

1 HUMA NASIR,
2 having been duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MS. FULLER:

5 Q. Could you please introduce yourself to the Court.

6 A. Sure. My name is Huma Nasir, spelled H-u-m-a
7 N-a-s-i-r, and I serve as the technical leader of a private DNA
8 lab called Orchid Cellmark that's based in Dallas, Texas.

9 Q. How long have you been with Orchid Cellmark?

10 A. A little over five years.

11 Q. Previous to Orchid Cellmark, where did you work?

12 A. I worked for another private DNA lab that was called
13 Reliagene Technologies, and that was located in New Orleans,
14 Louisiana.

15 Q. All right. And prior to that did you work for any
16 other laboratories?

17 A. No. I was in school prior to that.

18 Q. All right. Let's talk about your education.
19 Where -- tell the Court about your educational background.

20 A. Sure. I received my bachelor's of science degree in
21 biological sciences in 2000 from the University of New Orleans,
22 and then I received my master's of science degree with a
23 concentration in forensic serology and DNA from the University
24 of Florida in 2006.

25 Q. All right. Are you a member of any professional

1 organizations?

2 A. Yes, I am.

3 Q. What organizations are those?

4 A. They are American Academy of Forensics Scientists and
5 also the Association of Forensic DNA Administrators and DNA
6 Analysts.

7 Q. Have you been published?

8 A. Yes, I have.

9 Q. What were your papers regarding?

10 A. Three of the papers that I was a co-author of, they
11 had to do with Y chromosome testing for forensic case work, and
12 they were published in the Journal of Forensic Science.

13 Q. Have you testified in courts as an expert before?

14 A. Yes.

15 Q. On few or many occasions?

16 A. Many.

17 Q. And have you been deemed an expert here in the courts
18 in Texas?

19 A. Yes, I have.

20 Q. All right. I want to turn your attention to some
21 work that you did on Case No. MF11-0007. Have you had a chance
22 to review that case file?

23 A. Yes, I have.

24 Q. Okay. I want to start with your involvement at the
25 beginning of this case. We've already heard testimony that Ms.

1 Feller did the extractions. After she did the extractions,
2 what happened with that sample next?

3 A. After she performed the extraction, the DNA was in a
4 liquid form in a tube, and I took that tube and I combined the
5 DNA extract from that extraction with the DNA extract that was
6 sent to us by HPD crime lab. And the purpose of the combining
7 was to concentrate the DNA and to concentrate the amount of DNA
8 that was present in the sample.

9 So I basically took our extract and HPD's extract and
10 combined them together, and then I concentrated them using a
11 procedure called drying down, which basically evaporates the
12 water out of the sample so the DNA is concentrated.

13 Q. All right. So there's two penile swabs that are
14 collected in this case; is that correct?

15 A. Correct.

16 Q. And one swab you-all perform the extraction on?

17 A. Yes.

18 Q. Ms. Feller did that one?

19 A. Correct.

20 Q. The other extraction came from HPD and they sent you
21 that extraction and you combined both of those?

22 A. That's correct, yes.

23 Q. Okay. After you combined the extractions and you
24 went through the drying procedure --

25 A. Yes.

1 Q. First of all, were there any machines that aided in
2 doing that stuff?

3 A. Yes. There is just one machine that is called a
4 centrifuge, and that is what is used to evaporate the water.

5 Q. All right. That spins really fast and gets all the
6 water off of the sample?

7 A. Yes. It's heated so then the water evaporates.

8 Q. Okay. So after the extraction, what happened with
9 that sample next, where did it go?

10 A. After the extraction the sample was quantitated, and
11 Jennifer Crunk is the person who did the quantification.

12 Q. All right. Now, after quantification what happens
13 next?

14 A. The next process is called amplification, or PCR
15 reaction, which stands for polymerase chain reaction.

16 Q. And who did the amplification step?

17 A. I performed the amplification step.

18 Q. Can you tell us what is involved in performing the
19 amplification step?

20 A. Sure. An amplification step basically works like a
21 Xerox copy machine. So you feed something into the copy
22 machine and the machine spits out millions of copies of that
23 paper. So just like a Xerox copy machine, we target certain
24 regions of DNA that are the most distinguishable from one
25 individual to another, and those regions are called STR's, or

1 short tandem repeats.

2 So we use certain reagents or chemicals that are
3 called primers to basically target those regions, and the
4 machine, which is called thermocycler, makes millions of copies
5 of those targeted regions.

6 Q. After amplification you move into which step next?

7 A. The next step is called electrophoresis detection,
8 and that is where the DNA that is amplified gets separated
9 based on its size. So then the numbers or DNA typings can be
10 assigned to the DNA fragments based on their size.

11 Q. Okay. Now, at this point have you already determined
12 that a MiniFiler needs to be done before you get to the
13 amplification and detection stage or was that determination
14 made when you got to those stages?

15 A. That determination was made prior to the
16 amplification step, so the mini STR kit or MiniFiler kit was
17 used at the amplification step to target those certain regions
18 of DNA.

19 Q. Okay. I want to go back and talk about the
20 amplification and detection steps. Can you tell the Court
21 about the machines that were used in those steps and the
22 maintenance of those machines?

23 A. Sure. During the amplification step we use a machine
24 called a thermocycler, that basically based on the temperature
25 variations it makes millions of copies of DNA. Those machines

1 are maintained on a weekly, monthly, and quarterly basis, and
2 our records indicate that all of those machines and the machine
3 that was used in this case was, in fact, maintained and the
4 weekly, quarterly, and monthly maintenance was done on that
5 machine.

6 The machine that we use for the detection is called a
7 genetic analyzer, and that machine is maintained annually, and
8 it is also maintained daily. You have to change out the
9 reagents and the chemicals are used in the machine on a daily
10 basis, and there is also a weekly maintenance. And all those
11 maintenances were performed on the genetic analyzer that was
12 used on this case as well.

13 Q. Okay. So when you decided to do -- when the decision
14 was made to do the MiniFiler, why was that decision used, or
15 made to use the MiniFiler?

16 A. Sure. Actually the MiniFiler test was requested by
17 the Houston Police Department crime lab. But usually this type
18 of test is used for DNA samples where you expect to find DNA
19 that is degraded or broken down, or DNA that is in very minimal
20 or limited quantity. This is the most sensitive kit that is
21 available today at least in order to do the DNA testing of
22 samples of limited quantity. And for that reason, in this
23 case, the mini STR or MiniFiler test was requested.

24 Q. What is the difference between degraded DNA and low
25 sample DNA?

1 A. Sure. Degraded DNA is DNA that breaks down over
2 time. So you can have a lot of DNA but it may just be broken
3 down or degraded. That kind of DNA you would find from, let's
4 say, a human remains or a skeletal bone that is 50 to 60 years
5 old. There's going to be a lot of DNA within that bone, but
6 because it's been preserved for 50 to 60 years it's going to be
7 broken down. So in that type of case, a MiniFiler test can be
8 used to target those broken regions of DNA.

9 A low copy sample or a low quantity sample is one
10 where you don't have a lot of DNA to begin with. So, for
11 example, if it is a touch DNA sample where somebody touched,
12 maybe somebody didn't leave that many cells behind so you have
13 a limited quantity to start with.

14 Q. All right. So, for instance, if it's a penile swab
15 that you're testing, and there is evidence that the person was
16 wearing shorts and their -- the suspect's penis is rubbing up
17 against the shorts, could that result in a low sample?

18 A. From the penile swab?

19 Q. Yes, ma'am.

20 A. Yes, that's possible, because the DNA that was most
21 likely found on the penis would get wiped off by coming into
22 contact with the shorts.

23 Q. Okay. And additionally if somebody has changed their
24 clothes, could that also affect having a low sample?

25 A. Yes. Again, if that DNA came into contact with

1 another surface and it was rubbed against that fabric, then the
2 majority of the DNA would get transferred to that fabric and
3 you may not find that much DNA on the penis itself.

4 Q. How about if somebody washed themselves, washed their
5 penis or used the restroom, would that also contribute to
6 having a low sample?

7 A. Yes, that would.

8 Q. Okay. Now, you performed some steps in the process
9 of getting the data. Is that fair to say?

10 A. Yes.

11 Q. Okay. After the data was obtained, it then went to
12 Jill Cramer; is that correct?

13 A. Yes. She did the analysis and then wrote the report.

14 Q. Okay. And on that first report you were the
15 technical reviewer; is that correct?

16 A. That's correct.

17 Q. Do you remember discussing the case with Jill Cramer
18 when she obtained her results?

19 A. Yes, I do.

20 Q. And what do you remember from those conversations?

21 A. We -- I remember that we discussed the statistical
22 analysis in this case, that how we were only able to use one
23 marker for statistical calculations, and because it was a very
24 limited result that was obtained in this case.

25 Q. Okay. And after discussing those issues, did you

1 make any determination about what to do next?

2 A. Yes. After discussing it with Jill, I decided to
3 discuss the case with my lab director at the time, who is Dr.
4 Rick Staub, and I discussed the statistical calculations with
5 him to ask him if there was any other sort of statistical
6 calculations we could do that would give better weight to the
7 conclusion that we drew in this case. And then Dr. Rick Staub
8 decided that we could do a calculation called a likelihood
9 ratio, where the statistical calculations or the weight of that
10 match may be a little bit higher.

11 Q. All right. So let's back up. What type of test or
12 analysis did Jill Cramer use on the first round of testing?

13 A. Jill used the STR data that was obtained and she used
14 the random match probability calculations.

15 Q. Okay. Can you explain what kind of a test that is?

16 A. Yes. The statistical calculation that is used in the
17 random match probability is basically telling you how many
18 other people in the world could have the same DNA profile as
19 was found on the evidentiary item.

20 Q. Okay. And then you stated that you and Dr. Staub
21 then in the -- in your second report did a likelihood ratio; is
22 that correct?

23 A. Yes, that is correct.

24 Q. What is a likelihood ratio?

25 A. So the likelihood ratio is a different type of

1 calculation that basically looks at two theories. So we know
2 that the penile swab originated from or it was collected from
3 Mr. Wood, so we know that his DNA is going to be present on
4 that swab. So what we are looking for in this case then is two
5 theories saying that the DNA that was found on the sample
6 either belonged to Mr. Wood and the victim in this case, Flora
7 Ryan, versus it belonged to Mr. Wood and some other random
8 individual.

9 So then we calculate the likelihood ratio to say what
10 is the likelihood ratio that the DNA in this case came from
11 Dean Wood and Flora Ryan other than Dean Wood and somebody else
12 collected at random.

13 Q. Okay. And we'll talk about that second test in a
14 moment, but I want to go back to the first test.

15 A. Sure.

16 Q. Where you were the technical reviewer. The first
17 test only tested one loci; is that correct?

18 A. Locus, yes.

19 Q. Okay. And why did it only test one locus?

20 A. At the time this report was issued, we did not in our
21 laboratory have the frequency data that was needed to calculate
22 the statistics on the second marker, or the second locus, so --
23 and we issued the results only on the one locus, which is
24 actually a more conservative calculation.

25 Q. Okay. And you also stated in the first report that

1 because of the partial possible mixture, no determination could
2 be made regarding Dean Wood as a possible contributor to the
3 sample?

4 A. Correct.

5 Q. How is that when we know that it is his penile swab?

6 A. The reason we did that -- and like I said, it was
7 basically being more conservative in this case, because he has
8 two DNA typings, one that he received from his biological
9 mother and the other one that he received from his biological
10 father. One of those DNA typings was present in the data above
11 our reporting threshold, and the other DNA typing was below our
12 reporting threshold, so although it was present and we could
13 clearly see it, we could not at the time use it for statistical
14 calculations. And for that reason, we had to say that we
15 couldn't make a determination at that point whether he was a
16 contributor or not to the sample.

17 Q. Okay. So looking at it, you are confident in knowing
18 that it's Dean Wood's DNA, but because it doesn't meet your
19 threshold, you take the conservative approach of not factoring
20 that into your statistics?

21 A. That's correct.

22 Q. Is that correct? Okay.

23 When you did the second report, you used the same
24 data from the first report; is that correct?

25 A. Yes, that is correct.

1 Q. Okay. And in the second report you are actually
2 listed as the analyst and Dr. Staub is listed as your technical
3 reviewer; is that correct?

4 A. Yes.

5 Q. Okay. So using the second -- using the same data but
6 applying it to a likelihood ratio test, what results or
7 conclusions did you make?

8 A. In this case when we apply the likelihood ratio, we
9 know that Dean Wood cannot be excluded from that sample
10 because, one, his alleles were present or his DNA typings were
11 present in the sample, and secondly, even if we -- we don't
12 need to use the frequency of his data for the likelihood
13 calculation. So what we are basically trying to look at is
14 what is the -- how likely is it that this DNA that is present
15 in this sample came from Dean Wood and Flora Ryan versus that
16 it came from Dean Wood and some other random individual.

17 Q. Okay. And what were your results when you applied
18 those calculations?

19 A. So the results for the likelihood ratio that it is
20 for the Caucasian population group, it is a hundred two times
21 more likely that the DNA present in this case came from Dean
22 Wood and Flora Ryan than the fact that it came from Dean Wood
23 and some other individual.

24 Q. What other areas use likelihood ratios?

25 A. Likelihood ratio is generally used in criminal

1 paternity cases all the time, and then again it can also be
2 used in forensic cases such as this where the, like I said, the
3 random match probability is low, you still have the option to
4 use likelihood ratio.

5 Q. Okay. So both the probability ratio and the
6 likelihood ratio are both accepted analysis in the scientific
7 community and in the courts?

8 A. Yes, they both are.

9 Q. Okay. Now, if -- also on the second test, did you
10 also compare other DNA profiles that were provided to you by
11 HPD?

12 A. Yes, we did.

13 Q. And whose profiles were those?

14 A. Those were profiles from individuals named Mary
15 Ostlund and Julie Ostlund.

16 Q. Okay. And were you able to receive any conclusions
17 based on Mary Ostlund?

18 A. Yes. Mary Ostlund at the two markers where we did
19 obtain results shared the same DNA typings as Flora Ryan, so
20 our conclusion is that Mary Ostlund could also not be excluded
21 from this sample.

22 Q. Is it uncommon for mothers and their daughters to
23 have the same DNA at those locations?

24 A. No, not at all. You as a child, you get at least
25 50 percent of your DNA from your mother. So at least

1 50 percent of that DNA is going to be the same. So it's not
2 uncommon for them to share those DNA typings.

3 Q. All right. What were your conclusions regarding
4 Julie Ostlund?

5 A. Julie Ostlund was excluded as a possible contributor
6 to the sample.

7 Q. Okay. Is that because on those two loci that you
8 were testing she is not present at all?

9 A. Correct. Her DNA typings are different than the ones
10 that we obtained in the evidentiary profile.

11 Q. Okay. So in your second report, you cannot exclude
12 Flora Ryan as being present in those two locations; is that
13 correct?

14 A. Yes. She could not be excluded.

15 Q. And although you had limited data, you were still
16 able to obtain that result?

17 A. We had limited data, but it was sufficient to make a
18 comparison. Those were not inconclusive results. We still
19 could make a comparison to the profile that we obtained.

20 Q. Okay. And if you had not been able to make a
21 conclusion, what would you have reported?

22 A. Then we would have said that the results obtained
23 were inconclusive and we could not make any comparisons.

24 Q. Is it uncommon for you to be able to draw conclusions
25 of included or excluded at only two markers?

1 A. No. If the results are clear and we know how many
2 people are present and we can say that whether it's a single
3 source profile or a mixture profile, then we can make a
4 comparison to known samples.

5 Q. Did you use any type of different software in order
6 to perform the likelihood ratio?

7 A. Actually, Dr. Staub calculated the likelihood ratio
8 manually, and he most likely also used the Microsoft Excel
9 software.

10 Q. Is that Microsoft -- is the Excel software the same
11 software that Jill would have used in the probability ratio?

12 A. No. She uses another software that is actually
13 maintained by the FBI. He used Excel just because he was doing
14 manual calculations and manual multiplication.

15 Q. Okay. Now, I want to kind of go back and talk to you
16 generally about the equipment that was used.

17 A. Sure.

18 Q. If the equipment was not properly maintained, would
19 you have been able to reach any kind of conclusions in the
20 first or the second report?

21 A. No. If the equipment was not properly maintained and
22 it was malfunctioning, then you would have one of two outcomes,
23 either the process that we were trying to perform, that
24 procedure would fail and it would not work and you would not
25 get any results at all, so that would have been one outcome.

1 Another possible outcome is that our internal controls that we
2 use in both the amplification, extraction, quantitation, and
3 detection steps, those controls would not have passed if the
4 equipment was malfunctioning, and if those controls would have
5 failed, then we would not have used that data for reporting or
6 to draw conclusions.

7 Q. Now, did you know Elizabeth Feller?

8 A. Yes.

9 Q. Were you working at Orchid at the same time she did?

10 A. Yes, I was.

11 Q. And do you know the basis for her termination?

12 A. I know the -- yes, general information, I do have.

13 Q. Okay. Did her termination result in the lab having
14 to go back and do any type of retesting or reanalysis on any of
15 the cases that she worked on?

16 A. No. We did evaluate the case work, but the reason
17 for her disciplinary action did not affect any of the cases
18 in-house.

19 Q. Okay. And more specifically, did it affect this case
20 for Dean Wood on either of his two cases?

21 A. No, not at all, because the one step that the reason
22 why she was terminated, she did not even perform that stuff in
23 this case.

24 Q. Okay.

25 MS. FULLER: Pass the witness, your Honor.

1 CROSS-EXAMINATION

2 BY MR. HOCHGLAUBE:

3 Q. It's Ms. Nasir?

4 A. Yes.

5 Q. The way I'm understanding you is that Jill Cramer
6 does one analysis, which is sort of the normal DNA analysis,
7 and comes back with results sort of 6, 7, or 8 to 1 based on
8 race?

9 A. Right.

10 Q. And regularly when we see DNA testing we'll see a
11 billion to one or a trillion to one or quintillion to one,
12 right?

13 A. Yes, that's correct.

14 Q. And this is the same sort of, I guess, equation or
15 analysis that led in this case to possibly 6 to 1?

16 A. That's correct, yes.

17 Q. Okay. And you and Dr. Staub went back and said,
18 let's do another calculation on this because 6 to 1 doesn't
19 really look very strong, right?20 A. Well, it's not a very strong weight to the match,
21 yes.

22 Q. And you guys did another equation?

23 A. Right.

24 Q. And you guys said, well, it's a hundred two times
25 more likely that this DNA came from Flora Ryan or her daughter,

1 right?

2 A. Yes.

3 Q. As opposed to any other random person in the world,
4 right?

5 A. That is a combination of Flora Ryan and Dean Wood and
6 her daughter than any other random person in the world, yes.

7 Q. Right. So it's two of three of those people, right?

8 A. Yes.

9 Q. Now, as I'm understanding that then, I mean, that's
10 sort of like a little bit of mathematical gamesmanship, is it
11 not?

12 A. It's just another statistical calculation. So you
13 can -- they're both accepted methods in the forensic community,
14 and the SWGDAM guidelines say you can use either one, and
15 according to those guidelines we are allowed to use either one
16 of the ratios or either one of the formulas in the statistics.

17 Q. Okay. I mean, as I'm understanding you, and I want
18 to make sure I'm understanding you, right, so let's say we look
19 at the city of Bellaire, Texas, and we see that .01 percent of
20 the population there gets lung cancer, right?

21 A. Right.

22 Q. And we go to Pasadena, Texas and we see that
23 1.02 percent of the population there gets lung cancer, right?

24 A. Okay.

25 Q. Then you can say a person's 102 times more likely to

1 get lung cancer if they live in Pasadena as opposed to
2 Bellaire, right?

3 A. Correct.

4 Q. And that's basically the kind of testing you're
5 doing, right?

6 A. Sort of, yes.

7 Q. And even though a person in Pasadena is only
8 1.02 percent likely to get lung cancer, right?

9 A. Right.

10 Q. You can still say, well, it's 102 times more likely
11 here as opposed to there, right?

12 A. Right, yes.

13 Q. And it's a way for Orchid Cellmark to basically sort
14 of dramatize the numbers so that people will see, wow, it's so
15 much more likely that this DNA came from either Flora Ryan or
16 her daughter, right?

17 A. Well, I wouldn't say that it's a way for us to
18 dramatize it, it's just another way to do the calculation to
19 report those statistics. And like I said, any forensic
20 laboratory is allowed to do that, and that's actually the way
21 that you report statistics in any criminal paternity case. So
22 it's not that Orchid is the only laboratory using those
23 calculations or we're just doing that to dramatize it. Rather
24 than having an inconclusive result, we're trying to see what
25 kind of math we can assign to this -- what kind of weight we

1 can assign to this match.

2 Q. Right. But you didn't have any conclusive result
3 beforehand. You had one in six, right?

4 A. And it was still, the conclusion was still that
5 Flora --

6 Q. Is that right, ma'am?

7 A. Yes, that is.

8 Q. And as I understand it then, when somebody comes back
9 with a thousand to one or ten thousand to one or ten million to
10 one, in those situations you don't go back and come back and
11 say, well, it's a certain number times more likely to be this
12 person as opposed to another person, right?

13 A. Yes.

14 Q. You only do it when the ratio is exceedingly weak; is
15 that right?

16 A. That's correct, yes.

17 Q. And it's basically a way for you to take even
18 exceedingly weak ratios and make them appear stronger, right?

19 A. It's just another way of presenting the statistics.

20 Q. To make the appearance stronger, correct?

21 A. It does make it stronger, yes.

22 Q. The -- now, it sounded like -- sounded like you were
23 testifying from actual memory of your involvement in this case;
24 is that true.

25 A. I performed some of the laboratory work myself.

1 Q. Okay. Let me -- let me ask you these questions
2 another way.

3 A. Sure.

4 Q. Do you actually have memory of doing the
5 amplification in this case?

6 A. No. That was back in 2001. I do not have memory of
7 it, I just have records.

8 Q. It's not 2001, it's --

9 A. 11. Sorry. Yes.

10 Q. Okay. Right. So basically what you're doing is
11 you're looking at the record, right?

12 A. Yes.

13 Q. And the record says, well, this happened at some time
14 in 2011, right?

15 A. That I performed the testing and I checked everything
16 that I was supposed to check, yes.

17 Q. Right. But you don't actually have any personal
18 memory of going through the amplification process back in 2011,
19 right?

20 A. That's correct. And that's why we have our record.

21 Q. Absolutely.

22 The -- so what you're basing this on is what you
23 believe your notes were from 2011, correct?

24 A. Yes.

25 Q. And it's not from anything that you can remember

1 through your own brain of having actually done in 2011,
2 correct?

3 A. No.

4 Q. Now, this decision to go back and sort of do
5 additional mathematics to come back with a stronger number,
6 right?

7 A. Right.

8 Q. Do you remember having this conversation with
9 Dr. Staub?

10 A. Yes, that I do.

11 Q. That part you actually have actual memory of?

12 A. Yes.

13 Q. When did you have this conversation with Dr. Staub?

14 A. Before issuing that report. I do not remember the
15 exact date.

16 Q. Okay. So you realize Jill Cramer's report came out
17 in September of 2011, right?

18 A. Yes.

19 Q. And your report with Dr. Staub came out in December
20 of 2011, right?

21 A. Yes.

22 Q. Do you remember thinking to yourself, 6 to 1 is a
23 pretty weak number, I ought to take this to Dr. Staub and see
24 how we can make this look better?

25 A. Only when they submitted more references for

1 comparison, and that's the only time I went back to Dr. Staub
2 and asked him if there was any other calculation we could do.

3 Q. So when did they submit more references for
4 comparison?

5 A. Can I refer to my notes?

6 Q. Yes.

7 A. (Complies.) It was sometime in October of 2011.

8 Q. Okay. Now, so October 2011 is when it comes into
9 your mind, I would like to come up with a stronger numbered
10 analysis. Is that --

11 A. Only when I went to make more comparisons, yes.

12 Q. Is that in October also?

13 A. Yes, when they submitted more profiles for
14 comparison.

15 Q. All right. So this idea of going to Dr. Staub to get
16 a better number, does that happen, the idea, does that happen
17 in October or November or December?

18 A. I don't remember. Sometime when I was writing that
19 report, or prior to writing that report.

20 Q. Okay. So you then go -- the report that comes out
21 with Dr. Staub we said is December, correct?

22 A. Yes, that's correct.

23 Q. Did your actual math work to come up with this
24 hundred and two times more likely, did that occur in December,
25 November, or October?

1 A. One second. That was December 13, 2011.

2 Q. Well, I understand that's when the report comes out,
3 right?

4 A. No. That's when Dr. Staub reviewed and did the
5 calculations as well he actually dated them.

6 Q. So is it Dr. Staub that did the calculations --

7 A. Yes.

8 Q. -- or did you do it?

9 A. Dr. Staub did the calculations.

10 Q. So then why are you listed as the primary analyst?

11 A. Because I wrote the report.

12 Q. What is it about your report that's different than
13 Jill Cramer's report?

14 A. One, we made more comparisons to two additional
15 people, and secondly, we did the likelihood ratio and not the
16 random match probability.

17 Q. Okay. So the only difference is that Jill Cramer --
18 I mean, because you don't do the math at the end, right?

19 A. Right.

20 Q. That's Dr. Staub?

21 A. Yes.

22 Q. And so the only difference is that here, as opposed
23 to in Jill Cramer's report, you also include the analysis of
24 Mary Ostlund's DNA, right?

25 A. Yes.

1 Q. And Julie Ostlund's DNA?

2 A. That's correct.

3 Q. All right. And the results are that you can exclude
4 Julie Ostlund's DNA as being within -- as being on the penile
5 swab, right?

6 A. Yes.

7 Q. But Mary Ostlund's DNA and Flora Ryan's DNA are both
8 consistent with the swab, right?

9 A. Yes.

10 Q. And certainly you have from your own personal
11 knowledge no likelihood distinction between whether that is
12 Mary Ostlund's DNA or Flora Ryan's DNA, correct?

13 A. That's correct. They shared those same DNA typings.

14 Q. So from the analysis that you did --

15 A. Yes.

16 Q. -- it's a 50 percent chance that it's Flora Ryan with
17 the defendant and it's a 50 percent chance that it's Mary
18 Ostlund with the defendant?

19 A. That's correct.

20 Q. The -- the thermocycler, that makes millions of
21 copies in this case, right?

22 A. Yes, yes.

23 Q. You were testifying about the various maintenance
24 procedures that are -- that Orchid Cellmark did on that
25 machine, right?

1 A. Yes.

2 Q. Now, again, I'm talking about what your actual memory
3 is, not what's written on the piece of paper. You don't have
4 actual memory of these maintenance procedures being performed,
5 correct?

6 A. No, I do not.

7 Q. And the same is true with the genetic analyzer that
8 was -- it's another machine that's used in this case?

9 A. Yes.

10 Q. You have no personal recollection of how this machine
11 was maintained, correct?

12 A. That's correct.

13 Q. Now, in this case, you talked about MiniFiler being
14 useful because this was a limited quantity of DNA, correct?

15 A. Yes.

16 Q. And Cellmark Orchid basically used the entirety of
17 the DNA that it was given, right?

18 A. Uh, again, could I refer to my notes?

19 Q. Sure.

20 A. Give me one second. We extracted the entire swab
21 that we were given, and I concentrated it down, and we had
22 about 15 microliters of extract to use, and out of that we used
23 about 7 for our analysis. So there should have been about 8
24 microliters of DNA extract remaining. None of the swab, but
25 the DNA extract there should be remaining.

1 Q. And where is that now?

2 A. We returned it to the HPD crime lab.

3 Q. And as I'm understanding it, you guys combined your
4 own fluid with DNA with what HPD sent you as fluid with DNA?

5 A. Yes.

6 Q. And you obviously cannot speak to the procedures and
7 the protocols of the HPD lab, right?

8 A. That's correct.

9 Q. So if something was wrong the way the HPD lab -- if
10 the sample that they ultimately sent you was flawed or had a
11 problem with it, then that would have made your result invalid
12 too, right?

13 A. The only thing I can say in regards to that is they
14 did also send what is called a reagent control, a reagent blank
15 that is used in the process of extraction to monitor for
16 contamination. And I took that reagent blank and combined it
17 with our reagent blank and there was no DNA detected from that
18 sample. So there was no reagent contamination in that sample.

19 Q. Okay. Let me ask you this question one time and just
20 get a yes or no answer. If the HPD sample that you mixed with
21 your own sample --

22 A. Right.

23 Q. -- was flawed, all right, if it was flawed, would
24 that impact the testing that Cellmark Orchid did?

25 A. Yes.

1 Q. The reason why you combined the sample with HPD's
2 sample is because you were concerned that the amount of DNA to
3 be tested was so low, correct?

4 A. Yes.

5 Q. And you wanted to add as much DNA to be tested as
6 possible, right?

7 A. Correct.

8 Q. Even doing that, combining as much DNA sample as you
9 could, the ratio that you came back with was 1 in 6 possibility
10 that this was Flora Ryan's DNA, correct?

11 A. Right.

12 Q. And we know based on the further testing that was
13 done of Mary Ostlund, that there's also -- it would also be a 1
14 in 6 chance that this would be Mary Ostlund's DNA, correct?

15 A. Yes.

16 Q. Or 6 to 1 I should say?

17 A. Right.

18 Q. With Ms. Feller and her termination --

19 A. Yes.

20 Q. -- she -- she was apparently terminated for
21 re-exported information onto a computer; is that right?

22 A. That is my knowledge, yes.

23 Q. What does that mean?

24 A. Hmm, basically when you are trying to perform any
25 kind of test on a machine, you have sort of like an Excel

1 spreadsheet with all the sample numbers that you export to a
2 network drive, and then import it into the machine so that
3 machine can do the work. And our policy, I believe, is not to
4 export it more than one time, and my understanding is that she
5 exported it a second time.

6 Q. And she would have been aware that that was the rule,
7 not to export it a second time, right?

8 A. Everyone should have been aware of that, yes.

9 Q. And why would somebody want to export something a
10 second time?

11 A. I don't know. You would have to ask Liz.

12 Q. Okay. I mean, is it possible that if you don't like
13 the way that the testing comes out the first time that you
14 would export it a second time basically to make the results --

15 A. No.

16 Q. -- more --

17 A. No, that is not what you're exporting the list for.
18 It's basically just for the sample order. So if the samples
19 are being processed in order one, two, three, four, she could
20 have made it to say that they should run in an order of four,
21 three, two, one, but it wouldn't change the result for the
22 sample.

23 Q. So to your mind her mistake was one of sloppiness not
24 one of deception?

25 A. I really was not involved with her termination

1 procedure, I just know that she was disciplined for not
2 following policy, and that's the reason why she was terminated.
3 So I really don't have all the details of what was involved.

4 MR. HOCHGLAUBE: I'll pass the witness, Judge.

5 THE COURT: Anything further from this witness?

6 MS. FULLER: Nothing further, your Honor.

7 THE COURT: All right. We're going to take a small
8 break and take a plea.

9 (Break.)

10 THE COURT: All right. Ms. Fuller, would you like to
11 call your next witness.

12 MS. FULLER: Yes, your Honor. The State would like
13 to call Dr. Rick Staub.

14 THE COURT: You may proceed.

15 MS. FULLER: Thank you, your Honor.

16 DR. RICK STAUB,
17 having been duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MS. FULLER:

20 Q. Would you please introduce yourself to the Court.

21 A. Yes. My name is Dr. Rick Staub. I'm from Plano,
22 Texas.

23 Q. All right. Let's start with your educational
24 background, then we'll work forward to your work experience.

25 A. Sure.

1 Q. Tell us a little bit about your educational
2 background.

3 A. I have a bachelor's degree in mathematics from the
4 University of Wisconsin, and after that I proceeded to obtain a
5 master's and a PhD in genetics from the University of Arizona.

6 Q. Okay. Were there any subspecialties that you focused
7 your studies on during your master's and PhD work?

8 A. Well, at the time I did my masters and PhD work I was
9 actually working on plant genetics that focussed on chromosomes
10 and DNA, and after leaving there I became a standard professor
11 at Carlton College in Northfield, Minnesota, where I was for
12 eight years, teaching genetics and working on research in corn
13 genetics, maize genetics.

14 After that, I left there to take a job in commercial
15 identification industry, human identification industry, for
16 paternity testing. I worked at a lab in North Carolina for
17 three years doing that, and then I came to Houston, Texas in
18 1993 to start a laboratory with a woman called named Caroline
19 Caskey, and that laboratory was called Identigene, and it
20 became a very large paternity testing company, and then
21 eventually branched off into forensic testing. We used to do
22 testing for the Houston Police Department.

23 In 2000, though, I moved to Dallas to take a position
24 as the laboratory director. I had been a laboratory director
25 at Identigene, and I was named laboratory director and

1 compilations director at Orchid. At that time it was called
2 Gene Screen and then it became Orchid Cellmark eventually, and
3 I was there until 2012 when LabCorp purchased the company.

4 Q. All right. And where are you at now?

5 A. And now I am at my local police department, the Plano
6 Police Department, where I manage the crime scene investigation
7 unit and the property evidence room, and I'm also acting as a
8 DNA liaison between the detectives and DNA labs.

9 Q. Okay. So you mentioned that in -- with Identigene
10 all the way through to Cellmark that you were a lab director?

11 A. Yeah. Actually I was the lab director before that at
12 the company in North Carolina which was called -- it was
13 called -- gosh, I can't even remember -- anyways, it was a
14 large paternity testing laboratory. Genetic Design. Sorry.

15 Q. Okay. So we've already heard from two DNA analysts
16 in this case. Did you do DNA analysis work throughout your
17 career?

18 A. Yes.

19 Q. And as a lab director, did you continue to do DNA
20 analysis work?

21 A. Yes.

22 Q. Or did you then kind of shift more into a technical
23 review?

24 A. Well, as a lab director I would basically be
25 responsible for making sure that my analysts understood how the

1 process worked and how to carry out the tests, and then I would
2 technically review their work and sign off cases with them.

3 Q. Okay. So back in 2011 you were the technical
4 reviewer on -- let me back up first. Have you testified before
5 as an expert in courts?

6 A. Yes, many times.

7 Q. Okay. And were you deemed an expert in the courts in
8 Texas?

9 A. Yes, right here in Houston as well.

10 Q. Okay. And are you published?

11 A. Yes, I am.

12 Q. Okay. Back in 2011 you were given a case that you
13 were the technical reviewer on. The case number was MF11-0007.
14 Do you recall this case and have you had a chance to review it?

15 A. Yes.

16 Q. Okay. Now, Huma Nasir was the analyst in the case.
17 However, you did some calculations in this case in addition to
18 being the technical reviewer; is that correct?

19 A. That's correct.

20 Q. So at what point did Huma come to you, I don't mean
21 point in time, but at some point in time Huma came to you to
22 discuss this case; is that correct?

23 A. Yes.

24 Q. All right. What did you-all talk about in terms of
25 the results in the first round of testing that came through

1 with this case?

2 A. Well, she showed me what had been done already, and
3 asked me to look at it, and give her my opinion on it.

4 Q. Okay.

5 A. And at the time that I looked at it, my opinion was
6 that the sample that was obtained, it was a sample from a
7 penile swab from Dean Wood, and that penile swab, clearly the
8 profile was obtained with MiniFiler, and it was -- it was a
9 partial profile, so when you get a partial profile, typically
10 that means it's a pretty low level sample. And I looked at the
11 results, there were only two loci that gave results, but it was
12 clear to me that there was a mixture of two people there.

13 Now, obviously, the prime candidate for one of those
14 components would be Dean Wood because it was a swab from his
15 own penis, and then there appeared to be another person as
16 well. So my point to Huma was you could look at it two
17 different ways. One would be that you could look at it as a --
18 you could do what's called an inclusion probability. So you
19 look at the results that are there and then you calculate how
20 many people out of various populations would be included in
21 that mixture. But when you do that, you're looking at it just
22 saying all the alleles that are there and anybody that has any
23 kind of a profile that could be included in there would be
24 included in your stats.

25 That's not taking into account all the information

1 you have, because you know that the penile swab is from a
2 particular person, in this case Dean Wood, so it's important to
3 look at his profile and then look at what else is there, and
4 calculate what we call a likelihood ratio. And that likelihood
5 ratio tells you the likelihood ratio that it's from Dean Wood
6 and somebody else versus Dean Wood and the victim, which in
7 this case was Flora Ryan I believe.

8 Q. Okay. So the likelihood ratio test would take into
9 consideration all of the data that you had versus the random
10 probability that leaves out some of the data that you have, is
11 that --

12 A. Correct.

13 Q. -- correct?

14 A. Yeah. It's -- it's more all encompassing. You're
15 taking into account more -- more of the genetics behind what
16 you're -- what you're seeing. And granted, there's only two
17 loci that came through in the data, so it's not very strong
18 data, I'm just going to say that right off the bat. So because
19 of that, the -- any statistics that you produce are going to be
20 fairly -- not as probative as if you had eight loci, all the
21 loci in the MiniFiler working.

22 Q. So the statistics are going to be lower because you
23 have less loci to test versus having the whole nine available?

24 A. When you say lower, probably -- lower -- a lower
25 statistic means a higher probability. So anyways, yeah, the

1 statistics would be worse, in other words, they're not as
2 informative as if you had more loci.

3 Q. Okay. But did you feel that you had enough loci to
4 actually do the likelihood testing?

5 A. Well, yeah. I mean, you still have results there and
6 you can still look at them and say what they mean, even though
7 it's a low level, yes.

8 Q. Okay. So you actually performed the statistics in
9 the second report; is that correct?

10 A. Yes.

11 Q. How did you do that?

12 A. We have a -- you know, there's just standard protocol
13 that you would use to calculate a likelihood ratio, and I just
14 calculated it out mathematically using a spreadsheet, and then
15 Huma checked my calculations using the known frequencies, or
16 estimated frequencies that we have for alleles at the two loci
17 that we had data for.

18 Q. Okay. So are you using a computer software program
19 or are you just using the protocols and you're using, like an
20 Excel spreadsheet to help you do those?

21 A. Yeah, I'm using an Excel spreadsheet and using the
22 formulae that we know represent the likelihood ratio.

23 Q. Okay. And so what statistics did you come up with
24 for the second report?

25 A. Well, on the second report, the statistic for the

1 likelihood ratio and -- you know, we calculated for three
2 different races that we had allele data for, Blacks, Caucasians
3 and Southwest Hispanics, and the likelihood ratio comparing
4 Mr. -- and probably the best one to look at actually would be
5 Caucasians because that's the race that the victim and the
6 defendant are.

7 So when you look at Caucasian frequencies, the
8 likelihood of getting those results from Mr. Dean and someone
9 else is only 1 out of 102 times as likely as getting it from
10 Mr. Dean and Flora Ryan. So that's the way a likelihood ratio
11 works. In other words, it's 102 times more likely to get those
12 results from the suspect and the victim as it would be from the
13 suspect and someone else of the -- unrelated to that person, to
14 the victim.

15 Q. Okay. Now, both of these types of testing, both
16 types of testing are established tests that you can do, and
17 when I say established tests, I mean the analysis, whether you
18 do the random probability or the likelihood ratio, they're both
19 standard means of analysis. Is that fair to say?

20 A. Yes.

21 Q. Okay. And you performed both in this case, or your
22 lab did, and they reported both of those results. Is that fair
23 to say?

24 A. Yeah. We issued a second supplementary report,
25 supplemental report with this likelihood ratio statistics in

1 it.

2 Q. Okay.

3 A. And we also compared one other person in that report.
4 It was a relative of Flora Ryan.

5 Q. Okay. And were you able to include or exclude that
6 person?

7 A. Flora Ryan's daughter could not be excluded as a
8 possible contributor, which is not un -- it's not unbelievable
9 because she's, you know, shares many genes with Flora, but her
10 granddaughter could be excluded as a component.

11 Q. So the bottom line, when you take the statistics and
12 the numbers out, the bottom line is that you can't exclude
13 Flora Ryan or her daughter as having DNA on that penile swab.
14 Is that a fair statement?

15 A. Yes, we cannot exclude that possibility.

16 Q. Okay. And if you didn't have enough data or the data
17 was inconclusive, you would have reported that?

18 A. Yes.

19 Q. Is that correct?

20 A. Yes.

21 Q. And if there wasn't enough data to -- or if there was
22 enough data to exclude somebody, you would have and, in fact,
23 you did exclude somebody in these tests?

24 A. Yes.

25 Q. Now, were you the lab director when -- when Elizabeth

1 Feller was let go from Orchid Cellmark?

2 A. No. I was no longer there.

3 Q. So you have no knowledge whatsoever about the
4 circumstances that led to her leaving Orchid Cellmark?

5 A. No.

6 MS. FULLER: Pass the witness, your Honor.

7 THE COURT: Cross-examination?

8 MR. HOCHGLAUBE: Thanks, Judge.

9 CROSS-EXAMINATION

10 BY MR. HOCHGLAUBE:

11 Q. Dr. Staub, I just want to cover a couple of things
12 with your background.

13 A. Sure.

14 Q. You said you were an assistant professor at Carlton
15 College?

16 A. Yes.

17 Q. Which is a liberal arts college in Minnesota?

18 A. Yes, it is.

19 Q. And you were there for eight years and then you moved
20 on, right?

21 A. Yes.

22 Q. So you did not receive tenure there?

23 A. I did not receive tenure and I appealed it and won
24 the appeal but I still left.

25 Q. Then you went to Genetic Design in North Carolina?

1 A. Yes.

2 Q. And there you were the -- what was your title?

3 A. I started out as an assistant director, then was
4 promoted to associate director. I was there for three years,
5 and by the end of the three years I had been promoted to
6 director of DNA operations.

7 Q. Okay. And from there you went to Identigene; is that
8 right?

9 A. Yes.

10 Q. Now, when you went to Identigene, did you go there
11 because of any problems at Genetic Design?

12 A. No.

13 Q. It was just a better job opportunity?

14 A. Yeah, it was a much better job opportunity.

15 Q. And you worked at Identigene for how long?

16 A. 'Til 2000, from '93 until 2000.

17 Q. So about seven years?

18 A. Yes.

19 Q. And when you left there you went to Orchid; is that
20 right?

21 A. Yes.

22 Q. And when you left Identigene, was that under -- was
23 that because you had a better job opportunity at Orchid?

24 A. Yes, very. It was a very good job opportunity.

25 Q. So you did not have any -- there were no problems at

1 Identigene that caused you to leave. Is that fair to say?

2 A. Well, I mean, there was some disagreement that I had
3 with the president about the direction that I thought the
4 company should go and we weren't agreeing, so I left to go
5 to --

6 Q. So did you resign or were you terminated?

7 A. I was terminated.

8 Q. And then you were at Orchid Cellmark, right?

9 A. Yes.

10 Q. For how long?

11 A. 'Til 2012.

12 Q. So there you were there for about 12 years; is that
13 right?

14 A. Yes.

15 Q. And ultimately they were bought out by LabCorp,
16 right?

17 A. Yes, they were bought.

18 Q. And when they were bought out by LabCorp you lost
19 your job, right?

20 A. I did.

21 Q. And that's when you went to the Plano Police
22 Department, right?

23 A. That's correct.

24 Q. So now you work in law enforcement, correct?

25 A. I do.

1 Q. Are you a certified peace officer?

2 A. No. I'm a civilian employee.

3 Q. Okay. And you've been working there now for I guess
4 a year?

5 A. No. Just since March 11th.

6 Q. Okay. So about six months?

7 A. Six months, yeah.

8 Q. Okay. All right. But you were the lab director at
9 Orchid when these tests were performed?

10 A. I was, yes.

11 Q. Now, there's a whole bunch of different machines that
12 get used in a DNA analysis, right?

13 A. Yes, there are.

14 Q. A part of the reason why there's so many different
15 previous and current employees of Orchid here testifying in
16 this case is because it can be more cost effective to do sort
17 of an assembly line of tests, right?

18 A. Yes.

19 Q. You're aware that sometimes you can have one person
20 go through each of the different steps, extraction,
21 quantitation, amplification and analysis, sometimes one person
22 can do it all, right?

23 A. That's -- that's possible, but it's not as efficient
24 as separating it out.

25 Q. Right. It's more cost effective to have one person

1 do the extraction, then another person pick up where the first
2 person left off and do the quantitation, right?

3 A. That's correct.

4 Q. And then have another person pick up and do the
5 amplification, right?

6 A. Correct.

7 Q. And then another person pick up and do the analysis?

8 A. Yes.

9 Q. All right. But you agree with me that each and every
10 person in that process is providing sort of pretty important
11 work and analysis and information in coming up with the
12 ultimate analysis in a DNA test, right?

13 A. Yes. All the steps are important.

14 Q. The -- and so is the credibility and sort of
15 qualifications of each of the people that perform each of these
16 tests is also important, right?

17 A. Yes.

18 Q. And you'd agree with me that one of the downsides to
19 doing it this way is that one person may do hundreds and
20 hundreds of extractions over the course of a couple of years,
21 right? That's possible, right?

22 A. Yes.

23 Q. And that their memory of what they did in -- what
24 they did in a certain case, it may be less solid than a person
25 who actually takes the time to go through and do each and every

1 single part of the analysis and review every single step in the
2 analysis themselves?

3 A. Well, not so much -- I'm not so sure I agree with
4 that. I think either one you run the risk of the person not
5 remembering a certain case they worked on. And that's exactly
6 why we take detailed notes of every sample that we run through
7 there, so that we can put together a case file at the end which
8 explains precisely what happened with every sample in that
9 case. Nobody could remember every case they worked on, even if
10 they did it all themselves all the way through, you know, so
11 whether -- whether you do it as an assembly line fashion or one
12 person working the whole thing, I think you still run that risk
13 of a person not remembering what they did.

14 Q. So you'd agree with me that the people who are
15 actually performing these analyses, right, it just can't be
16 expected of them that they would actually remember their
17 actions on a particular analysis; is that right?

18 A. Well, you know, they might, but I wouldn't fault them
19 if they didn't remember precisely. You know, like I said,
20 that's why we'll take a note. For example, if something weird
21 happens in a process that you carry out, like an extraction,
22 say, oh, this tube fell out of the rack or something, and I had
23 to put it back in, you would take a note of that just in case
24 something down the line indicated that that was a problem.

25 Q. Right. But at this point now, because it's been more

1 than a couple of years since all of the analyses that Orchid
2 Cellmark performed, right?

3 A. Yeah, I think so.

4 Q. Some of 'em I think the tests were performed in
5 December of 2011, so let's say a year and a half?

6 A. Correct.

7 Q. But you'd agree with me that, I think we're saying
8 the same thing, it would be too much to expect a perfect
9 recollection by each of these analysts of the action they took
10 in this case, right?

11 A. I think so. I think everybody, you know, relies
12 pretty heavily on their case file to refresh their memory of
13 what happened with the samples in the particular case they're
14 testifying in.

15 Q. Do you have any personal recollection of your
16 involvement in this case?

17 A. In this case, I do remember talking to Huma about it,
18 because it was -- it was a -- an unusual case, you know, not
19 one that we would get every day.

20 Q. Why was it unusual?

21 A. Hmm, I'd say, you know, it's -- uh -- first of all,
22 it's from a penile swab, we don't do a lot of those, and then
23 there's a certain thought process that you go through when
24 you're looking at this sort of a sample, and I already
25 explained that. If it's from a penile swab, that you would

1 fully expect to obtain some genetic data from the individual
2 who was swabbed, unless they, you know, person that collected
3 the swab was extremely careful not to -- not to touch them, but
4 that's hard when you're doing a penile swab, so that's one
5 thing. And it's a mixture and it was done with the MiniFiler.

6 Q. The MiniFiler is unusual?

7 A. Not unusual, but it's only used for samples that are
8 degraded or low level. It really was designed for degraded
9 samples.

10 Q. The -- it's my understanding it was initially
11 performed on the victims of 911. Is that what you understood?

12 A. Well, it was used on victims of 911. That wasn't why
13 it was developed, though, but it was used in those cases, yes.

14 Q. But because you would expect in sort of the mass
15 carnage of those buildings that you would get a lot of degraded
16 DNA?

17 A. Absolutely, and that's why it would be good for
18 those. In fact, at that time our laboratory in Dallas was
19 using this technology called Snips, on those sorts of samples,
20 because Snips are all very good for degraded samples.

21 Q. Did you try to use Snips in this case?

22 A. No. By the time we did this case we no longer ran
23 Snips in our lab.

24 Q. Are there any other types of testing that can be done
25 on degraded or low level DNA?

1 A. Currently, I'd say STRs is pretty much the only thing
2 you can do besides Snips.

3 Q. Okay.

4 A. And there's not that many labs that do Snips.

5 Q. Was there any testing done to determine what type of
6 DNA cell you were analyzing, whether it was a blood cell or
7 epithelial cell or sperm cell?

8 A. No. With a sample like this you just typically take
9 the swab and test everything that's there. You just extract
10 all the DNA you can from the swab. You don't look at it under
11 a microscope or anything to see what kind of cells are there.

12 Q. The -- you're aware that after your test, after
13 Cellmark's tests were completed there was still apparently some
14 material left; is that right?

15 A. I'm not aware of that.

16 Q. Well, if Huma Nasir testified that there was, you
17 wouldn't -- do you have information that contradicts that?

18 A. No. I just -- I'm just not aware of that.

19 Q. Okay. Now, the -- along the same lines of sort of
20 going to memory and what people can remember of their own
21 activities, all of these different machines that are involved
22 in the process, there's a thermocycler, there's I think a 7000
23 does that --

24 A. Yeah. That's the quantification system.

25 Q. Right. There is a genetic analyzer, correct?

1 A. Yes.

2 Q. There is Qiagen?

3 A. Qiagen.

4 Q. Qiagen.

5 A. EZ-1.

6 Q. And the TKN Genesis?

7 A. Yes. That's a robot that transfers liquid from one
8 tube to another.

9 Q. So again, along those same lines of memory, all these
10 different machines and instruments require maintenance, right?

11 A. Yes.

12 Q. And I'm sure Orchid's policy was to provide proper
13 maintenance, right?

14 A. Yes.

15 Q. But again, we can't have anybody who actually
16 remembers performing all of the requisite maintenance on all
17 these machines two years ago, right?

18 A. That's why we keep records of it.

19 Q. Sure. But if the record is meant to actually refresh
20 the memory of what happened two years ago, that's not actually
21 doing that, is it? Just because you see it on a record doesn't
22 mean you necessarily remember doing the maintenance, right?

23 A. Not necessarily, right. I mean, but -- but if you
24 have the record that indicates it was done.

25 Q. Right. The -- now -- now, you -- in this particular

1 case, you basically -- Huma came to you and said, you know, the
2 numbers are pretty low, right? She said the numbers are only 6
3 to 1 for Caucasians in this case, and I want to see if there's
4 any type of other statistical analysis we can do, right?

5 A. I don't think she actually said it that way. She
6 just said is there some -- you know, is there another way we
7 could you look at this and see, could we do the stats with a --
8 another technique.

9 Q. Now, and I guess part of the problem with the 1 in 6
10 number is that you really only had in Orchid Cellmark the
11 mathematical numbers for one of the loci that was there?

12 A. That's correct, yes.

13 Q. And you didn't have the numbers for the other loci?

14 A. Correct.

15 Q. Am I saying that? Locus?

16 A. Locus.

17 Q. Locus is the individual?

18 A. Right.

19 Q. All right. By the time you left Orchid Cellmark, did
20 you guys have the other, the numbers for both locus -- loci?

21 A. Yes. We -- in fact, this case probably was a case
22 that stimulated us to change our statistics module in our
23 laboratory information management system to include two new
24 loci. D2 was one of them. D-19 was the other. But when I
25 calculated our statistics, I used allele frequencies that were

1 published in the literature by the FBI, and I used those to
2 compute our stats.

3 Q. The ultimate 102 number --

4 A. Yes, yes.

5 Q. -- that you used. Basically that's your analysis
6 based on both of the loci that were detected?

7 A. Correct.

8 Q. Okay. Now, do you know what the RFU standard was for
9 allele detection at Orchid back then?

10 A. Yes. We used a hundred RFU for allele detection.

11 Q. And did those, the machines that you're getting, this
12 electropherogram -- did I say that right?

13 A. Yes.

14 Q. The seismograph looking thing?

15 A. Right.

16 Q. That machine is made by Applied Biosystems, right?

17 A. Correct.

18 Q. And Applied Biosystems has a recommended RFU for its
19 machine, right?

20 A. No. Actually they -- hmm -- what's recommended is
21 that you do your own validation in your lab, and figure out
22 from your instrument where to set your allele calling
23 threshold. And so that had been done and we decided on 100 RFU
24 at that time.

25 Q. The -- if there was another expert that testified

1 that Applied Biosystems, that he recognized Applied Biosystems
2 used a recommended RFU of a hundred fifty, would you dispute
3 that?

4 A. I don't recall them ever recommending that, but --

5 Q. I guess I'm asking you whether you dispute that?

6 A. Yeah, I might. I mean, I think that the recommended
7 way to do it is to do your own validation and determine where
8 your threshold should be.

9 Q. And that's right too, that basically Applied
10 Biosystems recognizes that different labs may come up with
11 different numbers on their own.

12 A. Right.

13 Q. But that their recommended number was 150. I'm
14 asking you whether you dispute that?

15 A. I'm not disputing it, but I don't remember it is what
16 I'm saying.

17 Q. Now, and you'd agree with me that the numbers that
18 you came back with, either the 6 to 1 or the 102 to 1, they'd
19 be different if the RFU standard were raised higher than what
20 Orchid Cellmark had, right?

21 A. Well, actually, in, hmm -- the second way I did it
22 with the likelihood ratio, the reason that I looked at it that
23 way was to essentially make the suspect cancel out, because
24 there's nobody disputing whether he's there or not. It was
25 from his penile swab. So when you're looking at the likelihood

1 ratio it's really, it's comparing the likelihood of getting
2 those results from him and another person or him and Flora
3 Ryan. So you see, if you set that up as a ratio, he cancels
4 out of that, you know, he's on the numerator and denominator.
5 So it's basically what's the likelihood of these results after
6 you cancel him out, you know, of someone else versus Flora
7 Ryan, 1 out of 102, that's really what it comes down to.

8 Q. Now, the number of 102 to 1, basically what you're
9 saying is that it's much more likely that that DNA came from
10 Flora Ryan than it came from a random citizen you see walking
11 down the street, right?

12 A. Random Caucasian person.

13 Q. Random white person, right?

14 A. Yes.

15 Q. 102 times more likely, right?

16 A. Yeah, just based on the two loci that we have.

17 Q. But again, that number, if you just looked at that
18 number, is in some ways misleading, right?

19 A. I don't think it's misleading. It's just -- you
20 know, it's the answer to the question how likely is it these
21 results came from someone else as opposed to Flora Ryan. Now,
22 102 isn't exactly astronomical, you know. I mean, it's like,
23 many times if you get a full profile it's going to be in the
24 quadrillions.

25 Q. But take this as an example, right, if the people in

1 Plano, right, have a .01 percent chance of getting lung cancer
2 this year, right, but people in Dallas have 1.02 chance of
3 getting lung cancer this year, right, the people in Dallas are
4 102 times more likely to get lung cancer, right?

5 A. I didn't --

6 Q. Point zero one --

7 A. Something like that.

8 Q. 1.02.

9 A. I didn't do the math on it yet, but, okay.

10 Q. But -- all right.

11 A. Something like that.

12 Q. So .01 to 1.02 percent, right?

13 A. Okay.

14 Q. That's 102 times, right?

15 A. 102 times more likely, right.

16 Q. Right? And yet it's still very unlikely that
17 anybody, that if you take a random person in Dallas or a random
18 person in Plano that they're going to have -- that they're
19 going to get lung cancer this year, right? It's a small
20 minority of people, right?

21 A. Right. I have to think about that one. I think --

22 Q. My point is --

23 A. Yeah.

24 Q. Just by saying, well, she's a lot more likely to be a
25 contributor than if we took any other random person off the

1 street, right, that really doesn't tell us how likely it is to
2 be her, right?

3 A. No. It can't tell you how likely it is to be her.
4 It can only tell you how likely it is to get these results from
5 her and the suspect versus someone else and the suspect.

6 Q. Right. But you understand, a lot of times with these
7 DNA tests you come back with trillions to one or quintillions
8 to one?

9 A. Correct, yes.

10 Q. In those cases you don't need to do this extra added
11 analysis like you did in this case, right?

12 A. Well, if you already have a stat of, you know, four
13 quadrillion to one then --

14 Q. Right. It's a strong stat, it stands by itself,
15 right?

16 A. Right.

17 Q. And it makes it very clear that it's highly unlikely
18 that this DNA could have come from any other source, right?

19 A. Correct.

20 Q. But in this case, you felt the need to do this
21 additional mathematical testing, right?

22 A. Well, I didn't feel the need to do additional testing
23 because of that. I felt the need to do it because I felt it
24 much more accurately represented the data that we have, that
25 it's a better way to look at it. And, you know, that's -- if

1 you look in the literature also, people say that, that
2 likelihood ratios are a better way to look at mixtures if you
3 can than inclusion probabilities because inclusion
4 probabilities are fraught with all kinds of difficulties.

5 Q. So why do all these labs do that when they get a
6 quintillion to one?

7 A. Well, those quintillion to one, those are typically
8 from single source samples, so -- you know, in actuality, that
9 is a likelihood ratio. It's a likelihood of getting those
10 results from your guy versus someone else, for quadrillion to
11 1, that's what it really is. You're computing -- a match
12 probability is essentially a likelihood ratio.

13 Q. Well, is 6 to 1 not a likelihood ratio?

14 A. Yeah, but that 6 to 1 did not include all the -- all
15 the data. In other words, it -- it just was the match
16 probability for one locus looking at it as being from one
17 person so -- not the same.

18 Q. So this -- this loci, the -- the CSF?

19 A. Uh-huh.

20 Q. All right. That's the one where you-all didn't have
21 the -- basically the statistics to compute into the analysis,
22 correct?

23 A. No. Actually that is the one that we did. The D2
24 locus is the one that we did not. It's D2S1338.

25 Q. Okay. So the D2S1338 you didn't have the statistics?

1 A. Well, we didn't originally have the allele
2 frequencies in our program that we use in our laboratory.

3 Q. Why not?

4 A. We just had never incorporated it yet, even though --
5 I mean, that was a kit that came on later. So the original 13
6 markers we had in our program -- and we got that program from
7 the FBI. Okay. It was called Popstats. That Popstats did not
8 include D2 and D19. They're two separate loci. So we
9 typically did stats only using the 13 CODIS loci but not
10 including D2 and D19.

11 Many other laboratories did the same thing for quite
12 a while. We finally realized we -- you know, it would be a
13 good idea to get D2 and D19 into our -- into our stats program.

14 Q. Okay. And lastly, the point, the idea is this DNA
15 could have come from Flora Ryan or her daughter, right?

16 A. You can't exclude her daughter, but her daughter is
17 related to her and shares --

18 Q. That makes sense.

19 A. -- a lot of genes.

20 Q. If you've got a pretty weak sample, that family
21 members might both come up as consistent with the DNA sample,
22 right?

23 A. Sure.

24 Q. But in this case then, basically, your 102 to 1
25 ratio, that's for -- that's including both Flora Ryan and her

1 daughter, correct?

2 A. Yeah, but the 102 to 1 is for Flora Ryan versus an
3 unrelated person, not her daughter.

4 Q. Right.

5 A. Right.

6 Q. Right. In this case, we know specifically that this
7 DNA that was supposedly recovered off of my client, right?

8 A. Right.

9 Q. Is consistent with Mary Ostlund, right?

10 A. Yes.

11 Q. And so specifically, we can say that this DNA, right,
12 there's really a one in two chance, right, based on the two
13 people that we know of as being tested in this case, that it
14 could be DNA from either one, right?

15 A. Well, if you look at it like that, but, you know, you
16 could do that with lots of relatives for lots of crime cases.

17 MR. HOCHGLAUBE: I pass the witness, Judge.

18 MS. FULLER: Nothing further, your Honor.

19 THE COURT: All right. Thank you so much for coming
20 in.

21 Call your next.

22 MS. FULLER: The State has no further witnesses, your
23 Honor.

24 MR. HOCHGLAUBE: We have nothing, Judge.

25 THE COURT: Okay. You-all want to argue?

1 MR. HOCHGLAUBE: Sure.

2 MS. FULLER: I'll reserve my right to opening and
3 reserve it all for closing.

4 MR. HOCHGLAUBE: Judge, we -- there's a number of
5 different reasons for objecting here, Judge. The first is that
6 based on the testimony of the State's witnesses, this evidence
7 fails to meet the Daubert standards that this evidence is
8 reliable, that it was reliably tested in this case.

9 Those two prongs of the Daubert are basically that
10 the testing in this case is -- is recognized as being
11 scientifically valid. We would argue that the evidence in this
12 case, that it has not been established by the State that this
13 evidence came from scientifically validated testing.

14 Additionally, we would argue that it has not been --
15 that it wasn't processed in a way that -- in this specific case
16 that it wasn't processed in a way that it was scientifically
17 validated. So we would object to it under Daubert and Rules of
18 Evidence 702, 703, and 704. Specifically, citing to the fact
19 that one of the -- the extractor, Ms. Feller, was terminated
20 for basically -- for making mistakes, at a minimum, and
21 additionally, that the lab director himself was terminated from
22 employment once LabCorp took over the lab.

23 Additionally, Judge, as Dr. Staub testified, they
24 made adjustments in the lab based on the way their testing was
25 performed in this case, and that they felt like the way they

1 had to do their testing was vulnerable and wasn't -- they felt
2 like it wasn't adequate for their testifying purposes, and then
3 they went and got additional statistical information basically
4 to remedy what they viewed as a problem from this case.

5 Additionally, Judge, we would object because there's
6 -- no one can testify that any of the machines in this case
7 were properly maintained. There's obviously documentation that
8 they testified from suggesting apparently that it was, although
9 none of that's been admitted before the Court, and every single
10 one of these witnesses basically testified that I have no
11 personal recollection of any of the maintenance transpiring or
12 being a part of it, and they don't have any recollection of
13 their activities in this case.

14 So we would object under the Sixth Amendment that
15 basically we don't have a human being to cross-examine in this
16 case because everybody says that we don't have any memory of
17 what we did. We can't ask them, you know, why did you put
18 the -- why did you do the extraction in this particular way, or
19 why did you use the 7000 machine in this way, or why did you --
20 why did you use any of these machines in any particular way,
21 because no one can remember what they did with any of these
22 machines in this particular instance. So we would object on
23 the basis of it being hearsay, and also as a Sixth Amendment
24 violation of the right to confront and cross-examine the
25 witnesses.

1 And lastly, Judge, just in terms of the number, I
2 think frankly all of these arguments, I don't want to minimize
3 any of them, but we've got a situation here where we're raising
4 the specter of DNA, and the jury's going to hear, you know, oh,
5 my God, the DNA from the complainant was there on the
6 defendant's penis, and there's going to be jurors that are
7 going to shut down as soon as they just hear that, without even
8 thinking about what the numbers are behind it, without thinking
9 about whether it was blood or saliva or how it might have got
10 there. And under 403, this evidence is far more prejudicial
11 than probative, and in particular, given the numbers that show
12 a 6 to 1 ratio, or even the numbers of 102 to 1, which
13 basically from the Defense perspective these numbers of 102 to
14 1 were sort of cooked up by Orchid Cellmark to make the numbers
15 look more compelling, to make them look stronger because they
16 knew the 6 to 1 number that they had wasn't -- wasn't that
17 strong.

18 So we would object that they're not relevant because
19 particular is a one in two chance that this DNA evidence could
20 have come from either Mary or from Flora, and we would object
21 under 401, 402, and 403 that those are -- that this evidence is
22 irrelevant, and to the extent that it is relevant, that it is
23 substantially more prejudicial than probative.

24 And lastly, Judge, just the last time we were having
25 the DNA with Clay Davis testifying, he basically acknowledged

1 that Applied Biosystems uses a recommended RFU threshold of
2 150. All of this testing is done with an RFU standard of a
3 hundred, and again, we would say that that goes to the
4 reliability of this scientific evidence as being submitted
5 before the jury. And although, yes, it can be cross-examined
6 in front of the jury, you know, raising the specter of this DNA
7 evidence, all the explanation in the world can't get over that.
8 And also under Rule 602, that all of these witnesses lack
9 personal knowledge of the evidence.

10 I'm done, finally.

11 MS. FULLER: Your Honor, I want to first start with a
12 point that was second to last, Clay Davis' testimony. His
13 testimony was exactly the same as the testimony you heard here
14 today, which is that Biosystems gives a range of standards from
15 50 to 150, and they tell every single one of their labs that
16 you have to perform your validation testing on your own
17 equipment to determine what your RFU level should be. So it's
18 a misstatement of the evidence that has been presented to say
19 that 150 RFU is the absolute standard that you have to follow.
20 That is not true. That is the kit, Biostandard's
21 recommendation range, but every person who's come in here and
22 testified about RFU has said each lab is supposed to do their
23 own validation.

24 In regards to reliability, the witnesses here today
25 specifically talking today about MiniFiler said that MiniFiler

1 is recognized by the Texas Department of Public Safety. They
2 further stated that it is recognized by the FBI and it is
3 reliable such that the FBI even loads MiniFiler data into
4 CODIS. So I believe that the testimony has shown that these
5 MiniFiler tests are reliable.

6 In terms of the process, each witness who came in
7 here and operated a machine told you that they were following
8 the standards and protocols that were developed by either the
9 kit or by the lab after they had done the validation testing.

10 The Defense brings up the argument that the extractor
11 was -- Liz Feller was terminated. She was terminated in 2013.
12 These tests were done in 2011. And Ms. Nasir even testified
13 that no ill effect came from her termination or what she had
14 done. They did not have to go back to the lab and redo any
15 test results based on what she had done because what she did
16 was transfer data from one computer to another and it had no
17 effect on the samples.

18 The lab director's termination wasn't really
19 developed. A company came in and bought out the company that
20 he worked for, and that happens.

21 The Defense wants you to make your determination on
22 every single one of these witnesses coming in and stating to
23 you that they have no independent recollection of the tests
24 that they performed in 2011, and the State's position would be
25 that that would be setting a precedent not only for the

1 exclusion of DNA in criminal cases but also the exclusion of
2 DNA in exoneration cases.

3 So if a lab does testing and it exonerates somebody,
4 does that mean now that they can't come in and testify to that
5 exoneration if they don't have any independent recollection of
6 what they did years ago? I believe that that would open the
7 door to this DNA not being able to use -- be used in areas that
8 the Defense also relies on it to be used in.

9 And finally, the numbers, the most important part
10 about the numbers and about the testing that Orchid Cellmark
11 does is that the victim in this case and her daughter, because
12 they're related, they cannot be excluded from that mixture.

13 Now, the numbers are low, and if you were to only
14 have that DNA evidence, perhaps it would be more prejudicial
15 than probative. However, we have more DNA evidence that your
16 Honor is already aware of. We know that we've got DNA evidence
17 from the inside of Dean Wood's shorts where his penis would
18 come into contact with his shorts. That also returned the
19 victim's DNA inside his shorts. And we also have her DNA on
20 the beer bottles. So when you take all of this evidence
21 together, it becomes more probative and less prejudicial, even
22 though these numbers are low in the penile swabs.

23 THE COURT: All right. It's my opinion that in terms
24 of the Daubert argument by the Defense, I believe that the DNA,
25 the testimony and the science behind the DNA testing is

1 reliable, and I believe that despite your argument that they
2 have no personal knowledge, that their records and the records
3 they were relying on demonstrated it was collected in a
4 reliable fashion.

5 While I appreciate your Sixth Amendment argument to
6 not having an opportunity to cross-examine, part of the delay
7 in this case was due to the Defense's request to have the DNA
8 independently tested also. So it would seem disingenuous for
9 me to suppress it when part of that delay and that lack of
10 memory is due in part to the Defense request.

11 However, the Court is persuaded under your 403 that
12 the evidence is more prejudicial than probative. The low
13 numbers I believe aren't close enough to tie it to the defense,
14 so I think it's not relevant and I sustain the suppression on
15 that basis.

16 Can we take a break before we get started?

17 (Lunch recess.)

18 (Open court, defendant present.)

19 MR. HOCHGLAUBE: Judge, can we go on the record? We
20 had the hearing a couple weeks ago about the admissibility of
21 all of this evidence. I just want to make sure the running
22 objection that I made then and I think I've made continuously
23 about all of the biological material is still continuing, and
24 I'd ask for the Court to permit me not to raise any additional
25 objections in front of the jury as the State admits -- what are

1 the exhibit numbers presented?

2 MS. FULLER: 21 through 25 are just the portions of
3 swabs that were tested.

4 MR. HOCHGLAUBE: Okay. Basically that I not be
5 required to make additional objections in front of the jury for
6 those Exhibits 21 through 25.

7 THE COURT: Okay.

8 MS. FULLER: And since the -- did you want to answer?
9 Different topic, I just wanted to say since the
10 Cellmark DNA was suppressed, I'm assuming that that means
11 neither side can go into the penile swabs.

12 THE COURT: That's right.

13 MS. FULLER: That would include the Defense as well
14 talking about not being able to get anything from those penile
15 swabs.

16 THE COURT: Yes.

17 MR. HOCHGLAUBE: Well, I'd like to be able to ask
18 this witness about -- never mind. That's fine, that's fine.

19 THE COURT: Okay. All right. May we have the jury,
20 please, ma'am.

21 MS. FULLER: And I still have all the Cellmark people
22 here, so if something changes, if a door is opened ever so
23 slightly they'll be here.

24 (Jury in.)

25 THE COURT: All right. You may be seated. Nice to

1 see you again, jurors. Thank you for your return.

2 You may proceed.

3 MS. FULLER: At this time the State calls Juli
4 Rehfuss.

5 THE COURT: And, ladies and gentlemen, this witness
6 was sworn just prior to your arrival.

7 JULI REHFUSS,
8 having been duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MS. FULLER:

11 Q. I probably said your name wrong, so would you please
12 introduce yourself to the jury.

13 A. Yes, ma'am. My name is Juli Rehfuss.

14 Q. And who are you employed with?

15 A. I'm employed by with the Houston Police Department
16 crime laboratory.

17 Q. And what is your job duty at the crime lab?

18 A. I'm a criminalist with the serology biology section.

19 Q. All right. Let's talk about your educational
20 background. Can you give the jury an idea of that?

21 A. Yes, ma'am. I have a bachelor of science degree in
22 biology from North Carolina State University.

23 Q. And have you continued your education in any type of
24 forensic studies or sciences?

25 A. Well, we have a pretty intensive in-house training

1 program that includes reading forensics textbooks, reading
2 various forensic articles, and we have a lot of written tests
3 as well as competency tests, so the training actually
4 incorporates my degree into the field of biological sciences
5 through various mock cases that we have to go through, and then
6 we're shadowed by another qualified analyst for a time, and
7 then we're signed off on actual case work.

8 Q. And that's when you become an actual serologist?

9 A. Yes, ma'am.

10 Q. How long have you been a serologist with the crime
11 lab?

12 A. I've been with the crime lab since 2000.

13 Q. And you've been a serologist since that time?

14 A. Since 2004.

15 Q. Tell us what a serologist is, what are your job
16 duties?

17 A. Well, serology basically identifies biological
18 materials, mainly blood and seen, through a series of
19 presumptive and confirmatory tests.

20 Q. Can you, just broadly speaking, kind of give us some
21 examples of what kind of testing you would do for presumptive
22 tests?

23 A. Yes. So presumptive tests are really sensitive but
24 they're not specific. So it just gives us an indication that
25 something may be there, a biological fluid, and then if that is

1 positive, then we'll take it on to a confirmatory test to tell
2 if -- to tell us if it's of human origin, and then we can
3 apportion that and send it on to DNA.

4 Q. When you are looking at a piece of evidence, can you
5 always see with the naked eye certain biological materials?

6 A. It depends on the item and the biological material
7 that I'm looking for. Such as, you know, blood is fairly easy
8 to see on light colored clothing, or a swab, whereas semen --
9 you know, it depends on what the item is. If it's just a swab,
10 I can go ahead and just press out that swab and do one of my
11 presumptive tests to see if there could be biological fluid on
12 that swab. With clothing we go through a series of presumptive
13 tests just to help us identify if there are any semen stains.

14 Q. Now, sometimes when you are trying to test to
15 determine whether or not a particular piece of evidence has a
16 biological material on it, do you have to make a determination
17 of how you're going to collect that evidence, for example,
18 swabbing it versus performing additional tests to confirm
19 whether or not a biological agent is present?

20 A. It depends on what the item is. If it is a swab that
21 was taken in a sexual assault kit, for example, then we will
22 just go ahead and take a piece of filter paper. We put
23 distilled sterile water on the filter paper. We'll actually
24 press out the swabs and then we'll test the filter paper
25 instead of testing the swab directly, and then we can perform

1 our tests from there. So if my filter paper gives me a color
2 change, it lets me know that the presumptive test was positive
3 and I can take it on to a confirmatory test where I'll
4 physically cut part of the swab and take it down the line.

5 With clothing, it depends on what I'm looking for.
6 If I'm looking for semen or blood, it depends on what type of
7 material I'm dealing with if I could swab it or if I could
8 physically cut it out off of that item.

9 Q. Let's talk about contact DNA. Can you describe to
10 the jury what contact DNA is?

11 A. Yes. Contact DNA is basically touch DNA, if you
12 will. So they're more than likely just shed skin cells that we
13 have.

14 Q. And can it be skin cells from outside your body and
15 inside your body?

16 A. Yes, ma'am. The epithelial cells, which are the skin
17 cells, contain a nucleus, and so you can find DNA in any
18 nucleated cell. So it just depends on what the item is, if you
19 were touching something or if it physically came into contact
20 with one of your, you know, bodily fluids.

21 Q. And with touch DNA, do you have the problem of that
22 DNA easily being transferred or removed from certain pieces of
23 evidence?

24 A. Well, again, it does depend on how forcefully that
25 person could have touched the item, what the item is, if it is

1 -- is it a smooth surface or rough surface, had they just
2 washed their hands or have they come into contact with somebody
3 else or another object. It all depends.

4 Q. Okay. Do you recall working on a case back in 2011
5 with the -- I believe your incident number is 119305210?

6 A. Yes, ma'am.

7 Q. And the suspect in that case was Dean Wood?

8 A. That is correct.

9 Q. All right. And in this case can you tell me what you
10 were first requested to do?

11 A. Well, there are a series of three screening reports
12 in the case file. Would you like me to go through all three or
13 one in particular?

14 Q. Let's talk particularly about what you were asked to
15 do with beer bottles and a pair of shorts.

16 A. Yes, ma'am. So the investigator requested a pair of
17 shorts to be worked, which is item 1.1. There's a t-shirt,
18 1.2; a pair of tennis shoes, 1.3; as well as four bottles; an
19 energy drink can; and then I had known saliva swabs from a
20 Julie Ostlund, which is item 11, and Mary Ostlund, which is
21 item 12.

22 Q. Okay. Let's --

23 MS. FULLER: May I approach, your Honor?

24 THE COURT: Yes.

25 Q. (By Ms. Fuller) I'm going to first show you what has

1 already been introduced as State's Exhibit 95. Do you
2 recognize the contents of State's Exhibit 95?

3 A. May I?

4 Q. Yes.

5 A. Yes. It has the unique identifier, which is the
6 incident number in this case, my initials, as well as the item,
7 which is 1.1.

8 Q. And 1.1 according to your report is?

9 A. A pair of shorts.

10 Q. Okay. And your initials are seen on the bag, on the
11 outside of the bag?

12 A. Yes, on the outside of the bag as well as the seal.

13 Q. Okay. And obviously these have been opened, they've
14 already been admitted, but do those look familiar to you?

15 A. Yes. The shorts have a lab information tag on it
16 which has the unique identifier, the incident number, my
17 initials, item 1.1, and shorts.

18 Q. Okay. All right. So when you received item 1.1,
19 which is a pair of blue shorts, what was the first thing that
20 you did with those blue shorts?

21 A. Let's see -- the first thing I would do with the
22 shorts, I would do a visual examination of the shorts just to
23 see if I can see any blood or stains, food stains, anything
24 like that. And then I'll photograph the evidence and perform
25 some presumptive, and confirmatory tests if the presumptive

1 tests are positive.

2 Q. All right. And on the shorts did you find some
3 stains that appeared to be blood?

4 A. Yes, ma'am. On the front of the shorts there were
5 four, approximately four areas that were presumptively positive
6 for the presence of blood.

7 Q. Okay. Now, at some point did you take any swabs from
8 these shorts?

9 A. Actually I pressed them out with a piece of moistened
10 filter paper, and then I tested the filter paper with my
11 presumptive test for blood.

12 Q. Okay. So moving on from the blood, at some point did
13 you come back to these shorts to do another swab of a
14 particular area of the shorts?

15 A. Yes. I also took two swabs from the inside crotch
16 area of the shorts.

17 Q. Okay. And --

18 MS. FULLER: May I approach again, your Honor?

19 THE COURT: You may.

20 Q. (By Ms. Fuller) I also want to show you what has been
21 marked as State's Exhibit 79, 80, 81, and 82. Do you recognize
22 these bags and their contents?

23 A. Yes. They have the incident number on them, my
24 initials, as well as the item numbers.

25 Q. Okay. And at some point were you requested to take

1 swabs from these bottles?

2 A. Yes, ma'am, I did.

3 Q. How did you take the swabs first from the blue
4 shorts?

5 A. Well, with the blue shorts, I was looking for
6 possible contact DNA on the inside of the shorts, so I wouldn't
7 do any testing on the swabs. I would just moisten them a
8 little bit with the sterile water. I'll take two swabs at the
9 same time, and I'll just, you know, in a forceful manner swab
10 the inside panel of the shorts, and then I portion one of those
11 swabs for DNA analysis.

12 Q. Okay. And with the bottles, how did you collect the
13 swabs from the bottles?

14 A. It was basically in the same manner. I'll just take,
15 I believe two swabs -- (checking report.) Yes. So on each of
16 the bottles, items 8.2, 8.3, 8.4, and 8.5, I took two swabs and
17 in the same manner I just swabbed the entire outside and the
18 lip area of each bottle.

19 Q. Okay. So I want to show you what has been marked
20 previously as State's Exhibit 121, 122, 123, 124, and 125. Do
21 you recognize what these are?

22 A. Yes. These are portions of the swabs that I took
23 from items 1.1, 8.2, 8.3, 8.4, and 8.5.

24 Q. And those correspond to the shorts and the four beer
25 bottles; is that correct?

1 A. Yes. So I would take two swabs and then I would
2 portion one whole swab for DNA.

3 Q. Okay.

4 A. And that's what this is.

5 Q. And how do you know that these are the swabs that you
6 took from the shorts and from the bottles?

7 A. Well, it has the incident number, my initials, the
8 item number, and my seal is on the back with my initials and
9 the date.

10 Q. Okay.

11 MS. FULLER: Your Honor, at this time the State moves
12 to admit State's Exhibit 121, 122, 123, 124 and 125 into
13 evidence.

14 THE COURT: Subject to our discussions earlier?

15 MR. HOCHGLAUBE: Yes.

16 THE COURT: Which we've already said. I'm going to
17 admit now 121, 122, 124, 124 and 125.

18 MR. HOCHGLAUBE: Thank you, Judge.

19 Q. (By Ms. Fuller) So after you obtained these swabs and
20 you sealed them up into these envelopes, what happens with
21 those swabs next?

22 A. I gave those sealed envelopes directly to analyst
23 Clay Davis.

24 Q. Okay. And analyst Clay Davis is -- what would he
25 then do with those swabs, I mean, generally speaking?

1 A. He is the DNA analyst, so he would take all of those
2 portions, the swabs that I had put into the tube, and he would
3 carry those on for the DNA portion.

4 Q. When you took the swabs off of the bottles and off of
5 the shorts, did you follow the standard protocols and
6 procedures that you would use in order to collect that type of
7 evidence?

8 A. Yes, ma'am.

9 Q. And did anyone else aid you or help you in collecting
10 the swabs from the shorts or from the bottles?

11 A. No, ma'am.

12 MS. FULLER: Pass the witness, your Honor.

13 THE COURT: Cross-examination.

14 MR. HOCHGLAUBE: Thank you, Judge.

15 CROSS-EXAMINATION

16 BY MR. HOCHGLAUBE:

17 Q. A moment ago you were talking with the prosecutor
18 about the dates that you performed your analysis in this case,
19 right?

20 A. Yes, sir.

21 Q. And there was actually a number of different dates
22 that you performed different analyses in this case, correct?

23 A. May I refer to my notes?

24 Q. Please.

25 MR. HOCHGLAUBE: Judge, may I use that board right

1 behind the witness?

2 THE COURT: Sure.

3 Q. (By Mr. Hochglaube) Are you ready?

4 A. Yes, sir.

5 Q. I'm sorry, I was waiting on you.

6 What was the first date that you did testing in this
7 case?

8 A. I actually did all of the testing that was requested
9 of me on March 25, 2011.

10 Q. Okay. So, and what you're saying is that you were
11 responsible for testing the shorts, the blue shorts, correct?

12 A. Yes, sir. They were navy.

13 Q. So not the gray shorts?

14 A. No, sir.

15 Q. And the four beer bottles, or three beer bottles and
16 one malt liquor bottle; is that right?

17 A. Yes, sir.

18 Q. Now, are there other dates that you can tell from
19 your records that HPD did testing in this case?

20 A. Yes, sir. There are two other screening reports.

21 Q. What are the dates?

22 A. Oh, excuse me, three prior screening reports.

23 Q. What are those dates?

24 A. The first report was submitted on September 22, 2010.

25 Q. The next one?

1 A. The second screening report is dated October 5, 2010.

2 Q. Okay.

3 A. And the third screening report is dated November 30,
4 2010.

5 Q. Okay. So basically if this incident is alleged to
6 have happened in August of 2010, then your first analyses began
7 about eight, nine months later; is that right?

8 A. Yes, sir.

9 Q. And you weren't requested to do any of these analyses
10 back in August or September, you were requested to do your
11 analyses back in March, right?

12 A. The investigator submitted the fourth request, which
13 would be my analysis.

14 Q. Okay. And so at the time you began your analysis, do
15 you know whether the rape kit in this case has been analyzed?

16 A. Yes, sir, the sexual assault kit from Flora Ryan was
17 processed.

18 Q. It had already been processed at this point, right?

19 A. Yes, sir.

20 Q. And what about swabs from the complainant's
21 fingernails?

22 A. Yes, sir, the morgue evidence from Flora Ryan was
23 also processed.

24 Q. And that included her fingernails, right?

25 A. Yes, sir.

1 Q. Now, I guess you didn't have anything to do with the
2 testing of those items, right?

3 A. No, sir.

4 Q. But you certainly have experience with doing at least
5 the serology on rape kits, right?

6 A. Yes, sir.

7 Q. And so you're aware of why a rape kit might go
8 through serology, right?

9 A. Yes, sir.

10 Q. And you're aware of why it might be completely
11 processed for DNA purposes, right?

12 A. Yes, sir.

13 Q. The idea is that with the rape kit there's a
14 gathering of all the evidence found on the complainant in this
15 case, the supposed, the victim, right? The idea is that you
16 might get DNA material off of her body, right?

17 A. It is possible.

18 Q. Right. And it doesn't happen every time, right?

19 A. That is true.

20 Q. But it happens enough of the time that it's worth
21 testing for, right?

22 A. Yes, sir.

23 Q. And the same thing is true with testing for someone's
24 fingernails, right? Is that right?

25 A. Yes, sir.

1 Q. Because basically enough of the time you will find a
2 person having acted defensively and get some DNA off of whoever
3 the person they were in contact with underneath their
4 fingernails, right?

5 A. It's a possibility.

6 Q. Right. Enough of a possibility that it's worth
7 testing for, right?

8 A. Yes, sir.

9 Q. The -- now, with these shorts, these blue shorts, you
10 did a presumptive test for blood, right?

11 A. Yes, sir.

12 Q. And that was based on you being able to see what you
13 believed to be blood on the shorts themselves, right?

14 A. Yes, sir. I did notice a reddish brown staining on
15 the front of the shorts.

16 Q. Now, one other thing about your testing, is that you
17 can't tell how or whether DNA gets to wherever it gets to, or
18 any biological matter gets to wherever it gets to?

19 A. That's true.

20 Q. You can say it's there, but you can't say when or how
21 it got there, right?

22 A. That is true.

23 Q. So but you'd agree with me that if a person is
24 performing CPR on a body that is bloody, that's a pretty
25 reasonable way that they might get blood from the person that

1 they were doing CPR on on their shorts, right?

2 A. That's a possibility.

3 Q. Right. If they got it on their hands or if they put
4 their hand on their shorts or their shorts came in contact with
5 the person they're doing CPR on they can end up with blood on
6 their shorts, right?

7 A. Yes, sir.

8 Q. And in this case, you said they were, like, four
9 different spots; is that right?

10 A. Yes, sir.

11 Q. Okay. Now, you did the presumptive testing for blood
12 on the shorts, right?

13 A. Yes, sir. I also did confirmatory testing for human
14 blood.

15 Q. Okay. And it was blood, right?

16 A. Yes, sir.

17 Q. But -- and the idea of doing that testing, right, is
18 because you can see there's something there that is worth
19 testing for, right?

20 A. Yes, sir.

21 Q. But with the beer bottles and with the malt liquor
22 bottle, you didn't make any type of blood presumptive testing,
23 right?

24 A. The only evidence that I noticed on 8.4, which is the
25 malt liquor bottle, was that it appeared to have apparent mold

1 on the inside that was visible.

2 Q. Okay. Right. But so you did not do presumptive
3 testing for blood on any of the bottles, right?

4 A. No, sir. I just swabbed it for possible contact.

5 Q. And the idea is that you're not going to do
6 presumptive blood testing on every single item that comes
7 before you; is that right?

8 A. That is true.

9 Q. You're going to do it on the things that look like
10 they might have blood to be tested, right?

11 A. Yes, sir.

12 Q. Or semen to be tested, right?

13 A. Yes, sir.

14 Q. In this case, although you could see it on the
15 shorts, you couldn't see anything and you had no reason to
16 believe that there was any type of blood on any of the beer
17 bottles or the malt liquor bottle?

18 A. I made no note of any reddish brown staining on the
19 bottles.

20 Q. Do you know whether -- there were a couple of other
21 items that were also tested through HPD, but I'm assuming you
22 didn't have anything to do with them. There was a blanket that
23 was tested, right? I think it's 7.1.3.1?

24 A. Yes, sir.

25 Q. And did you talk about the shirt stain, 4.3.2.1?

1 A. I did not test the shirt, not me personally.

2 Q. Okay. Now, one of the other things I just want to
3 cover real briefly with you is the prosecutor talked about
4 contact DNA, right?

5 A. Yes.

6 Q. And along the same lines of contact DNA is the idea
7 of contamination, right? By DNA coming -- touching an item
8 that didn't have the DNA on it before, you can contaminate, I
9 guess, the DNA and the DNA can be spread onto something
10 inadvertently, right?

11 A. I wouldn't say contaminate. I would say that
12 possible contact DNA can cross-transfer from one object to
13 another or from one person to another.

14 Q. Okay. And I appreciate you correcting me. I think
15 you're right about the wording you're using and I'm not right
16 about it.

17 The -- but hypothetically, right, if we stick items
18 like the shirt, the blanket, or other items that have sort of
19 obvious bloodstains, obvious fecal matter, fairly obvious
20 stains, right, when we put them into a washing machine with
21 clothing items, say gray shorts, right, put them all in the
22 washing machine together, right, that's a recipe for getting
23 DNA transferred from one garment to another, is it not?

24 A. Yes, sir. And it also depends on the fluid and how
25 the fluid is. So if you have liquid blood and it's not dry yet

1 it could easily transfer to something else. However, if you
2 were -- a dry crusty bloodstain, you know, it would take a
3 little more effort to actually transfer the blood flakes to
4 another item. It just depends.

5 Q. Right. And so in theory, if these gray shorts have
6 some sort of biological material on them, right, and again,
7 speaking to the idea that we don't know how or when DNA gets on
8 a particular garment, we can't say the DNA got there before the
9 washing machine or got there when it was put in the washing
10 machine, right?

11 A. No, I couldn't tell you how it got there.

12 Q. And basically either which way is totally plausible,
13 right?

14 A. It's possible.

15 Q. Do you know whether the results that come from -- I
16 think I asked this but I want to make sure I covered it. The
17 rape kit and the complainant's fingernails, right, those have
18 been submitted at an earlier day, correct?

19 A. Yes, sir. They are in the first report dated
20 September 22nd.

21 Q. And the final analysis had come back before you
22 began -- before you were requested to do your testing in March
23 of 2011, right?

24 A. The only items that went on to DNA analysis were the
25 fingernail scrapings and clippings of the left hand, item 10.3;

1 the fingernail scrapings and clippings from the right hand,
2 item 10.4; and those are processed in the DNA report dated
3 January 26, 2011.

4 Q. Okay. So again, before you ever become involved?

5 A. Yes, sir.

6 Q. All right. Are you -- you're aware, though, that a
7 rape kit was submitted for DNA evaluation somewhere, right?

8 A. Yes, sir. That was not submitted to DNA.

9 Q. Okay.

10 A. Just for screening.

11 Q. Just for screening?

12 A. Yes, sir.

13 Q. All right. The -- do you -- okay.

14 MR. HOCHGLAUBE: I'll pass the witness.

15 MS. FULLER: Just briefly, your Honor.

16 May I approach the witness?

17 THE COURT: You may.

18 REDIRECT EXAMINATION

19 BY MS. FULLER:

20 Q. I want to be sure and -- this is State's Exhibit 81,
21 but it's 8.4 in your lab report. I'm going to pull this out
22 real quick. And then 8.1 and 8.2. 8.2, which is State's
23 Exhibit 79, did you make a list regarding how exactly you
24 swabbed these bottles?

25 A. Yes. I photographed the evidence, and according to

1 my notes, I just took two swabs at the same time, moistened
2 with sterile water, and I swabbed the lip area and the entire
3 outside body of the bottle, of each bottle.

4 Q. Of each bottle?

5 A. Independently.

6 Q. Okay. Did you put the swabs down inside the lip area
7 as well?

8 A. Yes, just inside the lip. And then I concentrated
9 mostly on the outside of the bottle.

10 Q. Okay.

11 MS. FULLER: Pass the witness, your Honor.

12 THE COURT: Anything further?

13 MR. HOCHGLAUBE: No, Judge.

14 THE COURT: Call your next.

15 MS. FULLER: The State calls Clay Davis.

16 THE COURT: All right. You may proceed.

17 MS. FULLER: Thank you, your Honor.

18 CLAY DAVIS,
19 having been duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MS. FULLER:

22 Q. Good afternoon, Mr. Davis. Would you introduce
23 yourself to the jury.

24 A. My name is Clay Davis.

25 Q. And, Mr. Davis, who are you employed by?

1 A. The Houston Police Department crime lab.

2 Q. Can you tell us what your job duties are at the crime
3 lab?

4 A. I'm a criminalist or a DNA analyst, which means I
5 will also test evidence for the presence of bodily fluids and
6 then take any of those items that are positive on to DNA
7 analysis.

8 Q. Can you tell the jury a little bit about your
9 educational background.

10 A. I have a bachelor's degree in biology from Louisiana
11 Tech University and a master's degree in forensic DNA and
12 serology from the University of Florida.

13 Q. And what did you do right after you got your master's
14 degree?

15 A. I was still working at HPD when I got my master's,
16 but prior, or after the bachelor's degree I was working for
17 Baylor College of Medicine here in town on the human genome
18 project, which was sequencing the DNA of a human.

19 Q. All right. And tell me a little bit about what you
20 did with that project, or with that?

21 A. It's basically just getting the genetic code of the
22 human, and putting all the A's, C's, T's and G's in order, and
23 we also did several other animals, including the monkey, the
24 rat, the mouse, the dog, and several bacteria.

25 Q. And from that experience did you have any articles

1 published?

2 A. I did. I'm on four papers with doing independent
3 research.

4 Q. Are you a member of any professional organizations?

5 A. I am. One of 'em is SWAFS, the Southwestern
6 Association of Forensic Scientists, and AFDAA, which is the
7 Association of -- sorry -- American Association of DNA Analysts
8 and Administrators.

9 Q. Have you testified as an expert witness before?

10 A. Yes, I have.

11 Q. On few or many occasions?

12 A. This is in my thirties, so I guess many.

13 Q. Okay. And have you been deemed an expert by the
14 courts in Texas?

15 A. Yes, I have.

16 Q. And in Harris County, Texas?

17 A. Yes, I have.

18 Q. All right. Can you start by telling the jury exactly
19 what DNA is.

20 A. DNA is the genetic material contained in all
21 nucleated cells. You get half from your mother and half from
22 your father, so of course your DNA is the same from the time
23 that you're born until the time that you die.

24 Since your DNA is the same throughout your body, we
25 can take DNA from hair, skin cells, saliva, blood, and all of

1 it should be the same within that person.

2 Q. And what can you do with DNA in a forensic setting?

3 A. In a forensic setting we can take an unknown DNA,
4 like from evidence, and compare it to a known sample, which
5 would be a blood sample or a buccal swab from the cheek, and do
6 the comparison to see is that individual consistent within the
7 evidence sample or not.

8 Q. When you're testing for DNA, can you explain a little
9 bit about what portion of DNA you're looking at and how many
10 locations of DNA you're looking at.

11 A. So we don't look at the entire DNA. We look at short
12 regions called STRs, which are short tandem repeats. These are
13 repeats of the DNA within the chromosomes. So we look at about
14 eleven different chromosomes, and we're looking at how many of
15 those repeats are within those sets.

16 Q. All right. And when you're comparing to pieces of
17 DNA, how does that comparison actually work?

18 A. So we will look at the first location, and you'll get
19 a number, and that number indicates how many repeats are at
20 that location. And so we look at 15 different regions,
21 including a sex determining region that will tell me either
22 male or female, and then the process is taking the evidence
23 samples, determining what kind of a profile it is, and then
24 comparing the knowns to that profile.

25 Q. Is this a -- is DNA a recognized field of expertise?

1 A. Yes, it is.

2 Q. By scientific organizations and from the courts?

3 A. Yes, in the forensic community definitely.

4 Q. Okay. And had the scientific theories that are the
5 underlying principles of DNA, have they been validated?

6 A. Yes. There's many journal articles written on this
7 process.

8 Q. About how long has DNA been around?

9 A. Some of the first DNA testing was done probably in
10 the late '80's, and those were -- like I said, it wasn't the
11 system that we're using now.

12 Q. Okay. I want to turn your attention to this case
13 specifically, and we can kind of talk through exactly how DNA
14 is tested and compared, but were you the DNA analyst that was
15 assigned to incident No. 119305210?

16 A. Yes, I was.

17 Q. All right. And there was a lot of evidence submitted
18 in this case. Is that fair to say?

19 A. Yes.

20 Q. Okay. I want to specifically draw your attention to
21 the fourth laboratory test that's dated March 28, 2011. And
22 you received some swabs from Juli Rehfuss; is that correct?

23 A. Correct.

24 Q. And tell us, starting from the beginning of what you
25 would have done, what your process is for testing one of these

1 swabs.

2 A. So this is the same process whether it's an evidence
3 sample or a known sample. And so the first step we'll do is an
4 extraction process, which is breaking open the cells, releasing
5 the DNA, and getting the DNA out of that cell.

6 The next step is determining how much DNA was
7 released, how many cells actually broke open, how much DNA I
8 actually got, and that's called quantification, so this is
9 telling me how much DNA is actually there.

10 The next step requires a specific amount, so I want
11 to know what I'm starting with. The next step is
12 amplification. This is where I'm copying my 15 regions plus my
13 sex determining location, and I'm making billions of copies of
14 those.

15 The next step is separation. I'm separating the DNA
16 based on size and charge, and it's running through, like, a
17 gel-like polymer, and so it will separate, those locations will
18 separate.

19 The last step is interpretation. This is me looking
20 at the DNA profile, going do I need to do more work? Is this a
21 single source or is this a mixture profile? Based on just the
22 quantification value and what would I -- what would I see when
23 I'm analyzing that profile.

24 And then the last step is just comparing the known
25 profiles to the actual evidence and writing a report and making

1 a comparison.

2 Q. So starting back with extraction, in these cases,
3 were you the only DNA analyst that worked these case -- the
4 evidence in this case?

5 A. Yes. For that report dated April 28, 2011, I did all
6 the extraction, quantification, amplification, and loaded the
7 machines for the separation.

8 Q. Okay. And you mentioned machines. Throughout these
9 steps are you utilizing machines to help you to separate the
10 DNA and amplify the DNA and copy the DNA?

11 A. Yes, I am, there are machines involved on all of
12 these.

13 Q. Okay. Starting with extraction, is there a machine
14 used for extraction?

15 A. There's a couple instruments. There's, you know,
16 pipettes, which is, you know, it's a -- it's kind of like a
17 turkey baster, brings up the volume, expels the volume.
18 There's heat block, it just kind of maintains the temperature
19 when they incubate overnight. There's centrifuge that will
20 spin the tubes to get the liquid off the lid so that when you
21 open it there's no liquid on the lid.

22 Quantification has a machine called a 7500. It's a
23 closed machine hooked up to a computer. It's PCR based,
24 polymerase chain reaction based, so it is copying and so that's
25 telling me how much DNA is there.

1 Amplification has a machine, it's a thermocycler.
2 It's -- heating and cooling, separating the DNA and amplifying.
3 And then of course the last machine is the 3100, which is the
4 separation machine.

5 Q. All right. And while you're running all these tests
6 and using all these machines are there standard protocols,
7 first of all, for how to use the machines?

8 A. Yes, there is.

9 Q. Okay. And is that a standard protocol that is given
10 to you by HPD crime lab?

11 A. Yes. It is well documented. It is in our SOP, or
12 standard operating procedures, and you were trained on that as
13 you go through training.

14 Q. All right. And are there safeguards for controls to
15 make sure that the, for example, extraction was done properly
16 so you can now move on to the next step?

17 A. Yes, there are. There are reagent blanks processed
18 with each evidence sample and each known sample, and so the
19 reagent blanks are there to make sure that the chemicals and
20 the reagents that are added are DNA free, there's nothing in
21 there once you're adding the reagent, and those reagent blanks
22 are carried through the entire process all the way to the end.

23 Q. So, for instance, if you're on amplification and you
24 receive something, a result that is outside of your standards,
25 what would you do if that were to occur?

1 A. We always step back one step. So if I see something
2 within the interpretation or the analysis of something within
3 the reagent blank, then we'll step back one step and see is it
4 in the amplified product. Was it just a -- a carry-over
5 between maybe two wells while you were pipetting between two
6 wells. And so we just step back one step. We will reamplify
7 it, and if it's still there then you go back to the actual
8 extract. If it's in the extract, then we will take a
9 completely new cutting of the evidence and start completely
10 over.

11 Q. Now, if -- the first step in DNA is just going
12 through serology; is that correct?

13 A. Yes.

14 Q. Okay. And if a piece of evidence does not make it
15 through serology, meaning no biological material is either
16 detected or found while doing presumptive testing or visually
17 looking at something, if no biological material is found, what
18 happens with that piece of evidence in terms of moving forward?

19 A. If nothing is found, whether it's blood or semen, or
20 if it's not suspected of being, like a contact sample, then the
21 sample stops. We retain it, and it's there for testing if you
22 need to.

23 Q. Okay. So if items of evidence are tested and they
24 don't even make it out of serology, they then don't make it to
25 you for DNA testing because there's nothing detected for you to

1 test. Is that fair to say?

2 A. Correct.

3 Q. Okay. Now, kind of back to the question about the
4 machines, sorry to jump around, but if you were to receive any
5 type of indicators on the machine that would indicate that you
6 needed to step back and do a step over again, would you
7 document that in your file?

8 A. Oh, absolutely, there's definitely documentation of
9 all of those.

10 Q. Okay. And also in terms of documentation, do you
11 have documentation that you keep in terms of maintenance logs
12 for each of these machines to make sure that they're running in
13 or being maintained the way that they're supposed to be?

14 A. Yes, they are. They're stored in the laboratory.

15 Q. Okay. I want to turn your attention to the lab
16 report that's dated March 28, 2011, and talk through that. You
17 received some swabs from Juli Rehfuss; is that correct?

18 A. Correct.

19 Q. And what were those swabs from?

20 A. I received item 1.1.1.1, portion of swabs from
21 shorts; item 1.1.2.1, portion of reddish brown stain from
22 shorts; item 8.2.1.1, portion of swabs from beer bottle;
23 8.3.1.1, portion of swabs from beer bottle; 8.4.1.1, portion of
24 swabs from malt liquor bottle; 8.5.1.1, portion of swabs from
25 beer bottle; 11.1, portion of known saliva swabs from Julie

1 Ostlund; and 12.1, portion of known saliva swabs from Mary
2 Ostlund.

3 Q. And previous to that, had you received any biological
4 evidence from the victim, Flora Ryan?

5 A. Yes. I received a bloodstain card, item 10.1.1.

6 Q. Okay. And when you received that bloodstain card,
7 were you able to obtain a DNA profile for Flora Ryan?

8 A. Yes, I was.

9 Q. Okay. So now you've got a known sample of the
10 victim, Flora Ryan; is that correct?

11 A. Correct.

12 Q. And from the swabs that you were given by Julie
13 Ostlund and Mary Ostlund, you're now able to get their DNA
14 profiles as well; is that correct?

15 A. Correct.

16 Q. Okay. So, you've got three known samples now.
17 Additionally, were you at another time given the known buccal
18 swabs of the defendant, Dean Wood?

19 A. Yes, I was. Item 3.2.1.

20 Q. Okay. So you've got his DNA profile as well?

21 A. Correct.

22 Q. Okay. I want to turn your attention to the swabs
23 from the shorts. And if you could, you've talked about the
24 process by which you would be able to obtain some DNA from
25 those shorts. Now, tell us what you do after you get those

1 results, I guess this would be your interpretation stage.

2 A. So I would start interpreting the DNA profile, is it
3 a mixture? Because since you get half your DNA from your mom
4 and half from your dad, you should only have two numbers in one
5 location that I'm looking at. And so if there's more than two
6 numbers, I know there's a mixture of individuals, maybe at
7 least two, and so we start off just by assessing the profile
8 from that standpoint, is it a mixture? What was the quant
9 value? Can I reamplify and get, you know, more of the numbers
10 coming up, you know, is it a good profile, and then just do the
11 analysis based on that and then start comparing the knowns to
12 this profile.

13 MS. FULLER: May we approach the bench?

14 THE COURT: You may.

15 MS. FULLER: Just briefly.

16 (The following proceedings were had at the bench:)

17 MS. FULLER: Okay. I didn't go out but Steven did go
18 out in the -- Steven went and talked to Clay about not
19 mentioning the positive for the semen, so I just wanted that to
20 be known. And kind of whisper into his ear again real quick to
21 make sure I don't ask anything.

22 THE COURT: Why don't we take a break.

23 (The following proceedings were had in open court:)

24 THE COURT: Ladies and gentlemen, I'm sorry, we
25 cannot handle this legal argument quietly enough. So if you'll

1 just give us a few minutes we can address it and then we'll get
2 you right back out here.

3 (Jury out.)

4 MS. FULLER: Thank you. I'm sorry, I didn't want to
5 say the wrong thing.

6 THE COURT: I appreciate so much you being careful.

7 MR. HOCHGLAUBE: No, I appreciate it too.

8 THE COURT: Go ahead on.

9 MS. FULLER: So just wanted to make sure that we're
10 not going to talk about any of the presumptive positive for the
11 semen on the shorts.

12 THE WITNESS: Okay.

13 MS. FULLER: That was something that we had agreed to
14 prior to because there were bleach stains and a lot of other
15 things on the shorts, so before we got into your analysis of
16 what you found on the shorts, I just wanted to make sure that
17 you knew don't -- we're not talking about the presumptive
18 positive presence for semen.

19 THE WITNESS: Right.

20 MS. FULLER: And you didn't test for semen anyway.

21 THE WITNESS: No.

22 MS. FULLER: So I just wanted everyone to be on the
23 same page so that we didn't -- so that I didn't ask you
24 something that would elicit that by mistake.

25 THE WITNESS: Okay.

1 MS. FULLER: Does that make sense?

2 THE COURT: It does.

3 (Pause.)

4 (Jury in.)

5 THE COURT: All right. You may be seated.

6 You may proceed.

7 MS. FULLER: Thank you, your Honor.

8 Q. (By Ms. Fuller) Okay. So before the break we were
9 talking about item -- the shorts, and how you took the swab and
10 you went from the extraction all the way through the steps that
11 you described to us earlier, and you obtained some data. Is
12 that fair to say?

13 A. Correct.

14 Q. Okay. What did you do with that data once you
15 obtained it?

16 A. So once the data was obtained, I would start doing a
17 comparison between the known samples that I have and the
18 profile that I obtained from the shorts.

19 Q. Okay. So let's talk first about the profile that you
20 obtained from the shorts. What can you tell us about that
21 profile that you obtained?

22 A. I know it's a mixture of DNA from at least two
23 individuals. At least one's male, and Flora Ryan cannot be
24 excluded as a contributor to the major component of this
25 mixture, which means she donated more DNA than the other

1 individual that's on the shorts.

2 Q. Okay. So it's a mixture, and Flora Ryan, her DNA is
3 present. Is that fair to say?

4 A. Correct.

5 Q. Okay. Once you find that information, once you
6 determine that information -- well, first of all, did you
7 determine who -- let me back up. Once you obtain a profile and
8 you're able to compare it to a known profile, do you then
9 assign some sort of numeric probability with that known and
10 unknown sample?

11 A. For her, yes. I will do a stats calculation on and
12 kind of give it just a little weight about how she is in --
13 included in the shorts.

14 Q. Okay. And can you tell us what that calculation was.

15 A. 1 in 7.8 trillion for Caucasians, 1 in
16 2.1 quadrillion for African-Americans, 1 in 7.6 billion for
17 Southeast Hispanic, and 1 in 19 trillion for Southwest
18 Hispanics.

19 Q. Okay. So the higher number, what does that -- what
20 does that mean?

21 A. The highest number here is 1 in 2.1 quadrillion,
22 which means 1 in every 2.1 quadrillion individuals would also
23 not be excluded from this mixture.

24 Q. Okay. Does that mean that there are -- that that's a
25 fairly high statistic to say that Flora Ryan's DNA is located

1 on those shorts?

2 A. It is a high statistic, but, you know, I don't know
3 if she has a twin so I can't say without a reasonable doubt
4 that her DNA is on the shorts, because I don't know if she has
5 a twin out there somewhere, but it is a high statistic, yes.

6 Q. Okay. So assuming she doesn't have a twin, fairly
7 high statistic?

8 A. Yes.

9 Q. Okay. And that was on the shorts?

10 A. Correct.

11 Q. Tell us about the beer bottles. I believe -- let's
12 talk about 8.2.1.1, the swab from that beer bottle.

13 A. And this is a partial female DNA profile, which means
14 of the 15 locations that I look at, not all of them produced a
15 result, so that's why it's a partial. And so Flora Ryan cannot
16 be excluded as a possible contributor to that partial profile,
17 and the stats here are 1 in 110 billion for Caucasians, 1 in 34
18 trillion for African-Americans, 1 in 74 million for Southeast
19 Hispanics, and 1 in 270 billion for Southwest Hispanics.

20 Q. So even though you could only obtain a partial
21 profile, again, those numbers, assuming she doesn't have a
22 twin, are fairly high. Is that fair to say?

23 A. Yes.

24 Q. Which makes the probability greater that that is, in
25 fact, Flora Ryan's DNA on that beer bottle?

1 A. I could not exclude her, no.

2 Q. Back to the shorts. Was that a full DNA profile or
3 was that only a partial DNA profile?

4 A. So this was a mixture of DNA of at least two. So, I
5 mean, mixture of DNA is mixture of DNA, and so it's not a
6 partial. So I did get a result at every location, but it is a
7 mixture of at least two people.

8 Q. Okay. Moving on to 8.4.1.1, what were the results
9 on, I believe that was the malt liquor bottle?

10 A. Yes. So this is actually a partial DNA mixture.
11 Again, mixture, more than two, more than two numbers at any
12 location, and partial because not all of the locations produced
13 a result. And Flora Ryan could not be excluded as a possible
14 contributor to this potential DNA mixture, and the stats are 1
15 in 890 for Caucasians, 1 in 4100 for African-Americans, 1 in
16 280 for Southeast Hispanics, and 1 in 8200 for Southwest
17 Hispanics.

18 Q. The other two beer bottles, 8.3.1.1 and 8.5.1.1, were
19 you able to receive any DNA data off of those two swabs?

20 A. No, I was not.

21 Q. Okay. And going back to 8.2.1.1, which is one of the
22 beer bottles, were you able to get the defendant's DNA off of
23 that beer bottle?

24 A. 8.2.1.1?

25 Q. Yes.

1 A. No. Dean Wood, Julie Ostlund, and Mary Ostlund are
2 excluded as possible contributors to this partial DNA profile.

3 Q. Okay. So the only person that you could get on
4 8.2.1.1 was Flora Ryan?

5 A. Correct. Her DNA was consistent.

6 Q. Okay. And Dean Wood is excluded as is Mary Ostlund
7 and Julie Ostlund?

8 A. Yes, that is correct.

9 Q. Now, 8.4.1.1, can you tell us about the defendant on
10 that one? That would be the malt liquor bottle.

11 A. Dean Wood cannot be excluded as a possible
12 contributor to this partial DNA mixture. And the stats are 1
13 in 11 million for Caucasians, 1 in 160 million for
14 African-Americans, 1 in 100,000 for Southeast Hispanics, and 1
15 in 93 million for Southwest Hispanics.

16 Q. Okay. So assuming that Dean Wood doesn't have a twin
17 out there, and he's Caucasian, his statistics that were
18 assigned to that was 1 in 11 million; is that right?

19 A. Yes. So 1 out of every 11 million people would also
20 not be excluded from this mixture.

21 Q. Okay. And how about Mary and Julie at 8.4.1.1?

22 A. Julie Ostlund and Mary Ostlund were excluded as
23 possible contributors to this DNA mixture.

24 Q. Okay. They're excluded?

25 A. Correct.

1 Q. Now, going back to the portion of the swabs from the
2 shorts, 1.1.1.1, did you also compare those to Mary, Julie, and
3 the defendant?

4 A. Yes. Julie Ostlund and Mary Ostlund are excluded as
5 possible contributors. And Dean Wood cannot be excluded as a
6 possible contributor. And his stats are 1 in 8100 for
7 Caucasian, 1 in 5100 for -- sorry -- 51,000 for
8 African-American, 1 in 9700 for Southeast Hispanics, and 1 in
9 74,000 for Southwest Hispanics.

10 Q. Now, are those probabilities, the statistics that you
11 assigned to each of these pieces of evidence, how do you get
12 those statistics?

13 A. So on the DNA profile we take each number that I'm
14 giving, whether it's in a mixture or a single source, and each
15 of those numbers, which we call alleles, there's an estimated
16 frequency within the general population. So if you take the
17 number ten, and let's say one out of every ten people have that
18 number ten in their DNA profile, and so since you should have
19 two numbers at any location, there's got to be a second number
20 hopefully, could be a ten but it could be a, let's say an
21 eleven. And let's say that eleven is also one in ten to make
22 it easier, so now we're looking at a one in a hundred chance
23 that any individual would have those two numbers. And so for a
24 DNA profile I will take all of the frequencies for all of the
25 15 locations, and it will be calculated, and that's how you get

1 the larger number.

2 Q. And are -- is there a formula that you use? Is there
3 a computer software that you use?

4 A. There's a formula and there is a computer software
5 that is monitored by the FBI. It is by the FBI, it's called
6 Popstats, and these are the ones that give us the statistics,
7 the numbers.

8 Q. Okay. Now, did you do any testing on the rape kit?

9 A. For DNA?

10 Q. Yes.

11 A. No, I did not.

12 Q. Okay. And would there have been a reason for that?

13 A. If the presumptive test for the rape kit were
14 negative, then it would not have been passed on to DNA.

15 Q. Okay. And can you tell from your notes if, in fact,
16 the rape kit was passed on for DNA?

17 A. No, it was not.

18 Q. Okay. So that means that there was no presumptive
19 test that came back positive to then forward something on to
20 you to test?

21 A. Correct.

22 Q. All right. How about the complainant's fingernail
23 clippings?

24 A. I did test those.

25 Q. Okay. And what information did you get after testing

1 those?

2 A. For item 10.4.1.1, this is the full single source
3 female DNA profile, and Flora Ryan cannot be excluded and Dean
4 Wood is excluded from this DNA profile.

5 Q. Okay.

6 A. On item 10.3.1.1 is a partial female DNA profile.
7 Flora Ryan cannot be excluded, and Dean Wood is excluded from
8 this profile.

9 Q. Okay. So he's excluded from both of the fingernail
10 clippings?

11 A. Correct.

12 Q. Going back to the rape kit, if in fact the serologist
13 had seen some sort of biological material, which could be
14 blood, semen, something along those lines, if they had seen
15 that and had gotten a presumptive positive test, then it would
16 have been forwarded to you for the DNA?

17 A. Correct.

18 Q. Okay. And in this case, nothing was found so DNA
19 wasn't even initiated?

20 A. No, it was not processed at this time, but it is
21 available to be tested.

22 MS. FULLER: Pass the witness.

23 THE COURT: Cross-examination.

24 MR. HOCHGLAUBE: Thank you, Judge.

25

1 CROSS-EXAMINATION

2 BY MR. HOCHGLAUBE:

3 Q. We meet again, Mr. Davis.

4 A. Here we are.

5 Q. The -- I want to start by -- by just covering how
6 extensive the enormity of evidence that was sent to your lab
7 was, okay?

8 A. Okay.

9 Q. So there's been mention of a rape kit, right?

10 A. Correct.

11 Q. And that involved, as best I can tell, eleven
12 different items, right?

13 A. That is correct, eleven.

14 Q. And basically there's a vaginal smear, there's a
15 vaginal swab, there's an anal smear, an anal swab, an oral
16 smear and an oral swab. There's head hair combings. There's a
17 lot of stuff that gets processed during a rape kit. You know
18 that, right?

19 A. Yes.

20 Q. All right. And there was a lot of stuff submitted to
21 your lab for analysis based on that rape kit, right?

22 A. Yes.

23 Q. Additionally, there were these fingernail scrapings,
24 right?

25 A. Yes.

1 Q. How many different items were submitted for your lab
2 based on that?

3 A. So the fingernail scrapings are inside of a morgue
4 kit and so there are -- four items within that.

5 Q. Okay. And the idea between doing the rape kit and
6 doing the fingerprint -- or fingernail scrapings is you want to
7 sort of cover the complainant's body as thoroughly as possible
8 to try to find evidence, right?

9 A. Yes, to find a foreign DNA profile that's not hers.

10 Q. Sure. And that's what was done in this case, right?

11 A. Correct.

12 Q. There was all kinds of swabs and smears and items
13 taken from her fingers, taken from her genitals, taken from her
14 anus, right?

15 A. Yes.

16 Q. All of this with an idea to try to figure out who had
17 done this to her, right?

18 A. Correct.

19 Q. And basically, none of it, not one shred of the
20 fingernail scraping, of the rape kit, of anything that was
21 found on Flora Ryan's body, not one bit comes back to Mr. Wood?

22 A. No.

23 Q. Now, this stuff was submitted -- I guess on
24 September 22nd is when the testing began; is that right?

25 A. September 14th was the rape kit.

1 Q. Okay. And the fingernails?

2 A. The morgue kit was received, or she started her
3 analysis on September 20th.

4 Q. Okay. But so mid September is when all this stuff
5 gets to HPD's crime lab, right?

6 A. Correct.

7 Q. Okay. When does HPD's crime lab make the
8 determination that there is no DNA from Dean Wood on Flora
9 Ryan's body, when do these results become final?

10 A. Since I didn't do anything on the rape kit, and then
11 the fingernail scrapings were submitted in the first DNA report
12 that I did, and that was January 26, 2011. That was my first
13 report.

14 Q. Okay. Now, you work for the Houston Police
15 Department, correct?

16 A. Yes.

17 Q. And you're a scientist, right?

18 A. Correct.

19 Q. You're not a peace officer, correct?

20 A. No, I'm not.

21 Q. And the idea is that ideally as a scientist you're
22 not influenced by the sort of pressures that law enforcement
23 might have on police officers in its ranks, right?

24 A. Correct, I'm not influenced.

25 Q. Well, that's the whole --

1 A. Or the pressure.

2 Q. I'm not questioning that.

3 A. Right.

4 Q. But nevertheless, you guys use the same computer
5 system, right?

6 A. To --

7 Q. Well, your report, when you come back with this
8 information, it becomes public -- it becomes information to the
9 investigating officers in this case, correct?

10 A. Yes, it is.

11 Q. So we can say that in January 2011 HPD knows that
12 there's none of the defendant's DNA on Flora Ryan's body,
13 right?

14 A. Yes, that is correct.

15 Q. Okay. Now, in addition you did testing not just on a
16 rape kit and on fingernails but on several items that were
17 recovered out of this apartment, right?

18 A. Yes, I did.

19 Q. You did testing on gray shorts that -- well, you may
20 not have done the test, but the HPD lab did testing on gray
21 shorts that were supposedly in a washing machine?

22 A. Yes.

23 Q. Right. And we were just talking about that kind of
24 in passing while the jury was out, right?

25 A. Yes.

1 Q. Okay. So there was gray shorts, there was a blanket,
2 right?

3 A. Yes, multicolored blanket, pillowcase.

4 Q. A pillowcase. There was a white shirt from the
5 complainant, right?

6 A. Yes.

7 Q. And there was -- okay. All right. And so all of
8 this testing, it also happens somewhere in this timeframe up
9 here, right?

10 A. Yes, it is.

11 Q. All right. And basically again, that information,
12 the blanket, the complainant's clothes, the defendant's shorts,
13 none of that has the defendant's DNA on it, right?

14 A. No, none of the items in my first report had any DNA
15 on it.

16 Q. Right. And the blanket and the shirt that are put in
17 the washing machine, they come back with the complainant's DNA,
18 right?

19 A. The shirt and the blanket, yes.

20 Q. And tell us what the number is there?

21 A. 1 in 4.4 quintillion for Caucasians -- and this is
22 Flora Ryan being included -- 1 in 3.8 sextillion for
23 African-Americans.

24 Q. Let's just focus on Caucasians.

25 A. Okay.

1 Q. So that's 4.4 --

2 A. Quintillion.

3 Q. Quintillion, right? That's a big number, right?

4 A. That is a big number.

5 Q. All right. We go, just so everybody's clear, we go
6 billion's, trillions, quadrillions, and then quintillions,
7 right?

8 A. Yes, million, billion, quad, quin.

9 Q. All right. And so I think that's a high enough
10 number that we can say with scientific certainty -- is that the
11 language -- that the DNA found on Flora Ryan's shirt and on her
12 blanket, that that's her DNA, right?

13 A. Yes.

14 Q. Okay. Now, ultimately on these shorts, right -- and
15 these are the blue shorts we're talking about now, right?

16 A. This is item 1.1.1.1.

17 Q. Exactly.

18 A. Okay.

19 Q. There's blood that's found on the outside of Dean
20 Wood's shorts, right?

21 A. Yes, there is blood found on the outside of the
22 shorts.

23 Q. Okay. And who does that come back to?

24 A. This is -- it comes back to Flora Ryan cannot be
25 excluded.

1 Q. And what's the number?

2 A. 1 in 4.4 quintillion.

3 Q. 4.4 quintillion again; is that right?

4 A. Yes.

5 Q. So again, there's no question, right, to a -- tell me
6 the phrasing, a scientific degree of certainty the blood found
7 on the outside of his shorts is Flora Ryan's, right?

8 A. Yes, to a reasonable degree of scientific certainty,
9 Flora Ryan cannot be excluded as a contributor of this DNA
10 profile.

11 Q. Okay. Now, there's also a swabbing done, this is on
12 the outside, right?

13 A. Yes, the reddish brown stain, item 1.1.2.1, is on the
14 outside.

15 Q. And the inside, it comes back to a mixture, right?

16 A. Yes.

17 Q. And that makes sense, doesn't it, that the inside of
18 the shorts would -- would show, number one, Dean Wood's DNA,
19 right, that makes sense?

20 A. That does make sense, yes.

21 Q. Okay. And what's the number for Dean Wood's DNA
22 inside of his shorts?

23 A. 1 in 8100 for Caucasians.

24 Q. All right. And there is also the complainant's DNA
25 found, or a high number that it's likely it's the complainant's

1 found inside, right?

2 A. There is a high number, yes, 2.1 -- sorry -- 7.8
3 trillion.

4 Q. Right. Now, that's a big number also, right?

5 A. Yes, it is.

6 Q. It's not as big as our national debt but it's a big
7 number.

8 A. It's a big number.

9 Q. Okay. And this is the shorts here, correct, that
10 we're talking about?

11 A. Yes, it is, the inside of the shorts.

12 Q. The inside of the shorts. All right.

13 Now, are you aware that these are the shorts that
14 were obtained from Dean Wood at the HPD jail?

15 A. No, I'm not. I just know they were collected. I
16 don't know where they were collected from. I mean, I knew they
17 were his but I don't know where they were from.

18 Q. All right. You're aware that DNA can get transferred
19 pretty easily, right?

20 A. Yes, relatively easy, yes.

21 Q. I mean, I may touch the top of the table and I may
22 leave DNA behind, right?

23 A. You will leave DNA behind, yes.

24 Q. And it's as simple as that, right, just touching?

25 A. Yes.

1 Q. Is that right?

2 Okay. And let me -- you're an expert in this field
3 so I'm going to give you a hypothetical.

4 A. Okay.

5 Q. If Dean Wood was doing CPR on Flora Ryan, right, and
6 she had blood on her, right?

7 A. Okay.

8 Q. It would not surprise you if he had bloodstains on
9 his shorts, would it?

10 A. No, it wouldn't.

11 Q. Right. And it wouldn't surprise you if actually her
12 DNA was -- ended up inside of his shorts along with his own
13 DNA, would it?

14 A. If he had placed his hands in his shorts I could say
15 that, yes.

16 Q. Right. And if there's several hours that go by
17 between when he does the CPR on her and when they end up taking
18 these shorts from him, right?

19 A. Correct.

20 Q. Then that's, all of that is completely within the
21 bounds of reason, right?

22 A. Yes, that is possible, yes.

23 Q. Okay. The -- now, do you know why the shorts and the
24 beer bottles weren't tested until March of 2011?

25 A. No. I know once the first report is issued, you

1 know, they can always ask for other things to be tested. You
2 know, the prosecutors can ask for stuff to be tested. So no, I
3 don't know.

4 Q. Would it be safe to say that HPD basically was
5 surprised, because none of the DNA was coming back to Dean
6 Wood?

7 A. I wouldn't say surprised. I mean, I really don't
8 have any expectations when I'm doing this of that someone is
9 there or someone is not included, or included on a particular
10 piece of evidence. So, I mean, I'd have been surprised in the
11 past but, you know, I don't draw any conclusions right off.

12 Q. Do you know whether or not the police officers in
13 this case were surprised?

14 A. I have no idea.

15 Q. Did you talk to them at all about the lack of
16 evidence coming back to Dean Wood?

17 A. No. I mean, usually they will call me and ask me to
18 interpret the results like I'm doing here, but other than that,
19 the discussion usually goes no further than this is what I
20 found, you know, and then can we test other things, and the
21 answer is yes.

22 Q. All right. And so that's when, basically once all
23 this evidence is not pointing at Dean Wood, that the decision
24 is made, let's test the rest of this stuff, right?

25 A. Yes.

1 Q. Okay. And so that's when the shorts, the blue shorts
2 that he's wearing at the jail when he gets arrested get tested,
3 right?

4 A. Yes, they were tested later.

5 Q. And that's when the three beer bottles and the one
6 malt liquor bottle get tested also, right?

7 A. Correct.

8 Q. Okay. Now, let's talk about the malt liquor bottle,
9 right? It's 11 million to 1 that the defendant's DNA is on the
10 malt liquor bottle, right, for Caucasians?

11 A. Yes, 1 in 11 million.

12 Q. And the complainant is 890, right?

13 A. Yes, that is correct.

14 Q. And not that 890 is insignificant, but it is very
15 different from numbers with millions and trillions and
16 quintillion, correct?

17 A. Correct.

18 Q. Why is that number so low?

19 A. If I could show you the DNA profile I could probably
20 explain it better, but of the 15 locations for the complaining
21 witness, not all the locations could be used in calculating her
22 stat. If I have indications of stuff below our threshold, then
23 those locations are not used, and so that's why her number is
24 lower than his. His number, or his stats could have been most
25 of the locations were used. Hers only some of the locations

1 were used.

2 Q. Okay. Now, are these numbers, all right, consistent
3 with, the 11 million to 1, is that consistent with the
4 defendant drinking that malt liquor inside that bottle and
5 leaving his saliva DNA on the top?

6 A. Yes, it could be from him drinking it, because the
7 entire bottle was swabbed, including the lip area of the malt
8 liquor bottle.

9 Q. And if he drank almost all of it but let Flora Ryan
10 have a sip, would that be consistent with her DNA results
11 coming back as low as they were?

12 A. Yes, that's possible.

13 Q. Okay. The -- now, let's talk about the beer bottles,
14 all right. On two beer bottles basically you don't get any
15 indication that either Dean's or Flora's DNA's is on it, right?

16 A. Yes. 8.3.1.1 there was no DNA profile obtained, and
17 8.5.1.1 there was no DNA.

18 Q. All right. But on one beer bottle you do get the
19 complainant's DNA, right?

20 A. Yes, I did.

21 Q. And if I'm not mistaken, that's a Bud Light bottle?

22 A. Yes, it is a Bud Light bottle.

23 Q. So of all the different bottles here, the strongest
24 DNA is on this one Bud Light bottle, right?

25 A. Yes, that is a high number.

1 Q. And that's, I mean, significantly higher than 890,
2 right?

3 A. Yes.

4 Q. Now, on this beer bottle right here, how much of the
5 defendant's DNA were you able to find?

6 A. Dean Wood was excluded from this beer bottle.

7 Q. This number right here, that's an indication of DNA
8 that's not been degraded, isn't it?

9 A. That is a very high number, and usually we do not get
10 a high number like that with DNA that's degraded unless it's
11 just degraded to the point of maybe I get 14 locations, but
12 usually you don't get that high of a number with degraded DNA,
13 no.

14 Q. And you don't -- and it's not likely that those come
15 from inhibited DNA?

16 A. No, it's not.

17 Q. Because the number's so high, right?

18 A. Right. Inhibited also would have a lower number.
19 You would get more of a partial profile with inhibited or
20 degraded DNA.

21 Q. All right. And so -- and you're aware that -- well,
22 let me ask you this, on all of these items here, right,
23 particularly the beer bottle and the malt liquor bottle, right,
24 was there any testing done to see whether this was a blood cell
25 or a skin cell?

1 A. No. We were just trying to find out who held the
2 beer bottle or contact DNA, and so the beer bottle was just
3 swabbed for DNA or contact cells, epithelial cells. So no
4 testing was conducted to determine whether blood was present.

5 Q. And the fact that there was no presumptive testing
6 for blood, right, is an indication that your lab never
7 suspected there was blood, right?

8 A. No. Once she swabbed it, if she had seen, like, red
9 brown stains, then she would have indicated that in her notes,
10 but that was not indicated in her notes so testing for blood
11 was not done on the beer bottles.

12 Q. And it's because in her mind it was never -- it never
13 even hit her radar that blood would be at issue here, right?

14 A. Right.

15 Q. So tell me the biological fluids, the epithelial
16 biological fluids that this could be other than -- other than
17 blood?

18 A. It could be skin cells.

19 Q. Okay.

20 A. I mean, there's epithelial cells in all of the
21 orifices, anal cavity, vaginal cavity.

22 Q. Saliva?

23 A. Mouth cavity, and so it could be any of the orifices.
24 There's epithelial cells in there. Skin cells. Blood is a
25 different -- is not considered epithelial cells, I mean, it's

1 blood cells.

2 Q. Okay. So there was not blood then that was found on
3 this beer bottle?

4 A. That was not tested on that beer bottle, no.

5 Q. Well, there's no indication that there was blood on
6 that beer bottle?

7 A. Correct.

8 Q. And there's no indication that there was blood on
9 this malt liquor bottle?

10 A. It was not tested for -- any of those were tested for
11 blood.

12 Q. Okay. Again because there's no indication that --

13 A. Correct.

14 Q. -- it was blood, right?

15 MR. HOCHGLAUBE: I'll pass the witness.

16 MS. FULLER: Just briefly, your Honor.

17 THE COURT: All right.

18 REDIRECT EXAMINATION

19 BY MS. FULLER:

20 Q. I want to turn your attention back to the shorts, and
21 specifically item 1.1.1.1 and item 1.1.2.1.

22 A. Okay.

23 Q. These are two different -- two different samples; is
24 that correct?

25 A. Yes, they are.

1 Q. Okay. Sample number one is a swab, and the sample
2 that has the two in it -- the sample with all the ones is
3 the -- is the swab. The sample that's 1.1.2.1 is actually a
4 portion of the reddish brown stain from the shorts?

5 A. Yes, that is correct.

6 Q. Is that correct? Okay.

7 So on both of these you were able to find Flora Ryan
8 present, is that -- that's correct as well, right?

9 A. Yes, she could not be excluded from both of those.

10 Q. Okay. So on the one that is the portion of reddish
11 brown stains, that is the blood that's found on the outside of
12 the shorts; is that right?

13 A. Yes, it did test positive for human blood, and is a
14 reddish brown stain, so yes.

15 Q. Okay. And on portion 1.1.1.1, the swab from inside
16 the shorts, if there were -- if there were any reddish brown
17 stains on the inside of the shorts, would that have been noted
18 either by yourself or by Juli?

19 A. Yes.

20 Q. On that swab in particular?

21 A. Yes. That would have been noted by Juli.

22 Q. Okay. And then would your swab have also noted that
23 it was a reddish brown swab?

24 A. Yes. If there had been a hint of reddish brown
25 staining on the swab, we would have described it that way.

1 Q. Okay. And if you could look to 1.1.1.1, do you
2 indicate at all that there was any type of a reddish brown
3 stain on that swab from the inside of the shorts?

4 A. No. It was not described that way.

5 Q. Okay. So the hypothetical that the defense attorney
6 gave you about the explanation for how her DNA mixture ends up
7 on the inside of his shorts, you had said if he had put his
8 hands down his shorts --

9 A. Correct.

10 Q. -- correct? Okay.

11 So if he is performing CPR on this woman and there's
12 blood everywhere and he then puts his hands down his shorts,
13 would you agree with me that there would probably be some
14 indication of blood or that swab would have some sort of
15 reddish brown tint to it based on the hypothetical he gave you
16 and the answer of you putting -- Dean putting his hands down
17 his pants?

18 A. Yes, I would expect to find some hint of a reddish
19 brown stain on the swab.

20 Q. Okay. So specifically on the two shorts, you've got
21 a test for the outside blood and the swab on the inside of the
22 shorts which also contains Flora Ryan, but nothing in your
23 report indicates that that inside portion contained any blood?

24 A. No, there's nothing indicating even a presumptive for
25 blood on the inside of the shorts.

1 MS. FULLER: Pass the witness, your Honor.

2 THE COURT: Cross-examination?

3 MR. HOCHGLAUBE: Yes.

4 RECROSS-EXAMINATION

5 BY MR. HOCHGLAUBE:

6 Q. Mr. Davis, let me give you a different hypothetical,
7 all right. Let's just suppose that the defendant raped and
8 killed Flora Ryan, okay?

9 A. Okay.

10 Q. And let's suppose that the photographs of her showing
11 her profusely bleeding from her vagina, all right -- are you
12 aware of those?

13 A. I did not see those, no.

14 Q. Okay. Well, for the purposes of this hypothetical I
15 want you to assume those to be true.

16 A. Okay.

17 Q. All right. It's the same -- it's the same idea,
18 right, that if he did that, and he got blood all over himself
19 from doing that, then once again you would expect to see blood
20 inside the shorts, right?

21 A. Had he raped her, yes, I would expect to see blood
22 inside the shorts.

23 Q. But you didn't, right?

24 A. Assuming that she was bleeding when she was raped I
25 would expect to see blood inside the shorts.

1 Q. Okay. And again, you didn't?

2 A. I did not.

3 MR. HOCHGLAUBE: I'll pass the witness.

4 MS. FULLER: Just briefly, your Honor.

5 REREDIRECT EXAMINATION

6 BY MS. FULLER:

7 Q. Again, going on that assumption, you said that you
8 would have to assume that she was bleeding at the time of the
9 rape?

10 A. Correct.

11 Q. So at the time of penetration she would have had to
12 have been bleeding, correct?

13 A. Yes.

14 Q. And also it's possible that he could have wiped away
15 blood, cleaned himself up, and it's possible that her DNA still
16 could have been -- could still end up inside his shorts?

17 A. Yeah, that is possible.

18 Q. So there is all kinds of possibilities that we could
19 come to --

20 A. There is.

21 Q. -- to explain why her DNA is on the inside of his
22 shorts?

23 A. Yes.

24 MS. FULLER: Pass the witness.

25

RERECROSS-EXAMINATION

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BY MR. HOCHGLAUBE:

Q. Just that 7.8 trillion, right, that's a pretty high number also, right?

A. Yes, it is.

Q. It's not a number that's consistent with degraded or inhibited DNA either?

A. No, it's not.

Q. And so your testimony is that, as I understood before, is that you would have expected if this was blood to have some visualization of it being blood; is that right?

A. Normally to see blood there is a visualization, yes.

Q. For that number that's that high, 7.8 trillion, right?

A. Are we still talking about the inside?

Q. Right. You'd expect you'd see -- you expect if that was blood you'd be able to see it, right?

A. I mean, there can be trace amounts of blood that you don't see that it's still blood. I mean, you can get those from, you know, epithelial cells too and not just blood. I mean, I've seen high numbers with, you know, contact samples of, you know, someone licking someone's neck, I've seen as high numbers with that, and that's saliva epithelial cells, and so -- blood is a possibility, but epithelial cells are also a possibility.

1 Q. And the bottom line is we don't really know what kind
2 of cells these were because you didn't do any tests, or HPD's
3 lab, I'm not trying to criticize you, but HPD's lab didn't do
4 any kind of testing?

5 A. Right.

6 MR. HOCHGLAUBE: I'm done, Judge, I think.

7 MS. FULLER: As am I.

8 THE COURT: Outstanding. Thank you so much.

9 Call your next.

10 MR. ASLETT: Your Honor, before calling its next
11 witness State offers into evidence State's Exhibit No. 91,
12 which are the complainant's medical records from Bayshore
13 Medical Center, as well as State's Exhibit 92, which are the
14 complainant's medical records from Memorial Hermann Southeast
15 Hospital. These medical records are being offered along with
16 business records affidavits, and they have been on file with
17 the Court for 14 days prior to trial.

18 MR. HOCHGLAUBE: I've reviewed them, Judge, I don't
19 have any objection.

20 THE COURT: State's 91 and 92 are admitted without
21 objection.

22 MR. ASLETT: And permission to publish to the jury,
23 your Honor?

24 THE COURT: You may.

25 MR. ASLETT: For the record, I'm throwing up on the

1 screen State's Exhibit 91, which are the Bayshore Medical
2 Center records for Flora Ryan.

3 Turning to page one, notes that Flora Ryan was
4 admitted on August 19, 2010, at 9:08 in the morning, for a
5 fall. Diagnosis of right eye swollen.

6 Flipping to a section of the medical records, giving
7 patient's history, patient's name, Flora Ryan. Subjective
8 assessment, her daughter says she got out of bed and fell
9 around 2:00 a.m., injured right eye, unwitnessed fall. Also
10 ankle swelling noted. Swelling and bruising noted to right
11 eye. Patient awake, alert, disoriented, unable to communicate.

12 In another section entitled emergency physician
13 record, she was seen at 9:50 in the morning, room 19. There
14 was a diagram indicating where the bruising on her face was
15 noted, right side, above the eye.

16 Finally the last section indicates an x-ray taken of
17 her foot and that there was a fracture through the base of the
18 fifth proximal phalanx with absolute displacement. Again, all
19 of that is on the morning of August 19th.

20 Showing State's Exhibit No. 92, which are Flora
21 Ryan's medical records from Memorial Hermann Southeast
22 Hospital, flipping to a similar page showing that she's seen at
23 10:02 p.m. on August 20, 2012. Notes indicating -- zoom in
24 since it's handwritten -- fresh blood around and under the
25 perineum, possibly from vagina. And underneath it, uterine

1 prolapse with fresh blood in vaginal vault.

2 Also attached to the medical records is a Houston
3 Fire Department EMS report for patient Flora Ryan, 92 years
4 old, date and time is 7:46 p.m. on August 20, 2010. Indicates
5 that EMS arrived on the scene at 7:53 and departed scene at
6 8:42.

7 Narrative section says the following, and it's -- see
8 if I can't -- patient found by granddaughter and called 911.
9 Did bystander CPR PTA of EMS crews. E52 and A36 on scene when
10 M70 arrived. Patient is apneic and pulseless, already on
11 AutoPulse getting compressions and A36 is inserting king tube.
12 Patient has multiple bruising on both arms and face, and a
13 swollen left foot and ankle with edema. Patient also has
14 several lacerations on lower arms with some bleeding. There
15 are spots of blood and stool on carpet around patient.
16 Caregiver states she fell two days ago and got all the bruises
17 then. Caregiver appears to have been drinking and is starting
18 to get combative with EMS crews on scene. Caregiver states
19 patient was fine 20 minutes ago. Caregiver is Hispanic male,
20 middle aged, and is stating he is a Marine in special ops.

21 Daughter of patient arrived on scene at 2020 hours.
22 Daughter states that the bruising is from the fall a few days
23 ago, but the bruising on the left side of the face was not
24 present this morning before she left for work.

25 There is a second narrative on the next page,

1 indicating again patient's bleeding from vagina.

2 And finally HFD officer arrived at ED and stated that
3 the granddaughter told him that she came back to her apartment
4 to check on patient and found her nude, sitting in tub with
5 shower running on her face. She then took her out of the tub,
6 dried her off, and patient was moaning. When patient stopped
7 moaning, she then called 911. It was then that M70 realized
8 that this patient may have been abused.

9 MR. ASLETT: Your Honor, at this time the State calls
10 Officer Brady.

11 THE COURT: All right. You may proceed.

12 MR. ASLETT: Thank you, Judge.

13 SERGEANT M. BRADY,
14 having been duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. ASLETT:

17 Q. Sir, would you please tell the jury your name.

18 A. My name is Mathew Brady.

19 Q. What is your occupation, Mr. Brady?

20 A. I'm a sergeant with the Houston Police Department
21 assigned to the homicide division.

22 Q. And how long have you been with the Houston Police
23 Department?

24 A. I've been with the Houston Police Department for
25 seven years, and with homicide for four years.

1 Q. What did you do with the Houston Police Department
2 prior to being assigned to homicide?

3 A. I was in patrol for about a year or so, and then I
4 went to a gang division unit called the crime reduction unit,
5 and then from there I was accepted into homicide.

6 Q. Can any patrol officer just walk up and decide, hey,
7 I want to apply for homicide?

8 A. They can apply if they want to, yes.

9 Q. Is it a rather selective process?

10 A. It tends to be.

11 Q. Tell us what you have to do to not only just apply to
12 become part of homicide, but once accepted, the training you
13 have to go through before you can handle homicide cases.

14 A. I began when I got to the police department preparing
15 to go to homicide because that was what my goal was. So I was
16 taking several hundred classes, or several hundred hours a year
17 of classes in preparation to go, and when the opportunity
18 finally came up I applied and was accepted.

19 Q. Tell us about some of the classes that you took as
20 part of that preparation to ultimately be a homicide detective.

21 A. Just a vast majority of classes, interview and
22 interrogation classes, crime scene classes, you know, the list
23 goes on and on.

24 Q. When were you -- you said it was about four years
25 ago. When did you first start working for homicide?

1 A. In the fall of 2009.

2 Q. I want to go ahead and get right to it and ask you to
3 remember a case that you worked on back in August 20, 2010.

4 A. Yes, sir.

5 Q. At the apartment complex in southeast Houston
6 involving a 92-year-old victim named Flora Ryan. Do you
7 remember that case?

8 A. I do remember it.

9 Q. Tell the jury how that call came in and what you did
10 when you were dispatched to the scene.

11 A. Well, I was on evening shift at that time, and the
12 call came in around, I would say in the 9:00 o'clock area. And
13 I was at the office and I was up for the next scene that came
14 in. It's kind of just a random rotation where, you know,
15 whoever's next gets whatever's next.

16 And so the call came in, and I was assigned to go out
17 there along with two other homicide detectives, that had just
18 joined the division, and so that's what I did, I proceeded out
19 to the scene with Sergeant Rohling.

20 Q. So you mentioned Sergeant Rohling. Who was the other
21 person going out there?

22 A. The other sergeant was Sergeant Joel Burton.

23 Q. About what time roughly do you get on the scene?

24 A. I would say in the 9:30-ish type area, maybe a little
25 before 10:00. I'd have to check.

1 Q. Tell the jury what you did once you arrived on the
2 scene.

3 A. Once I arrived on the scene, we talked to the primary
4 patrol officers to see what we had, because we really didn't
5 know what we had. It kind of came in as a very -- well, it
6 wasn't a very clear call. It was like a woman down, so we
7 weren't sure what we had.

8 So we talked to the basic patrol officers to kind of
9 find out what was going on. They had someone detained in the
10 back of a patrol car, and we went -- I went up and talked to
11 him for a couple seconds to see if he could tell us what was
12 happening.

13 Q. Let me stop you right there, okay. So I guess pretty
14 quickly from talking to patrol officers and other people
15 getting up to speed that it becomes clear that I guess Dean
16 Wood is a person of interest in this case?

17 A. Yes.

18 Q. And at the point you became aware of that, where was
19 the defendant?

20 A. He was in the back of a Houston police patrol car.

21 Q. And do you see the defendant Dean Wood in the
22 courtroom today?

23 A. Yes, sir.

24 Q. Would you please point him out and describe an
25 article of clothing he's wearing.

1 A. He is sitting over there, wearing a tannish long
2 sleeved shirt unbuttoned.

3 MR. ASLETT: Your Honor, may the record reflect the
4 witness has identified the defendant.

5 THE COURT: The record will so reflect.

6 Q. (By Mr. Aslett) Before you even go up to the patrol
7 car to speak to the defendant, did you notice anything about
8 his behavior in the patrol car?

9 A. I just knew he was in the patrol car and the officers
10 had told me that he was yelling and screaming prior to being
11 placed in the patrol car, so I couldn't really see what he was
12 doing until I walked up.

13 Q. Tell us what you saw when you walked up.

14 A. When I walked up he was sitting in the back of the
15 patrol car and he was yelling and screaming. I believe I
16 opened the door, and introduced myself, he started -- he was
17 spitting on the back of the cage, kicking the other window. I
18 tried to get him to calm down, explained who I was, and he
19 didn't want anything to do with it.

20 Q. Was he handcuffed?

21 A. He was handcuffed. He was yelling that he needed to
22 be unhandcuffed.

23 Q. What, if any, statements do you remember him making
24 to you directly?

25 A. Only that he needed to be unhandcuffed, and I think

1 he said something to the effect he was going to fucking kill
2 me, and it was only a few seconds because this was -- he was
3 not paying attention, wouldn't calm down so I just closed the
4 door.

5 Q. Were there -- did you notice any particular odors
6 about him?

7 A. Yes. There was a strong odor of what I thought was
8 beer in the back of the patrol car when I opened it.

9 Q. Would you say he was intoxicated?

10 A. He was so angry and yelling, he appeared to be
11 intoxicated.

12 Q. But I guess so -- so angry almost hard to tell unless
13 he calmed down?

14 A. Right.

15 Q. Okay. So you tried to speak with him, he made clear
16 he wasn't interested, what did you do next?

17 A. So we closed the door and we sent him down to -- to
18 the jail because he had warrants that were already -- the
19 officers on the scene had already verified, and fit the bill
20 for public intoxication, so we got him off the scene because he
21 was very belligerent.

22 After that we talked with other officers to see what
23 we had. I believe I spoke with Julie Ostlund. She gave me a
24 brief rundown of what we had. At this point the apartment's
25 locked and I decided to call the DA's office to see if we would

1 need some sort of search warrant to go into the apartment.

2 Q. And after calling up the DA's office, what were you
3 told about the need or lack of need of getting a search
4 warrant?

5 A. He said look in to see who was on the lease, and once
6 we determined, you know, what this situation was, to call him
7 back.

8 Q. And did you determine whether Dean Wood was a
9 permanent resident there or a guest?

10 A. According to Ms. Ostlund he was a guest, and my
11 partner, meanwhile he's at the hospital, Joel Burton is talking
12 to Mary Ostlund, and he's asking her the same sorts of
13 questions, who's on the lease. They both tell us that they're
14 on the lease, Mary and Julie are the only two on the lease, so
15 we ask them to sign the consent to search forms.

16 Q. So once you determine he's a guest, he's not on the
17 lease, the other occupants of the apartment will let you search
18 it, do you -- what do you do next?

19 A. So we obtain consent to search forms from Julie and
20 Mary. And once we had those, and once the crime scene unit was
21 ready to go, Julie gave us the keys and we went into the
22 apartment.

23 Q. And just briefly, since I guess -- would it be fair
24 to say that the actual processing of the scene is more the
25 responsibility of the crime scene unit?

1 A. Yes.

2 Q. So then what do you do when you do a walk-through of
3 the scene and the CSU is doing their -- what's sort of your
4 goal?

5 A. That's basically what it is, is a walk-through where
6 we're getting an idea of what we see, what we have. They're
7 doing the, you know, the actual measurements of where things
8 are and the collecting of where, you know, different pieces of
9 evidence. We're getting a general overview of what we have.

10 Q. And just briefly, since we've already heard a lot of
11 this from the CSU, what your memory of the walk-through of that
12 scene is.

13 A. Well, the biggest -- the biggest memory I have is
14 that the bathtub had a lot of blood in it. There were some
15 other areas on the carpet near the door in the living room area
16 that had blood on it, or in it, and, you know, otherwise, it
17 was a fairly neat and orderly place in general.

18 Q. Now, you mentioned that you talked to Julie Ostlund?

19 A. Uh-huh.

20 Q. There's another deputy I guess at the hospital
21 talking to Mary Ostlund; is that correct?

22 A. Correct.

23 Q. Did you make attempts to speak to other potential
24 witnesses at that scene?

25 A. I spoke to the neighbor next door, which who I

1 believe is Coreena Rodriguez. I also went down and talked to
2 another neighbor that lived below. There's four apartments,
3 one, two, three, four, two up, two down, and I just attempted
4 to speak to everyone that was in those four apartments.

5 Q. Now, when you spoke to Coreena Rodriguez, we're
6 talking about the immediate next-door neighbor one unit over on
7 that second floor?

8 A. Yes.

9 Q. Okay. And when you spoke to her again, without
10 saying, because I don't want us to violate the hearsay rule, so
11 without saying what she told you, did you get any indication
12 from her that there was any other potential suspect besides the
13 defendant?

14 MR. BYNUM: I'm going to object to hearsay and
15 confrontation, Judge.

16 THE COURT: That's overruled.

17 Q. (By Mr. Aslett) I'll just repeat the question. I
18 guess when you're speaking to different witnesses, you're
19 trying to get information to learn what potential suspects are
20 out there, correct?

21 A. Correct.

22 Q. I guess if you had a suspect that potentially had
23 fled the scene, you'd want to get that description and
24 information out there as quickly as you possibly could, right?

25 A. Yes.

1 Q. Okay. So I guess after speaking to the patrol
2 officers, speaking to Julie and speaking to Mary, that fair to
3 say Dean Wood is a potential suspect here, right?

4 A. Yes.

5 Q. After speaking to Coreena Rodriguez and learning what
6 she had had to say, did you have any -- did your scope of
7 potential suspects expand at all beyond Dean Wood?

8 MR. BYNUM: Only for purposes of the record, Judge,
9 same objection.

10 THE COURT: Overruled.

11 A. No.

12 Q. (By Mr. Aslett) And did you get any useful
13 information from the downstairs neighbors as far as to what
14 possibly went on in that apartment?

15 A. No.

16 Q. Okay. And if you could explain to the jury, what is
17 a canvas?

18 A. A canvas is going basically through a neighborhood
19 door to door, talking to different people, looking for video,
20 seeing if anyone saw anything or heard anything.

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

22 A. We did that in the area of the four apartments. The
23 way the buildings were set up, that was the only four
24 apartments that looked like they would have any sort of
25 relevance.

1 Q. Okay.

2 A. But we didn't go all through the entire apartment
3 complexes banging on every single door in this case, no.

4 Q. After you did your canvas I guess of the immediate
5 units, did your focus continue to remain on the one suspect
6 that you still had at that time, the defendant?

7 A. Yes.

8 Q. Okay. And at any point during your investigation
9 that night, did you receive any information that would indicate
10 to you that there was a possible alternative suspect who would
11 have done this besides Dean Wood?

12 A. No.

13 Q. Okay. All right. So you do the walk-through of the
14 scene, you do your canvas, speak to Julie, what else did you do
15 out there?

16 A. I spoke with Sergeant Burton who was at the hospital
17 handling that side of the investigation, and we were comparing
18 information about what he saw versus what I saw.

19 Q. So I guess after speaking to everybody that you
20 could, letting the CSU do its job, and having the defendant be
21 transported, did you then leave the scene?

22 A. Yes.

23 Q. Okay. And do you recall how late, how long you were
24 on the scene, roughly?

25 A. A few hours. I think we probably left around 1:30 or

1 so maybe.

2 Q. Okay. What did you do as far as your investigation
3 of this case after you left the scene, I would imagine early
4 morning hours August 21st?

5 A. Right after we left the scene we went to the district
6 attorney's office.

7 Q. Okay. And what did you do there?

8 A. We spoke with ADA Jordan about getting a search
9 warrant.

10 Q. Okay. And was that a search warrant for the
11 defendant's clothing and other items?

12 A. No.

13 Q. Okay. What was the search warrant for then?

14 A. It was for --

15 Q. Let me stop you there. Was it to collect items from
16 the defendant?

17 A. Yes.

18 Q. At the jail. Okay. All right. So that was done.

19 And did you have any involvement with collecting any
20 of the items from the defendant at the jail, his shorts, his --
21 anything like that?

22 A. I was there, that was all.

23 Q. Okay. And did you witness those items being
24 collected from the defendant at the jail?

25 A. Yes.

1 Q. Okay. And did that include a pair of blue -- navy
2 blue shorts?

3 A. Yes.

4 Q. After you witnessed those items being collected at
5 the jail, what did you do then?

6 A. Then we went back to the office, and I think we just
7 got together and talked about what we were going to do next the
8 following day, or later on in the day.

9 Q. Let's talk about the, I guess the days after this
10 happens, the follow-up investigation that you do, what's the
11 next thing that you do as part of your investigation in this
12 homicide?

13 A. We went back and reinterviewed Julie and Coreena,
14 clarified some things. We went to the Fiesta to get some video
15 of that to make sure our timing was correct. We would order
16 911 tapes.

17 Q. All right. So you mentioned going to Fiesta doing
18 some surveillance video. Could you tell us about that?

19 A. Sergeant Rohling and I went to the -- I believe
20 Sergeant Rohling and I went to the Fiesta and had them get us
21 the video of that day of Julie going in and out of the store
22 buying cigarettes and beer or whatever she was buying.

23 Q. Okay. Did you personally view that video?

24 A. I viewed it, uh-huh.

25 Q. What does that video generally show?

1 A. Shows them going into the store, purchasing their
2 items, and coming out of the store.

3 Q. Okay. By them, we're talking about Julie Ostlund?

4 A. Julie and her friend, her next-door neighbor.

5 Q. And do you remember what items were being purchased?

6 A. I believe it was cigarettes and beer, maybe a soda.

7 I'd have to check the report or the receipt, but --

8 Q. And do you remember when you met with Julie after
9 watching the surveillance video, did she give you a receipt of
10 what she purchased with Coreena at that Fiesta?

11 A. We got a receipt at some point. I don't know if it
12 was that night of the initial investigation, or if it was a
13 couple days later, but at some point she gave us a receipt.

14 Q. Okay. And --

15 MR. ASLETT: Your Honor, may I approach the witness?

16 THE COURT: You may.

17 Q. (By Mr. Aslett) Officer Brady, I'm showing you what's
18 been already admitted into evidence as State's Exhibit 120. Is
19 this the copy of the receipt that Julie Ostlund gave to you --

20 A. Yes.

21 Q. -- during the investigation? Okay.

22 And the purchase of these Marlboro Gold cigarettes
23 and Bud Light, did that match with what you say on surveillance
24 video from around the time that this homicide took place?

25 A. I don't think you could specifically -- I don't

1 remember if we could specifically tell, you know, what type of
2 cigarettes or anything. You could notice a box of beer and
3 something small.

4 Q. I guess then that you couldn't see on the
5 surveillance video anything more that was being bought other
6 than just cigarettes and beer, correct?

7 A. No.

8 Q. Okay. And did the surveillance video you viewed and
9 the receipt that you got from Julie corroborate what she and
10 the neighbor had been telling you about what occurred?

11 A. Yes.

12 Q. What did you do after that?

13 A. Like that day or -- where are --

14 Q. Just generally. So you go with the surveillance
15 video, you get this receipt, you go reinterview Julie and
16 Coreena. Generally what else did you do, if anything, as part
17 of your investigation of this case?

18 A. After that I was submitting certain things to the lab
19 to be processed, based on conversations mostly with the
20 district attorney's office, and gathering whatever they
21 suggested that they might need.

22 Q. Now, during the course of this homicide
23 investigation, did there come a point where you requested
24 certain items to be tested by the Houston Police Department
25 crime lab?

1 A. Yes.

2 Q. And what items do you recall requesting to be tested
3 by the lab?

4 A. Well, there were various items of clothing. The
5 items that were taken the night of the investigation by the
6 crime scene unit, which consisted I believe of clothing and
7 some pillowcases.

8 Q. Let me stop there. I guess I'll focus you on, so you
9 requested for clothing to be tested, right?

10 A. I requested whatever we had gathered, whatever we had
11 collected to be tested.

12 Q. All right. And did you submit just one request or
13 multiple requests?

14 A. I don't know. I would imagine more than one.

15 Q. Did you also request that the beer bottles, the Rock
16 Star energy can and malt liquor bottle recovered at the scene
17 be tested as well?

18 A. Yes.

19 Q. Now, at the time you requested those items to be
20 tested for the investigation, were you aware of any DNA results
21 in the case?

22 A. No.

23 Q. Okay. Then why did you request for them to be
24 tested?

25 A. To see if there would be any DNA results from them

1 that might help us.

2 Q. Okay. And as a general matter, how many cases would
3 you say you're working on at any given time as a homicide
4 investigator?

5 A. That's a very difficult question to answer. I
6 don't -- dozens perhaps. I mean, they come, you finish 'em,
7 they sometimes rear back up, sometimes they're never completed,
8 new ones keep getting added, so it's a very hard question to
9 answer.

10 Q. And so back in August going to the fall of 2010,
11 similar situation, this is not the only case that you're
12 working on?

13 A. No. I'd been there about a year, so maybe 20 cases.

14 Q. Okay. And when you're in -- would you say it's fair
15 to say that there are investigations that are in different
16 stages, some are more active and some are less active?

17 A. Yes.

18 Q. So after August 2010, would it be fair to say you had
19 a suspect and you collected about all the evidence you would be
20 expected to collect?

21 A. Yes.

22 Q. Okay. And were there other cases that you were
23 working on at this time that are more active, maybe hunting
24 down witnesses, leads, things like that?

25 A. I'm sure there were, yes.

1 Q. And where I'm going with all this, is do you recall
2 why you might have requested the bottles, other items of DNA
3 testing be, other items collected in this case to be tested
4 weeks or a couple of months after this arrest was made?

5 A. Hmm, no. I mean, no, I don't know. Sometimes that's
6 what we do. Sometimes things get requested really quickly,
7 sometimes they don't get requested really quickly.

8 Q. Okay. Do you ever request items to be tested solely
9 based on DNA results that come back that you may not like?

10 A. (No response.)

11 Q. I guess what I'm saying is that do you let your
12 investigation of a case be -- let me ask it this way. When you
13 get reports of DNA evidence results, do you go where that
14 evidence leads or do you try to shoehorn evidence into whatever
15 your preconceived notion of the case is?

16 A. No, we go to where the evidence leads.

17 Q. Okay. So after requesting all these items to be
18 tested, before you knew what the DNA results were and after
19 speaking with all the witnesses, did you have any further
20 involvement in this case?

21 A. No.

22 Q. Thank you, Officer.

23 MS. FULLER: Pass the witness, your Honor.

24 THE COURT: Cross-examination.

25 MR. BYNUM: Thank you, Judge.

1 CROSS-EXAMINATION

2 BY MR. BYNUM:

3 Q. Officer Brady, good afternoon.

4 You know, the first thing I'd really like to talk to
5 you about is this idea that this prosecutor was talking to you
6 about, about developing suspects when you arrived on the scene.

7 A. Yes, sir.

8 Q. I mean, we can agree that your job as a homicide
9 investigator when you first arrive on a scene is to identify
10 potential suspects, right?

11 A. Yes.

12 Q. And when you arrive on this scene, one of the first
13 things you see is Dean Wood in the back of a police car in
14 handcuffs?

15 A. Yes.

16 Q. So fair to say that at that point you're thinking,
17 Dean Wood is a suspect in this case?

18 A. That's true.

19 Q. Upon seeing that?

20 A. Sure.

21 Q. Because he's in the back of a police car?

22 A. Okay.

23 Q. And then after you're there a little while, you learn
24 some things about Dean and some things about the other
25 residents of the house, right?

1 A. Yes.

2 Q. And you learn that Dean and Julie are the only two
3 people that have access to the apartment that are present at
4 the scene when this happens, right?

5 A. Yes.

6 Q. And so they have that in common. And you learn that
7 both Dean and Julie live there?

8 A. Yes. Well, he's staying there.

9 Q. Staying there.

10 A. Yeah.

11 Q. So they have that in common?

12 A. They do.

13 Q. And you learn that they both were trying to revive
14 Flora on the ground as the other officers and the EMS arrived,
15 right?

16 A. Correct.

17 Q. And that's something else that they have in common?

18 A. Yes.

19 Q. And you also observe that, you know, neither Dean nor
20 Julie has -- let me take that back.

21 And they're both, to a certain degree, upset, right?

22 A. Yes, that's true.

23 Q. Now, Dean is a little more upset than Julie, right?
24 Dean's very upset, isn't he?

25 A. I only saw him for about 30 seconds to a couple -- a

1 few minutes, but he's definitely upset about something.

2 Q. Right. And so is Julie?

3 A. Yes.

4 Q. And that's something else they have in common?

5 A. Yes.

6 Q. So, but, you know, one thing they don't have in
7 common is that Julie is not in the back of a police car, right,
8 and Dean Wood is?

9 A. Yes.

10 Q. And as you're canvassing the scene for additional
11 witnesses, you discover there are no witnesses, eyewitnesses
12 that actually observed what happened to Flora Ryan?

13 A. That's correct.

14 Q. And so as I'm understanding the kind of progression
15 here, you show up on scene and you see Dean in the back of a
16 police car, you find that Dean has a great deal in common with
17 the other person who had access to the house, but Dean remains
18 a suspect and Julie in your mind never becomes a suspect?

19 A. Yeah, that's probably true.

20 Q. And you never questioned Julie in kind of an
21 antagonistic way that would indicate that she was a suspect?

22 A. Not in an antagonistic way, no. We asked her what
23 happened.

24 Q. Right. And you also learned that one thing that they
25 also don't have in common is that Julie has a key to the

1 apartment, right?

2 A. Yes, she has a key.

3 Q. And Dean does not?

4 A. Correct.

5 Q. But at that point, I mean, is it unusual for a
6 homicide -- in a homicide investigation, upon learning that a
7 person has uncontrolled access to a scene, and, in fact, may
8 have been the only person that had controlled access to a
9 scene, is it unusual for you to discard the possibility that
10 that person could be a suspect?

11 A. Nope.

12 Q. So, even upon learning that Julie could come and go
13 freely as she wished, and Julie was the 911 caller and so the
14 police didn't arrive until she wanted them to, that never
15 caused you to think that Julie could have been involved with
16 this?

17 A. We asked her what happened, and she gave us an
18 explanation.

19 Q. So she said she didn't do it, and that was good
20 enough for you?

21 A. Well, it doesn't end right there that specific
22 moment, no.

23 Q. But at no point did you ever think Julie was a
24 suspect in this case. I think that was your testimony earlier.
25 I just want to make sure in light of the other questions that's

1 still the case?

2 A. At this point that's correct.

3 Q. Okay. And really at no point in this investigation
4 was she treated like that?

5 A. No.

6 Q. So, you talked to her. At a certain point -- let me
7 ask this, have you listened to the 911 tape that when Coreena
8 called 911 -- Julie?

9 A. I knew what you meant. Julie.

10 Q. Thank you.

11 A. I have not listened to that in several years.

12 Q. But you did listen to it at some point during your
13 investigation?

14 A. Yes.

15 Q. And do you remember -- do you remember how the caller
16 sounded in that tape?

17 A. Not really.

18 Q. No. Fair to say that the way you heard Julie on the
19 tape, how her affect and her tone was similar as she appeared
20 to you on the scene?

21 A. I don't remember what it sounded like.

22 Q. Okay. You know, I want to talk to you about
23 something you said earlier about going to the Fiesta. You said
24 that -- the prosecutor asked you did viewing the video
25 corroborate the statements, the witness statements you had

1 taken before, and you answered that it did?

2 A. Yes.

3 Q. But that's not true, is it? I mean, isn't it true
4 that the video contradicted the statement that you took from
5 Coreena?

6 A. I don't know.

7 Q. Okay. Well, you wrote an offense report in this
8 case, right?

9 A. Yes.

10 Q. You wrote notes into an offense report, and it's, you
11 know -- you know what I'm about to ask you. You know how
12 important it is to take accurate notes in an offense report,
13 right?

14 A. Okay.

15 Q. And, I mean, would it refresh your memory to
16 review -- I mean, do you remember Coreena telling you that she
17 didn't go to Fiesta with Julie?

18 MR. ASLETT: Objection, hearsay, your Honor.

19 MR. BYNUM: If I can respond here or at the bench?

20 THE COURT: Why don't you-all come up.

21 (The following proceedings were had at the bench:)

22 MR. BYNUM: We're impeaching him. If the State wants
23 a limiting instruction, you know, that's fine, but, I mean, he
24 said that the tape corroborated the statement, but his previous
25 statement was that Coreena told him that she wasn't at the

1 Fiesta, so -- I'm impeaching him. I'm not introducing her
2 statement for the truth of the matter asserted.

3 THE COURT: My thought is, the answer was that it
4 corroborated what Julie did, not what Coreena said.

5 MR. BYNUM: That's not how I heard it. I mean, I
6 thought --

7 THE COURT: Think about it.

8 MS. FULLER: Judge, there are a couple of jurors that
9 keep wiggling in their seats.

10 (The following proceedings were had in open court:)

11 THE COURT: Ladies and gentlemen, we're going to take
12 a quick break. We'll get you back out here. I'm so sorry. I
13 thought we'd wrap up quickly, but I need to check something out
14 real quick. You-all all rise for the jury, please.

15 (Jury out.)

16 THE COURT: All right. So you asked about the
17 neighbor and so you want to cross-examine that the neighbor
18 said something different than what the officer testified to?

19 MR. BYNUM: Yes.

20 THE COURT: All right. So say it in a way that you
21 don't ask for hearsay.

22 MR. BYNUM: Okay. But I still think I can impeach
23 with hearsay.

24 THE COURT: Well, I will agree in certain context you
25 can, but if she said something different. The answer obviously

1 has to rely on hearsay.

2 MR. BYNUM: Yeah, sure, okay.

3 THE COURT: Does that make sense?

4 MR. BYNUM: It does.

5 THE COURT: Obviously you can impeach with the
6 prior --

7 MR. BYNUM: Okay. Got it, Judge.

8 (Break.)

9 (Jury in.)

10 THE COURT: You may be seated, Mr. Bynum.

11 Q. (By Mr. Bynum) Officer Brady, let's go back to you
12 going to the Fiesta. And you had said before that the video
13 you saw at Fiesta corroborated the statements given to you by
14 Julie and her neighbor Coreena, right?

15 A. Yes.

16 Q. And but -- and we know now, because you've actually
17 had a chance to refresh your recollection as well, that that's
18 not true?

19 A. No, that is -- no, I do not say that.

20 Q. Okay. Well, isn't it true that when you view the
21 videotape from Fiesta that it did directly contradict Coreena's
22 statement?

23 A. Coreena's initial statement.

24 Q. Right.

25 A. But not Julie's.

1 Q. And, in fact, at the time you viewed the video that
2 was the only statement you had from her?

3 A. From her, but not from Julie.

4 Q. Right. And we're just talking about her right now,
5 you know, because --

6 A. Well, we went back and asked her about it.

7 Q. Right.

8 A. Right. So --

9 Q. You went back and asked them both about it, in fact?

10 A. Yes.

11 Q. And you went back and Coreena admitted to having lied
12 to you?

13 A. Yes.

14 Q. And then you went to Julie's house, right after you
15 spoke to Coreena, you went and spoke to Julie about the same
16 thing?

17 A. Okay.

18 Q. Right?

19 A. Yes.

20 Q. And Julie said that she knew her neighbor lied?

21 MR. BYNUM: Objection, hearsay, your Honor.

22 THE COURT: Overruled.

23 Q. (By Mr. Bynum) Right?

24 A. Repeat the question, please.

25 Q. I mean, Julie told you that she knew that her

1 neighbor lied to you?

2 A. She had to have known that because Coreena was with
3 her, yes. Well, I don't know if she knew what Coreena had told
4 us actually. I don't remember. I'd have to check the report.

5 Q. Would it refresh your recollection to refer to your
6 offense report at page 2.079 in the last full paragraph?

7 A. This is written -- this is not written by me, by the
8 way.

9 Q. Okay. But still would it refresh your recollection
10 to read your partner's notes about that interaction?

11 A. Okay. Yes, it would.

12 Q. Now, read it to yourself.

13 A. Which page, what, which part?

14 Q. Just that last paragraph, if you could just read it
15 silently to yourself, if it would refresh your recollection.

16 A. (Complies.) Okay, yes, go ahead.

17 Q. Did reading that refresh your recollection as to your
18 own personal knowledge of what happened when you were
19 interviewing Julie that afternoon? This is about two weeks
20 after --

21 A. Right.

22 Q. -- the incident.

23 A. Okay.

24 Q. Did that refresh your memory?

25 A. Yes.

1 Q. Now, did Julie admit to you that she knew her
2 neighbor had lied to you?

3 A. Yes, that's what it says.

4 Q. So it stands. So what that means is, is that at some
5 point after Coreena spoke to you Coreena must have spoken with
6 Julie about lying to you?

7 MR. BYNUM: Objection, calls for speculation, lack of
8 personal knowledge.

9 THE COURT: Overruled.

10 A. Yes.

11 Q. (By Mr. Bynum) So as a homicide investigator, did
12 that not raise any red flags that two potential suspects at
13 least as you arrive now have gotten together to kind of like
14 get stories straight?

15 A. At this point, no.

16 Q. No. So you have someone who -- at no point did Julie
17 talking to her neighbor about lying to police officers, did you
18 at all change your thought process about her possibly being
19 involved in this?

20 A. No, because we'd already spoken to Mr. Wood at this
21 point.

22 Q. And Mr. Wood denied all involvement in this, didn't
23 he?

24 A. I don't believe so.

25 Q. Well, but you didn't interview him?

1 A. No.

2 Q. And -- so you know the real -- the real contradiction
3 between all these statements that you're trying to get to the
4 bottom of when you're revisiting them and going to the Fiesta
5 is the amount of time, is the time, right?

6 A. That's one thing we're trying to do.

7 Q. That's the main thing you're trying to do, fair to
8 say?

9 A. It's one thing we're trying to do.

10 Q. And that's where the contradiction is, is the
11 timeline, right?

12 A. What contradiction?

13 Q. Well, the contradiction that you encountered when you
14 re-interviewed both Julie and Coreena, was had to do with the
15 timeline of events that night, right?

16 A. I don't know -- I don't know if that was -- if that's
17 true or not.

18 Q. Well, the thing that Julie knew that Coreena had lied
19 to you about involved the timeline, didn't it?

20 A. I think it involved their actual actions, not the
21 timeline necessarily.

22 Q. Well, their actions would fall on a timeline,
23 wouldn't they?

24 A. They were lying for other reasons.

25 Q. Well, but the way -- the thing about the Fiesta, I

1 mean -- in a homicide investigation the timeline is crucial,
2 isn't it?

3 A. Yes.

4 Q. So all events happen in sequence as we kind of move
5 through this life and time, right?

6 A. Sure.

7 Q. I asked you a question a moment ago and I'm about to
8 ask you another question and the order of these things is
9 really important.

10 A. Okay.

11 Q. Right?

12 A. Yes.

13 Q. And, in fact, isn't it fair to say that the timeline
14 is the most important thing in a homicide investigation?

15 A. I wouldn't say that.

16 Q. No. I mean, you use the timeline to determine when
17 the decedent died, right, at any investigation?

18 A. Sure, we find out what time the decedent died.

19 Q. And what time potential suspects come and go from a
20 scene, that's an important part of the timeline too, isn't it?

21 A. Yes.

22 Q. And what time officers arrive at the scene is an
23 important part of the timeline, right?

24 A. Yes.

25 Q. And what time the 911 call is made is an important

1 part of the timeline?

2 A. It's part of the timeline, yeah.

3 Q. So the timeline is really essential to any
4 investigation?

5 A. It's part of it for sure.

6 Q. And, you know, when people are certain places on the
7 timeline it's very important, isn't it?

8 A. Yes.

9 Q. And another thing that Coreena admitted to lying to
10 you about is that Julie was in the apartment?

11 MR. ASLETT: Objection to hearsay, Judge, a running
12 objection to hearsay for any statements Coreena made.

13 THE COURT: That's sustained.

14 Q. (By Mr. Bynum) Coreena was inconsistent with you
15 about Julie's location that night, wasn't she?

16 A. I believe she was, yes.

17 Q. Yeah. So she lied to you about where Julie was in
18 her first statement to you, right?

19 A. Yes.

20 Q. But despite that, you still never made a decision to
21 investigate Julie's involvement any further?

22 A. We took her statement three times or -- whatever,
23 so --

24 Q. So you took her at her word that she wasn't involved?

25 A. Yes, we did.

1 Q. Okay. I'd like to play for you what I believe the
2 State is going to stipulate to submitting, the 911 tape; is
3 that correct?

4 MR. ASLETT: Yes.

5 MR. BYNUM: I believe as Defendant's Exhibit 2. Are
6 we at 2?

7 THE COURT: That's right.

8 Q. (By Mr. Bynum) I'd like to play for you finally the
9 911 tape.

10 MR. BYNUM: And I'm tendering the 911 tape to the
11 State and asking for it to be admitted by stipulation.

12 MR. ASLETT: No objections, Judge.

13 THE COURT: All right. Defense 2 is admitted without
14 objection.

15 MR. BYNUM: And I'd ask the State to help me publish
16 it.

17 And may I publish it, Judge?

18 THE COURT: Yes, with the State's help.

19 MR. ASLETT: Putting my law degree to use.

20 MR. BYNUM: Yes.

21 Q. (By Mr. Aslett) And, Officer Brady, what I'm going to
22 ask you to do at the end of this, just listen to it, and with
23 keeping in mind your interactions with Julie when you arrived
24 on the scene the night.

25 (Audio recording played.)

1 Q. (By Mr. Bynum) So, Officer Brady, having listened to
2 that with some attention to the tone and effect of Julie
3 Ostlund, based on your experiences with her that night, is this
4 call, is the tone and affect of Julie Ostlund on this --

5 MR. BYNUM: May I approach the exhibits, Judge?

6 THE COURT: You may.

7 Q. (By Mr. Bynum) Is the tone and affect of Julie
8 Ostlund in this call the same or substantially similar the way
9 she was, the way you remember her being when you saw her that
10 night?

11 A. I just don't know.

12 Q. Okay.

13 A. I don't know.

14 Q. Now, you don't or --

15 A. Means that I don't really remember. I don't
16 remember.

17 Q. Okay.

18 MR. BYNUM: Pass the witness, Judge.

19 THE COURT: Redirect?

20 MR. ASLETT: Yes, your Honor.

21 REDIRECT EXAMINATION

22 BY MR. ASLETT:

23 Q. Officer Brady, let's talk about certain aspects of
24 Julie's affect that you might remember. When you talked to her
25 with Sergeant Rohling, was she screaming at you?

1 A. No.

2 Q. Was she claiming to be in special ops?

3 A. Pardon?

4 Q. Was Julie claiming to have been a Marine?

5 A. No.

6 Q. Threatening to kill you?

7 A. No.

8 Q. Claiming she's killed other people?

9 A. No.

10 Q. Did she have any smell of alcohol about her?

11 A. No.

12 Q. Fair to say that, I believe the word that defense
13 counsel used was the defendant is upset and Julie is upset.
14 We're talking two very different types of upset here, aren't
15 we?

16 A. Yes.

17 Q. Okay. And we hear some yelling from the defendant on
18 the 911 tape, although it's hard to hear because it's in the
19 background. Same kind of yelling that you witnessed him doing
20 that night?

21 A. It was calmer on the 911 tape.

22 Q. Okay. Let's talk about Coreena. We hear her voice
23 briefly in the 911 tape, don't we?

24 A. I think we do.

25 Q. It sounds like Julie's handed her the phone, she's

1 briefly holding the phone while they're grabbing her out of the
2 bathtub. Is that how you heard it as well?

3 A. Yes.

4 Q. Okay. Now, you get several statements from Julie
5 about what occurred. You and Sergeant Rohling interview her a
6 couple of times, correct?

7 A. That's correct.

8 Q. Okay. And her -- is her account of what happened
9 consistent from statement to statement to statement?

10 A. Generally speaking, yes.

11 Q. Okay. And you already testified that it's
12 corroborated by her receipt and the video that you observed
13 from Fiesta, correct?

14 A. Yes.

15 Q. Okay. Now, that's not the same for Coreena. We've
16 heard that there was -- that Coreena in her first statement,
17 she lied; is that correct?

18 A. Yes, I believe she did.

19 Q. Okay. And she basically lied about whether she went
20 to Fiesta or not, right?

21 A. I believe that's true.

22 Q. Okay. And then you saw obviously Coreena went to
23 Fiesta and then you confront her about that, right?

24 A. Yes.

25 Q. Okay. And then obviously she has to admit that she

1 did go to Fiesta with Julie, right?

2 A. Yes.

3 Q. And did you get a reason for why she lied about this
4 little detail?

5 A. Yes.

6 Q. And what was that reason?

7 A. According to the report, she said it had to do with
8 she left her infant or small child with her teenage brother,
9 and thought that that was -- we would -- oh, then there's
10 something about an illegal, her husband's illegal or her
11 brother's illegal, someone is illegal, and she left the child
12 and she didn't want us to know that she left her child.

13 Q. So she's worried about immigration consequences?

14 A. I guess so.

15 Q. And she's worried about possible child abandonment?

16 A. I suppose.

17 Q. Okay. During your investigation did you get any
18 information suggesting that Coreena had a motive to kill Flora
19 Ryan, at all?

20 A. No.

21 Q. Or that she was a potential suspect in this at all?

22 A. No.

23 Q. Did you ever learn whether Coreena had a key to the
24 apartment or not?

25 A. I -- they didn't say she did.

1 Q. All right. As far as you know from the information
2 you developed it would be Julie and Mary Ostlund were the only
3 people with access to that apartment?

4 A. That's what they said.

5 Q. Okay. And so we have an explained lie from Coreena
6 and fair to say no -- you don't catch Julie in any sort of lies
7 about this case that you can find?

8 A. Lies, no.

9 MR. ASLETT: Pass the witness, your Honor.

10 MR. BYNUM: Very briefly, Judge.

11 RE CROSS-EXAMINATION

12 BY MR. BYNUM:

13 Q. You know, there's an inconsistency that I left out.
14 You know, I was so focused on Coreena that I forgot when you go
15 and look at the videotape in Fiesta, Julie also initially was
16 inconsistent to you about what she purchased at Fiesta, wasn't
17 she?

18 A. I think she does talk about a Coke at some point. I
19 don't remember what part of this, if it's in the first
20 interview, Sergeant Wilson's interview, or whoever later
21 interviews her.

22 Q. When you're viewing that tape from Fiesta, do you
23 remember what the largest in terms of size item was that was
24 purchased in that video?

25 A. I think it's, like, not a Coke, it's a box, right.

1 Q. A box. A box of?

2 A. Beer.

3 Q. Beer.

4 A. Yes.

5 Q. And when you see this tape, you realize that that is
6 not consistent with Julie's initial statement, right?

7 A. We probably did, yes.

8 Q. And you also know that part of the evidence taken in
9 this case that you actually requested to be DNA tested later
10 were beer bottles, right?

11 A. Yes.

12 Q. And Julie was inconsistent to you about whether or
13 not she was ever in possession of beer bottles, right?

14 A. She may have been, yes, yes, I guess.

15 Q. And they were -- and we're talking about Bud Light
16 bottles, right?

17 A. Right.

18 Q. She was inconsistent with you about whether she was
19 ever in possession of Bud Light bottles, right? Right?

20 A. At some point she was, yes.

21 Q. And one of your theories as a homicide investigator
22 is that a Bud Light bottle was involved in this homicide,
23 right?

24 A. I --

25 Q. That's one of your theories, right?

1 A. Okay, yeah.

2 Q. And she lied to you about whether or not she had any
3 that night, right?

4 A. I have to review the report, but she was inconsistent
5 about small little things, yes.

6 Q. Well, is it a small little thing, is a potential
7 murder weapon a small little thing?

8 A. You got me.

9 Q. What do you mean?

10 A. Congratulations, I walked into that trap. But, yes,
11 I mean, she -- I don't -- maybe she -- she might have been
12 inconsistent about the Bud Light.

13 Q. And -- all right. And, you know, the prosecutor --
14 or no, I think it was you that talked about --

15 MR. HOCHGLAUBE: Can we approach?

16 (The following proceedings were had at the bench:)

17 MR. HOCHGLAUBE: One of the other reasons that
18 Coreena lied to the police is that there was marijuana found at
19 the -- that there was marijuana in her apartment. And that was
20 not discussed, the rest of the story. Based on the
21 prosecutor's last questioning basically explained why Coreena
22 would lie.

23 THE COURT: I agree.

24 (The following proceedings were had in open court:)

25 Q. (By Mr. Bynum) And so Coreena also gave you another

1 reason why she lied to you, right, that night, and that reason
2 was that there was marijuana on her porch?

3 A. I think that's -- yes, at some point she brings that
4 up. She didn't want us to go out onto her porch or something
5 because there was marijuana outside.

6 Q. Even though the porch is visible from the porch of
7 this apartment, right?

8 A. It's visible.

9 Q. So you could have -- you saw over on to Coreena's
10 porch as you were looking at the porch in the Ostlund
11 residence, right?

12 A. Yes.

13 Q. So did you find Coreena's excuses as to why she lied
14 to a police officer to be credible?

15 A. Why she lied? I found them to be the typical type of
16 lie that we get sometimes.

17 Q. I mean, don't you think it's unusual that the
18 complainant's granddaughter knew that a witness had lied to you
19 and didn't contact you about that?

20 A. No, not -- I don't have any opinion about that.

21 Q. Well, do -- does family of complaining witnesses, do
22 they -- do they, in your training and experience, do they
23 typically cooperate with the investigation because they want
24 some finality, or do they not cooperate?

25 A. In general they cooperate.

1 Q. So is it cooperating with the police to conceal that
2 a witness has lied to the police?

3 A. No.

4 Q. No. So in this case, Julie was not cooperating with
5 your investigation of her grandmother's death?

6 A. I'm not saying that.

7 Q. You know, I think the heart -- I talked a lot about
8 the timeline, right? And the point of the timeline is that
9 people are going in and out of an apartment where there ends up
10 being a dead old woman, right?

11 A. At what point are they going in and out are you
12 talking about?

13 Q. Throughout the evening people are going into and out
14 of an apartment where eventually an old woman is dead?

15 A. Well, someone leaves and then goes back, so I don't
16 think in and out is -- she left and then she went back.

17 Q. Julie?

18 A. Julie.

19 Q. But just to be clear, you've received multiple
20 different accounts of when Julie was in the apartment on the
21 night of her grandmother's death, right?

22 A. I don't think multiple different accounts is
23 accurate.

24 Q. Well, you've heard more than one, haven't you?

25 A. Are you talking about within, like, five minutes or

1 ten minutes, that type of different account? Or are you
2 talking about numbers of times?

3 Q. I'm talking about numbers of times in and out of the
4 apartment.

5 A. I'd have to look.

6 Q. So --

7 THE COURT: All right. We're going to take a break
8 for the day. It's 5:00 o'clock. I need you back here, jurors,
9 at 9:30. I appreciate you-all returning today after the long
10 break. If you-all would please try to be prompt tomorrow at
11 9:30 we'll get started right away, okay. We'll see you
12 tomorrow at 9:30.

13 (Jury out.)

14 THE COURT: All right. We'll start back here at
15 9:30. Make sure that you-all have reviewed the charge so we
16 can review it before we start at 9:30.

17 MR. BYNUM: I think we already have.

18 (Proceedings recessed until September 24, 2013.)
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1 CAUSE NO. 1285552
2 THE STATE OF TEXAS IN THE 176TH DISTRICT
3 VS. COURT OF
4 DEAN JEROME WOOD HARRIS COUNTY, TEXAS
5

6 I, Judith Ann Fox, Official Court Reporter in and for
7 the 176th District Court of Harris County, State of Texas, do
8 hereby certify that the above and foregoing contains a true and
9 correct transcription of all portions of evidence and other
10 proceedings requested in writing by counsel for the parties to
11 be included in this volume of the Reporter's Record, in the
12 above-styled and numbered cause, all of which occurred in open
13 court or in chambers and were reported by me.

14 I further certify that this Reporter's Record of the
15 proceedings truly and correctly reflects the exhibits, if any,
16 admitted by the respective parties.

17 WITNESS MY OFFICIAL HAND this, the 11th day of
18 November, 2013.
19
20

21
22 /s/ Judith Ann Fox
23 Judith Ann Fox
24 Official Court Reporter
25 176th District Court
Harris County, Texas
Certificate No. 3311
Certificate expires: 12-31-13