

REPORTER'S RECORD

VOLUME 5 OF 10 VOLUMES

TRIAL COURT CAUSE NO. 1404917 FILED IN
14th COURT OF APPEALS
HOUSTON, TEXAS

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CHRISTOPHER A. PRINE
Clerk

BRITTINI KRESSIN) IN THE DISTRICT COURT
)
 Appellant)
)
)
)
 VS.) HARRIS COUNTY, TEXAS
)
)
)
 THE STATE OF TEXAS)
)
 Appellee) 351ST JUDICIAL DISTRICT

GUILT-INNOCENCE PROCEEDINGS

On the 8th day of October, 2015, the following
 proceedings came on to be heard in the above-entitled
 and numbered cause before the Honorable Terry Flenniken,
 Judge presiding, held in Houston, Harris County, Texas;
 Proceedings reported by computer-aided
 transcription/stenograph shorthand.

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VOLUME 5
(GUILT-INNOCENCE PROCEEDINGS)

OCTOBER 8, 2015

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1 (Open court, defendant present, no jury.)

2 THE COURT: The Court's back on the record
3 in Cause No. 1404917.

4 The record will reflect the defendant is
5 present in the courtroom with her counsel. The State is
6 represented by its district attorney. The jury is not
7 currently in the courtroom.

8 As to the issues that were being discussed
9 at the end of the day yesterday, the case that was
10 presented by the State in addition to the case that was
11 e-mailed to the Court by the State and the cases that
12 were e-mailed by the defendant were received and have
13 been read by the Court.

14 It is the Court's understanding that there
15 is no challenge to the qualifications of either
16 Dr. Cheney or Dr. Walterscheid; is that correct?

17 MR. MARTINEZ: That is correct, Your Honor.

18 THE COURT: That being the case, then it's
19 the Court's understanding that the defendant is making
20 no request to examine either of these individuals
21 outside the jury's presence.

22 MR. MARTINEZ: That's correct, Your Honor.

23 THE COURT: Further, it's the Court's
24 understanding that the remaining issue before the Court
25 is to what extent, if any, the first analyst -- to what

1 extent, if any, the report of the first analyst would be
2 admissible or any of the contents of the first report or
3 any conclusions of that analyst, which it would appear
4 by necessity have to come through Dr. Cheney; is that
5 correct?

6 MR. ASLETT: That's correct, Your Honor.

7 THE COURT: Okay. The Court having read
8 these cases, does the State have anything further the
9 State would like to --

10 MR. ASLETT: Your Honor, I think the
11 fairest reading of both the Lee case as well as the
12 Court of Criminal Appeals' decision in Paredes is that
13 the report itself from the previous analyst can't be
14 introduced, that most likely the results she obtained,
15 since they're not entirely machine-generated, would
16 require her testimony. And so probably the numbers
17 can't come in as well.

18 However, I think the fact that a previous
19 report was done and I think that the fact that
20 Dr. Cheney can say that he reviewed that report and
21 those results were unspecifiedly higher than the results
22 he obtained supports his own independent expert opinion
23 that there was some oxidation or evaporation of the
24 ethanol in the defendant's blood in the intervening time
25 between 2013 and when he tested the blood in the summer

1 2015.

2 So I think there won't be any confrontation
3 clause problems as long as he doesn't reveal the
4 specific numbers and as long as the report isn't
5 introduced. That's the State's position. He should be
6 allowed to talk about it.

7 THE COURT: Independent of the findings in
8 the first report as compared to Dr. Cheney's findings,
9 would Dr. Cheney be basing his opinion regarding
10 oxidation on something else or is it only on the --

11 MR. ASLETT: Well, it's an expected
12 phenomenon. And Dr. Cheney and both Dr. Walterscheid
13 will testify to that, but the reason we want him to talk
14 about it is, number one, because it's -- the amount of
15 oxidation he saw is what is expected and it would mean
16 that the true ethanol content would actually be higher
17 than what he found due to that since there was such a
18 time gap.

19 THE COURT: All right. What says the
20 defendant?

21 MR. MARTINEZ: Your Honor, there is a
22 confrontational clause problem and a hearsay problem.
23 We're not getting a chance to cross-examine the doctor
24 who made the first report. The problem with the second
25 doctor talking about there was an earlier report, at the

1 point he brings out -- the government brings out that
2 it's a higher result, he's already talking about a
3 value. We know the value has got to be higher than 5.8
4 {sic} and 7.0 {sic} based on that inference the jury
5 could make. So there is a value that's being talked
6 about when he says it's higher.

7 He probably could say there was an earlier
8 test and leave it at that, and then talk about the
9 oxidation process over time. That would probably be not
10 a violation of the confrontation clause, but when he
11 says it was higher, that's the problem. He is talking
12 about a value. And by inference, it's higher than what
13 you have in the second test. He could just say: There
14 was an original report done -- that's not hearsay -- and
15 that report was relied on by the second doctor, and the
16 period -- after the period of oxidation, this is the
17 results we got. And that's it. That's my opinion.
18 That's it. I'm not the final say, but that's what I
19 would say to be permitted.

20 THE COURT: All right. Anything further
21 from the State?

22 MR. ASLETT: No, Your Honor.

23 THE COURT: All right. Dr. Cheney will be
24 permitted to testify that he was contacted to reanalyze
25 the blood. He obviously can testify when he did it and

1 go into what his findings are and conclusions are. He
2 may also say that there was a previous analyst that had
3 analyzed the blood and issued a report. It can be
4 established through him that that analyst has since left
5 and moved away, or whatever he or she did.

6 But Dr. Cheney will not be permitted to
7 testify to any conclusions of the report, including
8 stating that the findings were different than what his
9 findings are. However, he certainly may say, if it is
10 the case, that he read the report and that it helped
11 form the basis of his -- of any opinions he might have,
12 but he can't go into any of the specifics of the report.
13 The Court finds that that would be testimonial and that
14 it violates the confrontation clause.

15 MR. ASLETT: And, Judge, just so the State
16 understands -- so I guess the word "higher" of course is
17 now out, but could he be asked: Have you reviewed the
18 report? Yes, I have. Does that previous report support
19 your opinion that there was oxidation and evaporation of
20 the blood in the intervening time period, and could he
21 say "yes" to that? The word "higher" is not used or
22 anything, just would keep it vague like that.

23 MR. MARTINEZ: May it please the Court?

24 THE COURT: You may be heard.

25 MR. MARTINEZ: He may be referencing the

1 first report by even saying that. I admit it's better
2 than what he previously said.

3 THE COURT: It's assumed that he's going to
4 have some knowledge of oxidation and he can certainly
5 testify about that, but it just seems that any reference
6 to any findings of the first report go into the first
7 report, you know, and what it revealed.

8 MR. ASLETT: And I understand that. I
9 guess just if he's allowed to rely on other reports to
10 support the basis of his own opinion, although he can't
11 disclose the raw facts or data, it's just -- I'm trying
12 to understand how he's able to say that it supports his
13 opinion without giving the reason that it supports his
14 opinion.

15 THE COURT: Well, he -- it would be
16 expected that he would probably testify that, when
17 asked, you know, have you reviewed any documents, you
18 know, in order to reach the conclusions or the opinions
19 that you have, or reviewed any materials, that he would
20 say: Yes, here's what I looked at. And then one of the
21 things that he would say is: I looked at the first
22 report.

23 But as far as going beyond that and then
24 talking about what the first analyst either did or
25 concluded or what any of the findings -- it just seems

1 that that would be hearsay and that it would certainly
2 be testimonial.

3 MR. ASLETT: So I couldn't even ask him if
4 his results were consistent given his review of the
5 first report?

6 THE COURT: Is it really necessary? I
7 mean, if he testifies -- from your standpoint, if he
8 testifies that there's expected oxidation, he explains
9 that concept on a scientific basis, explains it to the
10 jury, and then if that's the case, it would seem he
11 would be in a position to give an opinion that had he
12 tested or had -- you know, that it would have been
13 expected that it would have been higher closer to the
14 event but without saying anything about what that report
15 revealed.

16 MR. ASLETT: I can do that, Judge. It's
17 not a problem.

18 THE COURT: I mean, it would seem -- if
19 that's his opinion based upon, you know, scientific
20 method, I assume that that's probably what he would say,
21 but maybe I'm wrong. If he's able to say that -- now,
22 if he were to tell you or to come in here and testify:
23 I don't have anything to base that opinion on except the
24 report by a first analyst, then it would be improper
25 even for him to render that opinion because there would

1 be no scientific basis for it, nothing that had been,
2 you know, established either scientifically or
3 peer-reviewed or whatever. It would just be his opinion
4 based on one anecdotal incident. I'm assuming that's
5 not the case.

6 MR. ASLETT: No. His opinion would be
7 based on general scientific literature about the
8 phenomenon, as well as other cases in which he has done
9 retests, and in those other cases observed that his
10 results have been lower.

11 THE COURT: He can testify to that as long
12 as he does not specifically say that first analyst had
13 these findings, or when I tested it, the result that I
14 received had a lower alcohol content than the first
15 analyst. He's not going to be permitted to say those
16 things.

17 MR. ASLETT: Understood, Judge.

18 THE COURT: Anyway, I think you do
19 understand. So I don't mean to belabor it. And I know
20 you know I'm not fussing.

21 Anyway, is there anything else?

22 MR. MARTINEZ: No, Your Honor.

23 THE COURT: All right. Well, we don't have
24 the jury here yet. I wish we did, we would get started,
25 but we'll get started, hopefully, as soon as all 12 of

1 them get here.

2 And you say your witnesses were trying to
3 get on the elevator?

4 MR. ASLETT: That's correct, Judge. They
5 may, in fact, be out in the hall. I haven't been
6 checking my phone.

7 THE COURT: Okay. Is there any objection
8 to going off the record?

9 MR. ASLETT: No, Your Honor.

10 MR. MARTINEZ: No, Your Honor.

11 THE COURT: Court's off the record.

12 (Off the record.)

13 (Open court, defendant and jury present.)

14 THE COURT: You may be seated.

15 You may call your next.

16 MR. ASLETT: Your Honor, the State calls
17 Deputy Pete Galvan.

18 THE COURT: Have you been sworn?

19 THE WITNESS: No, sir.

20 (Witness sworn.)

21 THE COURT: Come around and take a seat.

22 Good morning.

23 JURORS: Good morning (in unison).

24 THE COURT: Y'all thought I'd forgotten to
25 say good morning, didn't you?

1 JUROR: No. We were just waiting for you.

2 THE COURT: Okay. It is Deputy?

3 THE WITNESS: Yes, sir.

4 THE COURT: I know you know you're about to
5 be asked some questions. Just keep your voice up so
6 everyone can hear you. Let these lawyers finish their
7 questions before you begin to answer. If you're
8 interrupted, you'll be able to complete your answer
9 unless an objection has been sustained.

10 Last, if any of these lawyers stand up
11 during the testimony to speak to the Court, please say
12 nothing further until you're given permission to do so.
13 Thank you.

14 THE WITNESS: Yes, sir.

15 You may proceed.

16 MR. ASLETT: Thank you, Judge.

17 **DEPUTY PETE GALVAN, JR.,**

18 having been called as a witness and being first duly
19 sworn, testified as follows:

20 **DIRECT EXAMINATION**

21 **BY MR. ASLETT:**

22 Q. Deputy Galvan, would you please state your full
23 name for the jury?

24 A. My name is Pete Galvan, Jr.

25 Q. What agency do you work for, Deputy Galvan?

1 A. I'm with the Harris County Sheriff's Office.

2 Q. How long have you been with the Harris County
3 Sheriff's Office?

4 A. Twenty-four years.

5 Q. What is your current assignment with the Harris
6 County Sheriff's Office?

7 A. I'm assigned to a jail intelligence unit.

8 Q. What do you do as part of the jail intelligence
9 unit?

10 A. My primary duties there with that unit is to
11 maintain inmate phone watches and mail watches.

12 Q. How long have you been monitoring phone and
13 mail watches?

14 A. Approximately 11 years.

15 Q. I'm not so concerned about the mail part. If
16 you could, explain to the jury how the phone system
17 works in the Harris County Jail.

18 A. Basically, all phone calls are recorded in the
19 jail and they are saved. They're stored from a company
20 that we have contracted with called Securus. And we're
21 able to go into that computer system and retrieve those
22 calls. And we can go back -- it used to be one year.
23 Now we can go back two years. We can pull any calls
24 that are requested from either attorneys or other law
25 enforcement agencies that are using those phone calls

1 for a criminal case.

2 Q. Now, are all calls that an inmate makes from
3 the Harris County Jail recorded?

4 A. Yes.

5 Q. Are calls to an inmate's attorney recorded?

6 A. They are documented that it's recorded, but the
7 audio isn't there. It just shows the date and time they
8 called.

9 Q. Okay. So when calls are requested, are those
10 calls from the attorney not released?

11 A. Correct. There's nothing there to release.

12 Q. Now, when an inmate makes a phone call from the
13 Harris County Jail, how are they supposed to do that?

14 A. The inmate will pick up the phone that's
15 located in their cell block. They'll enter his SPN
16 number along with a four-digit PIN number and dial the
17 number directly.

18 Q. Now, you mentioned something called a SPN
19 number. What is a SPN number?

20 A. A SPN number is an eight-digit unique number.
21 It's a -- no two inmates have the same number. It's
22 kind of like your Social Security number. So an inmate
23 will enter, like I said, his SPN number, and then enter
24 his personal four-digit number.

25 Q. Now, prior to an inmate being connected to

1 another person, is there an automated recording that
2 plays?

3 A. I'm sorry?

4 Q. Is there an automated recording that plays
5 prior to every phone call?

6 A. Yes. There's a warning message that's played.
7 Both parties hear the call -- I mean the message, the
8 person making the call as well as the person receiving
9 the call, and it lets them know that the call is going
10 to be monitored, that it's recorded. And it also
11 advises the person being called not to fall for like a
12 star-72 scam.

13 Q. Does that give the opportunity for the person
14 who is calling or the person who is being called to hang
15 up the phone if they don't want to approve it?

16 A. Yes, it does.

17 Q. Okay. And if a person wants to have a
18 conversation from the jail without it being recorded,
19 can they have an in-person meeting with somebody?

20 A. I couldn't hear.

21 Q. If I knew an inmate in the Harris County Jail
22 and I wanted to talk to somebody without that being
23 recorded, could I do that in person?

24 A. Yes. They have inmate visitations.

25 Q. Okay. Are inmate visitations recorded in any

1 way?

2 A. No.

3 Q. Okay. Deputy Galvan, in this case, did I ask
4 you to pull some jail calls for an inmate named Brittini
5 Kressin?

6 A. Yes, you did.

7 Q. And did I provide you with her SPN number so
8 you could pull those calls?

9 A. Yes, you did.

10 Q. What SPN number did I give you?

11 A. 02280234.

12 Q. Okay. And did you burn a copy of the calls
13 that she made from the Harris County Jail?

14 A. Yes, I did.

15 Q. All right. And did you burn those to a CD?

16 A. Yes.

17 Q. Okay. Did you then give those to me?

18 A. Yes.

19 Q. Prior to your testimony here today, did we
20 listen to some of those phone calls in my office?

21 A. Yes, sir.

22 Q. Okay. And on the phone calls, do we hear that
23 same recorded message?

24 A. Yes.

25 Q. Okay. Do we hear the defendant giving her

1 name?

2 A. Yes.

3 Q. And do we hear her mentioning her attorney's
4 name?

5 A. I don't remember if we did or didn't. I've
6 listened to too many calls.

7 Q. I understand.

8 And generally discussing the facts of her
9 case?

10 A. Yes.

11 Q. Okay. Now, what information about the call is
12 also burned onto the CD besides just the audio of the
13 call? What else is recorded?

14 A. It will display, also, the cell block location
15 where the call is made from, the date and time when the
16 call was made, along with their SPN number, their name,
17 and their PIN number.

18 Q. Now, prior to your testimony here today, did
19 you view the booking photo that's associated with the
20 SPN number that I gave you?

21 A. Yes.

22 Q. And do you see the person -- a person in the
23 courtroom today that matches that booking photo?

24 A. Yes.

25 Q. Would you please point out that person and

1 describe an article of clothing that they're wearing?

2 A. The lady sitting at the table in the black
3 sweater (indicating).

4 MR. ASLETT: Your Honor, may the record
5 reflect the witness has identified the defendant?

6 THE COURT: The record will so reflect.

7 MR. ASLETT: May I approach the witness,
8 Your Honor?

9 THE COURT: You may.

10 Q. (By Mr. Aslett) Deputy Galvan, I'm showing you
11 what I've marked as State's Exhibit 86. Could you tell
12 the jury what this is (indicating)?

13 A. This is phone calls from Brittini Kressin that
14 I had listened to. And I have initialed the CD, along
15 with my badge number and the date and time that I
16 listened to the calls.

17 Q. And do the calls that appear on this CD fairly
18 and -- are they the same calls that we listened to in my
19 office?

20 A. Yes.

21 MR. ASLETT: Your Honor, at this time State
22 offers into evidence State's Exhibit 86.

23 **(State's Exhibit No. 86 Offered)**

24 MR. RAMIREZ: May I take this witness on
25 voir dire, Judge?

1 THE COURT: You may.

2 VOIR DIRE EXAMINATION

3 BY MR. RAMIREZ:

4 Q. Officer Galvan, your role -- as I understand,
5 your role is you're just -- you'll receive this part of
6 the calls and -- the calls that come through the jail;
7 is that right?

8 A. Yes.

9 Q. Now, you mentioned in your examination that you
10 have access to these -- to all calls that are made there
11 at the jail; is that right?

12 A. Yes.

13 Q. Now, you also testified -- you also testified
14 that you don't actually do the recording, do you?

15 A. No. The system does the recording.

16 Q. And that system, the system that does the
17 recording, is another company; is that right? I think
18 you said Securus.

19 A. It's contracted through Securus, but the
20 sheriff's office owns the phone records.

21 Q. They own the phone records?

22 A. Yes.

23 Q. But the recording equipment is owned by
24 Securus; is that right?

25 A. Yes.

1 Q. Okay. And did you have an opportunity to --
2 have you ever had the opportunity to go over to Securus
3 and determine whether or not the equipment that they own
4 is working properly?

5 A. No, not there. They come to us.

6 Q. Okay. So you don't have any knowledge of the
7 working of the equipment that is owned by Securus that
8 does this recording, do you?

9 A. Well, yes. I work with the system in my
10 office. I haven't had any problems with it.

11 Q. But you don't -- you don't service that
12 equipment, do you?

13 A. No. We have people on site that do that.

14 Q. And Harris County doesn't own that equipment,
15 do they?

16 A. I wouldn't know if they owned it. I just know
17 the equipment that is used was provided by Securus. I'm
18 not sure if they purchased it.

19 Q. And you can't tell us that the equipment
20 recorded whatever it is the sheriff's office is
21 recording accurately, can you?

22 A. Yes, it's accurate.

23 Q. But you don't -- you -- but Securus is the one
24 who's doing the recording, correct?

25 A. It's hard to define if Securus is doing it

1 because, like I said, we -- it's with us, it's with the
2 sheriff's office.

3 MR. RAMIREZ: Judge, I'm going to object
4 just on -- one, that the witness is not qualified to
5 speak about the equipment owned by the other company and
6 whether that equipment is able to record these or
7 whether it's been serviced and all those things, but
8 also based on that, that we have a second company that
9 the proper predicate hasn't been laid for this recording
10 to be admitted into evidence. So I'm going to object to
11 State's Exhibit 86.

12 THE COURT: Do you have any other questions
13 of this witness at this time?

14 MR. ASLETT: It depends on your ruling,
15 Judge.

16 THE COURT: Will the lawyers approach?

17 (At the Bench, on the record.)

18 THE COURT: Did he say he's the custodian
19 of that?

20 MR. ASLETT: I can go through -- there are
21 two different predicates. For actual human-entered
22 records, we go through the business records custodian
23 questions. And he's qualified to do that. I can ask
24 that. For machine-generated data like this, which is
25 only reviewed by a human after the fact, you don't have

1 to ask those questions, but if the Court feels more
2 comfortable, I can go ahead and ask the custodian of
3 records questions.

4 THE COURT: What are you going to do
5 about -- the predicate that you're talking about, what
6 is that?

7 MR. ASLETT: Just that the company that
8 provided the equipment that's installed at the Harris
9 County Jail is Securus, but it's operated by the
10 sheriff's office. They'll have techs come in and
11 maintain it, and whatnot, but it's run and day-to-day
12 operated by the sheriff's office.

13 THE COURT: Who is the actual custodian?

14 MR. ASLETT: He is, Judge. Deputy Galvan
15 keeps all the jail --

16 THE COURT: Lay that predicate.

17 MR. ASLETT: Okay.

18 (Open court, defendant and jury present.)

19 **DIRECT EXAMINATION**

20 **CONT'D BY MR. ASLETT:**

21 Q. Deputy Galvan, I just have a few more questions
22 for you so we can clarify some things.

23 When jail calls are recorded, do they go to
24 your computer in your office?

25 A. Yes.

1 Q. Okay. Are you a custodian of records for calls
2 made from the Harris County Jail?

3 A. Yes, I am.

4 Q. And are the records that -- phone calls that
5 appear on the State's exhibit I just referred to, are
6 they kept in the regular course of business with the
7 Harris County Jail?

8 A. Yes, they are.

9 Q. And is it the regular practice of the Harris
10 County Jail to keep those phone records?

11 A. Yes.

12 Q. And did an employee of the Harris County Jail,
13 namely you, make those records by burning them onto that
14 CD?

15 A. Yes.

16 Q. And are these phone calls recorded at the time
17 they are actually made and then stored for later
18 retrieval?

19 A. Yes.

20 Q. Okay. Are the phone calls that appear on that
21 CD exact duplicates of the originals on the computer?

22 A. Yes, they are.

23 MR. ASLETT: Your Honor, State reoffers --

24 THE COURT: All right. Any further
25 objection?

1 MR. RAMIREZ: No objection, but I would
2 like to approach the Judge on one issue regarding --

3 THE COURT: You may. You may approach.

4 (At the Bench, on the record.)

5 MR. RAMIREZ: Judge, with respect to my
6 motion in limine regarding the bond violation issue, I'm
7 concerned --

8 THE COURT: Has it been redacted?

9 MR. ASLETT: It has, Judge. There is no
10 dates on it. It has to be --

11 MR. RAMIREZ: My concern would be that --

12 MR. ASLETT: I can play it so that
13 information is not displayed on the screen. I can
14 minimize them, so they just hear the audio.

15 MR. RAMIREZ: I don't want the date to be
16 exhibited of when the call was made because of the
17 motion in limine.

18 THE COURT: Are you able to play it without
19 the date showing?

20 MR. ASLETT: I can, Judge. I can do that.
21 I can minimize the graphic while it's playing. There's
22 a graphic that does display date. I don't need to show
23 that to the jury.

24 And then in the meantime, before they get
25 the evidence, I can make sure I have my tech remove the

1 date and time.

2 THE COURT: Okay. All right.

3 (Open court, defendant and jury present.)

4 THE COURT: All right. State's 86 -- the
5 objection is -- any objection is overruled. State's
6 Exhibit 86 is admitted with the caveat that the State
7 will redact the portion that was directed by the Court.

8 You may proceed.

9 **(State's Exhibit No. 86 Admitted)**

10 MR. ASLETT: Permission to publish, Your
11 Honor?

12 THE COURT: You may.

13 (State's Exhibit No. 86 published.)

14 MR. ASLETT: Pass the witness.

15 THE COURT: All right. Any questions?

16 MR. RAMIREZ: No questions.

17 THE COURT: Any objection to this witness
18 being excused?

19 MR. ASLETT: None from the State.

20 MR. RAMIREZ: None from the defense.

21 THE COURT: Deputy, you may step down.
22 You're free to go about your business.

23 THE WITNESS: Thank you, sir.

24 THE COURT: You may call your next.

25 MR. ASLETT: State calls Dr. Matthew

1 Cheney, Your Honor.

2 (Witness sworn.)

3 THE COURT: Please come around and take a
4 seat in the witness chair.

5 As you know, you're about to be asked some
6 questions. Just keep your voice up so everyone can hear
7 you. And let these lawyers completely finish their
8 questions before you start to answer. If you're
9 interrupted, you will be given the opportunity to finish
10 your answer, unless an objection has been sustained.

11 Last, if any of these lawyers stands up
12 during your testimony to speak to the Court, please say
13 nothing further until you're given permission to do so.

14 Thank you.

15 You may proceed.

16 MR. ASLETT: Judge, can I confirm that this
17 witness was sworn in on the record?

18 THE COURT: Weren't you just sworn?

19 MR. ASLETT: I just wanted to make sure. I
20 didn't know --

21 THE COURT: He was.

22 MR. ASLETT: Okay.

23 THE COURT: You must have been looking at
24 your paper there.

25 MR. ASLETT: I think I was distracted,

1 Judge.

2 THE COURT: That's all right.

3 DR. MATTHEW CHENEY,

4 having been called as a witness and being first duly
5 sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. ASLETT:

8 Q. Dr. Cheney, would you please state your full
9 name for the record?

10 A. My name is Matthew Cheney.

11 Q. What do you do for a living, Dr. Cheney?

12 A. I'm a senior forensic analyst in the toxicology
13 section of the Houston Forensic Science Center.

14 Q. How long have you been with the Houston
15 Forensic Science Center?

16 A. I've been there since November of last year.

17 Q. What do you do as a toxicologist for the
18 Houston Forensic Science Center?

19 A. My duty is to analyze blood for alcohol content
20 as well as to report that analysis and to testify in
21 court as to the science behind that.

22 Q. Prior to working for the Houston Forensic
23 Science Center, did you work for any other crime lab?

24 A. Yes, sir.

25 Q. What crime lab?

1 A. I worked for the Pasadena Police Regional Crime
2 Lab.

3 Q. How long did you work there?

4 A. Approximately a year.

5 Q. I want to talk about your educational
6 background that qualifies you to be a toxicologist. If
7 you could, walk us through your education starting with
8 college and going on after that.

9 A. Yes, sir. I received an undergrad, a bachelor
10 of science degree from University of Texas at El Paso,
11 also known as UTEP, in chemistry. I also received a
12 master of science degree, also in chemistry from UTEP.
13 And then I received a master of arts and a doctorate
14 from Rice University also in chemistry.

15 Q. Have you published any peer-reviewed articles
16 in the field of chemistry?

17 A. Yes, sir.

18 Q. And is part of your job at the Houston Forensic
19 Science Center to test human blood for the presence of
20 alcohol?

21 A. Yes, sir.

22 Q. What sort of training have you received in
23 order to do that sort of work?

24 A. I received extensive in-house training at the
25 Pasadena Police Regional Crime Lab. I also attended the

1 Borkenstein Course For Alcohol and Highways Safety at
2 Indiana University. I've attended two controlled
3 drinking exercise studies at the Pasadena Police
4 Academy, another controlled drinking exercise at the
5 Department of Public Safety in Austin. I've also
6 attended several seminar lectures by Dr. Robert Forney
7 and Dr. Miller also at the Department of Public Safety.

8 Q. Have you testified before as an expert in the
9 area of testing human blood for the presence of alcohol?

10 A. Yes, sir.

11 Q. On few occasions or many occasions?

12 A. Approximately ten.

13 Q. I want to talk about the accreditation that the
14 Houston Forensic Science Center has. What sort of
15 laboratory accreditation does your lab have?

16 A. It is accredited by FQS, or Forensic Quality
17 Services.

18 Q. Is it also certified by the public safety
19 director of the Texas Department of Public Safety?

20 A. Presently it is not. It is accredited by the
21 Texas Forensic Science Commission.

22 Q. Now, at the time the blood was tested in this
23 case, was your lab accredited by the public safety
24 director of the Texas Department of Public Safety?

25 A. Yes, sir.

1 Q. Okay. And is your lab required to be audited
2 periodically in order to maintain its certification?

3 A. Yes, sir.

4 Q. Okay. Talk us through how the samples of blood
5 arrive in the lab and then are prepared for testing.

6 A. The general procedure is that evidence will be
7 retrieved from the property room for the submitting
8 agency. In this case, the Houston Police Department.
9 The evidence will be then acquired and transferred to
10 the toxicology section of the Houston Forensic Science
11 Center. At that point, the evidence is assigned a
12 unique laboratory identification number, along with the
13 incident number for the submitting agency. That
14 evidence is placed into refrigeration storage in a
15 controlled setting until it is either accessioned --
16 another word for accessioned is inventoried. It is then
17 after that analyzed, either analyzed or -- for alcohol
18 content or drug content. In this case, the evidence was
19 then -- it was accessioned, or inventoried, followed by
20 analysis.

21 Q. What is the scientific method of testing you
22 use to test human blood for the presence of alcohol?

23 A. It is called gas chromatography head space
24 analysis.

25 Q. If you could, explain to the jury how gas

1 chromatography head space analysis is able to determine
2 the concentration of alcohol in the blood?

3 A. May I use the --

4 Q. Absolutely.

5 MR. ASLETT: Your Honor, may I approach the
6 witness?

7 THE COURT: You may.

8 Q. (By Mr. Aslett) Dr. Cheney, if you want to go
9 ahead and use the whiteboard, we can go ahead and do
10 that. I'll just move it to the side here. And there
11 should be a Sharpie marker.

12 THE COURT: Do you mind maybe bringing it
13 out here somewhere? And then y'all can get wherever you
14 need to get in order to see it.

15 MR. ASLETT: Okay, Judge. I just didn't
16 want to block the defense attorneys' view. But I can
17 move it.

18 THE COURT: Maybe just bring it back -- I
19 can't see. This bench is too high.

20 Mr. Ramirez, you and your client may
21 position yourselves wherever you can see it.

22 Q. (By Mr. Aslett) Dr. Cheney, if you would,
23 explain how gas chromatography head space analysis
24 works.

25 A. GC head space, or gas chromatography head

1 space, works by analyzing the head space portion of a
2 closed container. So imagine that this is a vial with a
3 liquid sample. In this case, it would be a blood
4 sample, along with internal standard solution. This
5 liquid sample -- the amount of a volatile in this liquid
6 sample is proportional to the amount of that same
7 volatile -- in this case, ethanol -- in the head space
8 portion above it (indicating).

9 The head space portion or the gas above the
10 liquid is simply what we test. This then is taken into
11 the gas chromatograph, which then has really long
12 tubing -- if you could imagine a really long, thin piece
13 of tubing with special chemistry -- that can then take
14 the compounds that were in this sample and separate them
15 to get something like this. It's called chromatogram
16 (indicating).

17 If you could imagine -- instead of the
18 liquid sample, imagine there was a piece of cake. If
19 you could sample that piece of cake and it goes through
20 these columns, you would actually see a separation of
21 the egg, the flour, and the sugar. And it would
22 separate these compounds, but it will also tell you how
23 much of each one was present in that sample.

24 Q. And is gas chromatography head space analysis
25 something that has been used in the scientific community

1 to measure alcohol in blood for many years?

2 A. Yes, sir.

3 Q. And is it generally accepted as a reliable
4 means for determining alcohol content in someone's
5 blood?

6 A. Yes, sir.

7 Q. Okay. You can stand up there. I don't know if
8 you need to draw anymore, but I'd hate to have you keep
9 coming back and forth.

10 So just so I understand a little bit
11 better, what exactly is the mechanism by which these
12 different volatile chemicals are separated out? Is it
13 by weight or how is that exactly done?

14 A. Well, the compounds from -- that are taken from
15 this sample are taken into the gas chromatography part
16 of the instrument, which is then separated with these
17 columns that has special chemistry. And it's simply the
18 attraction of those molecules with the compounds within
19 the column. It's called the stationary phase. The
20 compounds that exit inside the column do not move. So
21 it's simply the interaction of these compounds from the
22 sample that go through these columns, interact
23 differently, and then come out at different times. That
24 timing that the compounds come out is referred to as
25 retention time. So compounds have different retention

1 times.

2 Q. Okay. So if I'm understanding you correctly,
3 depending on chemical structure they're going to be
4 attracted to the substance of what's in the tubes at
5 different strengths, and I guess that affects how long
6 it takes them to travel through the tube?

7 A. Well, it has to do with not just the structure
8 of the compound, but it also has to do with the polarity
9 of the compound. It deals with several aspects of the
10 compound.

11 Q. Okay. I won't get into anymore detail than
12 that.

13 How are samples prepared to go into the gas
14 chromatograph?

15 A. Well, in this case we do have a closed
16 container. This is called a head space vial, what is
17 used. And in this glass head space vial, we put 50
18 microliters of the blood sample, along with 500
19 microliters of internal standard. And an internal
20 standard is simply -- in this case, it's n-Propanol. It
21 is a substance, volatile, that should never exist in the
22 body, but that can be used in this analysis to provide
23 evidence that the instrument was running correctly the
24 entire time.

25 So simply when you're testing something you

1 don't know, you should test something you do know and
2 it's consistent throughout the entire run, the entire
3 batch. And that's how you know the results were correct
4 and valid, as well as the instrument being correct the
5 entire time.

6 Q. So if I understand you correctly, you inject a
7 known amount of n-Propanol, and you expect to have that
8 same amount come out once the testing is completed?

9 A. That's correct.

10 Q. Okay. Is that something you review once you
11 get your chromatograph at the end of this test?

12 A. It is a requirement for us to check that the
13 internal standard area counts, which is simply the area
14 for each one of these peaks. If you take this area, we
15 call that the area counts (indicating). We know that
16 the internal standard should have approximately the same
17 internal standard area counts. And that's how we know
18 that the instrument was running -- was stable the entire
19 run.

20 Q. What's the sort of tracking system you use to
21 make sure that you tie particular results from a
22 particular blood sample to a particular person? Do
23 y'all use UPC codes or how is that sort of thing
24 tracked?

25 A. When evidence is received into the laboratory,

1 it is given a lab number. I do not know the lab number
2 in this case. But say, for example, it is 13-12345. We
3 take that number that comes with the evidence, we
4 accession the evidence. And in the evidence, we
5 actually write the lab number, the item number, the
6 analyst's or the accessioner's initials and date.

7 After analysis, any person who actually
8 manipulates the evidence, who handles the evidence, will
9 put their initials and their date. These head space
10 vials will also receive an identification. In my case,
11 I will put the lab number. So I will actually write
12 "13-12345." That is how I know this vial belongs to
13 this case. And in the chromatogram, the head space gas
14 chromatograph, the software, there's a sequence. And in
15 that sequence, I tell the instrument that in this
16 position is this vial. So I correlate the sequence
17 that's programmed into the instrument with the vials. I
18 double-check as they're put into the instrument. And
19 the sequence is also verified with the evidence by a
20 second analyst after the analysis has been completed.

21 Q. So it sounds like there are multiple layers to
22 catch any possible errors; is that correct?

23 A. Yes.

24 Q. Okay. After you've gotten a result from the
25 gas chromatograph, do you prepare a report?

1 A. Yes, sir.

2 Q. And is that report then reviewed by another
3 person?

4 A. It is actually reviewed by two individuals, one
5 person for technical review and another person for
6 administrative review.

7 Q. What's the purpose of that process?

8 A. It's simply to catch if any errors have been
9 made, if all of the requirements have been met, and to
10 determine whether the proper protocols have been
11 followed.

12 Q. You can go ahead and have a seat.

13 A. (Witness complies.)

14 Q. Now, in this case, did you test two blood
15 samples obtained from the defendant, Brittini Kressin?

16 A. Yes, sir.

17 Q. On what date did you conduct your testing?

18 A. The testing -- the analysis portion was
19 conducted on June 5th, 2015.

20 Q. Now, prior to you testing the blood on June
21 5th, 2015, had this blood already been tested by another
22 analyst?

23 A. Yes, sir.

24 Q. At an earlier date?

25 A. Yes, sir.

1 Q. Okay. And do you know the name of that
2 analyst?

3 A. Yes, sir.

4 Q. Who was that analyst?

5 A. The analyst was Dwan A. Wilson.

6 Q. Do you know what year she tested the blood?

7 A. The analysis portion was conducted on
8 October 24th, 2013.

9 Q. Now, does Ms. Wilson still work for the Houston
10 Forensic Science Center?

11 A. No, sir.

12 Q. Okay. To your understanding, while she was at
13 the lab, was her work perfectly good?

14 A. I cannot attest to perfectly good, but she was
15 a good analyst, in my opinion.

16 Q. Okay. And what is your understanding of why
17 she ultimately left the lab?

18 A. My understanding is that she went back to
19 school.

20 Q. Okay. So she wasn't fired or terminated for
21 poor performance or anything, to your understanding?

22 A. To my knowledge, no, sir.

23 Q. Okay. I don't want you to talk about the
24 results that she obtained because she's not here, but
25 did you review her report as part of your preparation

1 for your testimony in this case?

2 A. Yes, sir.

3 Q. Okay. Now, let's talk about the testing you
4 did. Did you use the same procedures to prepare and
5 test Brittini Kressin's samples that you've talked about
6 before this jury?

7 A. The same analytical procedure, gas
8 chromatography head space analysis, was conducted, yes,
9 sir.

10 Q. Did you receive a result for the blood vial
11 that was obtained at 4:31 and the blood vial that was
12 obtained at 5:04? Without saying what they were, did
13 you obtain a result?

14 A. Yes, sir.

15 Q. Okay. And did you prepare a report?

16 A. Yes, sir.

17 Q. And was that report subject to administrative
18 and technical review?

19 A. Yes, sir.

20 MR. ASLETT: Your Honor, may I approach the
21 witness?

22 THE COURT: You may.

23 Q. (By Mr. Aslett) Dr. Cheney, I'm showing you
24 what I've marked as State's Exhibit 68. If you could
25 generally tell the jury what this is (indicating).

1 A. This is the lab report that I wrote. It has my
2 signature on the bottom. It also has the lab number for
3 this case, 13-29227, along with the individual -- the
4 related individual, Brittini Elizabeth Kressin.

5 Q. Is this a fair and accurate copy of the lab
6 report that you prepared for the testing of the blood
7 samples in this case?

8 A. Yes, sir.

9 Q. Now, were you requested to retest these because
10 Ms. Wilson no longer works at the lab?

11 A. I do not have the specifics as to who requested
12 it. I was asked to retest it by my supervisor.

13 Q. Okay. And is that something you've done for
14 other cases in which Ms. Wilson tested blood but is no
15 longer available to testify?

16 A. Yes, sir.

17 MR. ASLETT: Your Honor, at this time State
18 offers into evidence State's Exhibit 68 and tenders to
19 defense counsel for inspection.

20 **(State's Exhibit No. 68 Offered)**

21 MR. MARTINEZ: No objection.

22 THE COURT: State's 68 is admitted.

23 **(State's Exhibit No. 68 Admitted)**

24 MR. ASLETT: Permission to publish, Your
25 Honor?

1 THE COURT: You may.

2 Q. (By Mr. Aslett) Dr. Cheney, what was the result
3 that you obtained for the blood sample that was obtained
4 at 4:31 in the morning?

5 A. The result was a 0.070, plus or minus 0.006,
6 grams of ethanol per 100 milliliters of blood.

7 Q. And the results for the later blood sample
8 obtained at 5:04 in the morning?

9 A. The result was a 0.058, plus or minus 0.005,
10 grams of ethanol per 100 milliliters of blood.

11 Q. What conclusion can you draw as to whether the
12 defendant's blood was metabolizing alcohol based on
13 these two results?

14 A. Based on these two results, the fact that one
15 is higher than the other and the fact that the one was
16 acquired approximately 30 minutes prior to the other,
17 this does speak to the elimination of alcohol in the
18 body.

19 Q. And if we were to -- and I'm not asking you to
20 do a retrograde extrapolation analysis, but is it
21 possible to take data such as this and then extrapolate
22 what ethanol would have been hours earlier?

23 A. Given certain facts, yes, sir.

24 Q. Okay. And I'm not going to ask you to do that,
25 but my other question for you is: Does the ethanol in

1 stored blood decrease over time?

2 A. Yes, sir.

3 Q. Okay. And if I'm understanding you correctly,
4 you tested this blood almost two years after it was
5 collected, correct?

6 A. Approximately, yes, sir.

7 Q. In your training and experience, are you
8 familiar with the phenomenon of alcohol slowly getting
9 eliminated in stored blood over time?

10 A. I have read several articles as to the
11 explanation and the observation of that phenomenon, yes,
12 sir.

13 Q. And is that something you've observed in other
14 cases where you've had to retest blood at a much later
15 date than it was originally tested?

16 A. Yes, sir.

17 Q. Okay. If you had tested this blood shortly
18 after was collected, would you expect the ethanol levels
19 that you would have obtained at that time to be higher
20 than what we see?

21 A. It would be approximately the same if not a
22 little lower.

23 Q. I mean -- I'm sorry. Assuming that you tested
24 the blood shortly after it was collected, would we
25 expect higher ethanol results than we would two years

1 later?

2 A. Yes, sir.

3 Q. Okay. And is that something you've personally
4 observed in other cases?

5 A. Yes, sir.

6 Q. Okay. So based on your scientific
7 understanding of this phenomenon, ethanol reduction over
8 time -- by the way, do you know what the mechanism, why
9 that happens?

10 A. The articles refer to it as oxidation of
11 ethanol.

12 Q. Okay. Is that a natural process that results
13 in less ethanol over time?

14 A. Yes, sir.

15 Q. Okay. So is it possible to tell exactly how
16 much more we would expect, or do we just know it would
17 be more?

18 A. The original value being more than the value
19 obtained at a later time?

20 Q. Correct.

21 A. We could not state specifically what that value
22 difference were to be.

23 Q. Okay. Thank you, Dr. Cheney.

24 MR. ASLETT: I pass the witness, Your
25 Honor.

1 THE COURT: Any questions?

2 MR. MARTINEZ: Yes, Your Honor. May it
3 please the Court?

4 **CROSS-EXAMINATION**

5 **BY MR. MARTINEZ:**

6 Q. Sir, my name is Ralph Martinez. I represent
7 Ms. Kressin. Good morning.

8 Sir, what is the legal limit in Texas for
9 intoxication?

10 A. The legal limit is 0.08 grams per 100
11 milliliters of blood.

12 Q. So the first sample at 4:31 a.m. was below the
13 legal limit?

14 A. Yes, sir.

15 Q. And the sample at 5:04 was actually
16 substantially below the legal limit, correct?

17 A. It was below 0.08, yes, sir.

18 Q. Thank you.

19 Do you know when the blood was actually
20 drawn?

21 A. I was not there at the time, so I cannot
22 testify to that.

23 Q. So you don't know -- you just stated you don't
24 know when the blood was drawn. So at 4:31 and at
25 5:04 a.m., you have no knowledge of any testing that

1 occurred before those times, correct?

2 A. I have no knowledge of that.

3 Q. So when the prosecutor asked you what the --
4 you would expect the higher result if there had been
5 testing shortly after the incident, you gave your
6 professional opinion, but there was actually no
7 verifiable testing at that time that you know of?

8 A. Immediately after the testing -- immediately
9 after the blood --

10 Q. Yes, sir.

11 A. No, sir, I do not know that.

12 Q. You don't know that.

13 Okay. But you were only asked to analyze
14 these tests, right?

15 A. Yes, sir.

16 Q. And this was at 4:31 a.m., 5:04 a.m. What
17 date -- sir, was that 6-5-14?

18 A. The 6 -- I do not -- the 6-5-15 is when I
19 analyzed the blood. When the blood was actually
20 acquired, I do not have those dates.

21 Q. You don't know who drew the blood, do you?

22 A. I do not.

23 Q. You don't know what happened to it other than
24 that it might have been stored over the past years --
25 the past year?

1 A. I -- as to the evidence, I do have a chain of
2 custody.

3 Q. Okay. All right, sir. Thank you very much.

4 MR. MARTINEZ: No questions -- I'm sorry.
5 No more questions.

6 THE COURT: Anything further?

7 MR. ASLETT: Nothing from the State.

8 THE COURT: Any objection to this witness
9 being excused?

10 MR. RAMIREZ: No, Your Honor.

11 MR. ASLETT: No, Your Honor.

12 THE COURT: Doctor, you may step down.

13 You're free to go about your business.

14 THE WITNESS: Appreciate it, Judge.

15 THE COURT: You may call your next.

16 MR. ASLETT: Your Honor, before calling its
17 next witness, the State would offer into evidence
18 State's Exhibit 66, which is the chain of custody
19 affidavit for the blood in this case. It has been on
20 file with the Court for several months prior to trial.
21 No objections lodged by the defense.

22 State would also offer into evidence
23 State's Exhibit 67, which is a certificate of analysis
24 by the toxicologist who did the drug testing on the
25 blood sample. Again, a copy was served on defense

1 several months ago. No objection was lodged prior to
2 trial.

3 **(State's Exhibit Nos. 66 and 67 Offered)**

4 THE COURT: All right. Any objections?

5 MR. MARTINEZ: May I look at it, Your
6 Honor, to make sure?

7 THE COURT: You may.

8 MR. MARTINEZ: Thank you, sir.

9 No objection, Your Honor.

10 THE COURT: State's 66 and State's 67 are
11 admitted.

12 **(State's Exhibit Nos. 66 and 67 Admitted)**

13 MR. ASLETT: Permission to publish State's
14 Exhibit 67 by reading it?

15 THE COURT: You may.

16 MR. ASLETT: State's Exhibit 67 is a
17 certificate of analysis that reads as follows:

18 BEFORE ME, the undersigned authority, personally
19 appeared Monica Mellon, who being duly sworn, stated as
20 follows:

21 My name is Monica Mellon. I am of sound
22 mind, over the age of 18 years, capable of making this
23 affidavit, and personally acquainted with the facts
24 stated in this affidavit.

25 From September 2012 to August 2014, I was

1 employed by the Houston Police Department Crime
2 Laboratory, which was authorized to conduct the analysis
3 referenced in this affidavit. Part of my duties for
4 this laboratory involved the analysis of physical
5 evidence of alcohol, drugs, and other toxins. This
6 laboratory was accredited by the Texas Department of
7 Public Safety and ASCLD/LAB at the time of the analysis.

8 My educational background is as follows --

9 THE COURT: Mr. Aslett, you might want to
10 slow down just a tad for the court reporter.

11 MR. ASLETT: Very well. Just trying to be
12 efficient.

13 My educational background is as follows:
14 Bachelor of Science degree in Biology and Chemistry from
15 West Texas A&M University, 2005, and a Master of Science
16 degree in Forensic Science from Sam Houston State
17 University in 2007. These degrees are supplemented with
18 both internal training provided by my employers and
19 external training received.

20 My training and experience that qualifies
21 me to perform the tests or procedures referred to in
22 this affidavit and determine the results of those tests
23 or procedures are as follows: I trained and worked at
24 S.E.D. Medical Laboratories in Albuquerque, New Mexico,
25 from 2007 to 2009; trained and worked at the Sam Houston

1 State University Regional Crime Laboratory in The
2 Woodlands, Texas from 2009 to 2012; and worked at the
3 Houston Police Department Crime Laboratory in Houston,
4 Texas from 2012 to 2014.

5 I received the physical evidence listed in
6 Laboratory Report No. 13-29227, Incident No. 129184013,
7 on the 21st day of January, 2014. On the date indicated
8 in the laboratory report, I reported results from the
9 following tests or procedures on the physical evidence:
10 Gas Chromatography/Mass Spectrometry analysis of the
11 blood sample.

12 The tests and procedures used were reliable
13 and approved by the laboratory; the results are as
14 indicated on the laboratory report. However, the
15 Houston Police Department Crime Laboratory was not able
16 to test for Gamma-Hydroxybutyrate, also known as GHB, at
17 the time of analysis.

18 And the results for drug testing are on the
19 second page, which indicate she found Fluoxetine, which
20 is Prozac, which is a selective serotonin reuptake
21 inhibitor, which is prescribed for the treatment of
22 depression.

23 Your Honor, State calls Dr. Jeffrey
24 Walterscheid.

25 THE BAILIFF: The witness has not been

1 sworn, Judge.

2 THE COURT: Doctor, please come forward and
3 stop along in there somewhere and raise your right hand.

4 (Witness sworn.)

5 THE COURT: You may put your hand down.

6 Please come around and take a seat in this
7 witness chair.

8 As you know, these lawyers are getting
9 ready to ask you questions. Please keep your voice up
10 so everyone can hear you. And let them completely
11 finish their questions before you begin to answer. If
12 you're interrupted, you will be given the opportunity to
13 complete your answer, unless an objection has been
14 sustained.

15 Last, if any of these lawyers stand up to
16 address the Court, please say nothing further until
17 you're given permission to do so.

18 Thank you.

19 THE WITNESS: Thank you, sir.

20 THE COURT: You may proceed.

21 MR. ASLETT: Thank you, Judge.

22 **DR. JEFFREY WALTERSCHEID,**
23 having been called as a witness and being first duly
24 sworn, testified as follows:

25 **DIRECT EXAMINATION**

1 **BY MR. ASLETT:**

2 Q. Dr. Walterscheid, will you please tell the jury
3 your full name?

4 A. My name is Jeff Walterscheid.

5 Q. Where do you work, Dr. Walterscheid?

6 A. I am a toxicologist at the Harris County
7 Institute of Forensic Sciences.

8 Q. How long have you been a toxicologist with the
9 Harris County Institute of Forensic Sciences?

10 A. About -- a little over eight years now.

11 Q. What are your duties in that position?

12 A. I oversee daily operations. I also develop new
13 methods. As new drugs come out, we develop techniques
14 for revealing, confirming these drugs. I also work with
15 the pathology staff for a lot of our death
16 investigations, looking at causes of death due to drugs.
17 I also evaluate casework on DWI suspects and sexual
18 assault victims.

19 Q. And how long have you worked in the field of
20 toxicology?

21 A. In forensics, it's been eight years.

22 Q. Tell us about the educational background you
23 have that qualifies you for this sort of work.

24 A. I have a bachelor of science in chemistry from
25 the University of Texas at Austin, a Ph.D. in immunology

1 from the UT Health Science Center here in Houston, and
2 then a postdoctoral fellowship in cardiovascular
3 medicine from Baylor College of Medicine. And then I'm
4 a board certified Fellow of the American Board of
5 Forensic Toxicology.

6 Q. Have you testified before as an expert in the
7 field of forensic toxicology?

8 A. Yes.

9 Q. On few or many occasions?

10 A. This will be 77 times now.

11 Q. Is it starting to get old?

12 A. It's always something new, every time.

13 Q. All right. As part of your training in
14 toxicology, have you studied -- or are you familiar with
15 the effects of alcohol consumption on the human body?

16 A. Yes.

17 Q. And is this an area where you've testified as
18 an expert before?

19 A. Yes.

20 Q. Can alcohol cause the loss of normal use of a
21 person's mental or physical facilities?

22 A. Certainly.

23 Q. How does alcohol do that to the human body?

24 A. Alcohol disrupts normal neurotransmitter
25 traffic in the brain due to GABA transmissions. GABA is

1 something that's made in your brain to kind of keep you
2 somewhere between sedated and excited to the point of
3 seizure. So it kind of modulates your normal routine.
4 And when you take something like ethanol or even drugs
5 like Xanax, you know, benzodiazepines, they will bind to
6 the GABA receptor and allow GABA to bind tighter, better
7 activate these flow of chloride ions into the cell.

8 And this causes a depolarization. So the
9 neurons in your brain don't fire as often as they
10 normally would. So you start to feel a buzz, euphoria,
11 and you have this kind of central nervous system
12 depression that causes, you know, an imbalance in
13 walking, slurred speech, things like that, this
14 intoxication effect.

15 Q. And, of course, does that affect your ability
16 to drive?

17 A. Yes.

18 Q. At what blood-alcohol concentration does
19 alcohol begin to affect a person?

20 A. Typically around -- the onset of alcohol
21 intoxication begins around -- like around .04 or .05.
22 You start to feel the buzz after a couple of drinks.
23 Through various clinical studies, it's determined that
24 everybody -- you know, some people might be intoxicated
25 after a couple of drinks, others might not. And so

1 they've determined at .08 is the point at which
2 everybody is intoxicated, no matter how much tolerance
3 you have. If you've had enough drinks to bring your
4 blood-alcohol level to that state, you're going to be
5 too impaired to drive safely.

6 Q. But as I think I understand your testimony, is
7 it possible for someone to be intoxicated personally
8 under .08 depending on --

9 A. Yes, it's true.

10 Q. Okay. Are you familiar with the science of
11 retrograde alcohol extrapolation?

12 A. Yes.

13 Q. What is retrograde alcohol extrapolation?

14 A. It is a way of using the -- I guess the root of
15 pharmacodynamic equations to work your way back up to a
16 point in the past to determine a BAC range at several
17 hours in the past. Since alcohol degrades in custody,
18 you can measure the alcohol, what it would be at a
19 certain point, but it's more important to know what it
20 was at this point in the past.

21 Since it degrades at a zero order kind of
22 kinetics, it's basically just a linear slope of -- about
23 .02 grams per deciliter per hour alcohol will disappear.
24 So we can just kind of work our way back up that
25 gradient using these equations.

1 Q. And is this something you've studied in the
2 scientific literature?

3 A. Yes.

4 Q. And have you been asked to perform retrograde
5 extrapolation analysis in other cases?

6 A. Yes.

7 Q. And have you testified before as an expert in
8 the area of retrograde alcohol extrapolation?

9 A. Yes.

10 Q. How exactly do you go about performing that
11 analysis? What do you do?

12 A. Only the BAC that we determine experimentally
13 and the time at which the blood was taken, because once
14 the blood enters a gray-top tube, all metabolism stops
15 and so the ethanol that would be in there is very well
16 preserved. Whether it's refrigerated or not, whether
17 it's been opened to air or not, it's going to be very
18 stable and solid.

19 Then by knowing the point at which the last
20 drink was taken, we can safely assume that there's going
21 to be absorption continuing either for the next
22 30 minutes on an empty stomach or maybe even up to two
23 hours on a full stomach. And then as you reach this
24 distribution phase, the completion of that turns into
25 the elimination phase, and then there's a slow slide as

1 it disappears.

2 So knowing that time, knowing the time the
3 blood was drawn, I could start working backwards and
4 find out what the ethanol range was at a certain point
5 in the past. And then if I have other characteristics
6 such as age and weight and gender and things, then I can
7 start calculating how many drinks they took as well.

8 Q. Now, you mentioned that on average, it's about
9 .02 grams per deciliter per hour elimination rate.

10 A. Yeah.

11 Q. Is that something that was determined in
12 population studies or --

13 A. Yeah. In many studies they found it can vary
14 anywhere from .01 to .025. And in my experience,
15 especially in a lot of our death cases where somebody
16 might have been in a car crash and survived several
17 hours in the hospital and we have multiple blood draws,
18 I can track the rates of elimination. It tends to
19 center around .18 -- I'm sorry -- .018, .02, right
20 around in there.

21 Q. All right. And in your retrograde
22 extrapolation analyses, do you use, I guess, all of the
23 different scientists and what they've determined the
24 metabolic rates to be for the elimination of alcohol?

25 A. Yes.

1 Q. Okay. So essentially what you're giving in
2 your report is sort of an average of all these studies?

3 A. It's the extremes of all the studies. And
4 everybody is somewhere in between there.

5 Q. How long has alcohol elimination in the body
6 been studied? How old is this scientific field?

7 A. Probably things really got kicked off in the
8 1930s with Dr. Widmark's experiments and determining the
9 formulas that describe this. And since then, it's been
10 studied by thousands and thousands of other trials.

11 Q. So would you say that our understanding of how
12 alcohol is absorbed and eliminated in the human body is
13 a mature science?

14 A. Yeah. There's not really not much -- any new
15 research going on. It's all been carefully determined
16 by now.

17 Q. Dr. Walterscheid, did I ask you to perform
18 retrograde extrapolation analyses based on the blood
19 results obtained in this case?

20 A. Yes.

21 Q. And what information did I provide you with?

22 A. The age, gender, weight, height, time of the
23 known -- or time of the withdrawal of the blood, and
24 then time of the last drink, and also the time of
25 interest at the crash.

1 MR. ASLETT: Your Honor, may I approach the
2 witness?

3 THE COURT: You may.

4 Q. (By Mr. Aslett) Dr. Walterscheid, I'm showing
5 you what I've marked as State's Exhibits 70 and 71. If
6 you could tell the jury generally what these are
7 (indicating).

8 A. These are copies of the extrapolation reports I
9 produced.

10 Q. And is there one for each blood sample?

11 A. Yes, sir.

12 Q. Okay. Is this fair and accurate copies of the
13 reports that you provided to me?

14 A. That's right.

15 MR. ASLETT: Your Honor, State offers into
16 evidence State's Exhibits 70 and 71.

17 **(State's Exhibit Nos. 70 and 71 Offered)**

18 MR. MARTINEZ: May I approach the bench,
19 Your Honor?

20 THE COURT: You may.

21 (At the Bench, on the record.)

22 MR. MARTINEZ: I respectfully object to the
23 testimony of this man --

24 THE COURT: I tell you what, hang on.

25 (Open court, defendant and jury present.)

1 THE COURT: Ladies and gentlemen, why don't
2 y'all take a break. Report back to the jury room in
3 about 15 minutes. Remember the admonitions previously
4 given.

5 THE BAILIFF: All rise for the jury.

6 (Open court, defendant present, no jury.)

7 THE COURT: You may be seated.

8 Since the jury is out, you can step back.
9 That way, it will make it easier to hear.

10 Mr. Martinez, what is the objection?

11 MR. MARTINEZ: Your Honor, in no way am I
12 challenging the qualifications of the expert, nor the
13 science of retrograde extrapolation. What I'm arguing,
14 Your Honor, is that the results are not reliable because
15 the information provided to the expert is not reliable.

16 First of all, all the information that he
17 used, other than the actual blood draw, comes from my
18 client, but my client clearly stated, when she was being
19 interviewed by the deputy, that she really didn't
20 remember. She was giving information, but it was clear
21 there's a lot of speculation going on, not to mention
22 guilt -- being motivated by her guilt and feelings of
23 despair. So the information she's providing to -- that
24 would support this opinion is not an accurate -- may not
25 be accurate because it comes from a lady in that

1 condition who doesn't remember, at the very minimum, and
2 who may be under the influence of Prozac and who's on
3 Prozac. And also, it is very despondent, which would
4 increase her susceptibility to the psychological
5 problems she's taking the Prozac for.

6 Another thing, Your Honor, is that the
7 testing was four-and-a-half hours after the incident.
8 And as a result of that, it ties in -- it creates a
9 better -- a higher result by the fact that there is a
10 higher degree of elimination going on at that point.
11 Had it been taken earlier, perhaps it wouldn't have
12 resulted in a higher elimination rate.

13 And finally, Your Honor, the actual test
14 represents a standard elimination rate or resistance;
15 that it's a standard, but it's not reflective on what my
16 client's actual rate is because she was not examined by
17 anybody and there was no evidence of any physiological
18 elimination rate or susceptibility to alcohol, none of
19 that, with regard to my client. This is more of a
20 standard rate.

21 So on those objections, I -- my objection
22 is actually the unreliability of the opinion because he
23 was not given reliable information from which to form
24 that opinion.

25 THE COURT: All right. The objection is

1 overruled. State's 70 and 71 are admitted.

2 (State's Exhibit Nos. 70 and 71 Admitted)

3 THE COURT: Anything else that needs to be
4 addressed at this time?

5 MR. MARTINEZ: No, sir.

6 THE COURT: If there's no objection, the
7 Court's off the record.

8 Court's off the record.

9 (Discussion off the record.)

10 (Brief recess.)

11 THE BAILIFF: All rise for the jury.

12 (Open court, defendant and jury present.)

13 THE COURT: You may be seated.

14 You may continue.

15 MR. ASLETT: Your Honor, may I publish
16 State's Exhibit 77 {sic}?

17 THE COURT: You may.

18 Q. (By Mr. Aslett) Dr. Walterscheid, first I'm
19 going to throw up State's Exhibit 70. Is this the
20 report you prepared for the blood sample that was taken
21 at 4:31 in the morning (indicating)?

22 A. Yes.

23 Q. Okay. What is this chart that we see here with
24 all these different numbers?

25 A. These are tabulations of the projected alcohol

1 measurements or readings over time starting at
2 1600 hours -- that's like 4:00 o'clock p.m. -- up to --
3 all the way to 4:31 when the blood was drawn.

4 Q. Did you prepare a chart to -- a graph, I should
5 say, to illustrate these numbers that you see in that
6 chart?

7 A. Yes.

8 Q. Now, it says under here on different lines,
9 Pose-Moz, Watson, Siedl, Widmark, Forrest. What do
10 these refer to?

11 A. These are a series of equations. The Widmark
12 is the original equation developed back in the 1930s,
13 followed by refinements by Watson, Siedl, and Forrest.
14 And then the Pose-Moz refers to Posey-Mozayani.
15 Actually, that's Dr. Douglas Posey and Ashraf Mozayani.
16 She was my mentor at Harris County, and what they did is
17 took all of these equations and merged them together
18 into another unique formula.

19 Q. So we see a peak alcohol concentration
20 approximately, if I go back to the other chart, of a
21 two-four-three, give or take around 6:30 in the
22 afternoon?

23 A. Yeah.

24 Q. Were you able to determine a blood-alcohol
25 concentration around the time of the crash at 12:15?

1 A. Yes.

2 Q. What was that?

3 A. Somewhere between a .11 and a .17.

4 Q. And so I guess the midpoint between that is a
5 .145?

6 A. Yes.

7 Q. Is that above the legal limit of .08?

8 A. It is.

9 Q. Were you able to estimate how many drinks the
10 defendant would have had to consume to get to that level
11 of alcohol?

12 A. It would take about four to six standard
13 drinks.

14 Q. What is a "standard drink"?

15 A. It's any kind of beverage that contains
16 .6 ounces of alcohol, ethanol. So think of a 12-ounce
17 beer that's 5 percent. When you multiply that, it's .6.
18 Or a shot of liquor is 1.5 ounces, but it's 40 percent.
19 Again, it's .6. Or a glass of wine, that's -- you have
20 a 5-ounce glass, but it's 12 percent ethanol. Again,
21 it's .6.

22 So any kind of these drinks is actually a
23 standard drink. They all deliver the same amount of
24 ethanol, just in various concentrations and volumes.

25 Q. You mentioned standard drinks. Let's say I

1 were to have a tall cocktail, a tall glass that has four
2 shots in it. Would that contain four standard drinks?

3 A. Right.

4 Q. Okay. So is it then possible to consume
5 multiple standard drinks by having a small amount of, I
6 guess, drink containers?

7 A. Oh, sure. You could have a large fishbowl-size
8 margarita, you know. And you might say I only had one
9 drink, but it could be several standard drinks.

10 Q. Did you also prepare a report for the lower
11 result, the .058?

12 A. Yes.

13 Q. Okay. And is this the chart that is reflective
14 of the analysis you did for that (indicating)?

15 A. Yes.

16 Q. And do we see a virtually identical graph for
17 this as well?

18 A. Yes, sir.

19 Q. Where the ethanol is peaking around 6:30?

20 A. Correct.

21 Q. Again, what was the BAC, give or take, for the
22 time of driving around 12:15?

23 A. Same range, about a .11 to a .17.

24 Q. Averaged out to a .14?

25 A. Yeah.

1 Q. About the same number of standard drinks?

2 A. Yes.

3 Q. Now, Dr. Walterscheid, are you familiar with
4 the phenomenon of ethanol in stored blood decreasing
5 over time?

6 A. Yes.

7 Q. What causes that?

8 A. Normally ethanol is eliminated by an enzymatic
9 reaction using alcohol dehydrogenase and a cofactor
10 called NAD. When it's stored in a blood tube with
11 sodium fluoride, that reaction is poisoned. And, of
12 course, the NAD would be consumed pretty rapidly
13 afterwards. No more is going to be made. So that
14 reaction would stop.

15 However, there's a very slow, inefficient
16 reaction by the oxyhemoglobin. The red blood cells
17 contain -- still contain oxygen and it has a catalytic
18 center that can still oxidize ethanol at a very slow
19 rate, around like a .01, .02 per year. And so what we
20 often see is if we do a test within, you know, several
21 days of the blood being taken and then maybe -- if we
22 have to do a retest, you know, 15, 16 months later, then
23 the results will always be a little bit lower.

24 Q. I guess the most common type of oxidation that
25 average people would be familiar with would be rusting,

1 correct, or something that rusts?

2 A. Rust is oxidation, yes.

3 Q. So this would just be a similar phenomenon that
4 happens to blood?

5 A. Yeah. The blood still containing oxygen can
6 still cause further oxidation of ethanol to
7 acetaldehyde.

8 Q. So would you expect the ethanol level in blood
9 that had been stored for 18 months to be lower than if
10 the blood had been tested immediately after it was
11 tested?

12 A. Yes. We've seen that in our lab and it's also
13 been published in several papers.

14 Q. And you mentioned about a .02 per year?

15 A. Yeah, roughly. That's kind of an average. It
16 really depends on the temperature it's been stored at,
17 and also the amount of -- the concentration of sodium
18 fluoride, because that will also poison the reaction
19 pretty well.

20 Q. So fair to say we don't know exactly how much
21 higher, but would we expect an even higher retrograde
22 extrapolation if we had results from the blood testing
23 immediately after it was drawn?

24 A. That's true.

25 Q. Dr. Walterscheid, I only have a couple of

1 additional questions for you.

2 Let's talk about Prozac very briefly. Are
3 you familiar with Prozac and its effects on the human
4 body?

5 A. Yes.

6 Q. Would the fact that Prozac was detected in the
7 defendant's blood have any sort of effect?

8 A. No. Modern antidepressants such as this,
9 serotonin reuptake inhibitors, are very safe and they
10 don't cause impairment.

11 Q. The only other question I have for you is -- I
12 want to ask you a hypothetical question. Let's assume
13 you have a driver that's driven the wrong way down a
14 roadway and strikes another vehicle. She has an odor of
15 alcoholic beverage about her, bloodshot eyes, speaks
16 with mumbled speech, she admits drinking several
17 alcoholic beverages, she scores six out of six on the
18 HGN test, six out of eight on the walk-and-turn, and one
19 out of four on the one-leg stand. She cannot properly
20 say her alphabet, cannot remember what she was doing
21 prior to the crash, and that person's blood was drawn
22 and the results are what we see.

23 In your expert opinion, are these results
24 consistent --

25 MR. MARTINEZ: I object, Your Honor, to the

1 opinion that is being solicited. It is based on --

2 THE COURT: The Court will certainly
3 consider the objection. What was the rest of the
4 question?

5 Q. (By Mr. Aslett) In your expert opinion, are
6 these results consistent with someone who's lost the
7 normal use of their mental and physical faculties
8 through the consumption of alcohol?

9 THE COURT: Don't answer yet.

10 What's the objection?

11 MR. MARTINEZ: Your Honor, one, no personal
12 knowledge. Two, it is not of assistance to the jury
13 because that's a fact issue for the jury to decide.
14 Three, he's being asked to give an expert opinion on the
15 ultimate issue in this case. And four, he's not an
16 expert to testify about the actual subject matter being
17 elicited. He's only talking about the actual blood
18 content and extrapolation. So it's not his field of
19 expertise.

20 THE COURT: It's overruled.

21 Q. (By Mr. Aslett) You may answer,
22 Dr. Walterscheid.

23 A. The blood-alcohol concentration would be
24 sufficiently high enough to cause impairment.

25 Q. Just a couple more questions. Can alcohol

1 consumption cause someone to black out and affect their
2 memory?

3 A. Yes. It's called anterograde amnesia.

4 Q. Okay. And would it be surprising to find that
5 effect beginning at around whatever the peak alcohol
6 consumption is?

7 A. It's difficult to pin that with the actual
8 concentration, you know, at this level you become this.
9 It's highly variable, but it is consistent with --
10 significant intoxication will cause blackout or loss of
11 memory. The inability to form memories under that
12 influence.

13 Q. Thank you, Dr. Walterscheid.

14 MR. ASLETT: I pass the witness, Your
15 Honor.

16 THE COURT: Any questions?

17 MR. MARTINEZ: Yes, sir. Thank you.

18 **CROSS-EXAMINATION**

19 **BY MR. MARTINEZ:**

20 Q. My name is Ralph Martinez. Good morning, sir.

21 A. Howdy.

22 Q. I know you're giving your opinion and it's an
23 expert opinion, but let me ask you this: The figures
24 you're talking about, the .14, the .11 to .17, those
25 figures you're talking about, I know this is based on

1 your sort of deductive reasoning based on the
2 information you had, but ultimately those figures are
3 not supported by a scientific verifiable blood analysis;
4 is that correct?

5 A. It would be more accurate if we had a blood
6 draw closer to the time point.

7 Q. Okay. So that's your estimate. And it's
8 ultimately an opinion based on the facts?

9 A. Yes.

10 Q. There is no blood draw that would indicate
11 those numbers, right, in this case?

12 A. Right.

13 Q. Now, the analysis, the opinion you formulated
14 comes from the two samples you tested, one at 4:30 --
15 one that was drawn at 4:30, the other one was drawn
16 about 5:00 o'clock, right?

17 A. Right.

18 Q. That's about four hours after the incident,
19 correct?

20 A. Right.

21 Q. Would you have preferred to have samples drawn,
22 say, closer to 12:15?

23 A. Right. Yeah. The sooner that it's drawn, the
24 less variability you have. There is a greater
25 variability over the next four or five hours as we see

1 here in this graph. The separation becomes much wider.

2 Q. Is it possible that the delay or the later
3 testing would increase your opinion or the content --
4 would make a higher content -- your opinion -- you would
5 testify that it would be a higher content based on
6 something that was done four hours later as opposed to
7 earlier?

8 A. The variability in that measurement would be
9 greater, would be wider as we go back up closer -- if we
10 had a time point that was much more proximal to the
11 event, the variability would be very low. It would be a
12 lot more precise.

13 Q. Would that produce a higher result of
14 intoxication or a lower result?

15 A. No. Instead of saying like a .11 to a .17, the
16 interval would be much shorter, like a -- say like a .13
17 to a .15.

18 Q. Is there any possibility it could go, say,
19 below 1.1, like -- could you get to a point where if you
20 tested it early enough that the scores would be going up
21 as opposed to be going -- I mean, it would be going --
22 it would be lower when she was driving as opposed to
23 higher?

24 A. In order to do that, we'd have to change the
25 interval of drinking, start and stop drinking.

1 Q. So if the information you're provided is not
2 accurate, your opinion is not accurate, through no fault
3 of your own?

4 A. Right. Like, for example, using a drink time
5 of, say, starting at 4:00 ending at 6:00, if that had
6 begun and ended much closer to midnight, then the BAC
7 values would be much lower.

8 Q. So -- and, also, if the testing had -- if you
9 had been able to test her right after the incident, you
10 think it might have been lower than, perhaps, testing
11 her four hours later?

12 A. I think it would be right around the same
13 range. Like I said, the precision of that estimate
14 becomes smaller if you have a more proximal measurement,
15 but four or five hours out, because of the variability
16 and absorption and elimination, I have a very wide range
17 of possibilities.

18 Q. And in reality, you have no knowledge as to why
19 they waited four hours to test her, do you?

20 A. I don't know.

21 Q. But you would prefer as an expert to have that
22 blood tested much closer to the incident?

23 A. It gives a more precise range.

24 Q. Okay. So do you know how -- I know you said
25 that the prosecutor gave you the information about my

1 client, but do you know where the prosecutor got that
2 information?

3 A. I guess at the investigation.

4 Q. Okay. Now, if he got that information through
5 officers who interviewed my client in a condition where
6 maybe she was under shock, depression, guilt-ridden,
7 maybe said she didn't remember, and you honestly felt if
8 you concluded that because of those factors the
9 information she gave was not accurate, maybe the impact
10 of the accident, that your opinion, through no fault of
11 your own, would not be accurate?

12 A. Yeah. This only reflects under that scenario
13 given. If we change the times, then the estimates will
14 be different.

15 Q. So your opinion is only as good as the
16 investigation is accurate in obtaining the information?

17 A. Yes.

18 Q. The one thing you do know about the
19 investigation is they didn't test her for four hours?

20 A. They didn't pull the blood until then.

21 Q. Okay. Now, you don't have -- your opinion is
22 based a lot on what it is -- from what little I know
23 about this science, but it's kind of like the
24 elimination absorption ratio, right? In other words,
25 your tests -- how many -- your conclusions are based on

1 measuring the elimination levels, correct?

2 A. Yeah. I use an assumption of a low elimination
3 rate at .01 or a higher elimination at .025. There are
4 published values that go much higher. I don't want to
5 do that because the faster the elimination rate, the
6 much higher that estimate will be at a point in the
7 past. So I try to keep it a little bit more
8 conservative for the benefit of the doubt.

9 Q. So at 1.0, that variable, versus -- you said
10 .25 or --

11 A. Yeah, .01 and a .025.

12 Q. Okay. If you used the 1.0, it would be lower,
13 the score would be lower than using a .25 elimination
14 rate?

15 A. That's right. That's where I come up with that
16 .11 versus the .17. That takes those elimination rates
17 both into account.

18 Q. Is it possible to use elimination rates lower
19 than 1.0?

20 A. Than the .01?

21 Q. Yes.

22 A. I don't think it's been demonstrated by anybody
23 to do that, but we could -- I suppose we could run the
24 numbers if you'd like.

25 Q. So depending -- and I'm not in any way

1 suggesting there's anything sinister about it, but your
2 opinion kind of depends upon what elimination rate you
3 choose?

4 A. Yeah, somewhere in between those two.

5 Q. Someone -- and I'm not saying you, but someone
6 who is really out to get someone could pick a very high
7 rate and that's all he picks and he's going to get
8 higher scores?

9 A. Yes, that's true.

10 Q. So someone, it's possible, that they could
11 manipulate the results based on delaying the testing or
12 based on giving false information or inaccurate
13 information or based on some expert using a higher
14 elimination rate with the result of trying to get a
15 higher result?

16 A. That's a very good point. Dr. A. W. Jones came
17 up with this. He wrote in Garriott's book on
18 "Medical-Legal Aspects of Alcohol," he said that
19 extrapolation can be a dubious process. And if -- like
20 you said, if you skew the results and try to use the
21 highest elimination rates and do this and that, if you
22 don't give the whole range and the entire picture,
23 you're really not doing any service to the Court.

24 Q. I appreciate that, sir.

25 So your opinion, obviously, you try to be

1 as fair as you can in using both rates?

2 A. Yes, I try.

3 Q. Right, and you did. But you're still dependent
4 on the information that's given to you, if that's
5 accurate; and your opinion is still dependent on the
6 timing of when the blood draw takes place, and that's
7 not in your control.

8 A. True.

9 Q. Now, you didn't do a personal examination of
10 Ms. Kressin, did you?

11 A. No, I didn't.

12 Q. You didn't have any of her medical information,
13 did you?

14 A. No.

15 Q. Is it possible that -- you know, do people have
16 different elimination rates?

17 A. Yes, they do. Even the same person on
18 different days.

19 Q. So you say each -- one person can have
20 different elimination rates on different days?

21 A. Yes.

22 Q. What are some of the things that affect the
23 elimination rates?

24 A. What you've eaten, and, you know, things
25 like -- for example, the higher protein content tends to

1 cause a faster elimination rate. Also, if you are on
2 other medications that slow gastric emptying, you won't
3 have -- you know, the distribution will take a lot
4 longer, the absorption and distribution. So elimination
5 will occur at a lot later point. Not necessarily
6 affecting the rate, but that point at which elimination
7 is out in full force will be variable. Surgical
8 alterations such as gastric bypass, bariatric surgery,
9 will also change that, too.

10 Q. And you really don't have any information about
11 Brittini Kressin as to those particulars, right?

12 A. Right.

13 Q. You didn't examine her --

14 A. No.

15 Q. -- to determine those, correct?

16 A. Right.

17 Q. Would Prozac being in her system increase the
18 elimination rate?

19 A. I would not consider that to be a factor in
20 anything. It's been studied with, you know, all kinds
21 of SSRI compounds or the drugs that -- what do they call
22 them -- proton pump inhibitors, things for gastric
23 reflex, also don't tend to change any absorption
24 elimination patterns. And none of them are impairing as
25 well. And if you need these drugs, you should be on

1 them without any consequence.

2 Q. What about insulin?

3 A. Insulin is a hormone that helps you utilize
4 sugar.

5 Q. But does it increase the elimination rate?

6 A. Increase the elimination rate? I don't know.
7 I'll have to look into that.

8 Q. Now, your own opinion is predicated on certain
9 standards that have been reviewed by members of your
10 profession, pretty much standard. However, despite
11 that, your opinion can never be based on what the actual
12 rate is for Brittini Kressin, correct?

13 A. We'll never know what the actual was that
14 night.

15 Q. Not only because you don't know about her
16 particular physiology, but you also don't know about
17 what she ate, maybe, or the things that were going on in
18 her life or the accuracy of the information of the
19 investigation, correct?

20 A. Right. Because I don't know that, I usually
21 make an assumption of like a 30-minute absorption
22 maximum versus like a two-hour to try to encompass empty
23 stomach to full stomach and everything in between.

24 Q. And you didn't interview Ms. Brittini Kressin?

25 A. Right, I didn't.

1 Q. You relied on others interviewing her?

2 A. Correct.

3 Q. And you didn't have -- you don't have sort of a
4 law enforcement mentality. You're not doing your
5 analysis in order to convict. You're just trying to
6 give a fair reading?

7 A. Right. I'm just a scientist.

8 Q. And a police officer might have a different
9 approach to getting information than you would, correct?

10 A. Yes.

11 Q. He may be trying to make a case, correct, as
12 opposed to trying to get an accurate reading on what her
13 elimination rate was?

14 A. Yeah. I don't know...

15 Q. You don't know what the officer --

16 A. Yeah, I just don't know.

17 Q. Is it possible to do your analysis using other
18 rates besides the ones you mentioned, like 1.5 or 2.2?

19 A. Yeah, these would all be in between the values
20 that I used. So they're all already accommodated.

21 Q. So you could pick really -- of course, when you
22 start getting to like 2.9, 3.0, you're talking about
23 something that's almost -- someone is almost like an
24 alcoholic or something, right?

25 A. Yeah.

1 Q. But you could conceivably give anywhere
2 between, you know, 0.5 all the way to 3.0 and have, you
3 know, 30 different opinions based on 30 different
4 elimination levels, correct?

5 A. It's just the range becomes wider and wider.

6 Q. And of course -- and I'll just finish up by
7 saying: Your opinion -- and I appreciate your candor.
8 Your opinion is always going to be limited somewhat by
9 not having her particular elimination rate, correct?

10 A. We'll never know what that number was. I can
11 only testify to a range.

12 Q. Thank you, sir.

13 THE COURT: Anything further?

14 MR. MARTINEZ: Nothing from the State, Your
15 Honor.

16 THE COURT: Any objection to this witness
17 being excused?

18 MR. ASLETT: Not from the State, Your
19 Honor.

20 MR. MARTINEZ: Not from the defense, Your
21 Honor.

22 THE COURT: You may step down. You're free
23 to go about your business.

24 THE WITNESS: Thank you.

25 THE COURT: You may call your next.

1 MR. ASLETT: State calls Officer Wilson,
2 Your Honor.

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

5 (Witness sworn.)

6 THE COURT: You may put your hand down.
7 Come forward and take a seat in this witness chair.

8 As you know, these lawyers are about to ask
9 you some questions. Please keep your voice up so
10 everyone can hear you. And let them finish their
11 questions before you start to answer. If you're
12 interrupted, you will be given the opportunity to
13 complete your answers.

14 Last, if anybody stands up, any of these
15 lawyers, to address the Court, please say nothing
16 further until you're given permission to do so.

17 Thank you.

18 You may proceed.

19 MR. ASLETT: Thank you, Your Honor.

20 **OFFICER MARK WILSON,**
21 having been called as a witness and being first duly
22 sworn, testified as follows:

23 **DIRECT EXAMINATION**

24 **BY MR. ASLETT:**

25 Q. Would you please tell the jury your name?

1 A. My name is Mark Wilson.

2 Q. What do you do for a living, Mr. Wilson?

3 A. I'm an officer with the Houston Police
4 Department.

5 Q. How long have you been an officer with HPD?

6 A. Just over eight years.

7 Q. What is your current assignment within HPD?

8 A. I'm currently assigned to the digital forensic
9 lab and the Secret Service high-tech task force.

10 Q. What do you do as part of the digital forensics
11 lab and the Secret Service high-tech task force?

12 A. My primary job is to extract data from mobile
13 devices, mostly cell phones, and provide that data to
14 prosecution in criminal trials.

15 Q. What sort of educational background and
16 training qualifies you to download content from cell
17 phones?

18 A. I have a master's in digital forensics. I've
19 received over 1,000 hours of training, mostly in mobile
20 forensics. I've processed hundreds of cases and
21 thousands of cell phones. I'm currently also an
22 instructor with one of the leading mobile forensic
23 companies in the world.

24 Q. And have you testified before in the area of
25 forensic analysis of cell phones?

1 A. Yes, sir.

2 Q. On few or many occasions?

3 A. Yes.

4 Q. Few or many?

5 A. Many.

6 Q. Okay. Tell us, what is sort of the process you
7 use to download information from a cell phone beginning
8 from when the cell phone is given to your custody?

9 A. The case agent drops the cell phone, or
10 whatever mobile device, off at my office along with a
11 search warrant allowing me to search that device. It's
12 put into an inventory so we know what we have at any
13 given time. We lock it up in our vault until we're
14 ready to work on it.

15 Once it's ready to be worked on and I have
16 the time to do it, I go into the vault, I retrieve that
17 evidence, and I place it inside of a Faraday box. A
18 Faraday box is a large steel box. You put the phone
19 inside, you close the lid. And it has a window so I can
20 see it. And it has two gloves. So I can put my hands
21 in and I can interact with the phone, but while it's
22 inside this phone, the phone can't send or receive
23 transmissions. So no texts are going out, no incoming
24 calls, that kind of thing. That way nothing on the
25 phone is being changed. Everything -- from the time

1 that it was seized and powered off until the time that I
2 turned it on again, nothing is being changed. And while
3 it's inside of the box, nothing is being changed. So
4 that way, when I hook it up to my forensic computer,
5 it's pulling data exactly as it was at the time that it
6 was seized.

7 Q. And does a Faraday cage prevent the possibility
8 of remote data wipes?

9 A. Yes, sir.

10 Q. Okay. Tell us how you go about plugging the
11 phone into your computer and downloading the data?

12 A. The majority of phones now just interact via
13 USB. The USB port goes outside of the Faraday box
14 through a protected shield. So nothing is going in,
15 once again. The data is being extracted directly from
16 the phone through a cord into my forensic machine. And
17 a particular software is able to interpret the phone's
18 data in a human readable format.

19 Q. What sort of data do you download from the
20 phone?

21 A. Most of the time, it's images and videos,
22 texts, call logs, contacts, multimedia messages, web
23 history, GPS, that type of thing.

24 Q. Now, on November 5th, 2013, did you receive a
25 cell phone attached to this case to analyze?

1 A. Yes, sir.

2 Q. Prior to doing that, did you review the search
3 warrant for that phone?

4 A. Yes, sir.

5 Q. Did you follow the same procedure you just
6 described to download that phone?

7 A. Yes, sir.

8 Q. Now, prior to doing that, do you -- or is prior
9 to or after that you photograph the phone?

10 A. Before I put it in the Faraday box, I'll
11 photograph it.

12 MR. ASLETT: Your Honor, may I approach the
13 witness?

14 THE COURT: You may.

15 Q. (By Mr. Aslett) Officer Wilson, I'm showing you
16 what I've marked as State's Exhibits 60, 61, and 62. If
17 you could tell us what these are (indicating).

18 A. These are photographs of the phone that I took
19 at my desk.

20 Q. And do these fairly and accurately depict the
21 very phone that you downloaded the data from?

22 A. Yes, sir.

23 Q. I'm showing you State's Exhibit 63. If you
24 could tell the members of the jury what this is
25 (indicating).

1 A. This is a DVD that I burned with all of the
2 extracted data from the phone.

3 Q. Does State's Exhibit 63 contain a copy of all
4 of the data that was on that phone?

5 A. All of the data that I extracted, yes.

6 Q. Okay. Now, prior to trial today did we meet in
7 my office to discuss the case?

8 A. Yes, sir.

9 Q. And is it fair to say there's an extremely
10 large amount of data on that CD?

11 A. Yes, sir.

12 Q. Okay. Did I, in your presence, go about
13 extracting bits of data to summarize for the jury from
14 this CD?

15 A. Yes.

16 Q. I'm going to show you State's Exhibit 64. If
17 you could tell us what this exhibit shows (indicating).

18 A. This exhibit shows both incoming and outgoing
19 call logs.

20 Q. And State's Exhibit 65, what does State's
21 Exhibit 65 show (indicating)?

22 A. These are text messages, both incoming and
23 outgoing.

24 Q. And are State's Exhibit 64 and State's Exhibit
25 65 fair and accurate copies of the call log data and the

1 text message information from the phone data?

2 A. Yes, sir.

3 MR. ASLETT: Your Honor, at this time State
4 offers into evidence State's Exhibits 60 through 65, and
5 tenders to defense counsel for inspection.

6 **(State's Exhibit Nos. 60 through 65**
7 **Offered)**

8 MR. RAMIREZ: No objection, Your Honor, to
9 State's Exhibits 63 and 64 and --

10 MR. ASLETT: 60 through 65.

11 MR. RAMIREZ: Or to 64 to 65 -- no
12 objection. No objection.

13 THE COURT: All right. State's 60 through
14 65 are admitted.

15 **(State's Exhibit Nos. 60 through 65**
16 **Admitted)**

17 MR. ASLETT: Permission to publish, Your
18 Honor?

19 THE COURT: You may.

20 Q. (By Mr. Aslett) Okay. Can you tell us what
21 we're looking at here in State's Exhibit 60
22 (indicating)?

23 A. It's the cell phone I received heavily damaged.

24 Q. State's Exhibit 61 (indicating).

25 A. The back of the cell phone.

1 Q. State's Exhibit 62 (indicating).

2 A. And the back removed and battery removed.

3 Q. And is this the way that you record the serial
4 number of the phone to make sure it matches the serial
5 number on the search warrant?

6 A. Yes, sir.

7 Q. State's Exhibit 64, the phone outgoing calls
8 list. For outgoing calls, what do these numbers refer
9 to here in the second column (indicating)?

10 A. This is the number that was dialed.

11 Q. Okay. And the names that we see in this third
12 column, where are those pulled from?

13 A. These are pulled from the contacts list,
14 however -- however it was saved in the phone.

15 Q. So if it's saved via nickname or some such,
16 that's how it would appear in this chart?

17 A. Yes, sir.

18 Q. Okay. The date and time. We see GMT minus
19 five. What does that mean?

20 A. It's Greenwich Mean Time. By subtracting five
21 hours, it puts it into local time, for Houston local
22 time.

23 Q. Okay. So were all these times in military time
24 for Houston local time?

25 A. Yes, sir.

1 Q. Okay. And the duration that we see here in
2 column number three, what does that refer to
3 (indicating)?

4 A. The length that the user was talking on the
5 phone allegedly.

6 Q. Okay. Is there any way to determine whether
7 that's a voicemail message as opposed to an actual phone
8 conversation?

9 A. No.

10 Q. Okay. Just going through this, I guess we see
11 a series of calls at around -- or shortly after 12:30 on
12 October 14th. Am I understanding that correctly?

13 A. That's correct.

14 Q. And then we see later on a series of two phone
15 calls to a man named Forrest, listed as Forrest at 9:55
16 and at 10:01 p.m.?

17 A. Yes.

18 Q. Okay. After that, at 10:02 p.m., a follow-up
19 call, 36 seconds to a person listed as Big Bro?

20 A. Correct.

21 Q. And then two unknown numbers we see at 12:03
22 within short succession of each other; is that correct?

23 A. Correct.

24 Q. And that would be 12:03 in the morning?

25 A. Yes.

1 Q. Okay. As far as the only incoming call listed
2 that day, it's much earlier at 1:07 from another unknown
3 number; is that correct?

4 A. Yes, sir.

5 Q. Okay. For the text message data, first if you
6 could explain to us sort of what all this information is
7 under "Phone Examination Report Properties."

8 A. These items are automatically populated by the
9 forensic software I used. The selected make and model
10 shows the model of phone that I selected. This is what
11 I told the software, hey, this is the type of phone it
12 is. And then also the detected is what the forensic
13 software believes it is. The revision is specifically
14 for the forensic software. The MEID is the mobile
15 equipment identifier. It's similar to a serial number
16 of the phone. The MDN is the mobile dialing number. So
17 this is the phone's phone number. The ICCID and IMSI,
18 these are numbers that identify the SIM card of the
19 phone. And the date and time is the date and time of
20 the phone. The connection type, I connected via USB
21 cable. And the UFED version and UFED serial number are
22 the identifiers for the forensic device that I used.

23 Q. Let's go down a little bit further to text
24 messages and we'll break it down by column.

25 The column in the far left, what do these

1 numbers represent?

2 A. Do you mind sliding that over a little?

3 Q. Sorry.

4 A. Thanks.

5 Q. Yes.

6 A. In this case, the text message, it was text
7 message 4,605. There were a number of text messages
8 before that.

9 Q. So the phone numerically orders all of the text
10 messages I guess by time sent and received?

11 A. Correct.

12 Q. Okay. Until they're, I guess, deleted by the
13 user?

14 A. Correct.

15 Q. Okay. So this would be the 4,605th text
16 message on the phone?

17 A. Correct.

18 Q. The phone number here, is this what we're
19 looking at in column two?

20 A. Yes.

21 Q. And column three, what are we looking at there?

22 A. Same thing as before, this is how that phone
23 number is stored in the phone. So that phone number is
24 associated with Adam.

25 Q. And then next to it, the date and time?

1 A. Yes.

2 Q. The next column, sent, read, sent, what does
3 that refer to?

4 A. This is: Did you send the text, did you
5 receive it, did you read it. So a number of different
6 things going on.

7 Q. And then in the next column, sent, inbox, sent,
8 what does that tell you?

9 A. This one shows what folder it's being stored
10 in. Is it in your sent folder, is it in your received
11 folder, is it in your read folder.

12 Q. And the next column that says "Phone"?

13 A. It just shows that it's housed in the phone
14 right now.

15 Q. And outgoing, incoming, outgoing?

16 A. Is the SMS message or text message incoming or
17 outgoing.

18 Q. And finally here, do we see the actual text on
19 the right side?

20 A. Yes, sir.

21 Q. I'm going to go ahead and skip to some texts
22 that were sent later on in the day, starting with Text
23 4629 -- I'll have to zoom in a little further -- to a
24 person listed in the contacts as OKRA Gabrielle at
25 approximately 4:35, sent, outgoing, and the text says:

1 Come to Anvil. And then we see a response from
2 Gabrielle: I can come when I get out of class at 6:00.
3 LOL.

4 And then we see a couple of more text
5 messages between her and Gabrielle. And then a text
6 message from Forrest at approximately 7:37 p.m. -- sent
7 to Forrest: What are you doing tonight? A reply from
8 Forrest about a minute later: Heading to Blacksmith for
9 a coffee thing, then to Poison Girl. You?

10 A response from the cell phone to Forrest
11 at 7:47: Just wondering around, seeing what was going.
12 And then a blank text message sent at 8:18, also
13 Forrest. And then another text message to Forrest sent
14 at 9:21 p.m.: Would you want to see me at all tonight?
15 "Tonight" being misspelled. A response from Forrest at
16 9:43 p.m.: Sure. Come to PG. And then another text
17 message to Forrest at 9:46 saying: Okay. So...
18 question mark.

19 And then some texts from Forrest to the
20 phone, 9:56: We are in back. Phone is dying. And then
21 another text from Forrest to the phone, this time
22 shortly before midnight, 11:54 p.m.: Just got home and
23 phone is charged. Come over and sneak into my bed. A
24 response to Forrest from the phone at 12:01 a.m.: All
25 right. Sneaking may happen. Then a message from

1 Forrest at 12:13 a.m.: Left the door open. Let me know
2 if you're not coming please so I can lock it. Hope to
3 see you soon.

4 And then a response from the phone to
5 Forrest at 12:16 a.m.: Okay. Just got in a wreck.
6 Hope to see you, not sure. Response from Forrest
7 shortly after: What? Are you okay? Wherever. Another
8 response -- another message to Forrest at approximately
9 12:17 in the morning: Not sure yet. M. Another
10 message from Forrest asking: Where?

11 Another message to Forrest from the phone
12 at 12:19: I think I'm good. Guy on bike not sure. If
13 not, nice to know you. And another response from the
14 phone: I-10 and Shepherd. Forrest asks: Did you hit
15 him? Response is: He hit me. Forrest asks: Are you
16 okay? Should I come get you? How is your car?

17 Response is: Not okay. He is not okay.
18 Forrest replies: Heard the ambulance. Heading that
19 way. Let me know if I can help or if you'd like me
20 help. Still hope to see you.

21 And no further text messages after 12:37
22 a.m.

23 Officer Wilson, apart from simply
24 downloading the phone content in this case, did you have
25 any additional involvement in this case?

1 questions. Please keep your voice up so everyone can
2 hear you. And let them complete their questions before
3 you begin to answer. If you're interrupted, you will be
4 given the opportunity to complete your answer, unless an
5 objection has been sustained.

6 Last, if any of these lawyers stand up
7 during your testimony to speak to the Court, please say
8 nothing further until you're given permission to do so.

9 Thank you.

10 THE WITNESS: Okay.

11 THE COURT: You may proceed.

12 **DR. ALEX JOHN,**

13 having been called as a witness and being first duly
14 sworn, testified as follows:

15 **DIRECT EXAMINATION**

16 **BY MR. ASLETT:**

17 Q. Dr. John, would you please tell the jury your
18 full name?

19 A. My name is Dr. Alex John.

20 Q. And what do you do for a living, Dr. John?

21 A. I'm employed by the Harris County Institute of
22 Forensic Sciences as an assistant medical examiner.

23 Q. And you're not a musician, right?

24 A. I'm not a musician.

25 Q. Terrible joke.

1 Okay. How long have you been an assistant
2 medical examiner with the Houston {sic} Institute of
3 Forensic Sciences?

4 A. I've been with the Harris County Institute of
5 Forensic Sciences for over two years now.

6 Q. And before that, were you a medical examiner
7 anywhere else?

8 A. Yes. I was employed as a forensic pathologist
9 at the Office of Chief Medical Examiner of Oklahoma
10 located in Tulsa, Oklahoma.

11 Q. Could you tell us about the educational
12 background you have that qualifies you to be a forensic
13 pathologist?

14 A. To be a forensic pathologist, you have to be a
15 physician first, which means you have to go through
16 medical school. Some of them gone through medical
17 schools here in the United States. International
18 medical degrees are also accepted here in the U.S. I
19 happened to go to medical school in India where I was
20 born and raised.

21 And after finishing medical school, I did a
22 four-year residency training in anatomic and clinical
23 pathology. I did that at the University of Oklahoma
24 from 2006 to 2010, and following which, I did a year of
25 Fellowship in forensic pathology at the Harris County

1 Institute of Forensic Sciences from 2010 to 2011. And
2 to be a forensic pathologist or assistant medical
3 examiner, you have to go through all this training and
4 also pass the relevant certifying exams that go along
5 with the training.

6 Q. And have you passed those exams?

7 A. Yes.

8 Q. Are you also licensed to practice medicine in
9 the state of Texas?

10 A. Yes.

11 Q. Are you board certified in forensic pathology?

12 A. Yes.

13 Q. Okay. Tell us, what is forensic pathology the
14 study of?

15 A. Forensic pathology is a subspecialty of
16 pathology in general, and forensic pathology deals with
17 the determination of cause and manner of death. And
18 autopsy and other death investigation techniques are
19 used to arrive at an accurate cause and manner of death.

20 Q. Is part of that process performing autopsies?

21 A. Yes.

22 Q. And have you performed autopsies in your career
23 as an assistant medical examiner?

24 A. Yes.

25 Q. Is that something you were trained how to do?

1 A. Yes.

2 Q. Approximately how many autopsies would you say
3 you've performed over the course of your career?

4 A. I've done about 1,000 autopsies in the course
5 of my career.

6 Q. And have you testified before as an expert
7 witness in the area of forensic pathology?

8 A. Yes.

9 Q. On few or many occasions?

10 A. Many occasions.

11 Q. Dr. John, on October 15th of 2013, did you
12 perform an autopsy on a woman named Claudia Ontiveros?

13 A. Yes.

14 Q. During the autopsy, were photos taken of the
15 body?

16 A. Yes.

17 Q. And did you also prepare an autopsy report
18 after your examination was completed?

19 A. Yes.

20 MR. ASLETT: Your Honor, may I approach the
21 witness?

22 THE COURT: You may.

23 Q. (By Mr. Aslett) Dr. John, I'm showing you what
24 I've marked as State's Exhibits 75 through 82. Do these
25 photographs fairly and accurately depict the various

1 parts of Claudia Ontiveros' body as you observed it on
2 October 15th, 2013 (indicating)?

3 A. Yes.

4 Q. State's Exhibit 83. Is this a fair and
5 accurate copy of the autopsy report you prepared after
6 conducting the autopsy on Claudia Ontiveros
7 (indicating)?

8 A. Yes.

9 MR. ASLETT: Your Honor, at this time,
10 State offers into evidence State's Exhibits 75 through
11 83.

12 **(State's Exhibit No. 75 through 83 Offered)**

13 MR. RAMIREZ: No objection to State's
14 Exhibits 75 to 83.

15 THE COURT: Admitted.

16 **(State's Exhibit Nos. 75 through 83**
17 **Admitted)**

18 Q. (By Mr. Aslett) Dr. John, before we start going
19 through these photographs, could you walk us through the
20 way you do an autopsy from beginning to end?

21 A. When a body is brought into our office, first
22 of all, they are photographed in the state that the body
23 is in with the clothing and with everything else that
24 the body comes with. And then subsequent to that, I
25 start documenting all the personal property, the

1 clothing, and the injuries that I can see in the
2 beginning. Subsequent to that, the clothing is taken
3 off. All the medical intervention, like I.V. lines and
4 endotracheal tubes that medical personnel might have put
5 in, is taken out. The body is cleaned. And then the
6 second round of photographs are taken.

7 Now, in this state, the body is in a
8 position where the injuries can be seen much more
9 easily. And at that point, I start documenting the
10 injuries or scars or other identifying features that the
11 body has.

12 Q. And after you do your external examination, do
13 you conduct an internal examination?

14 A. Yes.

15 Q. Tell us how you do that.

16 A. The internal examination consists of an
17 incision that is made. It's a Y-shaped incision, and
18 that exposes the internal organs. And all the internal
19 organs of the torso are examined. Likewise, the head is
20 opened to visualize and examine the brain.

21 Q. And do you sometimes find severe internal
22 injuries that are not readily apparent from an external
23 exam?

24 A. Yes.

25 Q. I want to go ahead and start showing you some

1 of these photographs starting with your external exam.
2 And if you could, as I put each photograph up onto the
3 screen, just tell us what we're looking at and if you
4 could note any injuries.

5 First State's Exhibit 75. Just tell us
6 what we're looking at here (indicating).

7 A. This is a photograph depicting the arm with two
8 armbands. The first armband has the number, which is
9 ML13-1350, which is a number that is given to the
10 decedent when they come in. "ML" stands for
11 medical-legal.

12 The band on the top is the armband in which
13 the decedent came with. And I believe this was
14 placed -- just by the characteristics of this band, it
15 seems like it has been placed by the hospital or the
16 medical intervention team that took care of the
17 decedent.

18 Q. Do you check these I.D. bands before performing
19 the autopsy to make sure you're doing it on the correct
20 body?

21 A. Yes.

22 Q. State's Exhibit 76 (indicating).

23 A. This is a photograph that we take on all our
24 decedents. It depicts the face. We call this the I.D.
25 shot. It used to be used, in the old days, for

1 identification purposes, but now we have scientific
2 methods like fingerprinting that we use for
3 identification.

4 In this photograph you can also see a tube
5 which is inserted into the mouth, which is the
6 endotracheal tube that the paramedics inserted or the
7 hospital inserted for airway maintenance. Other than
8 that, there is an abrasion on the right eye, this right
9 here. And then there are other punctate, small
10 abrasions around the mouth (indicating).

11 Q. And do you know what would cause those sort of
12 small abrasions that we see on the face?

13 A. This abrasion is caused by blunt force trauma.
14 Likewise, abrasions are in general caused by blunt force
15 trauma, but punctate abrasions can also be caused by
16 shattered glass which hits or strikes the face.

17 Q. State's Exhibit 77 (indicating).

18 A. This is part of our external examination, what
19 we call the second round photographs, depicting the face
20 and the torso. Here documented are tattoos on the torso
21 and the arm. And also here is a chest tube, which was
22 placed as part of medical intervention (indicating).

23 Q. Now, I guess from a layman's perspective, the
24 body appears to be bloated. What would cause this sort
25 of bloating?

1 A. I would say that the abdomen is distended. She
2 was slightly on the heavier side. And also, there is a
3 faint contusion here (indicating), which I have
4 described in my report. And the main reason for the
5 abdomen to distend is the abdominal fat right underneath
6 the entry of the abdominal wall.

7 Q. Now, later on did you discover there was some
8 internal bleeding that had occurred?

9 A. Yes.

10 Q. So that internal bleeding would not necessarily
11 be the cause of what we see here?

12 A. Correct.

13 Q. State's 78 (indicating).

14 A. This represents the lower part of the body,
15 includes the lower part of the arms and the upper part
16 of the legs and the entire thigh.

17 Q. State's Exhibit 79 (indicating).

18 A. This is the lowermost portion of the lower
19 extremities seen as the feet, the entire legs, and the
20 lower portion of the thighs.

21 Q. Now, it looks like from just the front part of
22 the body, there doesn't appear to be a lot of external
23 damage. Is that uncommon in a car-crash situation?

24 A. It is not uncommon.

25 Q. Where do most of the injuries that you see from

1 bodies that you receive from car crashes tend to be?

2 A. If the person is belted and the airbags have
3 deployed, then externally you don't necessarily have to
4 see a lot of trauma. Now, people who have been ejected
5 or do not wear a seatbelt tend to have more trauma
6 externally.

7 Q. State's Exhibit No. 80 (indicating).

8 A. This is the back of the body, which you can see
9 the head. And here there is some purple discoloration,
10 which is called lividity, which is not an injury
11 (indicating).

12 Lividity is the postmortem settling of
13 blood. So after you die, if you're placed on your back,
14 then the blood, because of gravity, will settle down and
15 will give rise to this purple discoloration.

16 Q. State's Exhibit 81 (indicating).

17 A. Again, this is the photograph representing the
18 lower portions including the lower back, the gluteal
19 region, or the buttock, and the posterior thigh. Again,
20 in this photograph, you can see some purple
21 discoloration here and there are areas which don't have
22 the purple discoloration. The difference is because if
23 the body is pressed against something, then there is no
24 lividity there or it's blanched. We call a blanching.
25 And the blood pools in other areas which are not pressed

1 or which are not -- which have a space to -- for the
2 blood to collect.

3 Q. Finally, the last photograph, State's
4 Exhibit 82 (indicating).

5 A. This is the last photograph of our second round
6 of external examination, which we call it showing the
7 lowermost portions of the back of the body.

8 Q. Again, do we see really any major external
9 injuries to the back of the body?

10 A. No.

11 Q. Again, is that unusual at all in a car-crash
12 situation where somebody is seat-belted in?

13 A. No.

14 Q. Okay. After you did your physical exam, did
15 you then perform an internal examination?

16 A. Yes.

17 Q. Let's sort of go through from the top starting
18 with any internal head injuries that you noticed and
19 work our way down.

20 What, if anything, did you see as far as
21 head injuries internally?

22 A. Internally?

23 Q. Were there any?

24 A. No. Internally, there was no head injuries.

25 Q. So no hemorrhages or anything like that to the

1 brain; is that correct?

2 A. Yes.

3 Q. Any skull fractures?

4 A. No.

5 Q. Okay. Moving on down to the torso, what did
6 you find of your examination of the internal organs in
7 the torso area?

8 A. Internally in the torso, the ribs were
9 fractured, the right ribs two through four were
10 fractured anteriorly. And the underlying lung had
11 lacerations and hemorrhages.

12 The right clavicle, which is the bone right
13 here (indicating), was fractured. And the aorta, which
14 is the large vessel which takes blood out of the heart
15 back to the rest of the body, was transected, which
16 means it was totally cut off. And that resulted in
17 about 200 milliliters of liquid blood in the right chest
18 cavity, and the left chest cavity -- chest cavity
19 meaning the space around the lungs -- had about 300
20 milliliters of liquid blood.

21 Other than that, if you go down to the
22 abdomen, the liver had multiple lacerations. It was
23 pretty extensive, extending to all the surfaces of the
24 liver. And also the -- when I cut through the liver,
25 there was a portion of the liver which was almost

1 pulpified.

2 Q. Would that be due to blunt force trauma?

3 A. Yes.

4 Q. When somebody is seat-belted in with both a
5 shoulder and a lap strap, do you often sometimes see
6 severe injuries around the area where the person was
7 seat-belted in?

8 A. It's possible.

9 Q. Okay. Could that account for why you saw, I
10 guess, what you would say, I guess for lack of a better
11 term, crushed liver?

12 A. It's possible.

13 Q. Okay. You also mentioned that you found
14 approximately 500 milliliters of blood inside her chest
15 cavity. Is that a major amount of internal bleeding?

16 A. It is quite significant.

17 Q. Okay. Now, you mentioned transected aorta.
18 That means completely cut off from the rest of the
19 heart?

20 A. Yes.

21 Q. Okay. How quickly would that cause death?

22 A. It can incapacitate somebody really quickly. I
23 would not expect somebody who had a transected aorta to
24 be walking around. Death is difficult to define
25 where -- you know, brain death is the ultimate

1 definition of death. So I would say if the aorta is
2 transected, I would not expect somebody to function.
3 You would be unresponsive.

4 Q. Would you say that among all of the injuries
5 that you observed, the transected aorta was the most
6 serious?

7 A. Yes.

8 Q. Would you point to that as the most immediate
9 cause of death?

10 A. Yes.

11 Q. What, if any, other injuries internally did you
12 note, or does that about encompass it?

13 A. That's about it.

14 Q. Now, did you make a finding in your autopsy
15 report of the manner of death for Ms. Ontiveros?

16 A. Yes.

17 Q. And what was the cause of death determination?

18 A. The cause of death was multiple blunt force
19 trauma, and manner of death was accident.

20 Q. And are all of the injuries that you observed
21 on Ms. Ontiveros' body consistent with injuries that
22 would have been suffered in a car crash?

23 A. Yes.

24 Q. I have to ask you this question even though it
25 may sound silly. In your experience, is a motor vehicle

1 a device that is capable of causing serious bodily
2 injury or death?

3 A. Yes.

4 Q. And does it, in fact, appear to have done so in
5 this case?

6 A. Yes.

7 Q. Thank you, Dr. John.

8 MR. ASLETT: I pass the witness, Your
9 Honor.

10 THE COURT: Any questions?

11 MR. RAMIREZ: No questions of this witness.

12 THE COURT: Any objection to this witness
13 being excused?

14 MR. RAMIREZ: No objection from the
15 defense.

16 MR. ASLETT: None from the State, Your
17 Honor.

18 THE COURT: Doctor, you may step down.
19 You're free to go about your business.

20 THE WITNESS: Thank you.

21 THE COURT: You may call your next.

22 MR. ASLETT: Your Honor, the State rests.

23 THE COURT: What says the defendant?

24 MR. RAMIREZ: May we take a moment?

25 THE COURT: Yes.

1 Will the lawyers approach?

2 (At the Bench, off the record.)

3 (Open court, defendant and jury present.)

4 THE COURT: Ladies and gentlemen, please
5 step into the jury room.

6 (Open court, defendant present, no jury.)

7 THE COURT: You may be seated.

8 Did you need a few minutes, Mr. Ramirez?

9 MR. RAMIREZ: Yes, Judge.

10 THE COURT: All right. Court's off the
11 record if there is no objection.

12 MR. RAMIREZ: No objection.

13 (Brief recess.)

14 (Open court, defendant and jury present.)

15 THE COURT: You may be seated.

16 The State having rested, what says the
17 defendant?

18 MR. RAMIREZ: Your Honor, the defense rests
19 as well.

20 THE COURT: All right. State closes?

21 MR. ASLETT: State closes, Your Honor.

22 THE COURT: Ladies and gentlemen, that's
23 all the evidence that you're going to hear in this case.
24 You're going to be recessed for lunch at this time.

25 The Court needs to prepare the Court's

1 charge. That's going to take a little while, but not an
2 extremely long time. By the time your lunch gets here
3 and you have an opportunity to eat it, it's probably
4 going to be closer to 2:00 o'clock, or maybe
5 2:00 o'clock when you're brought back into the
6 courtroom. When you are brought back into the
7 courtroom, the Court's charge will be read to you.
8 After the reading of the charge, then these lawyers will
9 be given an opportunity to make closing remarks to you,
10 summarizing the evidence and discussing the law with you
11 that is contained in the charge.

12 After that, you will retire to the jury
13 room to commence your deliberations. You must remain
14 together until you have reached a unanimous verdict in
15 this case. Of course, after you reach a unanimous
16 verdict, you'll be brought back into the courtroom where
17 your verdict will be received by the Court and announced
18 in open court.

19 If the verdict is not guilty, the case will
20 be concluded. If the verdict is guilty beyond a
21 reasonable doubt, then, of course, we will proceed to
22 the punishment phase of the trial. So that's how things
23 will proceed from now on.

24 With that, remember the admonitions
25 previously given. Do not discuss this case amongst

1 yourselves or with anyone else.

2 Please step into the jury room.

3 THE BAILIFF: All rise for the jury.

4 (Open court, defendant present, no jury.)

5 THE COURT: You may be seated.

6 If there's no objection, the Court's going
7 off the record.

8 MR. ASLETT: No objection, Your Honor.

9 MR. RAMIREZ: No objection.

10 (Discussion off the record.)

11 THE COURT: The Court's back on the record
12 in Cause No. 1404917. The jury having been removed from
13 the courtroom, the defendant is present in the courtroom
14 with her attorneys. The State is represented by its
15 assistant district attorney.

16 Has the State received a copy of the
17 proposed charge of the Court?

18 MR. ASLETT: It has, Your Honor.

19 THE COURT: Any requested instructions or
20 objections to the charge?

21 MR. ASLETT: No requested instructions and
22 no objections to the charge, Your Honor.

23 THE COURT: Has the defendant received a
24 copy of the proposed charge of the Court?

25 MR. RAMIREZ: We have, Your Honor.

1 THE COURT: Any requested instructions or
2 any objections to the charge?

3 MR. RAMIREZ: No, Your Honor.

4 THE COURT: All right. Is there anything
5 else that needs to be addressed on the record?

6 MR. ASLETT: Just what time do you want us
7 back, close to 2:00?

8 THE COURT: Does that need to be addressed
9 on the record?

10 MR. ASLETT: It does not, Judge.

11 THE COURT: All right. Court's off the
12 record if there's no objection.

13 MR. ASLETT: None from the State.

14 MR. RAMIREZ: No objection.

15 (Discussion off the record.)

16 (Lunch recess.)

17 (Open court, defendant and jury present.)

18 THE COURT: You may be seated.

19 Ladies and gentlemen, at this time the
20 charge of the Court is going to be read to you.

21 (Court's Charge read.)

22 THE COURT: The lawyers have agreed to
23 limit their closing remarks to no more than 15 minutes
24 to the side.

25 You may proceed, Mr. Aslett.

1 MR. ASLETT: Your Honor, State waives the
2 right to open and reserves the right to close.

3 THE COURT: Mr. Ramirez, you may proceed.

4 MR. RAMIREZ: Thank you, Judge.

5 May I, with the Court's permission, move
6 the easel?

7 THE COURT: You may.

8 **DEFENSE CLOSING STATEMENT**

9 MR. RAMIREZ: May it please the Court,
10 opposing counsel:

11 Ladies and gentlemen of the jury, I want to
12 thank you for your service over this past week. I know
13 it's been a long, grueling week for all of us. And I
14 know your work is about to begin.

15 This is a very important case. I told you
16 from the very beginning when we started -- when we
17 started my opening statement, this was a horrible,
18 horrible accident. Horrible. What more can you say?
19 It was a horrible accident. It has affected two
20 families for the rest of their lives no matter how you
21 try to think about what happened. We have a beautiful
22 family that lost a beautiful daughter. We have a
23 beautiful family who is here with their beautiful
24 daughter.

25 And what more can you say? It's horrible.

1 It involves an unfortunate death, horrible accident on
2 the Katy Freeway. We can't change those facts. We're
3 not trying to change the fact that this was a horrible
4 accident. And, unfortunately, a young lady lost her
5 life. When we began this case, we asked you if you
6 could stand in judgment in a case where somebody was
7 driving the wrong way on the freeway and there was a
8 loss of life, and if you could set that aside and judge
9 this case on the facts of that case.

10 And I told you at the time in my opening
11 that this was an intoxication case. This was an
12 intoxication case. And it very much remains that. The
13 prosecution has the burden of proof in this case. And
14 I'm going to ask you to -- when you are deliberating
15 that you separate the two major events in this case.
16 One, the accident, which nobody disputes. Nobody
17 disputes that. My client doesn't dispute that. You
18 heard from her through her video.

19 But there is also the question of
20 intoxication. And I'm going to ask you, when you are
21 evaluating this case, that you at least attempt to
22 separate those two things, although obviously related.
23 Can't unrelate them, but -- because that's why we're
24 here, but at least take a look at the evidence that the
25 State has presented you in this case.

1 What is it that we have? What is it --
2 with respect to intoxication, what do we have? Think
3 about it. We have an officer that made the scene, took
4 Ms. Kressin, formulated his opinion based on his testing
5 and -- and his experience, or lack thereof. We have her
6 statements where she tells you where she had three
7 drinks, two cocktails and one shot. She was stressed,
8 in shock, tired. No doubt, those things existed. It's
9 impossible -- even though Officer Corral says that he
10 didn't think those factors existed, they have to exist.
11 They have to exist.

12 And we got Mr. Jon Giraldo who says: I
13 couldn't calm her down. I was trying to get her to calm
14 down. But he couldn't. She was obviously not -- she
15 was in the frame of mind that you would probably expect
16 somebody to be who had just been in that type of an
17 accident.

18 All these factors, all these things, and
19 more that I'm going to discuss in a minute. Remember
20 what I said in voir dire. Probable cause to arrest,
21 that was, in this case, Officer Corral's responsibility.
22 Did he have probable cause to arrest? Absolutely.
23 There was some question of having had something to
24 drink, those types of things, but Officer Corral's
25 burden is not where we're at today. Today we're at

1 beyond a reasonable doubt. And there's -- you don't
2 jump from here to here without credible evidence.

3 In this case, the State cannot get you from
4 here to here with regard to intoxication. If this was
5 an accident case, and an accident case only, then the
6 person bringing the case would only have to get you to
7 preponderance of the evidence. And we don't -- we don't
8 have any fight with that argument. But this is an
9 intoxication case and whether or not the State of Texas
10 has been able to prove that.

11 So we have Officer Corral's testimony. We
12 have her testimony on the video. And then we have the
13 testing that was done on the blood and the
14 interpretation of that, the retrograde extrapolation
15 expert. I would like to say the one person that
16 probably was at the scene that was probably the most
17 closest and unbiased in the sense that he doesn't
18 represent the government, doesn't -- we don't know him
19 on the defense side, was Mr. Giraldo. And his testimony
20 was that he didn't smell any alcohol on her breath.

21 Now, obviously, the State will say he is
22 not trained, but you don't have to be trained to --
23 to -- when somebody is that close, you should smell it.
24 And if you want to believe what Officer Corral said, he
25 said it was strong. And if it was strong, then he

1 should have been able to smell it. But he didn't have
2 any reason -- he's very objective.

3 The extrapolation expert. We have that,
4 but there's -- there's no viable studies or testing to
5 substantiate his opinion. Everything that he testified
6 to was based on information that was provided to him.
7 And he very clearly said to you that his opinion was
8 based on the information that was provided to him by
9 whatever sources that was, which could be from the
10 prosecution, but the prosecution through the
11 investigating officers. And it trickles down that way.

12 And he told you that if somebody wanted to
13 provide wrong information or manipulate -- that it could
14 be manipulated because he's just plugging in the
15 numbers. He didn't -- it's not part of the process, but
16 you can't say: Well, we know for a fact that her
17 elimination rate is .18 or .018, which is what he used
18 as a standard rate. It could have been lower, it could
19 have been higher, but he can't say that is her
20 elimination rate. And he didn't evaluate her. He
21 didn't investigate her. He didn't conduct the physical
22 examination on her. We don't know what she had to eat.
23 He didn't know what she had to eat, drink, how much she
24 had. All those factors, he testified, could affect the
25 results that he presented.

1 He said that -- that -- or I believe in
2 response to the State that there was -- at some point,
3 there was a .24. That sounds extremely high for
4 somebody who just had three drinks 30 minutes later.
5 Think about that. It's based on the information that
6 was provided to him through Corral. Of course, we
7 talked about that, but Officer Hall --

8 THE COURT: You have five minutes
9 remaining.

10 MR. RAMIREZ: During the investigation, he
11 says: She's stressed out, she is in shock, she's
12 remorseful, she's talking, she's crying, she's wishing
13 it was her. All those factors have to go into this
14 determination.

15 Remember, the State has to prove this case
16 beyond a reasonable doubt. They must exclude all doubt
17 based on reason. They can't do that in this case in
18 respect to intoxication. If it were an accident case,
19 they could do it, but this -- I mean, an accident case
20 only, they could do it. They can't do it in this case.
21 And if I'm telling you wrong, he would be objecting, but
22 that's not -- that is what they have to do. There's not
23 enough evidence in this case.

24 When you took this oath, you said you could
25 set aside the accident. I'm asking you to just evaluate

1 this case on the intoxication. And there should be no
2 concern from anybody in this courtroom that my client
3 has not taken -- has -- that we have decided not to
4 present evidence. It is not our burden. The burden is
5 on the State of Texas. And any comments or concerns
6 about, you know, we could have brought this person in --
7 for example, ask yourself: Why didn't the State of
8 Texas bring in the person who served her the alcohol
9 that night? Why was that person not brought in? Or why
10 was not the person that was with her not brought in?
11 Raises a real important question. With all their
12 subpoena powers, they're bringing people in from Denver
13 and all of these other places -- or New Mexico, I think,
14 where the young man was from -- why couldn't they bring
15 the bartender from down the street and say: Tell this
16 jury what you served this young lady. Was it one drink,
17 was it two drinks, ten drinks? They didn't do that.
18 You have to ask yourself why.

19 They can't get you from here to here in
20 this case today. They can't get beyond a reasonable
21 doubt with those factors here. There's nothing else.
22 The expert -- the blood is -- the only thing that's
23 verifiable for the expert is that the blood is below the
24 legal limit at .058 and .07 at 4:30 and 5:00 in the
25 morning. That's verifiable. And to retrograde back

1 is -- based on the information that that expert was
2 given is not accurate. It can't be accurate. He said
3 it can't be. It's too many variables.

4 And I don't think that we should, in this
5 type of case, convict somebody on those potential
6 possibilities. If they had come in here and said: This
7 is her elimination rate, this is what she had to drink,
8 and, therefore, she should be found guilty, then that
9 would be different. But all the extrapolation is
10 nothing but speculative opinions based on potentially
11 flawed information that was provided to him.

12 THE COURT: You have one minute remaining.

13 MR. RAMIREZ: Find my client not guilty of
14 this offense. Thank you so much.

15 MR. ASLETT: Your Honor, may I have a
16 moment to set up?

17 THE COURT: You may.

18 (Pause.)

19 **STATE'S CLOSING STATEMENT**

20 MR. ASLETT: You know, as I watched all of
21 y'all during this trial, something struck me. And
22 that's that I think this is a jury more so than just
23 about any jury I've had that probably best represents
24 our community here in Houston, Harris County. There are
25 members of this jury who are young, who are older, who

1 have wildly different job experiences, who are from the
2 north part of the county, who live in the city, who have
3 graduated from high school, who have been all the way
4 onto college, who are every single different type of
5 race that we have here in the county. Y'all are almost
6 a perfect cross-section of our community.

7 And you know what? That's by design. I
8 didn't try to pick a skewed or slanted jury because I
9 know that the evidence in this case is strong enough
10 that it doesn't matter who you are or what your
11 background is or how old you are or where you are from.
12 This is an easy case. It's a case where the defendant
13 is obviously guilty. And it doesn't matter who you are
14 to be able to see that. And I know that I'm already
15 telling you what you already know.

16 Beyond a reasonable doubt, we're well
17 beyond that. If there is a case where the defendant's
18 guilt has been proved to a near certainty, this is it.
19 Mr. Ramirez kept saying over and over again in his
20 closing argument that he wants you to forget and set
21 aside the crash. I disagree with that. The crash is
22 the entire reason we are here. It is the reason that
23 Brittini Kressin is charged with intoxication
24 manslaughter and not DWI. Because it's that crash that
25 turned a 20-year-old woman who used to look like this

1 into somebody who looks like this (indicating). That is
2 why we are here.

3 I do not want you to forget Claudia, a real
4 human being, not somebody who just exists in autopsy
5 photographs. And that two years ago almost to the day,
6 she was taken from us by what this defendant did.

7 How do we know she was intoxicated? I'm
8 just telling you what you already know. She gets onto
9 I-10 the wrong way. No dispute about that. Who does
10 that? Somebody who's intoxicated. She admits to
11 drinking. She says she had three drinks, cocktails.
12 Who knows how many shots are in those cocktails. And
13 that's all that she can remember. She admits herself
14 that she may have drank more. We know that she wasn't
15 passed out or unconscious because we have her cell phone
16 calls. She was calling, texting people all through the
17 night, 9:00, 10:00, shortly before midnight. She even
18 texts Forrest that she was about to go over there. And
19 she says that she is wandering around. Where is she
20 wandering around to? Presumably other bars that she
21 doesn't remember she went to where she is drinking.

22 How does she behave during the crash? She
23 doesn't even realize that she initially hit a car. She
24 thinks she only hit a motorcycle. Right after the
25 crash, she's not getting out or trying to do anything.

1 She's still got the foot on the accelerator, spinning
2 the tires, putting up smoke and sparks. Who knows why?
3 Thinking that she's still driving? Well, that's bad
4 enough. Trying to get away? That's even worse. I
5 think only she knows -- or, well, I guess she doesn't
6 know why she did that because she was so black-out
7 drunk.

8 Mr. Giraldo. We've heard a little bit
9 about him. It's true, he's the one that came into
10 closest contact with the defendant. What did he tell
11 you over and over and over again? He's literally feet
12 from her only for a couple of seconds before the second
13 crash with the motorcycle happens, and then he goes out
14 to try and help Mr. Arias. And this is something that
15 was a very, very quick event.

16 It's not surprising that of all six or
17 seven of the civilian witnesses you heard from,
18 everybody remembers it a little bit differently, right?
19 I mean, Mr. Giraldo remembers he was on the phone with
20 911. That's something he's very insistent about. You
21 have the 911 calls. There's no recorded 911 call from
22 Mr. Giraldo. Okay?

23 Mr. Barnes is very insistent that there was
24 a brown truck that was part of the crash. Nobody else
25 saw a brown truck. There's no roadway evidence to

1 suggest there was a brown truck, but he's equally
2 adamant about that. So people differ in the little
3 details. And that's normal for a quick, traumatic event
4 like this.

5 But everybody agrees on the broad outline
6 of what happened. She came down one of the exit ramps
7 by TC Jester, maybe it was North Shepherd. Maybe it was
8 one further down. She's going freeway speed. She gets
9 into a head-on collision. She's disabled. And then
10 Mr. Arias hits her, and, frankly, almost dies. Had he
11 not had his helmet and his crash gear on and had there
12 not been civilians right then and there to help pull him
13 out of the roadway, you know we could have easily had a
14 second dead person in this case. It's really just a
15 miracle that Mr. Arias was here to be able to talk to
16 you about what he experienced that night.

17 So what does the defendant do after this
18 crash? She doesn't even remember that she gets into
19 this other person's vehicle. She barely remembers what
20 interaction she had with Officer Corral. Now,
21 Mr. Giraldo is somebody who only came into contact with
22 her briefly. Officer Corral is a DWI task officer who
23 has been doing this for his entire career, who has seen
24 countless intoxicated people. Smells alcohol, mumbled
25 speech, bloodshot eyes. And you saw her performance on

1 those tests. You can't see the eye tests, so you'll
2 have to trust him on that, but you saw how she performed
3 on the walk-and-turn test. She's not even trying. She
4 can barely stand up in the starting position and she's
5 not even trying to go heel to toe.

6 But, really, that's not even the most
7 important piece of evidence in this case, is it?
8 Because what does Officer Corral do? He doesn't have to
9 go get a warrant for her blood. He could just rely on
10 the mandatory blood draw statute, but, no, he wants to
11 put a bow around this case and get a warrant to make
12 sure there's absolutely no problems. And that's what he
13 does. Even though it ultimately causes some delay from
14 the time he has to go to type all this stuff up and
15 bring it to the judge and then run it down to Memorial
16 Hermann.

17 And so that y'all can know whether she's
18 eliminating or absorbing alcohol, we get two samples,
19 one half an hour from the other. And what do those
20 show? .058 from the later one and a .070 from the first
21 one within 30 minutes. What did Dr. Walterscheid tell
22 you is roughly the normal elimination rate? .02 per
23 hour. That's .01 difference between .058 and .070.
24 Double that, what do you have? Pretty much the average
25 metabolic alcohol rate for a human being. Doesn't take

1 a rocket scientist to extrapolate her up to what
2 Dr. Walterscheid did, .14 roughly at the time of
3 driving.

4 And we know that because the blood wasn't
5 tested until about 18 months later, because it had to be
6 retested since this analyst left, that more than likely
7 her actual blood-alcohol content is going to be much
8 higher than that, possibly a .16. Who knows? Maybe
9 double the limit, but, regardless, well above. And is
10 that consistent with what we heard? Of course it is. I
11 mean, look at the chart. Her alcohol concentration
12 peaks at around 6:30 in the afternoon. Between 6:30 and
13 7:30, it's at its highest.

14 When does she say that she blacked out and
15 can't really remember what happened? She says she went
16 to Spaghetti Western. Well, that's another thing. She
17 tells Officer Corral she went to Spaghetti Warehouse and
18 then she says she went to Spaghetti Western. So that's
19 a bit of a sign of intoxication. She says to Officer
20 Corral that she had shot of Ferret. She tells Officer
21 Hall that she had a shot of Fernet. So that's just
22 evidence she's messed up and slurring her words, but she
23 says she can't really remember much about what happens
24 in that gap between 7:30 and the time of the crash.

25 Guess when her peak alcohol concentration

1 is according to extrapolation. Right around the time
2 where she says that she can't remember what happened.
3 We know she doesn't have any medical problems. She's
4 not epileptic. She's not diabetic, so she didn't have
5 any sort of passing out from a sugar crash. We know
6 this is because she was intoxicated. It is plain and
7 simple as that.

8 This is an extremely simple case, but you
9 know what? You don't just have to take my word for it.

10 (Exhibit published.)

11 MR. ASLETT: I want you to tell the
12 defendant what she already knows herself. Find her
13 guilty, find "we do" on the deadly weapon paragraph, and
14 let's get to the punishment phase.

15 THE COURT: Ladies and gentlemen, at this
16 time you will retire to the jury room to commence your
17 deliberations. When you have reached a unanimous
18 verdict, respond in the manner that the bailiff
19 instructs you to respond to alert the Court.

20 THE BAILIFF: All rise for the jury.

21 (Open court, defendant present, no jury.)

22 THE COURT: You may be seated.

23 Is there any objection to going off the
24 record?

25 MR. ASLETT: There is one thing before we

1 go off the record.

2 THE COURT: You may.

3 MR. ASLETT: Over the break, I went ahead
4 and had my technical expert redact the date portion of
5 the phone calls. I have not yet labeled those with a
6 State's exhibit number. What I could do, for clarity of
7 the record, is label the newly redacted jail calls as
8 State's Exhibit 86. And then for purposes of the
9 appellate record, give a new exhibit number to the jail
10 calls that were actually played in front of the jury.
11 The only difference between the two is that Deputy
12 Galvan initialed one, as he testified to, and obviously
13 he hasn't initialed the redacted version. I think that
14 may be the cleanest way to do it.

15 THE COURT: Why don't you mark the redacted
16 one with the same exhibit number that the exhibit was
17 marked since that's what the exhibit reflects as the
18 exhibit was admitted. You can mark the original one
19 before the redaction, you can mark that with the exhibit
20 number, dash 1.

21 MR. ASLETT: Okay. For purposes of the
22 record, I'm marking the original introduced exhibit as
23 86-1 and marking the redacted exhibit as State's Exhibit
24 86.

25 (State's Exhibit No. 86-1 Offered)

1 THE COURT: All right. The record will so
2 reflect. If there's no objection, then we're off the
3 record.

4 **(State's Exhibit No. 86-1 Admitted)**

5 MR. ASLETT: None from the State, Judge.

6 MR. RAMIREZ: None from the defense.

7 THE COURT: Court's off the record.

8 (Jury deliberating.)

9 (Open court, defendant present, no jury.)

10 THE COURT: Y'all ready for the jury?

11 MR. ASLETT: Yes, Your Honor.

12 MR. RAMIREZ: Yes, Judge.

13 THE COURT: You can bring them in.

14 (Open court, defendant and jury present.)

15 THE COURT: Has the jury reached a verdict?

16 FOREPERSON: We have.

17 THE COURT: You may be seated.

18 You may hand the verdict form to the
19 bailiff.

20 (Foreperson complies.)

21 **JURY'S VERDICT**

22 THE COURT: We, the jury, find the
23 defendant, Brittini Kressin, guilty of intoxication
24 manslaughter as charged in the indictment.

25 So say you all?

1 JURORS: Yes (in unison).

2 THE COURT: Any request to have the jury
3 polled?

4 MR. ASLETT: No, Your Honor.

5 THE COURT: Any request to have the jury
6 polled?

7 MR. RAMIREZ: No.

8 THE COURT: Do you, the jury, find beyond a
9 reasonable doubt that the defendant used or exhibited a
10 deadly weapon, namely, a motor vehicle during the
11 commission of the offense for which she has been
12 convicted or during the immediate flight therefrom?

13 Answer: We do.

14 So say you all?

15 JURORS: Yes (in unison).

16 THE COURT: Any request to have the jury
17 polled?

18 MR. ASLETT: No, Your Honor.

19 MR. RAMIREZ: No, Your Honor.

20 THE COURT: All right. You may be seated.
21 Ladies and gentlemen, if you would, please
22 step into the jury room.

23 THE BAILIFF: All rise for the jury.

24 (Open court, defendant present, no jury.)

25 THE COURT: You may be seated.

1 Any objection to going off the record?

2 MR. ASLETT: None from the State, Judge.

3 MR. RAMIREZ: None, Your Honor.

4 THE COURT: All right. Court's off the
5 record.

6 (End of guilt-innocence proceedings.)

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REPORTER'S CERTIFICATE

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THE STATE OF TEXAS)
COUNTY OF HARRIS)

I, Gayle Patterson, Deputy Official Court Reporter in and for the 351st District Court of Harris County, State of Texas, do hereby certify that the above and foregoing contains a true and correct transcription of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in this volume of the Reporter's Record, in the above-styled and numbered cause, all of which occurred in open court or in chambers and were reported by me.

I further certify that this Reporter's Record of the proceedings truly and correctly reflects the exhibits, if any, admitted by the respective parties.

WITNESS MY OFFICIAL HAND this the 8th day of February, 2016.

/s/ Gayle Patterson
Gayle Patterson, Texas CSR 3355
Expiration Date: 12/31/2017
Deputy Official Court Reporter
351st District Court
P.O. Box 5224
Alvin, Texas 77512
713.582.9121

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