

1 MR. KEITER: Thank you, Your Honor.

2 MARIAM KANE,

3 having been first duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. KEITER:

6 Q. Ma'am, you can probably adjust the microphone.

7 Can you spell your first and last name for the record,

8 please, and introduce yourself to the ladies and

9 gentlemen of the jury?

10 A. My name is Mariam Kane. First name,

11 M-A-R-I-A-M, last name K-A-N-E.

12 Q. Ms. Kane, where are you from?

13 A. I'm from West Africa, Mali.

14 Q. What brought you here?

15 A. I'm a criminalist with HPD crime lab.

16 Q. What brought you -- were you born and raised

17 there?

18 A. Yes, I came here after high school for my

19 university studies.

20 Q. And you stayed?

21 A. Yes.

22 Q. And you chose Houston?

23 A. Yes.

24 Q. Tell us what you do a little bit, tell us what

25 your background and education is?

1 A. I have a Bachelor in biological and chemistry
2 from Houston Baptist University. And I also received a
3 six-month training from HPD crime lab.

4 Q. What other training and experience have you had
5 in order to become a crime analyst?

6 A. The Bachelor.

7 Q. Excuse me, a criminalist?

8 A. The Bachelor and the six months' training from
9 the crime lab.

10 Q. When did you start with the Houston crime lab?

11 A. On March 2009.

12 Q. And since that time have you worked with --
13 have you worked at HPD?

14 A. Yes.

15 Q. Do you have ongoing training that you are
16 required to attend?

17 A. Yes, you have to first do a six-month training
18 before you can start working cases.

19 Q. Do you have any certifications?

20 A. No.

21 Q. And as far as being, as far as the lab, is the
22 lab accredited?

23 A. Yes.

24 Q. And who is it accredited by?

25 A. By Texas DPS and ASCLAD Lab.

1 Q. What's ASCLAD Lab?

2 A. American Society of Crime Laboratory
3 Accreditation Board.

4 Q. So you just abbreviate that for short?

5 A. Yes.

6 Q. What is entailed in your training? What do you
7 train to do?

8 A. I'm trained to analyze unknown substances for
9 the presence of controlled substances.

10 Q. What is a controlled substance?

11 A. It's any substance including the drug and
12 adulterant and dilutants listed in Penalty Group 1
13 through 4 and scheduled 1 through 5.

14 Q. Is cocaine a controlled substance?

15 A. Yes.

16 Q. What penalty group is that?

17 A. Penalty Group 1.

18 Q. So, can we compare cocaine and Penalty Group 1
19 to -- what would be like a Penalty Group 2 or 4 kind of
20 drug?

21 A. Example of Penalty Group 2 drugs are Ecstasy
22 tablets.

23 Q. And as far as Penalty Group 4, would that be
24 something like Xanax?

25 A. Yes, Penalty Group 4, yeah, it's codeine and

1 promethazine and also Xanax.

2 Q. What is the legal name for Xanax? In other
3 words, is Xanax a street term?

4 A. No, that's the brand name; and the chemical in
5 it is alprazolam.

6 Q. All right. And so when something comes into
7 the lab, how are you -- you might want to sit a little
8 bit away from the mike.

9 A. Oh, okay, all right.

10 Q. Most witnesses we have to tell to speak up, but
11 not you. So, how do you get assigned a case?

12 A. It's -- I just -- the supervisor just called me
13 on Thursday and gave cases. I don't know how he
14 assigned them.

15 Q. And 2009 were you assigned a specific case
16 regarding this case?

17 A. I received case number, I started working Case
18 No. 175476309 on February 2nd, 2012. Was that the
19 question?

20 Q. Yes, ma'am. Was that case assigned to you
21 specifically?

22 A. Yes.

23 MR. KEITER: May I approach the witness,
24 Your Honor?

25 THE COURT: You may.

1 Q. (BY MR. KEITER) And with the number that you
2 read, Ms. Kane, is that the number of the police report
3 assigned to the case?

4 A. Yes, that's the incident number for the case.

5 Q. And who is, does it tell you who the suspect
6 was in that case?

7 A. For the submission form, there were two
8 suspects associated with that incident number.

9 Q. And who were those suspects?

10 MR. DAVIS: Your Honor, I'd object and ask
11 to approach?

12 THE COURT: Yes, you may approach.

13 (Bench conference.)

14 MR. DAVIS: I'm only asking because I don't
15 know.

16 THE COURT: I don't either.

17 MR. DAVIS: So, I'm just curious.

18 MS. ALLEN: I'll double check.

19 THE COURT: That's fine.

20 MR. DAVIS: Okay.

21 (End of bench conference.)

22 Q. (BY MR. KEITER) I'll ask it this way, ma'am.
23 Were the two suspects you were looking at regarding this
24 marijuana and the drugs, Juan Gonzalez and Damian
25 Flores?

1 A. Yes.

2 Q. All right. I'm showing you what's been marked
3 as State's Exhibits 59, 60, 61, 62 and 63. When that
4 same incident number that's on the submission form, does
5 that match the number that's on these items?

6 A. Yes.

7 Q. Does it also get a specific lab number?

8 A. The lab number is, we use the incident number.

9 Q. And so were these all items that you were
10 assigned to test?

11 A. Yes.

12 Q. And how do we know that?

13 A. By my initials on every bag, and the incident
14 number, also.

15 Q. Do you initial every bag that you test?

16 A. Yes.

17 Q. And in State's Exhibit No. 59, we see another
18 bag of a white powder substance, do your initials appear
19 on that inside bag as well?

20 A. It does, MK.

21 Q. Every time we see MK on these bags, is that
22 you?

23 A. That's me.

24 Q. Can you tell the ladies and gentlemen of the
25 jury a little bit how you go about analyzing whether

1 something is a controlled substance or not?

2 A. In order to identify a controlled substance, I
3 need to test. So, the test is different. For the white
4 powder, I have to do a chemical test; and also I have to
5 do a instrumental test in order to identify what's
6 present in this substance.

7 Q. So, let's talk about that. You're referring to
8 State's Exhibit No. 55?

9 A. No 59.

10 Q. And so, when you get State's Exhibit 59 in the
11 lab, what's the first thing that you do with it?

12 A. The first thing that I do is get the weight.

13 Q. And when you weigh something, do you weigh it a
14 little bit differently than how officers weigh something
15 in the field?

16 A. From the training and from my experience, I
17 know that sometimes officers get the weight with the
18 baggy. But in the lab we only get the weight of just
19 the powder, just the controlled substance.

20 Q. So what do you do?

21 A. What I do, I take my balance, put a paper on
22 it, tear it and then empty the powder on the paper so I
23 get the weight for just the powder.

24 Q. Did you do that in this case?

25 A. Yes.

1 Q. And did you get a weight on that exhibit?

2 A. Yes.

3 Q. What was the weight?

4 A. It was 8.8 grams.

5 Q. Is that more than 4 grams?

6 A. Yes.

7 Q. Is it less than 200 grams?

8 A. Yes.

9 Q. When you take that substance and you put it on
10 the piece of paper, what do you do after you weigh it?

11 A. After I weigh it, I do my first test, the
12 chemical test, which is getting a trace amount of the
13 powder and adding a chemical to it and I was looking for
14 a color change.

15 Q. Why don't you do the test first and then weigh
16 it?

17 A. No, because before I'm going to have to use
18 some of the substance, and that substance will be
19 destroyed. So, we always get the weight before the
20 testing because the weight might be lower after testing.

21 Q. So, how do you go about getting that piece of
22 the substance?

23 A. We have spatula, you get just a trace amount of
24 it, and we do a spot work. We put it in there, and we
25 add chemical to it.

1 Q. And when you add the chemical, what are you
2 looking for?

3 A. In this case, I was looking for a blue color
4 change.

5 Q. And when you tested it, what did you observe?

6 A. I got a blue color change.

7 Q. What did that indicate to you based on your
8 training and experience?

9 A. Based on my training, that give me an
10 indication that cocaine might be present in this
11 substance.

12 Q. Do you stop there and just say that it's
13 cocaine, or do you go further?

14 A. I go further. I do a second test.

15 Q. What do you do next?

16 A. The next test is the GCMS test, which stands
17 for Gas Chromatograph Mass Spectrometer.

18 Q. In English what does that mean?

19 A. Okay. That's an instrument. What you do is
20 that instrument analyze, it separates and analyze the
21 compound of the controlled substance based on their
22 masses, and it's a confirmatory test.

23 Q. A confirmatory test?

24 A. It is, yes.

25 Q. Did you do that with the, with State's Exhibit

1 No. 59?

2 A. Yes, I did.

3 Q. And what did that confirmatory test tell you?

4 A. It told me that this substance contains
5 cocaine.

6 Q. Are there other adulterants and dilutants that
7 are in that substance as well?

8 A. Yes, there was also caffeine in this substance.

9 Q. Is that common based on prior testing that
10 you've done?

11 A. Yes.

12 Q. Was there anything else?

13 A. No, that was the only two.

14 Q. Was this cocaine based on everything you
15 usually test more pure than most of the cocaine that you
16 test?

17 A. There is a specific test for the purity of
18 controlled substance, but this was not performed for
19 this case.

20 Q. All right. And what do you do -- what did you
21 do with State's Exhibit No. 59 after you were done with
22 the confirmatory test?

23 A. After doing the test, I made the report and I
24 first analyzed the rest of the bags because I analyze
25 everything, and at the end, I put the report.

1 Q. And let's talk about State's Exhibit No. 60,
2 61, excuse me, 60, 62 and 63?

3 Now, based on -- have you seen a lot or a
4 little of marijuana?

5 A. I'm sorry?

6 Q. Have you seen a lot or little marijuana in
7 testing?

8 A. A lot.

9 Q. And can you just look at that and say that it's
10 marijuana?

11 A. It looks similar, but I can't say unless I test
12 it.

13 Q. In your line of work, you don't do anything
14 without knowing for sure based on tests; is that
15 correct?

16 A. Yes, that is correct.

17 Q. Did you have an opportunity to test State's
18 Exhibits 60, 62 and 63?

19 A. Yes, I did.

20 Q. What kind of test did you do?

21 A. For the plant substance what we do is
22 different. I did a microscopy. I looked at the plant
23 substance in the microscope, and I also did a chemical
24 test.

25 Q. What did both of those tests indicate to you

1 what the substances were in State's Exhibits 60, 62 and
2 63?

3 A. Actually, I made a mistake. State's Exhibit 60
4 was not analyzed. It was just routine.

5 Q. Okay. Well, State's Exhibits 62 and 63.

6 A. Okay. 62 and 63, after testing, I found that
7 those plant substances are marijuana.

8 Q. And State's Exhibit 60, does it look like it's
9 the same substance that's in 62 and 63?

10 A. From visually it looks similar.

11 Q. As far as State's Exhibit 61 goes and its
12 contents, did you have an opportunity at some point to
13 test that as well?

14 A. 61?

15 Q. Yes, ma'am, the bottle?

16 A. Yes, 61 was tested. What was the question,
17 please?

18 Q. Yes, ma'am. What kind of test did you do for
19 61?

20 A. For 61, there were pharmaceutical tablets, so
21 we have a sub square, which is called American Lab
22 Search which has all logos for pharmaceutical. I used
23 that as the first test to identify this tablets.

24 MR. DAVIS: Your Honor, I'd object to that
25 as being hearsay as well.

1 THE COURT: Overruled.

2 Q. (BY MR. KEITER) You may continue.

3 A. The next test was the GCMS also for those
4 tablets.

5 Q. And what did those tests tell you based on your
6 training and experience?

7 A. From the test all the tablets contained
8 alprazolam.

9 Q. Is that also a controlled substance?

10 A. Yes.

11 Q. And that was 61 and its contents?

12 A. Yes.

13 MR. KEITER: May I approach the witness,
14 Your Honor?

15 THE COURT: You may.

16 MR. KEITER: At this time, Your Honor,
17 State will offer State's Exhibit Nos. 59, 60, 61, 62 and
18 63 into evidence. Tendering to Defense counsel for
19 examination.

20 (State's Exhibit Nos. 59 through 63
21 offered.)

22 MR. DAVIS: Your Honor, I'd only have an
23 objection to Exhibit No. 61. And I would assert that
24 the finding of it being Xanax is based on hearsay as
25 well as a violation of *Menendez v. Diaz*, which has a

1 confrontation clause violation in terms of the
2 determination of it, Your Honor.

3 THE COURT: She just testified and you can
4 clarify, but I heard her say that she did the gas
5 chromatograph chemical test.

6 THE WITNESS: GCMS test, yes.

7 THE COURT: Thank you.

8 MR. DAVIS: Then I don't have an objection.
9 If that's the case, I don't have an objection.

10 THE COURT: All right.

11 THE WITNESS: Yes, it was done for all the
12 tablets.

13 MR. DAVIS: Yes, ma'am.

14 THE COURT: All right. State's Exhibits 59
15 through 63 are admitted without objection.

16 (State's Exhibit Nos. 59 through 63
17 admitted.)

18 MR. KEITER: Nothing further. Pass the
19 witness, Your Honor.

20 THE COURT: All right, Mr. Davis.

21 **CROSS-EXAMINATION**

22 BY MR. DAVIS:

23 Q. I don't know if -- you work for HPD, ma'am?

24 A. Yes.

25 Q. Should I refer to you as Officer Kane or Mrs.

1 Kane?

2 A. You can just call me Mrs. Kane.

3 Q. Mrs. Kane, my name is Eric Davis. If I ever
4 speak too fast or you don't understand something I'm
5 asking, if you could just have me to repeat it. I don't
6 mind.

7 A. Okay.

8 Q. And if there's something you don't understand,
9 please interrupt me; is that okay?

10 A. That's okay.

11 Q. Now, you've been doing chemical analysis for
12 HPD for how many years now?

13 A. It's about three years now.

14 Q. About three years. And during the course of
15 your three years, you've analyzed, would you say,
16 hundreds of different controlled substances?

17 A. A lot of them, yes.

18 Q. As an estimate you would even estimate that as
19 being more than a thousand, right?

20 A. You mean cases, right?

21 Q. Yes, ma'am.

22 A. It's possible.

23 Q. And I'm asking you because you have procedures
24 and policies that you follow?

25 A. Yes.

1 Q. They're protocols that you have in the lab?

2 A. Yes, we do.

3 Q. And using those protocols are very important,
4 right?

5 A. Yes, that's correct.

6 Q. You've got to pretty much follow the protocols
7 to the letter when you're in the lab?

8 A. Yes.

9 Q. And would you agree with me that precision is
10 very important?

11 A. It is important, yes.

12 Q. In your investigation because you would
13 consider you're looking at and analyzing these
14 substances as an investigation, right?

15 A. That's correct.

16 Q. And in your investigation you pretty much have
17 got to be precise in your investigation?

18 A. Yes.

19 Q. If you've got some cross-contamination, it
20 could blow off all your results?

21 A. That's correct.

22 Q. If you got a situation where you may
23 contaminate something, it could throw off all your
24 results?

25 A. That is correct.

1 Q. So the protocols that you're maintaining in the
2 lab are for the utmost importance to maintain the
3 integrity of your investigation, right?

4 A. Yes, right.

5 Q. And then that precision in terms of your
6 investigation is important because you're coming to
7 court, right?

8 A. Right.

9 Q. Now, I know you don't go to court on all your
10 cases?

11 A. No.

12 Q. You wouldn't have that much time, I guess?

13 A. No.

14 Q. But you're maintaining that precision because
15 your testimony is going to be necessary in the court,
16 true?

17 A. True.

18 Q. And when the standard is so high, accuracy is
19 of the utmost importance because the standards in
20 criminal courts are fairly high, right?

21 A. Right.

22 Q. He asked you about the Xanax tablet just now
23 and you called to find out about it and you got some
24 verification from the names and numbers on the tablets,
25 true?

1 A. Oh, what was that?

2 Q. The tablets, the Xanax tablets had some numbers
3 on it, right?

4 A. Yes, the tablets have identification, yes. You
5 identify them by the number and the logo, okay.

6 Q. And so in your investigation you initially saw
7 that, but you took it a step further?

8 A. Yes.

9 Q. And you actually took it a step further to do
10 the gas?

11 A. Chromatograph.

12 Q. Thank you.

13 A. Yes.

14 Q. That test, right?

15 A. Yes, that's correct.

16 Q. And so all the drugs you're doing, you do that
17 initial presumptive test for the cocaine where you test
18 it and it comes out blue, right?

19 A. Repeat that, please, I'm sorry?

20 Q. Yes, ma'am, I'm sorry if I wasn't clear. When
21 you tested the cocaine, you did the initial test where
22 it was presumptive for cocaine with a blue test?

23 A. That is correct.

24 Q. But you took it a step further even after that?

25 A. And I did the GCMS test.

1 Q. You did a more thorough investigation, more
2 thorough test?

3 A. Uh-huh.

4 Q. Right?

5 A. Right.

6 Q. And being thorough is something that you
7 normally do?

8 A. Yes.

9 Q. It's what you would expect when you come to
10 court, right?

11 A. Yes.

12 Q. You're coming to court knowing that a lawyer
13 like myself is going to ask you questions about your
14 work?

15 A. Yes.

16 Q. And usually someone's life hangs in the balance
17 based on your testimony, true?

18 A. That's true.

19 Q. Because if you would have found there wasn't
20 any cocaine, there wouldn't have never been a case,
21 right?

22 A. Might be, I don't know. It depends.

23 Q. Yes, ma'am. If you found there wasn't any
24 marijuana or any cocaine, there would have never really
25 been any case in this situation; wouldn't you agree?

1 MR. KEITER: Objection, Your Honor, that
2 would call for a legal conclusion.

3 THE COURT: Sustained.

4 MR. DAVIS: I can withdraw that, Judge.

5 Q. (BY MR. DAVIS) What I'm asking is the results
6 of your analysis --

7 A. Okay.

8 Q. Determine what happens in a case, to a degree?

9 A. Yes.

10 Q. So, part of your investigation in terms of
11 being thorough and in terms of doing double testing and
12 in terms of really looking at this closely is because of
13 what's at stake in these cases, right?

14 A. Uh-huh, yes.

15 Q. It's somebody's life that's on the line, true?

16 A. That's true.

17 Q. And so you wouldn't do a shapshod quick
18 investigation?

19 MR. KEITER: Objection, asked and answered
20 and relevance.

21 THE COURT: Sustained.

22 Q. (BY MR. DAVIS) In other words, ma'am, have you
23 ever done a shapshod investigation?

24 MR. KEITER: Objection.

25 THE COURT: It's a new question. I'll

1 allow it.

2 A. Can you repeat the question, please?

3 Q. (BY MR. DAVIS) Let me use a different word.

4 Shapshod is not a word. Have you ever done a hasty,
5 sloppy investigation?

6 A. No.

7 Q. It's not something you would think of doing, is
8 it?

9 A. No.

10 Q. Because it's somebody's life being on the line?

11 THE COURT: And I sustained the objection,
12 so move on.

13 MR. DAVIS: I've asked that already, Your
14 Honor.

15 May I have one moment, Your Honor?

16 THE COURT: You may.

17 Q. (BY MR. DAVIS) In your office, you have other
18 types of analysis that's done, right?

19 A. Yes.

20 MR. KEITER: Objection as to relevance as
21 to what other analysis is done in her office.

22 MR. DAVIS: If she's aware. I can tie it
23 in. I can make it relevant.

24 THE COURT: She may answer. The objection
25 is overruled.

1 Q. (BY MR. DAVIS) You're aware of the other
2 analysis that's done in your office, right?

3 A. Yes.

4 Q. You're working in a crime lab?

5 A. Yes.

6 Q. There's DNA analysis that's done?

7 A. That is correct, yeah.

8 Q. There's also fingerprint analysis that's done,
9 correct?

10 A. Fingerprint is not part of the crime lab.

11 Q. I see. So fingerprint analysis is done through
12 separate individual offices?

13 A. Yes. They are not part of the crime lab. It's
14 a separate division.

15 Q. So, if there's a memorandum that comes out
16 saying that you're not to use the crime lab -- are you
17 aware of a memorandum that went out to police officers
18 saying not to use the crime lab unless it's absolutely
19 necessary? Are you aware of that?

20 A. If there was one?

21 Q. Yes.

22 A. I'm not aware of that.

23 Q. So, you're not aware of a memorandum that went
24 to police officers saying don't do DNA analysis or any
25 other type of analysis unless you need it?

1 A. No, I'm not aware of that.

2 Q. Are you aware -- you come to court before,
3 right?

4 A. Yes.

5 Q. You're aware there are fingerprint analysts who
6 come to court all the time and testify. Are you aware
7 of that?

8 MS. ALLEN: Objection as to relevance.

9 THE COURT: Sustained.

10 Q. (BY MR. DAVIS) Ma'am, bottom line is HPD does
11 fingerprint analysis all the time; are you aware of
12 that?

13 MR. KEITER: Objection, relevance.

14 THE COURT: Again, she's testified as to
15 what she does. And you may ask her anything about what
16 she does. So, I sustain the objection.

17 MR. DAVIS: Yes, Your Honor. I'd ask for
18 just a little latitude in terms of cross-examination.

19 THE COURT: And I've given you that.

20 MR. DAVIS: Yes, Your Honor, just a little
21 more.

22 THE COURT: No. I sustained the objection.

23 MR. DAVIS: If I could have her remain for
24 a little later?

25 THE COURT: You may.

1 MR. DAVIS: I pass the witness for now.

2 THE COURT: All right. Anything further?

3 MR. KEITER: Nothing further from this
4 witness, Your Honor. May she be excused?

5 WITNESS: I should wait in the witness
6 room?

7 THE COURT: Yes. Thank you very much, Ms.
8 Kane.

9 WITNESS: Okay.

10 THE COURT: Call your next witness.

11 MR. KEITER: Your Honor, at this time the
12 State would reoffer State's Exhibit 58 and its contents.

13 (State's Exhibit No. 58 offered.)

14 THE COURT: Is there any objection to
15 State's Exhibit No. 58?

16 MR. DAVIS: I don't think I do, Your Honor;
17 but I just want to see what it was.

18 THE COURT: The manila folder.

19 MR. DAVIS: Oh, I haven't gone all the way
20 through it, Judge. I was looking at it when we had that
21 break last.

22 THE COURT: All right. Ladies and
23 gentlemen, if you'll step back to the jury room for just
24 a few minutes, we'll be back with you shortly.

25 THE BAILIFF: Rise for the jury.

1 (Jury exits courtroom.)

2 THE COURT: Be seated, please.

3 MS. ALLEN: Your Honor, for the record
4 regarding State's Exhibit 59, there are a number of
5 documents that the State has --

6 THE COURT: It's 58.

7 MS. ALLEN: 58, I apologize. Thank you,
8 Your Honor. There are a number of documents that the
9 State has bound together with a binder clip that we
10 believe at this point are not admissible as they are
11 prejudicial against the Defendant, and we have shown
12 those to the Defense and we'll ask that they be removed
13 from there prior to submission.

14 MR. DAVIS: And I would agree with them. I
15 think there may be a few others that are along that same
16 line.

17 MS. ALLEN: That's fine.

18 MR. DAVIS: Yes, there may be a few others
19 along the same line.

20 THE COURT: Once you-all figure out what's
21 going to be included in State's Exhibit 58 and you have
22 an agreement as to what's going to be included in
23 State's Exhibit No. 58, then I can address -- you can
24 either admit it or not, I guess.

25 MR. DAVIS: May I proceed, Your Honor?

1 THE COURT: You may.

2 BILL OF EXCEPTION

3 BY MR. DAVIS:

4 Q. Ms. Kane, I was asking you a question about,
5 about fingerprint analysts. Ma'am, you've come down to
6 testify before, right?

7 A. Yes, I did.

8 Q. You've been here and there's been occasions
9 when fingerprint analysts have also testified?

10 A. I have never been in the witness room with a
11 fingerprint analyst.

12 Q. So, you've never seen a fingerprint analyst
13 down here testifying?

14 A. No.

15 Q. Are you aware that with HPD that fingerprint
16 analysts or at least fingerprint analysis goes on all
17 the time?

18 A. I'm not sure. I don't know.

19 Q. So, you don't know whether or not there is
20 actually a specific fingerprint analyst that works at
21 HPD that does fingerprint analysis?

22 A. No, I know we do fingerprint analysis because I
23 even sometimes have to take my cases to them. But I've
24 never seen one of them in the courthouse before.

25 Q. So on some occasions after you finish your

1 analysis of the substances, you're forwarding it to HPD
2 for fingerprint analysis?

3 A. No, whenever a case requires fingerprint
4 analysis, most of the time it's done first; and then we
5 get it.

6 Q. So, you've gotten cases that have come from
7 fingerprint analysts before?

8 A. Yes.

9 Q. So, part of your process with HPD is that cases
10 can go to a fingerprint analyst and they get
11 fingerprints off of them and then they forward it to
12 you?

13 A. Most of the time and then I'll get it.

14 Q. All right. Now, you said most of the time. Is
15 that something you've seen a lot done?

16 A. Not a lot.

17 Q. You've seen it done on many occasions?

18 A. I've seen it done on few occasions, not many.

19 Q. You've seen it done on some occasions?

20 A. Yes, yes.

21 MR. DAVIS: And, Your Honor, the only thing
22 I'd offer her testimony for is that she's aware that
23 fingerprint analysis was available, that's something
24 that could have been done?

25 THE COURT: The objection was sustained.

1 Thank you, ma'am. You may step down, and
2 you are excused.

3 MR. DAVIS: Oh, before she goes, Judge, the
4 Sixth Amendment also allows the right to put on evidence
5 and we'd like the right under the Defendant's Sixth
6 Amendment right to put on evidence, and this would be
7 some of the evidence that we would want to put on. So,
8 I'd argue that --

9 THE COURT: First of all, I guess here's
10 the question, you had an opportunity to cross-examine
11 this witness about what she did in this particular case.
12 She's indicated that there is not a fingerprint analyst
13 assigned to her lab, right?

14 MR. DAVIS: She indicated that sometimes
15 when she gets the drugs they've been analyzed by a
16 fingerprint analyst.

17 THE COURT: She indicated that outside the
18 presence of the jury.

19 MR. DAVIS: Exactly. In order to proffer
20 I'm trying to argue that the Sixth Amendment --

21 THE COURT: I'm sorry, Ms. Kane, you may be
22 excused. Thank you very much.

23 MR. DAVIS: Judge, I'm trying to
24 constitutionalize my objection in the sense that the
25 Defendant has a Sixth Amendment right to compel

1 testimony as well. And we're asking to cross-examine on
2 this area. And we're saying that not allowing this is
3 violating the Defendant's Sixth Amendment right. I
4 understand the Court's going to make the ruling you're
5 going to make, but I'm trying to make my objection as to
6 what I'm doing, Judge. That's all.

7 THE COURT: All right. Is there anything
8 further?

9 MR. DAVIS: No.

10 THE COURT: All right.

11 (A recess was taken.)

12 THE COURT: Do you have any other witnesses
13 to call this afternoon?

14 MR. KEITER: No, Your Honor. The State
15 intends to rest at this point.

16 THE COURT: All right. Are both sides
17 ready for the jury?

18 MS. ALLEN: No, Your Honor. We're just
19 finishing up with the document.

20 THE COURT: Mr. Davis, do you have any
21 witnesses that you'll be calling this afternoon?

22 MR. DAVIS: There are some. We have a
23 matter we want to take outside the presence of the jury
24 if they're going to rest.

25 THE COURT: All right. Let's do that now.