this bedroom, right?

A. Yes, sir.

Q. Or in this bathroom, right?

A. Yes, sir.

MR. HOCHGLAUBE: I'll pass the witness.

THE COURT: Anything further?

MR. ASLETT: Nothing further from the State, your Honor.

THE COURT: May this witness be excused?

MR. HOCHGLAUBE: Subject to recall, but yes.

THE COURT: Thank you for coming in.

Call your next.

MR. ASLETT: The State calls Officer Pena, your Honor.

May I proceed, your Honor?

THE COURT: You may.

OFFICER J. PENA,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ASLETT:

Q. Good afternoon, sir. Would you please tell the jury your name.

A. Jose Pena.

Q. And what do you do for a living, Mr. Pena?

A. I am a police officer with the Houston Police

Department. I've been with HPD for about 13, 14 years.

Q. And what is your current assignment within HPD?

A. My current assignment is with the south central patrol division.

Q. What are you currently doing for them?

A. Patrol duties, riding around in a patrol car and answering calls for service.

Q. Back in August of 2010 what job did you have with HPD?

A. I was a crime scene investigator.

Q. And did you have to go through specialized training to become a crime scene investigator?

A. I did, sir.

Q. If you could just briefly go through that.

A. Basically to become a crime scene investigator you apply with the division, they accept you, and they train you under a senior crime scene investigator in the use of a camera, collection of evidence, identification of evidence, and anything that entails processing a crime scene that involves a murder or an officer involved shooting or suicide or anything in that regards with a homicide case.

Q. Does that include collecting samples of DNA?

A. That's true, yes, sir.

Q. If you could just generally describe for the jury how you were trained and how you did collect DNA samples back in

August of 2010 when you were a crime scene investigator?

A. To collect DNA you will have to have a warrant if the person is not compliant. That warrant was taken care of by that day by Investigator Brady. And the way you collect evidence, in this case, I needed to collect hair samples and swab a penile area.

Q. Let me stop you right there. We'll go into the specifics of this case in just a second. Just the general process of doing a swab, if you could describe it.

A. Use gloves, sometimes we suit up, and use clean distilled water, and sterile cotton applicators, and that's the basics of it.

Q. Now, I want you to think back to the early morning hours of August 21, 2010. Were you called to collect evidence in a homicide case that morning?

A. I was, at 4:18 that day, by Investigator Brady.

Q. Okay. 4:18 a.m.?

A. 4:18 a.m., yes, sir.

Q. Okay. And where did you go?

A. I went to the central jail down at Reisner, to a holding area.

Q. Okay. And what were you asked to collect when you got there?

A. I was asked to collect hair fibers and do a swab on the penis, and also collect the clothing that the individual

was wearing.

Q. Okay. Who were you asked to collect the clothing, the penile swabs, and other DNA evidence from that day?

A. I was asked from a Mr. Wood, first name Dean.

Q. And do you see Dean Wood in the courtroom today?

A. Yes, sir. It's that gentleman with the striped shirt on.

MR. ASLETT: Your Honor, may the record reflect the witness has identified the defendant.

THE COURT: The record will so reflect.

Q. (By Mr. Aslett) And did you take these samples pursuant to a warrant that had been signed by a judge?

A. That's correct, yes, sir.

MR. ASLETT: Your Honor, at this time State would offer into evidence State's Exhibit 93, which is the search warrant for the DNA samples from Dean Wood in this case.

THE COURT: I'm sorry, number again?

MR. ASLETT: 93.

MR. HOCHGLAUBE: I don't have an objection.

THE COURT: State's 93 is admitted without objection.

MR. ASLETT: Permission to publish, your Honor?

THE COURT: You may.

Q. (By Mr. Aslett) It appears the warrant was signed August 21st at 3:53 a.m.

Okay. After you were told to collect these items,

how did you go about doing that?

A. I was assisted by the jail personnel and also the investigator, Sergeant Rohling, and Investigator Brady at the time. I entered the cell where he was being held, and he was compliant. I told him -- I introduced myself. I told him what I was going to do, what I needed, and he complied. For some time after that he was upset and I had to pull hair out of his head myself.

Q. And you say he was upset, describe how he was upset and what he was upset about.

A. He was blabbering on about we were wasting his time, he didn't do anything and so on.

Q. Now, did you collect hair samples from him?

A. I did, yes, sir.

Q. Describe how you did that.

A. I basically had gloves on, and I pulled a bunch of hair out of his head. He provided the hair samples that were free falling and also the ones that he had to pull from his groin area.

Q. Okay. What did you do after you collected the hair samples?

A. I packaged everything and I submitted it into the property room.

Q. Did you take a buccal swab from the defendant?

A. I did as well, yes, sir.

Q. Could you describe to the jury how you take a buccal from somebody?

A. You take a cotton tip applicator and you swab the inside cheek area of the mouth for a number of -- about a minute or so. I switch over to the next side and do the same thing over with the same two sterile cotton tip applicators.

Q. And did you take a buccal swab from the defendant using those procedures?

A. I did, yes, sir.

Q. What did you do with the buccal swab after you had taken it?

A. I allow it to air dry, and after that it's packaged and it's submitted into the HPD property room.

Q. And did you take swabs of DNA from the defendant's penis?

A. I did, yes, sir.

Q. Describe to the jury how you went about doing that.

A. Same thing, with a fresh pair of gloves I moistened the cotton applicators with distilled water and I swab the penis starting from the top near the groin area, down and around the head area and around the testicle area with the same swabs.

Q. And was there anything remarkable about the state of the defendant's penis that you can recall as you're doing this?

A. No, sir.

Q. Okay. So no blood or anything like that?
A. None that I could see with the naked eye.
Q. Okay. And what did you do with the penile swabs once you collected them?
A. They're allowed to air dry, then they're packaged in a box and submitted into the property room.
Q. Now, were you asked to collect the defendant's clothing that he was wearing at the time?
A. Yes, sir, I was.
Q. Would you describe what you saw the defendant to be wearing at the time?
A. He had on a t-shirt and a pair of tennis shoes, Nike shoes, and also a dark -- a pair of shorts.
Q. And do you recall the color of those shorts?
A. A dark blue.
Q. To your recollection was the defendant wearing any underwear underneath his shorts?
A. Not that I recall, no, sir.
Q. So his penis would have been in contact with the back of the blue shorts?
A. I assume, yes.
Q. Okay. And you observed him wearing these yourself, correct?
A. Yes, sir. I also photographed, took photographs of him wearing the clothing as well.

Q. Okay.

MR. ASLETT: Permission to approach the witness, your Honor?

THE COURT: You may.

Q. (By Mr. Aslett) Officer Pena, first I'm going to show you what's been previously marked as State's Exhibits 96 and 97. If you could please tell the jury what these are.

A. Okay. These are the boxes I put the swabs in, and the reason I can tell is because it has the case number, the date, location, and my unit number and my name and payroll number, and I also have initialed the box with my initials. And this is where the swabs that I keep on talking about, the cotton tip applicators go in after they've been air dried. And this is the one for the penis.

Q. We're talking about 96 is the one for the penis?

A. Yes. And 97 is the one for the buccal swabs. And again, I can tell it's mine because of the information I had labelled the box with and my initials on it.

Q. So this black Sharpie writing that says buccal and penile, that's your handwriting?

A. That's my handwriting, yes.

Q. Did you then place it in this evidence bag and seal it up?

A. I did, and submitted it to the property room.

Q. And do these swabs and bag, apart from other writing

that appears on it, appear to be in the same or substantially similar condition as when you collected these swabs?

A. As far as I can tell, yes, sir.

MR. ASLETT: Your Honor, at this time State offers into evidence State's Exhibits 96 and 97.

MR. HOCHGLAUBE: Can we approach, Judge?

THE COURT: You may.

(The following proceedings were had at the bench:)

MR. HOCHGLAUBE: Just for purposes of the record, I don't want to be heard to say I have no objection to these items. I don't have any additional objections.

THE COURT: No additional objections.

MR. HOCHGLAUBE: Correct.

THE COURT: State's 96 and 97 are admitted.

MR. HOCHGLAUBE: Thank you.

(The following proceedings were had in open court:)

THE COURT: State's 96 and 97 are admitted.

Q. (By Mr. Aslett) Did you also mention that among other items you tagged the defendant's shorts?

A. Yes, sir.

Q. Did you do any DNA swabbings yourself on these shorts or any evidence collection from them?

A. I did not. It was common practice, we go ahead and tag 'em into the property room, and then at the request of the investigators the lab will take custody of those and conduct

that testing.

Q. Officer Pena, I'm going to now show you what's been marked as State's Exhibit No. 95. Could you tell the jury what these are?

A. It appears to be the package holding the dark blue shorts we keep on talking about.

Q. Okay. I notice that this is open. Did you open this earlier today in my presence?

A. I did, when we met earlier this morning.

Q. Okay. And if you could tell us what is inside here in this brown paper bag.

A. This is going to be the bag where I placed the shorts in. And again, it's initialed by me and it has the case information as -- and the boxes we described earlier.

Q. And did we look at these together, these blue shorts together earlier today?

A. Yes, sir, we did.

Q. And apart from stuff that the lab did to it afterwards, do they appear to be in the same or substantially similar condition as when you collected them directly from the defendant on August 21, 2010?

A. They do, yes, sir.

MR. ASLETT: Your Honor, at this time State offers into evidence State's Exhibit No. 95 and tenders to Defense counsel for inspection.

MR. HOCHGLAUBE: No objection, Judge.

THE COURT: 95 is admitted without objection.

MR. ASLETT: Permission to publish, your Honor?

THE COURT: You may.

Q. (By Mr. Aslett) And again, just so we're absolutely clear, all these markings on it in what appear to be silver were not present when you collected them, right?

A. That's correct, yes, sir.

Q. But otherwise these are the blue shorts?

A. Those are.

Q. Did you collect any other evidence from the defendant at the jail?

A. Other than the clothing, the buccal swab, the penile swab, and the hair samples, no, sir.

Q. And again, what did you did with all the clothing and the DNA swabs after you collected them and put them in bags?

A. They were packaged and submitted into the HPD property room.

Q. And did you have any other involvement in that case after you tagged those items in the property room?

A. No, sir.

Q. And again, this is just so we're clear, we're talking about 4:00, roughly 4:00 in the morning on August 21st, correct?

A. That's correct, sir.

Q. Okay. And did you -- do you have any personal knowledge of how long after the murder in this case occurred you collected this evidence?

A. I do not. I didn't talk to the investigators or Officer Langford about it, so I do not.

Q. Okay.

MR. ASLETT: Pass the witness, your Honor.

THE COURT: Cross-examination.

CROSS-EXAMINATION

BY MR. HOCHGLAUBE:

Q. I don't think I understood the last question and answer. You said you don't know exactly what time you did the swabbings?

A. No, I know what time I did the swab. He's asking me what time that the crime occurred or the scene where Officer Langford was dispatched to.

Q. I see. And your swabbing occurred at?

A. Between 4:18 and 6:00 o'clock, 6:10 in the morning when I left the scene.

Q. Okay.

A. In that hour period.

Q. When you found him, when you found Mr. Wood, did he have bags on his hands?

A. No, sir.

Q. And you obviously don't know whether he had gone to

the bathroom over the past, say, ten hours or so, do you?

A. That is correct, I do not know. I wasn't made aware of that either.

Q. Okay.

MR. HOCHGLAUBE: Pass the witness.

MR. ASLETT: Nothing further from the State.

THE COURT: All right. Excellent.

Thank you very much for coming in, Officer. We appreciate that.

Ladies and gentlemen, at this time we are going to break for lunch. We have another hearing on another case that we will take up during the break, and then when you-all return from lunch we'll start back up.

(Jury out.)

THE COURT: All right. You may be seated.

(Lunch recess.)

(Open court.)

THE COURT: All right. You want to put everything on the record?

MR. HOCHGLAUBE: Sure.

THE COURT: Okay. Off of the record we have had discussions amongst ourselves about witnesses and their availability and the State's complying with the discovery order, and the State brought up to the Court's attention -- Ms. Fuller, you want to recite your position.