

MICHAL PIERCE - October 24, 2013
Direct Examination by Ms. Logan

1 **MICHAL PIERCE,**
2 having been first duly sworn, testified as follows:

3 **DIRECT EXAMINATION**

4 *BY MS. LOGAN:*

5 Q. Good afternoon, ma'am. Would you please state
6 and spell your name for the court reporter.

7 A. Yes. Michal Pierce; M-I-C-H-A-L, P-I-E-R-C-E.

8 Q. All right. And, Miss Pierce, tell us what it
9 is that you do for a living.

10 A. I'm currently the quality director at the
11 Harris County Institute of Forensic Sciences.

12 Q. Before working there, were you employed by the
13 Houston Police Department's crime lab?

14 A. I was.

15 Q. About how long did you work at the HPD Crime
16 Lab?

17 A. About two-and-a-half years.

18 Q. And what was your function at the HPD Crime
19 Lab?

20 A. I was a DNA analyst.

21 Q. Can you give the folks on the jury the benefit
22 of your education and experience that qualifies you as a
23 DNA analyst?

24 A. Yes. I have a bachelor's of science degree in
25 microbiology from the University of Illinois. I have a

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1 master's of science degree in forensic science from Sam
2 Houston State University. And I also am certified by
3 the American Board of Criminalists in molecular biology.

4 Q. Now, I want to turn your attention to some
5 serology testing that you did back in October of 2006.
6 Do you recall being tasked with conducting serology
7 testing on some items?

8 A. Yes.

9 Q. Okay. Can you tell us what the lab number is
10 that pertains to your analysis in this case?

11 A. Our lab number is L0612486.

12 Q. Okay. Of the and tell the folks on the jury,
13 when you're doing serology screening, what is it that
14 you're doing? What is your job?

15 A. When you're tasked with serology screening,
16 what we were doing is receiving evidence that had
17 potential biological evidence on it. We receive items.
18 We basically inventory the items and test for bodily
19 fluids, and the reason is because DNA is found in bodily
20 fluids. So, we were screening the items to see if they
21 were suitable for DNA testing.

22 Q. Now in this case, I know that you received a
23 number of items, right?

24 A. Yes.

25 Q. Okay. Did you create any type of a worksheet

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1 that helped you document the items that you were looking
2 at in this case?

3 A. Yes.

4 MS. LOGAN: May I approach the witness,
5 Judge?

6 THE COURT: You may.

7 Q. (By Ms. Logan) I'm going to show you what I've
8 marked as State's Exhibits 109 through 115 and ask you
9 whether or not you recognize them?

10 A. I recognize them.

11 Q. Okay. Do they fairly and accurately reflect
12 the notes that you made and the diagrams that you used
13 during your analysis in this case?

14 A. Yes.

15 MS. LOGAN: I'm going to offer State's
16 Exhibits 109 through 115 into evidence and tender to
17 defense counsel for inspection.

18 MS. GUTIERREZ: No objection, Your Honor.

19 THE COURT: Okay. State's 109 through 115
20 are admitted.

21 You may publish.

22 MS. LOGAN: Thank you, Judge.

23 Q. (By Ms. Logan) All right. Miss Pierce, can
24 you go ahead and tell us about the swabs labeled A, B
25 and C that you looked at in this case? Where were those

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1 swabs taken from, to your knowledge?

2 A. There was a manila envelope I received that was
3 submitted to the crime lab, and there was the three
4 swabs in that envelope.

5 Q. Okay. And those three swabs were labeled Items
6 A, B and C, correct?

7 A. Yes. I labeled them A, B and C.

8 Q. Okay. And did you perform serology screening
9 on those three swabs?

10 A. I did.

11 Q. Tell us what the results of your screening were
12 for those items.

13 A. I did a presumptive test for blood, which means
14 if positive it would indicate the presence of blood.
15 That test was -- the result was positive for those
16 swabs. I also did a confirmatory test for human origin,
17 which was positive, confirming that the fluid was of
18 human origin.

19 Q. All right. So based on your serology screening
20 on items A, B and C, which were swabs from the scene, we
21 know that they contained human blood?

22 A. The blood was presumptively positive; and it
23 was of human origin, correct.

24 Q. Okay. Thank you. Now let's talk about State's
25 Exhibit 109. I'm going to put it up on the document

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1 camera for us. All right. Is this one of the diagrams
2 that you created that pertained to your work in this
3 case?

4 A. Yes.

5 Q. All right. And we can see that there is a
6 drawing of a shirt on State's Exhibit 109, correct?

7 A. Yes.

8 Q. Now I'm going to show you what's already been
9 entered into evidence as State's Exhibit No. 94 and ask
10 you to look at the packaging that State's Exhibit 94 was
11 contained in. Do you recognize that packaging?

12 A. Yes.

13 Q. And do you recognize the shirt that I'm holding
14 up, State's Exhibit No. 94?

15 A. Yes.

16 Q. Okay. Are your initials located on the
17 container for this item?

18 A. Yes.

19 Q. And tell us what letter you labeled the Toyota
20 work shirt is for your purposes.

21 A. I label it Item F.

22 Q. Okay. And we can also see Item F is written
23 here on the container that State's Exhibit 95 was in,
24 right?

25 A. Correct.

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1 Q. Okay. Tell us what you noted about Item F
2 during your examination of it.

3 A. I noted several things. You mean in terms of
4 the staining?

5 Q. Yes, ma'am.

6 A. I noticed there -- I labeled a stain, Stain 1.
7 There was a reddish-brown stain on the collar area, and
8 I performed serology testing on that. There were some
9 other stains that were similar. There was another stain
10 on the bottom called Stain 2. I also did serology
11 testing on that.

12 Q. All right. Tell us what the results of your
13 serology testing was for Item F, referring to Stain 1
14 and Stain 2.

15 A. Stain 1, again, I did a presumptive test for
16 blood, which was positive. I confirmed the human origin
17 with a Hematrace test that was positive, a weak
18 positive. Stain 2, the presumptive test for blood was
19 negative.

20 Q. All right. So let's talk about Stain 1. You
21 said that the presumptive test -- or, I'm sorry -- that
22 the confirmatory test for human origin was a weak
23 positive. Can you tell the folks on the jury why that
24 might happen?

25 A. That might be if just the cutting I took to

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1 test was smaller, or if there just was not a lot of the
2 fluid present.

3 Q. Okay. So you were responsible for actually
4 cutting out the stains from the evidence and then
5 conducting the testing on it?

6 A. Correct.

7 Q. Okay. And what do you do with the items once
8 you're done with your testing of it?

9 A. Well, the whole item itself, I will repackage.
10 But first I will take any cuttings that I believe should
11 go through DNA analysis, which is the next step. So,
12 basically, I take cuttings for DNA, save that
13 separately, and repackage the rest of the items because
14 we don't need that anymore.

15 Q. Now did you submit any portions of Item F, this
16 Toyota work shirt, for DNA analysis?

17 A. I did.

18 Q. Tell us what parts of the shirt you submitted
19 for DNA.

20 A. I took a cutting again from Stain 1 for DNA
21 analysis because I believed there was blood on there,
22 that stain.

23 Q. Okay. And were any other portions of that
24 shirt, I guess, swabbed for possible DNA evidence?

25 A. Not -- no, I did not.

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1 Q. Okay. Now let's look at State's Exhibit
2 No. 110. This is the diagram that pertains to the
3 pants, right?

4 A. Yes.

5 Q. Okay. Look at State's Exhibit No. 93, the
6 packaging that contained this pair of pants. Do you
7 recognize it because your initials and writing is
8 present on the package?

9 A. Yes.

10 Q. All right. And what item was this labeled as
11 in your investigation?

12 A. I labeled it Item H.

13 Q. Okay. And we can see that there are holes cut
14 on the left leg portion of Item H. Were you responsible
15 for making those cuttings?

16 A. Yes.

17 Q. What was the purpose of taking those cuttings?

18 A. I took those cuttings for DNA analysis after I
19 performed some serology testing.

20 Q. Okay. What were the results of the serology
21 testing for Item H?

22 A. I tested three areas. I labeled them Stain 1,
23 2 and 3. All three stains were tested positive,
24 presumptively, for blood. I did one confirmatory test
25 on Stain 1 for human origin. That was positive.

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1 Q. Now why did you only do the Hematrace test on
2 Stain 1?

3 A. When you do the Hematrace test, again, it takes
4 more samples; so, I try to minimize the amount of sample
5 I'm using. We want to save as much sample as we can for
6 DNA analysis. So, at the time there was a rule that you
7 can confirm once with one of the stains if you believed
8 the other stains were similar.

9 Q. Okay. And did you believe that all of the
10 stains that we see here on Item H were similar in
11 nature?

12 A. Yes.

13 Q. And they all were presumptive positive for
14 blood?

15 A. Correct.

16 Q. So after you do the presumptive and
17 confirmatory tests for blood, did you take a sample of
18 these stains and send that on to DNA?

19 A. Yes.

20 Q. Now, another analyst is responsible for
21 actually doing the DNA analysis on those items; is that
22 right?

23 A. That is right.

24 Q. Okay. Now, was a DNA -- or was a sample
25 collected from the waistband of these pants, Item H?

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1 A. If it was, it was not sampled by myself.

2 Q. Okay. Now let's look at State's Exhibit 111.
3 What do we see here?

4 A. Photographs of a pair of gloves.

5 Q. Okay. And what did you do with respect to
6 these gloves?

7 A. With these gloves, I swabbed them for what we
8 call contact DNA. I did not do any serology testing. I
9 just took swabbings of the gloves.

10 Q. Why didn't you do serology testing on these
11 items?

12 A. I did not see any reddish-brown stains that
13 would indicate blood was present.

14 Q. And what did you label the gloves that we see
15 here in State's Exhibit 111?

16 A. I labeled each glove L1 and L2.

17 Q. Now, were those the gloves that were packaged
18 together?

19 A. Yes.

20 Q. Okay. So if I show you State's Exhibit No. 96,
21 the container, do you recognize your initials and the
22 item number?

23 A. Yes.

24 Q. Okay. And we can see written on there, it says
25 one pair of latex gloves, correct?

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1 A. Correct.

2 Q. So you swabbed for contact DNA on those gloves,
3 and then did you send the swabs that you took on for DNA
4 testing?

5 A. I did.

6 Q. And was there anything else that you did with
7 respect to these gloves?

8 A. No.

9 Q. State's Exhibit 112, tell us what we're looking
10 at here.

11 A. Just a photograph of another glove.

12 Q. Okay.

13 A. Two photographs.

14 Q. And I'm going to bring State's Exhibit No. 99
15 up to you. Do you recognize that item?

16 A. Yes.

17 Q. Okay. And it has your initials and, also, Item
18 M on the packaging, right?

19 A. Correct.

20 Q. And we can see on there it says one of three
21 white latex gloves from north of the dead-end at 9000
22 Prairie View, right?

23 A. That's what it said on the packaging, I
24 believe.

25 Q. Okay. Now what testing did you conduct on Item

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1 M, this glove?

2 A. I did a serology test on a stain I saw on the
3 glove. I also swabbed this glove for contact DNA.

4 Q. Let's talk about that stain. Is that what we
5 can see here circled with a line sort of out to the
6 side?

7 A. Yes.

8 Q. Okay. What did that stain look like to you?

9 A. It was a reddish-brown stain, or I call it a
10 reddish stain. There was some staining visible
11 throughout the glove, but that was an obvious area.

12 Q. Did you conduct the presumptive test on that
13 stain?

14 A. Yes.

15 Q. What were the results?

16 A. The result was positive.

17 Q. Did you do confirmatory Hematrace testing to
18 see whether that was blood of human origin?

19 A. I did not.

20 Q. Why not?

21 A. I did not feel there was sufficient sample in
22 that particular stain to do a Hematrace test.

23 Q. It's a pretty small stain, right?

24 A. Yes.

25 Q. Then you said that you swabbed other portions

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1 of Item M, this glove, for contact DNA, right?

2 A. Yes.

3 Q. Okay. Is that a similar procedure when you're
4 looking for contact DNA versus when you're looking at
5 the stains that you believe might be blood?

6 A. Yes. When I'm looking for -- when I swabbed
7 for contact DNA, I'm swabbing the area of the item that
8 I believe somebody touched or had skin contact, as in
9 the previous gloves.

10 Actually, let me clarify. For this
11 particular item, I wrote that I used two swabs to swab
12 most of the reddish stain; so I was probably trying to
13 get most of the blood, because that stain was fairly
14 small, so --

15 Q. And so, then when you're swabbing for the
16 contact DNA, tell us what you're doing.

17 A. I'm swabbing where I think the hand was inside
18 the glove so to get where the skin made contact to get
19 the skin cells.

20 Q. So, just so we're clear, State's Exhibits 99,
21 Item M, the stain that looked like blood to you is on
22 the opposite side of the glove from where you swabbed
23 for contact DNA; is that right?

24 A. Yes, that's what it would be.

25 Q. Okay. And then did you send your swabbings

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1 from the outside and inside of that glove on for DNA
2 testing?

3 A. For this item I sent two swabs that were only
4 from the outside, though, because I was swabbing the
5 reddish-brown stains for the other gloves I submitted
6 more from inside for contact DNA.

7 Q. Okay. So a swab from the inside and from the
8 outside of that glove was sent on for DNA, right?

9 A. Not for this particular glove. For the other
10 gloves.

11 Q. Okay. Now, State's Exhibit 113, what item is
12 this labeled as?

13 A. These are Items O and N.

14 Q. Okay. Link those up with the items that we
15 have here in court, State's Exhibits 97 and 98. Are
16 those going to be the items that you looked at and
17 labeled as Items N and O?

18 A. Yes.

19 Q. Okay. And for the record, State's 97 is going
20 to be Item N, and State's 98 is going to be Item O.
21 What testing did you conduct on those items?

22 A. I did not do any serology testing. However, I
23 swabbed these items for contact DNA.

24 Q. And what did you do with the swabs you took
25 from those items?

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1 A. I retained them for DNA testing.

2 Q. State's Exhibit 114. What items are we looking
3 at here in this photograph?

4 A. Items J and K.

5 Q. What testing did you perform on Items J and K?

6 A. I did not do a serology testing. Again, I
7 swabbed for contact DNA.

8 Q. All right. So Item J is going to be -- I'm
9 sorry. Item K is going to be State's Exhibit No. 95.
10 Those are your initials and your label, correct?

11 A. Correct.

12 Q. And that's one small black stocking, right?

13 A. Yes.

14 Q. Okay. And you swabbed that for contact DNA --

15 A. Yes.

16 Q. -- right?

17 MS. LOGAN: And then this is -- this is
18 going to be 105, for the purposes of the record.

19 Q. (By Ms. Logan) And on State's Exhibit 105, do
20 you see your initials and the label, Item J?

21 A. Yes.

22 Q. And this was another item that you swabbed for
23 contact DNA; is that right?

24 A. Yes.

25 Q. And were those samples also sent for DNA

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1 testing?

2 A. Yes.

3 Q. Now can you tell us what sorts of procedures
4 you follow in order to prevent cross-contamination
5 between items of evidence?

6 A. Sure. We only -- I only analyze one item at a
7 time, even in the same case; so every item I would take
8 out separately. My work area and tools were cleaned in
9 between each item, every time; and I always make sure
10 that everything is separated whenever I'm working, I'm
11 not near anything or anyone else. Therefore, I'm not
12 allowing any interfering DNA while I'm working.

13 Q. Now, did it seem unusual to you at all that two
14 of those gloves were packaged in one container?

15 A. It didn't seem unusual. I noticed it, but it
16 wasn't unusual.

17 Q. Okay. So that sort of thing has happened
18 before on other cases that you've worked on?

19 A. Yes. Officers will sometimes package certain
20 things together and sometimes not.

21 MS. LOGAN: I will pass the witness,
22 Judge.

23 THE COURT: Okay. Your cross, Counsel.

24 **CROSS-EXAMINATION**

25 BY MS. GUTIERREZ:

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1 Q. Good afternoon, Ms. Pierce. My name is Valerie
2 Gutierrez, and I'm one of the attorneys for Mr. Jones.

3 A. Good afternoon.

4 Q. After finishing your educational training, was
5 this the first job that you took?

6 A. After my master's degree, the Houston Police
7 Department was my first job in forensics.

8 Q. And at the time that you analyzed the evidence
9 in this case, how long had you been working for the
10 crime lab?

11 A. This was in October of 2006, and I -- I started
12 my work in July of 2005.

13 Q. So, then, about a year?

14 A. Yes, a little less.

15 Q. So when you do testing on items that are sent
16 to you, you're looking for fluid type of DNA, you said,
17 on items?

18 A. In serology we're looking for stains that are
19 bodily fluids.

20 Q. Okay. Would that include sweat stains?

21 A. Sweat stains are a good source of DNA. You
22 cannot see them with the naked eye, but those are of
23 interest when you're wanting to test something for DNA.

24 Q. I'd like to turn your attention to -- I guess,
25 you marked the item G in your report. Do you recall, or

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1 can you tell the jury what Item G was?

2 A. Item G is a T-shirt.

3 Q. What sort of testing did you do on Item G?

4 A. I did not do any serology testing.

5 MS. GUTIERREZ: May I approach the
6 witness, Your Honor?

7 THE COURT: You may.

8 Q. (By Ms. Gutierrez) Did this T-shirt here come
9 out of this bag? Do you see your handwriting on there?

10 A. Yes.

11 Q. And you have it listed as Item G?

12 A. Correct.

13 Q. And those are your initials?

14 A. Yes.

15 Q. Okay. You had a diagram that you make of each
16 article of clothing or item, correct, a picture?

17 A. Yes, of clothing.

18 Q. And in the picture, did you notate any sort of
19 staining on Item G?

20 A. No. May I clarify something?

21 Q. Yes, ma'am.

22 A. I did not notate on the diagram, but in my
23 notes of the shirt I said there were whitish stains on
24 the back and underarms; so, I did write that in my
25 notes.

1 Q. On the underarms. Okay. So did you -- you
2 didn't think to do any testing or any cuttings of the
3 underarm areas to see if that could have been some type
4 of DNA that was left behind in those areas?

5 A. No, I did not think the whitish stains were
6 DNA.

7 Q. But certainly, if you did, you would have cut
8 there, right, or you could have?

9 A. If I thought that there was a source where we
10 could obtain DNA, I would have cut them.

11 Q. Now under the arms, wouldn't that be an area
12 you would expect to find DNA if somebody had been
13 perspiring?

14 A. If they sweat, yes, that could be a source of
15 DNA.

16 Q. So you're saying with just your naked eye,
17 you're able to determine there was no sweat in the
18 armpits of that Item G?

19 A. No. I meant that the whitish stains, I did not
20 think were sweat. I thought that was whitish stains
21 and --

22 Q. Would sweat stains always be visible?

23 A. No. Sometimes, I would say maybe in a white
24 shirt, you would see brown areas. And sometimes, as we
25 all know, that could be from use and sweating.

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1 Q. Right. But in a dark shirt, you may not see
2 it; but that doesn't mean it's not there, correct?

3 A. That's correct.

4 Q. So in spite of that, you still decided not to
5 take a cutting from that area or to do a swab?

6 A. Correct.

7 Q. And you didn't take a swabbing anywhere of that
8 shirt, did you?

9 A. No.

10 Q. Not even in the neckline/collar area?

11 A. No.

12 Q. When you received items L, M, N and O, those
13 were all gloves, correct?

14 A. Correct.

15 Q. Were those items together with Item K in the
16 same envelope?

17 A. There was an envelope that did have -- there
18 was an envelope received with the stocking and the
19 gloves.

20 Q. And what envelope number was that?

21 A. That envelope had a bar code number of SVDY.

22 Q. So, inside of that envelope, are these items
23 loose?

24 A. No. The envelope contains five separate paper
25 bags, so it's just -- it was an outer packaging that

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1 contained several inner packagings.

2 Q. When you received the gloves and looked at
3 them, did you in any way turn them inside out from the
4 condition you got them in?

5 A. When I receive items, I look at the item in
6 entirety. And for latex gloves, you won't know what is
7 actually inside and outside; so that's why -- so I would
8 look at them, but very minimally. I wouldn't turn them
9 inside or outside completely.

10 Q. So on the one envelope where the reddish-brown
11 staining was noted in your report, that blood came to
12 you in that condition with the staining already on the
13 outside? You didn't need to peer inside to see that?

14 A. Correct.

15 Q. And that was obvious, I think you said,
16 correct?

17 A. Well, that particular stain on that item was,
18 yes.

19 Q. So this area right here, that would be the
20 first stain that you tested?

21 A. Of that glove, yes.

22 Q. And I see here, up here, you've noted some
23 tears visible on the gloves; is that correct?

24 A. Yes.

25 Q. And where are those tears located?

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1 A. On the thumb and ring finger.

2 Q. What's the significance in noting the tears?
3 Why would that be important?

4 A. We note any tears or holes to an item we've
5 received, because we want to make sure it's noted that
6 that's how it was received and that it was not -- that I
7 wasn't responsible for tearing the item. It came that
8 way. I don't want to be accused of ruining an item.

9 Q. So if there is tears in a glove and a person
10 has on a glove couldn't, contact DNA or even fluid DNA
11 be left behind through those tears?

12 A. What do you mean, through those tears?

13 Q. Well, escape through the tear if there was
14 bodily fluid or something where someone was perspiring
15 and they were to touch something with the glove. Isn't
16 it possible that the holes being there would allow
17 contact DNA to penetrate onto the surface?

18 A. Are you talking about one side versus the
19 other? Is that --

20 Q. Yes.

21 A. I mean, if somebody is wearing the glove, the
22 contact DNA would be on the inside of where they were
23 wearing.

24 Q. Right. But if somebody had a glove on and it
25 had a hole and they touched a surface or they touched an

1 article of clothing, wouldn't it be possible to leave
2 DNA behind?

3 A. You're saying if there is tears --

4 Q. Yes.

5 A. -- on the skin making contact?

6 Q. Because there is a hole there?

7 A. Yes, it would be a small amount; but it
8 potentially could be, yes.

9 Q. Now these are the stockings. Was this Item J
10 and K, right?

11 A. Yes, correct.

12 Q. And you didn't notice any sort of staining on
13 these items, did you?

14 A. I wrote in my notes that there was some whitish
15 stains visible.

16 Q. So, did you take cuttings from these items?

17 A. I swabbed these items.

18 Q. And you're swabbing for what type of DNA,
19 contact?

20 A. Yes.

21 Q. So on some items I see you elected to go ahead
22 and swab, and other ones you didn't. And that is just
23 based on how you believe, where you believe most likely
24 you would find DNA, right?

25 A. Yes.

1 Q. But you can't say that DNA could not have been
2 located in other areas that you did not swab for, can
3 you?

4 A. If an area is not tested for DNA, then you will
5 not know if there was DNA there.

6 Q. So wouldn't it be possible for more than one
7 person's DNA to be on an item and you -- well, let me
8 just ask that. Isn't it possible for more than one
9 person's DNA to be left on an item?

10 A. Yes. Depending on circumstances, any item can
11 have more than one person's DNA, depending on what it
12 went through.

13 Q. And just because you test an item and find one
14 person's DNA on one area of that item doesn't mean that
15 other people's DNA could not be found in areas on that
16 item, as well, that you didn't test for?

17 A. That is true. Again, you cannot know what the
18 results are if it was not tested.

19 Q. Based on your training and experience, the best
20 practice for dealing with evidence in cases would be to
21 package items separately, wouldn't it?

22 A. For DNA purposes, you want items to be separate
23 if you don't want cross-contamination.

24 Q. And how is it that cross-contamination can
25 happen?

1 A. If an item is touching another item, that's one
2 way that --

3 Q. It's that simple?

4 THE COURT: Let the witness finish
5 answering.

6 A. There is several ways for an item to be
7 contaminated with a foreign DNA. One of them is if
8 items were touching or rubbing together significantly.

9 Q. (By Ms. Gutierrez) So it's that simple? Is it
10 that simple, just for items to touch?

11 A. Like I said, I don't think it's just a touch
12 for one second. You would not have enough to be
13 detected, but you are crossing DNA if there is
14 significant contact.

15 Q. So if items were packaged in the same bag and
16 they were coming into contact with one another, the DNA
17 from one item could be transferred to the -- to the
18 other item?

19 A. That could happen.

20 Q. Now, did you receive a wig in packaging you
21 labeled Item E in this case?

22 A. Yes.

23 Q. And that wig was together with another item,
24 wasn't it?

25 A. The wig was in a cardboard box that also had a

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1 sweatshirt.

2 Q. Were they in two separate envelopes in the
3 cardboard box --

4 A. The --

5 Q. -- or were they loose?

6 A. The box had two brown bags, so they were
7 packaged -- the two items were packaged separately.
8 They were just sitting in a box together.

9 Q. So you didn't do any testing on the wig, did
10 you?

11 A. I did not.

12 Q. Don't you feel that a person wearing a wig
13 might have left their DNA on the interior part of the
14 wig that comes into contact with the scalp or the head?

15 A. They could have.

16 Q. Yet, you didn't feel that was significant to
17 swab for that?

18 A. Not in reference to all the other items of
19 evidence I received. I have to prioritize what you can
20 swab and submit for DNA, so I take the items that I
21 believe have -- will have the most DNA and go down from
22 there. So if I had enough items that I felt had a lot
23 of DNA, then I felt that was sufficient.

24 Q. You don't think it would be important to know
25 what, if any, DNA was left behind on the wig, given that

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1 the wig was used in this offense?

2 A. It could be; but all the other items, too, were
3 used in the offense, and I felt that there was a lot of
4 potential sources of DNA there.

5 Q. But at the time that you're doing this serology
6 and swabbing, you don't have the DNA results yet, back
7 yet from anything, right?

8 A. Correct.

9 Q. So you don't know if they're going to be able
10 to get anything from some of the other areas you took
11 cuttings from, do you?

12 A. No, which is why we always can go back after
13 the first round of testing.

14 Q. But the wig in this case, if you would have
15 tested that wig or you would have attempted to take a
16 swab or something from it, couldn't that have told us
17 if -- or it could have eliminated a suspect, couldn't it
18 have?

19 A. It may have. It's an item of evidence. Like I
20 said, I have to prioritize what I thought I would get
21 the best results from. And I felt that any little
22 source of DNA left behind on an item, such as the wig
23 and shirt, I might not have detected those small amounts
24 of DNA as opposed to the bloodstains or the contact from
25 the DNA from the gloves.

1 Q. Is it a matter of money that -- you say you
2 have to prioritize. Would it cost too much money to test
3 these things?

4 A. I wouldn't say it's money. It's in the lab.
5 It is about resources, though, in terms of time and
6 resources. And when we get many items in a case, we
7 want to start with -- in terms of time-wise, we want to
8 get results out fast. So I want to do as much as I can
9 the first round in terms of results that I believe I can
10 get in the shortest amount of time, so I will do a
11 number of -- number of items that I believe I can get
12 good results.

13 Q. So are you saying that if results are obtained
14 on other items you tested for, then it's just law
15 enforcement policy to just stop at that and not test
16 anything further to see if maybe some additional
17 evidence could be obtained from Mr. Jones to be able to
18 present here at trial?

19 A. Usually, in this particular -- at this time,
20 there would be a first round. And then there would be a
21 discussion with law enforcement or other investigating
22 parties. And if they request something to be tested
23 that wasn't, we certainly will go back and do that.

24 MS. GUTIERREZ: I'll pass the witness.

25 MS. LOGAN: Just briefly, Judge, because I

1 forgot to do it earlier.

2 **REDIRECT EXAMINATION**

3 *BY MS. LOGAN:*

4 Q. I left out State's Exhibit 115, which is your
5 diagram pertaining to the black T-shirt that you were
6 asked about earlier. Tell us what you noted and any
7 testing you conducted with respect to -- this would be
8 Item G?

9 A. Yes. I just described the item, how it
10 appeared to me. And I noted that there were whitish
11 stains on the back and underarms. There was no other
12 stains visible. I did not do any other testing.

13 Q. Okay. So, now, tell us what items of evidence
14 were retained in the laboratory for further testing.

15 A. To my list, the items I retained for DNA
16 analysis?

17 Q. Yes, ma'am.

18 A. I retained the first three swabbings, Items A,
19 B and C. I retained an oral swab from a defendant. I
20 retained a cutting from the work shirt, Item F, a
21 cutting from the pants, Item H. I retained swabs from
22 the stockings, Items J and K. I retained swabs from the
23 gloves, Items L, M, N and O. I also had some
24 fingernails scrapings that I swabbed, Items P1 and P2.
25 And I retained a bloodstained card from the decedent.

1 Q. And those fingernail scrapings, are those going
2 to be items that are collected at autopsy and submitted
3 to the lab for the purposes of testing?

4 A. Correct.

5 Q. Okay. When we're talking about the holes in, I
6 think it's Glove M that you had on your diagram, are
7 those, like, really big holes that your finger would go
8 through? I mean, you label them as tears; so, tell us
9 what you mean when you say tears.

10 A. I cannot say much about it other than they were
11 just -- well, probably, I wouldn't call them large
12 tears. They were just normal tears I noted on the
13 fingers.

14 Q. Okay. And you mentioned just a second ago that
15 you had an oral swab from the suspect. You're not
16 saying the suspect, Charles Jones, right? Because we
17 didn't have his sample at this point this time, did we?

18 A. No. At this time, I only had one swab from a
19 suspect, and it wasn't -- it was from Oscar Benjamin.

20 Q. Okay. And certainly, if the defense counsels
21 or persons representing a defendant requested further
22 testing at the lab, that would be accomplished, right?

23 A. Yes. The lab would honor a request for more
24 testing.

25 Q. So it's not like you would just say no. You

1 would test whatever request that you had, whether it
2 came from the State, law enforcement or the defense?

3 A. Correct.

4 MS. LOGAN: I pass the witness.

5 THE COURT: Okay. Any recross?

6 MS. GUTIERREZ: Just briefly.

7 **RECROSS-EXAMINATION**

8 BY MS. GUTIERREZ:

9 Q. What kind of testing was done on Item -- the
10 sweatshirt, Item D, that was together with the wig?

11 A. Item D, I did not do any testing.

12 Q. Now item D is a sweater, correct, a sweatshirt?

13 A. Yeah. I called it a Polo shirt.

14 MS. GUTIERREZ: May I approach the
15 witness, Your Honor?

16 THE COURT: Would the attorneys approach.

17 (At the bench)

18 THE COURT: Will you please stand when
19 you're addressing me?

20 MS. GUTIERREZ: Yes, ma'am.

21 THE COURT: Yes. You may approach.

22 (Continuing in jury's hearing)

23 MS. GUTIERREZ: May I approach the
24 witness, Your Honor?

25 THE COURT: You may.

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1 Q. (By Ms. Gutierrez) Do you recognize this
2 package?

3 A. Yes.

4 Q. And your initials are on there, correct?

5 A. Correct.

6 Q. And it says Item D?

7 A. Yes.

8 Q. Is this the, I guess you would call it, a
9 sweater or sweatshirt that was contained in that
10 package?

11 A. Yes.

12 Q. And how is it that you make a determination
13 that there is nothing significant about this entire item
14 that would be useful for testing or swabbing?

15 A. I did not see anything that looked like
16 bloodstains and the sources of DNA through other bodily
17 fluids I knew would be -- would have lower DNA than what
18 I would call normal contact DNA. So at the time, I did
19 not move on with any other swabbings or cuttings.

20 Q. So, in this case you knew there were multiple
21 suspects, correct?

22 A. Yes.

23 Q. And did you believe that one suspect had on all
24 of these clothes?

25 A. I did not believe anything about the clothing

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1 in regards to the suspect. I just knew very little
2 about the case as it should be.

3 Q. So you didn't know if one suspect had on two of
4 the items or if one suspect had on one item? You had no
5 way of knowing that, correct?

6 A. Correct.

7 Q. Okay.

8 MS. GUTIERREZ: I'll pass the witness.

9 MS. LOGAN: No further questions, Judge.

10 THE COURT: You are excused.

11 We're going to take a brief, five-minute
12 recess. Remember your admonitions.

13 (Brief recess)

14 (Outside jury's hearing)

15 THE COURT: One of my jurors sent a note
16 to the bailiff, and I'm going to read it into the
17 record.

18 Okay. 2:15. Just realized that I had
19 been a juror on a civil case some years ago with the
20 male defense attorney -- with the male defense lawyer.
21 Do not recall which side of the case he was handling;
22 but the outcome was eleven to one, and I was the one.
23 Do not know if this could be a conflict. Carl Harris.
24 My memory was jogged when the Judge asked him not to
25 speak out of turn, and I hope that my recollection is