P R O C E E D I N G S

December 4, 2012

(Jury seated.)

THE COURT: Be seated.

Call your next witness.

MR. MULDROW: At this time the State calls Dr. Phatak.

THE BAILIFF: Your Honor, this witness has not been sworn.

(Witness sworn.)

THE COURT: Let's proceed.

DARSHAN R. PHATAK,

having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MULDROW:

Q. Could you introduce yourself to the ladies and gentlemen of the jury?

A. Yes. My name is Darshan R. Phatak. I'm an assistant medical examiner for Harris County, Texas.

Q. What is a medical examiner?

A. A medical examiner is a forensic pathologist. It's a doctor who certifies the cause and manner of death for a human being.

Q. And how long have you been a medical

examiner?

A. Since July 1st of 2006.

Q. What kind of training did you go through to become a medical examiner?

A. I received my M.D. from New Jersey Medical School in Newark, New Jersey, in the year 2000. Following that I did a combined anatomic and clinical pathology residency at the Beth Isreal Deaconess Medical Center in Boston, Massachusetts. In 2004, I did a surgical pathology fellowship at the same institution. In 2005, I did a forensic pathology fellowship at the Dallas County Medical Examiner's Office in Texas. I am board-certified in anatomic, clinical and forensic pathology. I have a full license to practice medicine in the State of Texas.

Q. In addition to performing autopsies as a medical examiner, do you have any additional duties?

A. Yes. In addition to the performance of the autopsies, I compile reports based on the autopsy and when called on, I testify to my findings.

Q. Approximately how many autopsies have you performed in your career at the Harris County Medical Examiner's Office?

A. Close to 1,500.

Q. When you perform an autopsy, how does that process begin or how do you take over that process when you begin to perform an autopsy or get the body -- get that assigned to you?

A. Once the case is reported to our office, all of the doctors -- there's 12 of us in total. We just have an order we go through on a daily basis. So we're assigned the autopsy based on our order to get the case.

Q. Okay. And who is it assigns that?

A. Our -- the rest of the staff assign it. Mostly it's done by the Assistant Deputy Chief, Dr. Wolfe.

Q. Were you assigned the autopsy for Alicia Gonzalez?

A. Yes.

Q. And when were you assigned to perform that autopsy?

A. This case was assigned to me on May 27th, 2011.

Q. Are all deaths in Harris County assigned for an autopsy?

A. No.

Q. What types of deaths are assigned for

autopsies?

A. Whenever there's any suspicion of foul play, anytime there's an unattended death, an adult who is not being seen by a doctor, any child under the age of 6.

Q. When you were assigned that autopsy on the 27th, if that's what you said, when did you start -- when did you start that autopsy? On the same day?

A. Correct.

Q. Okay. How do you go about beginning the autopsy? What is the first step?

A. The first step is to take photographs of the body as we see it for the first time. After that step, we would catalogue any clothing, personal effects, jewelry or evidence of medical intervention that may be present.

Following those steps, we would then clean the body; and then at this point we would take photographs of the nude, clean body again making notes of any injuries or abnormalities that may be present.

Following that we start to draw our toxicology specimens and then we begin the dissection, again taking more notes of any natural

disease or any continuations of injuries that we saw on the outside.

Q. When you received Alicia Gonzalez's body, did it have any visible defects or any clothing on it or anything that was abnormal from the normal autopsy that you handle?

A. Yes. She was clad in a bloodstained blue polka dot shirt and bloodstained white pajamas. Her hands were within paper bags.

Q. And as part of that process, did you remove the bags and the clothing?

A. Yes.

Q. Okay. Was there anything that stood out to you at that point as a possible cause of death?

A. Yes. She had multiple sharp force injuries to her body.

Q. And during this process, were you taking photographs of the body?

A. Yes.

MR. MULDROW: Your Honor, may I approach the witness?

THE COURT: You may.

Q. (By Mr. Muldrow) I'm going to show you what's been marked as State's Exhibits No. 7 through State's Exhibit No. 36. Did you and I look through

these photographs earlier today?

A. Yes.

Q. And are those photographs some of the photographs that you took during the course of your autopsy?

A. Yes, they are.

Q. And do all those photographs fairly and accurately depict the body after you had cleaned it and while you were performing the autopsy?

A. Yes.

MR. MULDROW: Your Honor, at this time I would offer State's Exhibit No. 7 through State's Exhibit No. 36 into evidence and tender to opposing counsel.

MR. DECUIR: No objection, Your Honor.

THE COURT: They'll each be admitted.

(State's Exhibits No. 7 through 36 offered and admitted.)

Q. (By Mr. Muldrow) You said that you observed numerous sharp force injuries to Alicia Gonzalez's body; is that correct?

A. Yes.

Q. Did you do an examination to see if

there was any other possible cause of death?

A. Yes.

Q. What are the procedures that you go through to determine if there's another possible cause of death?

A. We examine the major organs of the body. These include the heart, lungs, liver, kidneys, spleen, pancreas and brain.

Q. Was there anything in your examination that revealed anything else that could have caused Alicia Gonzalez's death?

A. No.

Q. Were the sharp force injuries that you observed sufficient to cause her death?

A. Yes.

Q. And is it your opinion that they did cause her death?

A. Yes.

Q. And is that what you certified to as the cause of death as the assistant medical examiner?

A. Yes.

MR. MULDROW: Your Honor, may I approach the witness?

THE COURT: You may.

Q. (By Mr. Muldrow) I'm showing you what's

been marked as State's Exhibit No. 4. Is that the autopsy report that you prepared as a part of conducting that autopsy?

A. Yes.

MR. MULDROW: Your Honor, at this time I would offer State's Exhibit No. 4 into evidence and tender to opposing counsel.

MR. DECUIR: No objection, Your Honor.

THE COURT: It will be admitted.

(State's Exhibit No. 4 offered and admitted.)

Q. (By Mr. Muldrow) State's Exhibit No. 7, is that a photograph of the face of Alicia Gonzalez?

A. Yes.

Q. And did you take photographs of Alicia Gonzalez's hands?

A. Yes.

Q. Are you familiar with the term "defensive wounds"?

A. Yes.

Q. What does that term mean?

A. Defensive wounds are injuries sustained to a person's hands, wrists, forearms and arms while

they're trying to defend themselves from an oncoming blow or object.

Q. Okay. Did you see wounds on Alicia Gonzalez consistent with being defensive wounds?

A. Yes.

Q. I'm going to show you State's Exhibit No. 17 and State's Exhibit No. 12. Are those photographs of the right and left hand of Alicia Gonzalez?

A. Yes.

Q. And do they have what you would term defensive wounds on them?

A. Yes.

Q. Would it be possible for Alicia Gonzalez to sustain these wounds while holding an object?

A. If she was holding the blade that was coming at her, then, yes.

Q. Okay. Holding a dull object in a fist, would that -- would she be able to sustain these wounds while holding a dull object in a fist?

A. No.

Q. Did you catalogue the wounds that you observed on Alicia Gonzalez's body?

A. Yes.

Q. Approximately -- or how many distinct

cuts did she have?

A. 44.

Q. And can you describe for us where you found those on her body?

A. Yes. She had a stab wound to the left side of her neck. She had 15 sharp force injuries of her head. She had a puncture wound to the upper right side of her neck. She had four sharp force injuries of her chest. She had an incised wound of her right thigh. She had nine sharp force injuries of her right arm, right forearm and right wrist. There were nine sharp force injuries of the right hand. There were 18 sharp force injuries of the left hand. And she had other abrasions and soft tissue hemorrhages and contusions to her body.

Q. Okay. When you say other soft tissue hemorrhages, where did you observe those?

A. Those were in the bilateral temporal soft tissues. Those are the soft tissues on the right and left sides of the scalp and the underlying temporalis muscle.

Q. And what is -- what's consistent with having caused injuries like that?

A. These are blunt force injuries whenever an impact it made to the body that's sufficient

enough to cause a bruise.

Q. So both sides of her head had injuries?

A. Correct.

Q. So something -- would you say that something that had struck her or she had struck something to cause those injuries?

A. Yes.

Q. Okay. You also mentioned that she had a deep wound on the side of her neck?

A. Correct.

Q. How deep was that wound?

A. The wound to the left side of her neck had a maximum depth of 5 inches.

Q. Did it pierce any vital organs or vital parts of her body?

A. Yes.

Q. What parts were those?

A. The stab wound perforated the left external jugular vein, the left internal jugular vein, the thyroid gland, the trachea, the right common artery and penetrated the right first rib.

Q. And would that wound be sufficient to cause someone's death?

A. By itself, yes.

Q. As part of your autopsy, did you

catalogue each of the wounds that you mentioned and create a diagram showing where those wounds occurred on the body?

A. Yes.

Q. Was there anything distinct about the way those wounds were caused, anything that you would be able to say about what type of weapon caused those injuries?

A. Some of the wounds left a pattern as if they were left by a serrated knife.

Q. I'm going to show you State's Exhibit No. 34 and State's Exhibit No. 36. Are those wounds -- are those photographs of wounds that you found on Alicia Gonzalez's body?

A. Yes.

Q. And are they consistent with being caused by a serrated knife?

A. Yes.

Q. Can you describe how you know or how you believe they were caused by a serrated knife?

A. Yes. The wounds have a -- these are digitating or alternating patterns of injury and intact skin which matches the profile of a serrated knife.

Q. And that's State's Exhibits No. 34 and

36?

A. Correct.

Q. I'm going to show you State's Exhibit No. 121. This is not a photograph that you took during your autopsy. It's a photograph of a separate wound. Based on your examination of that photograph, does that appear to have also been caused by a serrated knife?

A. Yes.

Q. While performing that autopsy, did you create a bloodstain card?

A. Yes.

Q. What is a bloodstain card?

A. A bloodstain card is a white card with four circles outlined in black. What we do is we add drops of blood to each circle. We commonly take these in cases of suspected homicide as evidence.

Q. And what is that traditionally used for?

A. It's used to, one, identify the person if they're unknown by comparing them to family members that they might have and, two, to match the decedent's body with other evidence, blood evidence that might be at the scene.

Q. So that bloodstain card can be used for DNA comparison?

A. Correct.

MR. MULDROW: Your Honor, may I approach the witness?

THE COURT: You may.

Q. (By Mr. Muldrow) And was that DNA stain card submitted into evidence in this case?

A. Yes.

Q. I'm going to show you State's Exhibit No. 143 and 144. State's Exhibit No. 143, is that a serrated knife?

A. Yes.

Q. And is that a serrated knife that would be consistent with having caused the injuries that we discussed earlier?

A. Yes.

Q. Are both of these, State's Exhibit 144 and 143, are they both deadly weapons?

A. Yes.

Q. And could they cause serious bodily injury?

A. Yes.

MR. MULDROW: Pass the witness.

CROSS-EXAMINATION

BY MR. DECUIR:

Q. Doctor, of the 44 sharp puncture wounds

that you found on the body when you did the autopsy, how many of them were fatal?

A. They were all fatal in combination; but if you're asking which one could have killed her by itself, then it would have been No. 1, the stab wound to the left side of her neck.

Q. Do you know if the stab wound to the left side of the neck, was it administered first or did it come toward the end?

A. I have no way of knowing the order in which these wounds were sustained. When I number them, I roughly go from top to bottom.

Q. I notice that in your drawing on your autopsy report of the head -- do you have that in front of you?

A. Yes.

Q. -- you point out how many puncture wounds to the face, around the mouth?

A. Yes.

Q. And how many of them are there total?

A. There's a total of five around the mouth.

Q. Were any of those fatal?

A. By themselves, none of these could have been fatal.

Q. Have you experienced in your 1,500 autopsies the type of -- this type of number of wounds to a body?

A. Yes.

Q. And what is that -- what generally causes that number of wounds to the body?

A. Repeatedly cutting and stabbing somebody.

Q. And the person doing the cutting and stabbing would do so in maybe a rage?

MR. MULDROW: Objection. Calls for speculation.

THE COURT: Sustained.

Q. (By Mr. Decuir) In your experience, when they stab 44 times -- and you said a combination of the 44 may have been fatal; but other than the one puncture of the throat, how many of the others by themselves would have caused death or could have caused death?

A. None of the other 43 by themselves could have been fatal.

Q. Well, in your experience, what kind of person would inflict 44 wounds?

MR. MULDROW: Objection, speculation.

THE COURT: Sustained.

Q. (By Mr. Decuir) Five wounds to the mouth, would that tell you anything about what the attempt was?

A. I can't -- I can't discern what the assailant was trying to do, only that they did it based on what I've observed.

Q. Now, you said that these are defensive wounds. What would you be using your head to defend yourself against?

A. No. The defensive wounds are solely the wounds I discussed to the upper extremities, the hands.

Q. Okay. So not all of them are defensive wounds?

A. No.

Q. Now, as far as the upper extremities, did you make a determination whether Ms. Gonzalez was right-handed or left-handed?

A. I have no way of knowing that.

Q. And you didn't make -- nobody gave you that information?

A. Correct.

Q. Now, as far as the slice to the fingers and the hand, you said that was a defensive wound,

but that could -- or that the person maybe grabbed the knife. Could that person have been holding the handle of the knife and someone taking it away from her, pulled it through and cut her fingers, sliced her fingers that way?

A. It would depend on the characteristic of the knife. For example, if the knife was hilted, then it's impossible to draw it backwards through the hand.

Q. But if she was holding the knife, you could drag it through the hand and cut their finger if she was attempting to hold on to it?

A. Not -- not from the forward, but if you're able to get your hand behind her hand and pull it upward, if enough of the hilt was sticking out, then possibly.

Q. Okay. So it's possible that the slice wounds resulted from someone attempting to take the knife away from her and her trying to hold on to it?

A. It's possible.

Q. You can't tell?

A. No.

Q. And you can't tell from the cuts which way that knife was taken away or if she had grabbed ahold of the knife, the blade?

A. Correct.

Q. Could you tell if the wound to the neck was inflicted while she was laying down or standing up?

A. I have no way of knowing the position of her body when that injury was sustained.

Q. And that injury itself was sufficient to cause death?

A. Yes.

Q. And did you determine that that injury did cause the death of Alicia Gonzalez?

A. No. I certified the cause of death as multiple sharp force injuries --

Q. Okay.

A. -- without stating that one as the particular cause of death.

Q. Well, in your opinion today, would that wound have been sufficient to cause her death?

A. It would have been.

Q. And in your opinion today, would the other wounds individually be sufficient to cause her death?

A. Each of the other ones individually would not have been.

Q. Now, you -- in your autopsy report, you

show -- the full body part of the autopsy report, you show puncture wounds from 1/2 inch to 1 1/4 inches, 1/16 of an inch. Could that indicate maybe there was a fending off of the woman by the assailant?

A. It's possible. All I can do is describe what I see.

Q. Okay. She was a rather large woman, wasn't she?

A. Her weight was 257 pounds.

Q. And of the 44 wounds, how many of them were over 1/2 inch deep, if you know?

A. Just the one, the stab wound to the left side of the neck.

Q. Okay. So the rest of the wounds were just puncture wounds, just kind of a jabbing?

A. Right. A combination of incised wounds, yes.

Q. And they could have been wounds by the assailant defending himself against her attacking him?

A. It's possible.

Q. And the majority of the 44 wounds were to the hands; is that right?

A. Yes.

Q. Would there be a sequence of time that you could determine from the beginning of the attack through the end of the attack?

A. No. I have no way of knowing the amount of time it took to sustain all 44 wounds nor the time between each one nor their sequence.

MR. DECUIR: I pass the witness, Your Honor.

THE COURT: Anything future?

MR. MULDROW: Yes, Your Honor.

REDIRECT EXAMINATION

BY MR. MULDROW:

Q. The wounds on Ms. Gonzalez's hands, were there multiple cuts?

A. Yes.

Q. Were those cuts nonparallel?

A. Yes.

Q. If a person was pulling a knife through someone's hand, would it cause parallel wounds or nonparallel wound?

A. It would cause parallel wounds.

Q. If you pull a knife through someone's hand to cause the wounds that Alicia Gonzalez had, would you have to do that more than once?

A. Yes.

Q. Is there a toxicology report attached to your autopsy?

A. Yes.

Q. And were there any substances such as alcohol or cocaine or any drugs in her system at the time of her death?

A. No.

Q. And can you tell us what the difference is between the manner and means of a person's death -- or the cause of death and the manner of death?

A. The cause of death is the pathophysiological derangement that killed somebody. The manner of death is a medical/legal term that categorizes that derangement.

Q. And in this case what was the cause of death and what was the manner of death?

A. The cause of death was multiple sharp force injuries, and the manner of death is a homicide.

MR. MULDROW: Pass the witness.

THE COURT: Anything further?

MR. DECUIR: May I approach the witness, Your Honor?

THE COURT: Yes, sir.

RECROSS-EXAMINATION

BY MR. DECUIR:

Q. I'll show you what's been marked as State's Exhibit No. 16. Is this one of the pictures you took?

A. Yes.

Q. And what does that picture show?

A. This photograph shows the palmar surface of the right hand with multiple incised wounds, the multiple fingers, and other avulsions or skin tears.

Q. Okay. This is consistent with the knife blade going through the hand; is that correct?

A. That's right.

Q. And they're parallel. I mean, they are --

A. Those -- those three are.

Q. They are. Okay.

So there was at least one instance in which she was either holding, grabbing the knife or someone pulled the knife from her hand?

A. At least once, yes.

Q. Okay. All right.

MR. DECUIR: I have no further questions.

THE COURT: All right. May this

witness be excused?

MR. MULDROW: Yes, Your Honor.

MR. DECUIR: Yes, Your Honor.

THE COURT: Thank you, Doctor. You may be excused.

THE WITNESS: Thank you.

THE COURT: All right. Retire the jury, please.

THE BAILIFF: All rise for the jury.

(Jury retired.)

THE COURT: I understand that there is a stipulation that is going to be entered in regards to any DNA results.

MR. MULDROW: Yes, Your Honor, there is.

MR. DECUIR: Yes, Your Honor, there is.

THE COURT: All right. You need to have the defendant sworn to the stipulation, then.

(Brief pause.)

THE COURT: All right. Let's bring the jury back, please.

(Jury seated.)

THE COURT: Be seated.

All right. Mr. Muldrow.

MR. MULDROW: At this time the State would offer State's Exhibit No. 141, the Stipulation of Evidence between the parties, and State's Exhibit No. 3, which is the -- excuse me, 148, and State's Exhibit No. 3, the DNA laboratory report.

MR. DECUIR: No objection, Your Honor.

THE COURT: They'll each be admitted.

(State's Exhibits No. 3 and No. 148 offered and admitted.)

MR. MULDROW: At this time I'd like to read a portion of State's Exhibit No. 148 to the jury.

THE COURT: Let's proceed.

MR. MULDROW: "A DNA sample was taken from State's Exhibit 143. A DNA sample was taken from State's Exhibit 144. A DNA sample was taken from the pants and shirt worn by the defendant. A known DNA sample was taken from Alicia Gonzalez, the named complainant in Cause No. 1307888. The DNA sample taken from State's Exhibit 143, State's Exhibit 144, and the pants and shirt of

the defendant were tested and compared to the known sample taken from Alicia Gonzalez by Amy Castillo. If Amy Castillo was called to testify, she would testify that all items were tested according to the standard operating procedures of the Houston Crime Lab and the scientific community. Amy Castillo would also testify that to a reasonable degree of scientific certainty the source of the DNA found on State's Exhibit 143, State's Exhibit 144, and the pants and shirt of the defendant is Amy Castillo [sic], the named complainant in Cause No. 1307888."

THE COURT: Call your next, please.

MR. MULDROW: At this time the State would call Lauro Saldana.

THE BAILIFF: Your Honor, this witness has not been sworn.

THE COURT: Raise your right hand, please.

(Witness sworn.)

THE COURT: Let's proceed.

LAURO SALDANA,

having been first duly sworn, testified through an interpreter as follows:

DIRECT EXAMINATION

BY MR. MULDROW:

Q. Can you please state your name for the ladies and gentlemen of the jury?

A. My name is Lauro Saldana.

Q. And where do you live, Mr. Saldana?

A. 12909 Orleans Street.

Q. And who do you live there with?

A. With my nephews.

Q. What are their names?

A. Franco Gonzalez, Jesus Gonzalez and Enrique Gonzalez.

Q. Are you responsible for taking care of them?

A. Yes.

Q. How long have you been responsible for taking care of them?

A. A year and eight months.

Q. Do you know Alicia Gonzalez?

A. Yes.

Q. How do you know her?

A. My sister.

Q. Do you know Jesus Gonzalez?

A. Yes.

Q. How do you know him?