

1 A. No.

2 Q. Fair enough.

3 MS. COLLINS: Pass the witness, Your Honor.

4 MR. OLIVER: No questions, Judge.

5 THE COURT: All right. You may step down.

6 THE WITNESS: Thank you.

7 THE COURT: May this officer be excused?

8 MS. COLLINS: Yes, Your Honor.

9 MR. OLIVER: Yes, Your Honor.

10 THE COURT: You're excused. Thank you.

11 THE WITNESS: Thank you, Your Honor.

12 THE COURT: Call your next witness.

13 MS. COLLINS: Yes, Your Honor. At this
14 time, we call John McGuire to the stand.

15 THE BAILIFF: This witness has not been
16 sworn.

17 (Witness sworn)

18 **JOHN MCGUIRE,**

19 having been first duly sworn, testified as follows:

20 **DIRECT EXAMINATION**

21 **BY MS. COLLINS:**

22 Q. Please state your name, spelling --

23 A. John McGuire.

24 Q. She's going to yell at us if we talk over each
25 other. So, wait just a second.

1 Can you spell your first and last name for
2 me, please?

3 A. J-o-h-n. M-c-G-u-i-r-e.

4 Q. What do you do for a living?

5 A. I'm an investigator assigned to the district
6 attorney's office.

7 Q. How long have you been working at the district
8 attorney's office?

9 A. Approximately 13 years.

10 Q. And prior to that, what were you doing for a
11 living?

12 A. I've been a police officer for approximately 40
13 years. I started at the Houston Police Department. I
14 retired there with approximately 21 years. I then went
15 to the Hayes County Sheriff's Department. I was there
16 approximately four-and-a-half years. I then went to
17 work for the office of -- for the Medicaid Control Unit
18 at the attorney general's office. And I've been here
19 for the last 13 years at the district attorney's office.

20 Q. Working for the district attorney's office now,
21 are you still a certified peace officer?

22 A. I am.

23 Q. Do you have to maintain training and things
24 like that to hold that position?

25 A. Yes. In order to maintain a peace officer

1 license in the state of Texas, I have to -- I have to
2 take 40 hours of retraining every two years. Plus, I
3 have to show proficiency in firearms every year.

4 Q. Have you done that?

5 A. Yes.

6 Q. In the course of your duties and
7 responsibilities here at the district attorney's office,
8 have you ever had to collect swabs?

9 A. I have.

10 Q. Okay. When we're talking about collecting
11 swabs, what are we talking about?

12 A. They're called buccal swab. What it is, it
13 looks like a long q-tip with a cotton swab on the end.
14 And the way we collect that is to take and swab the
15 inside of the mouth for saliva.

16 Q. In the course of this case that we're here
17 about today, did you take some buccal swabs or buccal
18 swabs from a person?

19 A. I did.

20 Q. Who did you take those swabs from?

21 A. Bobby Peyronel.

22 Q. Okay. When you take buccal swabs, is it
23 important to make sure you've got the right person, you
24 know exactly who you're taking them from?

25 A. That's correct.

1 Q. In this case, how did you go about making sure
2 the swabs were being taken from Bobby Peyronel who is
3 here on trial?

4 A. I obtained his driver's license and then I made
5 a copy of his driver's license to ensure it was the same
6 person named in the court order to obtain the buccal
7 swab.

8 Q. Okay. And do you see the person that you took
9 that swab from here in the courtroom today?

10 A. Yes.

11 Q. Can you identify him using an article of
12 clothing he's wearing?

13 A. The gentleman in the gray coat with the dark
14 shirt. He's wearing glasses and he has a beard. He's
15 sitting between the two gentlemen there at the table.

16 Q. You're sure that's him?

17 A. No. I'm sorry. I apologize. On the end, the
18 other gray coat.

19 Q. Okay.

20 MR. COHEN: Your Honor, may I take this
21 witness on voir dire, please?

22 THE COURT: Are you going to do the
23 cross-examination?

24 MR. COHEN: On this one.

25 THE COURT: All right. Go ahead.

1 VOIR DIRE EXAMINATION

2 BY MR. COHEN:

3 Q. I'm not the individual that you took the --

4 A. No, you're not. I'm sorry.

5 Q. You would agree with me that misidentification
6 certainly occurs? And we have just seen an example of
7 that here in this courtroom.8 A. Which is why I took a copy of the driver's
9 license.10 Q. And you even had that copy of the driver's
11 license up there when you pointed at me as the
12 defendant?

13 A. Yes.

14 Q. Mr. McGuire, did you have a search warrant
15 for -- to receive and collect and to do the examination
16 of Mr. Peyronel?

17 A. I had a court order.

18 Q. You had a court order?

19 A. Yes, sir.

20 Q. Who was that court order signed by?

21 A. It was signed by this judge in the 174th
22 District Court, Judge Ruben Guerrero.

23 MR. COHEN: Pass the witness.

24 MS. COLLINS: May I proceed, Your Honor?

25 THE COURT: The record will reflect.

DIRECT EXAMINATION

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CONT'D BY MS. COLLINS:

Q. Okay. Looking at -- as you mentioned, did you take a driver's license in this case?

A. Yes.

Q. Okay. And who was that driver's license for?

A. Bobby Joe Peyronel.

Q. Okay. Now, do you see the person in that picture here in the courtroom today?

A. Yes.

Q. Is he the person sitting in between people or is he the person on the end?

A. The person on the end.

Q. Okay. Now, when you took that buccal swab, do you remember where you took it from?

A. Yes. It was taken up in my office on the fourth floor at the courthouse.

Q. Okay. And when you take a driver's license from a person to ensure they're the same person, do you look at them and make sure the person that you're seeing is the person in the driver's license?

A. Yes.

Q. Did you do that in this case?

A. Yes.

Q. Okay. Did you take buccal swabs from Bobby Joe

1 Peyronel?

2 A. I did.

3 Q. Was he cooperative?

4 A. Yes.

5 Q. Once you took those buccal swabs, what did you
6 do with them?

7 A. I packaged them in the prescribed manner for
8 submission into evidence and I locked them up. Since it
9 was a late hour and I couldn't get to the M.E.'s office,
10 I locked them in a file cabinet in my office that I had
11 the only key to until the next day.

12 Q. And what did you do the next day?

13 A. The next morning I took the buccal swabs, along
14 with the -- they were packaged along with the submission
15 form. I went to the forensic sciences lab and I
16 submitted them in evidence at 9:09 a.m. on October 12th
17 of 2010.

18 Q. Where did you submit those to?

19 A. Out at the office of the Jachimczyk Forensic
20 Center.

21 Q. Is that commonly referred to as the M.E.'s
22 office?

23 A. Yes.

24 MS. COLLINS: May I approach the witness,
25 Your Honor?

1 THE COURT: You may.

2 Q. (By Ms. Collins) I'm showing you what's been
3 pre-marked as State's Exhibit 17. Can you tell us what
4 you're looking at there (indicating)?

5 A. Yes. This is the evidence envelope that I
6 prepared. And I placed the package containing the two
7 buccal swabs in this envelope. I then sealed it with
8 evidence tape, I initialed it, and then submitted this
9 to the lab at the M.E.'s office.

10 Q. Other than -- anything that you wrote on there,
11 anything that you did been tampered with or changed in
12 any way?

13 A. No.

14 Q. Okay. And once you turn the buccal swabs into
15 the medical examiner's office, did you have any further
16 contact with the evidence or this case?

17 A. No.

18 MS. COLLINS: Pass the witness, Your Honor.

19 THE COURT: All right.

20 **CROSS-EXAMINATION**

21 **BY MR. COHEN:**

22 Q. Mr. McGuire, you indicated Mr. Peyronel was
23 completely cooperative with you?

24 A. Yes.

25 Q. Where did you actually do the swab?

1 A. He came -- he came to the fourth floor, which
2 is the trial bureau. I brought him down to my office
3 and we collected the buccal swabs there in my office.

4 Q. When you say fourth floor, is that here in this
5 building?

6 A. Yes, sir.

7 Q. And prior to asking him to come down, did you
8 explain to him that there was a court order for him to
9 do that?

10 A. No. I contacted Mr. Rick Oliver's office and
11 told -- informed her that we had a court order. She
12 had -- she made arrangements for Mr. Peyronel to come
13 down. When he came down, I showed him the court order
14 and explained what it was to him.

15 MR. COHEN: Pass the witness.

16 MS. COLLINS: Nothing further, Your Honor.

17 THE COURT: All right.

18 MR. COHEN: Nothing further.

19 THE COURT: Call your next witness.

20 MS. COLLINS: May I have just one moment?

21 THE COURT: All right.

22 (Pause)

23 MS. COLLINS: Your Honor, the State calls
24 Deidra Breaux to the stand.

25 (Witness sworn).