

1 sworn, testified as follows:

2 **DIRECT EXAMINATION**

3 **BY MR. BURDETTE:**

4 Q. Good morning, Ms. Todd.

5 A. Hi.

6 Q. How are you?

7 A. I'm great. How are you?

8 Q. Good. Thanks. Thanks for being here.

9 Do me a favor and introduce yourself to the  
10 members of the jury.

11 A. Hi. My name is Kerry Todd.

12 Q. Tell us a little bit about yourself. Where are  
13 you from?

14 A. I'm originally from Scotland.

15 Q. How are you employed?

16 A. I am employed by the Houston Forensic Science  
17 Center.

18 Q. In what capacity?

19 A. I'm a criminalist.

20 Q. What is a criminalist? What does that mean?

21 A. With the Houston Forensic Science Center, I'm a  
22 serologist, and I test for the presence of bodily fluid,  
23 such as blood or semen.

24 Q. Now, you mentioned you work for the Houston  
25 Forensic Science Center. I have a bad habit of calling

1 it the crime lab. Is that okay?

2 A. Sure.

3 Q. All right. It used to be considered the  
4 Houston Police Department Crime Lab, right?

5 A. Yes.

6 Q. When did y'all branch off and become the  
7 Houston Forensic Science Center?

8 A. I believe we became the Houston Forensic  
9 Science Center in April of this year.

10 Q. And so, now instead of being under the arm of  
11 the Houston Police Department, you are under the City of  
12 Houston; is that correct?

13 A. Yes, sir, that is correct.

14 Q. Is the lab still accredited?

15 A. Yes, sir.

16 Q. Do you still conduct the same type of  
17 examinations and analyses there?

18 A. Yes, sir, we do.

19 Q. Are you in the same building?

20 A. Yes, sir, we are.

21 Q. Okay. How long have you been employed as a  
22 criminalist?

23 A. I have been a criminalist for approximately  
24 three-and-a-half years.

25 Q. What educational background do you have that

1 qualifies you to be a criminalist for the Houston  
2 Forensic Science Center?

3 A. I have a Bachelor's of Science in biology with  
4 a minor in chemistry from Houston Baptist University.  
5 I'm also one year into my Bachelor's of Science and  
6 biology program.

7 Q. Do you have any additional training other than  
8 your education that qualifies you to be a criminalist  
9 and perform serology?

10 A. Yes. Once I was employed, I went through  
11 intensive in-house training, which included extensive  
12 readings in the background of serology. It included  
13 observations of other criminalists performing casework.  
14 It also included written exams that showed that I  
15 understood the theory of serology, as well as mock  
16 trials and a competency exam that showed that I could  
17 put this theory into practice and come to correct  
18 conclusions.

19 Q. Have you testified before?

20 A. I have testified once before.

21 Q. This is your second time?

22 A. Yes, sir, it is.

23 Q. Are you nervous?

24 A. Yes, sir, I am.

25 Q. Okay. Doing just fine.

1                   A little bit about the lab. You said it's  
2 accredited?

3           A. Yes sir.

4           Q. By whom?

5           A. Our lab is accredited by ASCLD/LAB, which is  
6 the American Society of Crime Laboratory Directors,  
7 Laboratory Accreditation Board. And we're also  
8 accredited by Texas Department of DPS -- I mean Texas  
9 Department of Public Safety. I apologize.

10          Q. Tell us a little bit about serology. What is  
11 serology?

12          A. Serology is basically the study of bodily  
13 fluids, such as blood and semen.

14          Q. Are there procedures in place -- are there  
15 accepted procedures in place for serology analysis?

16          A. Yes, sir.

17          Q. Did you follow those procedures in this case?

18          A. Yes, sir, I did.

19          Q. What are the general procedures for conducting  
20 a serology examination?

21          A. Could you be more specific?

22          Q. Tell us generally, for those of us who don't  
23 know how serology examinations are conducted, how it's  
24 done?

25          A. We test for -- a presumptive test for semen and

1 blood, and then we confirm these results with additional  
2 testing.

3 Q. When you say "test," what are you testing?

4 A. We're testing for the presence of semen and  
5 blood.

6 Q. Not what you're testing for, but what items are  
7 you testing?

8 A. Oh. In this case specifically?

9 Q. Just in general.

10 A. We're testing sexual assault kits, different  
11 types of evidence.

12 Q. So if there is a swab taken, whether it's a  
13 sexual assault kit or something by a crime scene  
14 officer, that swab is what's submitted to you for  
15 testing?

16 A. Yes, sir.

17 Q. All right. Now, let's talk about this case in  
18 particular. Okay? Do you have your report in front of  
19 you?

20 A. Yes, sir, I do.

21 Q. What items did you test in this case?

22 A. In this case, I tested Item 18, which was an  
23 envelope containing penile swabs from Suspect  
24 Westbrook. I also tested Item 19, which was known  
25 buccal swabs from -- pardon me for the pronunciation --

1 Khalon Westbrooks, and the sexual assault kit from  
2 Andreeanne Hernandez, which was Item 29.

3 Q. So, you basically had three items you were  
4 testing here?

5 A. Yes, sir.

6 Q. And you just test for blood and semen, right?

7 A. Yes, sir, that's correct.

8 Q. Someone else does DNA testing?

9 A. Yes.

10 Q. So let's take each of those three items  
11 separately. What was the first item that was tested?

12 A. The first item I tested was the sexual assault  
13 kit.

14 Q. And what items did you test from the sexual  
15 assault kit?

16 A. In the sexual assault kit, I tested Items 29.2,  
17 vaginal swabs; 29.4, anal swabs; and 29.6, oral swabs.

18 Q. What were your results?

19 A. I tested for -- my results were negative for  
20 the presence of semen.

21 Q. Okay. So from the sexual assault kit, you  
22 tested the complainant's oral swab; is that right?

23 A. Yes.

24 Q. Vaginal swab?

25 A. Yes.

1 Q. And then anal swab?

2 A. Yes.

3 Q. Okay. And they were negative for semen?

4 A. Yes, sir, they were.

5 Q. If during a sexual assault no ejaculate or  
6 pre-ejaculate is -- if no ejaculate or pre-ejaculate  
7 takes place, would you expect to find semen?

8 A. I would not expect to.

9 Q. When you conduct your examination, do you read  
10 the medical records before selecting which items to  
11 test?

12 A. Yes, I do. I read the medical report within  
13 the kit.

14 Q. Does that help guide your testing?

15 A. It does.

16 Q. Did you see in the medical report that the  
17 complainant had said that there was no ejaculation?

18 A. Yes, sir, I did.

19 Q. And so, a finding of no semen is consistent  
20 with no ejaculation?

21 A. No ejaculation and pre-ejaculation.

22 Q. Right.

23 A. Yes, sir.

24 Q. That's consistent?

25 A. It's expected.

1 Q. Did you also test items for blood?

2 A. I tested the vaginal swabs for blood  
3 presumptively.

4 Q. What was the result of your presumptive test?

5 A. It was positive.

6 Q. In your review of the records, did you see the  
7 complainant indicated she was menstruating?

8 A. Yes, sir, I did.

9 Q. So is that consistent with your finding?

10 A. Yes, sir, it is.

11 Q. At any point did you receive an additional  
12 request to test or retest any additional evidence?

13 A. To my knowledge, we did not.

14 Q. Who can make these requests to test or retest  
15 evidence?

16 A. Attorneys, such as D.A.s, defense attorneys, or  
17 officers can request to have evidence tested.

18 Q. And no additional requests were made in this  
19 case?

20 A. Not to my knowledge.

21 MR. BURDETTE: May I approach the witness?

22 THE COURT: You may.

23 Q. (By Mr. Burdette) Ms. Todd, I'm showing you  
24 what's been admitted as State's Exhibit 34 and State's  
25 Exhibit 35. Are these the swabs that were submitted for



1 examination? You can take a look at the packages if you  
2 need to.

3 A. Yes, they are.

4 Q. Just so the jury understands, when a Crime  
5 Scene Unit officer takes a swab, that swab is tagged  
6 into the property room?

7 A. To my knowledge, yes.

8 Q. And then how do you get the swab?

9 A. Once a request is made with the lab, it is  
10 assigned to an analyst and the evidence is then  
11 requested and picked up by an evidence technician and  
12 brought over to our laboratory.

13 Q. Is that a secure facility?

14 A. Yes, it is.

15 Q. And then once the testing of the swabs is  
16 complete, is the evidence resealed?

17 A. Yes, it is.

18 Q. And is it transported back to the property  
19 room?

20 A. Yes.

21 Q. Is that also a secure facility?

22 A. Yes.

23 MR. BURDETTE: I'll pass the witness.

24 THE COURT: Mr. Rushing?

25 MR. RUSHING: Thank you, Judge.

**CROSS-EXAMINATION**

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**BY MR. RUSHING:**

Q. Ma'am, your tests can't tell you if a defendant or a suspect was intoxicated, can it?

A. Correct.

Q. And your tests couldn't tell you, if someone was intoxicated, was intoxicated voluntarily or involuntarily, could it?

A. Correct.

MR. RUSHING: Pass the witness.

THE COURT: May this witness be excused?

MR. BURDETTE: No further questions for this witness, Your Honor.

THE COURT: May this witness be excused?

MR. BURDETTE: I have no objection.

THE COURT: Thank you. You may step down. You're excused.

Can I see the lawyers just briefly for a scheduling question?

(At the Bench, off the record.)

(Open court, defendant and jury panel present.)

THE COURT: Call your next witness.

MR. BURDETTE: State calls Robin Freeman.

THE BAILIFF: Judge, this witness was sworn