

10:43:52 1 THE COURT: You may step down, sir. Call
10:43:53 2 your next witness, please.

10:43:56 3 MR. PHANCO: The State calls Mariam Kane,
10:44:01 4 Your Honor.

10:44:47 5 THE BAILIFF: This witness has not been
10:44:48 6 sworn in.

10:44:49 7 THE COURT: All right, ma'am. Come
10:44:50 8 forward. I'll swear you in. Please raise your right
10:44:58 9 hand.

10 (Whereupon the witness is sworn in
11 by the Court.)

10:45:02 12 THE COURT: You may proceed when you are
10:45:09 13 ready, sir.

10:45:09 14 MR. PHANCO: Thank you, Your Honor.

15 **MARIAM KANE,**
16 having been first duly sworn, testified as follows:

17 **DIRECT EXAMINATION BY THE STATE**

10:45:11 18 BY MR. PHANCO::

10:45:12 19 Q. Good morning, Ms. Kane.

10:45:13 20 A. Good morning.

10:45:15 21 Q. If you could, tell us your name and spell it so
10:45:18 22 the court reporter can get it down.

10:45:20 23 A. My name is Mariam Kane, M-a-r-i-a-m. Last name
10:45:25 24 K-a-n-e.

10:45:26 25 Q. And explain to the jury what you do for a

10:45:28 1 living?

10:45:30 2 A. I analyze unknown substances for the presence
10:45:35 3 of controlled substances.

10:45:36 4 Q. Who do you work for?

10:45:37 5 A. I work for Houston Forensic Science Center.

10:45:40 6 Q. Kind of describe to the jury, it seems pretty
10:45:44 7 obvious, but what do you do on a daily basis? What is
10:45:46 8 your general job?

10:45:48 9 A. My general job is I receive cases, one every
10:45:54 10 Thursday of the week. And during the week I'm weighing
10:45:59 11 and performing analytical analysis on unknown substances
10:46:08 12 and doing the final report on the website.

10:46:10 13 Q. Now, the lab that you work for, can you talk a
10:46:14 14 little bit about the accreditation of your lab and how a
10:46:16 15 lab becomes accredited?

10:46:19 16 A. Our lab is accredited by the Texas Department
10:46:22 17 of Public Safety and FQS, which is Forensic Quality
10:46:28 18 Services. So, in order for a lab to be accredited, a team
10:46:32 19 of scientists are sent to the lab, and they go in and
10:46:36 20 verify all the procedure we do, if we follow all the
10:46:41 21 procedures, and using the right instrumentation, and
10:46:46 22 making sure all the instrumentation get checked before
10:46:50 23 use. That's about it. And after that, they will come to
10:46:53 24 the conclusion if the lab is -- can be accredited. And we
10:46:59 25 are accredited.

10:47:00 1 Q. And so right now your lab is accredited?

10:47:03 2 A. Yes.

10:47:04 3 Q. And did you have the opportunity to do a lab
10:47:08 4 analysis on substances in Case No. 131535214?

10:47:18 5 A. You say 131535214?

10:47:25 6 Q. Yes.

10:47:26 7 A. Yes, I did perform analysis on that case.

10:47:29 8 Q. At the time of your analysis, was your lab
10:47:31 9 accredited?

10:47:33 10 A. Yes, it was.

10:47:34 11 Q. Now, describe to the jury about you
10:47:37 12 specifically, about what kind of education, experience,
10:47:40 13 and training you have in being a forensic analyst.

10:47:45 14 A. I have a Bachelor in Biology and Chemistry from
10:47:49 15 Houston Baptist University. And I also received a
10:47:52 16 six-month training from Houston Forensic Science Center
10:47:57 17 before I was able to start analysis on unknown substances.

10:48:02 18 Q. And do you have any -- you guys have any
10:48:05 19 training as you're working for the lab? You guys have to
10:48:09 20 continue your training, or anything like that?

10:48:10 21 A. Yes, we have continued training whenever there
10:48:14 22 is new analysis techniques. And I also went to the DEA
10:48:20 23 training.

10:48:21 24 Q. Describe that, what do you mean by DEA
10:48:23 25 training? What does DEA stand for?

10:48:27 1 A. DEA stands for Drug Enforcement Agency.

10:48:31 2 Q. What's that training?

10:48:31 3 A. That training involve -- I went there and they
10:48:34 4 taught me about instrumentation that we use, about drug
10:48:39 5 analysis and all the testing required.

10:48:44 6 Q. I want to talk about your instrumentation. In
10:48:46 7 the case that we're referring to, No. 131535214, you
10:48:55 8 mentioned that you tested substances in that case. Tell
10:48:58 9 the jury how you test substances.

10:49:01 10 A. In order to test the substance, I need to
10:49:04 11 perform two tests, a first test called a presumptive test.
10:49:08 12 That's a test that gives me an indication of what the
10:49:11 13 unknown substance is. And the next test is the
10:49:16 14 confirmatory test. That's an instrumental test. That
10:49:19 15 will specifically tell you what the unknown substance has.

10:49:22 16 Q. What kind of instruments do you use?

10:49:24 17 A. I use the gas chromatograph mass spectrometer.

10:49:30 18 Q. Tell the jury how those work.

10:49:32 19 A. Okay. The gas chromatograph mass spectrometer
10:49:37 20 is a two-part instrument. The first part, which is the
10:49:39 21 gas chromatograph, you do insert the unknown sample as a
10:49:45 22 liquid form, and it vaporizes and travels inside the
10:49:49 23 column, which is part of the gas chromatograph. So every
10:49:54 24 drug comes out of the gas chromatograph at a specific
10:49:59 25 retention time, then it goes on to the second part of the

10:50:04 1 instrument which is the mass spectrometer.

10:50:05 2 What happens there is every drug is fragmented into
10:50:10 3 specific fragments, depending on the masses of those
10:50:14 4 fragments. That's how the drug is identified.

10:50:17 5 Q. And those machines that you use, do you
10:50:20 6 calibrate them, or are they inspected?

10:50:22 7 A. Yes, they are inspected by an outside vendor
10:50:26 8 once yearly, but also every first workday of the week, the
10:50:30 9 instrument is checked to make sure it's working properly.
10:50:34 10 But, also, every day in the morning, we make sure to check
10:50:39 11 the drug standards are working properly and have been
10:50:45 12 identified the correct way.

10:50:46 13 Q. Let's talk about what that means, a drug
10:50:47 14 standard and how you use them.

10:50:50 15 A. Drug standards are known samples that are
10:50:55 16 obtained from an outside vendor. So we know -- for
10:50:59 17 example, cocaine, we know that sample as cocaine. So we
10:51:02 18 use that to test the instrument before case work are done.

10:51:07 19 Q. And you do that every day?

10:51:09 20 A. That's done every day.

10:51:10 21 Q. So you take a known sample of cocaine, put it
10:51:13 22 through the machine, and then if it comes out as something
10:51:16 23 else, you know the machine is not working?

10:51:17 24 A. That's a problem, yes.

10:51:18 25 Q. Did you do all of that on the day that you

10:51:22 1 tested the sample in Case 131535214?

10:51:29 2 A. I didn't bring the instrument information, but
10:51:34 3 I can get that. I didn't bring the paperwork, but
10:51:37 4 everything is at the lab.

10:51:39 5 Q. Would you have used the machine on that day if
10:51:41 6 it wasn't in working condition?

10:51:43 7 A. No.

10:51:44 8 Q. And did you have the opportunity to test
10:51:48 9 substances in this case?

10:51:50 10 A. Yes.

10:51:53 11 Q. I'm going to show you what has been previously
10:51:55 12 marked as State's Exhibit 20.

10:52:01 13 MR. PHANCO: May I approach, Judge?

10:52:02 14 THE COURT: Absolutely.

10:52:07 15 Q. (By Mr. Phanco) Do you recognize State's
10:52:08 16 Exhibit 20?

10:52:09 17 A. Yes. That's a ziplock for Case 2014-21477 and
10:52:18 18 it's Item 11.2. It has my initial MK on it.

10:52:24 19 Q. For the record, State's Exhibit 20 has been
10:52:27 20 previously identified by the previous witness as being
10:52:33 21 delivered by the defendant, substance. Now, how do you
10:52:36 22 know that that is the same substance that you tested?
10:52:38 23 Like, how can you tell the jury that you can identify it?

10:52:43 24 A. Every item inside a case, when I get it, it's
10:52:49 25 given a specific item number. And on this one it was Item

10:52:52 1 11.2, and I have that written on the ziplock with my
10:52:59 2 initial.

10:52:59 3 Q. Show them your initial.

10:53:01 4 A. It's right there, MK.

10:53:04 5 Q. And your initials are MK. And you have -- did
10:53:08 6 you seal the bag after you tested it?

10:53:10 7 A. Yes, and that's also on the red and white
10:53:14 8 sticker right there, MK and the date.

10:53:17 9 Q. On what has been previously marked as State's
10:53:19 10 Exhibit No. 20, were you able to make a presumptive test
10:53:23 11 as to what that substance is?

10:53:26 12 A. Yes. After the presumptive test, I came to the
10:53:29 13 conclusion that this substance, this unknown substance,
10:53:33 14 might be cocaine.

10:53:35 15 Q. All right. So now that you know that it might
10:53:37 16 be cocaine, do you put it through a confirmatory test?

10:53:41 17 A. Yes.

10:53:42 18 Q. And did you come to an opinion after putting
10:53:44 19 that substance through a confirmatory test?

10:53:47 20 A. Yes.

10:53:47 21 Q. What, in your professional opinion, is that
10:53:49 22 substance?

10:53:49 23 A. That substance contains cocaine.

10:53:51 24 Q. And did you weigh that substance?

10:53:54 25 A. Yes.

10:53:55 1 Q. And what was the weight?

10:53:56 2 A. It was 2.80 grams.

10:54:05 3 MR. PHANCO: Your Honor, at this time I ask
10:54:06 4 that State's Exhibit No. 20 be admitted into
10:54:08 5 evidence. Tendering to opposing counsel for
10:54:10 6 inspection.

10:54:22 7 MR. DUNN: May I take the witness on voir
10:54:24 8 dire, briefly, Judge?

10:54:25 9 THE COURT: Yes, sir. Why don't you mark
10:54:36 10 the butcher block as Defendant's Exhibit 26 for
10:54:49 11 demonstrative purposes so when you refer to it and if
10:54:51 12 you use it later, we'll have a reference in the
10:54:53 13 record?

10:54:53 14 MR. PHANCO: Yes, Judge.

15 **VOIR DIRE EXAMINATION BY THE DEFENSE**

16 BY MR. DUNN:

10:54:54 17 Q. Ms. Kane, this particular bag marked as State's
10:54:57 18 Exhibit No. 20 hasn't been in your possession in its
10:55:00 19 entirety, correct?

10:55:02 20 A. Could you repeat the question?

10:55:08 21 Q. Absolutely. When you came here today, was this
10:55:11 22 bag in your possession?

10:55:12 23 A. No.

10:55:12 24 Q. How long has this bag been outside of your
10:55:14 25 possession?

10:55:15 1 A. Let me check the chain of custody. I received
10:55:22 2 the case on January 7th and I returned on
10:55:27 3 January 14th, which I mean I don't have possession since
10:55:30 4 January 14th of 2015.

10:55:33 5 Q. So since you haven't had possession of this
10:55:37 6 particular exhibit since January 14th, you don't know if
10:55:41 7 it's been opened and resealed or not, do you?

10:55:45 8 A. I don't know.

10:55:46 9 Q. You don't know if anything has been changed on
10:55:49 10 it or about it, do you?

10:55:51 11 A. I do not know.

10:55:53 12 Q. And there's some writing on here. Is this your
10:55:58 13 writing?

10:55:59 14 A. I have to see which one you're talking about.

10:56:02 15 MR. DUNN: May I approach, Judge?

10:56:04 16 THE COURT: Please do.

10:56:12 17 A. Which one?

10:56:15 18 Q. (By Mr. Dunn) Right here.

10:56:15 19 A. My writing is just that, this, and the sealing
10:56:19 20 on it.

10:56:19 21 Q. And when you say "this, and the sealing," were
10:56:22 22 you speaking of that -- you're speaking of the numbers
10:56:25 23 2014-21477 and then in parentheses (11.2 MK)?

10:56:33 24 A. Yes.

10:56:33 25 Q. As well as the date 1-12-15 MK?

10:56:38 1 A. Yes.

10:56:39 2 Q. So all other writing on here isn't your
10:56:41 3 writing, correct?

10:56:42 4 A. That's correct.

10:56:42 5 MR. DUNN: Judge, I'm going to object to
10:56:43 6 this, one, for chain of custody reason; two, as
10:56:48 7 hearsay on it which goes to prove the truth of the
10:56:51 8 matter.

10:56:52 9 THE COURT: Overruled. It's admitted.

10 (Whereupon State's Exhibit No. 20 is
11 admitted into evidence.)

10:56:54 12 MR. PHANCO: Your Honor, may I punish it by
10:56:56 13 walking by the jury?

10:56:58 14 THE COURT: Yes.

15 **DIRECT EXAMINATION (Continued)**

16 BY MR. PHANCO:

10:56:58 17 Q. All right. So this is the substance. You said
10:57:04 18 it was 2.8 grams of cocaine?

10:57:06 19 A. That is correct.

10:57:29 20 Q. Next, I want to draw your attention to State's
10:57:31 21 Exhibit No. 21.

10:57:37 22 A. Okay.

10:57:38 23 Q. And do you recognize State's Exhibit No. 21?

10:57:51 24 A. Yes.

10:57:52 25 Q. And you looked at this exhibit, correct?

10:57:57 1 A. Yes, I've seen it before.

10:57:59 2 Q. But you didn't test it, did you?

10:58:01 3 MR. DUNN: Objection, leading.

10:58:03 4 A. No.

10:58:05 5 MR. DUNN: I'm sorry. I withdraw that.

10:58:06 6 THE COURT: It's overruled.

10:58:06 7 Q (By Mr. Phanco) Explain to the jury why you
10:58:08 8 didn't test this particular substance.

10:58:10 9 A. This wasn't tested because when we receive a
10:58:12 10 case, we look at the charge, and the charge on this case
10:58:16 11 was 4 to 200 grams for the weight range. So I went ahead
10:58:22 12 and I did enough to cover that range because it was less
10:58:26 13 than 200 grams. So I did more than 4 grams. That's why
10:58:32 14 it wasn't tested.

10:58:33 15 Q. So on this particular item, No. 21, you didn't
10:58:39 16 actually perform any test on it?

10:58:41 17 A. No.

10:58:41 18 MR. PHANCO: For the record, that's been
10:58:42 19 the -- State's Exhibit 21 was what's been previously
10:58:47 20 identified by the police officer as the center
10:58:50 21 console cocaine. Your Honor, at this time I ask that
10:58:57 22 State's Exhibit 21 be admitted into evidence.
10:59:02 23 Tendering to opposing counsel for inspection.

10:59:05 24 MR. DUNN: Judge, first and foremost, I ask
10:59:08 25 that being -- that the exhibit that opposing counsel

10:59:12 1 has drawn up be removed if it's Exhibit No. 21, which
10:59:17 2 she didn't test and it says on his chart that it's
10:59:20 3 cocaine. He has no way of knowing that it's cocaine.

10:59:24 4 THE COURT: That's for demonstrative
10:59:27 5 purposes only. Do you have an objection to --

10:59:33 6 MR. DUNN: Yes, Judge. May I take the
10:59:34 7 witness on voir dire?

10:59:36 8 THE COURT: Yes, sir.

10:59:38 9 MR. DUNN: May I approach, Judge?

10:59:39 10 THE COURT: You may.

11 **VOIR DIRE EXAMINATION BY THE DEFENSE**

12 BY MR. DUNN:

10:59:39 13 Q. Again, ma'am, is there writing on this
10:59:47 14 particular exhibit that is not yours?

10:59:52 15 A. That is my writing on it.

10:59:53 16 Q. Is there writing on it that's not yours?

10:59:56 17 A. Yes, there is.

10:59:57 18 Q. And, specifically, the writing that's yours is
11:00:00 19 2014-21477 and in parenthesis, (11.4 MK)?

11:00:09 20 A. That's right.

11:00:09 21 Q. And also the date January 12, 2015 MK?

11:00:15 22 A. That's right.

11:00:16 23 Q. All other writing is not yours?

11:00:17 24 A. Yes.

11:00:18 25 Q. And let me ask you: On the day that you did

11:00:19 1 the testing of this particular substance, was the machine
11:00:23 2 that you tested it on calibrated?

11:00:26 3 A. This substance wasn't tested.

11:00:28 4 Q. I'm sorry. This one wasn't tested?

11:00:30 5 A. Yes.

11:00:32 6 MR. DUNN: I'm going to object to it as to
11:00:33 7 relevance. It wasn't tested. It's not relevant to
11:00:36 8 this case. And again --

11:00:38 9 THE COURT: Let me have counsel real quick.
11:00:47 10 Let's take our morning break. We're going to take a
11:00:50 11 quick break.

12 *(Jury leaves courtroom)*

13 *(Jury not present)*

11:01:32 14 THE COURT: Let make sure I have this
11:01:33 15 correct. This product was not tested, right?

11:01:36 16 MR. PHANCO: Not by the lab, no.

11:01:37 17 THE COURT: Okay. So -- and was it
11:01:44 18 weighed?

11:01:45 19 MR. PHANCO: It was weighed by the officer,
11:01:46 20 but not by the lab.

11:01:48 21 THE COURT: All right.

11:01:51 22 MR. PHANCO: And on my chart, to be fair,
11:01:53 23 it does not list it as cocaine. The officer did do a
11:01:56 24 presumptive test, and he testified to that. But I'm
11:01:59 25 not putting this as part of the charge.

11:02:02 1 THE COURT: Because what I was going to say
11:02:03 2 is it can be part of the seizure.

11:02:06 3 MR. PHANCO: Right, that's all it is.

11:02:07 4 THE COURT: But it cannot go to the weight.

11:02:09 5 MR. PHANCO: Totally agree.

11:02:11 6 THE COURT: As long as we have that.

11:02:13 7 MR. PHANCO: I'm totally understanding on
11:02:15 8 that. As you can see, I've got the 2.8, but I'm not
11:02:19 9 putting the 1.1 up there. I want to make sure they
11:02:22 10 heard from the officer that we went in there and got
11:02:25 11 a substance. So I need to make sure we have it in
11:02:28 12 evidence as the substance that was obtained, but not
11:02:30 13 tested by the lab.

11:02:32 14 THE COURT: It can be referred to as
11:02:33 15 substance that was seized, a presumptive test, not
11:02:39 16 tested by the lab, but only presumptive test, not
11:02:44 17 confirmed, and that's the testimony. All right?

11:02:48 18 MR. PHANCO: Yes.

11:02:48 19 THE COURT: And it cannot be included in
11:02:50 20 the weight, 4 grams or more.

11:02:54 21 MR. PHANCO: Totally agree.

11:02:55 22 MR. DUNN: Judge, we also object on the
11:02:56 23 chain of custody ground.

11:02:59 24 THE COURT: It's overruled. Take a
11:03:03 25 15-minute break.

1 (Whereupon the Court stood in a
2 brief recess.)

11:20:11 3 THE COURT: Bring in the jury, please.

4 (Whereupon the defendant and the
5 jury are present.)

11:21:33 6 THE COURT: When we left off, we were in
11:21:35 7 direct examination. You may proceed. Your objection
11:21:38 8 to -- what was that -- State's Exhibit 21 is
11:21:41 9 overruled.

10 (Whereupon State's Exhibit No. 21 is
11 admitted into evidence.)

11:21:43 12 MR. PHANCO: So 21 is admitted, Your Honor?

11:21:46 13 THE COURT: That's correct.

11:21:46 14 MR. PHANCO: May I walk it in front of the
11:21:48 15 jury?

11:21:49 16 THE COURT: Yes.

11:21:49 17 MR. PHANCO: That is publishing, that is.

18 **DIRECT EXAMINATION (Continued)**

19 BY MR. PHANCO:

11:21:51 20 Q. And, again, Ms. Kane, State's Exhibit 21, these
11:21:53 21 two packages, was not tested by your lab?

11:21:57 22 A. That's right.

11:22:09 23 Q. You said you did this -- you didn't test these
11:22:12 24 because you already had enough weight from the other items
11:22:15 25 to get over the 4 to 200 grams threshold?

11:22:19 1 MR. DUNN: Objection, leading.

11:22:20 2 THE COURT: Do not lead. Sustained.

11:22:22 3 Q (By Mr. Phanco) So as of right now, from your --
11:22:31 4 what I have down for you as what has been tested positive
11:22:35 5 for cocaine from your lab is No. 20 at 2.8 grams.

11:22:45 6 Now, I'm going to show you what's marked as State's
11:22:52 7 Exhibit 23. Do you recognize State's Exhibit 23? And
11:22:56 8 explain to the jury what it is.

11:23:03 9 A. State's Exhibit 23, that's a ziplock containing
11:23:07 10 three items, a plastic bag with a chunky white powder,
11:23:10 11 three bags with white powder, and three paper rock form
11:23:17 12 containing residue.

11:23:18 13 Q. How do you know that that is the substance?
11:23:19 14 Did you mark it with your initials and date?

11:23:23 15 A. Yes, I have the case number on it that I wrote,
11:23:25 16 2014-21477; in parentheses, Item 11.3.1 through 11.3.3
11:23:35 17 with my initial showing MK.

11:23:41 18 Q. Did you do a presumptive test on State's
11:23:43 19 Exhibit 23?

11:23:46 20 A. I did a presumptive test on one item inside
11:23:50 21 State's Exhibit No. 23.

11:23:53 22 Q. Which item is that?

11:23:55 23 A. It's 11.3.1.

11:23:57 24 Q. And what did the presumptive test come out as?

11:24:02 25 A. It gave me an indication that the substance

11:24:04 1 might be cocaine.

11:24:05 2 Q. Did you do a confirmatory test?

11:24:08 3 A. Yes.

11:24:08 4 Q. And in your opinion, what is that item that you
11:24:13 5 tested?

11:24:13 6 A. That unknown substance contains cocaine.

11:24:18 7 Q. And did you weigh that amount of cocaine?

11:24:20 8 A. Yes.

11:24:20 9 Q. So in that bag you tested, which part did you
11:24:26 10 say it was, what number?

11:24:28 11 A. 11.3.1.

11:24:30 12 Q. And it contained cocaine, and what was the
11:24:33 13 weight?

11:24:34 14 A. The weight is 27.87 grams.

11:24:42 15 Q. 27.87 grams?

11:24:45 16 A. Yes.

11:24:51 17 Q. And did you seal all those items up in that
11:24:55 18 bigger bag?

11:24:55 19 A. Yes, they are inside of a bigger bag.

11:24:57 20 Q. Did you test any other items or just 11.2?

11:25:01 21 A. Just 11.3.1.

11:25:04 22 Q. Excuse me. 11.3.1.

11:25:06 23 A. That's the only item tested.

11:25:07 24 Q. That was the 27.87 grams tested positive for
11:25:12 25 cocaine?

11:25:12 1 A. That is correct.

11:25:17 2 MR. PHANCO: I'm going to mark -- or what's
11:25:20 3 been previously been marked as State's Exhibit
11:25:21 4 No. 23, which is a large plastic bag containing three
11:25:25 5 plastic bags that have all been marked and been
11:25:30 6 identified as one of the substances inside as the
11:25:33 7 27.87 grams tested positive for cocaine. And I'm
11:25:37 8 tendering to opposing counsel for inspection.

11:25:40 9 MR. DUNN: May I approach, Judge, and take
11:25:42 10 the witness on voir dire?

11:25:44 11 THE COURT: I'm sorry?

11:25:45 12 MR. DUNN: May I approach?

11:25:46 13 THE COURT: Oh, the witness, yes.

14 **VOIR DIRE EXAMINATION BY THE DEFENSE**

15 BY MR. DUNN:

11:25:50 16 Q. We'll go through this again. There are items
11:25:54 17 within State's Exhibit No. 23 that have markings on them,
11:25:57 18 correct?

11:25:57 19 A. Yes.

11:25:58 20 Q. And those markings were not written by you?

11:26:00 21 A. Some of the markings are not written by me,
11:26:03 22 that's right.

11:26:04 23 Q. And this particular package hasn't been in your
11:26:06 24 possession since January 12, 2015, correct?

11:26:13 25 A. January 14th, that's when I returned it, yes.

11:26:17 1 Q. And so you don't know if it's been opened or
11:26:19 2 resealed, do you?

11:26:21 3 A. No, I don't know.

11:26:22 4 Q. You don't know if any of the contents in here
11:26:25 5 have been changed, do you?

11:26:26 6 A. No.

11:26:26 7 Q. As far as your testing is concerned, when you
11:26:29 8 did the test, was your equipment calibrated for the day?

11:26:32 9 A. Yes, it was.

11:26:33 10 Q. And how did you do that calibration?

11:26:35 11 A. We perform the calibration on the first day of
11:26:40 12 the week, but I have all the paperwork at the lab.

11:26:43 13 Q. You said on the first day of the week. So was
11:26:45 14 this done on the first day of the week?

11:26:47 15 A. That's what I don't remember, because on the
11:26:49 16 paperwork I didn't write if it was a Monday or Tuesday.
11:26:51 17 But I can get it available if you need it.

11:26:55 18 Q. Fair enough. As of today, you don't know if
11:26:57 19 the calibration was done on the day that you did this
11:27:01 20 testing, correct?

11:27:02 21 A. I know that the calibration was done, because
11:27:05 22 before I start doing analysis on any case, I first make
11:27:09 23 sure that the testing was verified in the morning.

11:27:14 24 Q. Do you take notes on that calibration?

11:27:15 25 A. All the notes are at the lab. I don't have the

11:27:18 1 notes over here.

11:27:20 2 Q. So as it stands today, you have no notations or
11:27:22 3 anything to recall whether or not you did the
11:27:25 4 calibrations, correct?

11:27:26 5 A. Correct.

11:27:28 6 Q. And, also, there are items contained within
11:27:32 7 State's Exhibit No. 23 that you did not test, correct?

11:27:35 8 A. That is correct.

11:27:36 9 MR. DUNN: Judge, on the grounds of chain
11:27:38 10 of custody, we don't know if the testing was done
11:27:43 11 properly on this, or weighed, or veracity of it being
11:27:47 12 cocaine, and the fact that there are items that
11:27:50 13 weren't tested. Based on the rule of optional
11:27:53 14 completeness, we would ask that the item, State's
11:27:55 15 Exhibit No. 23, be denied into evidence.

11:27:58 16 THE COURT: It's overruled. Admitted.

17 (Whereupon State's Exhibit No. 23 is
18 admitted into evidence.)

19 **DIRECT EXAMINATION (Continued)**

20 BY MR. PHANCO:

11:28:00 21 Q. You said 11 point -- what was it that contained
11:28:06 22 the 27.87 --

11:28:06 23 A. 11.3.1.

11:28:17 24 Q. Which is, if I have it right, this larger
11:28:19 25 substance here at the bottom of the bag?

11:28:22 1 A. That is correct, yes.

11:28:23 2 MR. PHANCO: May I publish to the jury by
11:28:24 3 walking by, Your Honor?

11:28:26 4 THE COURT: Yes, sir.

11:28:26 5 Q (By Mr. Phanco) And these other substances here
11:28:29 6 at the top, those you did not test?

11:28:30 7 A. That is correct.

11:28:31 8 Q. So it's this substance here. And, again, why
11:28:52 9 didn't you test the other substances?

11:28:53 10 A. Because I did enough for the weight range for
11:28:58 11 4 grams.

11:28:59 12 Q. Is that standard policy for your lab?

11:29:01 13 A. Yes.

11:29:02 14 Q. I'm going to show you what's marked as State's
11:29:04 15 Exhibit No. 24, which has been previously identified as
11:29:08 16 the substance found from the dining room table. Do you
11:29:13 17 recognize State's Exhibit No. 24?

11:29:14 18 A. Yes, I recognize it. It's a ziplock bag with a
11:29:19 19 white powder, and I recognize it by the Case No.
11:29:22 20 2014-21477. It's Item 11.1, and my initial MK.

11:29:33 21 Q. And that item matches up with all the other
11:29:36 22 items you tested in this case?

11:29:38 23 A. That is correct.

11:29:38 24 Q. And did you do a presumptive test on that item?

11:29:41 25 A. Yes.

11:29:42 1 Q. What was the presumptive test?

11:29:44 2 A. It indicates that the substance might be
11:29:46 3 cocaine.

11:29:47 4 Q. All right. Did you do a confirmatory test?

11:29:50 5 A. Yes.

11:29:50 6 Q. And in your opinion, what is the substance in
11:29:52 7 State's Exhibit No. 24?

11:29:54 8 A. That substance contains cocaine.

11:29:58 9 MR. PHANCO: I ask that State's Exhibit
11:29:59 10 No. 24 be admitted into evidence and tender to
11:30:03 11 opposing counsel for inspection.

11:30:11 12 MR. DUNN: May I again approach the witness
11:30:13 13 on voir dire, sir?

11:30:15 14 THE COURT: Yes, sir, you may.

15 **VOIR DIRE EXAMINATION BY THE DEFENSE**

16 BY MR. DUNN:

11:30:16 17 Q. We will do this one more time, Ms. Kane. On
11:30:21 18 State's Exhibit No. 24, there's handwriting on here,
11:30:24 19 correct?

11:30:25 20 A. Correct.

11:30:25 21 Q. And some of that handwriting is not your
11:30:27 22 handwriting, correct?

11:30:28 23 A. That is correct.

11:30:29 24 Q. The only handwriting on here is where it says,
11:30:31 25 "2014-21477," and then in parentheses, "11.1 MK," as well

11:30:40 1 as the date, "January 12th" -- does that say 13?

11:30:45 2 A. That's 15. That's a five.

11:30:49 3 Q. "January 12, 2015 MK," correct?

11:30:52 4 A. That is correct.

11:30:52 5 Q. All other handwriting on here is not yours?

11:30:54 6 A. No.

11:30:54 7 Q. As far as the date that this was taken out of

11:30:58 8 your custody, that would have been on January 14th,

11:31:02 9 correct?

11:31:03 10 A. That is correct.

11:31:03 11 Q. And it has not been in your custody since then,

11:31:05 12 correct?

11:31:06 13 A. That is correct.

11:31:06 14 Q. So you don't know if it's been opened and

11:31:08 15 resealed, do you?

11:31:09 16 A. I don't know.

11:31:10 17 Q. You don't know if anything has been taken out

11:31:13 18 of this, or put into it, or changed in any shape, form, or

11:31:17 19 fashion, do you?

11:31:18 20 A. No.

11:31:18 21 Q. As far as the testing goes on the day that it

11:31:21 22 was tested, you have no information in front of you to

11:31:24 23 verify the calibrations were done correctly to make sure a

11:31:28 24 proper test was done, correct?

11:31:30 25 A. I don't have it here, yes.

11:31:32 1 Q. And that's for weight, as well as the actual
11:31:35 2 spectrometry, correct?

11:31:38 3 A. Regarding weight, I do have my balance book
11:31:40 4 right here.

11:31:40 5 Q. Okay.

11:31:41 6 A. Because, also, the balance is checked every
11:31:44 7 first day of the week.

11:31:46 8 Q. As far as the spectrometry is concerned, you
11:31:51 9 don't have anything to corroborate that, correct?

11:31:53 10 A. No, I didn't bring it.

11:31:55 11 MR. DUNN: I'll object to that based on
11:31:57 12 hearsay, and based on chain of custody, and the fact
11:32:00 13 that it can't be corroborated that the test was
11:32:02 14 actually done properly on this.

11:32:04 15 THE COURT: It's overruled. It's admitted.
16 (Whereupon State's Exhibit No. 24 is
17 admitted into evidence.)

11:32:07 18 MR. PHANCO: May I publish to the jury by
11:32:09 19 walking by, Your Honor?

11:32:10 20 THE COURT: Yes. I don't think she
11:32:11 21 testified to weight. I don't recall her testimony.

22 **DIRECT EXAMINATION (Continued)**

23 BY MR. PHANCO:

11:32:14 24 Q. Can you tell the jury what the weight was on
11:32:17 25 State's Exhibit -- did you test it for weight -- or not

11:32:22 1 test it, but did you weigh it for weight?

11:32:24 2 A. It was weighed and --

11:32:28 3 Q. Go ahead.

11:32:28 4 A. -- the weight was 14.90 grams.

11:32:39 5 Q. That's State's Exhibit 24?

11:32:40 6 A. Yes.

11:32:40 7 Q. Would you do me a favor?

11:32:42 8 A. Okay.

11:32:43 9 Q. Do you have a calculator?

11:32:44 10 A. Yes.

11:32:45 11 Q. I want you to add --

11:32:49 12 THE COURT: How much did she say, 14?

11:32:51 13 MR. PHANCO: 14.90 grams.

11:32:53 14 Q (By Mr. Phanco) I would like you to add the
11:32:55 15 three amounts that you tested and weighed and give me the
11:32:58 16 total number of what you tested and weighed.

11:33:01 17 A. Sure. 45.57.

11:33:35 18 Q. All right.

11:33:38 19 MR. PHANCO: May I now publish it by
11:33:40 20 walking by the jury, Your Honor?

11:33:41 21 THE COURT: Yes, sir.

11:34:01 22 Q (By Mr. Phanco) And, again, the other substances
11:34:03 23 that you looked at but didn't test, the only reason for
11:34:08 24 that was what?

11:34:10 25 A. Because I did enough testing to cover the 4

11:34:14 1 grams to 200 grams range.

11:34:16 2 Q. So there was nothing wrong with the substances
11:34:18 3 or anything like that?

11:34:18 4 A. No.

11:34:19 5 MR. DUNN: Objection, Your Honor, vague.

11:34:23 6 THE COURT: I'm sorry. Your objection,
11:34:24 7 sir?

11:34:25 8 MR. DUNN: Vague. "There's nothing wrong
11:34:27 9 with the substance." I don't know what that means.

11:34:29 10 THE COURT: It's overruled.

11:34:29 11 Q (By Mr. Phanco) They were suitable for testing?

11:34:32 12 A. Yes, it was possible to test it, yes.

11:34:34 13 Q. But you didn't. And is that standard policy?

11:34:37 14 A. Yes.

11:34:38 15 MR. PHANCO: Pass the witness, Your Honor.

11:34:39 16 THE COURT: Cross?

11:34:40 17 MR. DUNN: Yes, Judge.

18 **CROSS-EXAMINATION BY THE DEFENSE**

11:34:42 19 BY MR. DUNN::

11:35:05 20 Q. Ms. Kane, you said you work for the Houston
11:35:07 21 Forensic Science Center, correct?

11:35:09 22 A. Yes.

11:35:09 23 Q. How long have you worked for the Houston
11:35:11 24 Forensic Science Center?

11:35:13 25 A. Since March 2009.

11:35:16 1 Q. Roughly, a little over six years that you've
11:35:25 2 been there?

11:35:25 3 A. Yes.

11:35:26 4 Q. Have you always worked in the same department?

11:35:28 5 A. Yes.

11:35:29 6 Q. I think you said you got your degree in
11:35:30 7 biology?

11:35:31 8 A. And chemistry.

11:35:32 9 Q. And chemistry?

11:35:33 10 A. Yes.

11:35:33 11 Q. I apologize.

11:35:34 12 A. That's okay.

11:35:35 13 Q. You have a wonderful accent. Where are you
11:35:37 14 from?

11:35:38 15 A. I'm from West Africa, Mali.

11:35:44 16 Q. Items that you tested, what goes -- as far as
11:35:48 17 the gas chromatograph mass spectrometer is concerned, what
11:35:56 18 goes into the calibration of that particular item?

11:35:58 19 A. When we do the standard use for testing
11:36:01 20 purposes?

11:36:03 21 Q. Yes, ma'am.

11:36:03 22 A. We use the cocaine standard to check.

11:36:07 23 Q. The calibration, what goes into the
11:36:09 24 calibration?

11:36:09 25 A. We use substance called PFTBA to make sure that

11:36:13 1 it's fragmented the proper way and there is no leak on the
11:36:19 2 instrument.

11:36:21 3 Q. You have guidelines on how often that
11:36:23 4 particular machine has to be calibrated, correct?

11:36:28 5 A. Yes.

11:36:28 6 Q. What are your guidelines?

11:36:29 7 A. Every first workday of the week.

11:36:31 8 Q. Every first workday of the week. And was the
11:36:34 9 the device calibrated on the first workday of that week?

11:36:38 10 A. Yes, it was.

11:36:39 11 Q. Do you have any proof of that today?

11:36:41 12 A. No, I don't have it here.

11:36:42 13 Q. And you were told by the State to bring
11:36:44 14 everything as it pertains to this particular case with you
11:36:47 15 today, correct?

11:36:48 16 A. Yes. I always bring this paperwork that I
11:36:52 17 have, except if it's requested to bring the calibration
11:36:57 18 information, then I'll bring it.

11:37:01 19 Q. And you weren't able to bring that today,
11:37:02 20 right?

11:37:03 21 A. It wasn't requested specifically.

11:37:08 22 Q. And as far as the weights are concerned, what
11:37:11 23 do you use to test the weight?

11:37:13 24 A. We have verified weight by an outside vendor
11:37:17 25 that we use to make sure that the balance is weighed

11:37:20 1 correctly, the weights.

11:37:22 2 Q. So you don't calibrate that weight machine
11:37:25 3 yourself?

11:37:25 4 A. No, it's not a machine. The machine
11:37:27 5 calibration is done by an outside vendor once a year.

11:37:31 6 Q. Is that within the guidelines?

11:37:33 7 A. Yes.

11:37:35 8 Q. What kind of -- you said it's not a machine.
11:37:39 9 So what is it?

11:37:39 10 A. It's a balance.

11:37:42 11 Q. What type of balance?

11:37:46 12 A. It's a top loading balance.

11:37:48 13 Q. What does that mean, top loading balance?

11:37:50 14 A. That means whenever you're weighing anything,
11:37:53 15 you have to put it at the top of the balance.

11:37:56 16 Q. And now the officer preceding you testified
11:38:03 17 that when he weighed State's Exhibit No. 24, which for you
11:38:09 18 would be Item No. 11.1, that he weighed it at 16 grams.
11:38:16 19 That's an incorrect amount, correct, 16 grams?

11:38:18 20 A. That is not correct.

11:38:23 21 Q. And interestingly enough he weighed everything
11:38:25 22 with the same device. Now, since you're in the habit of
11:38:34 23 testing weights quite often, if you're testing a substance
11:38:40 24 with the same weight, you should get the same results
11:38:43 25 every time, correct?

11:38:44 1 A. Yes.

11:38:44 2 Q. And calibration, if it's off, should be off
11:38:48 3 each time you weigh it, correct?

11:38:50 4 A. That is correct.

11:38:52 5 Q. So it would be surprising, then, that if the
11:38:55 6 officer weighed what's in your report as Item No. 11.2, if
11:39:05 7 he weighed it at 2.8 grams, given the fact that he weighed
11:39:13 8 Item 11.1 at 16 grams, something is off in his process of
11:39:18 9 weighing; correct, or in your process something is wrong,
11:39:22 10 correct?

11:39:23 11 A. From my experience, sometimes they do weigh the
11:39:27 12 content with the bag. So I don't know if that could have
11:39:31 13 been the reason why.

11:39:34 14 Q. Well, let me rephrase. It is inconsistent if
11:39:39 15 an officer weighed an amount at 16 grams --

11:39:45 16 A. Okay.

11:39:45 17 Q. -- and you came up at 14.9 grams, for him to
11:39:49 18 then weigh a separate item at 2.8 grams with the same
11:39:53 19 machine and you to weigh it with your machine at
11:39:57 20 2.8 grams, correct?

11:39:59 21 A. That is correct.

11:40:02 22 Q. So at some point either your testing was wrong,
11:40:04 23 as far as the weight was concerned, or his testing was
11:40:07 24 wrong, as far as the weight is concerned, correct?

11:40:09 25 A. I know I tested my balance before doing my

11:40:12 1 weights, so my weights are verified.

11:40:16 2 Q. So the only presumption would be that the
11:40:19 3 officer's testing, or whatever he did was wrong, correct?

11:40:22 4 A. I'm not sure how he did it.

11:40:27 5 Q. That's a safe and fair answer. And I see your
11:40:39 6 results say "contain cocaine," correct?

11:40:42 7 A. Yes.

11:40:45 8 Q. The items in 11.1, 11.2 and 11.3.1, are they
11:40:53 9 pure cocaine based on your spectrometer?

11:40:58 10 A. Our lab is not able to tell you the
11:41:01 11 concentration of cocaine. We just know that cocaine is
11:41:05 12 presented inside the powder.

11:41:08 13 Q. So it can't tell you what percentage is
11:41:10 14 actually cocaine, correct?

11:41:11 15 A. That is correct.

11:41:11 16 Q. So if you have 2.8 grams, you don't know what
11:41:14 17 percentage of that 2.8 grams --

11:41:16 18 MR. PHANCO: I object to relevance, Your
11:41:17 19 Honor.

11:41:18 20 THE COURT: That's sustained.

11:41:32 21 MR. DUNN1: Pass the witness, Judge.

11:41:33 22 THE COURT: Any redirect?

11:41:34 23 MR. PHANCO: Just a couple, Your Honor.

24

25

REDIRECT EXAMINATION BY THE STATE

11:41:36 2 BY MR. PHANCO::

11:41:36 3 Q. You were starting to explain to the jury why an
11:41:39 4 officer's weight might be different from yours. Talk
11:41:41 5 about what your experience -- how do they weight versus
11:41:45 6 how do you weigh, you know, the drug, that is.

11:41:48 7 A. From my experience --

11:41:49 8 MR. DUNN: Objection, Your Honor. We need
11:41:50 9 to establish how they weigh first before she gives an
11:41:53 10 answer.

11:41:54 11 THE COURT: It's overruled.

11:41:55 12 A. From my experience, I've noticed that sometimes
11:42:00 13 the weight they have is the weight with the bags. So
11:42:04 14 that's why sometimes the weight is off. It's different.

11:42:09 15 Q. (By Mr. Phanco) Because when you actually weigh
11:42:10 16 it, don't you take out the drugs to its regular form; is
11:42:13 17 that right?

11:42:14 18 A. Yeah. Whenever we do the weight, we make sure
11:42:16 19 it's just the drug, no bag included because that's going
11:42:20 20 to change the weight.

11:42:21 21 Q. All right. And you're in a lab where you can
11:42:24 22 do that where you have gloves and all the different stuff?

11:42:27 23 A. Yes.

11:42:27 24 Q. In the field, you would agree with me that they
11:42:30 25 may not have the opportunity to take it out of the bag?

11:42:32 1 A. That is correct.

11:42:37 2 Q. Very important question. Is cocaine a
11:42:39 3 controlled substance?

11:42:40 4 A. Yes.

11:42:42 5 MR. DUNN: Objection, Your Honor, outside
11:42:43 6 the scope of cross-examination.

11:42:47 7 THE COURT: It's overruled. It's direct.

11:42:52 8 Q. (By Mr. Phanco) The other question I was going
11:42:53 9 to ask at the end, he was asking you about the purities
11:42:56 10 and things like that, and I forgot to ask you about this,
11:42:59 11 but tell the jury what adulterants and dilutants are.

11:43:03 12 A. Adulterants and dilutants are any substance
11:43:04 13 that are ID'd to a controlled substance to increase the
11:43:07 14 weight of the controlled substance regardless of the
11:43:10 15 effect it has on the controlled substance.

11:43:13 16 Q. And, as far as you know, when cocaine is mixed
11:43:18 17 with adulterants or dilutants, does it matter when it
11:43:24 18 comes to the weight, or do you weigh all that substance
11:43:26 19 that contain cocaine?

11:43:28 20 A. It doesn't matter because a controlled
11:43:29 21 substance, it's a drug, including --

11:43:32 22 MR. DUNN: Objection, Your Honor.

11:43:32 23 Nonresponsive after "it doesn't matter."

11:43:36 24 THE COURT: It's overruled.

11:43:36 25 Q. (By Mr. Phanco) It's a controlled substance

11:43:38 1 including what?

11:43:39 2 A. It a controlled substance, it's a drug
11:43:42 3 including adulterants and dilutants listed in Schedule 1
11:43:46 4 through 5.

11:43:51 5 Q. So it doesn't matter how pure it is, if it
11:43:54 6 contains cocaine, it's a controlled substance?

11:43:56 7 MR. DUNN: Objection, Your Honor, leading.

11:43:58 8 THE COURT: That's sustained.

11:43:59 9 Q. (By Mr. Phanco) Does the purity matter to
11:44:01 10 whether it's a controlled substance or not?

11:44:02 11 A. No.

11:44:02 12 MR. DUNN: Objection, Your Honor. This
11:44:03 13 witness is not the proper person to be asked that
11:44:07 14 question.

11:44:07 15 THE COURT: It's overruled.

11:44:08 16 Q. (By Mr. Phanco) You can answer it.

11:44:09 17 A. That's correct, the purity doesn't matter.

11:44:13 18 MR. PHANCO: I pass the witness.

11:44:14 19 THE COURT: Any recross?

11:44:15 20 MR. DUNN: Very briefly, Judge.

21 **RECROSS-EXAMINATION BY THE DEFENSE**

11:44:18 22 BY MR. DUNN::

11:44:18 23 Q. As far as the testing goes by an officer versus
11:44:21 24 you, you said, yes, they may test it with the bag;
11:44:25 25 correct, and you test it without the bag?

11:44:28 1 A. You're talking about weighing the bag?

11:44:30 2 Q. Yes.

11:44:31 3 A. Yes, it's yes.

11:44:32 4 Q. But it would be inconsistent for an officer to
11:44:36 5 test one particular item inside of the bag and then test
11:44:39 6 the very next item outside of the bag, correct?

11:44:42 7 A. I can't answer that. I'm not sure. They might
11:44:45 8 have done that. I'm not sure.

11:44:47 9 Q. Fair enough.

11:44:48 10 MR. DUNN: Pass the witness.

11:44:50 11 THE COURT: Anything else, sir?

11:44:50 12 MR. PHANCO: Nothing, Your Honor.

11:44:51 13 THE COURT: All right. Thank you. You may
11:44:52 14 step down.

11:44:55 15 THE WITNESS: May I leave, Judge?

11:44:57 16 THE COURT: Yes, you are excused. Let me
11:45:01 17 have counsel. We have about 10 minutes.

18 (Whereupon counsel approached the
19 bench out of the hearing of the
20 jury.)

11:45:22 21 THE COURT: We will go ahead and break
11:45:25 22 here.

23 (Whereupon the following proceeding
24 is held in the hearing of the jury.)

11:45:26 25 THE COURT: We are going to break. The

11:45:31 1 rules still apply. You cannot discuss the case with
11:45:33 2 anyone. We will resume the trial tomorrow morning at
11:45:37 3 9:00. You know that your badges will get you to the
11:45:43 4 front of the line. You can come right through.

11:45:45 5 The State will pick up and complete their
11:45:47 6 presentation, and then when they are finished, the
11:45:50 7 defense, if they choose -- as you know, they have no
11:45:52 8 obligation at all, but if they choose to, they may
11:45:54 9 put on witnesses as well. And then the case will be
11:45:57 10 handed to you.

11:46:01 11 Walker, they are yours.

12 (Whereupon the Court adjourned for
13 the day.)
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