

1 MS. SAMPLE: We have no further questions
2 for Officer Castro, Your Honor.

3 THE COURT: All right. Then would you,
4 please, call your next witness.

5 MS. COLLINS: The State calls Mayra
6 Tovias.

7 THE BAILIFF: For the record, Your Honor,
8 the witness has been sworn.

9 THE COURT: All right. Let the record
10 reflect the witness has been sworn.

11 You may proceed.

12 MAYRA TOVIAS,
13 having been first duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 QUESTIONS BY MS. COLLINS:

16 Q. Good morning, Ms. Tovias. Would you please
17 introduce yourself to the jury?

18 A. Yes. Good morning. My name is Mayra Tovias.

19 Q. And would you spell that last name, for the
20 record?

21 A. Yes. It's T-o-v-i-a-s.

22 Q. And Ms. Tovias, at any point, did you go by the
23 last name of Cuevas?

24 A. Yes, I did.

25 Q. And how recently did you change your name?

1 A. Approximately, like, maybe a year ago. I've
2 been married for a year and a half, but I just changed my
3 last name, like, a year ago.

4 Q. So, Cuevas was your maiden name?

5 A. Yes, it was.

6 Q. So, any sort of reports, as far as your testing
7 or your analysis of controlled substance, would be under
8 your maiden name?

9 A. Yes, it would.

10 Q. And who do you work for, ma'am?

11 A. I work for the City of Houston Police
12 Department Crime Lab.

13 Q. And what's your occupation there?

14 A. I am a criminalist.

15 Q. What's a "criminalist"?

16 A. A criminalist receives and analyzes unknown
17 substances for the presence of a controlled substance.

18 Q. How long have you worked in that capacity?

19 A. For approximately two years and three months.

20 Q. Did you have any other duties with the City or
21 any other crime labs before coming to H.P.D.?

22 A. No.

23 Q. Tell us about your educational background to
24 become a criminalist.

25 A. Yes. I received my Bachelor of Science degree

1 from The University of Texas in San Antonio. Then I also
2 was part of the intensive in-house training program with
3 the City of Houston Police Department's Crime Lab.

4 Q. What's that training like?

5 A. Well, the training consisted of a series of
6 lectures from a trainer. I had to read many scholarly
7 articles concerning the controlled substances we deal
8 with every day. Also, we watched videos. I had, also,
9 a midterm and a final; and I had to identify many unknown
10 substances prior to receiving case work.

11 Q. Did you successfully complete that training?

12 A. Yes, I did.

13 Q. And when was that?

14 A. This was, like, two years ago.

15 Q. Aside from that initial training, what other
16 education courses or follow-up training have you had to
17 be a criminalist?

18 A. I've attended seminars; and, also, we have
19 instructors with instruments that we use that come and
20 they update us on new techniques of analysis.

21 Q. Are you currently up to date as far as all of
22 your credentials that you need to work as a criminalist?

23 A. Yes.

24 Q. Is the lab for the Houston Crime Lab accredited
25 by D.P.S.?

1 A. Yes, it is.

2 Q. Does the Crime Lab have any other
3 accreditations?

4 A. Yes, it is also accredited by the ASCLD,
5 American Society of Crime Lab Directors Lab Accreditation
6 Board.

7 Q. Have you testified before in Harris County as a
8 criminalist?

9 A. Yes, I have.

10 Q. On few or many occasions?

11 A. Many occasions.

12 Q. Do you feel that you are familiar with
13 controlled substances?

14 A. Yes, I believe so.

15 Q. Do you feel that you are comfortable with the
16 analysis of unknown substances, as far as identifying
17 them as a controlled substance?

18 A. Yes.

19 Q. What is a controlled substance?

20 A. A controlled substance is any -- it is a
21 substance which includes adulterants or dilutants listed
22 in Schedules 1 through 5 or Penalty Groups 1, 1-A, or 2
23 through 4. The term also includes any mixture or
24 solution that includes the controlled substance.

25 Q. Is cocaine a controlled substance?

1 A. Yes, it is.

2 Q. Is crack cocaine a controlled substance?

3 A. Yes, it is.

4 Q. And can you tell us a little bit about the
5 difference between pure cocaine and crack cocaine?

6 A. Yes. The difference between pure cocaine and
7 crack cocaine is the solubility, which means, also,
8 powder cocaine is acidic. It can be ingested directly.
9 Usually the most common way of ingesting it is through
10 the nose. And the crack cocaine is the basic form of
11 cocaine in that it's made by adding a base to the powder
12 cocaine, and the form of ingestion is -- you can -- it
13 goes -- you smoke it. It's the smokeable form.

14 Q. You mentioned adulterants and dilutants. What
15 are those?

16 A. Adulterants and dilutants are -- it's any
17 substance that is used to increase the bulk or the
18 quantity of a controlled substance, and it doesn't really
19 have to have any effect on the chemical activity of the
20 controlled substance.

21 Q. And when you conduct your analysis, do you
22 separate out the adulterants and dilutants?

23 A. No, we don't.

24 Q. Is there any particular reason for that?

25 A. Because the Texas law states that a controlled

1 substance includes adulterants and dilutants.

2 Q. So, based on your training and experience,
3 would you say it's possible to take an unknown substance
4 and identify it?

5 A. Oh, I'm sorry. Can you repeat that?

6 Q. Based on your training and experience, would
7 you say that it is possible to take an unknown substance
8 and identify it?

9 A. Yes.

10 Q. How do you do that?

11 A. Well, we go through the series of two tests.

12 We do a presumptive and a confirmatory test. The
13 presumptive test gives us an indication as to what might
14 be present, and the confirmatory just gives us a
15 confirmation that it is what the presumptive test gave us
16 as an indication.

17 Q. Is this an analysis that you perform
18 frequently?

19 A. Yes.

20 Q. In fact, did you have an opportunity to conduct
21 such an analysis for Case No. 027976510?

22 A. Yes.

23 Q. And did you conduct that analysis around March
24 of last year?

25 A. Yes, I did.

1 Q. Did you happen to see some envelopes this
2 morning labeled State's Exhibits 37 and 38?

3 A. Yes.

4 Q. And where did you see those?

5 A. I saw them in the witness room.

6 MS. SAMPLE: Your Honor, at this time, may
7 we have the officers bring in State's Exhibits 37 and 38?

8 THE COURT: You may.

9 Q. (BY MS. SAMPLE) And how is it that you first
10 receive -- what's the process like for receiving evidence
11 to test?

12 A. Yes. Well, we get the evidence from
13 Centralized Evidence Receiving, which is where they hold
14 the narcotics. C.E.R. gets the narcotics from the
15 officers. The officers, they put the evidence in a
16 lockbox; and only the C.E.R. personnel have access to
17 those lockboxes. It's like a mailbox. Somebody can put
18 something in there, which is the officers; but only
19 C.E.R. personnel can take those contents out of the
20 lockboxes. So, then we go down to C.E.R. and we get the
21 evidence and then we take it back to our area and we
22 store it in a secure location until we do analysis.

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

25 THE COURT: You may.

1 Q. (BY MS. SAMPLE) Ms. Tovias, I'm going to hand
2 you what's been previously marked as State's Exhibits 37
3 and 38. Are these the envelopes that you just mentioned
4 you saw this morning?

5 A. Yes.

6 Q. Where did you first see these two envelopes?

7 A. I first saw them at the Centralized Evidence
8 Receiving.

9 Q. And were you asked to do anything with the
10 contents of the envelopes?

11 A. Yes. Well, I was asked to analyze the contents
12 inside.

13 Q. Is this the analysis that you previously
14 described, the presumptive and confirmatory tests?

15 A. Yes.

16 Q. Can you please explain to us how you did your
17 analysis? What does the presumptive test consist of?

18 A. Okay. My presumptive test, I did a series of
19 spot tests. The spot test is conducted to a spot plate.
20 We add a little bit of sample, and we just observe for
21 color changes. Usually, each controlled substance gives
22 a specific color with certain tests and because it was a
23 cookie-like off-white chunk substance, I conducted a
24 cobalt thiocyanate test and it gave me an indication that
25 the cocaine was present. So, then I ran my confirmatory

1 test, which was the Fourier Transform Infrared
2 Spectrophotometry, which gave me the confirmation that
3 cocaine base was present.

4 MS. SAMPLE: May the witness step down;
5 and may I approach, please?

6 THE COURT: Yes.

7 Q. (BY MS. SAMPLE) Ms. Tovias, would you approach
8 with me right here?

9 A. Yes.

10 Q. What kind of markings are on State's Exhibits
11 37 and 38 that allow you to know that these are, in fact,
12 the substances that you tested and made a report on? Can
13 you show us, please?

14 A. Yes, it has my initials here and the case
15 number.

16 Q. So, all these things match up to your report?

17 A. Yes.

18 Q. Is there anything special about this green
19 sticker on the back of the envelope?

20 A. Yes. This has the unique identifying incident
21 number and the item number.

22 Q. And, in fact, if we go ahead and open the
23 envelope, there are two additional plastic bags. Do you
24 recognize the contents of the bag? If you would, take a
25 look in there.

1 A. Yes.

2 Q. Are there any markings on these plastic bags --
3 any numbers or anything else that allow you to identify
4 these substances as the ones you tested for in this case?

5 A. Yes. There's also the unique identifying
6 Incident No. 027976510 and my handwritten initials, M. C.

7 Q. Thank you. You can have a seat.

8 So, after you completed all your tests,
9 were you able to obtain any results?

10 A. Yes.

11 Q. And what were those results?

12 A. That it contained -- well, the two Ziplocs with
13 chunk substance contained cocaine.

14 Q. Are those the two Ziplocs that you just looked
15 at inside of State's Exhibit 37?

16 A. Yes.

17 Q. And what was the weight of the two chunk
18 substances that were cocaine?

19 A. 143.9 grams.

20 Q. Is that including the adulterants and dilutants
21 you described earlier?

22 A. Yes, it does.

23 MS. SAMPLE: Your Honor, at this time we
24 would offer State's Exhibit 37 and its contents and
25 tender to defense counsel.

1 MR. SIMMONS: We have no objections, Your
2 Honor.

3 THE COURT: State's Exhibit 37 is
4 admitted.

5 (State's Exhibit No. 37 was admitted.)

6 MS. SAMPLE: May we publish to the jury?

7 THE COURT: You may.

8 Q. (BY MS. SAMPLE) I have just a few more
9 questions for you, ma'am.

10 One thing that we've noticed is that the
11 contents of those bags, they're not really in that cookie
12 form anymore.

13 A. Huh-uh.

14 Q. Can you tell us how -- why is it brown? Why
15 has it changed over time?

16 A. Well, usually, it all depends on the way that
17 the person who prepared the chunk substance cooked it.
18 It just means that when they cooked it, it probably --
19 they probably didn't do a good job. It still has a lot
20 of contaminants in there.

21 Q. But it does still have that cocaine in it?

22 A. Yes, exactly.

23 Q. And based on your training and your experience,
24 does anybody have a lawful right to possess cocaine in
25 Texas?

1 A. No.

2 Q. Another thing, just from the chunk substances
3 being in plastic, we can't really appreciate any smells.
4 Do you know when you're testing it when it's out of the
5 Baggies, is there a smell to this?

6 A. Sometimes they do have a distinct smell.

7 Q. Can you describe that for us, please?

8 A. It would be more like a -- it's very hard to
9 describe since -- I mean, it's -- when I smell it, it's,
10 like, okay, this is cocaine. But I guess you could say a
11 chemical smell. It has, like, a chemical smell, along
12 with a plant smell sometimes.

13 Q. Is it a very subtle smell; or would you say
14 it's a very strong smell, based on your training and
15 experience?

16 A. Usually, it's very -- when it's a large
17 quantity like that, it can be moderately strong; but when
18 it's very small quantities, it's very subtle.

19 Q. Is this a quantity that you would consider a
20 larger quantity?

21 A. Yes.

22 MS. SAMPLE: May I approach the witness,
23 Your Honor?

24 THE COURT: You may.

25 Q. (BY MS. SAMPLE) In State's Exhibit 38, do you

1 see any --

2 MS. SAMPLE: And may the witness step
3 down, Your Honor?

4 THE COURT: Yes, she may.

5 Q. (BY MS. SAMPLE) In State's Exhibit 38, do you
6 see any markings that help you know whether or not this
7 was a substance that you tested in the same case?

8 A. Yes. It also has my handwritten initials,
9 M. C.

10 Q. And if we open this up, there is a container in
11 here that you conducted your analysis on, as well; is
12 that correct?

13 A. Yes, I did.

14 Q. So, inside State's Exhibit 38, there is another
15 plastic bag here. Are there any identifying marks,
16 numbers, or anything like that that allow you to know
17 that this is a substance you tested in this case?

18 A. Yes. It has, again, the unique identifying
19 incident No. 027976510 and my handwritten initials, M. C.

20 Q. Thank you very much. You can have a seat.

21 MS. SAMPLE: Your Honor, at this time, we
22 would offer State's 38 and tender to defense counsel.

23 MR. SIMMONS: No objection, Your Honor.

24 THE COURT: State's 38 is admitted.

25 (State's Exhibit No. 38 was admitted.)

1 MS. SAMPLE: May we publish to the jury?

2 THE COURT: You may.

3 Q. (BY MS. SAMPLE) Is this the item that's listed
4 as: "Bottle with clear liquid"?

5 A. Yes.

6 Q. And what was the result of the analysis on the
7 bottle with the clear liquid?

8 A. The clear liquid did not contain a controlled
9 substance.

10 Q. Is there anything unusual about that?

11 A. No. I mean, it just didn't. It had a little
12 trace and dilutants that are commonly used with cocaine.

13 Q. So, that is something that you found in there?

14 A. Yes. But since they're not controlled when
15 they're by themselves, it's just no controlled substance.

16 Q. Did you have an opportunity to test anything
17 else as part of this case?

18 A. I got to also test a Ziploc with plant
19 substance.

20 MS. SAMPLE: May I approach, Your Honor?

21 THE COURT: You may.

22 Q. (BY MS. SAMPLE) Ms. Tovias, I'm going to hand
23 you what's been marked and already admitted and
24 introduced as State's Exhibit No. 36. Do you recognize
25 that?

1 A. Yes.

2 Q. And how do you recognize it?

3 A. I recognize it because the evidence envelope
4 inside has my handwritten initials and it has the same
5 incident number.

6 Q. When we flip it over to the other side, is
7 there any identifying marks or labels?

8 A. Yes. The contents inside also have my
9 handwritten initials with the unique identifying incident
10 number.

11 Q. What were the results of the analysis on
12 State's Exhibit 36?

13 A. The plant substance was marijuana -- is
14 marijuana.

15 Q. And what quantity?

16 A. 10.14 ounces, or 287.5 grams.

17 Q. Thank you.

18 MS. SAMPLE: Pass the witness, Your Honor.

19 THE COURT: Mr. Carter -- oh, Mr. Simmons.

20 CROSS-EXAMINATION

21 QUESTIONS BY MR. SIMMONS:

22 Q. Ms. Tovias, during your analysis of this
23 particular case, was there a report generated from it?

24 A. I'm sorry, sir?

25 Q. When you analyzed the substance of this

1 particular case, did you generate a report?

2 A. Yes, I did.

3 Q. Did you review that report?

4 A. Yes.

5 Q. Did you review that report before you testified
6 today?

7 A. Yes, sir.

8 MR. SIMMONS: Can I receive it -- or
9 review it?

10 MS. SAMPLE: Your Honor, I'm just handing
11 defense counsel page 2.019, which was previously
12 furnished to Mr. Carter before trial.

13 Q. (BY MR. SIMMONS) Earlier today, Counsel made a
14 comment in regards to the form of this particular -- to
15 the crack that you had analyzed; and you said that it
16 might be due to the fact of contamination or there were
17 several other possibilities. Can you name those
18 possibilities and why that -- you know, it wouldn't still
19 be in a cookie form?

20 A. It also -- it's very -- it disintegrates very
21 easily. Its consistency is -- when they don't dry it
22 enough, it still is powdery-like; so, then it breaks up
23 very easily.

24 Q. So, in your opinion, when you received this
25 substance to review it, was it completed; or did it seem

1 like it was partially completed as far as was it dried up
2 or was it still moist as if it was still being prepared?

3 A. I mean, I would say it was completed; but what
4 I test for is if it contains cocaine or not.

5 Q. Now, your only statement here today is to say
6 that it, in effect, contained cocaine; is that correct?

7 A. Yes, sir.

8 Q. You're not here to give any type of impression
9 as far as who possessed it, are you?

10 A. Exactly.

11 Q. Isn't it true that you don't know who possessed
12 the cocaine?

13 A. No, I don't.

14 Q. Is it also true that you don't know who had the
15 intent to possess the cocaine?

16 A. I don't.

17 Q. Now, if someone was in the act of preparing the
18 cocaine and they get interrupted before they completed
19 it, would that have any effect on the outcome of the
20 cocaine?

21 A. No.

22 Q. How about, would that have any effect on the
23 consistency of the cocaine?

24 A. It could.

25 Q. Now, in regards -- you made a comment in

1 regards to the odor as far as "moderate." Can you sort
2 of give a layperson's suggestion as far as how we would
3 evaluate a moderate odor in comparison to something
4 strong or something weak, to that effect?

5 A. Okay. Something -- it has -- it's very -- it's
6 slightly moderate. It's kind of like when you're cooking
7 something and it's very -- it's not strong. It's not
8 very, very strong because it's a large quantity but not
9 large enough to produce a very big odor. When I handle
10 the unknown substance, I have it about this far away from
11 me and I can smell it; but if you're a little bit further
12 away, then I don't think you would be able to smell
13 anything.

14 MR. SIMMONS: No further questions, Your
15 Honor.

16 THE COURT: Ms. Sample.

17 MS. SAMPLE: No further questions, Your
18 Honor.

19 THE COURT: May the witness be excused?

20 MS. SAMPLE: Yes, Your Honor.

21 MR. SIMMONS: Yes, Your Honor.

22 THE COURT: Thank you, ma'am. You may
23 stand down.

24 THE WITNESS: Thank you.

25 THE COURT: Ms. Sample or Ms. Collins, do

1 you have another witness?

2 MS. COLLINS: Yes, Your Honor. At this
3 time, the State would call Mr. Troyce Carter to the
4 stand.

5 THE COURT: Thank you.

6 THE BAILIFF: The witness has not been
7 sworn, Your Honor.

8 THE COURT: Would you stand before the
9 clerk and take the oath as witness.

10 (Witness duly sworn.)

11 THE COURT: Let the record reflect the
12 witness has been sworn.

13 You may proceed.

14 MS. COLLINS: Thank you, Your Honor.

15 TROYCE CARTER,
16 having been first duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 QUESTIONS BY MS. COLLINS:

19 Q. Mr. Carter, can you spell your full name?

20 A. First name is Troyce, T-r-o-y-c-e; last name is
21 Carter, C-a-r-t-e-r.

22 Q. Mr. Carter, have we had an opportunity to talk
23 before you took the stand today?

24 A. Yes.

25 Q. Okay. And what's your role -- well, what do