

Amanda Leicht - September 30, 2014
Direct Examination by Ms. Casey Little

1 A. I do, yes.

2 Q. You do? And is that an extra job that you
3 work?

4 A. It is. It's an extra job I do in addition to
5 my job at Memorial Hermann.

6 Q. When you work at 61 Riesner, what are you doing
7 while there?

8 A. When I work at 61 Riesner, I am the blood draw
9 nurse for suspected DWI, DUI people that come in; and I
10 draw their blood samples for them.

11 Q. Approximately how many blood draws do you do a
12 night when you are working there?

13 A. Between ten and 30 in an eight-hour shift, just
14 depending on the night.

15 Q. Okay. And when you are working at Memorial
16 Hermann, what are your duties?

17 A. Currently, at Memorial Hermann right now -- I
18 just retired. I was previously a flight nurse, and then
19 I just started working in the post-anesthesia care unit
20 about three months ago. So I recover patients after
21 they come out of surgery.

22 Q. And you said that you were a flight nurse
23 before that?

24 A. Yes, ma'am.

25 Q. What were your duties as a flight nurse?

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1 A. As a flight nurse with Memorial Hermann, we
2 respond to accident scenes, hospital transfers, starting
3 IV's, advanced cardiac life support measures if needed.

4 Q. And where did you go to school to become a
5 nurse?

6 A. I obtained my associate's degree at San Jacinto
7 College, I got my bachelor's degree from Texas Tech, and
8 I'm currently enrolled for my masters at Texas A&M
9 Corpus Christi.

10 Q. Were you working 61 Riesner on December 29th of
11 2012?

12 A. Yes, I was.

13 Q. And did you take a blood sample from someone by
14 the name of Nomathemba Sitawisha?

15 A. Yes, I did.

16 Q. Do you remember her?

17 A. I recall the name.

18 Q. Do you remember her face?

19 A. Yes.

20 Q. Do you see her in the courtroom today?

21 A. Yes.

22 Q. Could you please identify her by an article of
23 clothing that she's wearing?

24 A. A long sleeve blue, green shirt.

25 MS. LITTLE: Your Honor, may the record

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1 reflect that this witness has identified the defendant.

2 THE COURT: Let the record reflect the
3 witness identified the defendant.

4 You may continue.

5 Q. (By Ms. Little) Deputy Allbritton had brought
6 her in, correct?

7 A. Yes.

8 Q. And when he brought her in and -- did you read
9 the warrant to her?

10 A. I did not read the warrant. That's the
11 officer's job.

12 Q. Okay. And once the warrant is read, that is
13 when you take the blood, correct?

14 A. They read it and then I look at it as well and
15 make sure there's a signature on it and then I proceed
16 with the blood draw.

17 Q. Okay.

18 MS. LITTLE: Your Honor, may I approach
19 the witness?

20 THE COURT: You may.

21 Q. (By Ms. Little) I'm showing you what's been
22 marked as State's Exhibit 7 in this case. Would this
23 have been the warrant that you would've seen?

24 A. Yes.

25 Q. And you confirmed that it is signed by a judge

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1 before drawing the blood?

2 A. Yes.

3 Q. This is the judge's signature that you looked
4 for, correct?

5 A. Yes.

6 Q. What do you -- do you -- are you provided a
7 kit, or do you obtain a kit from 61 Riesner to take the
8 blood?

9 A. It depends on what agency brings the person in.
10 Sometimes, I'm provided with a kit. The state troopers
11 have their own kits. Sometimes, HPD has their own kits
12 there for us to use.

13 Q. Okay. And this is Harris County Sheriff's
14 Office, so would they have used a kit that was there at
15 61 Riesner?

16 A. I don't remember. I think -- I think I used
17 the -- I don't remember which ones they use.

18 Q. That's okay. What does a kit consist of?

19 A. The typical blood draw kit contains sealing
20 stickers; a needle, which we call a butterfly needle,
21 for the venipuncture; and the blood vials and a plastic
22 tube and kind of like a bubble wrap to put the tube
23 in -- to put the blood vial in to put into the plastic
24 tube to put it into the box and you seal it with the
25 stickers to send off with the officer to take to the

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1 lab.

2 (State's Exhibit No. 10 published)

3 Q. (By Ms. Little) Okay. I'm showing you what's
4 been marked as State's Exhibit 10.

5 Is that your signature at the bottom?

6 A. Yes, it is.

7 Q. And is this the -- are these the blood vials
8 that were used in this case?

9 A. Yes, they are. That's my handwriting with all
10 the names and signatures on it.

11 Q. And are these gray topped tubes?

12 A. Yes.

13 Q. What is the significance of a gray topped tube?

14 A. It's a specific blood vial tube that's
15 manufactured for -- each blood vial tube is manufactured
16 for different blood tests, and you need to use a gray
17 tube when you're going for an alcohol level. It has a
18 white powdery substance in it to help with
19 anti-coagulation before it can get to the lab.

20 Q. Okay. And what is anti-coagulation?

21 A. It helps to keep the blood from clotting. When
22 you draw the blood into the gray topped tube, you invert
23 the blood ten times to help the white powder distribute
24 within the blood to keep it from clotting, for time for
25 it to get to the lab.

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1 Q. And did you do that in this case?

2 A. Yes.

3 Q. When you are drawing somebody's blood, what is
4 the step-by-step procedure that you do?

5 A. I put a tourniquet on; and then I palpate, look
6 for a vein, with gloves on my hands. Once I find a vein
7 that I feel will be adequate to give me enough blood in
8 both tubes, I use a Betadine prep solution, which is the
9 current practice recommendation for alcohol blood draws.

10 Q. Why do you use the Betadine?

11 A. If you use an alcohol swab that's pure alcohol,
12 Betadine does not contain the alcohol content. It's
13 used for antimicrobial cleaning of the skin. It comes
14 in -- it's a little packet; and when you do your
15 cleaning, you make a circle -- like, an outside spiral
16 so you don't cross-contaminate your site.

17 After you've cleaned the site, you wait
18 about ten seconds for it to dry -- you usually see a
19 little crystallization on the skin, that's how you can
20 tell it's dry -- wait ten seconds, insert the needle,
21 perform the venipuncture, fill the blood up to --
22 there's a little line on the tubes, that's where you
23 fill the blood up to -- and then invert it ten times.

24 Q. Okay. Did you do that exact same procedure in
25 this case?

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1 A. Yes.

2 (State's Exhibit No. 8 published)

3 Q. (By Ms. Little) I'm showing you what's been
4 marked as State's Exhibit 8.

5 Were the tubes then placed in this
6 evidence bag after you drew the blood?

7 A. Yes.

8 (State's Exhibit No. 9 published)

9 Q. (By Ms. Little) And State's Exhibit 9. Same
10 tubes in evidence bag?

11 A. Yes.

12 Q. To your knowledge, has the -- have the tubes or
13 the evidence bags been tampered with in any way?

14 A. In this picture, it doesn't appear so. They
15 have the --

16 THE DEFENDANT: Objection, Your Honor.
17 There's really no way she can say have they in any way
18 been tampered with.

19 MS. LITTLE: I specifically said to her
20 knowledge, Your Honor.

21 THE COURT: She can look to see if it's
22 been tampered by the picture, but can she say positive?
23 That would be something else.

24 Go ahead.

25 Q. (By Ms. Little) To your knowledge, has the

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1 blood been tampered with in any way?

2 A. The red evidence seal doesn't appear to have
3 any markings to show that it has been broken, which, to
4 me, implies that the tubes have been put in by me and
5 they were sealed and it hasn't been touched since, as
6 the evidence tape would've had some rips in it.

7 Q. Do you seal it yourself with the red evidence
8 tape, or does the deputy do that in front of you?

9 A. The officer does it in front of me.

10 Q. And you said that you put the blood in the bag?

11 A. Yes. I put the blood in the bag and then I
12 give the bag to the officer and I watch them seal it up.

13 Q. Okay. And was Deputy Allbritton in the room
14 while the blood was drawn in this case?

15 A. Yes.

16 MS. LITTLE: Pass the witness, Your Honor.

17 **CROSS-EXAMINATION**

18 BY THE DEFENDANT:

19 Q. I want to make sure I get your name correct.
20 Is it Leicht?

21 A. Yep, like a lightbulb.

22 Q. Okay. Ms. Leicht, during your career, have you
23 ever had any direct knowledge that a blood draw was
24 either mishandled or improperly stored?

25 MS. LITTLE: Objection, Your Honor,

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1 outside the scope of this case.

2 THE COURT: Sustained. We're staying in
3 the province of this case.

4 Q. (By The Defendant) Okay, Ms. Leicht. You have
5 mentioned that you are a party to about 30 blood draws
6 per night, and my next question would be: Of those 30
7 blood draws per night, how are they handled and stored
8 separately every single night, that many?

9 A. I can't answer that, because after I draw the
10 blood, hand it to the officer, and they seal it up and
11 they leave after it's sealed, I don't -- it's -- I don't
12 know where it -- I assume it goes to the lab. I don't
13 have anything to do with that.

14 Q. So what were your work hours on December 29th,
15 2012, if you can remember?

16 A. 2200 to 0600.

17 Q. So how many hours had you been working by the
18 time you drew the blood?

19 A. What time was the blood drawn at?

20 THE COURT: I think, by the evidence, it
21 said about 5:00 o'clock, didn't it?

22 Q. (By The Defendant) 5:03.

23 A. So I had been there for six, seven hours.

24 Q. So you had done approximately how many blood
25 draws in that seven-hour period prior to this blood

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1 draw?

2 A. It just depends. I would have to look at the
3 list, as they catalog every blood draw that I've done;
4 but the typical average on a shift that I do at 61
5 Riesner is ten to 30 blood draws. It could've been a
6 slow night or a busy night. I don't recall exactly how
7 many I had done.

8 Q. Well, this was December 29th, 2012. Do you
9 ever have times of the year when it is much busier than
10 others? This would've been following Christmas and
11 preceding New Year's. Is that typically, from your
12 experience, a very busy week of the year?

13 A. It's totally random. And, actually, in the
14 hospital, they call it Trauma Tuesdays. It's a bad
15 night.

16 Q. From the best of your recollection, last year,
17 during the same week, would that have been a very busy
18 period?

19 MS. LITTLE: Objection, Your Honor,
20 outside the scope of this case.

21 THE COURT: She's already -- she really
22 doesn't know. She's just guessing. You're getting her
23 to guess, and we don't speculate in here. So let's move
24 on.

25 Q. (By The Defendant) Have you ever, Nurse Leicht,

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1 had direct knowledge that a false positive happening --

2 THE COURT: Where --

3 Q. (By The Defendant) -- where you --

4 THE DEFENDANT: I'm sorry.

5 THE COURT: Where are you coming -- she
6 just drew the blood. Let's stay with what she did.

7 THE DEFENDANT: Yes.

8 THE COURT: Okay.

9 Q. (By The Defendant) Okay. So, Nurse, you
10 mentioned that you drew the blood and then you handed it
11 over to Officer Allbritton; is that correct?

12 A. Yes.

13 Q. Who was in the room during the blood draw?

14 A. On that night, it was the arresting officer;
15 and then whoever the HPD officer was that I was working
16 with that was doing the cataloging. I don't recall who
17 it was.

18 Q. So before you handed over the blood sample to
19 the officer, was it -- was it -- the vial closed, was it
20 in a bag? How did you hand it over to him?

21 A. The vial is always closed. It's a
22 closed-suction Vacutainer; so when I draw the blood, I
23 puncture the top with a needle. It's always closed,
24 it's never opened. And then I sign it off, I put my
25 initials on it, put it into the little plastic Baggie,

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1 and then I have the stickers and I give it to the
2 officer.

3 Q. So it was punctured with a needle. What type
4 of needle would that --

5 A. Twenty-three gauge butterfly needle.

6 Q. Is that switched out each of those 30 times
7 throughout the night?

8 A. Yes.

9 Q. And after you handed the open -- you handed the
10 open package with the vial over to Officer Allbritton,
11 what did you see him do?

12 A. He sealed it with the evidence tape.

13 Q. And from there, where did he go?

14 A. From there, they took the person; and they left
15 the room with their blood.

16 Q. Okay. Now, earlier, when Ms. Little asked
17 you -- the prosecutor asked you if you remembered me,
18 you said you remembered my name. Then she asked you did
19 you remember me.

20 Did you remember my name, or do you
21 remember me specifically for some reason?

22 A. Every now and then, a specific name -- when I'm
23 drawing the blood -- to a face; and I just happened to
24 remember it. Unfortunately, yours was one of those
25 times.

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1 Q. Is there a reason why when she asked if you
2 knew me, at first, you only said you remembered my name?

3 A. It takes a minute -- it's been a year and a
4 half -- to put a name and a face together.

5 THE DEFENDANT: One moment, Your Honor.

6 Q. (By The Defendant) So, to the best of your
7 knowledge, along with you, how many individuals would
8 have handled a typical blood sample -- well, this blood
9 sample that night?

10 A. I have no idea. I don't work in the lab. I
11 don't know how many people --

12 THE COURT: Again, again, we're staying in
13 this scope.

14 THE DEFENDANT: Right.

15 THE COURT: What she did, and then we'll
16 go on to the next.

17 THE DEFENDANT: All right.

18 Q. (By The Defendant) Now, Nurse Leicht, how are
19 you certain that you saw a judge's signature on that
20 document before you started the blood draw?

21 A. I look at the paper, the warrant.

22 Q. And this would've happened ten or 20 times
23 prior to my blood draw; is that correct?

24 A. It depends on how many others I drew that
25 night.

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1 Q. But you had been working that night, at least
2 seven hours -- is that correct -- doing blood draws
3 primarily -- only or primarily?

4 A. Yes. Seven hours is a little shift for me. In
5 the hospital, I work 12 to 14 hours.

6 THE COURT: All right. Hold on a second.
7 The warrant is not an issue. The warrant is already
8 into evidence. It's signed; it's already into evidence.
9 So there's no reason for us -- unless you have some
10 evidence to dispute that, then let's go. Proceed.

11 Q. (By The Defendant) What would your hours have
12 been for the entire week? How many hours would you have
13 worked?

14 THE COURT: It's irrelevant. Proceed.

15 Q. (By The Defendant) And you did mention earlier
16 that you had no idea where the kit actually came from;
17 is that correct?

18 A. This was -- if it's not in a sealed box, then
19 the blood tubes come from HPD.

20 Q. Okay. So you're with 100 percent certainty
21 that this came from HPD that night?

22 A. I don't recall if it was the HPD blood tubes or
23 if the sheriffs had brought them in from their stack.

24 Q. Okay. So it could be either/or?

25 A. Yes.

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1 Q. And when you retrieved the blood kit to then
2 open up, where did you retrieve it from?

3 A. Provided it was a kit, then I open it -- they
4 give it to me. The kit is sealed, and they open it in
5 front of me.

6 Q. And what if it was not a kit?

7 A. If it was the blood tubes that are provided by
8 61 Riesner, they are locked up in their department.
9 When I come in, I check the expiration dates on the
10 vials and gather up all my equipment and then I have
11 them in front of me for the night.

12 Q. So either you would've used only blood tubes
13 that night, or you would've used kits. There wouldn't
14 have been a mixture of the two; is that correct?

15 A. Correct.

16 Q. Okay. And forgive me for asking again, but the
17 blood tubes would've come from HPD and -- is that
18 correct?

19 A. They either came from 61 Riesner, provided for
20 me; or they came from the arresting officer.

21 Q. And the kits would've come from --

22 A. Well, actual kit, HPD has kits for their
23 officers; and then the state troopers have kits. I
24 don't remember with the sheriffs. Sometimes, they have
25 a kit; and sometimes, they use 61 Riesner's supplies.

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1 Q. Now, are all of these blood draws videotaped?

2 A. Yes.

3 Q. So there's a videotape that exists that shows
4 the entirety of what we just -- the blood draw?

5 MS. LITTLE: Objection, speculation.

6 THE COURT: Overruled.

7 A. I don't know if it -- I know there's a machine.
8 They press record and it says "record" and that's all I
9 can speak on that.

10 Q. How long would it -- how long did it take to do
11 the blood draw?

12 A. Probably less than three minutes.

13 THE DEFENDANT: I pass the witness for the
14 time being.

15 THE COURT: State?

16 MS. LITTLE: No further questions for this
17 witness, Your Honor. May she be excused?

18 THE COURT: You sure may. Thank you so
19 much.

20 THE WITNESS: Thank you.

21 THE DEFENDANT: Your Honor, I'd like to
22 approach.

23 THE COURT: Do what?

24 THE DEFENDANT: Approach.

25 THE COURT: Sure.

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1 (At the Bench, on the record)

2 THE DEFENDANT: I'd like to recall Natasha
3 Wilson and the husband.

4 THE COURT: And --

5 THE DEFENDANT: And then I would like to
6 ask --

7 THE COURT: Well, first of all --

8 (In open court)

9 THE COURT: Ladies and gentlemen, we're
10 going to have to be in a holding pattern here for a
11 little bit because our analyst --

12 MS. LITTLE: No, he's here.

13 THE COURT: No, he's not.

14 MS. LITTLE: Judge --

15 THE COURT: No, he's not. He had to go
16 upstairs. And -- because there was a jury waiting on
17 him to testify upstairs, and so they took him.

18 MS. LITTLE: Just now? Just a second ago?

19 THE COURT: Yeah.

20 MS. LITTLE: Okay.

21 THE COURT: That's why I was on the phone.

22 MS. LITTLE: Okay.

23 THE COURT: Okay? I know. We went and
24 stole him first, and then they stole him back. So we're
25 going to have to wait until they're finished; and,

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1 hopefully, that won't be too long. But I'm going to
2 sort of get a feel on how theirs is going so we can get
3 him down here and get this thing taken care of. So
4 let's take a break.

5 (Jury exits courtroom)

6 (Discussion off the record)

7 THE COURT: Back on the record.

8 THE DEFENDANT: Your Honor, last time
9 Ms. Wilson was on the stand, I did not get a chance to
10 address the conversation she had with Officer Ogletree.
11 Is that something that we can tackle?

12 MS. LITTLE: It's hearsay, Your Honor.

13 THE DEFENDANT: What she said.

14 THE COURT: No, she can't.

15 MS. LITTLE: It's hearsay.

16 THE COURT: It's hearsay. The only thing
17 that she can testify is to what she testified to and
18 that is what did she see, and she testified to
19 everything.

20 THE DEFENDANT: So is there any way
21 that -- can I bring up at all anything about what she
22 said, her statements, outside --

23 THE COURT: No.

24 THE DEFENDANT: Okay.

25 THE COURT: No.

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1 THE DEFENDANT: Is there any way that I
2 could replay the 911 tape, also?

3 THE COURT: Sure, you can play it.

4 THE DEFENDANT: Okay.

5 THE COURT: Sure, of course. As many
6 times as you want.

7 THE DEFENDANT: Just one moment, Your
8 Honor.

9 THE COURT: That's all right. Take your
10 time. Apparently, we've got a lot of time now.

11 (Brief pause)

12 THE DEFENDANT: Okay. Your Honor, I was
13 fully believing that I could bring back Officer Taylor
14 and Natasha Wilson today. I understand that you're
15 saying --

16 THE COURT: Well, you can't until -- first
17 of all, you can't bring anybody back until the State
18 rests and you start your defense.

19 THE DEFENDANT: Okay.

20 THE COURT: Okay? But the question is
21 what -- if you want to bring her back, before I waste
22 their time --

23 THE DEFENDANT: Yes.

24 THE COURT: -- and the jury's time --

25 THE DEFENDANT: Right.

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1 THE COURT: -- because trust me, the
2 longer we keep them, the more upset they're going to
3 get.

4 THE DEFENDANT: Okay.

5 THE COURT: Okay?

6 THE DEFENDANT: Yes, of course.

7 THE COURT: And so you don't want to make
8 them mad. I'm telling you.

9 THE DEFENDANT: Okay. Well --

10 THE COURT: So --

11 THE DEFENDANT: And --

12 THE COURT: And I'm not going to do
13 something that's repetitious.

14 THE DEFENDANT: I understand.

15 THE COURT: So if you tell me what --
16 first of all, it's not -- you just want to bring the 911
17 tape back in?

18 THE DEFENDANT: I do want to. And
19 without -- I was going to lead into the husband from the
20 wife; but I do want to bring back the 911, let the jury
21 hear it again.

22 THE COURT: You can do that. I have no
23 problem with that. You can even do it in closing.

24 THE DEFENDANT: Is it a waste of time to
25 bring back Officer Taylor? Do you believe that --

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1 THE COURT: Well, my question is: What --
2 Officer Taylor?

3 MS. LITTLE: Yes, Judge. He was the
4 first --

5 THE DEFENDANT: The first --

6 MS. LITTLE: -- officer.

7 THE COURT: Oh, God.

8 THE DEFENDANT: No?

9 THE COURT: Well, tell me what you're
10 trying to -- just try to tell me what you're trying to
11 do.

12 THE DEFENDANT: I'm trying -- I'm really
13 trying to draw a connection in the minds of the jury
14 that at no point in time was my vehicle, the one I was
15 in, ever seen doing these things and that each one of
16 the officers has a different model car that is still not
17 mine listed on the reports and in no way, shape, or form
18 was my Solara ever seen damaging a pole. So that's what
19 I was going to go ahead and try to connect in the minds
20 of the jury.

21 MS. LITTLE: Judge, I think it's been made
22 clear that it was a red sports car. All --

23 THE DEFENDANT: I don't think it has been
24 made clear that --

25 THE COURT: No. That --

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1 MS. LITTLE: I need to finish.

2 Ms. Sitawisha, we can't talk over each other. She has
3 to take us down.

4 THE DEFENDANT: Are we on the record or
5 off?

6 THE COURT: Uh-huh.

7 MS. LITTLE: We're on the record.

8 Ms. Wilson stated that it was a red sports
9 car, in her testimony.

10 THE COURT: Uh-huh.

11 MS. LITTLE: When she called 911, she said
12 it was a red, two-door car.

13 Officer Taylor, when he took the stand, he
14 also said red sports car.

15 THE COURT: Uh-huh.

16 MS. LITTLE: The next officer, Ogletree,
17 he thought that he knew the make; and then when I
18 refreshed his memory, it became very clear that, no, in
19 fact, all he was told was that it was a red sports car,
20 not a particular type of vehicle.

21 THE COURT: In the call slip.

22 MS. LITTLE: Exactly, Judge.

23 THE COURT: Yeah.

24 MS. LITTLE: So through all three
25 witnesses, it's been maintained that it was a red sports

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1 car. There are no -- no specifics.

2 And, yes, every single person thought it
3 was a different kind of car.

4 THE COURT: Uh-huh.

5 MS. LITTLE: But that's all been
6 addressed.

7 THE COURT: Right. And that's what -- you
8 know --

9 MS. LITTLE: And at the end of the day,
10 Judge, Ms. Wilson --

11 THE COURT: The issue -- the issue is --
12 and I know what you're trying to say. And you're
13 trying -- and what you're trying to say is that nobody
14 can be a hundred percent positive. That's what you're
15 trying to say.

16 THE DEFENDANT: No. I'm actually trying
17 to say in the report, everyone says -- there's even a
18 portion that says it's a four-door Corolla in the
19 incident report. My car doesn't have four doors --

20 THE COURT: Well, Ogletree thinks it's
21 still a Corolla. And the officer said it was a Corolla.

22 THE DEFENDANT: The last one said Celica.

23 THE COURT: No --

24 THE DEFENDANT: Yes, he did.

25 THE COURT: No.

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1 MS. LITTLE: He said Corolla.

2 THE COURT: He said Corolla.

3 THE DEFENDANT: Well --

4 THE COURT: We've got the record. We can
5 prove it.

6 THE DEFENDANT: One of them said Celica.
7 Who said Celica?

8 THE COURT: Look at --

9 MS. LITTLE: It was Ogletree.

10 THE COURT REPORTER: Ogletree said Celica;
11 Allbritton said Corolla. The last one said Corolla; the
12 one before that said Celica.

13 THE COURT: Okay. All right.

14 THE DEFENDANT: And at no point did anyone
15 actually say the car that I was in, which is a Solara.

16 THE COURT: Okay.

17 THE DEFENDANT: So that seems very
18 important to me and --

19 THE COURT: Well --

20 THE DEFENDANT: -- even though -- even
21 though Ms. Little has said, no, red sports car, red
22 sports car -- in every report, though, it's saying
23 four-door Corolla, two-door Corolla, two-door Celica,
24 and never mentioning my car. Even though my car was
25 there on that lot doesn't place me in that intersection

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1 in a Celica or a Corolla or a Corona or whatever they're
2 saying, so I want the jurors to know how can they
3 actually place me on that particular corner when no one
4 saw that car there.

5 THE COURT: The witness, the first
6 witness --

7 MS. LITTLE: Saw that car.

8 THE COURT: -- saw you, and she identified
9 you in open court as the driver of the car that did
10 that. And then she identified you in open court.

11 MS. LITTLE: And then she identified that
12 vehicle, Your Honor, as being parked right down the
13 road.

14 THE COURT: Right. I mean --

15 MS. LITTLE: And she pointed Officer
16 Taylor in that direction.

17 THE COURT: But the thing about it is:
18 Now, if you want -- if that is your angle -- okay --
19 then you -- you can close and argue that point all day
20 long. Okay? The jury already knows --

21 THE DEFENDANT: Yes.

22 THE COURT: -- the officers said different
23 things. You don't get to come back and redo that and
24 redo that and redo that.

25 THE DEFENDANT: Okay.

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1 THE COURT: We don't do that way.

2 THE DEFENDANT: Yes.

3 THE COURT: Once it's done, it's done.

4 THE DEFENDANT: Okay.

5 THE COURT: Let's move onto the next
6 evidence.

7 THE DEFENDANT: That makes sense.

8 THE COURT: Okay?

9 THE DEFENDANT: Yes.

10 THE COURT: So bringing -- so bringing
11 back the officers and just saying, Now, what kind of car
12 was that again, you can't do.

13 THE DEFENDANT: Well, actually, this time,
14 I was not going to tackle the car, the issue about the
15 car. You know, I really didn't dive into his experience
16 and his record -- I really didn't dive into that.

17 THE COURT: Well, you sure did have the
18 opportunity to do that. And that part -- and plus,
19 that's not going to -- that's irrelevant in regards to
20 this issue because we have the blood and we have the
21 results of the blood and we have the results of -- and
22 it all boils down to, really, Allbritton was the final
23 one that took you into custody. And so --

24 THE DEFENDANT: And he never said with any
25 certainty that my car was involved with any kind of

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1 traffic incident. I mean, that is in the report that
2 state property was damaged; and it hasn't been
3 established that I did.

4 THE COURT: Well, you can bring that up
5 all day long in closing.

6 THE DEFENDANT: All right. I will back
7 off.

8 THE COURT: If that's your argument, then
9 go and argue it.

10 THE DEFENDANT: Yes.

11 THE COURT: Okay?

12 THE DEFENDANT: Okay.

13 THE COURT: But I will warn you this --
14 because I don't know if you're going to take the stand
15 or not. Are you?

16 THE DEFENDANT: No.

17 THE COURT: Okay. Then I don't have to
18 warn you. Okay?

19 So -- but you can argue in front of the
20 jury all day long about that. Well, not all day long
21 because I'm only going to give you about 15 minutes to
22 argue that. But the -- like I said, you've already got
23 a point. And believe it or not, not bad, either. But
24 you've already got it across --

25 THE DEFENDANT: All right.

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1 THE COURT: -- that each one of them
2 really didn't know what kind of car it is, and I still
3 don't know what kind of car it is.

4 THE DEFENDANT: Okay.

5 THE COURT: It hasn't been processed yet.
6 And you can't -- unless you get on the stand, you cannot
7 put it in that you own a whatever.

8 THE DEFENDANT: Yes. Okay. I understand.
9 All right.

10 THE COURT: Make sense?

11 THE DEFENDANT: Yes, it does.

12 THE COURT: You know, there's certain
13 guidelines and rules; and we have to follow them.

14 THE DEFENDANT: Well, Judge, I think the
15 biggest thing is that it just seems as though the
16 prosecutor went out of their way to exclude the husband
17 from these proceedings.

18 THE COURT: I do not believe that one
19 second. We have done hundreds of trials down here and
20 stuff and, you know, a lot of times there's 15 officers
21 and they're only going to subpoena one because one is
22 going to say what all 15 did. I'm not going to allow
23 that. And if the husband came in -- if they said, Now
24 we're going to put on the husband, I would probably stop
25 the State and say, Wait a minute, what is he going to

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1 testify that the wife didn't testify to?

2 And they're going to say, No, Judge, he's
3 going to testify to the same thing; and I would say,
4 Then I'm not going to put him on. You're wasting the
5 Court's time.

6 We don't do that. So they know better.

7 THE DEFENDANT: Well --

8 THE COURT: Unless you had talked to him,
9 unless you actually know that he's going to testify to
10 something totally different and that she's lying about
11 something, then --

12 THE DEFENDANT: I believe -- I do believe
13 that.

14 THE COURT: There's not "I do believe
15 that."

16 THE DEFENDANT: Yes, that --

17 THE COURT: No. You have to tell me that
18 you do know.

19 THE DEFENDANT: I do know.

20 THE COURT: What?

21 THE DEFENDANT: Absolutely.

22 THE COURT: What?

23 THE DEFENDANT: I do know that the car
24 that she saw was not the car that was involved in this
25 incident. She was not even the driver, so the driver

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1 needs --

2 THE COURT: Huh?

3 THE DEFENDANT: The driver needs to
4 testify as to what kind of car was involved in this
5 incident. He was the actual driver of the vehicle.

6 THE COURT: No. No. That's not -- no.
7 I'm not going to allow it.

8 THE DEFENDANT: And the roads -- and, Your
9 Honor, also, Officer Allbritton did state that the roads
10 were wet.

11 THE COURT: Good.

12 THE DEFENDANT: So --

13 THE COURT: Then you finally got it in.
14 Good. That's it.

15 THE DEFENDANT: He was driving. He
16 could've had his own participation in what happened with
17 that curb, with the pole. We won't know unless he's
18 able to testify, you know, about his driving habits this
19 night.

20 THE COURT: No. I'm not going to -- I'm
21 not going to let him testify.

22 THE DEFENDANT: Okay.

23 MS. LITTLE: Okay. We wait.

24 THE COURT: We're in a holding pattern.

25 (Recess taken)

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1 (Jury enters courtroom)

2 THE COURT: State, call your next witness.

3 MS. LITTLE: Your Honor, the State calls
4 Andre Salazar.

5 THE COURT: Can I get you to raise your
6 right hand?

7 (Oath administered to the witness)

8 THE COURT: Please have a seat. Pull the
9 mic up to you, speak clearly.

10 And, State, you may begin.

11 MS. LITTLE: Thank you, Your Honor.

12 **ANDRE SALAZAR,**

13 having been first duly sworn, testified as follows:

14 **DIRECT EXAMINATION**

15 BY MS. LITTLE:

16 Q. Mr. Salazar, can you please introduce yourself
17 to the jury?

18 A. My name is Andre Salazar, and I'm a forensic
19 toxicologist with the Harris County Institute of
20 Forensic Sciences.

21 Q. What is a forensic toxicologist?

22 A. Forensic toxicologist is a scientist whose
23 primary responsibility is to identify and measure
24 drugs -- such as alcohol or other drugs or toxins,
25 poisons, chemical compounds -- in an individual.