

1 as a business record, that objection's overruled.

2 MR. CORNELIUS: Okay.

3 THE COURT: 124 is admitted.

4 (End of discussion at the bench.)

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

7 THE COURT: You may.

8 Q. (BY MS. FULLER) I have what has been admitted as
9 State's Exhibit No. 124. Can you compare that to your --
10 your records that were provided to the ME's Office and tell
11 me if these are, in fact, copies of the same records that
12 you have?

13 A. Yes. They look very similar. I think they're the
14 same.

15 Q. Okay. What is the name of the patient whose dental
16 records we are now speaking of?

17 A. The last name is H-A-R-T-S-O-U-G-H, first name
18 Linda.

19 Q. And do you know the name of the doctor's office
20 where these -- where these came from?

21 A. Yes, ma'am. The envelope says Matthew Naftis,
22 N-A-F-T-I-S, 1214 West 43rd Street, Suite 300, Houston,
23 Texas, 77018.

24 Q. Okay. Now, when you received these dental records,
25 you've got a written record and you've also got access to

1 the actual teeth; is that correct?

2 A. Well, I don't have access to the teeth. The dental
3 record is a written record and radiographs.

4 Q. Right. But you actually were able to look at the
5 evidence in this case, the skull, the jawbones, and make
6 your own x-rays of those teeth.

7 A. I have a decedent that at the time is unknown that
8 the medical examiners, through their investigation and such,
9 say we think that this is whatever the patient's -- the
10 individual's name is. These are the records that we have
11 obtained for you. So, would you do an examination of the
12 individual, chart what you have, radiograph what you have
13 and then compare it to the existing records we furnish you.

14 Q. Okay. And to be specific, the remains that you
15 identified or that you -- that you looked at, they link up
16 to a unique number assigned by the Institute of Forensic
17 Sciences, right?

18 A. They give me a medical-legal number. The body --
19 each individual that comes in has a unique medical-legal
20 number.

21 Q. Okay. And what is that number in this case?

22 A. The medical-legal number in this case is Medical
23 Legal 10-1866.

24 Q. Okay.

25 MS. FULLER: May I approach the witness, Your

1 Honor?

2 *THE COURT:* You may.

3 Q. (BY MS. FULLER) I'm going to show you what has
4 been marked as State's Exhibit 127 and 128. Do you
5 recognize those photographs?

6 A. These are blown-up pictures of the digital
7 radiographs that I took in the morgue on this deceased
8 individual.

9 Q. Okay. On Medical No. 10-1866?

10 A. Yes, ma'am.

11 Q. Okay. And are these a fair and accurate
12 representation of some of the teeth that you took the
13 radiographs of?

14 A. X-rays, if you like, yes, ma'am.

15 Q. Thank you. X-rays of 10-866?

16 A. Yes.

17 *MS. FULLER:* Your Honor, at this time State
18 moves --

19 A. 1866.

20 Q. (BY MS. FULLER) 1866. Thank you.

21 *MS. FULLER:* -- State's Exhibit 127 and 128
22 into evidence and tenders to defense counsel for inspection.

23 *MR. CORNELIUS:* No objection, Judge.

24 *THE COURT:* 127 and 128 will be admitted.

25 Q. (BY MS. FULLER) I am going to show you -- I don't

1 know if it's easier to give them here or put them up, but
2 using State's 127 and 128 and the medical records that you
3 identified as being -- belonging to Linda Hartsough, can you
4 make a conclusion between the medical records and the films,
5 the x-rays that you took in State's Exhibit 127 and 128?

6 *THE WITNESS:* Your Honor, could I go over in
7 front of the jury to show them the outline of these --

8 *THE COURT:* We have to keep it in question and
9 answer.

10 *MS. FULLER:* May I approach?

11 *THE COURT:* You may.

12 Q. (BY MS. FULLER) I'm going to put these up on the
13 screen. You can actually touch that screen to illustrate
14 what you're talking about.

15 A. All right.

16 Q. Let's first look at State's 127.

17 A. Oh, boy. Kind of washes out, doesn't it?

18 Q. Yeah. Let me make it smaller. That might help.
19 Is that better?

20 A. Yes. You can see the filling in this tooth. And
21 you can also see the bony trabeculae up here. The shape of
22 the root, the shape of the roots, the curvature here, kind
23 of straight here, pulp chamber, and this filling that goes
24 around, you can see that it's kind of odd shaped.

25 Q. Okay. And how does that -- how does State's

1 Exhibit 127 match up to the dental records of Linda
2 Hartsough as provided to you?

3 A. Well, we have the same thing here. I don't know if
4 you could project this as well. But this -- I'm looking at
5 the same thing here in this small little radiograph right
6 here that has the same outline as the filling itself in the
7 tooth taken at approximately the same angle. So, this is
8 what you use to make the comparison. Is it very similar?
9 Does it have the same characteristics? Is the bone pattern
10 the same? Are the roots shaped the same? The pulp chamber,
11 the part of the tooth that gives you the toothache, is it
12 the same? Yes. The third molar, is it sticking up the
13 same?

14 Unfortunately there is an awful lot of work in
15 the anterior portion of this individual's mouth but there's
16 also what's called gum disease or periodontal problems. So,
17 the record reflects the individual came in with severe pain
18 and the dentist, unfortunately, couldn't do much for her and
19 they extracted all these other teeth that I could have used;
20 so, I'm --

21 Q. Okay. But --

22 A. Pardon?

23 Q. Okay. But based on your expert opinion, does the
24 x-ray that was taken of 127, can you make a conclusion of
25 whose tooth that belongs to in State's Exhibit 127?

1 A. Yes, ma'am.

2 Q. Who is that?

3 A. I see the same outline to the fillings and such in
4 the record that was provided to the record that I took in
5 the morgue.

6 Q. Okay. So, I'm going to also show you State's
7 Exhibit 128. Can you see that okay?

8 A. Yes, ma'am. And you can see there's a -- kind of
9 an odd-shaped filling here in this tooth and there's also a
10 little bit of a filling here and unfortunately you can't see
11 it but I'm looking at essentially the same thing in these
12 two teeth.

13 The radiograph is taken at a slightly
14 different angle but the curvature of the roots is very
15 similar to what I'm looking at. And so, I only have four
16 teeth to make this but I have unique outlines of the
17 filling, the roots, the other anatomical structures, which
18 are these. These are a part of the sinus up here and the
19 base of the skull. So, it's enough that -- it's unique
20 enough, someone else, most likely would not have the same
21 situation in their mouths.

22 Q. Okay. Doctor, are you able to, based on the dental
23 records provided to you and the x-rays that you took, are
24 you able to make a positive identification of whose remains
25 are Medical No. 10-1866?

1 A. Yes, ma'am. In my opinion these are the decedent
2 as reflected in this record.

3 Q. And what is that decedent's name, please?

4 A. The last name, again, is Hartsough,
5 H-A-R-T-S-O-U-G-H, first name Linda.

6 MS. FULLER: Pass the witness, Your Honor.

7 THE COURT: Mr. Cornelius?

8 **CROSS-EXAMINATION**

9 Q. (BY MR. CORNELIUS) Dr. Stimson, my name is Skip
10 Cornelius. I think we've met before but it's been a long
11 time ago on a bite case. Had you on a bite case once.

12 Few questions, if I might. If I'm
13 understanding what you've testified to, the medical
14 examiner's office provides you with some dental records,
15 some x-rays from somebody named Linda Hartsough, who you
16 don't know.

17 A. Never seen her before, no, sir.

18 Q. From a dentist whom you don't know.

19 A. That's correct.

20 Q. And you never talked to that dentist or anybody
21 else about Linda's teeth, correct?

22 A. No.

23 Q. You just took some x-rays and some, I guess, dental
24 records that were provided to you to use in comparison?

25 A. That's correct.

1 Q. Okay. The authenticity of that stuff, you didn't
2 question; you assume they gave it to you because they had
3 the right stuff to give you.

4 A. The chain of evidence in the Medical Examiner's
5 Office I presume is correct.

6 Q. Okay. And you have no way to know who actually
7 acquired those records for the medical examiner, do you?

8 A. The records were acquired by one of the medical
9 investigators on a telephone call to the family who gave the
10 dentist of record who was subpoenaed or requested by the
11 medical examiner to furnish the records, which they did.

12 Q. Now, what makes you say all that?

13 A. Because that's the routine procedure that the
14 forensic institute follows like any other forensic institute
15 in the United States.

16 Q. Okay. Would it surprise you, though, that that was
17 not the procedure in this case?

18 A. I --

19 MS. FULLER: Objection, Your Honor, I believe
20 that's a misstatement of the facts that have come out so
21 far.

22 MR. CORNELIUS: I'll rephrase my question.

23 THE COURT: Thank you.

24 Q. (BY MR. CORNELIUS) Would it surprise you to know
25 that a Houston homicide investigator acquired the records

1 directly from the dentist and took them to the Medical
2 Examiner's Office?

3 A. It doesn't matter to me where the records came from
4 as long as they're the accurate records in the case that I
5 could make a comparison.

6 Q. And that's my whole point. They just gave you the
7 records. You don't know whether they're accurate or not.

8 A. I go on an assumption that the Medical Examiner's
9 Office has been doing this for so many years that they would
10 have only proper materials to make a comparison with.

11 Q. And proper procedure would be not for the Houston
12 homicide investigator to go acquire these records from the
13 dentist and provide them to the Medical Examiner's Office;
14 it would be something for the Medical Examiner's Office to
15 acquire.

16 A. As long as I have the proper records, how they get
17 there is of no consequence to me. I mean, they provide me
18 the dentist of record's information on the patient to
19 compare and that's what I use. How they got it, I never
20 question. That's not part of my job.

21 Q. I was just repeating what you testified to awhile
22 ago, that that was the procedure all over the country.

23 A. Yes. You can also make exceptions. The dentists
24 themselves can bring it in sometime and assist me and say,
25 yes, that is my patient.

1 Q. But that didn't happen in this case?

2 A. No, it didn't.

3 Q. And so in this case you're making your
4 identification from four teeth?

5 A. Yes.

6 Q. And you said it's most likely that someone else
7 wouldn't have those same dental issues in those same four
8 teeth.

9 A. In my 40 years of experience, I could say it's very
10 unlikely that they would.

11 Q. Very unlikely.

12 A. Extremely unlikely.

13 Q. Okay. All right. But that's the basis of your
14 identification. Four teeth and it's very unlikely that
15 someone else would have those same cavities?

16 A. Well, not cavities but restorations and anatomic
17 structures, yes.

18 Q. In four teeth.

19 A. In four teeth.

20 MR. CORNELIUS: Pass the witness.

21 MS. FULLER: Nothing further, Your Honor.

22 THE COURT: May this witness be excused?

23 MS. FULLER: Yes, Your Honor.

24 THE COURT: Mr. Cornelius?

25 MR. CORNELIUS: Yes, Your Honor.