

1 Actually, I don't have anything, Judge.

2 THE COURT: All right. Very good. Sir,
3 you're excused. Thank you.

4 All right. Call your next witness.

5 MS. MITCHELL: State calls April Palatino.

6 THE COURT: Okay.

7 Okay. You can take the stand.

8

9 APRIL PALATINO,

10 the witness, having first been duly sworn, testified as
11 follows:

12 THE COURT: You may proceed when you're
13 ready.

14 DIRECT EXAMINATION

15 BY MS. MITCHELL:

16 Q Would you please introduce yourself to us?

17 A April Palatino.

18 Q Where are you currently employed?

19 A I work for the Houston Police Department with the
20 crime scene unit.

21 Q How long have you been with the crime scene unit?

22 A About eight years.

23 Q And how long have you been with HPD in total?

24 A 12 years.

25 Q And did you have any special training to become a

1 police officer?

2 A Police academy, six months of training.

3 Q And do you go through continuing education?

4 A Yes, ma'am.

5 Q Did you have any special training to become a part
6 of the crime scene unit?

7 A Not to become, but since then I have taken about
8 408 classroom hours on various crime scene topics.

9 Q And with the crime scene unit, what are your
10 duties and responsibilities?

11 A I'm assigned to the vehicle examination building
12 and my duty is to collect and record where I got evidence
13 from out of vehicles.

14 Q Okay. Were you at any point asked to process a
15 vehicle or white Oldsmobile in this particular incident?

16 A Yes, ma'am.

17 Q And were you able to do that?

18 A Yes, ma'am.

19 Q And when you're asked to process a vehicle, I
20 guess how do you start? What's the first step?

21 A First thing we do is take pictures. We take
22 overall pictures of the outside of the vehicle. Overall
23 pictures of the inside of the vehicle. And move into
24 close range photographs. If we find something that needs
25 a close-up picture.

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

2 A Yes, ma'am.

3 MS. MITCHELL: May I approach the witness,
4 Your Honor?

5 THE COURT: You may.

6 Q (BY MS. MITCHELL) I'm showing you what has been
7 premarked as State's Exhibits 21 through 39. Do you
8 recognize these photos?

9 A Yes, ma'am. These are pictures that I took from
10 the vehicle on this case.

11 Q And do they fairly and accurately show the car in
12 the state it was on that date?

13 A Yes, ma'am.

14 Q Have they been altered in any way?

15 A No, ma'am.

16 Q All right.

17 MS. MITCHELL: Your Honor, at this time
18 the State offers State's Exhibits 21 through 39 and am
19 tendering to opposing counsel for inspection.

20 THE COURT: Okay.

21 MR. POPE: I previously viewed them,
22 Judge. I don't have any objection.

23 THE COURT: All right. They are admitted.

24 MS. MITCHELL: May I publish them to the
25 jury?

1 THE COURT: You may.

2 Q (BY MS. MITCHELL) So where is the location that
3 the vehicle was processed?

4 A We're located at 1305 Dart Street, about 10
5 minutes from the downtown area here. This one was -- I
6 believe we put that one in Bay 3, inside of our vehicle
7 examination building.

8 Q I'm showing you State's Exhibit No. 21. What are
9 we looking at here?

10 A That is inside Bay 3 of the vehicle examination
11 building. That's an overall photograph of the vehicle I
12 processed that day.

13 Q Okay. And State's Exhibit No. 22?

14 A That's just a different angle, same vehicle.

15 Q And State's Exhibit No. 23, I'm going to zoom in
16 on the back passenger door on the right side. Is there
17 anything of note in this picture?

18 A Yes, ma'am. You can see what appears to be a
19 blood stain on that rear passenger side door right there.

20 Q Okay. And then in State's Exhibit No. 25, what
21 are we looking at here?

22 A More blood stains on the driver's side doors.

23 Q Then State's Exhibit No. 28, what are we looking
24 at?

25 A That's a door frame. It looks like the front

1 passenger side door frame with possible blood stains.

2 Q Okay. And then in State's Exhibit 30. I'm going
3 to zoom out. What are we looking at?

4 A Again at the passenger side doors with more blood
5 stains on them.

6 Q And State's Exhibit 32, do you see anything of
7 note in this picture?

8 A Yes, ma'am. I was trying to take a little bit
9 closer-up picture of the interior front passenger side
10 door frame with what appears to be blood stains on them.

11 Q Okay. And State's Exhibit No. 33, what are we
12 looking at?

13 A Another picture of the interior front passenger
14 side door there is little blood stains on the window and
15 some more on the door frame.

16 Q Okay. And then State's Exhibit No. 34, what are
17 we looking at?

18 A The interior front passenger side door frame, we
19 can see blood stains.

20 Q When you were processing the vehicle, were you --
21 did you ever locate a knife in the vehicle?

22 A Yes, ma'am.

23 Q And where was that found?

24 A It was in the trunk of the vehicle in the spare
25 tire well.

1 Q All right. I'm showing you State's Exhibit No.
2 37. What are we looking at?

3 A That is a picture of the spare tire well and the
4 kitchen knife that I recovered from that area.

5 Q Okay. And what is State's Exhibit No. 38?

6 A It's a little bit closer-up photo of that knife
7 that I picked up.

8 Q Okay. What's State's Exhibit No. 39?

9 A And that's the steak knife that I collected and
10 took another close-up photograph.

11 Q Okay. And when you collected that knife, what did
12 you do with it?

13 A I put it in an envelope and placed it into the
14 Houston Police Department property room.

15 Q And did you bring it with you today?

16 A Yes, ma'am.

17 MS. MITCHELL: May I approach the witness,
18 Your Honor?

19 THE COURT: Of course.

20 Q (BY MS. MITCHELL) I am pre-marking the envelope
21 that is sitting in front of you as State's Exhibit No. 48.
22 So do you recognize this envelope?

23 A Yes, ma'am.

24 Q And did you bring it to court with you today?

25 A Yes, ma'am.

1 Q And how do you know it's the same envelope that
2 you tagged in?

3 A Because I write all my case information on it, on
4 the front side, include the offense type, the case number,
5 address, the date the offense occurred, my name, my unit
6 number, the date I collected this item, the number that I
7 tagged this item to be and then I seal it with red
8 evidence tape and I put my initials and the date that I
9 enclosed it into this envelope.

10 Q Okay. And if you would, please, open up this
11 envelope for me.

12 A (Witness complies) Okay.

13 Q Okay. And what is this brown envelope that came
14 from inside the envelope?

15 A That's just like a brown lunch sack that I would
16 put the knife in to contain any DNA evidence that may have
17 been on it. I didn't want it falling all over the inside
18 of this envelope so I put it in there.

19 Q Okay. And is the knife inside this brown
20 envelope?

21 A Yes, ma'am.

22 Q And if you will look at it to make sure that it's
23 in the same or substantially similar condition as it was
24 in when you found it.

25 A Yes, ma'am.

1 Q It hasn't been altered in any way?

2 A No, ma'am.

3 Q And then what is this other envelope that was
4 found inside?

5 A Oh, the crime lab must have opened it and
6 conducted some sort of DNA test on it. It's labeled "swab
7 from the blade of knife".

8 Q Okay.

9 MS. MITCHELL: Your Honor, at this time,
10 the State will offer State's Exhibit 48 and its contents
11 which is the knife.

12 THE COURT: Okay. Any objection, sir?

13 MR. POPE: Judge, I would just like to
14 look at the chain of custody list.

15 THE COURT: No problem.

16 MS. MITCHELL: And Your Honor, just so
17 there is no confusion, I'm going to label the individual
18 items within State's Exhibit 48.

19 THE COURT: Yes. The better practice. So
20 let's have them labeled -- well, let's just keep them in
21 sequence then and make them --

22 MS. MITCHELL: I'll make them 48A, if you
23 don't mind.

24 THE COURT: Is that okay, reporter?

25 Okay. 48A.

1 MS. MITCHELL: And 48B.

2 THE COURT: A and B.

3 MS. MITCHELL: So 48A I will be labeling
4 the envelope that contained the knife and 48B will be the
5 swabs that were taken from that envelope. And then State
6 will move to enter 48A into evidence. Along with the
7 envelope 48.

8 THE COURT: Got it.

9 MR. POPE: Judge, at this time I think I
10 need to object to the chain of custody as she opened the
11 envelope in front of us that had clearly been sealed up by
12 somebody else who had handled the knife in the interim.

13 THE COURT: It's overruled.

14 MS. MITCHELL: And Your Honor, may I
15 publish the knife, on the Elmo, to the jury?

16 THE COURT: Yes, ma'am.

17 Q (BY MS. MITCHELL) Okay, Officer, I'm showing
18 you -- I am showing the jury 48A which is the knife that
19 you recovered; is that correct?

20 A Yes, ma'am.

21 THE COURT: Wait, 48 is the knife, right?

22 MS. MITCHELL: 48 is the envelope that 48A
23 and 48B were contained in.

24 THE COURT: Okay. Say that one more time
25 for me.

1 MS. MITCHELL: 48 is just the envelope
2 that 48A and 48B were contained in.

3 THE COURT: So 48A is the knife?

4 MS. MITCHELL: Yes, sir.

5 THE COURT: Okay. All right. Got it.

6 MS. MITCHELL: Pass the witness, Your
7 Honor.

8 THE COURT: Cross?

9 MR. POPE: Just briefly, Judge.

10

11 CROSS EXAMINATION

12 BY MR. POPE:

13 Q Now, the Dart Street, there is a lot there, too,
14 right, where vehicles are taken to if they are like
15 wrecked or if they are being processed for other evidence;
16 is that correct?

17 A The Dart Street lot is right next door to us.
18 It's run by the auto theft people. We put our vehicles
19 there when we're done processing for evidence.

20 Q And so the vehicles can stay there if you want to
21 look at something in the future, right?

22 A If we ever needed to go back -- those vehicles are
23 released by the primary investigator assigned to the case.
24 So they determine when that vehicle can be released. If
25 in the meantime something else wants to be looked at, sure

1 they can go over next door.

2 Q Now, I notice during your testimony when you were
3 looking at some of the pictures you said this appears to
4 be blood or it's possibly blood. Did you do any testing
5 of the, you know, the smears that you found on the car to
6 determine if that's blood or do you just know by your
7 experience that it appears to be blood?

8 A I don't do any analysis. We didn't even collect
9 blood stains in this case off of this car. Or at least I
10 did not.

11 Q Is that something you would normally do is collect
12 blood stains?

13 A It just depends on the case. The investigator
14 needs to ask for it.

15 Q So you don't do it on your own. It's something
16 that you do at the direction of an investigator?

17 A That's correct.

18 Q And no investigator ever asked you to collect any
19 blood stains?

20 A No.

21 Q I think Exhibit No. 38 -- actually, you know what,
22 yeah. Exhibit 38 I'm just going to set it right over
23 this. And this is the knife when you picked it out of the
24 car you testified that you found it in the rear wheel
25 well?

1 A Inside the trunk, yes, sir.

2 Q Was there a tire over that or was it just sitting
3 there like that?

4 A I would need to see other pictures if I moved
5 anything before I saw it like that.

6 Q But you don't recall doing it?

7 A Not off the top of my head in the two years. I
8 take a picture as soon as I open the trunk.

9 Q Sure. And I know that this may seem like a silly
10 question, but when you visually inspected this knife did
11 you determine like what this might be here, what any of
12 these stains on the blade might be?

13 A I don't do any analysis, sir.

14 Q Okay. And in No. 39, you can also see some stains
15 on this knife right here; is that correct? You can see
16 something on the knife?

17 A There's something on the knife, yes, sir.

18 Q And the knife that was admitted into evidence as
19 No. 48A, you will agree with me that there is no stain, so
20 it has been altered in some way.

21 A Like I said, there was a swab.

22 Q But you didn't take that swab.

23 A I don't do that, no, sir.

24 Q And you can't testify as to anything that was done
25 to the knife itself?

1 A No, sir.

2 Q Other than the fact that it's clearly -- something
3 clearly has been done to it since the --

4 MS. MITCHELL: Objection, argumentative.

5 Q (BY MR. POPE) -- since the time that you put it
6 into evidence?

7 THE COURT: All right. Well, she can
8 testify as to her observations as the knife today as
9 opposed to when she first observed it. All right? But
10 that's it.

11 MR. POPE: Thank you, Judge.

12 THE COURT: Okay.

13 MR. POPE: Pass the witness, Your Honor.

14 THE COURT: All right. Anything else,
15 ma'am?

16 MS. MITCHELL: No, Your Honor.

17 THE COURT: Thank you. You may step down.

18 Tell you what, let's take our morning break.
19 Take a break right here. Probably about 30 minutes. I
20 will take care of some other court business in that time
21 and then we'll come out and we'll finish up our morning
22 session before lunch.

23 I have to remind you do not discuss any of the
24 testimony.

25 (Court in recess)

1 (Jury present)

2 THE COURT: Thank you. Take your seats.
3 State, call your next witness.

4 MS. MITCHELL: State calls Officer Rusty
5 Smajstrla.

6 THE BAILIFF: Witness already sworn,
7 Judge.

8 THE COURT: All right. Come forward, sir.

9
10 RUSSELL SMAJSTRLA,
11 the witness, having first been duly sworn, testified as
12 follows:

13 THE COURT: Take the stand.

14 You may proceed when you're ready.

15 DIRECT EXAMINATION

16 BY MS. MITCHELL:

17 Q Would you please introduce yourself to us?

18 A I'm Officer Russell Smajstrla.

19 Q And where are you currently employed?

20 A Houston Police Department.

21 Q And how long have you been with the Houston Police
22 Department?

23 A About 20 years.

24 Q Where is your current assignment?

25 A I work in our family violence unit, the Southeast