

1 MS. LOGAN: Thank you, Judge.

2 KATHLEEN MCKINNEY,
3 having been first duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MS. LOGAN:

6 Q. Good morning, ma'am. Would you say please
7 introduce yourself to the folks on the jury?

8 A. Good morning. Kathleen McKinney. That's
9 K-A-T-H-L-E-E-N, M-C-K-I-N-N-E-Y.

10 Q. Tell us what it is you do for a living,
11 Mrs. McKinney.

12 A. I'm a DNA analyst. I work for the Texas
13 Department of Public Safety Crime Laboratory.

14 Q. Tell us about your education and experience
15 that qualifies you as an expert in the field of DNA
16 analyst.

17 A. I have a bachelor of science in biomedical
18 science from Texas A & M University, and I have a master
19 of science in forensic science from Sam Houston State
20 University. Starting in 2006, I worked for three
21 different labs and received training at every lab.
22 First was Identigene in Houston, and then it was Orchid
23 Cellmark in Dallas and the Texas Department of Public
24 Safety.

25 Q. Tell us how, long have you been with the Texas

KATHLEEN MCKINNEY - October 28, 2013
Direct Examination by Ms. Logan

1 Department of Public Safety in their crime lab?

2 A. Since February of 2010.

3 Q. And about how long did you work for Identigene?

4 A. I worked there for about two years.

5 Q. And then how long did you spend at Orchid
6 Cellmark?

7 A. For about a year-and-a-half.

8 Q. I want to talk you a about a case that you
9 worked on back when you were employed at Identigene.

10 Were you there March 7th of 2008?

11 A. May I look at my case file?

12 Q. Absolutely.

13 A. Yes, I was.

14 Q. And at that point in time, were you tasked with
15 doing DNA analysis on items that were submitted to the
16 lab?

17 A. Yes, I was.

18 Q. And at that point in time, was the Houston
19 Police Department Crime Lab outsourcing some of its DNA
20 analysis to Identigene?

21 A. Yes. They were a client of ours at that time.

22 Q. So was Identigene an accredited laboratory for
23 the purposes of doing forensic DNA analysis?

24 A. Yes, through ASCLD-LAB, the American Society of
25 Crime Lab Directors Accreditation Board.

KATHLEEN MCKINNEY - October 28, 2013
Direct Examination by Ms. Logan

1 Q. Now I want to talk to you about the work that
2 you did on this case. Can you tell us what the lab
3 number or Identigene case number was for your work?

4 A. The unique Identigene case number was 93279.

5 Q. In your report, do you note that work was done
6 for the Houston Police Department?

7 A. Yes. It's on the report.

8 Q. And can you tell us what the lab number and
9 incident number were for the Houston Police Department
10 identification purposes?

11 A. Yes. It was L06-1248692957606E.

12 MS. LOGAN: May I approach the witness,
13 Judge?

14 THE COURT: You may approach.

15 MS. LOGAN: Thank you.

16 Q. (By Ms. Logan) Mrs. McKinney, I'm going to
17 show you what I've marked as State's Exhibit 105 and ask
18 you whether or not you recognize it?

19 A. Yes, I do.

20 Q. And is it a fair and accurate copy of the
21 report that you generated pertaining to your work on
22 this case?

23 (Off-the-record discussion)

24 A. Yes.

25 Q. (By Ms. Logan) Is it a record that is kept in

KATHLEEN MCKINNEY - October 28, 2013
Direct Examination by Ms. Logan

1 the normal course of business at that point in time with
2 Identigene?

3 A. Yes.

4 Q. And does it accurately reflect the results that
5 you got from the DNA analysis you did in this case?

6 A. Yes, it does.

7 Q. Okay.

8 MS. LOGAN: At this time I'm going to mark
9 it 139. At this time I would offer into evidence
10 State's Exhibit 139, the Identigene lab report,
11 tendering to defense counsel.

12 MR. EASTERLING: No objection, Your Honor.

13 THE COURT: Okay. State's 139 is
14 admitted.

15 You may publish.

16 MS. LOGAN: Thank you, Judge.

17 Q. (By Ms. Logan) As a part of your work in this
18 case, did you compare the known DNA buccal swabs of two
19 individuals, Charles Jones and Kevin Chaney, to some
20 evidence that was submitted in this case?

21 A. Yes. We actually only received the buccal
22 swabs from those two individuals, and then we received
23 the DNA profiles from the evidence that the HPD lab had
24 done.

25 Q. And is that standard practice for labs in

1 situations like this to utilize the extractions from
2 another lab and then perform analysis at your lab?

3 A. Yes. And when we receive the data from them,
4 we have them submit their whole case file so we can see
5 in electronic data, as well, and verify that the DNA
6 typing is correct.

7 Q. Now let's talk about Item F that we see here on
8 State's Exhibit 139. Can you tell us which, if any, of
9 the reference samples that were provided to you were
10 consistent with the DNA on Item F, work shirt cutting?

11 A. Yes. The DNA profile that we received from the
12 HPD lab from the Item F work shirt cutting was a single
13 source male DNA profile, and the profile matches the DNA
14 profiles obtained from the buccal swabs labeled Charles
15 Jones.

16 Q. And tell us about the results that you reached
17 with respect to Item L1.

18 A. For L1, we also received that DNA profile from
19 the HPD lab; and we compared it to both buccal swabs.
20 It was a -- found to be a mixture of male DNA from at
21 least two individuals. That means there's more than one
22 person in that DNA profile. Kevin Chaney cannot be
23 excluded as a possible contributor to this mixture.

24 Q. And with respect to your analysis of the known
25 buccal swabs or DNA samples of Kevin Chaney and Charles

KATHLEEN MCKINNEY - October 28, 2013
Direct Examination by Ms. Logan

1 Jones and comparing them to the results from items of
2 evidence in this case, you wrote a report. Did you do
3 anything else with respect to DNA in this case?

4 A. That is correct.

5 Q. Okay. And one last thing. We can see on Page
6 2 of your report, State's Exhibit 139, that it's signed
7 by Kathleen Born. Can you tell us why you're Kathleen
8 McKinney now?

9 A. Yes. Born is my maiden name, and McKinney is
10 my married name.

11 MS. LOGAN: I'll pass the witness, Judge.

12 THE COURT: Okay. Defense, cross?

13 **CROSS-EXAMINATION**

14 BY MR. EASTERLING:

15 Q. Hello, Miss McKinney. I'm Danny Easterling. I
16 represent Mr. Jones. How are you doing?

17 A. I'm fine. How are you?

18 Q. Okay. You were only asked to do comparisons on
19 two items, a work shirt cutting and a glove, correct?

20 A. Yes. Well, we received the evidence profiles
21 from HPD; and we were given the buccal swabs from
22 Charles Jones and Kevin Chaney to actually process in
23 our lab and compare them to the data that we received
24 from the HPD lab.

25 Q. Okay. My question was -- let me rephrase it --

KATHLEEN MCKINNEY - October 28, 2013
Cross-Examination by Mr. Easterling

1 were you asked to compare any of the items of evidence
2 besides a work shirt cutting or a glove?

3 A. No. We were specifically asked to compare just
4 those two items.

5 Q. Okay. I wanted to make sure the jury
6 understood that; because in evidence there's many more
7 items, okay --

8 A. Yes.

9 Q. -- that were tested by other labs, okay, or
10 another lab, correct?

11 A. Well, I don't know about the other evidence;
12 but that is --

13 Q. You weren't asked to test a wig, you weren't
14 asked to test a baseball cap, a shirt a T-shirt, a
15 sweatshirt, none of those items, correct?

16 A. No, sir.

17 Q. Okay. All right. Let's talk about the work
18 shirt cutting. Who did the serology on that?

19 A. Well, the actual serology was done with the HPD
20 bio lab.

21 Q. Okay. And then they transferred that report to
22 you to work from that?

23 A. We got their whole case file, so it actually is
24 in here. What we did when we got the case file, though,
25 is we just looked at the data from the DNA profiles for

1 those two items of evidence that they wanted us to
2 compare.

3 Q. I just want the jury to understand. So,
4 Houston Police Department is the one that actually cut
5 the shirt?

6 A. Yes, sir.

7 Q. And sent that to you, correct?

8 A. No, sir. They actually did the DNA testing at
9 the HPD lab. We just received the DNA profiles that
10 they already obtained.

11 Q. Okay. I understand now. So they sent you -- I
12 guess, digitally, they sent you the DNA profile?

13 A. It was a hard copy and, also, the electronic
14 data digitally.

15 Q. Now this is touch DNA that we're talking about
16 as opposed to bodily fluid DNA, correct?

17 A. I would have to look at their case file to see
18 what kind of serology they found, what their results
19 were.

20 Q. Okay. If we assume that there has been
21 evidence prior to this last week that there was swabs on
22 the work shirt collar done and preserved, that would be
23 looking for touch DNA, correct?

24 A. Yes, that's correct.

25 Q. And they're looking for skin cells that shed

KATHLEEN MCKINNEY - October 28, 2013
Cross-Examination by Mr. Easterling

1 off of a neck onto the cotton or whatever clothing that
2 is, right?

3 A. That's correct.

4 Q. Okay. Now, you can't tell the jury when this
5 particular DNA of skin cells was deposited on that
6 shirt, can you?

7 A. No, sir.

8 Q. In fact, skin cell DNA, touch DNA, can stay on
9 a collar of a shirt for a long time if that shirt is out
10 of the elements and is protected, correct?

11 A. Yes. Usually, we have seen it on cold cases
12 that we can get profiles from skin cells. It is
13 dependent on the elements, of course, and how it was
14 maintained throughout the years. But typically, you're
15 able to get, you know, a DNA profile from that.

16 Q. You mentioned cold cases. So the jury
17 understands what you're saying, that can be evidence
18 that's been somewhere for months or sometimes even years
19 where you can get a DNA profile, right?

20 A. It depends on the factors, of course; but yes,
21 we have been able to in some cases.

22 Q. So if the shirt is not outside in direct
23 sunlight and the rain and all of those kind of things,
24 then that touch DNA can stay on that collar a long time
25 if it's not washed in a laundry washing machine, right?

KATHLEEN MCKINNEY - October 28, 2013
Cross-Examination by Mr. Easterling

1 A. Typically, that's correct. It also depends on
2 how much that person sheds skin cells.

3 Q. That is another variable, too. Some human
4 beings shed a little bit, some shed moderately and some
5 shed a lot of skin cells, correct?

6 A. That's correct.

7 Q. So touch DNA is highly dependent upon that
8 variable?

9 A. That's correct.

10 Q. And when you perspire, does that also take skin
11 cells away from the skin and deposit it onto clothing?

12 A. Yes. Sweat is actually a really good source of
13 DNA, also.

14 Q. All right. So -- and that's a very consistent
15 expert opinion in the field of DNA science, that this
16 type of touch DNA can stay on an object like a shirt for
17 a long time under controlled conditions, correct?

18 A. That's correct.

19 Q. I mean, there is all kind of research that's
20 been done on that; articles, testing, all those kind of
21 things that's been done on that subject, right?

22 A. Yes.

23 Q. And do you know Clay Davis, who works for the
24 Houston Police Department's Crime Lab?

25 A. No, I do not.

1 Q. Well, he testified last week. I'm just
2 wondering if you might know him.

3 Okay. So, let me give you a hypothetical
4 situation. If a shirt like this work shirt where the
5 cutting came from, if it's found in some bushes or in
6 some weeds, all right, and it is then put into a sack
7 and then it's brought into the lab, you can't tell us,
8 as a DNA scientist, when the DNA was deposited on that
9 shirt if that's the fact situation we have?

10 A. No, I cannot.

11 Q. And even though it's a single source profile,
12 there is cut-offs on your -- I guess your computer
13 programs and your software programs where there could be
14 other DNA on there; it just hasn't risen to the level
15 where you can identify it, correct?

16 A. There is a threshold that labs typically set.
17 They validate it in their lab, so it can be different
18 from lab to lab. And that is correct; sometimes you do
19 have data below threshold that you can't use.

20 Q. And, also, if there is some other DNA that may
21 be on there, you can't tell us, as a DNA analyst, who
22 wore the shirt last or who wore the shirt first, can
23 you?

24 A. No, sir.

25 Q. So just because you get a single source profile

KATHLEEN MCKINNEY - October 28, 2013
Cross-Examination by Mr. Easterling

1 for Charles Jones doesn't mean that you can say with any
2 certainty that he was the last one to wear the shirt and
3 throw it in the weeds, correct?

4 A. No, I cannot say that.

5 Q. The glove that you worked on, there was no DNA
6 profile from Charles Jones on Item L1, the glove,
7 correct?

8 A. I'm sorry. Can you repeat that?

9 Q. The only name I see from your report on Item
10 L1, the glove, was a man named Kevin Chaney.

11 A. Yes.

12 Q. No other conclusions about the Charles Jones'
13 buccal swab, correct?

14 A. No. It was a mixture, and Kevin Chaney could
15 not be excluded. The other person that is present in
16 the mixture, they were too low to actually compare to
17 anyone; so that's why no conclusions were made regarding
18 the other possible contributor to this mixture.

19 Q. Charles Jones was not mentioned in your report
20 as being someone who could not be excluded, correct?

21 A. We weren't able to exclude him based on the
22 information that we had. It was too low. We weren't
23 able to make a conclusion on the second contributor in
24 that mixture.

25 Q. And how many other people were in that mixture?

1 Could there be two or three others in there; you just
2 didn't get to the threshold again?

3 A. It was a mixture of at least two individuals,
4 so it is possible that there is another person there.
5 Because it depends on how much -- some alleles are
6 shared in the population, and it's -- and especially if
7 you have a very minimal amount of information that's
8 above threshold, it can be difficult to tell how many
9 people are in there.

10 Q. Now the last questions about touch DNA. If a
11 rubber glove, you know, your typical medical kind of
12 rubber glove, if it has holes in the fingertip or the
13 thumb tip to expose the skin of the tip of that finger
14 or thumb, and if it touches something with that glove
15 on, that could potentially leave skin cells through the
16 hole in the glove, correct?

17 A. Onto the glove?

18 Q. No, no, onto the item that they're touching.

19 A. Oh, on the item. Oh, yes, definitely. Their
20 DNA on that surface, is that what you're saying?

21 Q. Yes.

22 A. Yes.

23 Q. Particularly, if the tear is large enough for
24 the skin to be exposed, correct?

25 A. Yes. And that also depends on the shed rate of

KATHLEEN MCKINNEY - October 28, 2013
Cross-Examination by Mr. Easterling

1 that person and if they're sweating, things like that.

2 Q. It's not uncommon for your hands to sweat a lot
3 when they're inside a rubber, non-breathable glove,
4 correct?

5 A. I would think so, yes.

6 MR. EASTERLING: Pass the witness, Judge.

7 THE COURT: Okay. Let's take a
8 five-minute recess.

9 Please remember your admonitions from the
10 Court.

11 *(Brief recess)*

12 *(Jury enters courtroom)*

13 THE COURT: All right. Please be seated.
14 You may proceed.

15 MS. LOGAN: Thank you, Judge.

16 **REDIRECT EXAMINATION**

17 BY MS. LOGAN:

18 Q. All right, Mrs. McKinney, let me ask you this:
19 Do you know of anyone, according to your research or
20 research that you have reviewed -- whether there is
21 anyone on earth who does not have DNA?

22 A. No.

23 Q. Okay. All humans have it, right?

24 A. Yes.

25 Q. And have you ever heard of or come into contact

1 with research that suggests that there are humans out
2 there that do not shed their DNA whatsoever?

3 A. No, I haven't seen anything like that.

4 Q. So, we all shed it. Some people shed it a lot;
5 some people shed it a little bit?

6 A. Yes.

7 Q. Now if two people were to wear the same item of
8 clothing, and let's say hypothetically they sweat in it,
9 they both sweat on the item, it is then preserved and
10 tested for DNA, would you expect to find a single source
11 DNA profile or a mixture of DNA profiles?

12 A. If both individuals sweated on the clothing, I
13 would expect to see a mixture.

14 MS. LOGAN: Pass the witness, Judge.

15 THE COURT: Okay. Any recross?

16 MR. EASTERLING: A little bit, Judge.

17 **RECROSS-EXAMINATION**

18 BY MR. EASTERLING:

19 Q. Of course, again, I guess your answer to that
20 question is, dependent upon how much they sweated on it,
21 right?

22 A. Yes, that's correct.

23 Q. So if somebody's running in the shirt in June
24 of 2006, in the City of Houston when it's hot and it's
25 humid, they're going to be expected to sweat some,

KATHLEEN MCKINNEY - October 28, 2013
Recross-Examination by Mr. Easterling

1 right?

2 A. Yes, that's correct.

3 Q. And if somebody had wore it in June, again,
4 maybe even a day or two or three or four, or two or
5 three weeks prior to that and sweats onto it, you may
6 get that or you may not get that DNA profile, right?

7 A. Yes. It just depends on how much sweat that
8 person -- how much that person sweated and, also, how
9 much they shed.

10 Q. All right.

11 MR. EASTERLING: Pass the witness.

12 THE COURT: Okay.

13 MS. LOGAN: Nothing further, Judge.

14 THE COURT: You are excused.

15 MS. LOGAN: You want us to approach,
16 Judge?

17 THE COURT: Yes.

18 *(Off-the-record discussion)*

19 THE COURT: All right. We finished a
20 little earlier than we anticipated this morning. So you
21 guys are going to -- I'm going to allow you to walk
22 around outside and get a little sun. Your food will be
23 here at 12:15. We will resume testimony -- we'll start
24 at 12:50. So, please remember the admonitions from the
25 Court.