

1
2
3
4
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6
7
8
9
10
11
12
13
14
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16
17
18
19
20
21
22
23
24
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REPORTER'S RECORD

VOLUME 16 OF 35 VOLUMES

TRIAL COURT CAUSE NO. 1384794

COURT OF CRIMINAL APPEALS NO. AP-77,025

OBEL CRUZ-GARCIA)	IN THE DISTRICT COURT
)	
Appellant)	
)	
)	
VS.)	HARRIS COUNTY, TEXAS
)	
)	
THE STATE OF TEXAS)	
)	
Appellee)	337TH JUDICIAL DISTRICT

PRETRIAL PROCEEDINGS AND MOTION TO SUPPRESS

On the 19th day of June, 2013, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Renee Magee, Judge presiding, held in Houston, Harris County, Texas;

Proceedings reported by computer-aided transcription/stenograph shorthand.

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1	I N D E X				
2	VOLUME 16				
	(PRETRIAL PROCEEDINGS AND MOTION TO SUPPRESS)				
3	JUNE 19, 2013				
4				PAGE	VOL.
	Opening statement by Defense Attorney.....			16	16
5	Defendant rests.....			21	16
6	Opening statement by State's Attorney.....			21	16
7	<u>STATE'S WITNESSES</u>				
8	Eric Mehl	Direct	Cross	Voir Dire	VOL.
		26	41	-	16
9	Matt Quartaro	48	66	-	16
10	Courtney Head	79	93	-	16
		98	-	-	16
11	State rests.....			99	16
12	Court's ruling.....			111	16
13	Closing Argument by State's Attorney.....			100	16
14	Closing Argument by Defense Attorney.....			107	16
15	Reporter's Certificate.....			122	16
16	Word Glossary.....			End of Volume	
17	ALPHABETICAL WITNESS INDEX				
18	Head, Courtney	Direct	Cross	Voir Dire	VOL.
		79	93	-	16
		98	-	-	16
19	Mehl, Eric	26	41	-	16
20	Quartaro, Matt	48	66	-	16
21					
22	EXHIBIT INDEX				
	NUMBER	DESCRIPTION	OFFERED	ADMITTED	VOL.
23	SX - 1	Curriculum Vitae Of Gloria J.			
24		Kologinczok	24	25	16
25		(Admitted For Purposes of Motion to Suppress Hearing Only)			

1 SX - 2 Consent to obtain
2 blood, saliva,
3 hair sample 78 79 16
(Admitted For Purposes of Motion to Suppress
Hearing Only)

4 SX - 3 HPD Crime Lab
5 evidence submission
6 form 78 79 16
(Admitted For Purposes of Motion to Suppress
Hearing Only)

7 SX - 4 City of Houston
8 letter dated
9 11/30/92 84 84 16
(Admitted For Purposes of Motion to Suppress
Hearing Only)

10 DX - 2 Second report of
11 the independent
12 investigator for
13 the Houston Police
14 Department crime
laboratory and
property room 20 21 16
(Admitted For Purposes of Motion to Suppress
Hearing Only)

15 DX - 3 Third report of
16 the independent
17 investigator for
18 the Houston Police
19 Department crime
laboratory and
property room 20 21 16
(Admitted For Purposes of Motion to Suppress
Hearing Only)

20 DX - 4 Fourth report of
21 the independent
22 investigator for
23 the Houston Police
24 Department crime
laboratory and
property room 20 21 16
(Admitted For Purposes of Motion to Suppress
Hearing Only)

25

1	DX - 5	Fifth report of			
2		the independent			
3		investigator for			
4		the Houston Police			
5		Department crime			
6		laboratory and			
7		property room	20	21	16
8		(Admitted For Purposes of Motion to Suppress			
9		Hearing Only)			
10	DX - 6	Final report of			
11		the independent			
12		investigator for			
13		the Houston Police			
14		Department crime			
15		laboratory and			
16		property room	20	21	16
17		(Admitted For Purposes of Motion to Suppress			
18		Hearing Only)			
19	DX - 7	Summary of recommendations			
20		of the independent			
21		investigator for the			
22		HPD crime lab and			
23		property room	20	21	16
24		(Admitted For Purposes of Motion to Suppress			
25		Hearing Only)			
	DX - 8	Internal Affairs			
		Division general			
		investigation			
		summary	20	21	16
		(Admitted For Purposes of Motion to Suppress			
		Hearing Only)			
	DX - 9	Internal complaints			
		report from chief			
		command/legal			
		services	21	21	16
		(Admitted For Purposes of Motion to Suppress			
		Hearing Only)			

1 (Open court, defendant present, no jury
2 panel)

3 THE COURT: Cause No. 1384794, State of
4 Texas versus Obel Cruz-Garcia. And Mr. Cruz-Garcia is
5 present at counsel table with his two lawyers, Mr. Mario
6 Madrid and Skip Cornelius. And present for the State is
7 Natalie Tise and Justin Wood. And Steve Walsh is here
8 as well, their intern. And we're proceeding on motions
9 today.

10 And so, to begin with, do both sides have
11 an oral motion -- I know there are some in the file as
12 well, but are there motions from both sides to adopt all
13 the previously filed motions in Cause No. 1289188,
14 1289189, and 1181910, and consolidate them and to
15 transfer them and to adopt them into 1384794?

16 MS. TISE: Yes, Your Honor.

17 MR. CORNELIUS: Yes, Your Honor.

18 THE COURT: Very good. That will be
19 granted.

20 And then part and parcel of that, I do see
21 a number of motions in the file that were -- that were
22 filed from the previous attorney. And that was Steve
23 Shellist and Christian Capatine

24 And, Mr. Cornelius, are you adopting those
25 motions?

1 MR. CORNELIUS: Yes, Your Honor. I'm
2 adopting those motions and asking that those be
3 transferred to the appropriate cause number.

4 THE COURT: That will be granted, too.

5 So, I'm going to start just going over each
6 individual one that hasn't been ruled on. And they're
7 all mixed up in here. I want to make sure everything is
8 covered.

9 I have a number of different motions for
10 discovery. Some of them are standard out of the 262nd,
11 that -- you know, obviously, this case was transferred
12 from the 262nd due to a motion on behalf of Mr. Capatine
13 and Mr. Shellist, stating that Judge Bradley should be
14 recused. And she granted that motion. So, all of the
15 discovery motions that were already signed out of that
16 court, that they have already been ruled on; but there a
17 number -- a number of different other ones that are
18 above and beyond the standard discovery.

19 Is there anything in any of those motions
20 for discovery that we need to address?

21 MR. CORNELIUS: Judge, can I just make a
22 blanket statement?

23 THE COURT: Yes, please do.

24 MR. CORNELIUS: I'm very convinced that
25 there isn't anything left for the defendant to discover.

1 I believe that I have been given access to every piece
2 of evidence the State has, everything in their file
3 other than work product. So, I'm not feeling the need
4 to have any testimony or any hearing on discovery.

5 THE COURT: Very good.

6 MR. CORNELIUS: I know the State has some
7 continuing responsibility to turn things over to us, but
8 I think they are complying with that.

9 THE COURT: Okay. Very good. And did you
10 want to put anything on the record in that regard,
11 State?

12 MS. TISE: Judge, our file has been open
13 and a number of materials -- boxes of materials were
14 supplied to Christian Capatine and Steve Shellist. All
15 of the reports, they subpoenaed all of the back data on
16 the DNA stuff. And all of that stuff was transferred
17 over to Mr. Cornelius. And in addition to that, we've
18 maintained an open file. It's still open today.
19 Mr. Cornelius has had access to everything that we have.

20 THE COURT: Okay. Very good.

21 So, let's move on now to all -- there are
22 several requests for notice of expert testimony in the
23 file. One filed on behalf of the State. And, of
24 course, that was signed. And one filed on behalf of the
25 defense. And that was signed.

1 Has there been discovery in that regard
2 where both sides have provided evidence of expert the
3 witnesses that they intend to call to the other side?

4 MS. TISE: Yes, Your Honor.

5 MR. CORNELIUS: Yes, Your Honor.

6 THE COURT: Okay. Very good. I can skip
7 over all of those.

8 We're here on the DNA, so that's going to
9 be determined after this hearing. How about -- okay.
10 All the notices -- there is notice of extraneous
11 offenses. You've gotten all of those, Mr. Cornelius, I
12 assume. Correct?

13 MR. CORNELIUS: I certainly believe I have,
14 Judge.

15 THE COURT: There is a number of them here
16 in this file.

17 MR. WOOD: Judge, with regards to that,
18 there were a couple of things that we had updated and
19 amended. Our 404(b), 609 extraneous notice, I have a
20 copy of that for the defense and I will give
21 Mr. Cornelius -- I left it down on my desk, so I will
22 grab that and give it to him. It just updates a couple
23 of things regarding jail disciplinary records, which
24 he's already gotten a copy of, but I will make sure that
25 he has that today.

1 THE COURT: Okay. Very good.

2 MR. CORNELIUS: Is that different than the
3 one -- I just got one the other day.

4 MR. WOOD: Skip, it just added a couple of
5 different things. I will have it at lunch.

6 MR. CORNELIUS: All right.

7 MS. TISE: Newly discovered information.

8 MR. CORNELIUS: Okay.

9 THE COURT: It looks like Mr. Capatine --
10 defense's request for a court reporter. That's
11 obviously going to be granted. We've had a court
12 reporter the entire time.

13 It looks like Mr. Capatine also filed a
14 motion to permit the inspection and copying of items
15 covered by Texas Code of Criminal Procedure Article
16 39.14. And that was ruled on by the judge presiding in
17 the 262nd. Has that been completed? It was also agreed
18 upon, it looks like, on December 10th.

19 MR. CORNELIUS: Judge, I'm not requesting
20 any kind of a hearing on that. I'm sure I -- I'm
21 convinced I have everything.

22 THE COURT: Okay. Very good. I will skip
23 over that one.

24 There is a defense motion for appointment
25 of investigator. And that investigator was appointed

1 and you've had that investigator; is that correct,
2 Mr. Cornelius? It was under Mike Fosher, but you've had
3 that investigator and had access to that investigator
4 the entire time. Is that correct, Mr. Cornelius?

5 MR. CORNELIUS: Well, not exactly. I have
6 a different investigator than they had. And there is my
7 own motion in there about an investigator and it was
8 granted. You and I have had personal ex parte
9 conversations about expenses on the investigator.

10 THE COURT: And I have a whole area of
11 files in camera on expenses and all that type of thing.
12 So, I'll not go over those on the record today.

13 MR. CORNELIUS: Well, I'd like to put
14 something on the record.

15 THE COURT: Regarding?

16 MR. CORNELIUS: Regarding that.

17 THE COURT: Okay. Go ahead.

18 MR. CORNELIUS: The record probably already
19 reflects somewhere, but I'm not sure if it was on the
20 record or not. I have two investigators. I have one
21 investigator that has investigated the backgrounds of my
22 client and another investigator that has investigated
23 the criminal accusation of my client. The investigator
24 that has investigated the background, I think he's
25 spoken to every member of the defendant's family,

1 reports to a psychologist who is operating as a
2 psychologist for purposes of evaluating the defendant
3 and also my mitigation specialist giving me advice on
4 mitigation.

5 THE COURT: Okay.

6 MR. CORNELIUS: I don't expect her to
7 testify in this case. I have no reason to think she's
8 going to testify, at least at this point. You know,
9 it's hard to make a decision before trial starts, but
10 I'll give the State who she is and they contact her if
11 they want to. There have been no reports issued, but
12 there's going to be a report, which I will give to the
13 State. I have not gotten it yet.

14 But, anyway, so on the issue of
15 investigation, I actually have two investigators. They
16 work from the same office, but they have completely
17 different assignments in this case. Because at the time
18 when I first was put on this case, there was a little
19 bit of confusion in the county about what they would pay
20 and what they wouldn't pay to mitigation experts. And I
21 simply could not find a mitigation expert that would
22 work in Harris County. And I talked to people really
23 all over the state. And the ones that I normally use
24 here, they wouldn't do for what the county was paying.
25 And so, I was very perplexed and met with Judge Burnett,

1 who was then the judge on this case.

2 THE COURT: Correct.

3 MR. CORNELIUS: And I said: Well, I've got
4 to go forward. And so, I came up with the plan that I
5 have used in the case. And I'm taking a special moment
6 here to put this in the record because at some point in
7 time somebody's going to question -- the writ writer for
8 sure -- why we didn't have a specific mitigation expert.
9 And we do. I'm stating that we do. We have somebody
10 that's not just a mitigation expert, but actually a
11 psychologist.

12 THE COURT: Very good.

13 Okay. I'm going on to -- there is a number
14 of motion for continuances in this file. And, of
15 course, those were granted on previous dates, but there
16 was no motion for continuance on the date that we began
17 the proceedings before me. And that was back on June
18 3rd. Correct, Mr. Cornelius?

19 MR. CORNELIUS: That's correct, Judge.

20 THE COURT: There was a request -- several
21 requests for additional time in voir dire. Wasn't
22 handled before voir dire, but, obviously, you were given
23 an opportunity to voir dire individually each juror.
24 And so, anything you want to put on the record about
25 that in regards to how much time you had? Did you need

1 more time? Did you feel like you had sufficient time
2 for the jurors that you voir dired?

3 MR. CORNELIUS: I did, Judge.

4 THE COURT: Okay. Very good.

5 I'm pulling out all the motions in limine
6 and we'll just deal with them before trial. Some of
7 them have to do with extraneous and they have to do with
8 the DNA stuff, which we're going to determine today what
9 happens on that. But I'm going to handle all of those
10 the morning of trial and we'll just go over those. It
11 shouldn't take that long. Obviously extraneous offenses
12 is going to be granted. Hearsay statements and a number
13 of things that are pretty standard will be granted.
14 Criminal histories on individuals that will be
15 testifying and certain criminal histories that aren't
16 impeachable, but we'll go over that the morning of
17 trial.

18 So, I think that brings us down to the
19 motions to suppress. And I do still have a number of
20 them in the file. And one of them is on the DNA that
21 we're addressing today, but I have two general ones that
22 are both filed by you, Mr. Cornelius. And they have to
23 do with statements, whether written or oral, which are
24 purported to be made by the defendant, any results from
25 any scientific test, including but not limited to

1 fingerprints, blood or urine tests, or any other test
2 prepared in this case, or any items seized as a result
3 of defendant's arrest and any other item or information
4 obtained as a result of the arrest and/or the search of
5 the defendant by agents of the State of Texas.

6 And so, do you intend to address those at
7 this hearing?

8 MR. CORNELIUS: No, except that we already
9 had a discussion with Mr. Cruz-Garcia about the swabbing
10 for saliva, which was used to get a DNA profile. And he
11 consented to that and has admitted he consented to that.
12 I'm not pursuing a hearing on the admissibility of the
13 swab that was taken with our consent or with the
14 defendant's consent. That would have been covered by
15 that motion.

16 THE COURT: Okay.

17 MR. CORNELIUS: But I'm not pursuing that
18 part of it. If the State decides to use the statement
19 by the defendant then --

20 THE COURT: I have a notice in the file
21 that they do intend to use the defendant's statement.
22 Is that correct?

23 MS. TISE: At this point in time, Judge, we
24 don't unless we decide to do it for impeachment
25 purposes. At this point this time, it's self-serving

1 and it doesn't look like something that we would put in,
2 but I did give notice of it in the event that something
3 should happen in trial that would make it significant.

4 THE COURT: Okay. So, I guess, we can just
5 take a break and do a short hearing at that time if it
6 becomes relevant.

7 MR. CORNELIUS: If I care to pursue it at
8 that time.

9 THE COURT: Okay. So, at this time on
10 those particular motions to suppress you are no longer
11 proceeding on those un -- and I know that they are on
12 file in case you need them, but we don't need to have a
13 hearing on them pretrial. Is that correct?

14 MR. CORNELIUS: Correct.

15 THE COURT: I'll make a notation on that.

16 And there is motions to produce records
17 regarding DNA analysis, motions to produce records
18 regarding DNA analysis, and then the motions to suppress
19 on the DNA, and there is a number of those.

20 So, have you gotten all of the records you
21 were seeking on the DNA analysis, Mr. Cornelius?

22 MR. CORNELIUS: I think so, Judge.

23 THE COURT: We're ready to proceed then.

24 MR. CORNELIUS: I don't have any specific
25 requests of anything. Well, I actually do, but I know

1 where they are and I have had access to them and I'm
2 good on the DNA records.

3 THE COURT: Okay. Very good. So, then
4 we're ready to proceed on your general motion on the DNA
5 today. And that is -- can you tell -- can you put on
6 the record for the Court specifically what aspect? Are
7 we proceeding on chain of custody or are we proceeding
8 on -- what aspects of the DNA?

9 MS. TISE: Can I make a couple of
10 statements for the record before we proceed to that,
11 Judge, with regard to the DNA?

12 THE COURT: Yes.

13 MS. TISE: There is obviously Brady
14 material associated with the old crime lab that dealt
15 with some of the evidence in this case. And a lot of
16 that would come up in this hearing, but I just wanted to
17 put on the record that we have given Mr. Cornelius --
18 and I believe that he will confirm -- copies of internal
19 memos, disciplinary records on individuals who might
20 have been involved. We have given him access to all of
21 the boxes and boxes of documents that were done and this
22 office's investigation of the crime lab. And also
23 exchanged copies of the Bromwich report where it details
24 all of the independent investigation on the crime lab.
25 There has been voluminous materials exchanging hands and

1 I believe Mr. Cornelius will confirm that, that we
2 provided him all of that information specific to the DNA
3 lab.

4 In addition, I'd like to note -- and you
5 didn't mention it in your motion that you found, but we
6 did translate the judgment and sentences from
7 Mr. Cruz-Garcia's convictions in Puerto Rico and we
8 filed well in advance of trial copies of those
9 translations so that we can offer them into evidence as
10 public records, but also with the translated copy so
11 that the jury will be able to read what they are. And
12 those are -- also should be in the file.

13 THE COURT: I did see those in the file and
14 made note of them.

15 Did you receive those, Mr. Cornelius?

16 MR. CORNELIUS: Yes.

17 THE COURT: Okay. Very good.

18 And so, in terms of -- did you want to put
19 anything else on the record, Ms. Tise?

20 MS. TISE: I think that's all, Judge.

21 THE COURT: Okay. Very good.

22 And I did show in the file also that she
23 provided all of that Brady information to the defense.
24 And you did receive all of that, Mr. Cornelius,
25 regarding the DNA stuff?

1 MR. CORNELIUS: Yes.

2 THE COURT: And the HPD Crime Lab?

3 MR. CORNELIUS: Yes, I have. I don't
4 know -- I can't detail everything I have. I have two
5 full boxes of stuff about the HPD Crime Lab and the DNA
6 in this case and the other labs that worked on it. I've
7 got a lot of stuff. I can't imagine they have more than
8 what I have.

9 THE COURT: Okay.

10 MR. CORNELIUS: But I will be vigilant and
11 make sure I keep looking in case there is something
12 there.

13 THE COURT: Very good. I just wanted to
14 make sure that you did receive that.

15 And so, regarding the DNA, then I'm going
16 to -- let's proceed with this motion on the DNA. And
17 I'm sure that I will figure out exactly what aspect of
18 the DNA that we're seeking to suppress the analysis.
19 Okay.

20 MR. CORNELIUS: Well, I'm going to tell you
21 right now. Can I make like an opening statement? I
22 think it will go a lot faster.

23 THE COURT: Yes.

24 **DEFENSE OPENING STATEMENT**

25 MR. CORNELIUS: The basis of our motion is

1 the fact that the HPD Crime Lab was investigated, some
2 very scathing reports were turned in, the lab was
3 actually closed. Some of the people, as you will find
4 out through the State's evidence, that actually handled
5 the evidence in the case in some form or fashion are
6 detailed in the investigation and -- well, you will see,
7 if you look through here, a casual look at our evidence,
8 which consists of all the reports from the crime. We'll
9 show some very unfavorable reports on various people in
10 the crime lab. And specifically some of the people that
11 handled this particular evidence.

12 I'm aware that the DNA results that the
13 State wants to offer come from a different laboratory,
14 an independent laboratory. One that I have used before
15 myself. There is several of these DNA labs that I've
16 used myself and have confidence in, but no confidence in
17 what was then the HPD Crime Lab.

18 The essence of the motion is that the items
19 that were recovered, which are specifically a pair of
20 panties and a cigar, from which a DNA profile or DNA
21 profiles were determined, were handled by the HPD Crime
22 Lab. Later cuttings or swabs or items produced by the
23 HPD Crime Lab were sent to Orchid Cellmark, which that's
24 the one the State is going to use, Orchid Cellmark, for
25 their analysis.

1 And the gist of our motion is we're arguing
2 that the Court should have no confidence in evidence
3 that was transferred from our now closed crime lab to
4 anywhere else for fear of contamination. I don't know
5 that I can prove this specific evidence was
6 contaminated. And I'm not alleging that I can, but the
7 overall -- I mean, the crime lab was, as the evidence
8 will show, completely closed. I mean, it was closed.
9 And I know that the Court and the general public
10 knowledge -- and it's detailed in here -- is that there
11 were bogus analyses. I don't know if I got the -- if
12 that's correct phraseology, but there was more than one
13 bogus analysis proven against the crime lab and all
14 kinds of mistakes, as you will see in these reports.

15 And so, based upon that, we're going to
16 argue that the Court should suppress the testimony from
17 Orchid Cellmark because it comes from the HPD Crime Lab.
18 Hopefully, that makes a little sense.

19 Now, I'm going to offer into evidence --
20 there are five -- allegedly five reports from Michael
21 Bromwich, who was an independent investigator who
22 investigated the crime lab. They start -- Defense No. 2
23 is the second report of the independent investigator.
24 And then 3 is the third report, 4 is the fourth report,
25 5 is the fifth report. I cannot find a number of the

1 first report. I'm going to -- so, I left that number
2 open in case I find one, in case there is one. I
3 haven't talked to Lester, Lester Blizzard, who may know.
4 And Mr. Bromwich has not returned my phone calls,
5 numerous phone calls that I've made to him. If there is
6 one, I'd like permission to augment the record and put
7 that in there, if there is actually a report number one.
8 I have a feeling it's going to turn out to be a letter
9 that's contained in those other reports.

10 So, those are the five reports. Then there
11 is a final report, which is this big thick one, 440
12 pages. And then I'm offering also a small report, which
13 is the summary of the recommendations of the independent
14 investigator for the HPD Crime Lab and property room,
15 which is the heart of what our motion is. Stuff stored
16 in the property room and the crime lab itself. We're
17 offering it -- I forgot which one I marked next. No. 6
18 is the summary. No. I'm sorry. No. 7 is the summary.
19 6 is the final report. And 8 is the internal affairs
20 general investigation summary, which I got from the
21 State. And No. 9 is internal complaints report from the
22 chief command, legal services, which I got from the
23 State, which deals with some of the witnesses in this
24 case.

25 THE COURT: No. 8 was the I.A.D. what?

1 MR. CORNELIUS: Internal affairs general
2 investigation summary. And it's short.

3 THE COURT: No. 9 was internal complainants
4 filed by individuals?

5 MR. CORNELIUS: Yes. And it shows the
6 findings.

7 THE COURT: That was individuals that filed
8 complaints with the Houston Police Department?

9 MR. CORNELIUS: No. These are the
10 complainants about the employees working at the crime
11 lab and some specific findings.

12 So, I provided the State with copies of
13 Defendant's 2 through 9.

14 THE COURT: And you don't have an Exhibit
15 No. 1 that you're offering?

16 MR. CORNELIUS: I don't have Exhibit No. 1
17 and I don't know if it exists. We'll leave that open.

18 (Discussion off the record)

19 MR. CORNELIUS: Okay. We'll leave that as
20 No. 1 to make the record clear. And if I come up with
21 another exhibit, I will go to 10. That will confuse
22 everybody. No. 10 is actually report number one.

23 **(Defense Exhibit No. 2 through 9 Offered)**

24 THE COURT: Do you have anything else that
25 you are going offer?

1 MR. CORNELIUS: No, I don't, Judge.

2 THE COURT: Okay. Any objections.

3 MS. TISE: No objection, Judge, for the
4 limited purposes of this hearing.

5 THE COURT: Okay. Very good. So, Defense
6 Exhibits 2, 3, 4, 5, 6, 7, 8, and 9 will be admitted for
7 the limited purposes of this hearing at this time.

8 **(Defense Exhibit No. 2 through 9 Admitted)**

9 THE COURT: Do you have anything else?

10 MR. CORNELIUS: I don't, Judge. We rest.

11 THE COURT: State, you ready to proceed?
12 Would you like to make an opening?

13 MS. TISE: I'd just like to make a brief
14 opening, Judge, in response to the defense's argument.

15 THE COURT: All right.

16 **STATE'S OPENING STATEMENT**

17 MS. TISE: It is not the State's position
18 or intention to offer any of the witnesses from the
19 crime lab that was in existence in 1992. It is not our
20 intention to offer a single report issued by that crime
21 lab.

22 What the State has done and what HPD did in
23 this case is exactly what Mr. Bromwich recommended be
24 done in the host of cases that were tested by the old
25 crime lab, and that is that we send the evidence off to

1 an independent lab and have them start from scratch and
2 do their own testing on that evidence and achieve the
3 results.

4 To address the contamination issues by the
5 defense, I believe that we'll be able to show through
6 the witnesses that are here today that there is -- the
7 only contamination issue that would be relevant for
8 trial purposes would be contamination that somehow put
9 the defendant's DNA on to the evidence that we want to
10 present to the jury at trial. Otherwise, all we're
11 trying to do is show the defendant's DNA was on a rape
12 kit, the complaining witness to the rape panties, and on
13 a cigar that was left behind at the scene.

14 So, the only contamination that's going to
15 be relevant for trial purposes is somehow or another
16 showing that contamination of that evidence was made
17 with the defendant's DNA, which was not in HPD's
18 possession at any time during the old crime lab days.
19 So, to believe that there is a problem with the evidence
20 would be to believe that somehow or another the
21 defendant's DNA popped up out of nowhere and got somehow
22 contaminated on the evidence by employees in 1992 who
23 simply didn't have his DNA. Because by the time the
24 evidence got shipped off to Orchid Cellmark in 2007, we
25 found a DNA profile that matched the defendant on the

1 rape kit, the panties, and the cigar.

2 So, you'd have to believe that somehow or
3 another the old crime lab contaminated that evidence
4 with the defendant's DNA, which they didn't have a
5 sample of because he was in Puerto Rico at the time.

6 So, that's the issue here. I believe we
7 can also show that the storage of the evidence in this
8 case was fine and appropriate and there is not going to
9 be a contamination issue also based on the results that
10 the independent labs got.

11 THE COURT: Okay. Very good, Ms. Tise.
12 Are you ready to call your first witness?

13 MS. TISE: Yes.

14 MR. WOOD: Judge, the first item that we
15 would have is a proffer that we would like to make on
16 the record of a witness by the name of Gloria
17 Kologinczok. She performed the sexual assault
18 examination in this case. And Mr. Cornelius has said
19 that it would be acceptable to him for us to make a
20 proffer as to what her testimony would be. And I'm
21 prepared to do that.

22 And I'll spell that name for you. It's
23 almost like it sounds, but it's K-o-l-o-g-i-n-c-z-o-k.
24 It's pronounced Kologinczok.

25 And I would like to proceed with that, if

1 that's okay with the Court.

2 THE COURT: No objection, Mr. Cornelius?

3 MR. CORNELIUS: No objection.

4 THE COURT: Very good. Proceed.

5 MR. WOOD: The State's proffer is that
6 Ms. Kologinczok would testify that she currently works
7 as an operations administrator at Memorial Hermann
8 Northwest Hospital. She also maintains a current law
9 practice. Ms. Kologinczok became a certified registered
10 nurse in 1979. She became a certified sexual assault
11 nurse examiner in 1985. She obtained her J.D. from
12 South Texas College of Law in 1992.

13 Ms. Kologinczok, in becoming a sexual
14 assault nurse examiner, went through a training program
15 that included classroom training, courtroom training,
16 and on-the-job practical training. At the time in 1992,
17 she was one of the first sexual assault nurse examiners
18 in the entire Houston area. Over her career, she has
19 performed over 500 sexual assault examinations.

20 And at this time, I will offer State's
21 Exhibit 1, a copy of Ms. Kologinczok's CV, into evidence
22 and I will show that --

23 **(State's Exhibit No. 1 Offered)**

24 MR. CORNELIUS: No objection.

25 THE COURT: That will be admitted, State's

1 1.

2 (State's Exhibit No. 1 Admitted)

3 MR. WOOD: Do you need to see that, Judge?

4 Further, Your Honor, Ms. Kologinczok would
5 testify that on October 1st of 1992, she was working at
6 St. Joseph's Hospital in Houston, Texas. On that date,
7 she performed a sexual assault examination on a
8 patient --

9 THE COURT: What's the date? I'm sorry.

10 MR. WOOD: Sorry. October 1st of 1992.

11 THE COURT: Okay.

12 MR. WOOD: On that date, she performed a
13 sexual assault examination on a patient by the name of
14 Diana Garcia, as she described as a Spanish female with
15 a date of birth of 6-4 of '53. She would testify that
16 she performed this examination at approximately 3:45
17 a.m. on the date of October 1st, 1992. On that same
18 date, she turned over the sexual assault evidence
19 collection kit of Diana Garcia to Officer W.T.
20 Bredemeyer of the Houston Police Department. And,
21 again, that was done on October 1st, 1992 at
22 approximately 4:25 a.m. on that date.

23 And that concludes the proffer of her
24 testimony for the purposes of this hearing.

25 THE COURT: Okay. Very good. Call your

1 next.

2 MS. TISE: The State will call Eric Mehl.
3 (Witness sworn)

4 THE COURT: Please take the stand.
5 Please state your full name for the court
6 reporter. And you may proceed.

7 THE WITNESS: My name is Eric Mehl,
8 M-e-h-l.

9 THE COURT: You may proceed, Ms. Tise.

10 **ERIC MEHL,**
11 having been first duly sworn, testified as follows:

12 **DIRECT EXAMINATION**

13 **BY MS. TISE:**

14 Q. And tell us how you are employed, Sir.

15 A. I retired as a sergeant with the Houston Police
16 Department.

17 Q. And when did you retire?

18 A. February of 2010.

19 Q. Can you tell the Court a little bit about your
20 background with the Houston Police Department starting
21 with your early days and the kinds of training that you
22 received over the course of your employment.

23 A. I joined HPD in 1981. I spent, after
24 completing the academy, four-and-a-half years in patrol,
25 was promoted to sergeant, spent 14 months as a patrol

1 supervisor. I was recruited by Homicide in June of 1988
2 and I transferred to Homicide at that time. I served in
3 Homicide for four years uninterrupted. And then I was
4 drafted by internal affairs in June of 1992. I served
5 there until November of '93. And I returned to Homicide
6 at that time.

7 Q. Okay. During the course of your career as a
8 police officer, did you receive training?

9 A. Yes.

10 Q. And tell the Court what kind of training you
11 received.

12 A. We were required to take 40 hours a year of
13 annual in-service training. And it could be legal
14 issues, it could be defensive driving, it could be
15 updates with regard to DNA, and things like that.

16 Q. And over the course of your career, have you
17 received training on how to properly handle evidence,
18 how to properly collect it, and how to properly store
19 it?

20 A. Yes.

21 Q. And have you received training on that specific
22 to the collection of biological evidence like DNA?

23 A. Not specific to the biological, no.

24 Q. Okay. As a member of the Houston Police
25 Department, did you ultimately get assigned to the cold

1 case squad?

2 A. I did.

3 Q. And tell the Court how that happened.

4 A. In November of 2004, HPD decided that they
5 needed a cold case squad within the Homicide Division
6 and they asked me to do it.

7 Q. Okay. And tell us a little bit about what --
8 how that came about. Just, they asked to go and did
9 they give you any -- basically, it was a new decision,
10 was it not?

11 A. It was just a squad within the currently
12 existing Homicide Division.

13 Q. But it was a new thing at the time, was it not?

14 A. It was.

15 Q. And did you have any guidance on what you were
16 going to be doing with the cold case squad?

17 A. Only that I could look at and reinvestigate any
18 case that was at least five years old --

19 Q. Okay.

20 A. -- and not cleared.

21 Q. Did you have some criteria for what kind of
22 cases to look for?

23 A. I developed my own.

24 Q. And what did you develop?

25 A. Going -- well, I had a list of 3,000 -- roughly

1 3,000 uncleared homicide cases that dated back to 1970.
2 I would go through that list and I would find cases that
3 required DNA analysis to go any further. And I would
4 try to keep a series of cases sent off to private
5 laboratories so they could do the DNA analysis on the
6 evidence that existed. And while that was going on, I
7 could do the field work on cases that had been returned
8 or cases that did not require DNA analysis.

9 Q. And at some point while you were following
10 through on that protocol, did you become familiar with a
11 case that involved the homicide of a 6-year-old boy
12 named Angelo Garcia, Jr.?

13 A. I did.

14 Q. And how did you discover that case?

15 A. I actually discovered the case because his
16 mother had been sexually assaulted during the course of
17 the offense back in 1992. So, it showed -- as well as
18 Angelo Garcia, Jr., his mother showed as a victim on my
19 homicide list. So, I looked into it based on that.

20 Q. And that triggered for you that there may be
21 some possible DNA evidence that could be --

22 A. Yes.

23 Q. -- could clear the case?

24 A. Yes.

25 Q. Okay. So, what did you do?

1 A. That was in September of 2007. I set out to
2 find the evidence that I wanted to ship to Orchid
3 Cellmark for analysis.

4 Q. Okay. And were there specific items of
5 evidence that you were interested in?

6 A. Yes.

7 Q. Can you tell us what those items were?

8 A. One was a cigar that had been left at the scene
9 of the crime. One was the rape kit that been taken from
10 Diana Garcia. And -- well, the cutting from the panties
11 was in the rape kit, so it -- but that was another
12 thing.

13 Q. Okay. And so, were you able to obtain those
14 items of evidence in 2007?

15 A. I was.

16 Q. And can you tell the Court where the cigar was
17 being stored at that time?

18 A. It was in the HPD property room on Goliad.

19 Q. Okay. So, it was not in the crime lab property
20 room?

21 A. It was not, no.

22 Q. Okay. And did you have an opportunity to
23 observe the condition that the cigar had been stored in?

24 A. Yes.

25 Q. Can you tell us about that?

1 A. The cigar was in a plastic bag with the case
2 information written on it. And then further, it was in
3 a large envelope.

4 Q. Okay. And would that be the standard brown
5 envelopes that are used for storing evidence from a
6 crime scene?

7 A. Yes.

8 Q. Okay. So, it was inside a plastic ziploc bag,
9 correct?

10 A. Yes.

11 Q. And that plastic ziploc bag was stored inside
12 the brown evidence envelope?

13 A. That's correct.

14 Q. Okay. And did the plastic ziploc bag appear to
15 have been unsealed at any point? Was the seal intact?

16 A. It was zipped closed, yes.

17 Q. Okay. And the brown evidence envelope, what
18 was the condition of that envelope?

19 A. It was sealed.

20 Q. Okay. And did there appear to have been any
21 damage at all to that envelope as if it had been stored
22 in unfavorable conditions, for example?

23 A. No.

24 Q. No water damage or anything like that?

25 A. No.

1 Q. Okay. And the cigar itself, did it appear to
2 still be in good condition?

3 A. It was intact, yes.

4 Q. Okay. After you collected the cigar from the
5 property room, the HPD property room on Goliad, what did
6 you do next?

7 A. Well, when I went to the property room, I
8 wanted to also check out the rape kit.

9 Q. Okay.

10 A. But the rape kit was actually in the property
11 room annex on the 24th floor at 1200 Travis.

12 Q. Okay. And so, it was also not being stored at
13 the crime lab property room on the top floor at 1200
14 Travis, correct?

15 A. Correct.

16 Q. Okay. It was on the 24th floor in the annex?

17 A. Yes.

18 Q. Okay. And can you tell the Court about what
19 condition that item of evidence was in when you found
20 it?

21 A. The rape kit was sealed in a plastic bag with
22 case information and all that on it.

23 Q. Okay. And was it in any other sort of bags or
24 envelopes in addition to the plastic bag?

25 A. Well, I didn't open it.

1 Q. Okay.

2 A. The rape kit was like a box in a plastic bag,
3 the plastic bag was sealed. I initialed the plastic
4 bag, but I didn't open it and go through.

5 Q. You didn't open it at all?

6 A. No.

7 Q. Okay. Did the plastic bag appear to be in good
8 condition?

9 A. It was.

10 Q. Did it appear that there had been any problems
11 with the storage of that item of evidence?

12 A. No.

13 Q. No water damage or anything like that?

14 A. No.

15 Q. Okay. After you retrieve those items, what did
16 you do with them?

17 A. I packaged them and sent them to Orchid
18 Cellmark.

19 Q. Okay. Do you recall when that happened?

20 A. October 2nd, 2007 was the ship date.

21 Q. Okay. And what else did you do at that point?

22 A. Well, there were -- my initial call was to the
23 crime lab property custodian herself and she had some
24 other evidence that they had retained in the crime lab.
25 I obtained that and sent portions of that to Orchid

1 Cellmark as well.

2 Q. Okay. What are those other items?

3 A. The cutting from the panties, biological
4 samples on Arturo Rodriguez and Diana Garcia.

5 Q. And did you learn that those individuals are
6 the parents of the little boy who was murdered in this
7 case?

8 A. Rodriguez is not --

9 Q. Step.

10 Diana Garcia is the complainant's
11 biological mother and she was married to Arturo.

12 Q. Exactly. I misspoke. The stepfather and the
13 mother of the little boy --

14 A. Yes.

15 Q. -- that was killed in this case.

16 Okay. And those items that you went and
17 retrieved from the crime lab, those included a cutting
18 from the panties --

19 A. Yes.

20 Q. -- correct?

21 And how was it being stored.

22 A. All the items that I got from the crime lab
23 were in individual plastic bags.

24 Q. Okay. And did you open or unseal those bags?

25 A. I opened the bigger bag. And then I did not

1 open the bags that would contain the evidence, no.

2 Q. Okay. So, they were stored in a larger bag,
3 but each of them was in its own individual plastic bag?

4 A. Yes.

5 Q. Okay. And those individual plastic bags were
6 not opened?

7 A. Correct.

8 Q. Okay. And there were also some DNA samples,
9 you said, blood samples for potential DNA, correct?

10 A. Yes.

11 Q. Those were for Diana Garcia and Arturo
12 Rodriguez, correct?

13 A. Yes, among others.

14 Q. And those were also individually packaged?

15 A. Yes.

16 Q. Now, you say among others. The others in the
17 case, did you research to determine who those
18 individuals were?

19 A. Yes.

20 Q. Okay. And do you have that information?

21 A. Their last names were Lebron, Melo, M-e-l-o,
22 German, and Martinez.

23 Q. Okay. And do you know who those individuals
24 are?

25 A. They were known associates of this defendant.

1 Q. Okay. And these were individuals that during
2 the original casework by HPD Homicide were interviewed
3 and DNA samples were collected from, correct?

4 A. Yes.

5 Q. In your research of this case from 1992 had HPD
6 ever made contact with the defendant, Obel Cruz-Garcia,
7 after the victim in this case was murdered?

8 A. They had not.

9 Q. Okay. And do you know why that was?

10 A. He fled the country.

11 Q. Okay. So, from the date that the homicide
12 happened throughout the entire police investigation in
13 the 90's, Obel Cruz-Garcia was never in the custody of
14 HPD, correct?

15 A. That is correct.

16 Q. And HPD was looking for him as the prime
17 suspect in the case, were they not?

18 A. They were.

19 Q. They were interviewing his known associates,
20 were they not?

21 A. They did.

22 Q. And they were collecting DNA samples from them?

23 A. They did.

24 Q. However, they never had a DNA sample from Obel
25 Cruz-Garcia at any time in the 1990s after this crime

1 occurred?

2 A. That's correct.

3 Q. When you began working the case and sent this
4 evidence off to Orchid Cellmark for them to determine if
5 they could develop DNA profiles from any of it, did you
6 have the defendant's DNA sample?

7 A. I did not.

8 Q. So, as of -- you said it was 2007. So, was it
9 2007 when you first looked at this case or is that when
10 you shipped it?

11 A. I shipped it on October 2nd, 2007.

12 Q. So, as of October 2nd, 2007, HPD still did not
13 have in its possession any DNA sample from Obel
14 Cruz-Garcia?

15 A. That's correct.

16 Q. Did that change?

17 A. It did.

18 Q. And tell us when that happened.

19 A. Sergeant Stephens from the narcotic HIDA unit
20 got a court order to obtain a DNA sample from this
21 defendant in Puerto Rico. And that was in 2008.

22 Q. And it was Sergeant Stephens who first learned
23 that the defendant was in custody in Puerto Rico in
24 2008?

25 A. Stephens was one of the original investigators

1 on the case and we had talked, were friends anyway, and
2 he had access to greater databases than I did in an
3 effort to find Obel Cruz-Garcia. And it was actually
4 Stephens who told me that this defendant was in custody
5 in Puerto Rico and if I wanted DNA from him, there it
6 was.

7 Q. Okay. So, how did you -- what efforts did you
8 take in order to obtain his DNA sample?

9 A. Well, the FBI in Puerto Rico went to the prison
10 where this defendant was being held and obtained a DNA
11 sample from him and sent it to me.

12 Q. Okay. Do you know when you received that
13 sample?

14 A. May 23rd, 2008.

15 Q. And at that time all of the original evidence
16 that might contain biological material had already been
17 shipped off to Orchid Cellmark for their analysis,
18 correct?

19 A. Yes. Their analysis had been completed.

20 Q. Okay. And you had received the results of that
21 analysis, correct?

22 A. Yes.

23 Q. But at that time, still no sample of the
24 defendant's DNA had been available for them to make a
25 comparison to the evidence, correct?

1 A. Correct.

2 Q. So, once you received the defendant's DNA
3 sample in 2008, what did you do?

4 A. Well, I never opened it. I knew what was in it
5 because it came from Agent Miller in Puerto Rico. I
6 just repackaged the original FedEx package into another
7 FedEx box and sent it to Orchid Cellmark.

8 Q. Okay. And that was in 2008 as well?

9 A. Yes, ma'am.

10 Q. Okay. Ultimately, did you receive Orchid
11 Cellmark's report as to the results of that testing?

12 A. I did.

13 Q. And what did you learn?

14 A. A full male DNA profile was obtained from the
15 cigar that had been left at the scene and that DNA
16 profile matches that of this defendant. The sperm
17 fraction from the cutting from the panties is a mixture.
18 A major DNA profile that was obtained from that sperm
19 fraction belongs to this defendant.

20 Q. Okay. What did you do next?

21 A. Well, and also on the vaginal swab he cannot be
22 excluded from that mixture.

23 Q. Okay. What happened next?

24 A. Ultimately, I filed a charge of capital murder
25 against this defendant.

1 Q. Back in 1992, you were an active homicide
2 investigator, were you not?

3 A. I was sent to internal affairs in June of 1992,
4 so I wasn't in Homicide during the course of the initial
5 investigation.

6 Q. But you had been prior to that?

7 A. Yes.

8 Q. And then you were again after that?

9 A. Yes.

10 Q. In 1992, when homicide detectives were
11 collecting evidence from scenes, is it fair to say that
12 DNA was in its infancy?

13 A. Yes.

14 Q. And especially here in Houston, it was an up
15 and coming thing that hadn't really been fully developed
16 at that point?

17 A. Yes.

18 Q. And as an investigator in Homicide, when you
19 were thinking of the types of evidence that might be
20 examined for DNA, what kinds of evidence were y'all
21 thinking back then?

22 A. Blood and semen.

23 Q. Okay. Was it even something that people were
24 talking about or considering doing to look for
25 epithelial cells on items like a cigar?

1 A. No.

2 Q. Okay. If you had at that time been in Homicide
3 and collected a cigar from a scene, would it even occur
4 to you to look for DNA on that cigar?

5 A. No.

6 Q. Okay. And was that the general thought in
7 Homicide at that time, from what you remember?

8 A. Yeah. I mean, DNA was something you read about
9 in books. And we knew it existed and we tried through
10 various labs in various cases to obtain DNA results and
11 they weren't good.

12 Q. And from the time you very first retrieved that
13 cigar from the property room, did it appear to you that
14 it had been analyzed or ever even taken out of its
15 original plastic bag?

16 A. It did not.

17 Q. Okay.

18 MS. TISE: Pass the witness, Judge.

19 THE COURT: Mr. Cornelius.

20 **CROSS-EXAMINATION**

21 **BY MR. CORNELIUS:**

22 Q. Do we call you still Sergeant Mehl?

23 A. You can.

24 Q. All right. Do you have your report?

25 A. Yes.

1 Q. Let me see if I can get the dates. I'm kind of
2 turning to Page 2.098 in the report.

3 A. Is this something I would have written?

4 Q. Yes, I think so.

5 A. Okay.

6 Q. It's stuff you did.

7 A. Okay. Yeah. Our page numbers are not going to
8 match up. Can you tell me what supplement it is, or a
9 date?

10 Q. October 1st, 2007. And it's the one that says
11 "continued."

12 A. Okay.

13 Q. Okay. Now, I don't mean to take things out of
14 order, but I got a little bit confused. You went to
15 where to obtain these items that are listed on -- in
16 this part of the report?

17 A. They came out of the crime lab.

18 Q. Okay. All right. So, are these items that you
19 actually opened and looked at?

20 A. These items were contained in a larger clear
21 plastic bag. I opened that bag and then all these items
22 were in their own individual plastic bags. I did not
23 open them, no.

24 Q. Okay. And so, the items were in a plastic bag
25 labeled Rodriguez. And extract tube, is that blood,

1 extract tube, or do you remember?

2 A. I don't know.

3 Q. Then a plastic bag that's labeled in quotes
4 "crotch panties" including a cutting from the panties,
5 correct?

6 A. Correct.

7 Q. A plastic bag labeled DNA extracted from panty
8 crotch of Diana Garcia, male and female fractions.

9 A. Correct.

10 Q. Five extract tubes?

11 A. Yes, sir.

12 Q. Who did all of that, do you know?

13 A. Who took the extractions?

14 Q. Yes.

15 A. Crime lab.

16 Q. Your crime lab? HPD Crime Lab?

17 A. Yes.

18 Q. One sealed plastic bag containing DNA extracted
19 from vaginal swab male and female fractions containing
20 two extracted tubes. That's a different bag, right?

21 A. Yes.

22 Q. And that's done by the HPD Crime Lab?

23 A. Yes.

24 Q. One sealed bag labeled DNA extracted from blood
25 of Diana Garcia containing one extract tube.

1 Now, tell me about that. Where would that
2 come from? I know you got it from the crime lab, but
3 who would have done that? Who would have taken Diana's
4 blood in the first place?

5 A. Well, I don't know. It may be either when she
6 had the rape kit done or they got biological samples
7 from her at a later date. I'm not sure.

8 Q. All right. If that was done as part of the
9 rape kit -- do you remember if they took blood as part
10 of the rape kit?

11 A. I don't know.

12 Q. I don't either.

13 But if it was done as part of the rape kit,
14 then somehow or another the rape kit, even though you
15 picked it up at 1200 Travis, at some time it went to the
16 crime lab?

17 A. Yes.

18 Q. When you picked the rape kit up at 1200 Travis,
19 could you see a notation on there showing it had been to
20 the crime lab?

21 A. I don't recall. I'd have to look at it again.

22 Q. All right. And then the last one listed here
23 is DNA extracted from blood, Arturo Rodriguez,
24 containing one extract tube.

25 Do you know where that would have come

1 from?

2 A. Well, I'm sure the investigator at the time
3 took him to the crime lab to have blood drawn for, you
4 know, elimination purposes.

5 Q. The HPD Crime Lab?

6 A. Yes.

7 Q. Did your investigation reveal that -- whether
8 or not Diana Garcia and Arturo Rodriguez knew
9 Mr. Cruz-Garcia?

10 A. They did.

11 Q. Okay. Then this stuff was packaged and sent to
12 Orchid Cellmark?

13 A. It was.

14 Q. Along with the actual sexual assault kit, the
15 cigar, and the extract tubes and the cuttings from the
16 panties?

17 A. Yes.

18 Q. Right?

19 Now, these are different cuttings from the
20 panties other than the ones that are listed above that
21 we just went over, right? These are cuttings that you
22 already had?

23 A. No.

24 Q. Look at that on that page and see if it
25 refreshes your memory.

1 A. The cuttings from the panties would have come
2 from the rape kit. The panties would have come from the
3 rape kit.

4 Q. Okay.

5 A. And then they cut the crotch out for their
6 examination.

7 THE COURT: So, what exactly did you send
8 to Orchid Cellmark, the stuff that came from the crime
9 lab or the stuff that came out of the rape kit, which
10 was the panties with the skin cells?

11 THE WITNESS: I sent the entire rape kit, I
12 sent the things that the crime lab removed from the rape
13 kit, which was the crotch of the panties.

14 THE COURT: Okay.

15 Q. (By Mr. Cornelius) Okay. I think I understand.

16 The first group of things we went over was
17 sent in addition to the three items later in this page
18 of the report that says: The sexual assault kit of
19 Diana Garcia -- whatever was left in the sexual assault
20 kit was sent.

21 A. That's correct.

22 Q. The cigar itself.

23 A. Yes.

24 Q. And the extract tubes and the cutting from the
25 panties.

1 A. Yes.

2 Q. That cutting and extract tube came from the
3 panties which were a part of the assault kit?

4 A. Yes.

5 Q. And was done by the HPD Crime Lab?

6 A. Yes.

7 Q. Okay.

8 MR. CORNELIUS: I pass the witness at this
9 time.

10 THE COURT: Okay. Very good.

11 Do you have anything further, Ms. Tise,
12 from this witness?

13 MS. TISE: No, Your Honor.

14 THE COURT: You may step down, Sergeant.
15 Thank you.

16 Call your next.

17 MS. TISE: State would call Matt Quartaro.
18 (Witness sworn)

19 MS. TISE: Judge, may this witness be
20 excused?

21 THE COURT: Yes.

22 Please keep your voice up. How do you
23 spell your last name?

24 THE WITNESS: It's spelled Q-u-a-r-t-a-r-o.

25 THE COURT: Okay. You may proceed,

1 Ms. Tise.

2 **MATT QUARTARO,**

3 having been first duly sworn, testified as follows:

4 **DIRECT EXAMINATION**

5 **BY MS. TISE:**

6 Q. Would you tell the Court how you are employed,
7 Mr. Quartaro?

8 A. Yes. I'm a supervisor of forensics at Cell --
9 what's now called Cellmark Forensics in Dallas, Texas.

10 Q. And is that the same place that used to be
11 called Orchid Cellmark?

12 A. Yes, it is.

13 Q. So, when we're referring to it for purposes of
14 this hearing, do you mind if I still call it Orchid
15 Cellmark out of habit?

16 A. No, not at all.

17 Q. Okay. Can you tell the Court a little bit
18 about your background and training?

19 A. Sure. I have a master's -- a bachelor's degree
20 and a master's degree in molecular biology. I have a --
21 let's see. I started at Orchid Cellmark about
22 11-and-a-half years ago. I have been working there,
23 initially as an analyst. In 2005, I was promoted to a
24 supervisor and have been a supervisor since then.

25 To become an analyst, there is a rigorous

1 training program, educational requirements, as well as
2 continuing education that we have to perform every year.

3 Q. Okay. And can you tell us what your day-to-day
4 duties involve?

5 A. Sure. I supervise a team of ten DNA analysts
6 who perform criminal casework from different agencies
7 around the country. And I also still perform the duties
8 of analyst as well. I actually work performing DNA
9 analysis on samples.

10 Q. Okay. And were you asked to do that as part of
11 the case against Obel Cruz-Garcia?

12 A. Yes.

13 Q. Okay. And can you recall when that -- when
14 your involvement in the case occurred?

15 A. Sure. May I refer to my notes?

16 Q. Yes, please.

17 A. Sure. I believe we received the first shipment
18 of evidence October 3rd, 2007.

19 Q. Okay. And had you had any correspondence with
20 Sergeant Mehl prior to receiving that?

21 A. I don't recall if we did in this particular
22 case, but we had worked together on other cases as part
23 of his involvement with the cold case unit and he would
24 send us evidence in other cases.

25 Q. Okay. And can you tell the Court about the

1 condition of the evidence when you received it?

2 A. Sure. It was received in a large Federal
3 Express box that was sealed. Inside there, there were
4 several manilla envelopes and evidence bags containing
5 the evidence that was described earlier.

6 Q. And was the evidence individually packaged?

7 A. Yes, it was.

8 Q. Okay. And when you received the evidence, did
9 you have anything that triggered in your mind, oh, this
10 wasn't sent to me correctly, it wasn't packaged
11 correctly, contamination would have happened here?

12 A. There was nothing initially just looking at the
13 evidence that would indicate that any tampering or
14 contamination may have occurred.

15 Q. Did it appear to be done in the standard way
16 that you receive evidence from Sergeant Mehl or other
17 officers asking you to do DNA tests? Did it appear to
18 be the standard method of shipping?

19 A. Yes, that's correct. It came in via Federal
20 Express. It was received by our evidence custodian.
21 She would have noted any sort of tampering at that point
22 when she received the evidence. And there were no notes
23 made in this case.

24 Q. Okay. So, after you received the evidence,
25 did --- you heard Sergeant Mehl's testimony that you

1 received, in addition to the original rape kit in the
2 case -- correct?

3 A. Correct.

4 Q. -- an individually packaged cigar --

5 A. Correct.

6 Q. -- and then some extractions?

7 A. Some samples that were labeled, yes, DNA
8 extractions or extracted material.

9 Q. Okay. And you knew those had come from the HPD
10 Crime Lab?

11 A. I assumed that they did, but I -- there was
12 nothing on there saying these came from HPD, but I
13 assumed that they did, yes.

14 Q. Did you rely on the HPD extractions in any way?

15 A. No, ma'am. We performed our own DNA
16 extractions from these samples.

17 Q. So, basically, you set their extractions aside
18 and did not work with those?

19 A. That's correct. We did look at the same
20 cutting from the crotch of the panties, but as far as
21 the other samples we tested from the raw evidence itself
22 and not using the DNA extractions that were done
23 previously.

24 Q. Okay. And that cutting from the panties is the
25 actual evidence, right?

1 A. That's correct.

2 Q. You didn't rely on extractions or whatever they
3 might have received from the panties?

4 A. That's correct. We took our own cutting from
5 that crotch of the panties and performed our DNA
6 analysis on our own cutting.

7 Q. Okay. And at that time, had you received any
8 extractions or blood samples for the purpose of getting
9 extractions on any suspects in the case?

10 A. Initially we received reference samples from
11 Diana Garcia, Arturo Rodriguez, and Angelo Garcia.
12 Those are the only reference samples that we were
13 initially given.

14 Q. Okay. So, the mother and stepfather of the
15 child and the child?

16 A. That's correct.

17 Q. So, any of the defendant's known associates,
18 those samples didn't come to you either at that point?

19 A. Not in the initial shipment, no.

20 Q. And you certainly didn't have a sample from the
21 defendant, Obel Cruz-Garcia?

22 A. No, we did not.

23 Q. Okay. So, what did you do in order to analyze
24 that evidence?

25 A. I work as a team format, so I didn't perform

1 every step along the way, but we -- basically, we
2 screened the sexual assault kit to look for any samples
3 that may have semen on them. And any of those samples
4 that were positive for semen, we performed DNA testing
5 on. We also tested a sample from a cigar, a swabbing of
6 a cigar, as well as tested the reference samples in this
7 case for comparison.

8 Q. Okay. So, basically, you started from scratch?

9 A. Yes.

10 Q. Okay. What items did you determine had semen
11 on them?

12 A. The vaginal swabs had semen present, the
13 panties and the panties cutting had semen present on
14 them.

15 Q. Okay. Did the cigar have any semen on it?

16 A. We didn't look for semen on the cigar.

17 Q. Okay. So, talking about the vaginal swabs and
18 panties cuttings, what did you do with that, those items
19 of evidence, once you determined that they had semen?

20 A. We performed a DNA extradition and analyzed the
21 DNA that was present to see if we could develop a DNA
22 profile.

23 Q. Okay. And were you able to?

24 A. Yes, we were.

25 Q. And just in general -- this hearing isn't

1 really about the ultimate results you received, but in
2 general what results did you receive from the vaginal
3 swab and the panties cuttings?

4 A. Do you want me to give the initial results or
5 once we already compared all of the parties?

6 Q. The initial results. Because at this point,
7 you don't have a sample to compare it to.

8 A. Correct. We obtained a DNA profile from an
9 unknown male from the cigar. From the vaginal swabs,
10 there is an epithelial or skin cell fraction. That was
11 with Diana Garcia.

12 Q. Okay.

13 A. The sperm cell fraction was a mixture of
14 multiple individuals. Arturo Rodriguez --

15 Q. The husband of the complainant's mother?

16 A. That's correct.

17 And the donor of the DNA we obtained from
18 the cigar could not be excluded as a contributor.

19 Q. So, basically, you had -- in the rape kit
20 vaginal swabs, you had epithelial cells that matched
21 Diana Garcia, which would be expected?

22 A. Correct.

23 Q. DNA matching her husband, correct?

24 A. Correct.

25 Q. And a third unknown individual, correct?

1 A. That's correct.

2 Q. And that third unknown individual was a male?

3 A. That's correct.

4 Q. And that DNA from that vaginal swab also, that
5 third unknown male is also the third unknown male whose
6 DNA was on that cigar?

7 A. I would probably phrase it differently just to
8 be more conservative, but --

9 THE COURT: There's not three males; is
10 that correct? There's two males and one female, is that
11 what you're --

12 THE WITNESS: Yes.

13 Q. (By Ms. Tise) There's two males and one female.

14 MS. TISE: Thank you, Judge.

15 Q. (By Ms. Tise) The third unknown individual --
16 or the third individual unknown -- the only unknown
17 individual was a male, correct?

18 A. Correct.

19 Q. And that DNA profile matched the DNA profile
20 from the cigar?

21 A. Again, I would say that the unknown profile
22 from the cigar couldn't be excluded as a contributor to
23 that vaginal swab.

24 Q. Okay. And the DNA that you found from the
25 cigar is a single-source DNA, correct?

1 A. That's correct. There was only one
2 individual's DNA present there.

3 Q. And tell us about what you found on the
4 panties.

5 A. On the panties, the epithelial fraction or the
6 skin cell fraction was consistent with Diana Garcia.

7 Q. Okay.

8 A. The sperm fraction was a mixture of at least
9 two individuals. The major profile originated from an
10 unknown male. And this was consistent with the unknown
11 male profile we obtained from the cigar. And Arturo
12 Rodriguez could not be excluded as a possible
13 contributor to the sample as well.

14 Q. Okay. So, on the panties you had epithelial
15 cells that matched Diana Garcia?

16 A. Correct.

17 Q. You had male DNA from the same profile or
18 matching the profile from the cigar or cannot being
19 excluded?

20 A. Correct.

21 Q. Okay. And also from the profile on the vaginal
22 swabs, the same unknown male individual?

23 A. The same unknown male could not be excluded
24 from the cigar, the sperm fraction from the vaginal
25 swab, and the sperm fraction from the panties.

1 Q. Okay. And Arturo Rodriguez was also a
2 contributor to the male DNA in the panties?

3 A. He could not be excluded as a minor
4 contributor.

5 Q. Okay. But the major contributor was the
6 unknown male?

7 A. Correct.

8 Q. Okay. You reported on those results?

9 A. Yes.

10 Q. And what happened next?

11 A. Next, we received some reference samples from
12 some different individuals to compare to see if we could
13 obtain -- to see if we could find a match to this
14 unknown profile that we had obtained.

15 Q. Okay. And can you tell me whose reference
16 samples you received at that point?

17 A. Sure. The next shipment, we obtained reference
18 samples from Candido Lebron, Bienviendo Melo, Leonardo
19 German, and Carmelo Martinez.

20 Q. And when did you receive those samples?

21 A. On December 7th, 2007.

22 Q. Okay. And did you compare those individuals to
23 the DNA profile that you had obtained from the cigar and
24 the items from the rape kit?

25 A. Yes.

1 Q. And can you tell us what result you got?

2 A. Sure. Mr. Lebron, Mr. Melo, and Mr. German
3 could be excluded as possible contributors to all of the
4 samples that were tested. We obtained a really partial
5 profile from Mr. Martinez because what we were provided
6 was a DNA extract. So, we couldn't make any conclusions
7 about him as a possible contributor at this time.

8 Q. Okay. Were you later asked to do that or was
9 that HPD that ultimately got further information?

10 A. Eventually we were given a swab and compared
11 those as well.

12 Q. Okay. And let's go ahead and talk about that.
13 On Martinez, originally you didn't have enough DNA to
14 exclude or include him from those samples?

15 A. That's correct.

16 Q. So, what -- can you tell us when you got
17 further DNA or a further sample from Mr. Martinez to
18 compare and determine whether he was included or
19 excluded?

20 A. Sure. It was June 2nd of 2011.

21 Q. Okay. And when you received that, were you
22 able to get a DNA -- a full DNA profile from Carmelo
23 Martinez?

24 A. Yes.

25 Q. And after you got his full DNA profile, were

1 you able to exclude him from being a contributor to the
2 DNA on the cigar, the vaginal swabs, and the panties?

3 A. Yes.

4 Q. Okay. At some point, did you receive a sample
5 from the defendant, Obel Cruz-Garcia, to compare to the
6 results you had obtained?

7 A. Yes.

8 Q. And when was that?

9 A. It was May 28th, 2008.

10 Q. And were you able to obtain a full DNA profile
11 from the sample you received?

12 A. Yes.

13 Q. And what result did you get?

14 A. The DNA profile we obtained from
15 Mr. Cruz-Garcia, it matched the DNA profile from the
16 cigar. He could not be excluded as a contributor to the
17 sperm fraction of the vaginal swabs. And he matched the
18 major profile that we obtained from the sperm fraction
19 of the panties.

20 Q. And in the case of Obel Cruz-Garcia, you are
21 comfortable using the strong statement that it was a
22 match to the panties and to the cigar?

23 A. It was a match to -- yes -- to the major
24 profile from the sperm fraction of the panties and to
25 the cigar. The profiles matched.

1 Q. And can you tell us the statistics?

2 A. Sure. You would expect to find his DNA profile
3 in the North American populations roughly 1 in 1
4 quintillion unrelated individuals. I was trying to give
5 you the most conservative and that was the least
6 conservative. Excuse me.

7 So, 1 in 71.5 quadrillion unrelated
8 individuals. Excuse me.

9 Q. Okay. At any point as you received evidence
10 from Sergeant Mehl throughout the course of this DNA
11 work that you did over a period of time, did you have
12 anything in the packaging of the evidence to indicate to
13 you any kind of contamination or mishandling?

14 A. There is nothing in -- you can't really see
15 contamination from the way the evidence is packaged.
16 All the outermost packaging was sealed and there was
17 nothing, just looking at, that would make you think that
18 anything could have happened.

19 Q. Can you talk to us a little bit about how,
20 after conducting your analysis, you can assure this
21 Court that the evidence would not have been contaminated
22 with -- by anything that the HPD lab might have done
23 prior to obtaining the defendant's DNA sample?

24 A. Stating it like that, it's kind of hard for me
25 to say without knowing what the HPD Crime Lab had done

1 with the evidence.

2 Q. Let me ask you this question. Let's assume
3 that the HPD lab did not have a sample of the
4 defendant's DNA. Is there any kind of mishandling that
5 could have been done without a sample defendant's DNA in
6 their possession that would create the kind of results
7 that you got?

8 A. Without having the defendant's DNA to
9 contaminate with, I don't see a way that his DNA profile
10 could have shown up on this evidence.

11 Q. Let's say that the evidence back in 1992 was
12 stored in atrocious conditions. Okay? And that a
13 tropical storm blew through and there was a leaky roof
14 and the evidence got wet. Would that somehow make the
15 defendant's DNA appear on that evidence when it wasn't
16 there before?

17 A. No. It may make it more difficult to obtain a
18 DNA profile, but it wouldn't change or add to the
19 results from the evidence that we received.

20 Q. Okay. Let's say that a person at the crime lab
21 mishandled one piece of evidence, like the cigar, and
22 touched an item from the rape kit with it. First of
23 all, what kind of tampering like that would have to
24 occur to get the major profile results that you got on
25 the panties?

1 A. That would be difficult to do because we're
2 basically looking at two different cell types that we're
3 trying to isolate DNA from. One being epithelial cells
4 or skin cells that you would expect to find on the cigar
5 that someone may have in their mouth. So, you have
6 saliva and skin cells. On the second, we did identify
7 sperm on the panties and the vaginal swabs. So, I don't
8 see a way that, you know, epithelial cells from a cigar
9 could make the sperm cells that we obtained DNA from
10 match the defendant.

11 Q. Okay. So, when you test what you believe to be
12 semen, in either the vaginal swabs or the cutting from
13 the panties, what kinds of procedures do you use to
14 isolate the sperm cells from any other kinds of cells?

15 A. We do what's called a differential extraction.
16 And that's basically an attempt to separate out any of
17 those epithelial cells that are easier to break open and
18 purify, wash away the DNA from the sperm cells that are
19 extremely hearty cells. They are made to go from one
20 person to another to, you know, have a baby, to create a
21 baby. So, they are really hearty cells. So, we use
22 that to our advantage and first break open any
23 epithelial cells that are present. We wash away, as
24 best we can, any DNA, and, you know, cellular material
25 away from the sperm cells during this differential

1 extraction to, as best we can, separate any epithelial
2 cells from any sperm cells. And then we isolate the DNA
3 from those two different fractions to do our best to
4 have, you know, any female or epithelial cells in one
5 fraction and any DNA that we obtain from sperm cells in
6 the other.

7 Q. So, when you were looking at the DNA cells from
8 the panties and the vaginal swabs, you were looking at
9 sperm cells in particular?

10 A. We were looking at both types. We had an
11 epithelial fraction and we had a sperm cell fraction.
12 So, we separate those two out. We still perform DNA
13 testing on both of those fractions, but one would be
14 very rich in epithelial cell DNA and the other would be
15 rich in sperm cell DNA.

16 Q. Okay. So, you were looking -- when you found
17 the defendant's DNA profile on the panties, you were
18 looking specifically at sperm cells?

19 A. They -- his profile showed up in the sperm cell
20 fraction of both of those samples.

21 Q. Okay. So, there would have had to have been
22 sperm cells on the cigar for the cigar to have
23 contaminated the panties?

24 A. Yeah. When we tested the panties, we saw --
25 when we trying to see how many sperm were present, they

1 are quite a few sperm present. You would expect to
2 find, you know, a robust profile there. And we did find
3 a robust DNA profile there. We had a major profile from
4 that panties cutting that did match the defendant in
5 this case.

6 Q. And it was such a robust profile you were
7 comfortable saying that it was a match?

8 A. Yes. It was a major profile, so we were able
9 to deduce that out and separate it out from any other
10 contributors in that sample.

11 Q. And those are sperm cells that you were looking
12 at?

13 A. Yes. We did our best to isolate the sperm
14 cells themselves.

15 Q. And looking -- when looking at the cigar, you
16 were looking at the epithelial cells?

17 A. Correct.

18 Q. A whole different type of cell?

19 A. That's correct.

20 Q. And it was the epithelial cells on the cigar
21 that you were able to say were a match to the defendant?

22 A. That's correct.

23 Q. So, what does that indicate to you with regards
24 to contamination?

25 A. Again, you know, what I stated at the

1 beginning, it looks like they're coming from two
2 different cell types; one from epithelial or skin cells
3 from the cigar where it may have been handled or put in
4 someone's mouth and the other is from the sperm cells
5 that were identified on the panties themselves.

6 Q. And does the quantity of sperm cells that you
7 saw where you were able to say was the major
8 contributor, also contribute to your opinion?

9 A. Yeah. That helps me form my opinion. Since
10 there were so many sperm cells there, I would expect
11 that to be, you know, a major profile or a good
12 contributor to the sperm cell fraction DNA.

13 Q. Did you report the results that you received
14 from your testing once you received Obel Cruz-Garcia's
15 DNA and major comparisons?

16 A. Yes.

17 Q. Let me ask you this, about storage conditions
18 when it comes to biological evidence. If you store
19 biological evidence in an unclimate-controlled area in a
20 plastic bag, what can happen to that evidence?

21 A. If there is any moisture that's trapped in that
22 plastic bag, it could promote any mold or bacteria
23 growth that may be, you know, on that sample and that
24 could degrade your DNA that's on the sample, which would
25 just make it harder to get -- or make it impossible,

1 potentially, to get a DNA profile from that sample.

2 Q. Okay. So, basically, you are shooting yourself
3 in the foot, potentially, if you do that, correct?

4 A. Potentially, yes.

5 Q. Might not get DNA there, right?

6 A. Correct.

7 Q. But it's not going to make somebody else's DNA
8 that wasn't there to begin with all of sudden turn up on
9 that sample?

10 A. That's correct. It won't change the DNA to
11 someone else's DNA. It would just break up the DNA to
12 where you are not able to obtain results from it.

13 Q. Okay.

14 MS. TISE: I'm going to pass the witness.

15 THE COURT: Thank you, Ms. Tise.

16 Mr. Cornelius.

17 MR. CORNELIUS: Can we take a quick break,
18 Judge?

19 THE COURT: Sure.

20 (Recess)

21 THE COURT: You may proceed.

22 MR. CORNELIUS: Thank you.

23 **CROSS-EXAMINATION**

24 **BY MR. CORNELIUS:**

25 Q. Would you spell your last name again for me,

1 please?

2 A. Yes. It's Q-u-a-r-t-a-r-o.

3 Q. Quartaro?

4 A. Quartaro, yes.

5 Q. I'm sorry. I wasn't paying attention.

6 A. No problem.

7 Q. My name is Skip Cornelius. I don't think we've
8 ever met or discussed this case or anything else before,
9 have we?

10 A. No, sir.

11 Q. All right. You said that y'all started from
12 scratch doing your analysis or testing, but you couldn't
13 really start from scratch because you got -- the items
14 that you received to do the testing came from the HPD
15 Crime Lab, right?

16 A. Yes. We did test items that came from the
17 crime lab. What I'm saying is we didn't use any of
18 their DNA extracts or their products of testing in our
19 DNA testing.

20 Q. But you used their evidence. The evidence they
21 had in their possession came to you and that's what you
22 used?

23 A. Yeah, we tested the evidence in the case and it
24 was in HPD's possession at one point. Yes.

25 Q. Okay. And could you tell that that same

1 evidence had been tested by the HPD Crime Lab?

2 A. I could tell it had been tested because there
3 were some swabs missing and there were swab sticks
4 without the swab heads on them, but I couldn't
5 specifically tell -- I wasn't really concerned with who
6 all had touched the evidence.

7 Q. Okay. But it's fair to say that you know there
8 was some active testing by the HPD Crime Lab?

9 A. Yes.

10 Q. All right. Now, why were y'all doing the work
11 for the HPD Crime Lab? What's your understanding of
12 that?

13 A. We had a contract with the City of Houston to
14 perform DNA analyses on both -- I mean, on active cases,
15 on cold cases, and several different types of cases.
16 So, we had done so for several years.

17 Q. And was the HPD Crime Lab shut down at that
18 point, still working, or what was your understanding?

19 A. Our work with HPD spanned from the time they
20 were closed down till recently. So, I mean, it spanned
21 several years.

22 Q. What was your understanding of why the crime
23 lab was shut down?

24 A. Again, all I know is the anecdotal evidence
25 that I've read in the newspapers. And, again, reading

1 that was several years ago. I know there was some
2 issues with --

3 MS. TISE: I'll object to anything from
4 that kind of anecdotal evidence as hearsay. He doesn't
5 have firsthand knowledge of it.

6 THE COURT: Unless you have firsthand
7 knowledge, we don't -- just what you heard from somebody
8 else.

9 THE WITNESS: Sure.

10 THE COURT: I will sustain that.

11 MR. CORNELIUS: Actually, Judge, not to
12 argue with you, but just so I don't go anywhere I
13 shouldn't. Hearsay evidence is actually admissible for
14 purposes of this hearing. If you don't want to hear it,
15 that's your business, but I'm not going to --

16 THE COURT: Well, is it clear from all the
17 documents that you have already put in evidence?

18 MR. CORNELIUS: It is.

19 THE COURT: I don't want his opinion on
20 what he thinks went wrong, but if it's clear from all of
21 these other documents let's just proceed.

22 MR. CORNELIUS: If you don't want to hear
23 it, I totally understand.

24 Q. (By Mr. Cornelius) All right. So, when is it
25 that y'all started doing testing for the Houston Police

1 Department?

2 A. I believe it was either 2003 or 2004. I don't
3 recall the exact date that the contract started.

4 Q. Okay. Among the things that you received were
5 samples from friends and associates of the defendant; is
6 that what you were told?

7 A. We received them as reference samples. I
8 didn't know who particularly they were, other than
9 people to see if we could include or exclude.

10 Q. Okay. So, what you received from HPD didn't
11 have any language or notification to you as to who these
12 people were, just people for you to try to get profiles
13 on?

14 A. I can look to see what the notes specifically
15 said when we received the evidence. Regardless of what
16 it said, it doesn't change the type of testing that we
17 do. There were just listed as possible suspects.

18 Q. Okay. And that group of samples came from the
19 HPD Crime Lab also?

20 A. They came from Eric Mehl who sent them to us.

21 Q. Okay. Now, with respect to the skin cells,
22 epithelial cells, can those be transferred from one
23 person to another?

24 A. They can, yes.

25 Q. I mean, for example, if somebody had my skin

1 cell on their hand for some reason or their clothing, or
2 whatever, some friend of mine had my skin cell and that
3 person then touched a cigar or smoked a cigar, could
4 they leave my epithelial cell on the cigar?

5 A. That's a possibility, but they would also leave
6 their own DNA behind as well.

7 Q. Why is that?

8 A. Because they would be touching the sample.

9 Q. Every time you touch something you leave your
10 epithelial cells?

11 A. We shed millions of cells every day. Some
12 people shed more cells than others, depending on how dry
13 their skin is or how oily their skin is, how rough a
14 surface is. There is different amounts of DNA that are
15 shed every day. So, just in the course of you rubbing
16 your hands on the chair right there, you are leaving
17 some DNA behind.

18 Q. So, at crime scenes -- if a suspect is at a
19 crime scene and it isn't where he was, everything he
20 touches is going to have his DNA on it?

21 A. We may not be able to detect the DNA depending
22 on how much DNA is left behind, but you shed skin cells
23 on everything that you do touch.

24 Q. Okay. Then why is it that the police don't get
25 DNA very often at crime scenes?

1 A. I don't know if that's an accurate statement.

2 Q. Okay. All right. So, if one person is --
3 we'll call them a shedder, meaning that they either have
4 dry skin or for some reason their cells flake off, that
5 person is definitely going to leave skin cells on most
6 things that they touch, correct?

7 A. That's a pretty general statement. And, again,
8 people shed skin cells. Is it sufficient to obtain a
9 DNA profile from an item? That's highly variable with
10 how much they shed, how rough the surface is, how long
11 since they've touched the item. I mean, there are a lot
12 of variables to know -- or to even give an estimate if
13 it is likely or to get a DNA profile from that.

14 Q. Okay. So, why is that you would say that if
15 two people touch a cigar they would both leave their DNA
16 on it?

17 A. I think that they would both leave their DNA on
18 there. Would it be in sufficient amounts to obtain a
19 DNA profile, is the main question.

20 Q. Okay. Well, maybe I just didn't understand
21 what you were saying. Two people touch the cigar, is it
22 possible you get a DNA profile for only one of them?

23 A. It could be possible.

24 Q. Okay. With respect to the sperm cells, is
25 there any way that you can test for when the sperm cells

1 were deposited?

2 A. No, we can't tell when it was deposited, just
3 whose DNA is there.

4 Q. And is there any way you can test -- under what
5 conditions, other than obviously having sex, but under
6 what conditions the sperm cells were left?

7 A. No. Again, all we can tell is whose DNA is
8 left behind.

9 MR. CORNELIUS: I pass the witness at this
10 point, Judge.

11 THE COURT: Okay. I'm going to ask a few
12 questions of this witness just to clear some things up
13 for me.

14 Okay. I think you already testified, but
15 the swabs that you tested and you got back the results
16 of not excluding this defendant's profile from those
17 swabs, did you say that those swabs, you could tell, had
18 already been tested by the HPD Crime Lab?

19 THE WITNESS: Well, when a sexual assault
20 kit -- there are multiple swabs, swab types. So, for
21 example -- if I can refer to my notes quickly.

22 There were a total of, looks like, three
23 original vaginal swabs in the sexual assault kit. One
24 of those did not have the swab head on it anymore, but
25 the two remaining swabs were intact. So, we then tested

1 one of the intact vaginal swabs.

2 THE COURT: Okay. So, the one that didn't
3 have a head on it, you can assume it had already been
4 tested in some way by another crime lab?

5 THE WITNESS: That's what we assumed. I
6 don't know that for sure, but it was not there for us to
7 test at this point

8 THE COURT: All right. And then so you
9 tested the other two swabs and they came up with you
10 couldn't exclude this defendant, correct?

11 THE WITNESS: We tested one other swab.
12 There's still one swab remanning for any additional
13 testing.

14 THE COURT: Okay. Very good.

15 And then as to the other evidence from the
16 rape kit that -- you were referring to panties and
17 cuttings and -- did you -- I know you received one
18 cutting that already came from another crime lab, that
19 was already cut out presumably those same panties,
20 correct?

21 THE WITNESS: Correct.

22 THE COURT: Did you make another cutting
23 from the panties that came out of the sexual assault
24 kit?

25 THE WITNESS: There is crotch area that was

1 approximately 8 centimeter by 6 centimeters. And from
2 that there was approximately a 2-and-a-half centimeter
3 by 1-and-a-half centimeter already taken from that
4 sample.

5 THE COURT: Okay.

6 THE WITNESS: And so, we took an additional
7 cutting from that sample and tested it. So, the
8 entire -- the crotch was cut out, one cutting was
9 previously tested, and then we took another cutting from
10 this same crotch area.

11 THE COURT: Did you test anything
12 additional on the panties itself?

13 THE WITNESS: No, we did not.

14 THE COURT: So, you just took the one
15 crotch cutting from the panties that -- and do you know
16 if that was stored separately? How were those stored?
17 Were they all stored in the same container or what?

18 THE WITNESS: And there was one crotch of
19 the panties -- a cutting from the crotch of the panties
20 that were stored in a ziploc bag that was separate from
21 the sexual assault kit.

22 THE COURT: Okay. So, presumably that's
23 the one that had been already tested from the previous
24 crime lab?

25 THE WITNESS: It looks like the crotch of

1 the panties was cut out and a portion of that was
2 tested.

3 THE COURT: Okay.

4 THE WITNESS: And then we tested another
5 portion of that same cutting.

6 THE COURT: All right. So, the crotch of
7 the panties and the actual panties themselves were still
8 in the sexual assault kit, but the small portion was in
9 a separate bag that had already been tested by the other
10 crime lab; is that right?

11 THE WITNESS: No. There is -- originally
12 there was a pair of panties in the sexual assault kit.

13 THE COURT: Sure. And that's still in the
14 sexual assault kit.

15 THE WITNESS: There's still an envelope in
16 there that's labeled panties that's stapled on one end
17 and labeled in the sexual assault kit. We never did
18 anything with that pair of panties that was in the
19 sexual assault kit. But for -- just for history, so
20 there is a pair of panties, the crotch is taken out, and
21 approximately an 8 centimeter by 6 centimeter cutting of
22 the crotch was taken -- was cut from those original pair
23 of panties. And then a small portion of that was
24 presumably taken for DNA testing. And then we took
25 another cutting from this same crotch area for DNA

1 testing. So, we didn't test the actual small cutting
2 that the other lab took from there for DNA testing. We
3 took another cutting from that same crotch, but not the
4 portion that was previously tested.

5 THE COURT: Yeah. And I understand what
6 you tested. I'm just wondering where you got that from.
7 Was it -- so that crotch portion was already cut out and
8 separated out from the sexual assault kit when you got
9 it?

10 THE WITNESS: That's correct, yes.

11 THE COURT: Okay. Very good.

12 Does anywhere in your documentation show --
13 and this may have already been asked -- who actually,
14 from the HPD Crime Lab, handled those cuttings?

15 THE WITNESS: No, there is not.

16 THE COURT: I don't have anything further.
17 Does anybody have any questions?

18 MS. TISE: No.

19 THE COURT: All right. May this witness be
20 excused?

21 MS. TISE: Yes, Your Honor.

22 MR. CORNELIUS: Yes, Your Honor.

23 THE WITNESS: Thank you.

24 THE COURT: Thank you, sir.

25 Call your next.

1 MR. WOOD: Judge, the State will call
2 Courtney Head. Prior to Ms. Head testifying, we just
3 had a couple of stipulations to read into the record.

4 THE COURT: Okay. Very good. You may
5 proceed.

6 MR. WOOD: This is something we discussed
7 with Mr. Cornelius before the hearing regarding the
8 defendant's submission to a DNA sample. I believe --
9 and Mr. Cornelius can agree with this or not agree with
10 this, but on February 16th, 2010, the defendant
11 consented to submit a blood, hair, or saliva sample.
12 There was a signed consent form signed by the defendant.
13 It was interpreted by Rolando Hernandez. And I will
14 offer that as State's Exhibit 2.

15 And in addition to that, Michael Webb, an
16 investigator with the Harris County District Attorney's
17 Office obtained two buccal swabs from the defendant.
18 Those were submitted to the Houston Police Department
19 Crime Lab on February 18th of 2010. And the submission
20 form is marked State's Exhibit 3. And I will submit
21 those for -- or I will offer those into evidence.

22 **(State's Exhibit No. 2 and 3 Offered)**

23 MR. CORNELIUS: No objection.

24 THE COURT: No objection to State's Exhibit
25 2 or 3 for purposes of this hearing?

1 MR. CORNELIUS: That's correct, Judge.

2 THE COURT: Okay. They will both be
3 admitted, State's Exhibit 2 and State's Exhibit 3.

4 Okay. And you may call Courtney Head.

5 **(State's Exhibit No. 2 and 3 Admitted)**

6 (Witness sworn)

7 THE COURT: Ms. Head, it's H-e-a-d?

8 THE WITNESS: Yes.

9 THE COURT: You may proceed, Mr. Wood.

10 MR. WOOD: Thank you, Your Honor.

11 **COURTNEY HEAD,**

12 having been first duly sworn, testified as follows:

13 **DIRECT EXAMINATION**

14 **BY MR. WOOD:**

15 Q. Good morning, Ms. Head.

16 A. Good morning.

17 Q. Can you introduce yourself with your full name
18 for the Court?

19 A. Sure. My first name is Courtney. Last name
20 Head, H-e-a-d.

21 Q. And, Ms. Head, tell us how you are employed.

22 A. I'm employed as a criminalist specialist with
23 the Houston Police Department Crime Lab.

24 Q. How long have you been employed there?

25 A. About three-and-a-half years.

1 Q. Have you maintained that same position, a
2 criminalist, there at the HPD Crime Lab?

3 A. Yes.

4 Q. Tell us a little bit about your background and
5 first your education. Tell us where you went to school.

6 A. Sure. I have an undergraduate degree from
7 Ouachita Baptist University. My degree is in biology
8 with a minor in chemistry. I also have a masters in
9 forensic science with a concentration in forensic
10 molecular biology from George Washington University.

11 Q. And tell us about your training in the area of
12 DNA analysis.

13 A. I have been working in DNA analysis since 2002.
14 And I started working in a private forensic DNA
15 laboratory where I received most of my training. It was
16 made up of mostly readings as well as watching another
17 qualified analyst and doing my own test, practices,
18 doing competency tests, and then oral tests as well.

19 Q. What are your duties and responsibilities as a
20 criminalist at the Houston Police Department Crime Lab?

21 A. Well, I'm actually a criminalist specialist, so
22 I'm a supervisor in the laboratory. I supervise a small
23 group of about nine individuals who do mostly screening,
24 the actual initial testing to determine if like blood or
25 semen might be present on an item. I'm also the case

1 manager, so I assign all of the cases to every analyst
2 in the lab for DNA or for serology. I also maintain DNA
3 analysis. And so, I can write cases, do extractions, do
4 lab techniques, and ultimately write reports.

5 Q. Are part of your responsibilities there also
6 testifying in court as you are doing today?

7 A. Yes.

8 Q. Have you testified as an expert in this area on
9 few or many occasions in the past?

10 A. I have testified on many occasions.

11 Q. Regarding the area of DNA analysis, based on
12 your training and experience do you recognize it as a
13 reliable scientific theory or principle?

14 A. Yes.

15 Q. Within your lab currently and in your
16 experience, do you currently use a technique known as --
17 and we can talk about this in a little bit, but STR or
18 short random -- tandem repeats?

19 A. Yes.

20 Q. And do you know that to be a valid technique in
21 your field in your training and experience?

22 A. Yes, I do.

23 Q. Is that also recognized as being valid by the
24 scientific community in which you practice?

25 A. Yes.

1 Q. Ms. Head, I want to visit with you a little bit
2 about -- you said you've been with the HPD Crime Lab a
3 little over three years?

4 A. Yes.

5 Q. I take it from that you weren't involved in any
6 way, shape, or form with the crime lab back in 1992?

7 A. No.

8 Q. I know it's not polite to ask someone's age,
9 but I trust you weren't even around back then?

10 A. I was -- well, I was around. I was in seventh
11 grade, I think.

12 Q. But not at HPD?

13 A. No.

14 Q. Okay. Do you know anything or do you have any
15 dealings or experience with a lab out of California
16 called the Genetic Design Lab?

17 A. Only in reviewing this case I have seen some
18 report from them, but, otherwise, no.

19 Q. And your work on this case -- we'll go into
20 what your specific role was in this case, but in your
21 work on this case, did you also have an opportunity to
22 review the work that others had done involving this case
23 in the past?

24 A. Yes.

25 Q. And the records and such that go along with

1 that?

2 A. Yes.

3 Q. With regards to the Genetic Design Lab, based
4 on your reading of the information on this case was some
5 of the materials involved in this case originally sent
6 off for testing at that California lab back in 1992?

7 A. Can I check out my notes?

8 Q. Sure.

9 A. Everything that I can see from the records that
10 we still had at the crime lab it appears that extracted
11 DNA was sent to Genetic Design.

12 Q. And I think in our talking about that, you
13 supplied a letter that came from within your crime lab
14 dated November 30th of 1992?

15 A. That's correct.

16 Q. And does that detail the evidence that was
17 shipped or sent to Genetic Design Lab requesting that
18 testing be done or analysis be done?

19 A. Yes, it does.

20 MR. WOOD: Your Honor, may I approach?

21 THE COURT: Yes.

22 Q. (By Mr. Wood) Ms. Head, I'm going to show you
23 State's Exhibit 4. Is this the letter that you and I --
24 or that you were just referencing (indicating)?

25 A. Yes.

1 MR. WOOD: Your Honor, I will offer State's
2 Exhibit 4 into evidence.

3 (State's Exhibit No. 4 Offered)

4 MR. CORNELIUS: No objection.

5 THE COURT: State's Exhibit 4 will be
6 admitted.

7 (State's Exhibit No. 4 Admitted)

8 Q. (By Mr. Wood) Based on your reading of State's
9 Exhibit 4, Ms. Head, do you see that certain extractions
10 were sent to that lab back in 1992?

11 A. Yes, I do.

12 Q. What do you take from that? What do you mean
13 by extractions?

14 A. This would mean that the HPD laboratory
15 actually extracted the DNA from the evidentiary samples.
16 So, for example, the vaginal swab and the crotch
17 panties, the DNA was actually extracted out of those
18 samples. And then for all the blood samples, DNA was
19 extracted from that blood as well.

20 Q. So, the original evidence, those original
21 evidentiary samples, whether it be the sexual assault
22 kit or the blood or other evidence, that was maintained,
23 based on your assumptions, by the lab that's -- by the
24 HPD itself?

25 A. Yes.

1 Q. And only extractions from those evidentiary
2 samples were sent to the Genetic Design Lab?

3 A. That's correct.

4 Q. In your reading of -- or in your understanding,
5 that evidence that was sent to the Genetic Design Lab
6 back in 1992, was there a cigar or any extraction or
7 sample of a cigar sent in that evidence?

8 A. No. I don't see any listing of a cigar.

9 Q. Ms. Head, are you familiar with a criminalist
10 by the name of Joseph Chu?

11 A. Yes, I am.

12 Q. And have you ever personally worked with
13 Mr. Chu?

14 A. We do work in the crime lab together. However,
15 he works in the evidence receiving section on a
16 different floor. So, the only time I really have
17 interaction with him might be at a lab wide meeting.

18 Q. And you understand he has been part of the HPD
19 Crime Lab for some time?

20 A. Yes.

21 Q. In your review of the information in this case,
22 does it appear that -- does it appear to you that
23 Mr. Chu, Joseph Chu, did any kind of DNA analysis on any
24 of the evidence in the case?

25 A. Not from what I have reviewed.

1 Q. And does it appear that he at one point
2 obtained a hair sample from a suspect back in 1992?

3 A. Yes.

4 Q. Specifically, October 7th?

5 A. I'd have to look at my notes.

6 Q. I think that's based on what you and I had
7 talked.

8 A. Okay. Then, yes.

9 Q. And then he also was in receipt of some buccal
10 swabs of the defendant from Michael Webb back on
11 February 18th of 2010?

12 A. Yes.

13 Q. And is that the only two references to Mr. Chu
14 that you have seen in your review of the information in
15 this case?

16 A. That's correct.

17 Q. What about an individual by the name of B.
18 Sharma, do you know that person

19 A. I have no personal knowledge of that person.

20 Q. Do you understand that that individual has
21 previously worked in the Houston Police Department Crime
22 Lab?

23 A. Yes.

24 Q. Did you have -- have you had an opportunity to
25 review a report or work done by B. Sharma back on

1 October 28th of 1992?

2 A. Yes.

3 Q. And would you agree with me that B. Sharma did
4 some DNA analysis on some of the extractions from the
5 rape kit in this case back in -- on that date of October
6 of 1992?

7 A. Yes.

8 Q. I guess a little bit about the history of DNA.
9 We're talking about 1992. Would you characterize that
10 as being the very early stages of DNA?

11 A. Yes.

12 Q. Suffice it to say that the techniques used back
13 in 1992 were -- are definitely different than what you
14 are experiencing today?

15 A. Yes.

16 Q. With regards to B. Sharma's findings from that
17 analysis back in October of 1992, do you recall a
18 finding by B. Sharma that the male fraction DNA was too
19 degraded to make -- form any conclusions?

20 A. Yes, on certain items.

21 Q. What does that mean -- what does that mean when
22 he characterizes that as too degraded?

23 A. That would mean that the DNA -- we're looking
24 for certain links of DNA as far as doing the testing.
25 So, we need for the DNA to be of a certain length in

1 order for us to detect it. And if the DNA is too
2 degraded, that means that the DNA could be chopped up
3 and it's too small for us to actually be able to use
4 these certain techniques, especially these older
5 techniques needed much longer fragments.

6 Q. And in your review of the materials, did you
7 actually -- were you actually able to review some of
8 that work that B. Sharma was referencing there?

9 A. I did find a few of his notes and a couple of
10 pictures in our library.

11 Q. In your opinion, can you tell us, are his --
12 are his findings that the male fraction DNA at that time
13 was too degraded consistent with the methods that were
14 being used back then?

15 A. I personally have never used this technique,
16 but in talking and in studies and things that I have
17 learned in graduate school, you would expect to see a
18 certain banding pattern on a DNA profile that would be
19 intact or that you could draw some conclusions from.
20 And in this certain situation, the DNA looks basically
21 like a smear all the way down the photograph. And so,
22 that would be indicative that the DNA was too degraded.

23 THE COURT: That it was what?

24 THE WITNESS: Too degraded.

25 Q. (By Mr. Wood) And that was based on the method

1 or technique that he was relying on at that time?

2 A. Yes.

3 Q. Was that the RFLP testing or was that a
4 different technique?

5 A. Honestly, I don't know from the notes. It
6 doesn't actually say it was RFLP. Based on the notes
7 that I can see, it's a quantitative GEL. And so, at
8 that point it could have just been a simple GEL trying
9 to determine how many DNA was there versus actually
10 splitting it up and looking at the certain locations on
11 the DNA.

12 Q. I guess with time and advancements your ability
13 to -- well, analysis has improved or techniques have
14 improved over time; is that correct?

15 A. Yes, drastically.

16 Q. Okay. I want to visit with you a little bit
17 about your personal work on this case. Okay?

18 A. Okay.

19 Q. When was it that you first became involved in
20 this case or asked to become involved in this case?

21 A. I have to go to a different folder.

22 I first became involved with this case in
23 October of 2010.

24 Q. And how was it that you became involved?

25 A. I was asked to perform extraction analysis on a

1 buccal swab.

2 Q. And did you, in fact, perform the extractions
3 on that buccal swab?

4 A. Yes, I did.

5 Q. And who was the buccal swab -- who was that
6 reference sample from?

7 A. It was from Obel Cruz-Garcia.

8 Q. And after performing extractions on that
9 reference sample of Obel Cruz-Garcia, what did you do
10 then?

11 A. After the DNA was extracted, I did some other
12 techniques in the laboratory. I quantified, basically
13 determined how much DNA was present. And then I
14 amplified that sample of DNA and ultimately gained a DNA
15 profile that I could analyze and compare to any previous
16 evidentiary samples.

17 Q. Okay. So, your work alone, you were able to
18 obtain a DNA profile for Obel Cruz-Garcia, the defendant
19 in this case?

20 A. Yes.

21 Q. And after you obtained that profile, you stated
22 that you were able to then compare it against some
23 evidentiary samples?

24 A. Yes.

25 Q. Tell me about that. What did you do to go

1 about that?

2 A. I reviewed the case file from Orchid Cellmark
3 and then I had the DNA profile that I generated from the
4 buccal swab and I compared that DNA profile to any other
5 evidentiary samples that were obtained from Orchid
6 Cellmark.

7 Q. So, you, Ms. Head, independently, did not
8 obtain DNA profiles from evidentiary samples on your
9 own, you relied on the DNA profiles obtained by Orchid
10 Cellmark; is that right?

11 A. That's correct.

12 Q. Specifically, did you compare the DNA profile
13 that you obtained of the defendant, Obel Cruz-Garcia, to
14 an evidentiary sample from a cigar?

15 A. Yes, I did.

16 Q. And what basically -- generally what were your
17 findings there with regards to the cigar?

18 A. Well, the cigar was a single-source DNA
19 profile. So, the DNA only came from one individual.
20 And when I compared it to the buccal swab from Obel
21 Cruz-Garcia, Obel Cruz-Garcia could not be excluded as a
22 contributor to the DNA on that cigar.

23 Q. Did you compare his -- the known DNA sample
24 of -- the reference sample of the defendant to other
25 evidentiary items?

1 A. Yes. I compared it to the sperm fraction of
2 the vaginal swabs from Diana Garcia and also the sperm
3 fraction from the panties, which is described as a
4 crotch-red from Diana Garcia.

5 Q. With regards to the vaginal swabs of Diana
6 Garcia, what were your findings?

7 A. Well, the profile obtained from Orchid Cellmark
8 was a mixture of at least three individuals. And Obel
9 Cruz-Garcia could not be excluded as a possible
10 contributor to the DNA mixture.

11 Q. And, again, this was sperm fraction DNA; is
12 that correct?

13 A. Sperm fraction from the vaginal swabs, yes,
14 that's correct.

15 Q. And with regards to the reference -- the
16 evidentiary sample from the panties, what about that?
17 Was that also sperm fraction?

18 A. Yes, it was also a sperm fraction. And the
19 results: It was a mixture of DNA from at least two
20 individuals, at least one of whom is male. And Obel
21 Cruz-Garcia could not be excluded as a contributor to
22 the major component of that DNA mixture.

23 Q. Ms. Head, in your analysis of the case, I
24 guess, it's suffice to say that in the techniques that
25 you used, DNA was not too degraded for you to be able to

1 make findings. Is that accurate?

2 A. That is accurate.

3 MR. WOOD: Your Honor, I will pass the
4 witness at this time.

5 THE COURT: Mr. Cornelius, you may proceed.

6 MR. CORNELIUS: One second, if I might,
7 Judge.

8 (Pause)

9 **CROSS-EXAMINATION**

10 **BY MR. CORNELIUS:**

11 Q. Okay. Ms. Head, my name is Skip Cornelius. I
12 think I've met you before on a different case in the
13 last couple of years.

14 A. I think that's true.

15 Q. But we've never discussed this case, right?

16 A. No.

17 MR. CORNELIUS: Judge, may I look at the
18 document that came into evidence?

19 THE COURT: Here is 2 through 4 from the
20 State.

21 Q. (By Mr. Cornelius) The one marked as State's
22 No. 4, do you have a copy of this yourself?

23 A. I do.

24 Q. Now, what do you know about this submission --
25 I guess we can call it a submission form. What do you

1 know about this?

2 A. Only that it appears to be a letter generated
3 by Jim Bolding, who I seem to think was one of the
4 supervisors in the crime lab at the time. And he had
5 been asked to draft this letter in order to describe
6 what exactly was being sent to Genetic Design and to
7 request a certain type of testing.

8 Q. Okay. And beyond that, do you know anything
9 about these?

10 A. No.

11 Q. So, you don't know how they were obtained?

12 A. I don't know how the letter was obtained?

13 Q. No.

14 A. The sample?

15 Q. The different extractions.

16 A. I have some notes on the certain samples and
17 that's all I have.

18 Q. Okay. And do any of your notes have to do with
19 Joseph Chu or B. Sharma?

20 A. Joseph Chu is just what Justin Wood described,
21 the head hair pulling and the receipt of the buccal
22 swab. B. Sharma --

23 Q. The receipt of the buccal swab when?

24 A. In 2010.

25 Q. Okay. All right. Well, that doesn't have

1 anything to do with this letter?

2 A. No. These samples, I do believe that Sharma
3 did do -- or at least was involved in the DNA
4 extractions for these samples.

5 Q. Sharma doesn't work for crime lab any more,
6 right?

7 A. No. I actually don't think he is still alive.

8 Q. Okay. I guess that's true.

9 Do you know if he was terminated from the
10 crime lab?

11 A. I don't know.

12 Q. You don't know about all that stuff?

13 A. No.

14 Q. So, you came to work there when?

15 A. In 2010.

16 Q. So, in 2010 was the crime lab up and fully
17 operational when you went to work there?

18 A. Yes.

19 Q. Okay. From this letter marked State's Exhibit
20 No. 4, we can determine that the evidence in this case,
21 which would include a vaginal swab from Diana Garcia,
22 the crotch of the panties of Diana Garcia, and blood
23 from various individuals, was handled by the Houston
24 Police Department Crime Lab?

25 A. Yes.

1 Q. And Sharma was one of the ones -- Sharma was
2 one of the ones that worked on this case?

3 A. Yes.

4 MR. CORNELIUS: Nothing further at this
5 time, Judge. I'll put the evidence back.

6 THE COURT: I have a couple questions.

7 All right. As to Joseph Chu, where was
8 Joseph Chu working when he received the buccal swabs in
9 2010?

10 THE WITNESS: He currently works in the
11 evidence receiving section. And mainly that has to do
12 with --

13 THE COURT: For Orchid Cellmark?

14 THE WITNESS: No. For HPD. He still works
15 at HPD.

16 THE COURT: Okay.

17 THE WITNESS: He's entitled a criminalist,
18 however, he works in the section that receives most of
19 the controlled substances. On occasion, he's actually
20 with the D.A.'s office. If they have buccal swabs, they
21 don't submit them directly to HPD property room, they
22 can go to our central evidence receiving. And that's
23 where he works, he receives the buccal swab.

24 THE COURT: Okay. And so, your information
25 shows that Joseph Chu received a buccal swab of the

1 defendant in 2010?

2 THE WITNESS: Yes.

3 THE COURT: And it did not go directly to
4 Orchid Cellmark?

5 THE WITNESS: No. What I understand is two
6 buccal swabs were collected from the defendant in this
7 case. One several years prior to the one I actually
8 tested. And the buccal swab that Orchid Cellmark tested
9 was this one that was collected previous. And the one
10 that I tested was collected in 2010.

11 THE COURT: Okay. So, the buccal swab that
12 was collected -- that Joseph Chu received in 2010, that
13 was not used for any of the DNA analysis that was
14 done -- performed by Orchid Cellmark?

15 THE WITNESS: That's correct, to my
16 understanding.

17 THE COURT: And then you've already
18 testified as to what you believe Sharma's contact with
19 this case was. And was he the -- according to your
20 notes, was he the main analyst on the items that were
21 tested when they received extractions from the rape kit?
22 Was he the main analyst?

23 THE WITNESS: He is the main analyst for
24 the DNA testing.

25 THE COURT: Okay. Very good.

1 And as to -- do you show anything, Deetrice
2 Wallace, was she on any of the testing in this case?

3 THE WITNESS: I do believe that she might
4 have been involved in -- let me check my notes before I
5 speak on this.

6 THE COURT: Okay.

7 THE WITNESS: Yes, I believe she initially
8 received the sexual assault kit and did some screening,
9 which is the basic detection of blood or semen. Because
10 she does have some results written on this worksheet
11 that would document what test she did. And it has the
12 initials D.M.W., which I believe are Deetrice Wallace,
13 but I don't know for sure. I've never seen her or
14 worked with her.

15 THE COURT: Okay. Anything else?

16 MR. WOOD: Just one second, Your Honor.

17 THE COURT: Okay.

18 (Pause)

19 MR. WOOD: I'm sorry. May I ask one
20 follow-up?

21 THE COURT: Please proceed.

22 **REDIRECT EXAMINATION**

23 **BY MR. WOOD:**

24 Q. Ms. Head, I just had one follow-up question, if
25 you know. Do you know, based on your review of the

1 information, when the last time the DNA crime lab
2 handled or dealt with any of the evidence prior to you
3 becoming involved in 2010?

4 A. I can check and see if I can figure that out.
5 Did you mean the old HPD Crime Lab?

6 Q. Yes.

7 A. The latest date I can see, just in a brief
8 quick look of the registries, is 1994.

9 Q. Thank you, Ms. Head.

10 MR. WOOD: I pass the witness, Your Honor.

11 MR. CORNELIUS: No further questions.

12 THE COURT: Thank you, Mr. Cornelius.

13 Anything further from this witness at all?
14 May she be excused?

15 MR. WOOD: No objection.

16 MR. CORNELIUS: No objection.

17 THE COURT: You may be excused. Thank you,
18 Ms. Head.

19 Call your next.

20 MR. WOOD: State rest, Your Honor.

21 THE COURT: Okay. Arguments. You may
22 proceed since it's your motion, Mr. Cornelius, unless
23 you want to waive.

24 MR. CORNELIUS: I will just wait and
25 respond to the State, if they have any argument.

1 THE COURT: Okay. Ms. Tise.

2 **STATE'S ARGUMENT**

3 MS. TISE: Thank you, Judge.

4 There are a lot of different issues at play
5 here, so I want to try to compartmentalize them as best
6 I can to address each one of them.

7 The first issue is whether -- and, perhaps,
8 the easiest issue in this case -- is whether or not this
9 evidence should go before the jury. And it's the
10 State's argument that it certainly should. It's a
11 question of fact in this case whether or not the jury is
12 going to find the evidence sufficiently reliable and not
13 a question of law. And, therefore, that that is really
14 the easiest question. This evidence should go before
15 the jury.

16 But there are a number of things that I
17 think pretty clearly should not go before the jury. And
18 I want to argue those things now with regards to our
19 motion in limine about some of those things. First of
20 all, the disciplinary history and the criminal records
21 of Deetrice Wallace, in my opinion, should not go before
22 the jury. Deetrice Wallace will not be called as a
23 witness in this case. She'll not be testifying, nor
24 will any of the work that she did at the crime lab be
25 offered by the State. Because of that, she's not a

1 testifying witness. So, Rule 609, which allows the
2 defense to impeach someone by their prior convictions,
3 is not going to come into play. So, her prior
4 conviction is not going to be relevant for impeachment
5 purposes.

6 It's also not relevant when it comes to the
7 reliability issue because Deetrice Wallace' issues did
8 not happen when she was at HPD. You have a copy of the
9 I.A.D. history on Deetrice Wallace and you'll see there
10 is nothing in the exhibit that the --

11 THE COURT: I don't really have it before
12 me. I know --

13 MR. CORNELIUS: It's down here. You
14 haven't seen it yet.

15 THE COURT: But I do know from your Brady
16 notice that she has criminal convictions for tampering
17 with a governmental record. I have no idea what those
18 are about.

19 MS. TISE: Those happened a great deal of
20 time later when she was working at the D.P.S. Lab and
21 she was responsible for going out and checking on the
22 intoxilyzer instruments. And she was saying that she
23 had gone when she hadn't. Over 10 years after --

24 THE COURT: Like a timesheet issue?

25 MS. TISE: Yes. Well, she had records

1 where she was indicating I had gone out and checked this
2 intoxilyzer instrument at this location and I checked at
3 this location, where she hadn't done it, so that she
4 could be paid, basically.

5 There is no evidence, and you won't find it
6 in any of the Bromwich reports, which I invite you to
7 look at, of anything that Deetrice Wallace did during
8 her time at the crime lab to indicate that she did not
9 have competence. Her file from her previous conviction
10 is full of commendations where she was actually doing a
11 good job at HPD. And there is no disciplinary history
12 for her at HPD. It's over 10 years later when she gets
13 in trouble. And that is simply too remote to have
14 anything to do with this case, especially since she's
15 not testifying.

16 So, it's our very strong argument that that
17 evidence is not -- I can't even think how it would come
18 into play since she's these not going to be impeached
19 and none of her reports are going to be offered.

20 B. Sharma also was an analyst at the crime
21 lab who had problems. When you look at the Bromwich
22 report, you're going to see that most of his problems
23 were supervisory and management problems, and also
24 problems with the fact that when he tested DNA he used
25 really rudimentary techniques that show he missed a lot

1 of stuff. And so, in the report they talk about things
2 that B. Sharma should have done, he might have gotten
3 better results if he had done this test, or he might
4 have gotten more -- you know, more information if he had
5 done that test, but it's not the kind of -- basically,
6 he's written up for incompetence because he's not using
7 the most modern lab techniques that he could use to get
8 the results that he needed to get. And he is ultimately
9 seen as ineffective manager who is not really doing his
10 job at the crime lab and he gets removed from his
11 duties.

12 He is not going to be called as a witness,
13 obviously. I don't even think he is still with us and
14 none of his reports are going to be offered, but there
15 is nothing to indicate any kind of tampering or anything
16 that B. Sharma might have done with the evidence that
17 might have caused it to be comprised in any way.

18 You are going to also see from the Bromwich
19 report some talk from the individuals who did the report
20 about contamination issues at the crime lab. None of
21 that is relevant to this case because of the way this
22 particular evidence was stored.

23 First of all, the cigar was stored in the
24 HPD property room on Goliad. It was not stored in the
25 crime lab where the issues happened with the leaking

1 roof that resulted in potential contamination on 36
2 cases. Those 36 cases are not identified in the
3 Bromwich report, but it does make clear they are cases
4 where they contained clothing evidence that were in
5 cardboard boxes that got wet during one of the tropical
6 storms and were potentially contaminated. Our cigar
7 wasn't even there. Our cigar was in the property room
8 on Goliad. We also know that that cigar never appears
9 to have been unsealed. It was in its original packaging
10 from when it was collected at the scene.

11 As far as the sexual assault kit goes, we
12 do know that the old crime lab retrieved that and tested
13 it. You are not going to have the concerns about the
14 contamination issues with the leaky roof because the
15 sexual assault kit was also not stored on the top floor
16 of the HPD Crime Lab. It was stored in an annex on a
17 lower floor. In addition, Officer Mehl testified it was
18 in very good condition when he found it and no
19 indication that it had been comprised in any way.

20 In addition, you have the fact that when
21 they analyzed the evidence it shows that contamination
22 is extremely unlikely in this case. And I know it's
23 confusing with the different DNA samples, so I want to
24 make sure the Court is clear about that. HPD and the
25 old crime lab never had the defendant's DNA until 2008

1 when he was found in a Puerto Rican prison and a DNA
2 sample was obtained by some federal agents and sent to
3 Eric Mehl. So, in 2008, that's the first time HPD --

4 THE COURT: And that one didn't go to the
5 crime lab. That went to Mehl?

6 MS. TISE: It went to Eric Mehl.

7 THE COURT: And he testifies that he sent
8 that to Orchid Cellmark, right?

9 MS. TISE: And he didn't even open it. He
10 left it in the packaging that he received from the FBI
11 agent, put it in a FedEx container, and shipped it
12 directly to Orchid Cellmark.

13 THE COURT: Okay.

14 MS. TISE: That was in 2008.

15 THE COURT: This 2010 sample came out of
16 nowhere. What was that for?

17 MS. TISE: I will explain.

18 THE COURT: Okay.

19 MS. TISE: The Orchid Cellmark got the 2008
20 sample of the defendant that the FBI agent sent from
21 Puerto Rico.

22 In 2010, by that time the defendant had
23 been extradited from Puerto Rico to Houston. At that
24 time, in order to try to prevent bringing FBI agents
25 from Puerto Rico in to testify that they took a sample

1 from the defendant, we decided to get a separate sample
2 here in Houston and have it tested. And at that time,
3 the HPD lab was up and running again, so we sent it to
4 them and they tested that 2010 sample. So, there are
5 two separate DNA samples of the defendant, both of which
6 have been tested and both of which show that he matches
7 DNA on the cigar, he is the major contributor to the DNA
8 on Diana Garcia's panties, and he is a contributor to
9 the DNA on her vaginal swabs.

10 If there was going to be contamination
11 because of a tropical storm coming in and raining down
12 on the top floor of the crime lab, unless it was raining
13 Obel Cruz-Garcia's semen, it's not going to have
14 affected the results that Orchid Cellmark and HPD got.
15 If someone had malicious intent at the crime lab, which
16 there is no evidence that any of the analysts involved
17 in this case did have -- were malicious and just want to
18 rub evidence all over each other, then -- and,
19 therefore, contaminate it, that's a stretch, but let's
20 just give them the benefit of the doubt and say that
21 happened. Then Matt Quartaro would not have gotten the
22 results that he had gotten. He got semen, semen on the
23 panties, semen on the vaginal swabs, and epithelial
24 cells on the cigar. So, it's just not likely. And not
25 only that, but he's the major contributor and the semen

1 was prolific on the panties and it matches the
2 defendant.

3 So, for all these reasons, our position is
4 that criminal history on Deetrice Wallace is certainly
5 not admissible because she's not going to testify. Any
6 evidence as to the competence of B. Sharma is not
7 relevant or admissible because she's not going to
8 testify and his results are not going to be offered to
9 the jury, or even referred to in any way. There is no
10 contamination evidence that can be directly linked to
11 this case. And the Genetic -- thank you, Justin.

12 The Genetic Design Lab from California, who
13 also had their hands on this case, only had their hands
14 on the extraction. They didn't get the original
15 evidence. And the leaky roof, you will see from the
16 Bromwich report -- I'm sorry to jump around -- but that
17 happened in the late 1990s, long after the HPD Crime Lab
18 had finished with what they were doing with this case.
19 And the evidence was all stored.

20 Thank you, Judge.

21 THE COURT: Okay. Thank you, Ms. Tise.

22 Mr. Cornelius.

23 **DEFENSE CLOSING STATEMENT**

24 MR. CORNELIUS: Just a couple of things,
25 Judge.

1 What is in evidence as Defendant's No. 9,
2 which I know you haven't seen yet, contains the -- I
3 guess you call it the disciplinary report of Sharma.
4 And there are -- there is one finding of incompetence,
5 two findings of misconduct, and one finding of improper
6 police procedure.

7 And then with respect to Chu, we have two
8 findings -- or one finding of misconduct and one finding
9 of at-fault accident. There is nothing in terms of --
10 well, all I have been provided is nothing on Deetrice
11 Wallace other than --

12 THE COURT: You were provided nothing on
13 Deetrice Wallace?

14 MR. CORNELIUS: Well, I have been finding
15 lots of things on Deetrice Wallace, but not -- there is
16 no discipline while she worked at the crime lab, at
17 least that's what I'm told. So, her -- the only thing
18 we would seek to offer are convictions, but it happened
19 at a different crime lab. But in our opinion, it goes
20 to -- as part of the overall part of showing lack of
21 competent in the crime lab or anything that they
22 handled.

23 Another just a couple of quick comments. I
24 won't make a long argument to the Court. The testimony
25 is you cannot see contamination, you can't see it. So,

1 the analyst -- or whatever the proper title is -- from
2 Orchid Cellmark can't -- what he said is he can't
3 testify whether things had been contaminated or not, you
4 can't really see that. He did testify he didn't
5 think -- he did not think they were contaminated, but he
6 can't say that they weren't.

7 For example, you can see a skin cell. You
8 can't see if one person passes a skin cell on to
9 something else, their own skin cell or somebody else's
10 skin cell. You can't really see it with the naked eye.
11 There's a process to try to get a DNA profile from a
12 skin cell or a sperm cell.

13 So, two quick things. Our argument is that
14 we wish the Court to suppress because of the problem
15 with the HPD Crime Lab as handling this case,
16 including -- in my opinion, including the cigar. We ask
17 that it all be suppressed, any testimony concerning the
18 results of DNA extraction and identifications be
19 suppressed. And so, that's number one.

20 The second thing is if you are not going to
21 suppress it, then we've had this hearing also as a
22 proffer to try to determine what you might let into
23 evidence and what you might not let into evidence from
24 the defense standpoint. If you allow it in, I would
25 like to be able to introduce all of this evidence for

1 the jury to decide, because it will be a fact issue,
2 whether what they would know then, after getting all
3 this evidence about our crime lab that handled this
4 stuff, is sufficient to create in their mind doubt about
5 the results of what finally the State's offering as DNA
6 analysis and comparisons.

7 Among other things that's an issue, I'm not
8 sure how I sponsor Michael Bromwich's report if he won't
9 -- he lives in Washington D.C. -- if he won't take my
10 phone calls or won't come down here. I suppose I
11 can -- well, I probably can get around that, but that's
12 an issue for me right now. I've got a couple of weeks
13 to figure that out.

14 But, anyway, I would like to offer all this
15 stuff. If you allow the State to go forward with the
16 DNA testimony, I would like to make the jury as aware as
17 I can make them as to what the situation was with our
18 crime lab that handled all of this evidence. And that's
19 it.

20 THE COURT: Okay. I did find in the
21 record -- and this was filed by Christian Capatine and
22 Steve Shellist, but it was a State's -- a motion for
23 in-camera inspection the State's file on Deetrice
24 Wallace -- it gives the cause number -- to determine the
25 existence of any evidence favorable to the defendant

1 under Brady v. Maryland.

2 So, have you received everything that you
3 feel you need on those files to determine whether or not
4 there is any Brady information in those files on
5 Deetrice Wallace?

6 MR. CORNELIUS: Yes.

7 THE COURT: Okay. I want to make sure
8 that's noted in here.

9 Okay. First off, as to the general
10 admission of the DNA evidence, I agree with the State
11 that this evidence is going to come in. Specifically
12 this cigar evidence, I don't see that the HPD Crime Lab
13 ever handled the cigar. So, any of the issues as to
14 whether it could have been tainted or contaminated or
15 mis-tested, or whatever, any of these problems don't
16 have anything to do with the cigar. As far as I
17 understand the testimony, the cigar was kept in the HPD
18 property room over there on Goliad and was in a sealed
19 container up until Eric Mehl decided to get it out and
20 send it to Orchid Cellmark and that was in 2007.

21 MS. TISE: May I correct the record on
22 that, Judge? Because there is a -- I don't want the
23 Court to have any misconception.

24 THE COURT: Okay. That's what I
25 believe the testimony to be from this hearing.

1 MS. TISE: Eric Mehl testified that it
2 appeared to have never been taken out of the package,
3 the original packaging. Now, the crime lab did request
4 some evidence to test from the crime scene and there was
5 a large brown paper bag that was brought over from the
6 property room and there was a sheet
7 individually-packaged, a t-shirt individually packaged,
8 and a cigar individually packaged. And they tested the
9 sheet for blood and semen and didn't find any. And then
10 sent that whole thing back over to the property room.

11 So, I do not want there to be any kind of
12 misconception. They did have it, but there is no
13 indication that they ever tested it or removed from it
14 from its original packaging.

15 THE COURT: So, what you are saying now is
16 that the cigar in a larger container may have gone over
17 to the HPD Crime Lab. On what date? When?

18 MS. TISE: October 9th of 1992.

19 THE COURT: Okay. And that the crime lab
20 at that time tested a sheet and some other evidence in
21 that larger package, but there's no indication they even
22 opened the container containing the cigar?

23 MS. TISE: Eric Mehl said it was in the
24 original sealed plastic bag.

25 THE COURT: Okay.

1 MR. CORNELIUS: Well, that's not what he
2 said. Did he say it was the original sealed plastic bag
3 or sealed plastic bag? I mean...

4 THE COURT: So, I stand corrected. There
5 may -- it's not that the cigar never went over there as
6 I originally thought, but there is no indication that it
7 was ever tested by the HPD Crime Lab in any way. And
8 that's not the same with the sexual assault evidence.
9 It looks like, even though it may have been stored
10 long-term in a property room, it, at one point, had gone
11 over to the HPD Crime Lab and at least some samples were
12 taken out of there, at least one swab perhaps, and a
13 cutting from the panties crotch area, and there was some
14 extractions made as to that evidence.

15 I believe all that evidence is admissible.
16 And there may be a question of fact as to whether the
17 jury believes that evidence to be credible, but from
18 what I have heard in this motion to suppress, I'm not
19 going to suppress that evidence, that the jury is going
20 to get to hear it.

21 Now, what else might they get to hear along
22 with it? And you are telling me that, State, that you
23 don't intend to call Deetrice Wallace, B. Sharma, or
24 Joseph Chu, or any other person from the HPD Crime Lab
25 that might have had contact with this evidence; is that

1 correct?

2 MS. TISE: My intention is to call Courtney
3 Head, who was not working there back in those days, but,
4 no, I have no intention of calling Deetrice Wallace, B.
5 Sharma, or Joseph Chu, nor offer any report or any
6 findings from those individuals.

7 THE COURT: I have not had an opportunity
8 to review the Defense exhibits. And so, before I make
9 my ruling on what actually is admissible, I'm going to
10 review all of this because I don't know what they show
11 or what kind of connection there might be to this case.

12 But, Mr. Cornelius, what would your theory
13 of their admissibility be if you do not have any of
14 these witnesses to call? How would you consider them to
15 be admissible? Of course, I can see a felony
16 conviction, if someone testifies, may be admissible, but
17 if they didn't testify, how would you get into these
18 things? Under what theory?

19 MR. CORNELIUS: I don't know about the
20 felony conviction. I will think about that, but I'm not
21 sure where this stuff is -- well, first of all, what --
22 is the objection hearsay? Is that --

23 THE COURT: No. We're talking about in
24 terms of -- in terms of what I'm going to allow you to
25 put in, if anything. I'm allowing them to put on the

1 DNA evidence. So, if I allow you to put on anything to
2 counter that in terms of trying to establish that it's
3 contaminated or anything like that, I'm trying to, at
4 this point, establish what I'm going to allow you to go
5 into. I can't see -- if there is not a witness called,
6 I'm trying to determine what theory you would be
7 presenting that under.

8 MR. CORNELIUS: Okay. So, you are not
9 saying that I need to overcome relevance. You're saying
10 that I need to overcome hearsay?

11 THE COURT: Potentially. Here with
12 B. Sharma, it looks like disciplinary records. You
13 know, usually extraneous conduct of even a witness isn't
14 available to impeach them unless there is some other
15 relevance, like motive or something like that. How
16 would you -- and I guess that's what you are going to,
17 is motive on these -- motive and identity and all those
18 others, 404(b) type scenario where these would be
19 allowed in for any witness testifying. The Bromwich
20 report is not going to be -- that's something that may
21 come in under, you know, a business record, but it's
22 still going to have to be relevant. I suppose the
23 relevancy is going to be the challenge of DNA. So, I
24 have to read through that to see if I feel that would
25 come in.

1 later. So, that's --

2 MR. CORNELIUS: If I'm attacking this lab,
3 I'm not sure how I attack this other lab.

4 THE COURT: And --

5 MR. CORNELIUS: I'd have to think real hard
6 about a good faith argument to get that in.

7 THE COURT: And then Joseph Chu.

8 MR. CORNELIUS: The other stuff --

9 THE COURT: You would be offering it in
10 simply to impeach the HPD Crime Lab, which they're not
11 really even offering the results from. So --

12 MR. CORNELIUS: Yeah, but they handled it.

13 THE COURT: And I understand. I know we're
14 still on the record, I'm just -- I have not made my
15 ruling. I'm trying to contemplate what your arguments
16 will be to convince me that I should let it in, but they
17 are not offering in the results there. You are offering
18 it in for contamination, but you don't really have a
19 witness that's saying it is contaminated.

20 MR. CORNELIUS: True, I don't. And their
21 witnesses testify you couldn't see it anyway.

22 MS. TISE: But he also testified that from
23 the results he got, contamination is not consistent
24 with --

25 MR. CORNELIUS: No. He made a good witness

1 for you. He made a good witness.

2 THE COURT: Is there any case law you want
3 me consider in terms of --

4 MR. CORNELIUS: On a defunct crime lab? I
5 don't have any cases on that.

6 THE COURT: It doesn't necessarily have to
7 be the HPD Crime Lab, but on this type of evidence
8 coming in just simply to impeach like a whole agency.
9 Obviously, the HPD Crime Lab was shut down and I can't
10 make an analogy to any other agency that I can think of,
11 but I'm sure there are other crimes and such that that's
12 happened to. And to allow that in in general just to
13 say that you can imagine how many cases we would just
14 have to throw evidence out if we excluded everything
15 that they ever laid their hands on, but --

16 MR. CORNELIUS: You are not going to
17 exclude it, though. You've already ruled you're going
18 to let the evidence in.

19 THE COURT: Correct, I am going to let the
20 evidence in.

21 MR. CORNELIUS: So, the case doesn't get
22 thrown out. I think it's something the jury has the
23 right to know in a case this serious, but I need to
24 isolate whether what I'm trying to overcome is
25 relevance. Because if your ruling is it's not relevant,

1 then I'm done. You know, I have offered what I can
2 offer. I really --

3 THE COURT: I need to read them first and
4 need to think through it because I don't know, there may
5 be portions of those reports that are very relevant to
6 what I'm seeing here, what's been testified about here
7 as to extractions and the handling. From what I hear so
8 far, the crime lab did not have the defendant's profile
9 at the time that they were handling it -- the old crime
10 lab -- that it would be virtually impossible for them to
11 have contaminated those samples with his DNA profile.
12 And even though they had a cigar in a different
13 location, the cigar was epithelial cells and it turned
14 out there were sperm cells on the items that were in the
15 rape kit or the sexual assault kit.

16 So, that's what I'm hearing, but I don't
17 know what those reports show. So, let me read through
18 those and see if they bring to light anything else that
19 may be relevant. And in general, contamination issues
20 maybe that have not been discussed here, but could be
21 extrapolated from some of the evidence that I heard.
22 So, I'm going to withhold my ruling on what exactly I
23 will allow in. I'll read through that. And if you have
24 any case law to support it coming in, would you please
25 give to me?

1 MR. CORNELIUS: Okay.

2 THE COURT: If you have any case law to
3 support it not coming in, more than what you've already
4 argued -- I know a lot of this is not case law, a lot of
5 it is just common sense and --

6 MS. TISE: Right.

7 THE COURT: -- applying the rules, but if
8 there is anything else, please give it to me. And I'll
9 make my ruling by -- I'll try to make my ruling by that
10 week of July 1st, so you a little time to plan.

11 Is everyone going to be around on that
12 Wednesday of the July 4th week?

13 MR. CORNELIUS: I'll be around, but not
14 till after lunch.

15 THE COURT: Okay.

16 MS. TISE: I will be here.

17 THE COURT: Okay. So, I'll try to put it
18 on the record that afternoon, that Wednesday afternoon.

19 MR. CORNELIUS: Great.

20 But let me ask another question on the
21 record. If you decide that some part of it or all of it
22 is admissible, do I need to have Bromwich here -- if the
23 objection is hearsay, do I need to have Bromwich here to
24 offer this report or some specific person to offer this
25 report, or any of these documents, or is it going to

1 come in as a public record or some other argument I can
2 come up for its admissibility?

3 THE COURT: Okay. Let's go off the record.

4 (Proceedings recessed)

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REPORTER'S CERTIFICATE

THE STATE OF TEXAS)
COUNTY OF HARRIS)

I, Mary Ann Rodriguez, Official Court Reporter in and for the 337th District Court of Harris County, State of Texas, do hereby certify that the above and foregoing contains a true and correct transcription of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in this volume of the Reporter's Record, in the above-styled and numbered cause, all of which occurred in open court or in chambers and were reported by me.

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

WITNESS MY OFFICIAL HAND this the 2nd day of October, 2013.

/s/ Mary Ann Rodriguez
Mary Ann Rodriguez, Texas CSR 3047
Expiration Date: 12/31/2013
Official Court Reporter
337th Court
1201 Franklin
Houston, Texas 77002
713.755.7746

	<p>2002 - 80:13 2003 - 70:2 2004 - 28:4, 70:2 2005 - 48:23 2007 - 22:24, 30:1, 30:14, 33:20, 37:8, 37:9, 37:11, 37:12, 42:10, 49:18, 57:21, 111:20 2008 - 37:21, 37:24, 38:14, 39:3, 39:8, 59:9, 104:25, 105:3, 105:14, 105:19 2010 - 26:18, 78:10, 78:19, 86:11, 89:23, 94:24, 95:15, 95:16, 96:9, 97:1, 97:10, 97:12, 99:3, 105:15, 105:22, 106:4 2011 - 58:20 2013 - 1:20, 1:3, 122:17 2028 - 2:12 21 - 1:5, 1:6, 2:10, 2:14, 2:18, 2:22, 3:4, 3:7, 3:9, 3:12 23rd - 38:14 24 - 1:24 24039247 - 2:5 24th - 32:11, 32:16 25 - 1:24 26 - 1:8, 1:19 262nd - 4:10, 4:12, 7:17 28th - 59:9, 87:1 2nd - 33:20, 37:11, 37:12, 58:20</p>	<p>713.755.7746 - 122:22 713.877.9400 - 2:16 77002 - 2:6, 122:22 77002-1659 - 2:16 77019-2408 - 2:13 78 - 2:2, 2:4 79 - 1:10, 1:18, 2:2, 2:4 7th - 57:21, 86:4</p>	<p>age - 82:8 agencies - 49:6 agency - 118:8, 118:10 Agent - 39:5 agent - 105:11, 105:20 agents - 12:5, 105:2, 105:24 ago - 48:22, 69:1 agree - 78:9, 87:3, 111:10 agreed - 7:17 ahead - 8:17, 58:12 aided - 1:24 alive - 95:7 allegedly - 18:20 alleging - 18:6 allow - 109:24, 110:15, 114:24, 115:1, 115:4, 118:12, 119:23 allowed - 115:19 allowing - 114:25 allows - 101:1 almost - 23:23 alone - 90:17 99 - 1:11 9th - 112:18</p>		
<p>'53 - 25:15 '93 - 27:5 'skip' - 2:11</p>					
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<p>00795683 - 2:4 00797777 - 2:15 04831500 - 2:12</p>					
<p>1</p>					
<p>1 - 1:23, 20:15, 20:16, 20:20, 24:21, 24:23, 25:1, 25:2, 60:3, 60:7 1-and-a-half - 75:3 10 - 20:21, 20:22, 101:23, 102:12, 116:25 100 - 1:13 107 - 1:14 10th - 7:18 11-and-a-half - 48:22 11/30/92 - 2:6 111 - 1:12 1181910 - 3:14 12/31/2013 - 122:20 1200 - 32:11, 32:13, 44:15, 44:18 1201 - 2:6, 122:21 122 - 1:15 1225 - 2:15 1289188 - 3:13 1289189 - 3:14 1384794 - 1:3, 3:3, 3:15 14 - 26:25 16 - 1:2, 1:1, 1:4, 1:5, 1:6, 1:8, 1:9, 1:10, 1:11, 1:12, 1:13, 1:14, 1:15, 1:18, 1:19, 1:20, 1:24, 2:2, 2:4, 2:6, 2:10, 2:14, 2:18, 2:22, 3:4, 3:7, 3:9, 3:12 16th - 78:10 18th - 78:19, 86:11 19 - 1:3 1970 - 29:1 1979 - 24:10 1981 - 26:23 1985 - 24:11 1988 - 27:1 1990s - 36:25, 107:17 1992 - 21:19, 22:22, 24:12, 24:16, 25:5, 25:10, 25:17, 25:21, 27:4, 29:17, 36:5, 40:1, 40:3, 40:10, 61:11, 82:6, 83:6, 83:14, 84:10, 85:6, 86:2, 87:1, 87:6, 87:9, 87:13, 87:17, 112:18 1994 - 99:8 19th - 1:20 1st - 25:5, 25:10, 25:17, 25:21, 42:10, 120:10, 122:16</p>	<p>3</p> <p>3 - 2:3, 2:11, 18:24, 21:6, 78:20, 78:22, 78:25, 79:3, 79:5 3,000 - 28:25, 29:1 3047 - 122:19 30th - 83:14 337th - 1:12, 122:5, 122:21 36 - 104:1, 104:2 39.14 - 7:16 3:45 - 25:16 3rd - 10:18, 49:18</p>	<p>8</p> <p>8 - 3:8, 19:19, 19:25, 21:6, 75:1, 76:21 84 - 2:6</p>	<p>ability - 89:12 able - 15:11, 22:5, 30:13, 53:23, 58:22, 59:1, 59:10, 64:8, 64:21, 65:7, 66:12, 71:21, 88:3, 88:7, 90:17, 90:22, 92:25, 109:25 above-entitled - 1:21 above-styled - 122:11 academy - 26:24 acceptable - 23:19 access - 5:1, 5:19, 8:3, 14:1, 14:20, 38:2 accident - 108:9 according - 97:19 accurate - 72:1, 93:1, 93:2 accusation - 8:23 achieve - 22:2 active - 40:1, 68:8, 68:14 actual - 45:14, 51:25, 76:7, 77:1, 80:24 add - 61:18 added - 7:4 addition - 5:17, 15:4, 32:24, 46:17, 51:1, 78:15, 104:17, 104:20 additional - 10:21, 74:12, 75:6, 75:12 address - 4:20, 12:6, 22:4, 100:6 addressing - 11:21 administrator - 24:7 admissibility - 12:12, 114:13, 121:2 admissible - 69:13, 107:5, 107:7, 113:15, 114:9, 114:15, 114:16, 120:22 admission - 111:10 Admitted - 1:22, 21:8, 25:2, 79:5, 84:7 admitted - 12:11, 21:6, 24:25, 79:3, 84:6, 122:15 adopt - 3:12, 3:15 adopting - 3:24, 4:2 advance - 15:8 advancements - 89:12 advantage - 62:22 advice - 9:3 affairs - 19:19, 20:1, 27:4, 40:3 Affairs - 3:8 affected - 106:14 afternoon - 120:18</p>	<p>9</p> <p>9 - 3:10, 19:21, 20:3, 20:13, 20:23, 21:6, 21:8, 108:1 90's - 36:13 93 - 1:10, 1:18 98 - 1:10, 1:20 99 - 1:11 9th - 112:18</p>	<p>A</p> <p>analogy - 118:10 analyses - 18:11, 68:14 analysis - 13:17, 13:18, 13:21, 16:18, 17:25, 18:13, 29:3, 29:5, 29:8, 30:3, 38:17, 38:19, 38:21, 49:9, 52:6, 60:20, 67:12, 80:12, 80:13, 81:3, 81:11, 83:18, 85:23, 87:4, 87:17, 89:13, 89:25, 92:23, 97:13, 110:6 analyst - 48:23, 48:25, 49:8, 80:17, 81:1, 97:20, 97:22, 97:23, 102:20, 109:1 analysts - 49:5, 106:16 analyze - 52:23, 90:15 analyzed - 41:14, 53:20, 104:21 anecdotal - 68:24, 69:4 Angelo - 29:12, 29:18, 52:11 Ann - 122:4, 122:19 annex - 32:11, 32:16, 104:16 annual - 27:13 anyway - 9:14, 38:1, 110:14, 117:21 Ap-77.025 - 1:4 Appeals - 1:4 appear - 31:14, 31:20, 32:1, 33:7, 33:10, 41:13, 50:15, 50:17, 61:15, 85:22, 86:1 appeared - 112:2 Appellant - 1:7 Appellee - 1:12 applying - 120:7 appointed - 7:25 appointment - 7:24 approach - 83:20 appropriate - 4:3, 23:8 area - 8:10, 24:18, 65:19, 74:25, 75:10, 76:25, 80:11, 81:8, 81:11, 113:13 argue - 18:16, 69:12, 100:18 argued - 120:4 arguing - 18:1 argument - 21:14, 99:25, 100:10, 102:16, 108:24, 109:13, 116:21, 117:6, 121:1 Argument - 1:13, 1:14,</p>
<p>2</p> <p>2 - 2:1, 2:7, 18:22, 20:13, 20:23, 21:6, 21:8, 78:14, 78:22, 78:25, 79:3, 79:5, 93:19 2-and-a-half - 75:2 2.098 - 42:2 20 - 2:10, 2:14, 2:18, 2:22, 3:4, 3:7, 3:9</p>	<p>5</p> <p>5 - 2:19, 18:25, 21:6 500 - 24:19</p>				
<p>2</p>	<p>6</p> <p>6 - 3:1, 19:17, 19:19, 21:6, 75:1, 76:21 6-4 - 25:15 6-year-old - 29:11 609 - 6:19, 101:1 66 - 1:9, 1:20</p>				
<p>2-and-a-half - 75:2 2.098 - 42:2 20 - 2:10, 2:14, 2:18, 2:22, 3:4, 3:7, 3:9</p>	<p>7</p> <p>7 - 3:5, 19:18, 21:6 71.5 - 60:7 713.237.8547 - 2:13 713.755.5800 - 2:7</p>				

<p>100:2 Arguments - 99:21 arguments - 117:15 arrest - 12:3, 12:4 Article - 7:15 Arturo - 34:4, 34:11, 35:11, 44:23, 45:8, 52:11, 54:14, 56:11, 57:1 aside - 51:17 aspect - 14:6, 16:17 aspects - 14:8 assault - 23:17, 24:10, 24:14, 24:17, 24:19, 25:7, 25:13, 25:18, 45:14, 46:18, 46:19, 47:3, 53:2, 73:19, 73:23, 74:23, 75:21, 76:8, 76:12, 76:14, 76:17, 76:19, 77:8, 84:21, 98:8, 104:11, 104:15, 113:8, 119:15 assaulted - 29:16 assign - 81:1 assigned - 27:25 assignments - 9:17 Assistant - 2:5 associated - 14:14 associates - 35:25, 36:19, 52:17, 70:5 assume - 6:12, 61:2, 74:3 assumed - 51:11, 51:13, 74:5 assumptions - 84:23 assure - 60:20 at-fault - 108:9 atrocious - 61:12 attack - 117:3 attacking - 117:2 attempt - 62:16 attention - 67:5 Attorney - 1:4, 1:6, 1:13, 1:14 attorney - 3:22 Attorney's - 78:16 Attorneys - 2:5, 2:7, 2:17 augment - 19:6 available - 38:24, 115:14, 116:11 aware - 17:12, 110:16</p>	<p>began - 10:16, 37:3 begin - 3:10, 66:8 beginning - 65:1 behalf - 4:12, 5:23, 5:24 behind - 22:13, 71:6, 71:17, 71:22, 73:8 believes - 113:17 belongs - 39:19 benefit - 106:20 best - 62:24, 63:1, 63:3, 64:13, 100:5 better - 103:3 beyond - 4:18, 94:8 Bienviando - 57:18 big - 19:11 bigger - 34:25 biological - 27:22, 27:23, 34:3, 34:11, 38:16, 44:6, 65:18, 65:19 biology - 48:20, 80:7, 80:10 birth - 25:15 bit - 9:19, 26:19, 28:7, 42:14, 48:17, 60:19, 80:4, 81:17, 82:1, 87:8, 89:16 blanket - 4:22 blew - 61:13 Blizzard - 19:3 Blood - 40:22 blood - 2:1, 12:1, 35:9, 42:25, 43:24, 44:4, 44:9, 44:23, 45:3, 52:8, 78:11, 80:24, 84:18, 84:19, 84:22, 95:22, 98:9, 112:9 bogus - 18:11, 18:13 Bolding - 94:3 books - 41:9 box - 33:2, 39:7, 50:3 boxes - 5:13, 14:21, 16:5, 104:5 boy - 29:11, 34:6, 34:13 Bradley - 4:13 Brady - 14:13, 15:23, 101:15, 111:1, 111:4 break - 13:5, 62:17, 62:22, 66:11, 66:17 Bredemeyer - 25:20 brief - 21:13, 99:7 bring - 119:18 bringing - 105:24 brings - 11:18 Bromwich - 14:23, 18:21, 19:4, 21:23, 102:6, 102:21, 103:18, 104:3, 107:16, 115:19, 120:22, 120:23 Bromwich's - 110:8 brought - 112:5 brown - 31:4, 31:12, 31:17, 112:5 buccal - 78:17, 86:9, 90:1, 90:3, 90:5, 91:4, 91:20, 94:21, 94:23, 96:8, 96:20, 96:23, 96:25, 97:6, 97:8, 97:11 Buffalo - 2:12 Burnett - 9:25 business - 69:15, 115:21, 116:13</p>	<p>cardboard - 104:5 care - 13:7 career - 24:18, 27:7, 27:16 Carmelo - 57:19, 58:22 case - 4:11, 9:7, 9:17, 9:18, 10:1, 10:5, 12:2, 13:12, 14:15, 16:6, 16:11, 17:5, 19:2, 19:24, 21:23, 23:8, 23:18, 28:1, 28:5, 28:16, 28:18, 29:11, 29:14, 29:15, 29:23, 31:1, 32:22, 34:7, 34:15, 35:17, 36:5, 36:7, 36:17, 37:3, 37:9, 38:1, 49:11, 49:14, 49:22, 49:23, 50:23, 51:2, 52:9, 53:7, 59:20, 64:5, 67:8, 67:23, 80:25, 82:17, 82:19, 82:20, 82:21, 82:22, 83:4, 83:5, 85:21, 85:24, 86:15, 87:5, 89:17, 89:20, 89:22, 90:19, 91:2, 92:23, 93:12, 93:15, 95:20, 96:2, 97:7, 97:19, 98:2, 100:8, 100:11, 100:23, 102:14, 103:21, 104:22, 106:17, 107:11, 107:13, 107:18, 109:15, 114:11, 116:18, 118:2, 118:21, 118:23, 119:24, 120:2, 120:4 cases - 21:24, 28:22, 29:1, 29:2, 29:4, 29:7, 29:8, 41:10, 49:22, 49:24, 68:14, 68:15, 81:1, 81:3, 104:2, 104:3, 118:5, 118:13 casework - 36:2, 49:6 casual - 17:7 caused - 103:17 cell - 54:10, 54:13, 56:6, 62:2, 63:11, 63:14, 63:15, 63:19, 64:18, 65:2, 65:12, 71:1, 71:2, 71:4, 109:7, 109:8, 109:9, 109:10, 109:12 Cell - 48:8 Cellmark - 17:23, 17:24, 18:17, 22:24, 30:3, 33:18, 34:1, 37:4, 38:17, 39:7, 45:12, 46:8, 48:9, 48:11, 48:15, 48:21, 91:2, 91:6, 91:10, 92:7, 96:13, 97:4, 97:8, 97:14, 105:8, 105:12, 105:19, 106:14, 109:2, 111:20 Cellmark's - 39:11 cells - 40:25, 46:10, 54:20, 56:15, 62:3, 62:4, 62:6, 62:8, 62:9, 62:14, 62:17, 62:18, 62:19, 62:21, 62:23, 62:25, 63:2, 63:4, 63:5, 63:7, 63:9, 63:18, 63:22, 64:11, 64:14, 64:16, 64:20, 65:2, 65:4, 65:6, 65:10, 70:21, 70:22, 71:10, 71:11, 71:12, 71:22, 72:4, 72:5, 72:8, 72:24, 72:25, 73:6, 106:24, 119:13, 119:14 cellular - 62:24 centimeter - 75:1, 75:2, 75:3, 76:21 centimeters - 75:1 central - 96:22 certain - 11:15, 84:9, 87:20, 87:24, 87:25, 88:4, 88:18, 88:20, 89:10, 94:7, 94:16 certainly - 6:13, 52:20, 100:10, 107:4 Certificate - 1:15, 122:1 certified - 24:9, 24:10 certify - 122:6, 122:13</p>	<p>chain - 14:7 chair - 71:16 challenge - 115:23 chambers - 122:12 change - 37:16, 61:18, 66:10, 70:16 characterize - 87:9 characterizes - 87:22 charge - 39:24 check - 32:8, 83:7, 98:4, 99:4 checked - 102:1, 102:2 checking - 101:21 chemistry - 80:8 chief - 3:11, 19:22 child - 52:15 chopped - 88:2 Christian - 3:23, 5:14, 110:21 Chu - 85:10, 85:13, 85:23, 86:13, 94:19, 94:20, 96:7, 96:8, 96:25, 97:12, 108:7, 113:24, 114:5, 117:7 cigar - 17:20, 22:13, 23:1, 30:8, 30:16, 30:23, 31:1, 32:1, 32:4, 39:15, 40:25, 41:3, 41:4, 41:13, 45:15, 46:22, 51:4, 53:5, 53:6, 53:15, 53:16, 54:9, 54:18, 55:6, 55:20, 55:22, 55:25, 56:11, 56:18, 56:24, 57:23, 59:2, 59:16, 59:22, 59:25, 61:21, 62:4, 62:8, 63:22, 64:15, 64:20, 65:3, 71:3, 71:4, 72:15, 72:21, 85:6, 85:7, 85:8, 91:14, 91:17, 91:18, 91:22, 103:23, 104:6, 104:7, 104:8, 106:7, 106:24, 109:16, 111:12, 111:13, 111:16, 111:17, 112:8, 112:16, 112:22, 113:5, 119:12, 119:13 City - 2:5, 68:13 classroom - 24:15 clear - 20:20, 29:23, 42:20, 69:16, 69:20, 73:12, 104:3, 104:24 cleared - 28:20 clearly - 100:17 client - 8:22, 8:23 closed - 17:3, 18:3, 18:8, 31:16, 68:20 Closing - 1:13, 1:14, 107:23 clothing - 71:1, 104:4 Code - 7:15 cold - 27:25, 28:5, 28:16, 49:23, 68:15 collect - 27:18 collected - 32:4, 36:3, 41:3, 97:6, 97:9, 97:10, 97:12, 104:10 collecting - 36:22, 40:11 collection - 25:19, 27:22 College - 24:12 comfortable - 59:21, 64:7 coming - 40:15, 65:1, 106:11, 118:8, 119:24, 120:3 command - 19:22 command/legal - 3:11 commendations - 102:10 comments - 108:23 common - 120:5 community - 81:24 compare - 54:7, 57:12, 57:22, 58:18, 59:5, 90:15, 90:22, 91:12, 91:23 compared - 54:5, 58:10, 91:4, 91:20, 92:1</p>
<p style="text-align: center;">B</p> <p>baby - 62:20, 62:21 bachelor's - 48:19 background - 8:24, 26:20, 48:18, 80:4 backgrounds - 8:21 bacteria - 65:22 bag - 31:1, 31:8, 31:11, 31:14, 32:21, 32:24, 33:2, 33:3, 33:4, 33:7, 34:25, 35:2, 35:3, 41:15, 42:21, 42:24, 43:3, 43:7, 43:18, 43:20, 43:24, 65:20, 65:22, 75:20, 76:9, 112:5, 112:24, 113:2, 113:3 bags - 32:23, 34:23, 34:24, 35:1, 35:5, 42:22, 50:4 banding - 88:18 Baptist - 80:7 Based - 84:8, 89:6 based - 18:15, 23:9, 29:19, 81:11, 83:3, 84:23, 86:6, 88:25, 98:25 basic - 98:9 basis - 16:25 became - 24:9, 24:10, 89:19, 89:22, 89:24 become - 29:10, 48:25, 89:20 becomes - 13:6 becoming - 24:13, 99:3</p>	<p style="text-align: center;">C</p> <p>California - 82:15, 83:6, 107:12 camera - 8:11, 110:23 Candido - 57:18 cannot - 18:25, 39:21, 56:18, 108:25 Capatine - 3:23, 4:12, 5:14, 7:9, 7:13, 110:21 capital - 39:24</p>		

<p>comparison - 38:25, 53:7 comparisons - 65:15, 110:6 compartmentalize - 100:5 competence - 102:9, 107:6 competency - 80:18 competent - 108:21 complainant's - 34:10, 54:15 complainants - 20:3, 20:10 complaining - 22:12 complaints - 3:10, 19:21, 20:8 completed - 7:17, 38:19 completely - 9:16, 18:8 completing - 26:24 complying - 5:8 component - 92:22 comprised - 103:17, 104:19 computer - 1:24 computer-aided - 1:24 concentration - 80:9 concerned - 68:5 concerning - 109:17 concerns - 104:13 concludes - 25:23 conclusions - 58:6, 87:19, 88:19 condition - 30:23, 31:18, 32:2, 32:19, 33:8, 50:1, 104:18 conditions - 31:22, 61:12, 65:17, 73:5, 73:6 conduct - 115:13 conducting - 60:20 confidence - 17:16, 18:2 confirm - 14:18, 15:1 confuse - 20:21 confused - 42:14 confusing - 104:23 confusion - 9:19 connection - 114:11 Consent - 2:1 consent - 12:13, 12:14, 78:12 consented - 12:11, 78:11 conservative - 55:8, 60:5, 60:6 consider - 114:14, 118:3 considering - 40:24 consistent - 56:6, 56:10, 88:13, 117:23 consists - 17:8 consolidate - 3:14 contact - 9:10, 36:6, 97:18, 113:25 contain - 35:1, 38:16 contained - 19:9, 42:20, 104:4 container - 75:17, 105:11, 111:19, 112:16, 112:22 containing - 43:18, 43:19, 43:25, 44:24, 50:4, 112:22 contains - 108:2, 122:7 contaminate - 61:9, 106:19 contaminated - 18:6, 22:22, 23:3, 60:21, 63:23, 104:6, 109:3, 109:5, 111:14, 115:3, 117:19, 119:11 contamination - 18:4, 22:4, 22:7, 22:8, 22:14, 22:16, 23:9, 50:11, 50:14, 60:13, 60:15, 64:24, 103:20, 104:1, 104:14, 104:21, 106:10, 107:10, 108:25, 117:18, 117:23, 119:19</p>	<p>contemplate - 117:15 continuance - 10:16 continuances - 10:14 continued - 42:11 continuing - 5:7, 49:2 contract - 68:13, 70:3 contribute - 65:8 contributor - 54:18, 55:22, 56:13, 57:2, 57:4, 57:5, 58:7, 59:1, 59:16, 65:8, 65:12, 91:22, 92:10, 92:21, 106:7, 106:8, 106:25 contributors - 58:3, 64:10 controlled - 65:19, 96:19 conversations - 8:9 conviction - 101:4, 102:9, 114:16, 114:20 convictions - 15:7, 101:2, 101:16, 108:18 convince - 117:16 convinced - 4:24, 7:21 copies - 14:18, 14:23, 15:8, 20:12 copy - 6:20, 6:24, 15:10, 24:21, 93:22, 101:8 copying - 7:14 Cornelius - 2:11, 3:6, 3:17, 3:24, 4:1, 4:21, 4:24, 5:6, 5:17, 5:19, 6:5, 6:11, 6:13, 6:21, 7:2, 7:6, 7:8, 7:19, 8:2, 8:4, 8:5, 8:13, 8:16, 8:18, 9:6, 10:3, 10:18, 10:19, 11:3, 11:22, 12:8, 12:17, 13:7, 13:14, 13:21, 13:22, 13:24, 14:17, 15:1, 15:15, 15:16, 15:24, 16:1, 16:3, 16:10, 16:20, 16:25, 20:1, 20:5, 20:9, 20:16, 20:19, 21:1, 21:10, 23:18, 24:2, 24:3, 24:24, 41:19, 41:21, 46:15, 47:8, 66:16, 66:17, 66:22, 66:24, 67:7, 69:11, 69:18, 69:22, 69:24, 73:9, 77:22, 78:7, 78:9, 78:23, 79:1, 84:4, 93:5, 93:6, 93:10, 93:11, 93:17, 93:21, 96:4, 99:11, 99:12, 99:16, 99:22, 99:24, 101:13, 107:22, 107:24, 108:14, 111:6, 113:1, 114:12, 114:19, 115:8, 116:4, 116:7, 116:20, 117:2, 117:5, 117:8, 117:12, 117:20, 117:25, 118:4, 118:16, 118:21, 120:1, 120:13, 120:19 Correct - 6:12, 10:2, 10:18, 13:14, 32:15, 35:7, 39:1, 43:6, 43:9, 51:3, 51:5, 54:8, 54:22, 54:24, 55:18, 56:16, 56:20, 57:7, 64:17, 66:6, 74:21, 118:19 correct - 8:1, 8:4, 10:19, 12:22, 13:13, 18:12, 31:9, 31:13, 32:14, 34:20, 35:9, 35:12, 36:3, 36:14, 36:15, 37:2, 37:15, 38:18, 38:21, 38:25, 43:5, 46:21, 50:19, 51:2, 51:19, 52:1, 52:4, 52:16, 54:16, 54:23, 54:25, 55:1, 55:3, 55:10, 55:17, 55:25, 56:1, 58:15, 64:19, 64:22, 66:3, 66:10, 72:6, 74:10, 74:20, 77:10, 79:1, 83:15, 85:3, 86:16, 89:14, 91:11, 92:12, 92:14, 97:15, 111:21, 114:1, 116:20, 122:7 corrected - 113:4 correctly - 50:10, 50:11, 122:14</p>	<p>correspondence - 49:19 counsel - 3:5, 122:9 counter - 115:2 country - 36:10, 49:7 county - 9:19, 9:24 County - 1:9, 1:23, 9:22, 78:16, 122:2, 122:5 couple - 6:18, 6:22, 7:4, 14:9, 78:3, 88:9, 93:13, 96:6, 107:24, 108:23, 110:12 course - 5:24, 10:15, 26:22, 27:7, 27:16, 29:16, 40:4, 60:10, 71:15, 114:15 court - 3:1, 4:16, 7:10, 7:11, 26:5, 37:20, 81:6, 122:12 Court - 1:3, 1:4, 1:6, 3:3, 3:18, 4:4, 4:23, 5:5, 5:9, 5:20, 6:6, 6:15, 7:1, 7:9, 7:22, 8:10, 8:15, 8:17, 9:5, 10:2, 10:12, 10:20, 11:4, 12:16, 12:20, 13:4, 13:9, 13:15, 13:23, 14:3, 14:6, 14:12, 15:13, 15:17, 15:21, 16:2, 16:9, 16:13, 16:23, 18:2, 18:9, 18:16, 19:25, 20:3, 20:7, 20:14, 20:24, 21:2, 21:5, 21:9, 21:11, 21:15, 23:11, 24:1, 24:2, 24:4, 24:25, 25:9, 25:11, 25:25, 26:4, 26:9, 26:19, 27:10, 28:3, 30:16, 32:18, 41:19, 46:7, 46:14, 47:10, 47:14, 47:21, 47:25, 48:6, 48:17, 49:25, 55:9, 60:21, 66:15, 66:19, 66:21, 69:6, 69:10, 69:16, 69:19, 73:11, 74:2, 74:8, 74:14, 74:22, 75:5, 75:11, 75:14, 75:22, 76:3, 76:6, 76:13, 77:5, 77:11, 77:16, 77:19, 77:24, 78:4, 78:24, 79:2, 79:7, 79:9, 79:18, 83:21, 84:5, 88:23, 93:5, 93:19, 96:6, 96:13, 96:16, 96:24, 97:3, 97:11, 97:17, 97:25, 98:6, 98:15, 98:17, 98:21, 99:12, 99:17, 99:21, 100:1, 101:11, 101:15, 101:24, 104:24, 105:4, 105:7, 105:13, 105:15, 105:18, 107:21, 108:12, 108:24, 109:14, 110:20, 111:7, 111:23, 111:24, 112:15, 112:19, 112:25, 113:4, 114:7, 114:23, 115:11, 116:6, 116:12, 116:25, 117:4, 117:7, 117:9, 117:13, 118:2, 118:6, 118:19, 119:3, 120:2, 120:7, 120:15, 120:17, 121:3, 122:4, 122:5, 122:20, 122:21 Court's - 1:12 Courtney - 1:10, 1:18, 78:2, 79:4, 79:11, 79:19, 114:2 courtroom - 24:15 covered - 4:8, 7:15, 12:14 create - 61:6, 62:20, 110:4 credible - 113:17 Crime - 2:3, 16:2, 16:5, 17:1, 17:17, 17:21, 17:23, 18:17, 19:14, 43:15, 43:16, 43:22, 45:5, 47:5, 51:10, 60:25, 67:15, 68:1, 68:8, 68:11, 68:17, 70:19, 73:18, 77:14, 78:19, 79:23, 80:2, 80:20, 82:2, 85:19, 86:21, 95:24, 99:5, 104:16, 107:17,</p>	<p>109:15, 111:12, 112:17, 113:7, 113:11, 113:24, 117:10, 118:7, 118:9 crime - 2:9, 2:13, 2:17, 2:21, 3:3, 3:6, 14:14, 14:22, 14:24, 17:8, 17:10, 18:3, 18:7, 18:13, 18:22, 19:16, 20:10, 21:19, 21:20, 21:25, 22:18, 23:3, 30:9, 30:19, 31:6, 32:13, 33:23, 33:24, 34:17, 34:22, 36:25, 42:17, 43:16, 44:2, 44:16, 44:20, 45:3, 46:8, 46:12, 61:20, 67:17, 68:22, 71:18, 71:19, 71:25, 74:4, 74:18, 75:24, 76:10, 82:6, 83:10, 83:13, 85:14, 94:4, 95:5, 95:10, 95:16, 99:1, 100:24, 102:8, 102:20, 103:10, 103:20, 103:25, 104:12, 104:25, 105:5, 106:12, 106:15, 108:16, 108:19, 108:21, 110:3, 110:18, 112:3, 112:4, 112:19, 118:4, 119:8, 119:9 crimes - 118:11 Criminal - 1:4, 7:15, 11:14 criminal - 8:23, 11:15, 49:6, 100:20, 101:16, 107:4 criminalist - 79:22, 80:2, 80:20, 80:21, 85:9, 96:17 criteria - 28:21 Cross - 1:7, 1:17, 41:20, 66:23, 93:9 Cross-examination - 41:20, 66:23, 93:9 crotch - 43:4, 43:8, 46:5, 46:13, 51:20, 52:5, 74:25, 75:8, 75:10, 75:15, 75:18, 75:19, 75:25, 76:6, 76:20, 76:22, 76:25, 77:3, 77:7, 84:16, 92:4, 95:22, 113:13 crotch-red - 92:4 Cruz - 1:6, 3:4, 12:9, 15:7, 36:6, 36:13, 36:25, 37:14, 38:3, 45:9, 49:11, 52:21, 59:5, 59:15, 59:20, 65:14, 90:7, 90:9, 90:18, 91:13, 91:21, 92:9, 92:21, 106:13 Cruz-garcia - 1:6, 3:4, 12:9, 36:6, 36:13, 36:25, 37:14, 38:3, 45:9, 49:11, 52:21, 59:5, 59:15, 59:20, 90:7, 90:9, 90:18, 91:13, 91:21, 92:9, 92:21 Cruz-garcia's - 15:7, 65:14, 106:13 Csr - 122:19 current - 24:8 Curriculum - 1:23 custodian - 33:23, 50:20 custody - 14:7, 36:13, 37:23, 38:4 cut - 46:5, 74:19, 75:8, 76:1, 76:22, 77:7 cutting - 30:10, 34:3, 34:17, 39:17, 43:4, 46:24, 47:2, 51:20, 51:24, 52:4, 52:6, 53:13, 62:12, 64:4, 74:18, 74:22, 75:7, 75:8, 75:9, 75:15, 75:19, 76:5, 76:21, 76:25, 77:1, 77:3, 113:13 cuttings - 17:22, 45:15, 45:19, 45:21, 46:1, 53:18, 54:3, 74:17, 77:14 Cv - 24:21</p>
D			
D.a.'s - 96:20			

<p>Dallas - 48:9 damage - 31:21, 31:24, 33:13 data - 5:15 databases - 38:2 date - 10:16, 25:6, 25:9, 25:12, 25:15, 25:17, 25:18, 25:22, 33:20, 36:11, 42:9, 44:7, 70:3, 87:5, 99:7, 112:17 Date - 122:20 dated - 2:5, 29:1, 83:14 dates - 10:15, 42:1 day-to-day - 49:3 days - 22:18, 26:21, 114:3 Dc - 110:9 deal - 11:6, 101:19 dealings - 82:15 deals - 19:23 dealt - 14:14, 99:2 December - 7:18, 57:21 decide - 12:24, 110:1, 120:21 decided - 28:4, 106:1, 111:19 decides - 12:18 decision - 9:9, 28:9 deduce - 64:9 Deetrice - 98:1, 98:12, 100:21, 100:22, 101:7, 101:9, 102:7, 107:4, 108:10, 108:13, 108:15, 110:23, 111:5, 113:23, 114:4, 116:22 defendant - 3:1, 4:25, 9:2, 11:24, 12:5, 12:19, 22:25, 35:25, 36:6, 37:21, 37:23, 38:4, 38:10, 39:16, 39:19, 39:25, 52:21, 59:5, 62:10, 64:4, 64:21, 70:5, 74:10, 78:10, 78:12, 78:17, 86:10, 90:18, 91:13, 91:24, 97:1, 97:6, 105:20, 105:22, 106:1, 106:5, 107:2, 110:25 Defendant - 2:17, 1:5 defendant's - 8:25, 12:3, 12:14, 12:21, 22:9, 22:11, 22:17, 22:21, 23:4, 37:6, 38:24, 39:2, 52:17, 60:23, 61:4, 61:5, 61:8, 61:15, 63:17, 73:16, 78:8, 104:25, 119:8 Defendant's - 20:13, 108:1 defense - 5:25, 6:20, 7:24, 15:23, 22:5, 101:2, 109:24 Defense - 1:4, 1:14, 16:24, 18:22, 20:23, 21:5, 21:8, 107:23, 114:8 defense's - 7:10, 21:14 defensive - 27:14 definitely - 72:5, 87:13 defunct - 118:4 degrade - 65:24 degraded - 87:19, 87:22, 88:2, 88:13, 88:22, 88:24, 92:25 degree - 48:19, 48:20, 80:6, 80:7 Department - 2:9, 2:13, 2:17, 2:21, 3:3, 20:8, 25:20, 26:16, 26:20, 27:25, 70:1, 78:18, 79:23, 80:20, 86:21, 95:24 deposited - 73:1, 73:2 describe - 94:5 described - 25:14, 50:5, 92:3, 94:20 Description - 1:22 Design - 82:16, 83:3, 83:11, 83:17, 85:2, 85:5,</p>	<p>94:6, 107:12 desk - 6:21 detail - 16:4, 83:16 detailed - 17:6, 18:10 details - 14:23 detect - 71:21, 88:1 detection - 98:9 detectives - 40:10 determine - 11:8, 35:17, 37:4, 53:10, 58:18, 80:24, 89:9, 95:20, 109:22, 110:24, 111:3, 115:6 determined - 6:9, 17:21, 53:19, 90:13 develop - 28:24, 37:5, 53:21 developed - 28:23, 40:15 Diana - 25:14, 25:19, 30:10, 34:4, 34:10, 35:11, 43:8, 43:25, 45:8, 46:19, 52:11, 54:11, 54:21, 56:6, 56:15, 92:2, 92:4, 92:5, 95:21, 95:22, 106:8 Diana's - 44:3 different - 4:9, 4:17, 7:2, 7:5, 8:6, 9:17, 17:13, 43:20, 45:19, 49:6, 57:12, 62:2, 63:3, 64:18, 65:2, 68:15, 71:14, 85:16, 87:13, 89:4, 89:21, 93:12, 94:15, 100:4, 104:23, 108:19, 116:24, 116:25, 119:12 differential - 62:15, 62:25 differently - 55:7 difficult - 61:17, 62:1 Dire - 1:7, 1:17 dire - 10:21, 10:22, 10:23 Direct - 1:7, 1:17, 26:12, 48:4, 79:13 directly - 96:21, 97:3, 105:12, 107:10 dired - 11:2 disciplinary - 6:23, 14:19, 100:20, 102:11, 108:3, 115:12, 116:1, 116:17 discipline - 108:16 discover - 4:25, 29:14 discovered - 7:7, 29:15 discovery - 4:10, 4:15, 4:18, 4:20, 5:4, 6:1 discussed - 67:8, 78:6, 93:15, 119:20 Discussion - 20:18 discussion - 12:9 District - 1:6, 1:12, 2:5, 78:16, 122:5 Division - 3:8, 28:5, 28:12 Dmw - 98:12 Dna - 5:16, 6:8, 11:8, 11:20, 12:10, 13:17, 13:18, 13:19, 13:21, 14:2, 14:4, 14:8, 14:11, 15:2, 15:25, 16:5, 16:15, 16:16, 16:18, 17:12, 17:15, 17:20, 22:9, 22:11, 22:17, 22:21, 22:23, 22:25, 23:4, 27:15, 27:22, 29:3, 29:5, 29:8, 29:21, 35:8, 35:9, 36:3, 36:22, 36:24, 37:5, 37:6, 37:13, 37:20, 38:5, 38:8, 38:10, 38:24, 39:2, 39:14, 39:15, 39:18, 40:12, 40:20, 41:4, 41:8, 41:10, 43:7, 43:18, 43:24, 44:23, 49:5, 49:8, 50:17, 51:7, 51:15, 51:22, 52:5, 53:4, 53:20, 53:21, 54:8, 54:17, 54:23, 55:4, 55:6, 55:19, 55:24, 55:25, 56:2, 56:17, 57:2, 57:23, 58:6, 58:13, 58:17, 58:22,</p>	<p>58:25, 59:2, 59:10, 59:14, 59:15, 60:2, 60:10, 60:23, 61:4, 61:5, 61:8, 61:9, 61:15, 61:18, 62:3, 62:9, 62:18, 62:24, 63:2, 63:5, 63:7, 63:12, 63:14, 63:15, 63:17, 64:3, 65:12, 65:15, 65:24, 66:1, 66:5, 66:7, 66:10, 66:11, 67:18, 67:19, 68:14, 71:6, 71:14, 71:17, 71:20, 71:21, 71:22, 71:25, 72:9, 72:13, 72:15, 72:17, 72:19, 72:22, 73:3, 73:7, 76:24, 76:25, 77:2, 78:8, 80:12, 80:13, 80:14, 81:2, 81:11, 83:11, 84:15, 84:17, 84:18, 85:23, 87:4, 87:8, 87:10, 87:18, 87:23, 87:24, 87:25, 88:1, 88:2, 88:12, 88:18, 88:20, 88:22, 89:9, 89:11, 90:11, 90:13, 90:14, 90:18, 91:3, 91:4, 91:8, 91:9, 91:12, 91:18, 91:19, 91:22, 91:23, 92:10, 92:11, 92:19, 92:22, 92:25, 95:3, 97:13, 97:24, 99:1, 102:24, 104:23, 104:25, 105:1, 106:5, 106:7, 106:9, 109:11, 109:18, 110:5, 110:16, 111:10, 115:1, 115:23, 119:11 document - 93:18, 98:11 documentation - 77:12 documents - 14:21, 69:17, 69:21, 120:25 done - 14:21, 21:22, 21:24, 25:21, 43:22, 44:3, 44:6, 44:8, 44:13, 47:5, 50:15, 51:22, 60:22, 60:25, 61:5, 68:16, 82:22, 83:18, 86:25, 97:14, 102:3, 103:2, 103:3, 103:5, 103:16, 119:1 donor - 54:17 doubt - 106:20, 110:4 down - 6:21, 11:18, 47:14, 68:17, 68:20, 68:23, 88:21, 101:13, 106:11, 110:10, 118:9 Dps - 101:20 draft - 94:5 drafted - 27:4 drastically - 89:15 draw - 88:19 drawn - 45:3 driving - 27:14 dry - 71:12, 72:4 due - 4:12 duly - 26:11, 48:3, 79:12 during - 22:18, 29:16, 36:1, 40:4, 62:25, 102:7, 104:5 During - 27:7 duties - 49:4, 49:7, 80:19, 103:11 Dx - 2:7, 2:11, 2:15, 2:19, 3:1, 3:5, 3:8, 3:10</p>	<p>79:21, 79:22, 79:24 employees - 20:10, 22:22 employment - 26:22 end - 76:16 entire - 7:12, 8:4, 24:18, 36:12, 46:11, 75:8 entitled - 1:21, 96:17 envelope - 31:3, 31:12, 31:17, 31:18, 31:21, 76:15 envelopes - 31:5, 32:24, 50:4 epithelial - 40:25, 54:10, 54:20, 56:5, 56:14, 62:3, 62:8, 62:17, 62:23, 63:1, 63:4, 63:11, 63:14, 64:16, 64:20, 65:2, 70:22, 71:4, 71:10, 106:23, 119:13 Eric - 1:8, 1:19, 26:2, 26:7, 26:10, 70:20, 105:3, 105:6, 111:19, 112:1, 112:23 especially - 40:14, 88:4, 102:14 essence - 17:18 essentially - 116:5 establish - 115:2, 115:4 estimate - 72:12 evaluating - 9:2 event - 13:2 Eventually - 58:10 evidence - 2:3, 5:2, 6:2, 14:15, 15:9, 17:4, 17:5, 17:7, 17:11, 18:2, 18:5, 18:7, 18:19, 21:25, 22:2, 22:9, 22:16, 22:19, 22:22, 22:24, 23:3, 23:7, 24:21, 25:18, 27:17, 27:22, 29:6, 29:21, 30:2, 30:5, 30:14, 31:5, 31:12, 31:17, 32:19, 33:11, 33:24, 35:1, 37:4, 38:15, 38:25, 40:11, 40:19, 40:20, 49:18, 49:24, 50:1, 50:4, 50:5, 50:6, 50:8, 50:13, 50:16, 50:20, 50:22, 50:24, 51:21, 51:25, 52:24, 53:19, 60:9, 60:12, 60:15, 60:21, 61:1, 61:10, 61:11, 61:14, 61:15, 61:19, 61:21, 65:18, 65:19, 65:20, 67:20, 67:23, 68:1, 68:6, 68:24, 69:4, 69:13, 69:17, 70:15, 74:15, 78:21, 83:16, 84:2, 84:20, 84:22, 85:5, 85:7, 85:15, 85:24, 93:18, 95:20, 96:5, 96:11, 96:22, 99:2, 100:9, 100:12, 100:14, 102:5, 102:17, 103:16, 103:22, 104:4, 104:21, 106:16, 106:18, 107:6, 107:10, 107:15, 107:19, 108:1, 109:23, 109:25, 110:3, 110:18, 110:25, 111:10, 111:11, 111:12, 112:4, 112:20, 113:8, 113:14, 113:15, 113:17, 113:19, 113:25, 115:1, 116:23, 118:7, 118:14, 118:18, 118:20, 119:21, 122:8 evidentiary - 84:15, 84:21, 85:1, 90:16, 90:23, 91:5, 91:8, 91:14, 91:25, 92:16 ex - 8:8 exact - 70:3 Exact - 34:12 exactly - 8:5, 16:17, 21:23, 46:7, 94:6, 119:22 Examination - 26:12, 48:4, 79:13, 98:22 examination - 23:18, 25:7, 25:13, 25:16, 41:20, 46:6,</p>
E			
<p>early - 26:21, 87:10 easier - 62:17 easiest - 100:8, 100:14 education - 49:2, 80:5 educational - 49:1 effort - 38:3 efforts - 38:7 either - 44:5, 44:12, 52:18, 62:12, 70:2, 72:3 elimination - 45:4 employed - 26:14, 48:6,</p>	<p>79:21, 79:22, 79:24 employees - 20:10, 22:22 employment - 26:22 end - 76:16 entire - 7:12, 8:4, 24:18, 36:12, 46:11, 75:8 entitled - 1:21, 96:17 envelope - 31:3, 31:12, 31:17, 31:18, 31:21, 76:15 envelopes - 31:5, 32:24, 50:4 epithelial - 40:25, 54:10, 54:20, 56:5, 56:14, 62:3, 62:8, 62:17, 62:23, 63:1, 63:4, 63:11, 63:14, 64:16, 64:20, 65:2, 70:22, 71:4, 71:10, 106:23, 119:13 Eric - 1:8, 1:19, 26:2, 26:7, 26:10, 70:20, 105:3, 105:6, 111:19, 112:1, 112:23 especially - 40:14, 88:4, 102:14 essence - 17:18 essentially - 116:5 establish - 115:2, 115:4 estimate - 72:12 evaluating - 9:2 event - 13:2 Eventually - 58:10 evidence - 2:3, 5:2, 6:2, 14:15, 15:9, 17:4, 17:5, 17:7, 17:11, 18:2, 18:5, 18:7, 18:19, 21:25, 22:2, 22:9, 22:16, 22:19, 22:22, 22:24, 23:3, 23:7, 24:21, 25:18, 27:17, 27:22, 29:6, 29:21, 30:2, 30:5, 30:14, 31:5, 31:12, 31:17, 32:19, 33:11, 33:24, 35:1, 37:4, 38:15, 38:25, 40:11, 40:19, 40:20, 49:18, 49:24, 50:1, 50:4, 50:5, 50:6, 50:8, 50:13, 50:16, 50:20, 50:22, 50:24, 51:21, 51:25, 52:24, 53:19, 60:9, 60:12, 60:15, 60:21, 61:1, 61:10, 61:11, 61:14, 61:15, 61:19, 61:21, 65:18, 65:19, 65:20, 67:20, 67:23, 68:1, 68:6, 68:24, 69:4, 69:13, 69:17, 70:15, 74:15, 78:21, 83:16, 84:2, 84:20, 84:22, 85:5, 85:7, 85:15, 85:24, 93:18, 95:20, 96:5, 96:11, 96:22, 99:2, 100:9, 100:12, 100:14, 102:5, 102:17, 103:16, 103:22, 104:4, 104:21, 106:16, 106:18, 107:6, 107:10, 107:15, 107:19, 108:1, 109:23, 109:25, 110:3, 110:18, 110:25, 111:10, 111:11, 111:12, 112:4, 112:20, 113:8, 113:14, 113:15, 113:17, 113:19, 113:25, 115:1, 116:23, 118:7, 118:14, 118:18, 118:20, 119:21, 122:8 evidentiary - 84:15, 84:21, 85:1, 90:16, 90:23, 91:5, 91:8, 91:14, 91:25, 92:16 ex - 8:8 exact - 70:3 Exact - 34:12 exactly - 8:5, 16:17, 21:23, 46:7, 94:6, 119:22 Examination - 26:12, 48:4, 79:13, 98:22 examination - 23:18, 25:7, 25:13, 25:16, 41:20, 46:6,</p>		

<p>66:23, 93:9 examinations - 24:19 examined - 40:20 examiner - 24:11, 24:14 examiners - 24:17 example - 31:22, 70:25, 73:21, 84:16, 109:7 except - 12:8 exchanged - 14:23 exchanging - 14:25 exclude - 58:14, 59:1, 70:9, 74:10, 118:17 excluded - 39:22, 54:18, 55:22, 56:12, 56:19, 56:23, 57:3, 58:3, 58:19, 59:16, 91:21, 92:9, 92:21, 118:14 excluding - 73:16 Excuse - 60:6, 60:8 excused - 47:20, 77:20, 99:14, 99:17 Exhibit - 1:21, 20:14, 20:16, 20:23, 21:8, 24:21, 24:23, 25:2, 78:14, 78:20, 78:22, 78:24, 79:3, 79:5, 83:23, 84:2, 84:3, 84:5, 84:7, 84:9, 95:19 exhibit - 20:21, 101:10 exhibits - 114:8, 122:15 Exhibits - 21:6 existed - 29:6, 41:9 existence - 21:19, 110:25 existing - 28:12 exists - 20:17 expect - 9:6, 60:2, 62:4, 64:1, 65:10, 88:17 expected - 54:21 expenses - 8:9, 8:11 experience - 81:12, 81:16, 81:21, 82:15 experiencing - 87:14 expert - 5:22, 6:2, 9:21, 10:8, 10:10, 81:8 experts - 9:20 Expiration - 122:20 explain - 105:17 Express - 50:3, 50:20 extract - 42:25, 43:1, 43:10, 43:25, 44:24, 45:15, 46:24, 47:2, 58:6 extracted - 43:7, 43:18, 43:20, 43:24, 44:23, 51:8, 83:10, 84:15, 84:17, 84:19, 90:11 extraction - 62:15, 63:1, 85:6, 89:25, 107:14, 109:18 extractions - 43:13, 51:6, 51:8, 51:14, 51:16, 51:17, 51:22, 52:2, 52:8, 52:9, 81:3, 84:9, 84:13, 85:1, 87:4, 90:2, 90:8, 94:15, 95:4, 97:21, 113:14, 119:7 extracts - 67:18 extradited - 105:23 extradition - 53:20 extraneous - 6:10, 6:19, 11:7, 11:11, 115:13 extrapolated - 119:21 extremely - 62:19, 104:22 eye - 109:10</p>	<p>111:16, 119:8 fashion - 17:5 faster - 16:22 fault - 108:9 favorable - 110:25 Fbi - 38:9, 105:10, 105:20, 105:24 fear - 18:4 February - 26:18, 78:10, 78:19, 86:11 Federal - 50:2, 50:19 federal - 105:2 Fedex - 39:6, 39:7, 105:11 felony - 114:15, 114:20 female - 25:14, 43:8, 43:19, 55:10, 55:13, 63:4 few - 64:1, 73:11, 81:9, 88:9 field - 29:7, 81:21 fifth - 18:25 Fifth - 2:19 figure - 16:17, 99:4, 110:13 file - 3:11, 3:21, 5:2, 5:12, 5:18, 5:23, 6:16, 10:14, 11:20, 12:20, 13:12, 15:12, 15:13, 15:22, 91:2, 102:9, 110:23 filed - 3:13, 3:22, 5:23, 5:24, 7:13, 11:22, 15:8, 20:4, 20:7, 39:24, 110:21 files - 8:11, 111:3, 111:4 final - 19:11, 19:19 Final - 3:1 finally - 110:5 findings - 20:6, 20:11, 87:16, 88:12, 91:17, 92:6, 93:1, 108:5, 108:8, 114:6 fine - 23:8 fingerprints - 12:1 finished - 107:18 first - 9:18, 19:1, 23:12, 23:14, 24:17, 26:11, 37:9, 37:22, 41:12, 44:4, 46:16, 48:3, 49:17, 62:22, 79:12, 79:19, 80:5, 89:19, 89:22, 100:7, 105:3, 114:21, 116:4, 119:3 First - 61:22, 100:19, 103:23, 111:9 firsthand - 69:5, 69:6 five - 18:20, 19:10, 28:18 Five - 43:10 flake - 72:4 fled - 36:10 floor - 32:11, 32:13, 32:16, 85:16, 104:15, 104:17, 106:12 Flores - 2:20 folder - 89:21 follow - 98:20, 98:24 follow-up - 98:20, 98:24 following - 1:20, 29:9 follows - 26:11, 48:3, 79:12 foot - 66:3 foregoing - 122:6 forensic - 80:9, 80:14 forensics - 48:8 Forensics - 48:9 forgot - 19:17 form - 2:4, 17:5, 65:9, 78:12, 78:20, 82:6, 87:19, 93:25 format - 52:25 forward - 10:4, 110:15 Fosher - 8:2 four - 26:24, 27:3 four-and-a-half - 26:24 fourth - 18:24</p>	<p>Fourth - 2:15 fraction - 39:17, 39:19, 54:10, 54:13, 56:5, 56:6, 56:8, 56:24, 56:25, 59:17, 59:18, 59:24, 63:5, 63:11, 63:20, 65:12, 87:18, 88:12, 92:1, 92:3, 92:11, 92:13, 92:17, 92:18 fractions - 43:8, 43:19, 63:3, 63:13 fragments - 88:5 Franklin - 2:6, 122:21 friend - 71:2 friends - 38:1, 70:5 full - 16:5, 26:5, 39:14, 58:22, 58:25, 59:10, 79:17, 102:10 fully - 40:15, 95:16</p>	<p>94:21 half - 26:24, 79:25 Hand - 122:16 hand - 71:1 handle - 11:9, 27:17 handled - 10:22, 17:4, 17:11, 17:21, 65:3, 77:14, 95:23, 99:2, 108:22, 110:3, 110:18, 111:13, 117:12 handling - 109:15, 119:7, 119:9 hands - 14:25, 71:16, 107:13, 118:15 hard - 9:9, 60:24, 117:5 harder - 65:25 Harris - 1:9, 1:23, 9:22, 78:16, 122:2, 122:5 head - 73:24, 74:3, 94:21 Head - 1:10, 1:18, 78:2, 79:4, 79:7, 79:11, 79:15, 79:20, 79:21, 82:1, 83:22, 84:9, 85:9, 91:7, 92:23, 93:11, 98:24, 99:9, 99:18, 114:3 heads - 68:4 hear - 69:14, 69:22, 113:20, 113:21, 119:7 heard - 1:21, 50:25, 69:7, 113:18, 119:21 hearing - 5:4, 6:9, 7:20, 12:7, 12:12, 13:5, 13:13, 14:16, 21:4, 21:7, 25:24, 48:14, 53:25, 69:14, 78:7, 78:25, 109:21, 111:25, 119:16 hearsay - 69:4, 114:22, 115:10, 120:23 Hearsay - 11:12, 69:13 heart - 19:15 hearty - 62:19, 62:21 held - 1:23, 38:10 helps - 65:9 hereby - 122:6 Hermann - 24:7 Hernandez - 2:20, 78:13 herself - 33:23 Hida - 37:19 highly - 72:9 histories - 11:14, 11:15 history - 76:19, 87:8, 100:20, 101:9, 102:11, 107:4 Homicide - 27:1, 27:2, 27:3, 27:5, 28:5, 28:12, 36:2, 40:4, 40:18, 41:2, 41:7 homicide - 29:1, 29:11, 29:19, 36:11, 40:1, 40:10 Honestly - 89:5 Honor - 3:16, 3:17, 4:1, 6:4, 6:5, 25:4, 47:13, 77:21, 77:22, 79:10, 83:20, 84:1, 93:3, 98:16, 99:10, 99:20 Honorable - 1:22 Hopefully - 18:18 Hospital - 24:8, 25:6 host - 21:24 hours - 27:12 Houston - 1:23, 2:6, 2:13, 2:16, 2:5, 2:8, 2:12, 2:16, 2:20, 3:2, 20:8, 24:18, 25:6, 25:20, 26:15, 26:20, 27:24, 40:14, 68:13, 69:25, 78:18, 79:23, 80:20, 86:21, 95:23, 105:23, 106:2, 122:22 Hpd - 2:3, 3:6, 16:2, 16:5, 17:1, 17:17, 17:21, 17:23, 18:17, 19:14, 21:22, 26:23, 28:4, 30:18, 32:5, 36:2, 36:5, 36:14, 36:16, 37:12, 43:16, 43:22, 45:5, 47:5,</p>
<p>F</p>	<p>fact - 17:1, 90:2, 100:11, 102:24, 104:20, 110:1, 113:16 fair - 40:11, 68:7 faith - 117:6 familiar - 29:10, 85:9 family - 8:25 far - 51:20, 87:24, 104:11,</p>	<p>G</p> <p>gained - 90:14 Garcia - 25:14, 25:19, 29:12, 29:18, 30:10, 34:4, 34:10, 35:11, 43:8, 43:25, 45:8, 46:19, 52:11, 54:11, 54:21, 56:6, 56:15, 92:2, 92:4, 92:6, 95:21, 95:22 garcia - 1:6, 3:4, 12:9, 36:6, 36:13, 36:25, 37:14, 38:3, 45:9, 49:11, 52:21, 59:5, 59:15, 59:20, 90:7, 90:9, 90:18, 91:13, 91:21, 92:9, 92:21 Garcia's - 106:8 garcia's - 15:7, 65:14, 106:13 Gel - 89:7, 89:8 general - 3:8, 11:21, 14:4, 18:9, 19:20, 20:1, 41:6, 53:25, 54:2, 72:7, 111:9, 118:12, 119:19 generally - 91:16 generated - 91:3, 94:2 Genetic - 82:16, 83:3, 83:11, 83:17, 85:2, 85:5, 94:6, 107:11, 107:12 George - 80:10 German - 35:22, 57:19, 58:2 gist - 18:1 given - 5:1, 10:22, 14:17, 14:20, 52:13, 58:10 Gloria - 1:23, 23:16 Glossary..... end - 1:16 Goliad - 30:18, 32:5, 103:24, 104:8, 111:18 governmental - 101:17 grab - 6:22 grade - 82:11 graduate - 88:17 granted - 3:19, 4:4, 4:14, 7:11, 8:8, 10:15, 11:12, 11:13 great - 101:19 Great - 120:19 greater - 38:2 group - 46:16, 70:18, 80:23 growth - 65:23 guess - 13:4, 87:8, 89:12, 92:24, 93:25, 95:8, 108:3, 115:16 guidance - 28:15</p>	<p>H</p>
<p>fact - 17:1, 90:2, 100:11, 102:24, 104:20, 110:1, 113:16 fair - 40:11, 68:7 faith - 117:6 familiar - 29:10, 85:9 family - 8:25 far - 51:20, 87:24, 104:11,</p>	<p>fact - 17:1, 90:2, 100:11, 102:24, 104:20, 110:1, 113:16 fair - 40:11, 68:7 faith - 117:6 familiar - 29:10, 85:9 family - 8:25 far - 51:20, 87:24, 104:11,</p>	<p>habit - 48:15 hair - 2:2, 78:11, 86:2,</p>	<p>habit - 48:15 hair - 2:2, 78:11, 86:2,</p>

<p>51:9, 51:12, 51:14, 58:9, 60:22, 60:25, 61:3, 67:14, 68:1, 68:8, 68:11, 68:17, 68:19, 70:10, 70:19, 73:18, 77:14, 80:2, 82:2, 82:12, 84:14, 84:24, 85:18, 96:14, 96:15, 96:21, 99:5, 101:8, 102:11, 102:12, 103:24, 104:16, 104:24, 105:3, 106:3, 106:14, 107:17, 109:15, 111:12, 111:17, 112:17, 113:7, 113:11, 113:24, 117:10, 118:7, 118:9 Hpd's - 22:17, 67:24 husband - 54:15, 54:23</p>	<p>86:14, 96:24, 99:1, 103:4, 111:4 initial - 33:22, 40:4, 52:19, 54:4, 54:6, 80:24 initialed - 33:3 initials - 98:12 Inside - 50:3 inside - 31:8, 31:11 inspection - 7:14, 110:23 instrument - 102:2 instruments - 101:22 intact - 31:15, 32:3, 73:25, 74:1, 88:19 intend - 6:3, 12:6, 12:21, 113:23 intent - 106:15 intention - 21:18, 21:20, 114:2, 114:4 interaction - 85:17 interested - 30:5 intern - 3:8 internal - 14:18, 19:19, 19:21, 20:3, 27:4, 40:3 Internal - 3:8, 3:10, 20:1 interpreted - 78:13 Interpreters - 2:21 interviewed - 36:2 interviewing - 36:19 intoxilyzer - 101:22, 102:2 introduce - 79:17, 109:25 investigated - 8:21, 8:22, 8:24, 17:1, 18:22 investigation - 3:9, 9:15, 14:22, 14:24, 17:6, 19:20, 20:2, 36:12, 40:5, 45:7 investigator - 2:8, 2:12, 2:16, 2:20, 3:2, 3:6, 7:25, 8:1, 8:3, 8:6, 8:7, 8:9, 8:21, 8:22, 8:23, 18:21, 18:23, 19:14, 40:2, 40:18, 45:2, 78:16 investigators - 8:20, 9:15, 37:25 invite - 102:6 involve - 49:4 involved - 14:20, 29:11, 82:5, 83:5, 89:19, 89:20, 89:22, 89:24, 95:3, 98:4, 99:3, 106:16 involvement - 49:14, 49:23 involving - 82:22 isolate - 62:3, 62:14, 63:2, 64:13, 118:24 issue - 9:14, 22:7, 23:6, 23:9, 100:7, 100:8, 101:7, 101:24, 110:1, 110:7, 110:12 issued - 9:11, 21:20 issues - 22:4, 27:14, 69:2, 100:4, 101:7, 103:20, 103:25, 104:14, 111:13, 119:19 item - 12:3, 23:14, 32:19, 33:11, 61:22, 72:9, 72:11, 80:25 items - 7:14, 12:2, 17:18, 17:22, 30:4, 30:7, 30:14, 33:15, 34:2, 34:16, 34:22, 40:25, 42:15, 42:18, 42:20, 42:21, 42:24, 46:17, 53:10, 53:18, 57:24, 67:13, 67:16, 87:20, 91:25, 97:20, 119:14 itself - 19:16, 32:1, 46:22, 51:21, 75:12, 84:24</p>	<p>Jim - 94:3 job - 24:16, 102:11, 103:10 joined - 26:23 Joseph - 85:10, 85:23, 94:19, 94:20, 96:7, 96:8, 96:25, 97:12, 113:24, 114:5, 117:7 Joseph's - 25:6 Jr - 29:12, 29:18 judge - 7:16, 10:1 Judge - 1:23, 4:13, 4:21, 5:12, 6:14, 6:17, 7:19, 9:25, 10:19, 11:3, 12:23, 13:22, 14:11, 15:20, 21:1, 21:3, 21:10, 21:14, 23:14, 25:3, 41:18, 47:19, 55:14, 66:18, 69:11, 73:10, 78:1, 79:1, 93:7, 93:17, 96:5, 100:3, 107:20, 107:25, 111:22 judgment - 15:6 Judicial - 1:12 July - 120:10, 120:12 jump - 107:16 June - 1:20, 1:3, 10:17, 27:1, 27:4, 40:3, 58:20 juror - 10:23 jurors - 11:2 jury - 3:1, 15:11, 22:10, 100:9, 100:11, 100:15, 100:17, 100:22, 107:9, 110:1, 110:16, 113:17, 113:19, 118:22 Justin - 2:4, 3:7, 94:20, 107:11</p>	<p>85:5, 85:19, 86:22, 95:24, 99:5, 101:20, 104:16, 107:12, 107:17, 109:15, 111:12, 112:17, 113:7, 113:11, 113:24, 117:10, 118:7, 118:9 lab - 3:6, 14:14, 14:22, 14:24, 15:3, 17:2, 17:10, 18:3, 18:7, 18:13, 18:22, 19:16, 20:11, 21:19, 21:21, 21:25, 22:1, 22:18, 23:3, 30:19, 32:13, 33:23, 33:24, 34:17, 34:22, 42:17, 43:15, 43:16, 44:2, 44:16, 44:20, 45:3, 46:9, 46:12, 60:22, 61:3, 61:20, 67:17, 68:23, 74:4, 74:18, 75:24, 76:10, 77:2, 81:2, 81:4, 81:15, 82:6, 82:15, 83:6, 83:10, 83:13, 84:10, 84:23, 85:14, 85:17, 94:4, 95:5, 95:10, 95:16, 99:1, 100:24, 102:8, 102:21, 103:7, 103:10, 103:20, 103:25, 104:12, 104:25, 105:5, 106:3, 106:12, 106:15, 108:16, 108:19, 108:21, 110:3, 110:18, 112:3, 112:19, 116:24, 117:2, 117:3, 118:4, 119:8, 119:10 labeled - 42:25, 43:3, 43:7, 43:24, 51:7, 76:16, 76:17 laboratories - 29:5 laboratory - 2:9, 2:13, 2:17, 2:21, 3:3, 17:13, 17:14, 80:15, 80:22, 84:14, 90:12 labs - 16:6, 17:15, 23:10, 41:10 lack - 108:20 laid - 118:15 language - 70:11 large - 31:3, 50:2, 112:5 larger - 35:2, 42:20, 112:16, 112:21 Last - 79:19 last - 35:21, 44:22, 47:23, 66:25, 93:13, 99:1 late - 107:17 latest - 99:7 law - 24:8, 100:13, 118:2, 119:24, 120:2, 120:4 Law - 24:12 lawyers - 3:5 leaking - 103:25 leaky - 61:13, 104:14, 107:15 learn - 34:5, 39:13 learned - 37:22, 88:17 least - 9:8, 28:18, 56:8, 60:5, 92:8, 92:19, 92:20, 95:3, 108:17, 113:11, 113:12 leave - 20:17, 20:19, 71:4, 71:5, 71:9, 72:5, 72:15, 72:17 leaving - 71:16 Lebron - 35:21, 57:18, 58:2 left - 4:25, 6:21, 19:1, 22:13, 30:8, 39:15, 46:19, 71:22, 73:6, 73:8, 105:10 legal - 19:22, 27:13 length - 87:25 Leonardo - 57:18 Lester - 19:3 letter - 2:5, 19:8, 83:13, 83:23, 94:2, 94:5, 94:12, 95:1, 95:19 library - 88:10 light - 119:18</p>
<p style="text-align: center;">I</p>			
<p>lad - 19:25, 101:9 idea - 101:17 identifications - 109:18 identified - 65:5, 104:2 identify - 62:6 identity - 115:17 imagine - 16:7, 118:13 impeach - 101:2, 115:14, 116:2, 116:15, 116:16, 117:10, 118:8 impeachable - 11:16 impeached - 102:18 impeachment - 12:24, 101:4 impossible - 65:25, 119:10 improper - 108:5 improved - 89:13, 89:14 in-camera - 110:23 in-service - 27:13 include - 58:14, 70:9, 95:21 included - 24:15, 34:17, 58:18, 122:9 including - 11:25, 43:4, 109:16 incompetence - 103:6, 108:4 independent - 2:7, 2:11, 2:15, 2:19, 3:1, 3:5, 14:24, 17:14, 18:21, 18:23, 19:13, 22:1, 23:10 independently - 91:7 Index - 1:17, 1:21 indicate - 50:13, 60:12, 64:23, 102:8, 103:15 indicating - 83:24, 102:1 indication - 104:19, 112:13, 112:21, 113:6 indicative - 88:22 individual - 4:6, 34:23, 35:3, 35:5, 42:22, 54:25, 55:2, 55:15, 55:16, 55:17, 56:22, 86:17, 86:20, 91:19 individual's - 56:2 individually - 10:23, 35:14, 50:6, 51:4, 112:7, 112:8 individually-packaged - 112:7 individuals - 11:14, 14:19, 20:4, 20:7, 34:5, 35:18, 35:23, 36:1, 54:14, 56:9, 57:12, 57:22, 60:4, 60:8, 80:23, 92:8, 92:20, 95:23, 103:19, 114:6 ineffective - 103:9 infancy - 40:12 information - 7:7, 12:3, 15:2, 15:23, 31:2, 32:22, 35:20, 58:9, 83:4, 85:21,</p>	<p style="text-align: center;">J</p>	<p style="text-align: center;">K</p>	<p style="text-align: center;">L</p>
<p>infectious - 103:9 infancy - 40:12 information - 7:7, 12:3, 15:2, 15:23, 31:2, 32:22, 35:20, 58:9, 83:4, 85:21,</p>	<p>jail - 6:23 Jd - 24:11</p>	<p>keep - 16:11, 29:4, 47:22 kept - 111:17 killed - 34:15 kind - 7:20, 27:10, 28:21, 42:1, 60:13, 60:24, 61:4, 61:6, 61:23, 69:4, 85:23, 103:5, 103:15, 112:11, 114:11 kinds - 18:14, 26:21, 40:20, 62:13, 62:14 kit - 22:12, 23:1, 25:19, 30:9, 30:11, 32:8, 32:10, 32:21, 33:2, 44:6, 44:9, 44:10, 44:13, 44:14, 44:18, 45:14, 46:2, 46:3, 46:9, 46:11, 46:13, 46:18, 46:20, 47:3, 51:1, 53:2, 54:19, 57:24, 61:22, 73:20, 73:23, 74:16, 74:24, 75:21, 76:8, 76:12, 76:14, 76:17, 76:19, 77:8, 84:22, 87:5, 97:21, 98:8, 104:11, 104:15, 119:15 knowing - 60:25 knowledge - 18:10, 69:5, 69:7, 86:19 known - 35:25, 36:19, 52:17, 81:16, 91:23 Kologinczok - 1:24, 23:17, 23:23, 23:24, 24:6, 24:9, 24:13, 25:4 Kologinczok's - 24:21</p>	<p>Lab - 2:3, 16:2, 16:5, 17:1, 17:17, 17:22, 17:23, 18:17, 19:14, 43:16, 43:22, 45:5, 47:5, 51:10, 60:25, 67:15, 68:1, 68:8, 68:11, 68:17, 70:19, 73:18, 77:14, 78:19, 79:23, 80:2, 80:20, 82:2, 82:16, 83:3, 83:17, 85:2,</p>

<p>likely - 72:13, 106:24 limine - 11:5, 100:19 limited - 11:25, 21:4, 21:7 linked - 107:10 links - 87:24 list - 28:25, 29:2, 29:19 listed - 42:15, 44:22, 45:20, 70:17 listing - 85:8 lives - 110:9 location - 102:2, 102:3, 119:13 locations - 89:10 locking - 36:16 long-term - 113:10 Look - 45:24 look - 13:1, 17:7, 28:17, 28:22, 40:24, 41:4, 44:21, 51:19, 53:2, 53:16, 70:14, 86:5, 93:17, 99:8, 102:7, 102:21 looked - 29:19, 37:9, 42:19 looking - 16:11, 50:12, 60:17, 62:2, 63:7, 63:8, 63:10, 63:16, 63:18, 64:11, 64:15, 64:16, 87:23, 89:10 looks - 7:9, 7:13, 7:18, 65:1, 73:22, 75:25, 88:20, 113:9, 115:12 Louisiana - 2:15 lower - 104:17 lunch - 7:5, 120:14</p>	<p>material - 14:14, 38:16, 51:8, 62:24 materials - 5:13, 14:25, 83:5, 88:6 Matt - 1:9, 1:20, 47:17, 48:2, 106:21 mean - 18:7, 18:8, 41:8, 42:13, 68:14, 68:20, 70:25, 72:11, 84:12, 84:14, 87:21, 87:23, 99:5, 113:3 meaning - 72:3 means - 88:2 meeting - 85:17 Mehl - 1:8, 1:19, 26:2, 26:7, 26:8, 26:10, 41:22, 49:20, 50:16, 60:10, 70:20, 104:17, 105:3, 105:5, 105:6, 111:19, 112:1, 112:23 Mehl's - 50:25 Melo - 35:21, 57:18, 58:2 member - 8:25, 27:24 Memorial - 24:7 memory - 45:25 memos - 14:19 mention - 15:5 met - 9:25, 67:8, 93:12 method - 50:18, 88:25 methods - 88:13 Michael - 18:20, 78:15, 86:10, 110:8 might - 14:19, 38:16, 40:19, 52:3, 60:22, 80:25, 85:17, 93:6, 98:3, 103:2, 103:3, 103:16, 103:17, 109:22, 109:23, 113:21, 113:25, 114:11 Might - 66:5 Mike - 8:2 Miller - 39:5 millions - 71:11 mind - 48:14, 50:9, 110:4 mine - 71:2 minor - 57:3, 80:8 mis - 111:15 mis-tested - 111:15 misconception - 111:23, 112:12 misconduct - 108:5, 108:8, 116:23 mishandled - 61:21 mishandling - 60:13, 61:4 missed - 102:25 missing - 68:3 misspoke - 34:12 mistakes - 18:14 mitigation - 9:3, 9:4, 9:20, 9:21, 10:8, 10:10 mixed - 4:7 mixture - 39:17, 39:22, 54:13, 56:8, 92:8, 92:10, 92:19, 92:22 modern - 103:7 moisture - 65:21 mold - 65:22 molecular - 48:20, 80:10 moment - 10:5 months - 26:25 morning - 11:10, 11:16, 79:15, 79:16 most - 60:5, 72:5, 80:15, 96:18, 102:22, 103:7 mostly - 80:16, 80:23 mother - 29:16, 29:18, 34:11, 34:13, 52:14, 54:15 Motion - 1:16, 1:2 motion - 3:11, 4:12, 4:14, 7:14, 7:24, 8:7, 10:14, 10:16, 12:15, 14:4, 15:5, 16:16, 16:25, 17:18, 18:1, 19:15, 99:22, 100:19,</p>	<p>110:22, 113:18 motions - 3:8, 3:12, 3:13, 3:21, 3:25, 4:2, 4:9, 4:15, 4:19, 11:5, 11:19, 13:10, 13:16, 13:17, 13:18 motive - 115:15, 115:17 mouth - 62:5, 65:4 move - 5:21 multiple - 54:14, 73:20 murder - 39:24 murdered - 34:6, 36:7</p>	<p>36:24, 37:13, 38:3, 49:11, 52:21, 59:5, 59:20, 65:14, 90:7, 90:9, 90:18, 91:13, 91:20, 91:21, 92:8, 92:20, 106:13 object - 69:3 objection - 21:3, 24:2, 24:3, 24:24, 78:23, 78:24, 84:4, 99:15, 99:16, 114:22, 116:8, 116:9, 120:23 objections - 21:2 observe - 30:23 obtain - 2:1, 30:13, 37:20, 38:8, 41:10, 42:15, 57:13, 59:10, 61:17, 63:5, 66:12, 72:8, 72:18, 90:18, 91:8 obtained - 12:4, 24:11, 33:25, 38:10, 39:14, 39:18, 54:8, 54:17, 56:11, 57:14, 57:17, 57:23, 58:4, 59:6, 59:14, 59:18, 62:9, 78:17, 86:2, 90:21, 91:5, 91:9, 91:13, 92:7, 94:11, 94:12, 105:2 obtaining - 60:23 obviously - 4:11, 7:11, 10:22, 14:13, 73:5, 103:13 Obviously - 11:11, 118:9 occasion - 96:19 occasions - 81:9, 81:10 occur - 41:3, 61:24 occurred - 37:1, 49:14, 50:14, 116:23, 122:11 October - 25:5, 25:10, 25:17, 25:21, 33:20, 37:11, 37:12, 42:10, 49:18, 86:4, 87:1, 87:5, 87:17, 89:23, 112:18, 122:17 offense - 29:17 offenses - 6:11, 11:11 offer - 15:9, 17:13, 18:19, 20:25, 21:18, 21:20, 24:20, 78:14, 78:21, 84:1, 108:18, 110:14, 114:5, 119:2, 120:24 Offered - 1:22, 20:23, 24:23, 78:22, 84:3 offered - 100:25, 102:19, 103:14, 107:8, 119:1 offering - 19:12, 19:17, 20:15, 110:5, 116:12, 117:9, 117:11, 117:17 office - 9:16, 96:20 Office - 78:17 office's - 14:22 Officer - 25:19, 104:17 officer - 27:8 officers - 50:17 Official - 122:4, 122:16, 122:20 often - 71:25 oily - 71:13 old - 14:14, 21:24, 22:18, 23:3, 28:18, 99:5, 104:12, 104:25, 119:9 older - 88:4 on-the-job - 24:16 once - 39:2, 53:19, 54:5, 65:14 one - 4:6, 5:24, 7:3, 7:23, 8:20, 11:20, 17:24, 18:12, 19:2, 19:6, 19:7, 19:11, 19:17, 20:22, 24:17, 37:25, 42:10, 43:25, 44:22, 44:24, 55:10, 55:13, 56:1, 61:21, 62:19, 63:4, 63:13, 65:2, 67:24, 70:22, 72:2, 72:22, 74:1, 74:2, 74:11, 74:12, 74:17, 75:8, 75:14, 75:18, 75:23, 76:16, 86:1, 91:19,</p>
M		N	
<p>ma'am - 39:9, 51:15 Madrid - 2:14, 3:6 Magee - 1:22 main - 72:19, 97:20, 97:22, 97:23 maintain - 81:2 maintained - 5:18, 80:1, 84:22 maintains - 24:8 major - 39:18, 56:9, 57:5, 59:18, 59:23, 61:24, 64:3, 64:8, 65:7, 65:11, 65:15, 92:22, 106:7, 106:25 male - 39:14, 43:8, 43:19, 54:9, 55:2, 55:5, 55:17, 56:10, 56:11, 56:17, 56:22, 56:23, 57:2, 57:6, 87:18, 88:12, 92:20 males - 55:9, 55:10, 55:13 malicious - 106:15, 106:17 management - 102:23 manager - 81:1, 103:9 manilla - 50:4 Marilu - 2:20 Mario - 2:14, 3:5 marked - 19:17, 78:20, 93:21, 95:19 married - 34:11 Martinez - 35:22, 57:19, 58:5, 58:13, 58:17, 58:23 Mary - 122:4, 122:19 Maryland - 111:1 master's - 48:19, 48:20 masters - 80:8 match - 42:8, 57:13, 59:22, 59:23, 62:10, 64:4, 64:7, 64:21 matched - 22:25, 54:20, 55:19, 56:15, 59:15, 59:17, 59:25 matches - 39:16, 106:6, 107:1 matching - 54:23, 56:18</p>	<p>material - 14:14, 38:16, 51:8, 62:24 materials - 5:13, 14:25, 83:5, 88:6 Matt - 1:9, 1:20, 47:17, 48:2, 106:21 mean - 18:7, 18:8, 41:8, 42:13, 68:14, 68:20, 70:25, 72:11, 84:12, 84:14, 87:21, 87:23, 99:5, 113:3 meaning - 72:3 means - 88:2 meeting - 85:17 Mehl - 1:8, 1:19, 26:2, 26:7, 26:8, 26:10, 41:22, 49:20, 50:16, 60:10, 70:20, 104:17, 105:3, 105:5, 105:6, 111:19, 112:1, 112:23 Mehl's - 50:25 Melo - 35:21, 57:18, 58:2 member - 8:25, 27:24 Memorial - 24:7 memory - 45:25 memos - 14:19 mention - 15:5 met - 9:25, 67:8, 93:12 method - 50:18, 88:25 methods - 88:13 Michael - 18:20, 78:15, 86:10, 110:8 might - 14:19, 38:16, 40:19, 52:3, 60:22, 80:25, 85:17, 93:6, 98:3, 103:2, 103:3, 103:16, 103:17, 109:22, 109:23, 113:21, 113:25, 114:11 Might - 66:5 Mike - 8:2 Miller - 39:5 millions - 71:11 mind - 48:14, 50:9, 110:4 mine - 71:2 minor - 57:3, 80:8 mis - 111:15 mis-tested - 111:15 misconception - 111:23, 112:12 misconduct - 108:5, 108:8, 116:23 mishandled - 61:21 mishandling - 60:13, 61:4 missed - 102:25 missing - 68:3 misspoke - 34:12 mistakes - 18:14 mitigation - 9:3, 9:4, 9:20, 9:21, 10:8, 10:10 mixed - 4:7 mixture - 39:17, 39:22, 54:13, 56:8, 92:8, 92:10, 92:19, 92:22 modern - 103:7 moisture - 65:21 mold - 65:22 molecular - 48:20, 80:10 moment - 10:5 months - 26:25 morning - 11:10, 11:16, 79:15, 79:16 most - 60:5, 72:5, 80:15, 96:18, 102:22, 103:7 mostly - 80:16, 80:23 mother - 29:16, 29:18, 34:11, 34:13, 52:14, 54:15 Motion - 1:16, 1:2 motion - 3:11, 4:12, 4:14, 7:14, 7:24, 8:7, 10:14, 10:16, 12:15, 14:4, 15:5, 16:16, 16:25, 17:18, 18:1, 19:15, 99:22, 100:19,</p>	<p>110:22, 113:18 motions - 3:8, 3:12, 3:13, 3:21, 3:25, 4:2, 4:9, 4:15, 4:19, 11:5, 11:19, 13:10, 13:16, 13:17, 13:18 motive - 115:15, 115:17 mouth - 62:5, 65:4 move - 5:21 multiple - 54:14, 73:20 murder - 39:24 murdered - 34:6, 36:7</p>	<p>36:24, 37:13, 38:3, 49:11, 52:21, 59:5, 59:20, 65:14, 90:7, 90:9, 90:18, 91:13, 91:20, 91:21, 92:8, 92:20, 106:13 object - 69:3 objection - 21:3, 24:2, 24:3, 24:24, 78:23, 78:24, 84:4, 99:15, 99:16, 114:22, 116:8, 116:9, 120:23 objections - 21:2 observe - 30:23 obtain - 2:1, 30:13, 37:20, 38:8, 41:10, 42:15, 57:13, 59:10, 61:17, 63:5, 66:12, 72:8, 72:18, 90:18, 91:8 obtained - 12:4, 24:11, 33:25, 38:10, 39:14, 39:18, 54:8, 54:17, 56:11, 57:14, 57:17, 57:23, 58:4, 59:6, 59:14, 59:18, 62:9, 78:17, 86:2, 90:21, 91:5, 91:9, 91:13, 92:7, 94:11, 94:12, 105:2 obtaining - 60:23 obviously - 4:11, 7:11, 10:22, 14:13, 73:5, 103:13 Obviously - 11:11, 118:9 occasion - 96:19 occasions - 81:9, 81:10 occur - 41:3, 61:24 occurred - 37:1, 49:14, 50:14, 116:23, 122:11 October - 25:5, 25:10, 25:17, 25:21, 33:20, 37:11, 37:12, 42:10, 49:18, 86:4, 87:1, 87:5, 87:17, 89:23, 112:18, 122:17 offense - 29:17 offenses - 6:11, 11:11 offer - 15:9, 17:13, 18:19, 20:25, 21:18, 21:20, 24:20, 78:14, 78:21, 84:1, 108:18, 110:14, 114:5, 119:2, 120:24 Offered - 1:22, 20:23, 24:23, 78:22, 84:3 offered - 100:25, 102:19, 103:14, 107:8, 119:1 offering - 19:12, 19:17, 20:15, 110:5, 116:12, 117:9, 117:11, 117:17 office - 9:16, 96:20 Office - 78:17 office's - 14:22 Officer - 25:19, 104:17 officer - 27:8 officers - 50:17 Official - 122:4, 122:16, 122:20 often - 71:25 oily - 71:13 old - 14:14, 21:24, 22:18, 23:3, 28:18, 99:5, 104:12, 104:25, 119:9 older - 88:4 on-the-job - 24:16 once - 39:2, 53:19, 54:5, 65:14 one - 4:6, 5:24, 7:3, 7:23, 8:20, 11:20, 17:24, 18:12, 19:2, 19:6, 19:7, 19:11, 19:17, 20:22, 24:17, 37:25, 42:10, 43:25, 44:22, 44:24, 55:10, 55:13, 56:1, 61:21, 62:19, 63:4, 63:13, 65:2, 67:24, 70:22, 72:2, 72:22, 74:1, 74:2, 74:11, 74:12, 74:17, 75:8, 75:14, 75:18, 75:23, 76:16, 86:1, 91:19,</p>
	O		
	<p>Obel - 1:6, 3:4, 36:6, 36:13,</p>		

<p>92:20, 93:21, 94:3, 96:1, 96:2, 97:7, 97:9, 98:16, 98:19, 98:24, 100:6, 104:5, 105:4, 108:4, 108:5, 108:8, 109:8, 109:19, 113:10, 113:12, 116:10 One - 5:23, 17:14, 30:8, 30:9, 43:18, 43:24, 62:3, 73:23, 93:6, 97:7 ones - 4:17, 9:23, 11:21, 45:20, 96:1, 96:2 Open - 3:1 open - 5:12, 5:18, 19:2, 20:17, 32:25, 33:4, 33:5, 34:24, 35:1, 42:23, 62:17, 62:22, 105:9, 122:12 opened - 34:25, 35:6, 39:4, 42:19, 42:21, 112:22 opening - 16:21, 21:12, 21:14 Opening - 1:4, 1:6, 16:24, 21:16 operating - 9:1 operational - 95:17 operations - 24:7 opinion - 65:8, 65:9, 69:19, 88:11, 100:21, 108:19, 109:16 opportunity - 10:23, 30:22, 82:21, 86:24, 114:7 oral - 3:11, 11:23, 80:18 Orchid - 17:23, 17:24, 18:17, 22:24, 30:2, 33:17, 33:25, 37:4, 38:17, 39:7, 39:10, 45:12, 46:8, 48:11, 48:14, 48:21, 91:2, 91:5, 91:9, 92:7, 96:13, 97:4, 97:8, 97:14, 105:8, 105:12, 105:19, 106:14, 109:2, 111:20 order - 37:20, 38:8, 42:14, 52:23, 88:1, 94:5, 105:24 original - 36:2, 37:25, 38:15, 39:6, 41:15, 51:1, 73:23, 76:22, 84:20, 104:9, 107:14, 112:3, 112:14, 112:24, 113:2 originally - 58:13, 76:11, 83:5, 113:6 originated - 56:9 Otherwise - 22:10 otherwise - 82:18 Ouachita - 80:7 outermost - 60:16 overall - 18:7, 108:20 overcome - 115:9, 115:10, 118:24 own - 8:7, 22:2, 28:23, 35:3, 42:22, 51:15, 52:4, 52:6, 71:6, 80:17, 91:9, 109:9</p>	<p>23:1, 30:10, 34:3, 34:18, 39:17, 43:4, 45:16, 45:20, 46:1, 46:2, 46:10, 46:13, 46:25, 47:3, 51:20, 51:24, 52:3, 52:5, 53:13, 53:18, 54:3, 56:4, 56:5, 56:14, 56:25, 57:2, 59:2, 59:19, 59:22, 59:24, 61:25, 62:7, 62:13, 63:8, 63:17, 63:23, 63:24, 64:4, 65:5, 74:16, 74:19, 74:23, 75:12, 75:15, 75:19, 76:1, 76:7, 76:12, 76:16, 76:18, 76:20, 76:23, 84:17, 92:3, 92:16, 95:22, 106:8, 106:23, 107:1, 113:13 panty - 43:7 paper - 112:5 parcel - 3:20 parents - 34:6 part - 3:20, 12:18, 42:16, 44:8, 44:9, 44:13, 47:3, 49:10, 49:22, 81:5, 85:18, 108:20, 120:21 parte - 8:8 partial - 58:4 particular - 13:10, 17:11, 49:21, 63:9, 103:22 particularly - 70:8 parties - 54:5, 122:9, 122:15 Pass - 41:18 pass - 47:8, 66:14, 73:9, 93:3, 99:10 passes - 109:8 past - 81:9, 82:23 patient - 25:8, 25:13 patrol - 26:24, 26:25 pattern - 88:18 Pause - 93:8, 98:18 pay - 9:19, 9:20 paying - 9:24, 67:5 people - 9:22, 17:3, 17:9, 17:10, 40:23, 70:9, 70:12, 71:12, 72:8, 72:15, 72:21 perform - 49:2, 49:6, 49:7, 52:25, 63:12, 68:14, 89:25, 90:2 performed - 23:17, 24:19, 25:7, 25:12, 25:16, 51:15, 52:5, 53:4, 53:20, 97:14 performing - 49:8, 90:8 perhaps - 100:7, 113:12 period - 60:11 permission - 19:6 permit - 7:14 perplexed - 9:25 person - 61:20, 62:20, 70:23, 71:3, 72:2, 72:5, 86:18, 86:19, 109:8, 113:24, 120:24 personal - 8:8, 86:19, 89:17 personally - 85:12, 88:15 Phone - 2:7, 2:13, 2:16 phone - 19:4, 19:5, 110:10 photograph - 88:21 phrase - 55:7 phraseology - 18:12 picked - 44:15, 44:18 pictures - 88:10 piece - 5:1, 61:21 place - 44:4, 48:10 plane - 10:4, 116:2, 120:10 plastic - 31:1, 31:8, 31:11, 31:14, 32:21, 32:24, 33:2, 33:3, 33:7, 34:23, 35:3, 35:5, 41:15, 42:21, 42:22, 42:24, 43:3, 43:7, 43:18, 65:20, 65:22, 112:24, 113:2,</p>	<p>113:3 play - 100:4, 101:3, 102:18 point - 9:8, 10:6, 12:23, 12:25, 29:9, 31:15, 33:21, 40:16, 50:21, 52:18, 54:6, 57:16, 59:4, 60:9, 67:24, 68:18, 73:10, 74:7, 86:1, 89:8, 113:10, 115:4 police - 27:8, 36:12, 71:24, 108:6 Police - 2:8, 2:12, 2:16, 2:20, 3:2, 20:8, 25:20, 26:15, 26:20, 27:24, 69:25, 78:18, 79:23, 80:20, 86:21, 95:24 polite - 82:8 popped - 22:21 populations - 60:3 portion - 76:1, 76:5, 76:8, 76:23, 77:4, 77:7 portions - 33:25, 119:5, 122:8 position - 21:17, 80:1, 107:3 positive - 53:4 possession - 22:18, 37:13, 61:6, 67:21, 67:24 possibility - 71:5 possible - 29:21, 56:12, 58:3, 58:7, 70:17, 72:22, 72:23, 92:9 potential - 35:9, 104:1 potentially - 66:1, 66:3, 104:6 Potentially - 66:4, 115:11 practical - 24:16 practice - 24:9, 81:24 practices - 80:17 prepared - 12:2, 23:21 present - 3:1, 3:5, 3:6, 22:10, 53:12, 53:13, 53:21, 56:2, 62:23, 63:25, 64:1, 80:25, 90:13 presenting - 115:7 presiding - 1:23, 7:16 presumably - 74:19, 75:22, 76:24 pretrial - 13:13 Pretrial - 1:16, 1:2 pretty - 11:13, 72:7, 100:17 prevent - 105:24 previous - 3:22, 10:15, 75:23, 90:15, 97:9, 102:9 previously - 3:13, 51:23, 75:9, 77:4, 86:21 prime - 36:16 principle - 81:13 prison - 38:9, 105:1 private - 29:4, 80:14 problem - 22:19, 67:6, 109:14 problems - 33:10, 102:21, 102:22, 102:23, 102:24, 111:15 procedure - 108:6 Procedure - 7:15 procedures - 62:13 Proceed - 24:4 proceed - 13:23, 14:4, 14:10, 16:16, 21:11, 23:25, 26:6, 26:9, 47:25, 66:21, 69:21, 78:5, 79:9, 93:5, 98:21, 99:22 proceeding - 3:8, 13:11, 14:7 Proceedings - 1:16, 1:24, 1:2, 121:4 proceedings - 1:21, 10:17, 122:8, 122:14</p>	<p>process - 109:11 produce - 13:16, 13:17 produced - 17:22 product - 5:3 products - 67:18 proffer - 23:15, 23:20, 24:5, 25:23, 109:22 profile - 12:10, 17:20, 22:25, 39:14, 39:16, 39:18, 53:22, 54:8, 55:19, 55:21, 56:9, 56:11, 56:17, 56:18, 56:21, 57:14, 57:23, 58:5, 58:22, 58:25, 59:10, 59:14, 59:15, 59:18, 59:24, 60:2, 61:9, 61:18, 61:24, 63:17, 63:19, 64:2, 64:3, 64:6, 64:8, 65:11, 66:1, 72:9, 72:13, 72:19, 72:22, 73:16, 88:18, 90:15, 90:18, 90:21, 91:3, 91:4, 91:12, 91:19, 92:7, 109:11, 119:8, 119:11 profiles - 17:21, 37:5, 59:25, 70:12, 91:8, 91:9 program - 24:14, 49:1 prolific - 107:1 promote - 65:22 promoted - 26:25, 48:23 pronounced - 23:24 proper - 109:1 properly - 27:17, 27:18 property - 2:10, 2:14, 2:18, 2:22, 3:4, 3:7, 19:14, 19:16, 30:18, 30:19, 32:5, 32:7, 32:10, 32:13, 33:23, 41:13, 96:21, 103:24, 104:7, 111:18, 112:6, 112:10, 113:10 protocol - 29:10 prove - 18:5 proven - 18:13 provided - 6:2, 15:2, 15:23, 20:12, 58:5, 108:10, 108:12 psychologist - 9:1, 9:2, 10:11 public - 15:10, 18:9, 121:1 Puerto - 15:7, 23:5, 37:21, 37:23, 38:5, 38:9, 39:5, 105:1, 105:21, 105:23, 105:25 pulling - 11:5, 94:21 purify - 62:18 purported - 11:24 purpose - 52:8 purposes - 9:2, 12:25, 21:4, 21:7, 22:8, 22:15, 25:24, 45:4, 48:13, 69:14, 78:25, 101:5 pursue - 13:7 pursuing - 12:12, 12:17 put - 5:10, 8:13, 9:18, 10:6, 10:24, 13:1, 14:5, 14:17, 15:18, 19:6, 22:8, 65:3, 69:17, 96:5, 105:11, 114:25, 115:1, 120:17</p>
P			
<p>package - 39:6, 112:2, 112:21 packaged - 33:17, 35:14, 45:11, 50:6, 50:10, 51:4, 60:15, 112:7, 112:8 packaging - 60:12, 60:16, 104:9, 105:10, 112:3, 112:14 Page - 1:3, 42:2 page - 42:7, 45:24, 46:17 pages - 19:12 paid - 102:4 pair - 17:19, 76:12, 76:18, 76:20, 76:22 panel - 3:2 panties - 17:20, 22:12,</p>			Q
			<p>quadrillion - 60:7 qualified - 80:17 qualified - 90:12 quantitative - 89:7 quantity - 65:6 Quartaro - 1:9, 1:20, 47:17, 47:24, 48:2, 48:7, 67:2, 67:3, 67:4, 106:21 questions - 73:12, 77:17, 96:6, 99:11 quick - 66:17, 99:8, 108:23, 109:13</p>

<p>quickly - 73:21 quintillion - 60:4 quite - 64:1 quotes - 43:3</p>	<p>red - 92:4 Redirect - 98:22 refer - 49:15, 73:21 reference - 52:10, 52:12, 53:6, 57:11, 57:15, 57:17, 70:7, 90:6, 90:9, 91:24, 92:15 references - 86:13 referencing - 83:24, 88:8 referred - 107:9 referring - 48:13, 74:16 reflects - 8:19, 122:14 refreshes - 45:25 regard - 5:10, 6:1, 14:11, 27:15 regarding - 6:23, 13:17, 13:18, 15:25, 16:15, 78:7 Regarding - 8:15, 8:16, 81:11 Regardless - 70:15 regards - 6:17, 10:25, 64:23, 83:3, 87:16, 91:17, 92:5, 92:15, 100:18 registered - 24:9 registries - 99:8 reinvestigate - 28:17 relevance - 115:9, 115:15, 118:25 relevancy - 115:23 relevant - 13:6, 22:7, 22:15, 101:4, 101:6, 103:21, 107:7, 115:22, 116:9, 118:25, 119:5, 119:19 reliability - 101:7 reliable - 81:13, 100:12, 116:13 reliance - 116:10 relied - 91:9 rely - 51:14, 52:2 relying - 89:1 remaining - 73:25 remanning - 74:12 remember - 41:7, 43:1, 44:9 remote - 102:13 removed - 46:12, 103:10, 112:13 Renee - 1:22 repackaged - 39:6 repeats - 81:18 report - 2:7, 2:11, 2:15, 2:19, 3:1, 3:11, 9:12, 14:23, 18:23, 18:24, 18:25, 19:1, 19:7, 19:11, 19:12, 19:19, 19:21, 20:22, 21:20, 39:11, 41:24, 42:2, 42:16, 46:18, 65:13, 82:18, 86:25, 102:22, 103:1, 103:19, 104:3, 107:16, 108:3, 110:8, 114:5, 115:20, 120:24, 120:25 reported - 1:24, 57:8, 122:12 Reporter - 122:4, 122:20 reporter - 7:10, 7:12, 26:6 Reporter's - 1:1, 1:15, 122:1, 122:10, 122:13 reports - 5:15, 9:1, 9:11, 17:2, 17:8, 17:9, 18:14, 18:20, 19:9, 19:10, 81:4, 102:6, 102:19, 103:14, 119:5, 119:17 request - 7:10, 10:20, 94:7, 112:3 requested - 122:8 requesting - 7:19, 83:17 requests - 5:22, 10:21, 13:25 require - 29:8 required - 27:12, 29:3 requirements - 49:1</p>	<p>research - 35:17, 36:5 respect - 70:21, 72:24, 108:7 respective - 122:15 respond - 99:25 response - 21:14 responsibilities - 80:19, 81:5 responsibility - 5:7 responsible - 101:21 rest - 21:10, 99:20 rests - 1:5, 1:11 result - 12:2, 12:4, 58:1, 59:13 resulted - 104:1 results - 11:24, 17:12, 22:3, 23:9, 38:20, 39:11, 41:10, 54:1, 54:2, 54:4, 54:6, 57:8, 59:6, 61:6, 61:19, 61:24, 65:13, 66:12, 73:15, 92:19, 98:10, 103:3, 103:8, 106:14, 106:22, 107:8, 109:18, 110:5, 117:11, 117:17, 117:23 retained - 33:24 retire - 26:17 retired - 26:15 retrieve - 33:15 retrieved - 34:17, 41:12, 104:12 returned - 19:4, 27:5, 29:7 reveal - 45:7 review - 82:22, 85:21, 86:14, 86:25, 88:6, 88:7, 98:25, 114:8, 114:10 reviewed - 85:25, 91:2 reviewing - 82:17 Rflip - 89:3, 89:6 Rican - 105:1 rich - 63:14, 63:15 Rico - 15:7, 23:5, 37:21, 37:23, 38:5, 38:9, 39:5, 105:21, 105:23, 105:25 rigorous - 48:25 robust - 64:2, 64:3, 64:6 Rodriguez - 34:4, 34:8, 35:12, 42:25, 44:23, 45:8, 52:11, 54:14, 56:12, 57:1, 122:4, 122:19 Rolando - 2:20, 78:13 role - 82:20 roof - 61:13, 104:1, 104:14, 107:15 room - 2:10, 2:14, 2:18, 2:22, 3:4, 3:7, 19:14, 19:16, 30:18, 30:20, 32:5, 32:7, 32:11, 32:13, 41:13, 96:21, 103:24, 104:7, 111:18, 112:6, 112:10, 113:10 rough - 71:13, 72:10 roughly - 28:25, 60:3 Rp - 2:11 rub - 106:18 rubbing - 71:15 rudimentary - 102:25 Rule - 101:1 ruled - 4:6, 4:16, 7:16, 118:17 rules - 120:7 ruling - 1:12, 114:9, 117:15, 118:25, 119:22, 120:9 running - 106:3</p>	<p>38:11, 38:13, 38:23, 39:3, 52:20, 53:5, 54:7, 56:13, 58:17, 59:4, 59:11, 60:23, 61:3, 61:5, 64:10, 65:23, 65:24, 66:1, 66:9, 71:8, 75:4, 75:7, 78:8, 78:11, 85:7, 86:2, 90:6, 90:9, 90:14, 91:14, 91:23, 91:24, 92:16, 94:14, 105:2, 105:15, 105:20, 105:25, 106:1, 106:4 samples - 34:4, 35:8, 35:9, 36:3, 36:22, 44:6, 49:9, 51:7, 51:16, 51:21, 52:8, 52:10, 52:12, 52:18, 53:2, 53:3, 53:6, 57:11, 57:16, 57:18, 57:20, 58:4, 58:14, 63:20, 70:5, 70:7, 70:18, 84:15, 84:18, 84:21, 85:2, 90:16, 90:23, 91:5, 91:8, 94:16, 95:2, 95:4, 104:23, 106:5, 113:11, 119:11 saw - 63:24, 65:7 Sbot - 2:4, 2:5, 2:12, 2:15 scathing - 17:2 scenario - 115:18 scene - 22:13, 30:8, 31:6, 39:15, 41:3, 71:19, 104:10, 112:4 scenes - 40:11, 71:18, 71:25 school - 80:5, 88:17 science - 80:9 scientific - 11:25, 81:13, 81:24 scratch - 22:1, 53:8, 67:12, 67:13 screened - 53:2 screening - 80:23, 98:8 seal - 31:15 sealed - 31:19, 32:21, 33:3, 43:18, 43:24, 50:3, 60:16, 111:18, 112:24, 113:2, 113:3 search - 12:4 Second - 2:7 second - 18:23, 62:6, 93:6, 98:16, 109:20 section - 85:15, 96:11, 96:18 see - 3:20, 15:13, 17:6, 18:14, 25:3, 42:1, 44:19, 45:24, 48:21, 53:21, 57:12, 57:13, 60:14, 61:9, 62:8, 63:25, 70:9, 70:14, 83:9, 84:9, 85:8, 88:17, 89:7, 99:4, 99:7, 101:9, 102:22, 103:18, 107:15, 108:25, 109:4, 109:7, 109:8, 109:10, 111:12, 114:15, 115:5, 115:24, 117:21, 119:18 seeing - 119:6 seek - 108:18 seeking - 13:21, 16:18 seem - 94:3 seized - 12:2 self - 12:25 self-serving - 12:25 semen - 40:22, 53:3, 53:4, 53:10, 53:12, 53:13, 53:15, 53:16, 53:19, 62:12, 80:25, 98:9, 106:13, 106:22, 106:23, 106:25, 112:9 send - 21:25, 46:7, 49:24, 111:20 sense - 18:18, 120:5 sent - 17:23, 29:4, 33:17, 33:25, 37:3, 38:11, 39:7, 40:3, 45:11, 46:11, 46:12, 46:17, 46:20, 50:10, 70:20,</p>
S			
<p>saliva - 2:1, 12:10, 62:6, 78:11 sample - 2:2, 23:5, 36:24, 37:6, 37:13, 37:20, 38:8,</p>			

<p>83:5, 83:11, 83:17, 84:10, 85:2, 85:5, 85:7, 94:6, 105:2, 105:7, 105:20, 106:3, 112:10 sentences - 15:6 separate - 62:16, 63:1, 63:12, 64:9, 75:20, 76:9, 106:1, 106:5 separated - 77:8 separately - 75:16 September - 30:1 sergeant - 26:15, 26:25 Sergeant - 37:19, 37:22, 41:22, 47:14, 49:20, 50:16, 50:25, 60:10 series - 29:4 serious - 118:23 serology - 81:2 served - 27:2, 27:4 service - 27:13 services - 3:12, 19:22 servicing - 12:25 set - 30:1, 51:17 seventh - 82:10 several - 5:22, 10:20, 17:15, 50:4, 68:15, 68:16, 68:21, 69:1, 97:7 sex - 73:5 sexual - 23:17, 24:10, 24:13, 24:17, 24:19, 25:7, 25:13, 25:18, 45:14, 46:18, 46:19, 53:2, 73:19, 73:23, 74:23, 75:21, 76:8, 76:12, 76:14, 76:17, 76:19, 77:8, 84:21, 98:8, 104:11, 104:15, 113:8, 119:15 sexually - 29:16 shape - 82:6 Sharma - 86:18, 86:25, 87:3, 87:18, 88:8, 94:19, 94:22, 95:2, 95:5, 96:1, 102:20, 103:2, 103:16, 107:6, 108:3, 113:23, 114:5, 115:12, 116:1, 116:15, 116:20 Sharma's - 87:16, 97:18 shed - 71:11, 71:12, 71:15, 71:22, 72:8, 72:10 shedder - 72:3 sheet - 112:6, 112:9, 112:20 Shellist - 3:23, 4:13, 5:14, 110:22 ship - 30:2, 33:20 shipment - 49:17, 52:19, 57:17 shipped - 22:24, 37:10, 37:11, 38:17, 83:17, 105:11 shipping - 50:18 shirt - 112:7 shooting - 66:2 short - 13:5, 20:2, 81:18 shorthand - 1:25 show - 15:22, 17:9, 18:8, 22:5, 22:11, 23:7, 24:22, 77:12, 83:22, 98:1, 102:25, 106:6, 114:10, 119:17 showed - 29:17, 29:18, 63:19 showing - 22:16, 44:19, 108:20 shown - 61:10 shows - 20:5, 96:25, 104:21 shut - 68:17, 68:23, 118:9 side - 6:3 sides - 3:10, 3:12, 6:2 signed - 4:15, 5:24, 5:25, 78:12 significant - 13:3</p>	<p>simple - 89:8 simply - 9:21, 22:23, 102:13, 117:10, 118:8 single - 21:20, 55:25, 91:18 single-source - 55:25, 91:18 situation - 88:20, 110:17 skin - 46:10, 54:10, 56:6, 62:4, 62:6, 65:2, 70:21, 70:25, 71:2, 71:13, 71:22, 72:4, 72:5, 72:8, 109:7, 109:8, 109:9, 109:10, 109:12 skip - 6:6, 7:22 Skip - 3:6, 7:4, 67:7, 93:11 small - 19:12, 76:8, 76:23, 77:1, 80:22, 88:3 smear - 88:21 smoked - 71:3 someone - 6:12, 66:11, 101:2, 106:15, 114:16 somewhere - 8:19 Sorry - 25:10 sorry - 19:18, 25:9, 67:5, 98:19, 107:16 sort - 32:23, 50:21 sounds - 23:23 source - 55:25, 91:18 South - 24:12 Spanish - 25:14 spanned - 68:19, 68:20 special - 10:5 specialist - 9:3, 79:22, 80:21 specific - 10:8, 13:24, 15:2, 18:5, 20:11, 27:21, 27:23, 30:4, 82:20, 120:24 specifically - 14:6, 17:10, 17:19, 63:18, 68:5, 70:14 Specifically - 86:4, 91:12, 111:11 spell - 23:22, 47:23, 66:25 spelled - 47:24 spent - 26:23, 26:25 sperm - 39:16, 39:18, 54:13, 56:8, 56:24, 56:25, 59:17, 59:18, 59:24, 62:7, 62:9, 62:14, 62:18, 62:25, 63:2, 63:5, 63:9, 63:11, 63:15, 63:18, 63:19, 63:22, 63:25, 64:1, 64:11, 64:13, 65:4, 65:6, 65:10, 65:12, 72:24, 72:25, 73:6, 92:1, 92:2, 92:11, 92:17, 92:18, 109:12, 119:14 Sperm - 92:13 splitting - 89:10 spoken - 8:25 sponsor - 110:8 squad - 28:1, 28:5, 28:11, 28:16 St - 25:6 stages - 87:10 stand - 26:4, 113:4 standard - 4:10, 4:18, 11:13, 31:4, 50:15, 50:18 standpoint - 109:24, 116:10 stapled - 76:16 start - 4:5, 18:22, 22:1, 67:13 started - 48:21, 53:8, 67:11, 69:25, 70:3, 80:14 starting - 26:20 starts - 9:9 State - 1:11, 2:7, 1:11, 3:3, 3:6, 5:2, 5:6, 5:11, 5:23, 9:10, 9:13, 12:5, 12:18, 17:13, 17:24, 19:21, 19:23,</p>	<p>20:12, 21:11, 21:22, 26:2, 47:17, 78:1, 93:20, 99:20, 99:25, 100:25, 110:15, 111:10, 113:22, 116:5, 122:2, 122:5 state - 9:23, 26:5 State's - 1:6, 1:7, 1:13, 17:4, 21:16, 21:17, 24:5, 24:20, 24:23, 24:25, 25:2, 78:14, 78:20, 78:22, 78:24, 79:3, 79:5, 83:23, 84:1, 84:3, 84:5, 84:7, 84:8, 93:21, 95:19, 100:2, 100:10, 110:5, 110:22, 110:23 Statement - 16:24, 21:16, 107:23 statement - 1:4, 1:6, 4:22, 12:18, 12:21, 16:21, 59:21, 72:1, 72:7 statements - 11:12, 11:23, 14:10 stating - 4:13, 10:9 Stating - 60:24 statistics - 60:1 Step - 34:9 step - 47:14, 53:1 stepfather - 34:12, 52:14 Stephens - 37:19, 37:22, 37:25, 38:4 Steve - 3:7, 3:22, 5:14, 110:22 sticks - 68:3 still - 5:18, 11:19, 32:2, 37:12, 38:23, 41:22, 48:14, 49:7, 63:12, 68:18, 74:12, 76:7, 76:13, 76:15, 83:10, 95:7, 96:14, 103:13, 115:22, 117:14 stipulations - 78:3 storage - 23:7, 33:11, 65:17 store - 27:18, 65:18 stored - 19:15, 30:17, 30:23, 31:11, 31:21, 32:12, 34:21, 35:2, 61:12, 75:16, 75:17, 75:20, 103:22, 103:23, 103:24, 104:15, 104:16, 107:19, 113:9 storing - 31:5 storm - 61:13, 106:11 storms - 104:6 Str - 81:17 stretch - 106:19 strong - 59:21, 102:16 studies - 88:16 stuff - 5:16, 11:8, 15:25, 16:5, 16:7, 42:6, 45:11, 46:8, 46:9, 95:12, 103:1, 110:4, 110:15, 114:21, 116:5, 117:8 Stuff - 19:15 styled - 122:11 submission - 2:3, 78:8, 78:19, 93:24, 93:25 submit - 78:11, 78:20, 96:21 submitted - 78:18 subpoenaed - 5:15 substances - 96:19 sudden - 66:8 Suffice - 87:12 suffice - 92:24 sufficient - 11:1, 72:8, 72:18, 110:4 sufficiently - 100:12 Suite - 2:15 summary - 3:9, 19:13, 19:18, 19:20, 20:2 Summary - 3:5 supervise - 49:5, 80:22</p>	<p>supervisor - 27:1, 48:8, 48:24, 80:22 supervisors - 94:4 supervisory - 102:23 supplement - 42:8 supplied - 5:14, 83:13 support - 119:24, 120:3 suppose - 110:10, 115:22 suppress - 11:19, 13:10, 13:18, 16:18, 18:16, 109:14, 109:21, 113:18, 113:19 Suppressed - 1:16, 1:2 suppressed - 109:17, 109:19 surface - 71:14, 72:10 suspect - 36:17, 71:18, 86:2 suspects - 52:9, 70:17 sustain - 69:10 swab - 12:13, 39:21, 43:19, 54:3, 55:4, 55:23, 56:25, 58:10, 68:3, 68:4, 73:20, 73:24, 74:11, 74:12, 84:16, 90:1, 90:3, 90:5, 91:4, 91:20, 94:22, 94:23, 95:21, 96:23, 96:25, 97:8, 97:11, 113:12 swabbing - 12:9, 53:5 swabs - 17:22, 53:12, 53:17, 54:9, 54:20, 56:22, 59:2, 59:17, 62:7, 62:12, 63:8, 68:3, 73:15, 73:17, 73:20, 73:23, 73:25, 74:1, 74:9, 78:17, 86:10, 92:2, 92:5, 92:13, 96:8, 96:20, 97:6, 106:9, 106:23 sworn - 26:3, 26:11, 47:18, 48:3, 79:6, 79:12 Sx - 1:23, 2:1, 2:3, 2:5</p> <p style="text-align: center;">T</p> <p>t-shirt - 112:7 table - 3:5 tainted - 111:14 tampering - 50:13, 50:21, 61:23, 101:16, 103:15 tandem - 81:18 team - 49:5, 52:25 technique - 81:16, 81:20, 88:15, 89:1, 89:4 techniques - 81:4, 87:12, 88:4, 88:5, 89:13, 90:12, 92:24, 102:25, 103:7 ten - 49:5 term - 113:10 terminated - 95:9 terms - 15:18, 108:9, 114:24, 115:2, 118:3 Terrace - 2:12 test - 11:25, 12:1, 62:11, 67:16, 72:25, 73:4, 74:7, 75:11, 77:1, 80:17, 98:11, 103:3, 103:5, 112:4 tested - 21:24, 51:21, 53:5, 53:6, 58:4, 63:24, 67:23, 68:1, 68:2, 73:15, 73:18, 73:25, 74:4, 74:9, 74:11, 75:7, 75:9, 75:23, 76:2, 76:4, 76:9, 77:4, 77:6, 97:8, 97:10, 97:21, 102:24, 104:12, 106:2, 106:4, 106:6, 111:15, 112:8, 112:13, 112:20, 113:7 testified - 26:11, 48:3, 73:14, 79:12, 81:8, 81:10, 97:18, 104:17, 112:1, 117:22, 119:6 testifies - 105:7, 114:16 testify - 9:7, 9:8, 24:6,</p>
--	---	--	--

<p>25:5, 25:15, 105:25, 107:5, 107:8, 109:3, 109:4, 114:17, 117:21 testifying - 11:15, 78:2, 81:6, 100:23, 101:1, 102:15, 115:19 testimony - 5:4, 5:22, 18:16, 23:20, 25:24, 50:25, 108:24, 109:17, 110:16, 111:17, 111:25 testing - 22:2, 39:11, 53:4, 63:13, 65:14, 67:12, 67:14, 67:18, 67:19, 68:8, 69:25, 70:16, 74:13, 76:24, 77:1, 77:2, 80:24, 83:6, 83:18, 87:24, 89:3, 94:7, 97:24, 98:2 tests - 12:1, 50:17, 80:18 Texas- 1:11, 1:9, 1:23, 2:6, 2:7, 2:13, 2:16, 3:4, 7:15, 12:5, 24:12, 25:6, 48:9, 122:2, 122:6, 122:19, 122:22 themselves - 64:14, 65:5, 76:7 theory - 81:13, 114:12, 114:18, 115:6 therefore - 100:13, 106:19 they've - 72:11 thick - 19:11 thinking - 40:19, 40:21 thinks - 69:20 third - 18:24, 54:25, 55:2, 55:5, 55:15, 55:16 Third- 2:11 three - 46:17, 55:9, 73:22, 79:25, 82:3, 92:8 three-and-a-half - 79:25 throughout - 36:12, 60:10 throw - 118:14 thrown - 118:22 timesheet - 101:24 Tise- 2:3, 3:7, 3:16, 5:12, 6:4, 7:7, 12:23, 14:9, 14:13, 15:19, 15:20, 21:3, 21:13, 21:17, 23:11, 23:13, 26:2, 26:9, 26:13, 41:18, 47:11, 47:13, 47:17, 47:19, 48:1, 48:5, 55:13, 55:14, 55:15, 66:14, 66:15, 69:3, 77:18, 77:21, 100:1, 100:3, 101:19, 101:25, 105:6, 105:9, 105:14, 105:17, 105:19, 107:21, 111:21, 112:1, 112:18, 112:23, 114:2, 117:22, 120:6, 120:16 title - 109:1 today - 3:9, 5:18, 6:25, 8:12, 11:8, 11:21, 14:5, 22:6, 81:6, 87:14 together - 49:22, 85:14 took - 43:13, 44:9, 45:3, 52:4, 75:6, 75:9, 75:14, 76:24, 77:2, 77:3, 105:25 top - 32:13, 104:15, 106:12 total - 73:22 totally - 69:23 touch - 71:9, 71:23, 72:6, 72:15, 72:21 touched - 61:22, 68:6, 71:3, 72:11 touches - 71:20 touching - 71:8 training - 24:14, 24:15, 24:16, 26:21, 27:8, 27:10, 27:13, 27:17, 27:21, 48:18, 49:1, 80:11, 80:15, 81:12, 81:21 transcription - 122:7</p>	<p>transcription/stenograph - 1:25 transfer - 3:15 transferred - 4:3, 4:11, 5:16, 18:3, 27:2, 70:22 translate - 15:6 translated - 15:10 translations - 15:9 trapped - 65:21 Travis- 32:11, 32:14, 44:15, 44:18 trial - 9:9, 11:6, 11:10, 11:17, 13:3, 15:8, 22:8, 22:10, 22:15 Trial- 1:3 tried - 41:9 triggered - 29:20, 50:9 tropical - 61:13, 104:5, 106:11 trouble - 102:13 True- 117:20 true - 93:14, 95:8, 122:7 truly - 122:14 trust - 82:9 try - 29:4, 70:12, 100:5, 105:24, 109:11, 109:22, 116:15, 120:9, 120:17 trying - 22:11, 60:4, 62:3, 63:25, 89:8, 115:2, 115:3, 115:6, 116:16, 117:15, 118:24 tube - 42:25, 43:1, 43:25, 44:24, 47:2 tubes - 43:10, 43:20, 45:15, 46:24 turn - 5:7, 19:8, 66:8 turned - 17:2, 25:18, 119:13 turning - 42:2 Two- 72:21 two - 3:5, 8:20, 9:15, 11:21, 16:4, 43:20, 55:10, 55:13, 56:9, 62:2, 63:3, 63:12, 65:1, 72:15, 73:25, 74:9, 78:17, 86:13, 92:19, 97:5, 106:5, 108:5, 108:7, 109:13 type - 8:11, 64:18, 70:16, 94:7, 115:18, 118:7 types - 40:19, 62:2, 63:10, 65:2, 68:15, 73:20</p>	<p>unreliable - 116:8 unseal - 34:24 unsealed - 31:15, 104:9 up - 4:7, 10:4, 14:16, 20:20, 22:21, 40:14, 42:8, 44:15, 44:18, 47:22, 61:10, 63:19, 66:8, 66:11, 73:12, 74:9, 80:16, 88:2, 89:10, 95:16, 98:20, 98:24, 103:6, 106:3, 111:19, 121:2 updated - 6:18 updates - 6:22, 27:15 urine - 12:1</p> <p style="text-align: center;">V</p> <p>vaginal - 39:21, 43:19, 53:12, 53:17, 54:2, 54:9, 54:20, 55:4, 55:23, 56:21, 56:24, 59:2, 59:17, 62:7, 62:12, 63:8, 73:23, 74:1, 84:16, 92:2, 92:5, 92:13, 95:21, 106:9, 106:23 valid - 81:20, 81:23 variable - 72:9 variables - 72:12 various - 17:9, 41:10, 95:23 versus - 3:4, 89:9 via - 50:19 victim - 29:18, 36:7 vigilant - 16:10 virtually - 119:10 visit - 82:1, 89:16 Vitae - 1:23 voice - 47:22 Voir - 1:7, 1:17 voir - 10:21, 10:22, 10:23, 11:2 Vol - 1:3, 1:7, 1:17, 1:22 Volume - 1:2, 1:1, 1:16 volume - 122:10 Volumes - 1:2 voluminous - 14:25 Vs - 1:9</p>	<p>96:14, 96:17, 97:2, 97:5, 97:15, 97:23, 98:3, 98:7, 122:16 witness - 22:12, 23:12, 23:16, 41:18, 47:8, 47:12, 47:19, 66:14, 73:9, 73:12, 77:19, 93:4, 99:10, 99:13, 100:23, 101:1, 103:12, 115:5, 115:13, 115:19, 116:15, 116:16, 117:19, 117:25, 118:1 Witnesses - 1:7 witnesses - 6:3, 19:23, 21:18, 22:6, 114:14, 116:11, 116:14, 117:21 wondering - 77:6 Wood - 2:4, 3:7, 6:17, 7:4, 23:14, 24:5, 25:3, 25:10, 25:12, 78:1, 78:6, 79:9, 79:10, 79:14, 83:20, 83:22, 84:1, 84:8, 88:25, 93:3, 94:20, 98:16, 98:19, 98:23, 99:10, 99:15, 99:20 Word - 1:16 works - 24:6, 85:15, 96:10, 96:14, 96:18, 96:23 worksheet - 98:10 writ - 10:7 write - 81:3, 81:4 writer - 10:7 writing - 122:9 written - 11:23, 31:2, 42:3, 98:10, 103:6 Wt - 25:19</p>
	<p style="text-align: center;">U</p> <p>ultimate - 54:1 ultimately - 27:25, 58:9, 81:4, 90:14, 103:8 Ultimately - 39:10, 39:24 uncleared - 29:1 unclimate - 65:19 unclimate-controlled - 65:19 under - 8:2, 73:4, 73:5, 111:1, 115:7, 115:21, 116:13, 116:16 Under - 114:18 undergraduate - 80:6 unfavorable - 17:9, 31:22 uninterrupted - 27:3 unit - 37:19, 49:23 University - 80:7, 80:10 unknown - 54:9, 54:25, 55:2, 55:5, 55:15, 55:16, 55:21, 56:10, 56:22, 56:23, 57:6, 57:14 unless - 12:24, 99:22, 106:12, 115:14 Unless - 69:6 unlikely - 104:22 unrelated - 60:4, 60:7</p>	<p style="text-align: center;">W</p> <p>wait - 99:24 waive - 99:23 Wallace - 98:2, 98:12, 100:21, 100:22, 101:9, 102:7, 107:4, 108:11, 108:13, 108:15, 110:24, 111:5, 113:23, 114:4 Wallace' - 101:7 Walsh - 3:7 wants - 17:13 wash - 62:18, 62:23 Washington - 80:10, 110:9 watching - 80:16 water - 31:24, 33:13 Webb - 78:15, 86:10 Wednesday - 120:12, 120:18 week - 120:10, 120:12 weeks - 110:12 wet - 61:14, 104:5 whole - 8:10, 64:18, 112:10, 118:8 wide - 85:17 wish - 109:14 withhold - 119:22 Witness - 1:17, 26:3, 26:7, 46:11, 47:18, 47:24, 55:12, 69:9, 73:19, 74:5, 74:11, 74:21, 74:25, 75:6, 75:13, 75:18, 75:25, 76:4, 76:11, 76:15, 77:10, 77:15, 77:23, 79:6, 79:8, 88:24, 96:10,</p>	<p style="text-align: center;">Y</p> <p>y'all - 40:20, 67:11, 68:10, 69:25 year - 27:12, 49:2 years - 26:24, 27:3, 28:18, 48:22, 68:16, 68:21, 69:1, 79:25, 82:3, 93:13, 97:7, 101:23, 102:12, 116:25 yourself - 66:2, 79:17, 93:22</p> <p style="text-align: center;">Z</p> <p>ziploc - 31:8, 31:11, 31:14, 75:20 zipped - 31:16</p>