

1 (Whereupon the witness is sworn by the
2 Court.)

3 **INVESTIGATOR JIMMY DE LOS SANTOS,**

4 having been first duly sworn, testified as follows:

5 **DIRECT EXAMINATION**

6 BY MR. WAKEFIELD

7 Q. Good morning.

8 A. Good morning.

9 Q. Please introduce yourself to this jury.

10 A. My name is Investigator Jimmy De Los Santos. I
11 work for the Houston Police Department, Sex Crimes Unit.

12 Q. How long have you been with the Houston Police
13 Department?

14 A. Almost 30 years.

15 Q. And during your 30 years on the force, what
16 divisions have you been assigned to?

17 A. I've been assigned to Patrol, Homicide, Special
18 Crimes.

19 Q. What does Special Crimes mean?

20 A. Special Crimes is a combination of family
21 violence and sexual assaults units.

22 Q. How long have you been investigating family
23 violence and sexual assault cases?

24 A. About 20 years.

25 Q. Can you explain to the jury why there is a

1 difference between a sexual assault investigator and a
2 robbery investigator?

3 A. A sexual assault investigator, all we deal with
4 is any kind of sexual assault, any kind of physical sexual
5 contact. Robbery is any robberies, crimes against a
6 person where they may use a weapon, or something of their
7 personal property get stolen from them.

8 Q. Whenever someone complains that they were both
9 robbed and sexually assaulted, do you have one
10 investigator or multiple investigators?

11 A. We have multiple investigators.

12 Q. Explain to the jury why that is.

13 A. The Robbery Division usually handles any kind
14 of robbery. They take whatever information they can find
15 at the scene for their deal. As far as the sexual assault
16 part of it, we do the forensic reports from the rape kits.
17 We take the complainant's statement stating exactly what
18 happened with her and what kind of trauma or whatever she
19 went through; and we do that part of the report and the
20 other division does the other part.

21 Q. When you were becoming a sex crimes
22 investigator, what kind of education did HPD put you
23 through specific to a sex crimes investigator?

24 A. I've been through several schools to learn
25 about sexual assaults. I've taken a few classes where

1 they actually teach us about what kind of traumatic
2 experience that male or female will go through at the
3 time, as far as their physical abilities, their
4 remembering of things, and all of the trauma that they go
5 through. And we've been through sensitivity classes where
6 we actually have a lot of compassion for the victim when
7 they are sexually assaulted because they are the only ones
8 that know what kind of trauma happened to them and what
9 kind of experiences they are experiencing at the time.

10 Q. Are you certified as an investigator for
11 special victims?

12 A. Yes, I am.

13 Q. Explain to the jury how you become certified as
14 an investigator for special victims.

15 A. You take classes, you go to certain schools for
16 -- investigator schools, and you become a certified --
17 TCLEOSE certifies you as a special investigator for sexual
18 assaults.

19 Q. When you say TCLEOSE, does that mean the
20 Houston Police Department certifies you or does like the
21 State of Texas certify you?

22 A. The State of Texas.

23 Q. All right. Do you hold any other
24 certifications through the State of Texas?

25 A. I have a master's police officer certification.

1 I have a homicide investigator certificate. That's about
2 all that comes to mind right now.

3 Q. All right. When cases usually come to you as
4 an investigator, how do they come to you?

5 A. I get the case assigned to me by my supervisor.
6 And from then on, I contact the complainants and I try to
7 set up appointments for them to come into our office and
8 speak to us. All of the statements are notarized. So, we
9 try to get everybody to come in. And we also have a
10 victim services division that we extend to them in case
11 they do need some kind of help as far as trying to cope
12 with what happened to them.

13 Q. When you say that you are assigned these cases
14 and then you have to contact the complainant, do you
15 usually make scenes of sexual assaults, or are you the one
16 who actually does the follow-up investigation?

17 A. All I do is the follow-up investigation. The
18 patrol officers are the first units on the scene, and they
19 are the ones who do the initial report and all we do is
20 the follow-up investigation.

21 Q. Were you assigned an investigation in August of
22 2011 to a sexual assault that happened to a woman named
23 Dominique Withoff?

24 A. Yes.

25 Q. All right. Can you explain to the jury what

1 kind of sexual assault you were investigating?

2 A. I was investigating an assault where the victim
3 claims that an individual had put a gun to her side and
4 made her go into an apartment, made her lay down on the
5 floor, and he picked her dress up with a gun that he had,
6 and he penetrated her vagina with his fingers and
7 attempted to penetrate her with the pistol as well.

8 Q. When you say he attempted to penetrate her,
9 where did he attempt to penetrate her with his pistol?

10 A. Her vagina and her rectum.

11 Q. When you received this investigation, what was
12 the first thing you did?

13 A. The first thing I did was try to contact the
14 complainant to set up an appointment for her to come into
15 my office.

16 Q. Did you contact her?

17 A. At that time, yes.

18 Q. And did you set up an appointment for her to
19 come in and meet with you?

20 A. Yes, I did.

21 Q. When did she come to meet with you?

22 A. On the 22nd or 23rd. Let me look. On August
23 13th at 10:00 a.m. I set up an appointment with her to
24 come in, but she called me and said she couldn't make it.
25 So, I rescheduled the appointment for August 23rd.

1 Q. Now, when you spoke with -- when you ultimately
2 spoke with Dominique Withoff, did you take a statement
3 from her?

4 A. Yes, I did.

5 Q. You mentioned that -- you said it was
6 notarized. Can you explain to the jury what that means?

7 A. Yes, sir. That means whenever we take a
8 statement from a victim, we type down their version of the
9 incident. After we type up the version of the incident,
10 we read them a perjury clause, which states that they
11 understand that this is truthful, and if they are caught
12 lying, that they may be prosecuted for it for perjury.
13 They read their own statement. And then if they want to
14 add anything or subtract anything from the statement, we
15 do it at that time; and after it's done, they sign it and
16 we notarize it to make it an official document.

17 Q. In this case, did Dominique come into your
18 office and make a statement?

19 A. Yes, she did.

20 Q. At the end of the statement, did she have it
21 notarized?

22 A. Yes.

23 Q. Did she swear that it was the truth?

24 A. Yes.

25 Q. Now, through the course of your investigation,

1 did you determine who was the person that was the one who
2 sexually assaulted her?

3 A. Through the course of the investigation, I
4 contacted -- I was contacted by the Robbery Division to
5 see if they had --

6 MR. ANDERSON: Sorry, Your Honor. I would
7 object to nonresponsive.

8 THE COURT: That will be sustained.

9 Q. (By Mr. Wakefield) Through the course of your
10 investigation, were you able to identify the person who
11 was the one who actually did sexually assault her that
12 day?

13 A. Yes.

14 Q. Who was that person?

15 A. John Thomas.

16 Q. Do you see him in court today?

17 A. Yes, sir. Right here to my left.

18 Q. Can you identify him by his clothing?

19 A. In the plaid shirt.

20 MR. WAKEFIELD: Your Honor, may the record
21 reflect the identification by the witness?

22 THE COURT: It will.

23 Q. (By Mr. Wakefield) Now, whenever you became
24 involved in the investigation, were you aware of whether
25 or not a sexual assault examination had been done on Ms.

1 Winnfield -- I'm sorry -- on Ms. Withoff?

2 A. Yes.

3 Q. Okay. Had one been done?

4 A. No, sir.

5 Q. Do you know why that is?

6 A. The victims have the option of going to the
7 hospital themselves, if they'd like to. In this
8 situation, she wasn't transported by ambulance or
9 anything. She didn't end up going to the hospital at that
10 time.

11 Q. At that time. That was at the time you
12 interviewed her?

13 A. Yes.

14 Q. Now, through the course of your investigation,
15 did you ever come into contact with Greg Coleman?

16 A. Yes, I did.

17 Q. Were you able to meet and speak with him?

18 A. Yes.

19 Q. Were you able to make contact with John Thomas?

20 A. Yes.

21 Q. And were you able to meet and speak with him as
22 well?

23 A. Yes.

24 Q. All right.

25 MR. WAKEFIELD: Approach the witness,

1 Judge?

2 THE COURT: All right.

3 Q. (By Mr. Wakefield) I'm showing you what has
4 been pre-marked as Exhibits 62, 63, and 64. We'll begin
5 with 62. Do you recognize this document?

6 A. Yes, I do.

7 Q. What is this document?

8 A. This is a Consent to Give a Specimen form.

9 Q. Okay. Explain to the jury what a Consent to
10 Give a Specimen form is used for.

11 A. The Consent to Give a Specimen form is used for
12 us to draw DNA, saliva samples, from the individual's
13 mouth to be used as comparison to the DNA.

14 Q. If a person wants to give a DNA sample, what
15 options are they given as far as what kind -- how they can
16 submit that sample?

17 A. We give them the consent form, which is a
18 voluntary form. They read it, they understand it, they
19 sign it. And we let them know that all we are doing is
20 taking a saliva sample. Once they read it and sign it, we
21 witness it and we take the buccal swabs from their mouth.

22 Q. All right. Who was the one who this particular
23 form was given to?

24 A. This was Greg Coleman.

25 Q. Did Greg Coleman consent to giving you a

1 specimen?

2 A. Yes, he did.

3 Q. Is that his signature there?

4 A. Yes, it is.

5 Q. What date is that signed?

6 A. August 18th, 2011.

7 Q. What time?

8 A. At 1:50.

9 Q. Is this your signature here?

10 A. Yes, it is.

11 Q. Were you a witness to that? Is that why it
12 says it there?

13 A. Yes.

14 Q. Is this in substantially the same condition as
15 it was the day you made it?

16 A. Yes.

17 MR. WAKEFIELD: Offer State's Exhibit 62
18 into evidence.

19 (State's Exhibit No. 62 offered.)

20 MR. ANDERSON: No objection.

21 THE COURT: It will be admitted.

22 (Whereupon State's Exhibit No. 62 is
23 admitted into evidence.)

24 Q. (By Mr. Wakefield) Now, after getting that
25 consent form, did you take a sample from Greg Coleman?

1 A. Yes.

2 Q. I'm handing you what has been pre-marked as
3 State's Exhibit 56. Do you recognize this parcel?

4 A. Yes, sir, I do.

5 Q. How do you recognize it?

6 A. I initialed the back of it when it was sealed.

7 Q. Were you present when it was opened and
8 resealed?

9 A. Yes.

10 Q. Has it been tampered with since that time?

11 A. No.

12 Q. How do you know that?

13 A. It still has the tape on it with my signature
14 on it.

15 Q. Can you please open it?

16 A. (Witness complies).

17 Q. Now, you're holding what's been pre-marked as
18 State's Exhibit 57 inside. Can you show that to the jury
19 and explain what it is?

20 A. This is a box containing two buccal swabs that
21 we obtained from the mouth of Greg Coleman with the saliva
22 samples on it to be used as DNA.

23 Q. Are you the person that actually made that box?

24 A. Yes.

25 Q. How do you know that?

1 A. It's got my writing on it.

2 Q. And is that in substantially the same condition
3 as it was when you took the swabs from Greg Coleman?

4 A. Yes, sir.

5 Q. Now, explain to the jury when you are taking
6 swabs from someone how you actually do it, what you do
7 with the swabs. What do the swabs look like, to begin
8 with?

9 A. The swabs are like a long Q-tip with only one
10 end on it. The cotton swab is on one end. What we do is
11 we get the cotton swab, we rub it inside the individual's
12 mouth along the cheeks, under his tongue, and just enough
13 to get a saliva sample on there, and we tag them into
14 these boxes.

15 Q. Is that how you did it with Greg Coleman when
16 you took this sample from him?

17 A. Yes, sir.

18 Q. Is this in substantially the same condition in
19 this bag when you tagged it into evidence?

20 A. Yes, sir.

21 MR. WAKEFIELD: Offer State's 56 and 57.

22 (State's Exhibit No. 56 and 57
23 offered.)

24 MR. ANDERSON: No objection, Your Honor.

25 THE COURT: Admitted.

1 (Whereupon State's Exhibit Nos. 56 and
2 57 are admitted into evidence.)

3 Q. (By Mr. Wakefield) Now, I'm handing you State's
4 Exhibit 63. Can you tell the jury what this is?

5 A. This is another Consent to Give a Specimen form
6 from Dominique Withoff.

7 Q. Is this in substantially the same condition it
8 was when you made it?

9 A. Yes, sir.

10 Q. Whenever Dominique was asked to give a sample,
11 did she agree to consent to give a DNA sample?

12 A. Yes.

13 Q. What form of sample was that?

14 A. That was the same thing, a buccal swab, saliva
15 sample.

16 Q. Is this her signature here?

17 A. Yes, it is.

18 Q. What was the date and time?

19 A. August 18th, 2011 at 3:10 p.m.

20 Q. Is that before or after you took the swab from
21 Greg Coleman?

22 A. After.

23 Q. Is that your signature down there?

24 A. Yes, it is.

25 MR. WAKEFIELD: Offer State's Exhibits 63

1 into evidence.

2 (State's Exhibit No. 63 offered.)

3 MR. ANDERSON: No objection.

4 THE COURT: It will be admitted.

5 (Whereupon State's Exhibit No. 63 is
6 admitted into evidence.)

7 Q. (By Mr. Wakefield) All right. After getting
8 the consent from Dominique Withoff to take her DNA, I'm
9 now showing you State's Exhibit 58. Do you recognize that
10 parcel?

11 A. Yes, I do.

12 Q. How do you recognize it?

13 A. It's got my initials on the back when it was
14 sealed.

15 Q. And other than your initials, is it in exactly
16 the same condition it was when you tagged it into
17 evidence?

18 A. Yes, sir.

19 Q. Please open it.

20 A. (Witness complies).

21 Q. And what did you pull out?

22 A. I pulled out a box containing the two buccal
23 swabs that I took from Ms. Withoff.

24 Q. Is that in State's Exhibit 59?

25 A. Yes, sir.

1 Q. When you took these buccal swabs, did you use
2 exactly the same method you did when you took Greg
3 Coleman's buccal swabs?

4 A. Yes, sir.

5 Q. Is this in substantially the same condition as
6 it was after you took them from Dominique Withoff?

7 A. Yes, sir.

8 MR. WAKEFIELD: Offer State's Exhibits 59
9 and 58 into evidence.

10 (State's Exhibit No. 58 and 59
11 offered.)

12 MR. ANDERSON: No objection.

13 THE COURT: Admitted.

14 (Whereupon State's Exhibit Nos. 58 and
15 59 are admitted into evidence.)

16 Q. (By Mr. Wakefield) Finally, did you do a third
17 consent form?

18 A. Yes, sir.

19 Q. All right. Who is -- I'm showing you State's
20 Exhibit 64. Can you tell us who this consent form is for?

21 A. John Darian Thomas.

22 Q. Is that the man sitting here that you
23 identified earlier?

24 A. Yes, sir.

25 Q. Did he consent to give a buccal swab of DNA?

1 A. Yes, sir.

2 Q. Did he sign right there?

3 A. Yes, sir.

4 Q. Is that your signature there?

5 A. Yes, sir.

6 MR. WAKEFIELD: Offer -- I'm sorry.

7 Q. (By Mr. Wakefield) Is this in substantially the
8 same condition as it was when you did this one?

9 A. Yes, sir.

10 MR. WAKEFIELD: I offer State's 64.

11 (State's Exhibit No. 64 offered.)

12 MR. ANDERSON: No objection.

13 THE COURT: Admitted.

14 (Whereupon State's Exhibit No. 64 is
15 admitted into evidence.)

16 Q. (By Mr. Wakefield) And our last parcel, State's
17 Exhibit 60. Can you -- do you recognize that particular
18 item?

19 A. Yes, sir.

20 Q. How do you recognize it?

21 A. It's got my signature on the back when I tagged
22 it into the property room.

23 Q. Is it in substantially the same condition as it
24 was when you tagged it?

25 A. Yes, sir, it is.

1 Q. Please open it.

2 A. (Witness complies).

3 Q. What is State's Exhibit 61 that you just pulled
4 out?

5 A. It's the two buccal swabs that I took from John
6 Thomas.

7 Q. And were these buccal swabs done in exactly the
8 same manner that it was done with both Dominique Withoff
9 and Greg Coleman?

10 A. Yes, sir.

11 Q. Now, what day was this buccal swab actually
12 taken?

13 A. This was taken on --

14 Q. I'm showing you State's Exhibit 64. Would it
15 have been the same date you got the consent?

16 A. Yes, sir.

17 Q. What day was that?

18 A. August 23rd at 5:10 p.m.

19 Q. So, not the same day as Greg Coleman and
20 Dominique Withoff?

21 A. No, sir.

22 Q. All right. And is this in substantially the
23 same condition as it was when you tagged it into evidence?

24 A. Yes, sir.

25 MR. WAKEFIELD: Offer State's Exhibits 60

1 and 61 into evidence.

2 (State's Exhibit No. 60 and 61
3 offered.)

4 MR. ANDERSON: No objection.

5 THE COURT: Admitted.

6 (Whereupon State's Exhibit Nos. 60 and
7 61 are admitted into evidence.)

8 Q. (By Mr. Wakefield) Now, after taking the
9 notarized statement from Dominique and ultimately getting
10 the DNA swabs, was there anything else you did in this
11 particular investigation?

12 A. I had all the buccal swabs, and it was packaged
13 up for the crime lab. And, basically, I sent it up there
14 to them and let them know that this was ready to be
15 processed, and then they did whatever it is that they do
16 with it.

17 Q. When you took the DNA swabs from John Thomas,
18 was it after he had been arrested?

19 A. Yes.

20 Q. Was it after he had been arrested for the
21 charge of sexual assault?

22 A. Yes.

23 MR. WAKEFIELD: Pass the witness.

24 MR. ANDERSON: May I proceed?

25 THE COURT: Yes.

CROSS-EXAMINATION

1
2 BY MR. ANDERSON

3 Q. Just a few questions. Officer De Los Santos,
4 you indicated you've been with the -- an investigator with
5 the Sex Crimes Unit for how many years?

6 A. Approximately 20 years.

7 Q. All right. And I take it you no longer, being
8 an investigator, are required to go to -- out to a
9 particular crime scene the very day that the alleged crime
10 takes place, correct?

11 A. No, sir.

12 Q. Now, you indicated and talked a little bit
13 about the sexual assault kit. What specifically is a
14 sexual assault kit?

15 A. I didn't talk about a sexual assault kit.
16 That's the rape kit?

17 Q. Yes, sir, that's what I'm talking about.

18 A. It's just an examination they produce at the
19 hospital where they go and do whatever procedure it is
20 they do to obtain evidence from the victims.

21 Q. You indicated that, typically, that process is
22 something that the victim themselves has the
23 responsibility for in terms of whether or not a rape kit
24 is developed in a sexual assault case; is that correct?

25 A. Yes, sir.

1 Q. Is it the practice of, let's say, the first
2 responder, the officer who arrives at the scene where
3 there are some allegations of sexual assault, to advise a
4 potential victim to go to a hospital in order to have a
5 rape kit examination completed?

6 A. Yes, sir. Whoever the scene officers are have
7 to advise them, and it's their option whether they want to
8 go to the hospital or not. They don't have to actually
9 go.

10 Q. And in advising a victim of the -- going to the
11 hospital to submit to a rape kit, I take it the importance
12 of that is also explained to the victim as far as
13 furthering the investigation of that case?

14 A. Yes, sir.

15 Q. And that is also the responsibility of the
16 first responder, the officer who, I guess, initially
17 arrives at the scene and speaks with the victim in that
18 case?

19 A. Yes.

20 Q. Now, do you know whether the first scene
21 officer, Officer Matthews, conveyed that information to
22 Ms. Withoff the night of August 14th, 2011?

23 A. No, sir. I was not there.

24 Q. Do you know whether Ms. Withoff on her own
25 decided not to go to the hospital in order to have such an

1 examination to take place?

2 MR. WAKEFIELD: Objection. Speculation.

3 THE COURT: If he knows, he can answer.

4 Q. (By Mr. Anderson) Do you know if she made that
5 decision on her own?

6 A. No.

7 Q. The first contact that you had with Ms. Withoff
8 would have been after you received the assignment on this
9 particular case, correct?

10 A. Yes.

11 Q. And what date did you receive the assignment on
12 this case?

13 A. On August the 16th, 2011.

14 Q. So, you received the assignment two days later?

15 A. Yes.

16 Q. And, of course, again, your contact with Ms.
17 Withoff was sometime after -- after receiving the
18 assignment?

19 A. Yes.

20 Q. Now, without going into everything that's done
21 as far as a rape kit is concerned, it's important to have
22 that examination done in the event that there is some
23 evidence of relevance to that particular investigation so
24 that it could be preserved for either later analysis or
25 for presentation at a trial, correct?

1 A. Yes, sir.

2 Q. And it's important in order to try and preserve
3 that evidence to make sure that it's not altered, that
4 such an examination takes place almost immediately after
5 the event, the alleged sexual assault, correct?

6 A. Yes, sir.

7 Q. Because they want to make sure that there's
8 been no washing, nothing that would contaminate any
9 possible evidence that might be present that may have been
10 left as a result of the alleged sexual assault, correct?

11 A. Yes, sir.

12 Q. And, again, experts, such as doctors, are the
13 ones that do the examination, and if there is evidence,
14 they are the ones who retrieve that type of evidence,
15 correct?

16 A. Yes, sir.

17 Q. Now, along with the examination that's done
18 with the victim in a sexual assault case, typically, what
19 happens also is, perhaps, the clothing, if the person was
20 wearing clothing during the course of the sexual assault,
21 that is also secured from the victim before anything could
22 happen or be done to that clothing?

23 A. In certain cases, yes, sir.

24 Q. That would be whether we're talking about
25 pants, dress, underwear, bra, whatever clothing the person

1 may have had on at the time of the alleged sexual assault,
2 it's important to get that at the -- I guess, at the time
3 that the event took place so that it also won't fall into,
4 possibly, something being done to alter or change any
5 possible evidence that might be present?

6 A. Yes, sir.

7 Q. Now, do you know whether -- do you know whether
8 on August 14th, 2011, the clothing of Ms. Withoff was
9 turned over to any members of the Houston Police
10 Department?

11 A. No, sir, I don't.

12 Q. Do you know if at sometime during the
13 investigation of this case, Ms. Withoff, in fact, turned
14 over the clothing that she indicated she was wearing the
15 night of August 14th, 2011?

16 A. If Ms. Withoff didn't turn it into me, then I
17 don't know, sir.

18 MR. ANDERSON: I'll pass the witness.

19 Thank you, sir.

20 MR. WAKEFIELD: Nothing further of this
21 witness, Judge.

22 THE WITNESS: Am I free to go?

23 THE COURT: Ask him.

24 THE WITNESS: Sir, am I free to go?

25 MR. WAKEFIELD: Yes, sir.