

1 All right. We'll take about 15 minutes.

2 (Recess)

3 (Open court, jury and defendant present)

4 THE COURT: Call your next witness.

5 MS. COLLINS: Yes, Your Honor. At this  
6 time, the State would call Deputy Smith to the stand.

7 (Witness sworn)

8 **PETER SMITH,**

9 having been first duly sworn, testified as follows:

10 **DIRECT EXAMINATION**

11 **BY MS. COLLINS:**

12 Q. Please state your name, spelling the first and  
13 last, please.

14 A. Deputy Peter Smith. P-e-t-e-r. S-m-i-t-h.

15 Q. Probably the easiest name we've had all day.

16 Sir, can you tell us what you do for a  
17 living?

18 A. I'm a Harris County deputy sheriff.

19 Q. How long have you been with the sheriff's  
20 department?

21 A. Ten years.

22 Q. Prior to that, did you work for any other law  
23 enforcement agencies?

24 A. No, ma'am.

25 Q. When you became a sheriff's deputy, did you

1 have to go through the academy?

2 A. Yes, ma'am.

3 Q. Is that the same academy that it takes anywhere  
4 from three to six months depending on when you went?

5 A. I went through the six-month course.

6 Q. And after the academy, did you take some tests  
7 to be able to kind of graduate from that academy?

8 A. Yes, ma'am. I took TCLEOSE.

9 Q. And you passed?

10 A. Yes.

11 Q. How long have you now been a certified peace  
12 officer?

13 A. Ten years.

14 Q. During your time -- where are you currently  
15 assigned?

16 A. District 4 patrol, nights. That's in the west  
17 side, Katy area mainly.

18 Q. During -- are part of your duties as working  
19 patrol to sometimes pick up evidence from different  
20 locations and take it to something called the property  
21 room?

22 A. Yes.

23 Q. What is the property room?

24 A. Property room is where they store evidence  
25 that's collected from scenes, crime scenes.

1 Q. When we talk about property room, can you  
2 describe it a little bit for us? Is it like a  
3 locked-down facility or can any one of us go in and --

4 A. It's a secured facility. One door in, one door  
5 out. For anybody like yourselves to get into the  
6 property room, you have to be signed in and escorted by  
7 a licensed peace officer.

8 Q. What is the point of the property room being so  
9 locked down like that?

10 A. Maintain chain of command -- chain of custody.  
11 Excuse me.

12 Q. Somewhere around October 27th, 2009, were you  
13 called out to the Memorial Hermann Hospital in Katy to  
14 pick up evidence?

15 A. Yes, ma'am.

16 Q. And who did you meet there at the hospital to  
17 get that evidence from?

18 A. I met with a forensic nurse. Her name was  
19 Tiffani Dusang. She's a registered nurse. She's a  
20 forensic nurse out there.

21 Q. When you pick up evidence, is there like a  
22 protocol for how you go about doing that?

23 A. No. Normally in this type of a situation, the  
24 evidence is collected in a secured room. I wait until  
25 everybody has been cleared out of the room and then

1 Tiffani would call for me to come in as she's bagging up  
2 the evidence or collecting whatever she needs to be  
3 collected in the box. She seals it, she signs it, then  
4 I sign it. And I take it -- in this case, I drove it  
5 down to the medical examiner's office and I secured it  
6 in that facility in a refrigerator which is locked.

7 Q. Okay. You mentioned it's locked. Is it closed  
8 down as the property room is?

9 A. Yes. And -- do you want me to expand on that?

10 Q. Please do.

11 A. When I drive over there, the only way to get  
12 in -- I drove in after hours, so I go to the back door.  
13 We get buzzed in. I have to sign in to the sign-in log  
14 and there's also a computer-generated sign-in sheet.  
15 From there, an investigator will meet me, unlock the  
16 refrigerator. At that point, I basically do my  
17 supplement, collect my property tags, affix them to each  
18 one of the bags and the box. That person will sign that  
19 I've actually submitted evidence. That will be placed  
20 by me in the refrigerator. She closes the door with the  
21 lock back on and I leave.

22 Q. Once you go through that process, do you have  
23 any further contact with the case?

24 A. No.

25 Q. Do you do any investigation in the case?

1 A. No.

2 Q. When was the next time that you saw the box and  
3 the two bags that you picked up?

4 A. This morning when I picked them up at the  
5 property room.

6 Q. What did you do that?

7 A. Because I was told to come here to court.

8 Q. Fair enough.

9 Have you been waiting out there with this  
10 evidence for a while today?

11 A. Since 10 o'clock this morning.

12 Q. Okay. I'm going to go ahead and approach with  
13 what's been marked as State's Exhibits 9, 15, and 16.  
14 Deputy, if you could take a look at these items and tell  
15 me what they are (indicating).

16 A. Well, I can't tell you what's in the box  
17 because when I got the box, it was pretty much sealed.  
18 The box has never been explained to me. So, I pick up a  
19 box marked sexual assault evidence kit. The nurse signs  
20 above my name. It says received by my name at 23:45  
21 hours, which was in the p.m., on 10-27 of 2009. Each  
22 one of the packages is marked the same. I do know  
23 what's in each of these packages because on here it  
24 states: Listed item enclosed. This one says: Black  
25 pants. And this one says: Purple shirt.

1 Q. Like you said, do you do anything to take out  
2 the evidence, look at it, any of that stuff?

3 A. Never touch it, except for it being in a bag.

4 Q. Okay. Fair to say from the time you pick it up  
5 to the time that you drop it off in the fridge over at  
6 the M.E.'s office it remains as is?

7 A. Yes.

8 Q. Can you tell, from looking at this, anything  
9 that you put on this box or two bags that's been altered  
10 in any way from when you last saw it?

11 A. There's more writing on it. That's about it.  
12 Otherwise, the box and the bags are still secured to the  
13 best of my ability.

14 There's tape on the back from the medical  
15 examiner's office. I'd have to say that I assume  
16 they've opened the bag to do their tests and resealed  
17 it. I did not put that on this bag.

18 Q. Okay. Fair to say in your knowledge through  
19 the sheriff's department when you drop this stuff off at  
20 the fridge, the hope is that it's going to be opened by  
21 someone at the medical examiner's office for testing?

22 A. Yes. Per my understanding, DNA testing.

23 Q. Okay. Are you an expert in DNA?

24 A. No.

25 Q. Do you deal with any of that stuff?

1 A. No.

2 Q. Fair enough.

3 MS. COLLINS: Pass the witness, Your Honor.

4 MR. OLIVER: No questions, Judge.

5 THE COURT: All right. You may step down.

6 THE WITNESS: Thank you.

7 THE COURT: May this officer be excused?

8 MS. COLLINS: Yes, Your Honor.

9 MR. OLIVER: Yes, Your Honor.

10 THE COURT: You're excused. Thank you.

11 THE WITNESS: Thank you, Your Honor.

12 THE COURT: Call your next witness.

13 MS. COLLINS: Yes, Your Honor. At this  
14 time, we call John McGuire to the stand.

15 THE BAILIFF: This witness has not been  
16 sworn.

17 (Witness sworn)

18 **JOHN MCGUIRE,**

19 having been first duly sworn, testified as follows:

20 **DIRECT EXAMINATION**

21 **BY MS. COLLINS:**

22 Q. Please state your name, spelling --

23 A. John McGuire.

24 Q. She's going to yell at us if we talk over each  
25 other. So, wait just a second.