

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.

1 THE COURT: Okay. Thank you, Doctor. You're
2 free to go. Please do not discuss your testimony with any
3 of the other witnesses. Thank you so much.

4 THE WITNESS: You're welcome. Thank you. I'm
5 sorry for the delay.

6 THE COURT: That's all right. We had a little
7 miscommunication.

8 MS. FULLER: May I approach to just grab --

9 THE COURT: Make sure we have everything we
10 need.

11 All right. Call your next witness.

12 MS. FULLER: Your Honor, at this time State
13 moves again to admit State's Exhibit No. 123.

14 THE COURT: Any objections?

15 MR. CORNELIUS: Yes.

16 THE COURT: Okay.

17 (At the bench, on the record.)

18 MR. CORNELIUS: Now that we have this
19 testimony, I see no need to have in here the parts of the
20 records that are not business records where they're
21 asserting certain things that they didn't prove themselves
22 or authorize themselves or no one in their office actually
23 had written or personal knowledge of them and all of that is
24 the identification of Linda Hartsough. All the references
25 that she's who it is. They have got their testimony from

1 this person but this person doesn't have any records to put
2 in and I'm going to object to them offering from the medical
3 examiner's records his conclusions.

4 *THE COURT:* That will be overruled. Anything
5 else?

6 *MR. CORNELIUS:* No. I think I need to be more
7 specific. I'm objecting -- I understand your ruling. I'm
8 just being specific for the record. The identification of
9 the complainant, Linda Sue Hartsough, in the -- what was the
10 original autopsy report, the first four pages of -- what's
11 your exhibit number?

12 *MS. FULLER:* 123.

13 *MR. CORNELIUS:* 123. And then the
14 anthropology report, the identification of the alleged
15 victim on page 1, 2, 3, 4.

16 *THE COURT:* All right. So --

17 *MR. CORNELIUS:* 5.

18 *THE COURT:* Sorry.

19 *MR. CORNELIUS:* And then on page 6 of that
20 report, or actually it's numbered 1 of 11.

21 *MS. FULLER:* Do you want to look at that,
22 Judge?

23 *THE COURT:* No. I've seen most of it in our
24 discussions. I've looked at it before -- at lunchtime.
25 That was when it was offered.

1 MR. CORNELIUS: The only other objections is
2 on page -- it's numbered 1 of 11, is this positively
3 identified statement right here.

4 THE COURT: Okay. That's overruled.

5 MR. CORNELIUS: Of Linda Hartsough.

6 My record's complete.

7 *(End of discussion at the bench.)*

8 THE COURT: So, that means State's 123 is
9 admitted.

10 MS. FULLER: Thank you, Your Honor.

11 THE COURT: And with that?

12 MS. FULLER: Your Honor, the State of Texas
13 rests.

14 MR. CORNELIUS: We're going to rest, too,
15 Judge.

16 THE COURT: All right. Close, State?

17 MS. FULLER: Yes, Your Honor.

18 THE COURT: Defense?

19 MR. CORNELIUS: We'll close.

20 THE COURT: Ladies and gentlemen, both sides
21 have rested and closed and that completes all the evidence
22 that you will hear. It's now my duty to prepare the Court's
23 charge, which I actually have but I need to go over a couple
24 of things with the attorneys. We've added some things; so,
25 I need to make sure that it's ready to go.

1 So, rather than keep you here while we do that
2 and then argue and then it will be close to 5:00, we're just
3 going to start fresh in the morning. So, if I can have
4 everybody here at 10:00 o'clock, I'll read the charge and
5 the lawyers will make their closing statements to you and
6 then I will send you back to deliberate.

7 I understand that the evidence has been closed
8 but please do not begin any discussions of what the evidence
9 has been, either amongst yourselves or with anybody outside
10 of the courtroom because you do not have the Court's
11 instructions to you to guide you in your deliberations.

12 So, you can talk about anything else you want
13 to talk about when you get here as you're leaving today or
14 when you get here in the morning but not about the case.
15 With that, y'all are excused. I'll see everybody in the
16 morning.

17 *(Jury not present.)*

18 *(Recess.)*

19 THE COURT: Okay. State, good, bad, ugly?

20 MS. FULLER: Well, I believe you need to take
21 out the defendant's priors.

22 THE COURT: We did. Sorry. You were outside
23 when we did that.

24 MS. FULLER: And then I guess my only other
25 objection would be the 38.22. I don't believe that there's

1 anything that -- I don't believe that anything was elicited
2 in the testimony to allow for that instruction.

3 *THE COURT:* Well, and I think -- I could be
4 wrong, but unlike 38.23 --

5 *MS. FULLER:* 38.23. Yes, I'm sorry.

6 *THE COURT:* Unlike 38.22 -- sorry, I'm
7 backwards. Unlike 38.22, which requires there to be some
8 sort of conflicting testimony, I think that 38.23, you give
9 them, so that if the defense requests it, to check it off.
10 And I just didn't look at that, but I will.

11 *MR. CORNELIUS:* You've got in there 38.22 and
12 38.23. 38.22 are the instructions. 38.23 is the
13 application saying you can't consider it, right?

14 *THE COURT:* Right, but -- well, no. Hang on.

15 *MS. FULLER:* Are you looking in the Code,
16 Judge?

17 *THE COURT:* Yeah. I'm looking at 38.23.

18 *MS. FULLER:* I'm looking on page 360.

19 *THE COURT:* I'm on a different book.

20 *MR. CORNELIUS:* Without wasting a lot of time,
21 how can you not put it in there? The defendant says on his
22 statement: You tricked me, you caused me to do this, you
23 misled me, you told me you were going to help me. How can
24 you not put it in there?

25 *THE COURT:* Well, okay. I just see, and

1 perhaps erroneously, I see a difference. 38.23 in my mind
2 is the traffic stop where the defendant says I wasn't
3 speeding and the officer says he was and you have two
4 different statements. 38.22 is when a statement may be
5 used. It's specific to a statement. Not evidence, which is
6 38.23. So, I don't think that 38.23 is the application
7 paragraph to 38.22.

8 *MR. CORNELIUS:* You don't?

9 *THE COURT:* Or the application. No. I think
10 it's a completely different section. Because if that's
11 true, it says: In any case where the legal evidence raises
12 an issue hereunder that the jury shall be instructed that if
13 it believes or has a reasonable doubt that the evidence was
14 obtained in violation of the provisions of this article,
15 which seems to me to say that there has to be -- there has
16 to be a difference in testimony.

17 Where I think 38.22 is the rules as to when a
18 statement may be used and the jury has to go through and see
19 if, in fact, those rules were followed, and if they were,
20 the statement is admissible.

21 *MR. CORNELIUS:* Okay.

22 *THE COURT:* I don't think there necessarily
23 has to be an argument, although I know there's a case out
24 there somewhere. I just can't remember --

25 *MS. FULLER:* I think it's Vasquez v. State,

1 which contrasts 38.22 instructions with 38.23 instructions.

2 *THE COURT:* Well, there's that case that says,
3 you know, in 38.23, you have to have conflicting testimony.
4 But I don't -- and that case starts with an M. For the life
5 of me, I can't tell you what it is. Maddox, I think it is,
6 actually.

7 *MS. FULLER:* Madden v. State.

8 *THE COURT:* Madden, yeah.

9 *MS. FULLER:* I'm looking at 38.22 in the
10 instructions paragraph at the very --

11 *THE COURT:* I'm looking at -- I think we're
12 looking at different books. I'm just looking at the Code,
13 not the annotated.

14 *(Off the record discussion.)*

15 *THE COURT:* So, you made your objection. I'm
16 overruling your objection. I'm going to leave in 38.22.
17 Other than that, do you have any other objections?

18 *MS. FULLER:* None from the State.

19 *THE COURT:* All right. Defense?

20 *MR. CORNELIUS:* Nothing from the defense.

21 *THE COURT:* All right. Let's be ready to go
22 tomorrow. 10:00 AM.

23 *(Court in recess for the day.)*

24

25

Jury Trial
September 20, 2011

1 STATE OF TEXAS
2 COUNTY OF HARRIS

3 I, Carrie Logan, Official Court Reporter in and for the
4 185th District Court of Harris County, State of Texas, do
5 hereby certify that the above and foregoing contains a true
6 and correct transcription of all portions of evidence and
7 other proceedings requested in writing by counsel for the
8 parties to be included in this volume of the Reporter's
9 Record in the above-styled and numbered cause, all of which
10 occurred in open court or in chambers and were reported by
11 me.

12 I further certify that this Reporter's Record of the
13 proceedings truly and correctly reflects the exhibits, if
14 any, offered by the respective parties.

15 WITNESS MY OFFICIAL HAND on this, the 13th day
16 of February, 2012.

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