

2 A. I think it's possible.

3 Q. You're not going to go with probable with me?

4 A. I'm not going to go with probable.

5 Q. Okay. All right. What about this? I don't

6 want to touch this. Let me give you something else.

7 I'm holding these two files, okay. I'm carrying them.

8 And I carry them around for three or four minutes in the

9 courtroom; and then I put them in a briefcase together,

10 and they're rubbing against each other like this. You

11 can transfer DNA, can't you?

12 A. Yes, I believe that's possible.

13 Q. Okay. Well, that's the kind of example I was

14 trying to say it's not only possible; it's probable,

15 isn't it?

16 A. I'm still going to go with possible. I don't

17 know if items together are rubbed vigorously together.

18 I don't know if they're just laying next to each other.

19 I don't know if they're just laying on top of each

20 other. I don't know of any tests that have been done

21 doing that kind of comparison; so I'm going to say it's

22 possible, but I'm not a hundred percent sure that it's

23 probable.

24 Q. I'm not asking for a hundred percent sure. It

25 can happen, can't it?

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1 A. Again, possible.

2 Q. Okay. It can happen possibly, can't it?

3 A. It can.

4 Q. So it's not something where you can say, that's
5 impossible; it would never happen?

6 A. No, I can't say that.

7 Q. Now if clothing like this, pants, shirt,
8 T-shirt, sweatshirt, if they're in a laundry basket
9 together for a good period of time, okay -- and I'm not
10 talking about a few minutes. I'm talking about like
11 hours, maybe even a day or two -- you have a strong
12 chance that there's going to be a transfer of the DNA
13 items whenever they're thrown in there together or when
14 they're pulled out together or when they're touching
15 each other, right?

16 A. There is a chance, yes.

17 Q. Or if they're -- other scenarios -- if they're
18 piled into the trunk of a car in the same location, or
19 if they're piled into the backseat or the floorboard of
20 a car, or they're just in a corner in a bedroom, same
21 scenario could apply. If they're together, there could
22 be transferred DNA, correct?

23 A. It is possible, yes.

24 Q. And if Charles Jones, if for some reason he had
25 wore some of these items days or weeks prior to the

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1 capital murder on June 15th, 2006, that DNA could stay
2 on there, again, if it's protected, and show up if it's
3 collected at the scene or near the scene, right?

4 A. If protected, DNA would show up, yes.

5 Q. Again, because you can't tell us if -- strike
6 that. If Charles Jones wore the items some days or
7 weeks prior to the capital murder day, and then somebody
8 else wore it on the day of the capital murder date, you
9 can't tell us which one you're necessarily going to get
10 the DNA from, can you?

11 A. No, I cannot.

12 Q. Okay. The gloves. Michal Pierce did some
13 serology work in the HPD Crime Lab on the gloves before
14 they got to you. Remember that? She testified right
15 before you. I know you were asked to do some work, but
16 she did the initial serology work. Is that your
17 understanding?

18 A. Yes, she did.

19 Q. M, Item M, as in Mary, is the glove that I want
20 to concentrate on for a minute. In your report, one
21 spot you talk about swabs from glove. Who took the
22 swabs from the glove? Was that you or Miss Pierce? Do
23 you recall?

24 A. Miss Pierce took swabs from glove. I did the
25 swabs on the inside of the glove.

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1 Q. Okay. Now --

2 MR. EASTERLING: May I get to the
3 evidence, Judge?

4 THE COURT: You may.

5 Q. (By Mr. Easterling) In evidence are some
6 photos by Miss Pierce when she does serology. That's a
7 standard procedure whenever they mark and cut and swab
8 items, to photograph them and then take notes, correct?

9 A. Correct.

10 Q. Okay. You see those all the time, every day,
11 right? And you have them right there, right?

12 A. Yes.

13 Q. I see you do. Let's look at, real quick, Item
14 M, glove.

15 MR. EASTERLING: May I approach the
16 witness, Judge?

17 THE COURT: You may.

18 Q. (By Mr. Easterling) Let me make sure I have
19 the right thing together, because I'm going to put it up
20 on the screen for the jury. It'll label it as State's
21 Exhibit 112, and it's a picture of two gloves. And
22 there is a circle here, tear and tear; so, we have the
23 same thing here?

24 A. Yes.

25 Q. Let me show you that on the screen real quick.

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1 She wrote some notes in here. The glove, one latex
2 glove, yellow. She -- reddish stains visible all over.
3 And then she did two swabs used to swab most of reddish
4 stains. And then she makes, a note, thumb and ring
5 finger have small tear, okay?

6 A. Yes.

7 Q. And then she turns those two swabs in to the
8 lab, two swabs retained in lab?

9 A. Yes.

10 Q. Are those the two swabs that you were working
11 with there?

12 A. Yes, the swabs from the glove.

13 Q. Okay. Now, did you note that she says nothing
14 there about whether it's inside or the outside of the
15 glove, does she?

16 A. No. She just said reddish item or reddish
17 stains visible all over item.

18 Q. Now, let's look over here to the glove. If you
19 agree with me -- well, have you ever worked in serology?

20 A. Yes, I have.

21 Q. Do you agree with me, with these rubber gloves,
22 these cheap rubber gloves, sometimes very difficult to
23 tell what's the inside and what's the outside; because
24 they don't have warm fuzzy liners or anything to them,
25 correct?

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1 A. That is correct.

2 Q. Okay. So this looks like it's all there. I
3 don't see any of the fingers gnarled up, or I don't see
4 of the fingers inverted. It looks like it's just there,
5 right?

6 A. Yes.

7 Q. Doesn't look like it's necessarily inside out.
8 Doesn't look like it's necessarily either way, does it?

9 A. Right, I don't think you can tell.

10 Q. Okay. So, same thing down here on the second
11 photograph. She's photographing both sides, right?
12 She's turning it over, correct?

13 A. Yes, I believe it's turned over.

14 Q. Same thing there. You can't tell whether
15 that's the inside or the outside of the glove, can you?

16 A. No.

17 Q. Now with your normal winter leather gloves, you
18 could probably tell where the outside would be and where
19 the warm, fuzzy part on the inside would be, right?
20 That would be real obvious, common sense?

21 A. Right. I think you could tell on those.

22 Q. So whenever you were asked to do your swabbing,
23 okay, somebody asked you to do the swabbing of the
24 gloves later?

25 A. Yes. Or I took it upon myself to swab the

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1 inside of the glove, because nothing was taken of the
2 inside of the glove.

3 Q. So, were they the same glove as were
4 photographed here?

5 A. Yes.

6 Q. Did you do a photograph in the same kind of
7 report when you did your swabbing?

8 A. No. I didn't do a photograph, no.

9 Q. Okay. All right. Do the gloves look the same?

10 A. Yes.

11 Q. To your knowledge, do they look the same as the
12 photographs Miss Pierce took?

13 A. Yes.

14 Q. So, I guess whenever you're swabbing what you
15 think is inside, you're assuming that the inside of the
16 glove is inside what she had there, right?

17 A. Yes, I'm assuming that the inside of the glove
18 is the inside as I see it.

19 Q. But you would agree with me that you don't know
20 what's the inside and the outside of the glove at the
21 time of it being worn during the alleged crime, do you?

22 A. No, I do not.

23 Q. So when you say inside the glove in your
24 report, you can't be certain it was really inside, can
25 you?

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1 A. I'm saying it's the inside as I received it,
2 and that's how we described it.

3 Q. Of course, you weren't out at the scene when
4 Officer West collected it and claimed that the gloves
5 were inside out?

6 A. No, I was not.

7 Q. Okay. And you weren't present when Miss Pierce
8 took them out of the bag and did what she started doing
9 with them, whether she manipulated to make them look
10 like they were flat like that or they came out of there
11 flat, right? You weren't there for that, either?

12 A. No, I was not.

13 Q. Okay. So you're not telling the jury that you
14 can be positive, or even with any certainty, that you
15 swabbed the inside of a glove where somebody's hand was,
16 can you?

17 A. No.

18 Q. The scraping of the waistband of these cargo
19 pants, Item H, Miss Pierce did not scrape the waistband.
20 That was you that did that, correct?

21 A. Correct.

22 Q. Did somebody ask you to do that, or do you
23 recall how that came about?

24 A. No, I don't recall.

25 Q. Okay. You were asked to test it, so that's

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1 what you wanted to do?

2 A. Yes.

3 Q. And like you described, sometimes people's --
4 people's -- sometimes a person's skin will make contact
5 with the inside of that, particularly if their shirt is
6 not tucked in, right?

7 A. Yes.

8 Q. Like if their shirt's on the outside or they're
9 just not wearing a shirt at all, right?

10 A. Right.

11 Q. Okay. Because of perspiration, again?

12 A. More of a rubbing action of the skin.

13 Q. Rubbing action, okay, with you. But it can be
14 a combination of both, right?

15 A. Correct.

16 Q. Okay. Same questions I asked for the previous
17 items. You can't tell us when Charles Jones' skin cells
18 that you think you picked up were deposited on those
19 pants, can you?

20 A. No. I can't tell you a time, no.

21 Q. You can't tell the jury that Charles Jones was
22 wearing those cargo pants in the Happy All Store or down
23 the bayou on June 15th, 2006, when this allegedly
24 occurred, can you?

25 A. No, I can't tell you that he wore it that day.

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1 Q. In fact, if I was to ask you to be specific,
2 say, did you find Charles Jones' DNA on those pants and
3 I had to pin you down to say yes or no, what would you
4 have to say?

5 A. I would say yes.

6 Q. Okay. I thought you can only say he can't be
7 excluded?

8 A. Yes.

9 Q. Okay. It's a yes on both?

10 A. Yes.

11 Q. Okay.

12 A. He cannot be excluded.

13 Q. So you can also say, yes, his DNA was there?

14 A. I can say, yes, he cannot be excluded. I don't
15 know if Charles Jones has a twin or not, so I can't tell
16 you that it's exactly Charles Jones' DNA. I can tell
17 you that Charles Jones' known sample that I have is
18 consistent on the pants.

19 Q. Okay. Okay. The baseball hat, Item I, there
20 is a mixture. So there is high likelihood that more
21 than one person wore that baseball cap somewhere in the
22 past, correct?

23 A. Yes. There is at least two individuals.

24 Q. Could be more?

25 A. Could be more.

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1 Q. Depending on what your cut-off level is for
2 skin cell detection, right, or DNA profile detection,
3 right?

4 A. I indicate at least two.

5 Q. Okay. So there could be more?

6 A. Could be three.

7 Q. Could be four?

8 A. I would give it at least three.

9 Q. Okay. All right. And there is a very low
10 number there, extremely low number compared to
11 everything else for, allegedly, Charles Jones; 1 in 78
12 African/Americans, right?

13 A. Yes, that is a low number.

14 Q. Where is your cut-off? If it goes down to 1 in
15 12, 1 in 10, is that when you say, I can't really reach
16 a conclusion? Where do you draw the line?

17 A. I don't draw the line based on those
18 statistics. I draw the line based on what I see of the
19 profile. The statistics were done after the fact, after
20 the inclusion or exclusion has been made. Then the
21 stats are calculated. And even based on the stats, I've
22 reported 1 in 10 and 1 in 5. If I believe that he is
23 consistent within that mixture, then I will call an
24 inclusion. And again, two other people agree with me on
25 that. If I believe he's excluded, then I will exclude

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1 him.

2 Q. Who came up with all of this statistical stuff
3 for DNA?

4 A. This is based out of the FBI. So they took
5 each of those numbers that you see on the chart, and
6 each one of them that is a frequency within the general
7 population. And then once you start putting in the
8 numbers into a program, it calculates the frequency, the
9 estimated frequency in the general population.

10 Q. Somebody in the FBI came up with that?

11 A. Yes. It's based on the FBI. They collected
12 all of the samples. And so, it's their program.

13 Q. It's a computer software program?

14 A. Correct.

15 Q. Subject to computer error, just like any other
16 computer error?

17 A. Yes, which is why it's an estimate.

18 Q. Estimated?

19 A. That's why it's an approximate number.

20 Q. In other words, an estimate is an educated
21 guess, right?

22 A. I've not heard that, no.

23 Q. You haven't heard that definition?

24 A. No.

25 Q. Black -- okay. Well, before I move on, you

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1 can't tell the jury when that baseball hat was ever worn
2 by Charles Jones prior to you doing your testing, can
3 you?

4 A. I can tell you that Charles Jones wore the hat,
5 but I can't tell you when.

6 Q. You think he might have it on his head at some
7 time?

8 A. I think it's possible, yes. Because he cannot
9 be excluded from the inside of the hat; so at some point
10 he had to touch it, wear it, spit on it, something.
11 Somehow it came in contact with him.

12 Q. Or somebody transferred his DNA to it. That's
13 one of the possibilities, too, isn't it?

14 A. That's possible. I'm not sure how the transfer
15 would work. It could be possible.

16 Q. I mean, there is scenarios. We could stay here
17 for hours; and I could keep giving them to you, right?

18 A. You could, I'm sure, yes.

19 Q. Okay. And you use the word "possible" that he
20 wore it, right?

21 A. Yes.

22 Q. Okay. Okay. Item G, a black T-shirt, this is
23 the T-shirt that has the rapper picture, large rapper
24 face, Tupac, on the front. Did you get a swab on that,
25 or was that a cutting? Which one was that, sir, Item G?

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1 A. For the collar, it was a swab.

2 Q. It's a swab from the collar of the black
3 T-shirt; is that correct?

4 A. Yes.

5 Q. Now did you do that one, or did Miss Pierce do
6 that one?

7 A. No. That was another serologist that took the
8 swabs of the collar.

9 Q. Really?

10 A. Yes.

11 Q. What's that name?

12 A. Kirby Clark.

13 Q. Kirby Clark. Who is he employed by?

14 A. She.

15 Q. Oh, she?

16 A. She is currently in law school, LSU.

17 Q. Okay. At the time she did it, what was the
18 day?

19 A. Her -- she swabbed it on February 12th, 2010.

20 Q. At least, you're reading from some sort of
21 report that she did, right?

22 A. Yes, I am.

23 Q. Did she work for the HPD Crime Lab at the time?

24 A. Yes, she did.

25 Q. As a serologist?

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1 A. Yes.

2 Q. Who asked her to do that? Do you know?

3 A. I believe Michal Pierce had already left at the
4 time.

5 Q. She went on to Harris County --

6 A. Yes.

7 Q. -- Lab? Okay. All right. So, let's talk
8 about the black T-shirt. Same questions. You can't
9 tell the jury that Charles Jones wore a black T-shirt in
10 addition to a Toyota work shirt on the day this crime
11 allegedly happened, June 15th, 2006, can you?

12 A. No, I cannot.

13 THE COURT: Excuse me, Counsel. We're
14 going to take a brief, five-minute recess.

15 Please remember the admonitions.

16 *(Brief recess)*

17 *(Jury enters courtroom)*

18 THE COURT: Please be seated.

19 You may proceed, Counsel.

20 Q. *(By Mr. Easterling)* Okay. The scene swab,
21 Item A, we know is the blood of the complainant, Thi
22 Nguyen. I don't know if you knew that that was -- that
23 it was a bodily fluid. Is that your understanding, it
24 was from the scene, Item A?

25 A. Yes. I do know that it responded positive to

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1 human origin testing.

2 Q. And that means positive for human blood,
3 correct?

4 A. Correct.

5 Q. Okay. So something about Item J, as in John,
6 the stocking -- I believe that's at the very end of the
7 second page there?

8 A. Correct.

9 Q. It's a -- it looks to be a piece or a cutting
10 of a stocking, I guess, nylon stocking. Who did the
11 swab or cutting from that, sir?

12 A. A Miss Pierce did the swabbings of the
13 stocking.

14 Q. So she would have done a Q-tip and rubbed it on
15 the stocking and preserved that for you, correct?

16 A. Correct.

17 Q. And your decision on that was it had Kevin
18 Chaney as a possible contributor; but Charles Jones --
19 no conclusion can be made on the defendant, Charles
20 Jones, on the stocking, correct?

21 A. Correct. Kevin Chaney is a possible
22 contributor. No conclusions on Charles Jones.

23 Q. So there wasn't enough DNA profile to say he
24 wore that or came in contact with it, right?

25 A. Correct. There was not enough DNA to include

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1 or exclude Charles Jones.

2 Q. Now was there only one stocking that was
3 tested, to your knowledge?

4 A. I have Items J and K are stockings, so I think
5 there are two.

6 Q. Okay. On K, was there any testing done on Item
7 K for comparison purposes? I didn't see anything on the
8 report, but --

9 A. No, I don't see any testing done on Item K.

10 Q. Okay. All right. Okay. Okay. I believe I
11 covered all of the items. Let me double-check here real
12 quick.

13 Okay. I want to go back to Item M, the
14 glove testing, because I missed a couple of things. And
15 I'm going to finish up with that. The Item M, from what
16 you thought at the time, was the inside. Because
17 remember you did two Item M testings, correct?

18 A. Correct.

19 Q. So what you thought was the inside, but you're
20 not sure of, there was a mixture of at least three
21 individuals, correct?

22 A. Correct.

23 Q. So, could have been four?

24 A. Yes.

25 Q. Okay. And four could have been from coming in

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1 contact with that glove; or there could have been
2 cross-contamination or transfer to that glove, correct?

3 A. Or wearing the glove.

4 Q. Or come in contact or wearing. It's all those
5 possibilities, right?

6 A. Correct.

7 Q. Particularly, when you have that many people on
8 a glove, right?

9 A. Yes.

10 Q. Now, remember I showed you on the screen -- and
11 I'll do it again -- Miss Pierce's -- State's Exhibit
12 112 -- her notes and photographs. Remember she noted
13 the tears?

14 A. Yes.

15 Q. I'm zooming into -- and she says, on the ring
16 finger and she says on the thumb, correct?

17 A. Correct.

18 Q. When you did the testing, do you remember
19 anything about the tears?

20 A. No, I do not.

21 Q. These are not easy to put on sometimes. Okay.
22 I have State's Exhibit 99, which is -- it's one of the
23 white latex gloves. It's Item M, okay. Let's look at
24 what appears to be the thumb of this glove. Do you see
25 that tear right there? I could bring it up to you,

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1 also. Appear to be a tear there?

2 A. Yes, there appears to be a tear there.

3 Q. And it looks like a red substance there, too,
4 correct?

5 A. Correct.

6 Q. Let me turn it over. Possibly a small tear, a
7 hole there, too, correct?

8 A. Yes.

9 Q. Now I'm going to bring it up to you to look and
10 inspect it in just a second. Let me see if I can zoom
11 one more time. Can you see the break there when I'm
12 moving it?

13 A. Yes.

14 Q. Want me to bring it up to you for you to look
15 at, or is that necessary?

16 A. I don't think it's necessary.

17 Q. Okay. Whenever you have a tear in a glove like
18 that and I'm wearing it, and if the skin can protrude
19 out of the glove, I can deposit skin cells and DNA onto
20 an object if I touch it, right?

21 A. Yes.

22 Q. Obviously, it depends on the size of the tear,
23 right?

24 A. Depends on the size, yes.

25 Q. Because it's obviously not a pinhole tear.

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1 It's a pretty good size tear that would allow some skin
2 cells or flesh of that thumb to make contact with items,
3 right?

4 A. Yes.

5 Q. Obviously, there's different types of rubber
6 gloves. I mean, I guess you heard of the type where you
7 can buy them to wash dishes. They're a lot thicker than
8 some of these, I guess for lack of a better word, nurse
9 or surgical gloves are, right?

10 A. Yes, there are different type of gloves.

11 Q. These seem to be the real thin type?

12 A. Yes.

13 Q. That are much important susceptible to getting
14 cuts in them?

15 A. Right.

16 Q. Particularly, a fingernail or a nail on your
17 thumb that might cut it?

18 A. I think a nail or --

19 Q. And that's right on the area where the
20 thumbnail would be, right, on this particular thing?

21 Now, there is a tear noted on the ring
22 finger. She's calling it, I guess, the ring finger.
23 All right. Let's look at the second one. If this is --
24 if the thumb would be over here and the four fingers,
25 that would be -- I guess the small finger would be here,

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1 right?

2 A. Correct.

3 Q. And then on her chart, on her photograph -- I'm
4 going to turn it over just like she did. She has it
5 like -- she shows the tear, right, on the second one, I
6 guess a lot of people call the ring finger, correct?

7 A. Correct.

8 Q. Let's look at the ring finger on the glove.
9 I'm going to turn it over. Let's see if we see a tear
10 on the ring finger of that glove. Right there. Does
11 that appear to be a tear there?

12 A. Yes, it does.

13 Q. And that one looks even larger than the thumb
14 one, doesn't it?

15 A. It does look pretty large.

16 Q. Where a lot of flesh could come through on a
17 finger and touch something, right?

18 A. Yes, that would be exposed.

19 Q. Okay.

20 MR. EASTERLING: For the record, I'm
21 putting the glove back in State's Exhibit 99, the
22 envelope.

23 Q. (By Mr. Easterling) It wasn't your job to
24 detect tears or document tears, because that had already
25 been done by the serologist when you swabbed the blood,

1 correct?

2 A. That is correct.

3 Q. Okay.

4 MR. EASTERLING: Pass the witness, Your
5 Honor.

6 MS. LOGAN: Just briefly redirect, Judge.

7 THE COURT: All right.

8 **REDIRECT EXAMINATION**

9 BY MS. LOGAN:

10 Q. So, Mr. Davis, I want to show the chart,
11 State's Exhibit 108. And it's going to be the last page
12 of that chart. All right. We can see this first column
13 where you're looking at the alleles for the scraping of
14 the waistband of the cargo pants, right?

15 A. Yes.

16 Q. Okay. Now earlier you told us the difference
17 between a single source and a mixture of DNA, right?

18 A. Yes, that's correct.

19 Q. Can you tell us, when you look at this chart
20 and you look on each of these boxes, how many numbers
21 are we seeing?

22 A. We see anywhere from two to one per box.

23 Q. Okay. And what does that tell you about
24 whether or not there is a mixture or a single source
25 present from the waistband of the pants?

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1 A. That would indicate a single source. You can
2 tell by the sample next to it that that is a mixture
3 with more than two numbers at any one location.

4 Q. Okay. Now, we already talked about it earlier,
5 but I just want to make this clear. If two people wear
6 the same item of clothing, what did you tell us about
7 what you expect as far as whether you will get a single
8 source DNA or a mixture of DNA?

9 A. I would expect to find a mixture, but there is
10 also several factors that influence that. Did the first
11 person wear it for a day and the second person put it on
12 for ten minutes? Did they wear it equal amounts of
13 time? Then I would expect a complete mixture.

14 The first scenario, I can get a mixture
15 from that; but I wouldn't be surprised if I get a single
16 source from that. So it really depends on the factors
17 involved of the two individuals wearing it, one person
18 wearing it for an hour versus one person wearing it for
19 a day. So, equal amount of time, I would suspect a
20 mixture. However, a couple of hours, it's possible to
21 get, you know, a third number coming up at one of those
22 locations that would indicate another person. But I did
23 not see that on this sample.

24 Q. Okay. What did you see on this sample?

25 A. This sample I considered a single source sample

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1 for the waist.

2 MS. LOGAN: I'll pass the witness, Judge.

3 THE COURT: Okay. Any recross?

4 **RECROSS-EXAMINATION**

5 BY MR. EASTERLING:

6 Q. So what you just discussed there, again, single
7 source with mixture, none of your -- if I asked all the
8 questions again that I asked you --

9 MS. LOGAN: I would object to that.

10 MR. EASTERLING: Yeah, I know you would.
11 Everybody would.

12 Q. (By Mr. Easterling) But if I did,
13 hypothetically, nothing is going to change in your
14 answers about the huge variables we have as to when
15 someone wore the cargo pants, for how long they wore
16 them, whether they're an average shedder, light shedder
17 or heavy shedder. All of those variables I could cover
18 with you for the next twenty minutes; and your answers
19 would still be the same, right?

20 A. Correct. I cannot tell you time or when the
21 individual wore it.

22 Q. All right. And mixtures are depending on a lot
23 of these cut-off levels that you have in your program,
24 right?

25 A. All samples follow the same cut-off levels.

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1 Q. Right. And it's how many alleles, it's how
2 many points, how many markers; all of these things are
3 considered, right?

4 A. Correct.

5 Q. Okay.

6 MR. EASTERLING: Pass the witness, Judge.

7 THE COURT: Okay.

8 MS. LOGAN: We should let this witness go.

9 THE COURT: You are excused. Have a good
10 evening.

11 Okay. Ladies and gentlemen, we're
12 finished for the day. Please remember your admonitions
13 from the Court. Do not discuss this case with anyone,
14 not even among yourselves. No outside investigation is
15 permitted, and we will resume testimony at 10:30 a.m.
16 Drive safely.

17 (Court adjourned at 4:33 p.m.)

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