

1 MS. CARROLL: Yes, Your Honor.

2 THE COURT: Thank you so much.

3 MS. CARROLL: Your Honor, at this point I will
4 call Dr. Phatak.

5 THE COURT: Thank you.

6 THE BAILIFF: This witness has not been sworn
7 in, Your Honor.

8 THE COURT: Thank you very much.

9 (Witness sworn.)

10 THE COURT: Thank you. Please have a seat.

11 THE WITNESS: Thank you.

12 **DARSHAN PHATAK,**

13 having been first duly sworn, testified as follows:

14 **DIRECT EXAMINATION**

15 Q. (BY MS. CARROLL) Can you state your name for the
16 record?

17 A. Yes. My name is Darshan R. Phatak.

18 Q. And what is your occupation?

19 A. I'm an assistant medical examiner for Harris
20 County, Texas.

21 Q. And in your capacity as a medical examiner, do you
22 perform a lot of autopsies?

23 A. Yes.

24 Q. And during your career, approximately how many
25 autopsies do you think you've performed?

1 A. Approximately 1,800.

2 Q. Okay. And on October 23rd, 2010, did you conduct
3 an autopsy on Travone Ford?

4 A. Yes.

5 Q. And was the laboratory report submitted by you
6 displaying the results of the drug testing performed on
7 Travone Ford?

8 A. Yes.

9 Q. I'm now going to show you what's been previously
10 marked as Defense Exhibit No. 43. Do you recognize this?

11 A. Yes.

12 Q. Okay. And this was the report submitted by you?

13 A. This is a report on the samples submitted by me,
14 yes.

15 Q. Was this report made at or near the time of the
16 autopsy and testing of the specimens?

17 A. Yes.

18 Q. Was it made by somebody with knowledge from
19 information -- or from information transmitted by a person
20 with knowledge with the information contained in it?

21 A. Yes.

22 Q. Was it kept in the course of regularly conducted
23 business activities?

24 A. Yes.

25 Q. And was it the regular practice of your business to

1 make these reports?

2 A. Yes.

3 MS. CARROLL: Now tendering to the prosecutor.

4 (Ms. Knecht and Ms. Carroll whispering.)

5 MS. KNECHT: No objections.

6 THE COURT: Admitted.

7 Q. (BY MS. CARROLL) Did Travone Ford have any drugs
8 in his system at the time of his death?

9 A. Yes.

10 Q. What drugs did he have in his system?

11 A. He had ethanol, ethanol alcohol and
12 benzoylecgonine.

13 Q. Let's first talk about the alcohol. There's a few
14 different numbers shown on your laboratory report. Which of
15 these numbers, as far as alcohol, would be the most accurate
16 about the level of alcohol in his system at his time of
17 death?

18 A. The vitreous humor ethanol result would be the most
19 physiologically accurate.

20 Q. Why is that the most accurate?

21 A. The vitreous chamber of the eye is sequestered from
22 the immune system and it's resistant to decompositional
23 effects.

24 Q. And what was his alcohol level?

25 A. 0.10 grams per deciliter.

1 Q. So, .1 alcohol level?

2 A. Correct.

3 Q. And what other drugs did he have in his system?

4 A. The other drug found was benzoylecgonine. That's
5 the main metabolite of cocaine.

6 Q. Okay. And can you tell when he had consumed the
7 cocaine?

8 A. I can only provide a range of time.

9 Q. And what range of time did you provide as to when
10 he consumed the cocaine?

11 A. At least 24 to 48 hours before death.

12 Q. Is there any way to determine just how much cocaine
13 he used?

14 A. No.

15 Q. Is it possible that he was still feeling the
16 effects of the cocaine at the time of his death?

17 A. It's possible.

18 MS. KNECHT: Judge, I'm going to object to
19 speculation.

20 MS. CARROLL: Your Honor, he's an expert on
21 this matter.

22 THE COURT: Yeah. Can you just establish
23 that?

24 Q. (BY MS. CARROLL) Okay. Can you tell me about
25 where you went to school?

1 A. Yes. I received my MD from the New Jersey Medical
2 School in the year 2000.

3 Q. Okay. And were you also a professor?

4 A. I'm an assistant clinical professor. I help
5 educate pathology residents and medical students who rotate
6 through our institute.

7 Q. Is part of your education teaching them how to
8 interpret these results?

9 A. Yes.

10 Q. And how long have you been doing that?

11 A. I've been here since July of 2006.

12 Q. Okay. And how long have you been an assistant
13 medical examiner?

14 A. For the same amount of time.

15 Q. And have you been interpreting these results?

16 A. Yes.

17 Q. And that's since 2006?

18 A. For Harris County, yes.

19 Q. And are you board certified in forensic pathology?

20 A. Yes.

21 Q. And are you board certified in anatomic and
22 clinical pathology?

23 A. Yes.

24 Q. And did you go -- are you with the College of
25 American Pathologists?

1 A. Yes.

2 MS. CARROLL: Your Honor, may I proceed?

3 THE COURT: Yes, ma'am.

4 MS. KNECHT: Judge, my objection, though, is
5 as far as his trying to interpret any type of toxicology
6 results. He hasn't been established as an expert in
7 toxicology. I --

8 THE COURT: Okay. Can you lay a predicate for
9 that?

10 Q. (BY MS. CARROLL) What is your experience in
11 interpreting toxicology reports?

12 A. Well, the toxicology reports are commonly ordered
13 with the autopsy and the lethality of certain substances and
14 their interactions with other substances is something that
15 I've studied during the course of my education.

16 Q. Okay. And when you were -- either as a professor,
17 an assistant professor, were you also instructing others on
18 how to interpret these results?

19 A. Correct.

20 Q. And how many times have you had to interpret these
21 results?

22 A. I've performed approximately 1800 autopsies. I'd
23 say I've ordered toxicology on close to over a thousand
24 cases.

25 Q. And have you testified at trials regarding the

1 toxicology reports?

2 A. Yes.

3 Q. And is that on a few or many occasions that you've
4 testified at trials?

5 A. Many.

6 MS. CARROLL: Your Honor, may I continue?

7 THE COURT: Do you still renew your objection
8 or do you withdraw?

9 MS. KNECHT: I withdraw it, Judge.

10 THE COURT: Thank you.

11 Q. (BY MS. CARROLL) So, is it possible that he was
12 still feeling the effects of the cocaine at the time of his
13 death?

14 A. It's possible.

15 Q. Is it possible that he was still high?

16 A. It's possible.

17 Q. And he was at a .10 alcohol level?

18 A. Correct. In his vitreous fluid, yes.

19 Q. And that was the most accurate of your analysis,
20 the analyses that are done?

21 A. Correct.

22 Q. Of the analyses that were done?

23 A. Correct.

24 MS. CARROLL: Your Honor, I pass the witness.

25 THE COURT: Thank you.

1 counsel for any objections.

2 MS. CARROLL: No objections, Your Honor.

3 THE COURT: Admitted.

4 Q. (BY MS. KNECHT) Dr. Phatak, in doing your autopsy,
5 you, in fact, concluded that he died as a result of a
6 gunshot wound, right?

7 A. May I refer to my copy of the report? Actually the
8 cause of death was a shotgun wound of the back through the
9 chest.

10 Q. Okay. So, the entrance wound was in the back.

11 A. Correct.

12 Q. And the exit wound was in the front.

13 A. Correct.

14 Q. So, he was shot -- he was shot in the back.

15 A. Correct.

16 Q. As far as the toxicology results go, you don't know
17 when he smoked any drugs, do you?

18 A. No.

19 Q. You don't know -- it could have been 48 hours
20 prior.

21 A. Correct. I would only provide a range of time when
22 it could have occurred.

23 Q. Okay. And you saying that he could have been under
24 the influence, that's just a guess, right?

25 A. It's possible. I don't know for sure.

1 Q. Right. You don't know.

2 A. Correct.

3 Q. All right.

4 MS. KNECHT: Pass the witness.

5 THE COURT: Thank you.

6 **REDIRECT EXAMINATION**

7 Q. (BY MS. CARROLL) And is your guess based on your
8 training and your experience based on the amount of cocaine
9 that was in his system?

10 A. There wasn't cocaine, just the metabolite of
11 cocaine. It -- based on my experience, it's impossible to
12 determine what a person's behavior might be on cocaine since
13 the effects of cocaine differ from person to person and in
14 the same person at different times. It's a unpredictable
15 drug, so to speak.

16 Q. But it's based on your experience and your training
17 that you believe that he could have been high at the time.

18 A. It's possible, yes.

19 MS. CARROLL: Pass the witness.

20 THE COURT: Thank you.

21 MS. KNECHT: Nothing further, Judge.

22 THE COURT: May this witness be excused?

23 MS. CARROLL: Yes, Your Honor.

24 THE COURT: Is that all right with the State?

25 MS. KNECHT: Yes, Judge.