

FILED

14 SEP 12 PM 1:49

SONYA KRASKI  
COUNTY CLERK  
SNOHOMISH CO. WASH



CL16774378

SUPERIOR COURT OF WASHINGTON  
FOR SNOHOMISH COUNTY

FILED  
Sept 16, 2014  
Court of Appeals  
Division I  
State of Washington

THE STATE OF WASHINGTON,

Plaintiff,

v.

EARL, Brandon J.,

Defendant.

72685-4

No. 12-1-00034-9

ORDER TRANSFERRING MOTION  
FOR RELIEF FROM JUDGMENT

(CLERK'S ACTION REQUIRED)

This matter came before the court pursuant to CrR 7.8(c)(2), for initial consideration of the defendant's Motion for New Trial. The court has considered the documents listed below. Being fully advised, the court hereby concludes and orders as follows:

**I. CONCLUSIONS OF LAW**

1. The defendant's motion is not time barred by RCW 10.73.090.
2. The defendant has not made a substantial showing that the defendant is entitled to relief.
3. Resolution of the defendant's motion will not require a factual hearing.

**II. ORDER**

1. Pursuant to CrR 7.8(c)(2), the defendant's Motion for Relief from Judgment is transferred to the Court of Appeals for consideration as a personal restraint petition.

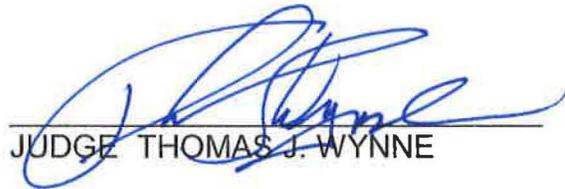
ORIGINAL

2. The clerk of this court shall transmit copies of the following to the Court of

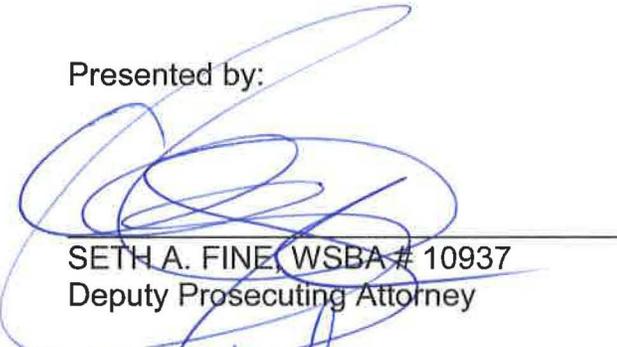
Appeals:

- a. This order;
- b. Motion for New Trial (sub no. 137).
- c. State's Motion to Transfer Motion For Relief From Judgment (sub no. 139).
- d. Response to State's Motion for Transfer of Defendant's Motion for New Trial

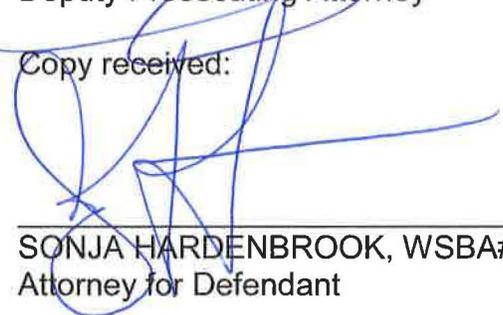
(filed 8/6/14) *e. updated caselaw Hawkins & Davila.*  
*137* *SEPT*  
Entered this 13<sup>th</sup> day of ~~August~~ *SEPT*, 2014.

  
\_\_\_\_\_  
JUDGE THOMAS J. WYNNE

Presented by:

  
\_\_\_\_\_  
SETH A. FINE, WSBA # 10937  
Deputy Prosecuting Attorney

Copy received:

  
\_\_\_\_\_  
SONJA HARDENBROOK, WSBA# 35386  
Attorney for Defendant

FILED

2014 AUG -6 AM 9:38

RECEIVED

AUG 06 2014

PROSECUTING ATTORNEY  
FOR SNOHOMISH COUNTY

BY \_\_\_\_\_  
FOR \_\_\_\_\_

SONYA KRASKI  
COUNTY CLERK  
SNOHOMISH CO. WASH

ORIGINAL



CL17015277

STATE OF WASHINGTON

SUPERIOR COURT OF WASHINGTON FOR SNOHOMISH COUNTY

STATE OF WASHINGTON.

Plaintiff.

vs.

EARL. BRANDON J.

Defendant

) Case No.: 12-1-00034-9

) RESPONSE TO STATE'S MOTION FOR  
) TRANSFER OF DEFENDANT'S MOTION  
) FOR NEW TRIAL ON THE BASIS OF  
) NEWLY DISCOVERED EVIDENCE

**I. DECLARATION OF COUNSEL**

I, Sonja Hardenbrook, am the attorney appointed to represent the defendant, and declare:

1. The State invites the Court to rely upon the facts as laid out in the recent Court of Appeal decision in order to refresh its memory about the testimony at Mr. Earl's trial. However, the unpublished Court of Appeal decision was incorrect on several of the facts:

A. "That night, M.F. went straight to bed and slept in the clothes she had worn that day." P3. In fact, all testimony was to the contrary. M.F. got herself

RESPONSE TO STATE'S MOTION FOR  
TRANSFER OF DEFENDANT'S MOTION  
FOR NEW TRIAL ON THE BASIS OF NEWLY  
DISCOVERED EVIDENCE

Snohomish County Public Defender Association  
1721 Hewitt Ave., Suite 200  
Everett, WA 98201  
425-339-6300

140

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

undressed and went to bed in different clothing on the night of the alleged incident. 13-16 RP 337.

B. "Two days later, December 26, 2010, the mother took M.F. to a sexual assault examination in Everett. M.F. made allegations consistent with her report to her grandmother that Earl had orally raped her." P 3. This is also incorrect and unsupported by the trial record. Nurse Dale Fukura saw M.F. on December 28, 2011 – four days after the alleged incident. 10 RP 394. And M.F. made no disclosures to Nurse Fukura. 14-17 RP 397.

C. "[Mr. Earl] gave conflicting statements about whether the contact with her vaginal area was over or under M.F.'s clothing." This is also incorrect. Mr. Earl consistently maintained that he only touched M.F.'s genital area over her clothing and accidentally, while blowing raspberries on her bare tummy. In fact, this was so clear at the trial level that the Court agreed to give a defense instruction clarifying that contact between mouth and clothed genitals would not meet the elements of the crime charged.

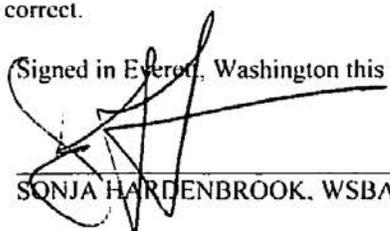
D. "The mother long ago forgave the abuser, who is now a welcomed member of the family." P9. Again, the record lacks any support for this assertion. In contrast, were the defense allowed to go into that issue, April Mathis would have testified that she was very bothered that her family forgave her uncle/abuser, that she did not want him around her children at all, and that she was bothered by his coming to family events. Ms. Mathis has not forgiven nor welcomed her uncle back into her life. See transcript of defense interview Appendix A, specifically pages 78-80.

2. The State also presents the Court with a declaration from WSP Supervisor Lorraine Heath. Ms. Heath's declaration was incorrect in that she did not personally observe all of Mr. Lin's testimony in this case. Ms. Heath was not present in at trial on Friday

1 February 1, 2013 at all. Counsel was present in the courtroom and never saw Ms.  
2 Heath, because Ms. Heath was not present. On Friday February 1, 2013 the court  
3 heard the start of Mr. Lin's direct and the initial half of the foundational hearing that  
4 determined whether or not the jury could hear about YSTR-DNA from Mr. Lin. See  
5 Appendix B for the content of the February 1 testimony of Mr. Lin. Ms. Heath was  
6 present in court on Monday February 4<sup>th</sup>. 2013 when Mr. Earl's trial resumed after  
7 the weekend break. See Appendix C for the content of the February 4, 2013 testimony  
8 of Mr. Lin. Ms. Heath's declaration also appears to factually conflict with documents  
9 she and her peers authored about Mr. Lin's performance from 2009-2013, which were  
10 exhaustively discussed and attached to the original Motion for New Trial.

- 11 3. It is undisputed that the Snohomish County Prosecutor originally declined to file  
12 charges in this case, going so far as to author a decline notice. RP 190-192. The  
13 prosecutor did not actually charge the case until it received the DNA results from Mr.  
14 Lin, approximately 1 year after the incident itself. Although the defense asked the  
15 court to compel the decline notice, the court declined to do so during the trial.  
16 However, the existence of the decline notice and the timing regarding the DNA  
17 evidence is undisputed.
- 18 4. On July 29, 2014 counsel received the final batch of documents in response to the  
19 public disclosure request to the Snohomish County Prosecutor. Counsel personally  
20 reviewed the documents and they contained no new information of relevance to this  
21 issue

22 I certify under penalty of perjury under the laws of the State of Washington that the  
23 foregoing is true and correct.

24  Signed in Everett, Washington this 5<sup>th</sup> day of August, 2014.

25  
26 SONJA HARDENBROOK, WSBA #35386

RESPONSE TO STATE'S MOTION FOR  
TRANSFER OF DEFENDANT'S MOTION  
FOR NEW TRIAL ON THE BASIS OF NEWLY  
DISCOVERED EVIDENCE

Snohomish County Public Defender Association  
1721 Hewitt Ave., Suite 200  
Everett, WA 98201  
425-339-6300

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**II. ARGUMENT**

The State concedes that defendant's motion is timely under RCW 10.73.100 and then argues that transfer to the Court of Appeal is required due to: CrR7.8(c)(2)(i) failure to make a substantial showing Mr. Earl is entitled to relief; and CrR 7.8(c)(2)(ii) resolution of the motion will require a factual hearing. The State's argument under CrR7.8(c)(2)(i) focuses on the alleged deficiency of Mr. Earl's proof on two of the *Williams* factors: 1) that the newly discovered evidence would change the result of trial; and 5) the newly discovered evidence is not merely cumulative or impeaching. The State apparently concedes that Mr. Earl has met *Williams* factors 2-4: 2) the newly discovered evidence was only discovered after trial; 3) the newly discovered evidence could not have been discovered before trial by the exercise of due diligence; 4) newly discovered evidence is material. This is exactly the same position the State took on the *Roche* case, where it argued "that Roche ha[d] failed to establish that the evidence would probably change the result of the trial, and the State also contends that the evidence is merely impeaching. *State v. Roche*, 114 Wash.App. 424, 436 (2002). The State also assumes that the defense is not requesting a new trial on the basis of *Brady* violations. This is incorrect. The defense is contending that it is entitled to a new trial because of Newly Discovered Evidence and *Brady* violations. The defense will address each of the State's two contentions (*Williams* factors 1 & 5) in turn.

**A. Earl has made a Substantial Showing That He Is Entitled To Relief Per CrR 7.8(c)(2)(i)**

**1. The Newly Discovered Evidence Would Change the Result of Trial**

If Mr. Earl is given a new trial, the State would face incredible obstacles in attempting to admit any expert testimony by Mr. Lin, due to his lack of qualifications as flushed out by recently revealed employment records. The Court conducted a lengthy and detailed foundational hearing the first time Lin was offered as a witness on YSTR-DNA, and for a future trial there would be even more reason to doubt his qualification and for the court to disallow his testimony.

1           There is also the significant issue of whether Lin's handling of the evidence would defeat  
2 the chain of custody. Surely without his testimony at all, the State could not admit the DNA  
3 evidence. The instant case is akin to the *Roche* case, where the appellate court found that were  
4 *Roche* reversed for a new trial, the State was unlikely to even retry the case since it was already  
5 declining to charge other cases involving the same forensic scientist, due to chain-of-evidence.  
6 If the State is deprived of the DNA evidence, by rigorous pretrial hearings on Mr. Lin's  
7 qualifications and chain-of-custody, then it is unlikely to proceed to trial against Mr. Earl a  
8 second time. Even were it to proceed, Mr. Earl is very likely to prevail at trial when there is no  
9 DNA evidence upon which the jury can rely. Even were the State to successfully admit the DNA  
10 evidence with discredited forensic scientist Lin, Mr. Earl would have aid of the records  
11 previously undisclosed in violation of *Brady* to show that his defense theory was correct, that  
12 Mr. Lin is a sub-par scientist no longer employed by WSP, who has testified incorrectly in the  
13 past, been dishonest with supervisors, and likely contaminated the evidence due to  
14 incompetence. The jury in Mr. Earl's case deliberated for an entire day on a 6 day trial – they  
15 did not come to their decision easily or lightly. A lack of DNA would be a significant change in  
16 the case and go far towards Mr. Earl's acquittal. In the current post-CSI<sup>1</sup> culture, juries in sex  
17 cases expect and heavily rely on scientific evidence – particularly DNA. When the expertise of  
18 the individual testifying about the DNA match is in jeopardy, the State is deprived of its most  
19 powerful evidence and Mr. Earl will probably achieve acquittal.

20           The State and Ms. Heath contend that because there was male DNA found in the  
21 unknown sample prior to Mr. Lin handling the samples, that Mr. Lin could not possibly have  
22 contaminated them. Their argument fails for two reasons. First, the Court of Appeal faced a  
23 similar situation in *Roche*. In that case, the police had done a preliminary NIK test of the  
24 suspected controlled substance and taken a photograph of the packaging prior to impounding the  
25

26 <sup>1</sup> Crime Scene Investigation is a popular crime television drama that chronicles the daily events  
of a fictitious crime lab in various American cities and has exposed civilians to all the wonders of  
forensic science, some real and much created solely for television.

1 evidence. The State argued that it could meet chain of custody given the presumptive positive on  
2 the NIK and comparisons the jury could make between the evidence at trial and the photograph  
3 taken by the police at the time of the seizure. essentially bookending the time the drugs spent  
4 with the discredited forensic scientist. *Roche*, 114 Wash.App. at 437 The *Roche* court found that  
5 this was insufficient to remedy the chain-of-custody problem, and that even re-testing could not  
6 solve the problem because the State would still have to establish the sanctity of the chain-of-  
7 custody while in the forensic scientists hands during initial testing, which it could not do. *Id.* At  
8 438-439. Second, the State and Ms. Heath fail to address the possibility that Mr. Lin did  
9 introduce Mr. Earl's DNA into the unknown sample, but in an amount greater than the amount of  
10 unknown DNA previously identified, such that during amplification the dominant DNA (Mr.  
11 Earls) took over, as can happen during amplification. Because this possibility exists within  
12 science and the facts of this case, the mere fact that Ms. Hoffman detected *some* male DNA prior  
13 to providing the samples to Mr. Lin does not exclude the possibility that Mr. Lin introduced Mr.  
14 Earl's DNA at such high quantities that it took over the sample. That is especially concerning  
15 where as in this case, Mr. Lin performed amplification of Mr. Earl's known sample and the  
16 unknown sample in the same amplification batch. 11 RP 778.

17  
18 **2. The Newly Discovered Evidence Is Not Merely Impeaching, but Goes To  
Admissibility of Essential State Evidence**

19 The Snohomish County Prosecuting attorney chose not to file charges against Mr. Earl  
20 until it had the DNA result, as determined by Mr. Lin. Thus, the State determined that it could  
21 not go forward with charges absent DNA. This flies in the face of the State's current contention,  
22 that the DNA was merely corroborative evidence. In fact, the DNA was the cornerstone of the  
23 State's entire case. The prosecutor would not have charged the case without DNA and the State  
24 could not have proved its case without the DNA. Due to the newly discovered evidence, Mr. Lin  
25 may not be able to offer expert testimony at trial, much less satisfy the chain-of-custody required  
26 for admission of the DNA evidence. Without the DNA the State would be returned to the pre-

1 filing position, where they previously declined to file charges. This is persuasive evidence that  
2 the DNA is vital to the State's case, that new evidence going to the admission (or not) of the  
3 DNA goes well beyond mere impeachment evidence and that acquittal would be likely upon  
4 retrial.

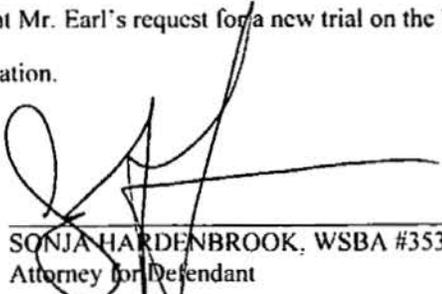
5  
6 **B. Resolution of Earl's Motion for New Trial Will Require A Factual Hearing Per  
CrR 7.8(c)(2)(i)**

7 The trial court is in the best position to address the merits of Mr. Earl's argument for a  
8 new trial. By setting a Show Cause date the court would be able to re-review the entire record of  
9 Mr. Lin's foundational and trial testimony, and hear the testimony of any State or defense  
10 witnesses to further explain the DNA issues involved. The defense would like the opportunity at  
11 minimum to cross examine Ms. Heath as to the many inconsistencies between her declaration  
12 and Mr. Lin's employment records, as well as to make an additional request for a copy of the  
13 decline notice. The Court of Appeals will be restricted to the record created and compiled by the  
14 trial court, we owe it to them to do a thorough examination of the issues and fully flush out the  
15 factors for consideration under *Williams*. Only then can they have a completed record to review.

16  
17 **CONCLUSION**

18 Mr. Earl has made a substantial showing that he is entitled to relief by addressing all five  
19 *Williams* factors. Consequently, the Court should hold a factual hearing. Under CrR 7.8(c)(3)  
20 the court should "enter an order fixing a time and place for hearing and directing the adverse  
21 party to appear and show cause why the relief asked for should not be granted." CrR 7.8(c)(3).  
22 At that future hearing, the Court should grant Mr. Earl's request for a new trial on the basis of  
23 Newly Discovered Evidence and *Brady* violation.

24 Dated this 5<sup>th</sup> day of August 2014.

25  
26   
SONJA HARDENBROOK, WSBA #35386  
Attorney for Defendant

RESPONSE TO STATE'S MOTION FOR  
TRANSFER OF DEFENDANT'S MOTION  
FOR NEW TRIAL ON THE BASIS OF NEWLY  
DISCOVERED EVIDENCE

Snohomish County Public Defender Association  
1721 Hewitt Ave., Suite 200  
Everett, WA 98201  
425-339-6300

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**APPENDIX A**

RESPONSE TO STATE'S MOTION FOR  
TRANSFER OF DEFENDANT'S MOTION  
FOR NEW TRIAL, ON THE BASIS OF NEWLY  
DISCOVERED EVIDENCE

Snohomish County Public Defender Association  
1721 Hewitt Ave., Suite 200  
Everett, WA 98201  
425-339-6300



1 (0:53)  
2 TR: Okay. As an adult, only Washington?  
3 AM: Correct.  
4 TR: And legally have you gone by any names other than April Mathis?  
5 AM: No.  
6 TR: And what do you do for a living? What is your profession?  
7 AM: Cocktail server. And real estate.  
8 TR: Are you a real estate agent?  
9 AM: Correct.  
10 TR: Okay. And what's your current address?  
11 AM: 9627 Chappell Hill Road, Lake Stevens.  
12 TR: And who lives at that address with you?  
13 AM: Myself, my boyfriend Jorge, Mia and Brody which are my two kids, and then  
14 Steven and Wilmer which are Jorge's kids.  
15 TR: And Jorge is Mia's father?  
16 AM: Mia and Brody, yes.  
17 TR: So he's Jorge Fuentes?  
18 AM: Correct.  
19 TR: And Steven and Wilmer, is their last name Fuentes as well?  
20 AM: Correct.  
21 TR: And how old are each of the children?  
22 AM: Wilmer is 8 or 9 and Steven is 12.  
23 TR: And how old is Brody?  
24 AM: 2-1/2.  
25 TR: And how long have the one, two, three, four, five, six of you been living together?  
26 How long has it been?  
27 AM: Just a couple months actually. Jorge's two boys just came two months ago to live  
28 with us.  
29 TR: And prior to Wilmer and Steven coming to live with you, how much contact did  
30 Mia have with them?  
31 AM: She's seen them maybe two times. They stayed for a month during the summer  
32 and then they stayed for a week or two another time a year ago.  
33 TR: Okay, so the summer when they stayed for a month, what year was that?

1 (2:56)  
2 AM: That was this...2012.  
3 TR: That's in 2012. And then the time they visited for a week, what year was that?  
4 AM: 2009? Let's see...Yeah, 2009.  
5 TR: Okay. And where did... Steven and Wilmer I assume lived with their mom  
6 before they came to live with you?  
7 AM: Correct.  
8 TR: Where was that? Was that local or did they...?  
9 AM: California.  
10 TR: Lived in California. And what are the circumstances of their coming to live with  
11 you? Do you know what that situation is or is that something your husband  
12 knows more about?  
13 AM: Um...  
14 TR: Or I'm sorry, your boyfriend.  
15 AM: Yeah. That's...Their dad has custody of them now.  
16 TR: Okay. So this is a permanent arrangement.  
17 AM: Correct.  
18 TR: And Mia, how old is she?  
19 AM: She is 5.  
20 TR: Now the case we're here to discuss involves a family get-together and it's a little  
21 complicated and hard to understand because I think there's two Sherry's for one.  
22 So I'd like to just go over the family and how everyone is related to everybody.  
23 So who are your parents?  
24 AM: My parents are Tim and Sherry Mathis.  
25 TR: Okay. And where do they live?  
26 AM: They live in Granite Falls.  
27 TR: Okay. And Brandon Earl, how is he related to your family?  
28 AM: Before he was married to my cousin, Stephanie...Before that he was kind of like a  
29 second family. You know, my family always hung out with their family kind of  
30 thing.  
31 TR: So he was a family friend?  
32 AM: Yeah, a family friend, and then he ended up marrying my cousin Stephanie.  
33 TR: How did he meet your cousin Stephanie? Was it through the family connections?

1 (5:03)

2 AM: Yeah.

3 TR: Okay.

4 AM: I think he was a...I guess he was a stepchild through that family, something. It's  
5 not blood-related, it's all...

6 TR: Okay. So Stephanie's...Who are Stephanie's parents?

7 AM: Sheri Morrow and her stepdad, Dennis Morrow.

8 TR: And is it through Sheri Morrow or Dennis Morrow that Stephanie's related to  
9 you?

10 AM: Sheri.

11 TR: Okay. So Sheri ...and who is... So Sheri Morrow I assume must be the sister of  
12 Tim Mathis?

13 AM: Correct.

14 TR: Okay. And Sheri Morrow, before she married, was a different Sheri Mathis?

15 AM: Yeah, she was a Sheri Mathis as well before she got married.

16 TR: Now the two Sherry's, are they spelled the same?

17 AM: No. My mom is S H E R R Y. And Aunt Sheri is S H E R I.

18 TR: Okay. That should help. So do you have other local aunts and uncles besides  
19 Tim and Sheri? Or Dennis and Sheri?

20 AM: Oh yeah.

21 TR: And who are they?

22 AM: Um...I have a... Mike and Debbie Mathis out of Everett. And a Pam and Mick  
23 Sawka.

24 TR: Is that Nick or Mick?

25 AM: Mick. M I C K. They're separated.

26 TR: How do you spell Sawka?

27 AM: S A W K A.

28 TR: And when they were together where did they live?

29 AM: Snohomish for the most part.

30 TR: Okay. And they're related to, I assume... Mike and Debbie Mathis, you're blood-  
31 related to Mike Mathis.

32 AM: Correct.

33 TR: And he is the brother of Tim Mathis?

1 (6:54)  
2 AM: Correct.  
3 TR: And therefore also the brother of Sheri Morrow.  
4 AM: Correct.  
5 TR: Okay. And I would guess that you're blood-related to Pam Sawka?  
6 AM: Yes.  
7 TR: And who is she related...  
8 AM: To my dad.  
9 TR: Okay.  
10 AM: Yeah. It's pretty much all my dad's side of the family.  
11 TR: Okay. And now do you have a grandmother who lives locally as well?  
12 AM: Um...yeah. She likes to bounce around. Virginia Kuhl.  
13 TR: C O O L?  
14 AM: K U H L.  
15 TR: Okay. And does she go by Jennie?  
16 AM: Mmm hmm (yes).  
17 TR: So when someone's talking about Grandma Jennie, they're talking about Virginia  
18 Kuhl?  
19 AM: Yes. Yes.  
20 TR: Okay. And I assume there are also additional cousins through all these....  
21 AM: Oh yeah. And then we have Randy and Sue Lutz(?), our other aunt and uncles.  
22 TR: Randy and Sue Lutz?  
23 AM: Lutz. Yeah. And Randy is my mom's brother. Sue is related to Brandon  
24 somehow. That's where it starts getting....yeah.  
25 TR: Okay.  
26 AM: And Debbie Mathis is related to Brandon somehow. I think it's by step kids.  
27 TR: Okay. And Randy and Sue Lutz are local?  
28 AM: Yeah.  
29 TR: And how often do you see all these people? Are there some that you see more  
30 often than others?  
31 AM: Um...I see my Aunt Sheri often, and Dennis. They're like second parents to me  
32 and my brother. We're really close with them. The rest of the people, holidays.  
33 Randy and Sue, maybe twice a year. Events.

1 (8:54)  
2 TR: But with your Aunt Sheri and Dennis, much more frequent?  
3 AM: That's regular, yeah.  
4 TR: Now you mentioned you have a brother?  
5 AM: Mmm hmm (yes). Dwayne Mathis.  
6 TR: D W A Y N E?  
7 AM: Correct.  
8 TR: Any other siblings?  
9 AM: No.  
10 TR: And how often do you see Dwayne? Does he live locally?  
11 AM: Correct. Yeah. I see him often.  
12 TR: And how often is often? Once a month? Once a week?  
13 AM: Probably once a month.  
14 TR: Okay.  
15 AM: Talk to him on the phone more.  
16 TR: And does he have kids?  
17 AM: No.  
18 TR: Okay. So how old was Brandon Earl when you first met him?  
19 AM: Probably like 9, 10.  
20 TR: And up to the point... And how old were you when you met him? How old were  
21 you?  
22 AM: I would say I was about the same age.  
23 TR: And did you guys play together as kids?  
24 AM: Um...yeah. They'd have family functions and we'd see each other and I wouldn't  
25 say play but hang out during the family function or whatever.  
26 TR: And so while the two of you were kids, how often would you guys see each  
27 other?  
28 AM: Maybe once a month. Might not be even that.  
29 TR: And just from being kids together, did you ever form any strong opinions about  
30 Brandon?  
31 AM: No.  
32 TR: And Brandon also was around Stephanie at that same age?  
33 AM: Correct.

1 (10:40)  
2 TR: Okay. So they've known each other since childhood.  
3 AM: Right.  
4 TR: And do you remember when they were married? When Brandon and Stephanie  
5 got married?  
6 AM: Mmm hmm (yes).  
7 TR: What ...Approximately what year was that?  
8 AM: I think that was 2007.  
9 TR: And were you at the wedding?  
10 AM: Yeah, I was in their wedding.  
11 TR: Were you in the wedding party?  
12 AM: I was a bridesmaid, yeah.  
13 TR: Okay. And did you have any strong opinions about Stephanie marrying Brandon?  
14 AM: No, not really. I mean...  
15 TR: I mean I assume as a bridesmaid you must've been close to Stephanie.  
16 AM: Yeah, we were very close while growing up.  
17 TR: And were you close enough that if you had any objections to her marrying  
18 Brandon or had any reservations about Brandon that you would've communicated  
19 those to her?  
20 AM: I think so.  
21 TR: And did you ever communicate any discomfort or uncertainties about Brandon to  
22 her?  
23 AM: No.  
24 TR: Okay. So now talk to me about Mia. What kind of child is Mia?  
25 AM: Um...Mia. She is a very...Like her preschool teacher said, "She has no problem  
26 telling people what she likes or doesn't like and how she feels." She's very  
27 assertive. She's really shy in groups. Very shy in groups. She doesn't like the  
28 spotlight on her. But as far as one or two people, oh yeah, she'll sing me some  
29 songs and...  
30 TR: There are some kids who like to be the center of attention always. Is she one of  
31 those kids?  
32 AM: No. Maybe the center of grandma's attention, but, you know...or mine. But  
33 that's about all.

1 (12:50)  
2 **TR:** And how does she get along with her brothers...or her brother, Brody?  
3 **AM:** Good. Really good. Very caring for him.  
4 **TR:** Is she involved a little bit...I mean I know she's only 5, but is she involved a little  
5 bit in taking care of him?  
6 **AM:** Oh yeah. Oh yeah. She likes to get him dressed and do his hair.  
7 **SH:** He's a doll.  
8 **AM:** Yeah, pretty much. And he likes it.  
9 **SH:** Give him a few years.  
10 **AM:** I know, right?  
11 **TR:** He's a little too young to object. So she dresses him, does his hair. When she  
12 dresses him is it in just normal clothes or costumes?  
13 **AM:** Yeah, it's normal clothes. She likes to pick his clothes.  
14 **TR:** And does she....Does she actually play with him?  
15 **AM:** Um...yeah. They'll do like... I mean as long as he can last with the same stuff.  
16 She's constantly out there riding bikes with him and scooters. They'll kick the  
17 ball back and forth together. And, you know, other activities that he's not quite  
18 into yet.  
19 **TR:** Now with Wilmer and Steven being sort of a recent addition to the home, how has  
20 she dealt with that transition?  
21 **AM:** She's really good. Very good. A lot better than I would have expected. She's  
22 pretty close with them. Fight as well, just like brother and sister with a 9 year-  
23 old. I'm like "oh boy, just wait until Brody gets older." But is very loving at the  
24 same time.  
25 **TR:** So her disagreements are with Steven? Not Wilmer?  
26 **AM:** No, her disagreements are with Wilmer, the younger one.  
27 **TR:** Oh, is Wilmer the younger one, I'm sorry.  
28 **AM:** Yeah. My cookie, your cookie. My ball. I want to play and you don't. It's my  
29 turn on the computer.  
30 **TR:** But you say that the adjustment went better than expected.  
31 **AM:** Yeah.  
32 **TR:** What were you expecting?  
33

1 (14:48)  
2 AM: Well I guess I would've expected more...since attention was taken away from  
3 Mia and Brody and some put on them, I guess I would've expected more like, you  
4 know....  
5 TR: Acting out?  
6 AM: Yeah. Trying to get more att... It's just not like that. They're all very loving.  
7 They both love the boys. So that's good.  
8 TR: Now my understanding from the police reports that we've looked at is that  
9 ...During a certain period of time Jorge was in the Federal Detention Center in  
10 Tacoma on some sort of immigration hold?  
11 AM: Immigration detention center, yeah.  
12 TR: How did that...How did he happen to wind up there?  
13 AM: Um...He got pulled over for like no tabs, something stupid, and they took him.  
14 TR: Where was he pulled over?  
15 AM: Kirkland.  
16 TR: Was he taken directly from Kirkland to Tacoma?  
17 AM: I'm pretty sure. I think so.  
18 TR: Okay. And how long was he held in the INS...I'll just call it the INS Detention  
19 Facility. I know it has a different name.  
20 AM: It was close to a year. Like 10 months or something. And then he...He was able  
21 to stay and got his permission to stay.  
22 TR: Did you have to hire a lawyer?  
23 AM: Yeah.  
24 TR: And so once he was released... So he was held ... Do you know when it was that  
25 he went in?  
26 AM: Yeah. It was just after my son was born. And he was born in June 2010. I think  
27 he was there for Mia's birthday in July. So it was probably July/August of 2010.  
28 TR: Now I assume prior to his being put in the detention facility did he live...Did you  
29 guys have a household together?  
30 AM: Right.  
31 TR: And you both contributed to the support of the household?  
32 AM: Right.  
33 TR: So when he was taken away, did that cause some financial hardship?

1 (17:11)  
2 AM: Oh yeah.  
3 TR: And I can't imagine it wouldn't have.  
4 AM: Oh yeah.  
5 TR: So how did you get through that?  
6 AM: Um...I had got state assistance. I went back to work 'cause I wasn't working at  
7 the time, I just had the baby so I went back to work. And got state assistance.  
8 And managed.  
9 TR: And I assume Brody's probably too young to really understand what was  
10 happening. I mean he was 2 months old.  
11 AM: Oh yeah, he has no idea.  
12 TR: What about Mia? Did she know where dad went?  
13 AM: She...Yeah, no, she didn't really understand at first. We went to visit and I'm  
14 thinking it must've been...all the sudden she did. "Is dad in jail?" "How do you  
15 know what jail is?" So yeah, she understood.  
16 TR: Okay. How did it affect her not having dad anymore?  
17 AM: She was really upset. She was very upset. You know, leaving was...that was  
18 hard.  
19 TR: Leaving? You mean during a visit?  
20 AM: Yeah.  
21 TR: Okay.  
22 AM: She wanted to actually touch him. You know, it was a glass window. That was  
23 her hard thing is "Why can't he hold me? Why can't I go see him?" So...Other  
24 than that she was okay.  
25 TR: And what was her relationship with Jorge like? How close were they?  
26 AM: Very close. She's daddy's little girl.  
27 TR: And when Jorge was finally released from the INS Detention Facility, he rejoined  
28 the household?  
29 AM: Mmm hmm (yes).  
30 TR: And how long ago was that?  
31 AM: Um...It must've been...Maybe April of 2011?  
32 TR: And I understand that these are rough dates. We're not holding you to the exact  
33 date or anything like that. And what was Mia's response when he came home?

1 (19:10)  
2 AM: She ran up to him and, yeah, did the jump in his arms.  
3 TR: Okay. So I understand she was upset while he was gone. Any other  
4 manifestations of anything, any other impacts that you remember on Mia about  
5 dad not being there?  
6 AM: No.  
7 SH: Who took care of Mia when you had to go back to work?  
8 AM: A preschool, a church preschool in Lake Stevens.  
9 SH: Is that where she is now?  
10 AM: No. She's in kindergarten now.  
11 TR: Now how close is Mia to all these other relatives? Does she have any favorites?  
12 AM: She really...she adores Aunt Sheri. They're not super close but she adores her.  
13 Very close with my mom and dad. And then that's pretty much it. She likes  
14 going to Jeff and Melissa's, which is...where my brother lives...which is...Jeff is  
15 my blood cousin. And they have a 6, 7 year-old son.  
16 TR: Now did she ever spend time alone with Aunt Sheri? Like would Aunt Sheri do  
17 things one-on-one with her?  
18 AM: No, but Aunt Sheri watched her like once or twice.  
19 TR: Okay. And what about your mom and dad?  
20 AM: Oh, all the time. One-on-one watching. Spending the night.  
21 TR: Spending the night?  
22 AM: Oh yeah.  
23 TR: Okay. What kind of things did Mia like to do for fun?  
24 AM: The beach. Likes to go play in the sand.  
25 TR: Has that always been so?  
26 AM: Oh yeah. We would spend hours in the sand just playing. Imagination Museum.  
27 TR: Is that a place?  
28 AM: Yeah. Children's Museum in Everett. It's a big hit.  
29 TR: Oh, the one right here downtown  
30 AM: Uh huh (yes).  
31 TR: The kind of fancy looking one.  
32 AM: Yeah.  
33 TR: Does she watch T.V.?

1 **(21:16)**  
2 **AM:** Yep.  
3 **TR:** Does she have favorite programs?  
4 **AM:** PBS. Sprouts(?). But she's too old for Sprouts now she says.  
5 **TR:** Oh does she now? And Sprouts, is it live action? Is it a cartoon? Is it puppets?  
6 **AM:** Sprouts is toddler kind of learning channel.  
7 **TR:** Okay, but the programming that's shown on it, is it a mix of all these...You  
8 know, is it live action?  
9 **AM:** Usually cartoon characters. Caillou(?). Dora.  
10 **TR:** Caillou? C A I L L O U? You're a parent, do you know?  
11 **AA:** It's either one L or two, but yeah.  
12 **TR:** I don't know why I know that. It's from my past career as a spelling champion.  
13 So Dora the Explorer. Anything else? Any other cartoon characters that she  
14 really likes?  
15 **AM:** Um...anything that's cute. She's kind of at the stage that she wants everything  
16 right now.  
17 **TR:** Hello Kitty? Does she like Hello Kitty?  
18 **AM:** Oh yeah. Hello Kitty is huge.  
19 **TR:** And when she was... How old was she when you started letting her... Or I  
20 shouldn't say started letting her. When she showed an interest in watching  
21 television?  
22 **AM:** Um...She didn't really watch television on a regular basis until probably about  
23 last year. We found a couple good learning shows and then that's pretty much it.  
24 **TR:** And did you... I mean some parents intentionally restrict kids' access to  
25 television. Is that what the situation was? Or did she just have...  
26 **AM:** Oh yeah. They're not allowed to watch... They're not allowed to watch like Tom  
27 & Jerry or... I never thought I'd be that kind of parent, but...  
28 **TR:** Right, right. But just television in general, even educational television, did you  
29 sort of limit her exposure to that when she was younger?  
30 **AM:** Oh yeah. Yeah.  
31 **TR:** So you're assessing her development and seeing when it's a good time to expose  
32 her to these sorts of things?  
33 **AM:** Right.

1 (23:28)  
2 TR: Okay.  
3 AM: Don't want her just sitting there like a blob watching T.V.  
4 TR: Okay. Now how often does she get together with her cousins?  
5 AM: Um...Usually every holiday. Maybe add a few times here and there.  
6 TR: And by "holiday"? Christmas? Thanksgiving? 4<sup>th</sup> of July?  
7 AM: Easter. Yeah. Pretty much everyone.  
8 TR: Not Labor Day? Not the... Just the regular family get-together holidays?  
9 AM: Yeah.  
10 TR: Okay. And does she like playing with her cousins? Does she like seeing her  
11 cousins?  
12 AM: Oh yeah. Oh yeah.  
13 TR: And what about...Does she have friends her own age?  
14 AM: Um...yeah, a few.  
15 TR: Do you know their names?  
16 AM: She's got Sydney. I don't really know Sydney's last name 'cause it's different  
17 than her mom's, which is my...One of my really good friend's daughter. And she  
18 likes a girl down the street now, a few doors down. She's a little older; she's in  
19 2<sup>nd</sup> or 3<sup>rd</sup> grade.  
20 TR: What's her name?  
21 AM: What is her name? Lilly?  
22 TR: Lilly? Do you know if she has a friend named Evelyn?  
23 AM: No. She might have an Evelyn in her kindergarten class. I don't think I've ever  
24 heard of them.  
25 TR: She's never talked about Evelyn?  
26 AM: (No).  
27 TR: Any other close friends whose names you remember?  
28 AM: Let's see...Sydney. She plays with Blake.  
29 TR: And Blake is Brandon and ...  
30 AM: Stephanie's...  
31 TR: Stephanie's son. Okay.  
32 AM: Not a whole lot since she started kindergarten.  
33 TR: Okay. Now before kindergarten started, how often did Mia go camping?

1 (25:56)  
2 AM: Um....Not very often, a couple of times.  
3 TR: And who did she go camping with?  
4 AM: My mom and dad. It took awhile. I wasn't comfortable with it. I thought she  
5 was gonna get up and walk out of the...you know. So she went a couple of times  
6 once she got a little older.  
7 TR: What kind of camping is this? Is this camping in a tent? Camping in a...?  
8 AM: Camping in a motorhome.  
9 TR: Okay. And where would they go?  
10 AM: Usually in Granite Falls, off M\_\_\_\_ (inaudible name). Not too far. F\_\_\_\_ Lake.  
11 TR: So not super long trips.  
12 AM: No. No.  
13 TR: And did she have fun doing that?  
14 AM: Oh yeah. She loves it.  
15 TR: And how long at a time would they go camping?  
16 AM: Just one night, maybe two nights.  
17 TR: And would they ever do that over a holiday?  
18 AM: No, not usually.  
19 TR: Like on Christmas? Would they ever go camping on Christmas?  
20 AM: No.  
21 TR: And does Mia have access to a trampoline?  
22 AM: Um...Nathan's trampoline, which is where my brother lives.  
23 TR: So Nathan lives with Jeff and Melissa?  
24 AM: Yeah.  
25 TR: And whose trampoline is it? Nathan's or Jeff and Melissa's?  
26 AM: I guess all of theirs. Jeff and Melissa are the mom and dad, Nathan is the child, so  
27 whoever. Whoever she feels like she likes better that day probably.  
28 TR: Okay. And she jumps on the trampoline when she's there?  
29 AM: Mmm hmm (yes).  
30 TR: As far as you know is that Mia's only access to a trampoline that she's ever had?  
31 AM: No, her dad took her...took her to a friend's house a few weeks ago and they  
32 jumped on a trampoline.  
33 TR: Now is Mia a tattletale?

1 (27:46)  
2 AM: She is now with her brother being there.  
3 TR: Which brother?  
4 AM: The 9 year-old. Yeah, a little bit more.  
5 TR: Well, I mean Brody doesn't...Brody... The stage where he doesn't do much.  
6 AM: Yeah. He's not into, you know, hitting or... She just kind of... Yeah, it's more  
7 tattletaling.  
8 TR: And that's on Wilmer?  
9 AM: Yeah. And Steven too. "They swore." "They said a bad word." Stuff like that.  
10 TR: And what happens when she does that? I mean parents have different rules and  
11 treat tattling differently.  
12 AM: Yeah. It sometimes becomes excessive and I tell her "You gotta just ignore them  
13 and you need to play by yourself. Go elsewhere if they're acting like that." Other  
14 times it's, you know, "Hey guys, remember, let's not do that." I try to not make a  
15 big ordeal out of it, try to calmly talk to those boys.  
16 TR: Does she ever tattle on Brody at all?  
17 AM: Yeah. Oh yeah.  
18 TR: What does Brody do that upsets her so that she'll tell you about it?  
19 AM: He'll be messing with her toys. Definitely markers. She'll tell me when he's  
20 using markers 'cause, you know, that's a disaster.  
21 TR: Well he'll write on the walls and....  
22 AM: Yeah, exactly.  
23 TR: So she's not telling on him, she's warning you about a bigger situation.  
24 AM: Right. Yeah, pretty much.  
25 TR: Okay. Do you ever punish the kids based on Mia tattling?  
26 AM: Mmm...maybe. I can remember once. The 9 year-old hit the 2-1/2 year-old in  
27 the fact. Not hard apparently, but... And she told me. And then...well he didn't  
28 get punished but it was actually basically "Don't be doing that ever."  
29 TR: But you talked to him. Okay. And so how do you punish the kids when they do  
30 something wrong?  
31 AM: Um...  
32 TR: And they're different ages so I imagine there's different punishments.  
33

1 (29:40)  
2 **AM:** Yeah. The older boys, I kind of try and let their dad deal with that 'cause I'm not,  
3 you know, I'm not their mom. So ... And if he's not around or whatnot I'll just  
4 "Go to your room right now." They don't usually have huge issues though. My  
5 daughter, it's usually a timeout. Brody, you know, it's usually a timeout or to the  
6 bedroom. Brody is kind of starting, trying the timeouts.  
7 **TR:** Now what is a... With Mia, what is a timeout?  
8 **AM:** A timeout is sitting on the bottom stair for a couple minutes until she can relax  
9 and apologize and tell me what she did wrong.  
10 **TR:** Okay. And does that work?  
11 **AM:** Usually, yeah. If we can get her to not freak out while on the stairs and stay there.  
12 **TR:** Okay. Any other punishments? Grounding? Is that ever done? Taking  
13 something away from her?  
14 **AM:** Yeah, no, not with her. Not yet. Well actually... No, hers is more... Hers is  
15 really kind of the vice-versa; getting. "What are we working for?" "What are we  
16 working for?" "Oh, we're working for a tablet." That's been working for  
17 months. So for Christmas she wants a tablet. And that usually kind of switches  
18 her attitude. "Oh, okay, that's right."  
19 **TR:** What about spanking? Is there spanking in the house?"  
20 **AM:** Ehh...vaguely. Just a little.  
21 **TR:** Okay. When you say "vaguely" what does that... ?  
22 **AM:** It's me. Yeah. She's gotten a swat or two.  
23 **TR:** Okay. So a swat as opposed to an over the knee kind of spank?  
24 **AM:** Oh no. No.  
25 **TR:** Just an occasional swat?  
26 **AM:** Yeah. More of a hurt the feelings, not hurt them.  
27 **TR:** And is Jorge involved in the discipline of the two youngest kids; Brody and Mia?  
28 **AM:** Mmm hmm (yes).  
29 **TR:** And does he have the same approach you have or is there some difference?  
30 **AM:** Um...no, he is... Brody is pretty much...If he's acting crazy it's time for a nap.  
31 So he'll go lay down with him, get him to take a nap. With Mia, it's ...He just  
32 sends her to her room. And actually usually that results in naptime too 'cause it's  
33 usually when she starts acting crazy is she's tired.

1 (31:53)  
2 TR: Oh, I wanted to ask you about naptime. Does she still take naps?  
3 AM: Off and on.  
4 TR: Okay. So on days when she needs it.  
5 AM: Yeah.  
6 TR: There are days when she doesn't.  
7 AM: Yeah.  
8 TR: And when she takes a nap what time does she usually take the nap?  
9 AM: It all varies; it's not a set... it's more like you can see that she's tired, she's  
10 acting...It's time to lay down no matter what time it is. Even if it's for 2 hours.  
11 SH: What does she look like when she's tired?  
12 AM: Two fingers go in her mouth. That's an instant giveaway. Her eyes look different  
13 too. You can just tell in her eyes, they're kind of...they're just kind of in there  
14 rolling around a little bit. And she gets ornery. She gets a little ornery.  
15 SH: What does she look like when she's ornery?  
16 AM: Mischievous. She just looks mischievous. You know, she's got the frown and  
17 it's very...very to be known, she really wants you to know.  
18 SH: Does she do anything or is she just kind of making faces at you to express or...?  
19 AM: She's usually making faces. Yeah. And she'll kind of, you know, throw some  
20 stuff around in the car and whatnot. She gets, you know... (inaudible  
21 words)...it's time for you to take a nap.  
22 TR: How old was she when she stopped taking a daily nap?  
23 AM: Um...right before she started kindergarten this year. 5.  
24 TR: So up until starting kindergarten this fall she took a nap every day?  
25 AM: Pretty much, yeah.  
26 TR: Okay.  
27 SH: What time did she do it before then?  
28 AM: Um...Let's see, it used to be around 2:00-ish. She'd get out of preschool, we'd  
29 kind of chitchat for awhile and dink around and then it was naptime.  
30 TR: Now ...and how is she adjusting to kindergarten?  
31 AM: Oh she loves it. Yeah, it's great, no problem.  
32 TR: And has her...have you met with her teachers about her development compared  
33 with other students in the class?

1 (33:59)  
2 AM: Mmm hmm (yes).  
3 TR: Where does she stand in the...?  
4 AM: Average. Normal.  
5 TR: Okay. Has she ever told you what she likes most about kindergarten?  
6 AM: No. She doesn't say, but I think really what she likes most is learn how to read  
7 and doing the sounds. I hear it all day long. Sounding out stuff.  
8 TR: So she sees signs on the road and she sounds them out?  
9 AM: Mmm hmm (yes).  
10 SH: So it sounds like she knows her alphabet.  
11 AM: Yeah.  
12 SH: How high does she count?  
13 AM: I think she's pretty close to 100 now, with some help towards the end. But yeah.  
14 SH: Colors? Shapes? All that?  
15 AM: Oh yeah.  
16 TR: Now has Mia ever lied to you?  
17 AM: Mmm...I don't know.  
18 TR: So you can't recall any particular instance when you've caught her in a lie?  
19 AM: Right. I guess it's kind of one of those 9 year-olds going "No, she did that." It's  
20 like who do you believe? I don't really know.  
21 TR: So there are conflicts with the 9 year-old where you have to decide who to  
22 believe?  
23 AM: Right.  
24 TR: And you weren't there.  
25 AM: And usually it's just a wash, I just walk away, moving on. What do you do?  
26 TR: And when that happens do both Mia and Wilmer defend their point? Try to  
27 convince you that they're telling the truth/  
28 AM: Oh yeah. Um...Mia not really. You can...you know, she...I can't really name  
29 any instance that she's lied. But if you...I can recall looking in her eyes... She'll  
30 squint is what she does. She squints.  
31 TR: She squints when?  
32 AM: So she'll do really, you know, vague lying. Like "No, I didn't get that piece of  
33 candy." She's like this. I'm like "You're lying." You know, silly stuff like that.

1 (36:15)  
2 **TR:** Okay.  
3 **AM:** You know, she won't go into detail about defending.  
4 **TR:** She won't create these fantastical scenarios under which this very unlikely fact is  
5 true?  
6 **AM:** No. No.  
7 **TR:** Okay. What about Wilmer? Does he lie?  
8 **AM:** Um...I think he's pretty good. I think he's pretty good about it.  
9 **SH:** Does that mean he's good at lying or he doesn't lie?  
10 **AM:** No, I don't think he lies.  
11 **SH:** Okay.  
12 **AM:** I'm not quite sure yet, it's only been a couple months.  
13 **SH:** Give him time.  
14 **TR:** Now at some point did you ever talk to Mia about good touching and bad  
15 touching?  
16 **AM:** Um...no, not necessarily that way, just more "nobody touches," and "this is to  
17 wash only."  
18 **TR:** And when was that conversation? How old was she when you had that  
19 conversation?  
20 **AM:** Probably really young. At least since she started to wash herself.  
21 **SH:** And when did she start to wash herself?  
22 **AM:** Probably like 2.  
23 **SH:** Baths or showers?  
24 **AM:** Bath.  
25 **SH:** And so you told her that it was just for washing, that those parts weren't for  
26 other...?  
27 **AM:** How I explained it to her was "Nobody touches your pee, this is...we just wash  
28 it." And that was that.  
29 **SH:** You called it pee?  
30 **AM:** A pee.  
31 **SH:** Pee?  
32 **AM:** A pee.  
33 **SH:** Okay. Is that because pee comes out of the pce?

1 (37:53)  
2 **AM:** Um...I don't know. I just...Instead of saying "your private," or...it just ended up  
3 what we called it was her pee.  
4 **TR:** What does she call it when she talks about it?  
5 **AM:** Her pee.  
6 **TR:** Has she ever called it anything other than her pee?  
7 **AM:** No.  
8 **SH:** When she started washing herself was she toileting on her own?  
9 **AM:** Um...I think so.  
10 **SH:** Do you remember when she did that? When she started?  
11 **AM:** I know she was probably potty-trained by 3. I actually want to say it was almost  
12 2.  
13 **SH:** You should write a book.  
14 **AM:** Hmm?  
15 **SH:** You should write a book. I have a 2-1/2 year-old and she's nowhere near that.  
16 And I envision my son, such a difference.  
17 **AM:** Yeah, she was very fast on stuff.  
18 **SH:** And how did that work? Did she have her own potty? Did she use the adult  
19 potty?  
20 **AM:** Both. She had a chair, a little potty chair, and then she had, you know, those  
21 things that you throw on top of the toilet.  
22 **SH:** What did she do when you were away from home and she didn't have either of  
23 those, like when she was learning?  
24 **AM:** I don't recall, she probably just sat on the regular toilet I would assume.  
25 **SH:** And how did that look? How did she not fall in is kind of my question. 'Cause  
26 they have those little seats to go in so that the child's bottom doesn't fall in. So  
27 are you holding her on the toilet or how is that working?  
28 **AM:** I am going to assume she does like her brother does and just holds on, you know,  
29 to the seat.  
30 **SH:** Okay. But you're assuming, you don't remember.  
31 **AM:** I don't really recall, yeah. I think pretty much probably, yeah...for the most part  
32 always had a chair whether it was grandma's house or my house. At that point  
33 she was only with me or grandma, so...

1 (40:04)  
2 **TR:** Now does she have accidents anymore?  
3 **AM:** Um...once in awhile. If she's...if she's having a tantrum, yeah, she'll  
4 accidentally pee, then she really cries.  
5 **TR:** And how often is that?  
6 **AM:** Maybe once every 6 months. But no bedwetting, stuff like that.  
7 **TR:** And I assume there was a time earlier on when she was having more accidents?  
8 **AM:** Oh yeah.  
9 **TR:** When did that stop? When did she stop having accidents on a common basis?  
10 **AM:** I know she hasn't had any in 6 months. Probably...well she didn't really have  
11 any accidents when she started preschool and that was...and she was 4.  
12 **TR:** What about before preschool?  
13 **AM:** Um...She was pretty good from early age. Really good from early age. We  
14 didn't go through a big extravagant bedwetting and stuff like that.  
15 **SH:** So did she kind of do it on your (her?) own or did you have a method that you...?  
16 **AM:** Oh yeah. No, she just was ready.  
17 **TR:** Now who does the laundry in your household?  
18 **AM:** No Jorge does.  
19 **TR:** Okay. When Jorge was out of the house, when he was...  
20 **AM:** Me.  
21 **TR:** It was you. Did you ever notice staining to Mia's panties? Her underpants?  
22 From urine?  
23 **AM:** Once in awhile, you know, the wiping issue with little kids.  
24 **TR:** Okay. But did you actually notice it on her underwear? I mean I doubt you were  
25 inspecting her underwear.  
26 **AM:** Yeah.  
27 **TR:** Did you sometimes see urine stains on her underwear?  
28 **AM:** Yeah.  
29 **TR:** Now this wiping issue, tell me about that.  
30 **AM:** They just are not good wipers. They forget to wipe or they just don't wipe even.  
31 They just jump off the toilet and pull their pants up. So of course there's gonna  
32 be something there.  
33 **TR:** Okay. And is that over with? The non-wiping?

1 (42:26)  
2 AM: Yeah, I think she's gotten it pretty good.  
3 TR: Okay. Do you have any other questions about Mia and her (inaudible word)?  
4 Before we move on to...?  
5 SH: Tantrum. You said sometimes she will have an accident when she's having a  
6 tantrum. What do you mean by tantrum?  
7 AM: That's usually a result of over-tired and just, you know, anything...something  
8 stupid will happen and she'll just cry and scream. Cry and scream and cry and  
9 scream. And she works herself up so much that she'll pee.  
10 SH: Okay. So kind of an overall loss of control.  
11 AM: Yeah.  
12 SH: And she'll tell you?  
13 AM: And she'll tell me.  
14 SH: How does she say it?  
15 AM: Um...now it's more like...it's not a...it's more like a disappointment for herself.  
16 "I wet my pants," you know, and everything kind of stops and it's a hug and a  
17 kiss, finished, take care of this. Everything is done and over with at that point.  
18 SH: Okay, it kind of brings her out of it?  
19 AM: Yeah, it does.  
20 SH: Okay. And who dresses her?  
21 AM: Um...usually herself.  
22 SH: Does that make for some interesting combinations?  
23 AM: I try and help. So it's between me and her. Once in awhile her dad gets her  
24 dressed. But it's usually her.  
25 SH: Okay. And when did that start?  
26 AM: Herself? Probably for the last year.  
27 SH: So she's 5, so about 4?  
28 AM: Yeah. Yep.  
29 SH: Did she have an opinion before that about what she wore?  
30 AM: Absolutely. Oh yes.  
31 SH: And what was that?  
32  
33

1 (44:31)  
2 AM: You know, she wants to just wear crazy stuff all the time. And so...she just gets  
3 set on what she wants to wear and we try to work around the pair of pants that she  
4 wants to wear, whether she doesn't want to wear that shirt or... I try to explain to  
5 her the matching game. "Well it matches 'cause it's both got purple on it."  
6 TR: Does she have a preference for dresses versus pants?  
7 AM: She goes through phases. Right now she's in a skirt phase with the warm tights. I  
8 actually just got her new warm tights so she's kind of in that phase. For a long  
9 time she would not wear dresses or skirts, she hated them. And then just this  
10 year...I'm pretty sure it was when I got those warm tights all the sudden she  
11 showed a little bit more interest.  
12 SH: Who undresses her?  
13 AM: Usually herself right now.  
14 SH: And did that start about the same time?  
15 AM: Probably.  
16 SH: Did she learn to undress herself before she learned to dress herself? Or did they  
17 both happen around the same time?  
18 AM: Uh...she probably undressed herself first. That's easier to do.  
19 SH: That's my experience, but mine(?) are more destructive clearly. And does  
20 her...So how does that work? Does she have her own room with her clothes in it?  
21 Does she share a room with someone?  
22 AM: She now shares it with her little brother, yeah, but she's always had her own room  
23 up until 2 months ago.  
24 SH: Okay.  
25 AM: So we'll usually both go in there in the morning and I'll evaluate what she picks.  
26 It's usually a bit of an argument for about 15 minutes trying to get something  
27 together. And then that's pretty much it.  
28 TR: Does she have a hamper in her room?  
29 AM: Yeah.  
30 TR: And if she undresses herself does she put her clothes in the hamper or does she  
31 leave them on the floor?  
32 AM: Half and half. It's usually on the floor.  
33 SH: I was impressed with the half and half.

1 (46:37)  
2 AM: I know. It's repetitiveness.  
3 TR: So who collects them off the floor and puts them in the hamper when they don't  
4 get put in the hamper initially?  
5 AM: (Unintelligible word).  
6 TR: Do you ever make her "go pick your clothes up and put them in the hamper"?  
7 AM: Yes.  
8 TR: Okay.  
9 SH: And are her clothes washed separately or are they washed...all the family clothes  
10 together?  
11 AM: Pretty much they're usually hers. Last couple months it's been a little different.  
12 Hers and Brody's, you get more combined now. Kind of getting combined with  
13 mine too. But that's just in the last couple of months. It used to be hers were  
14 solely for her, Brody's were his, mine were mine.  
15 SH: So then did Brody have his own hamper in his?  
16 AM: Mmm hmm (yes).  
17 TR: Now on holidays, does she dress herself on holidays?  
18 AM: No, I usually dress her.  
19 TR: Okay. And even when she was going through the phase where she preferred to  
20 wear pants, would she be dressed up in a dress on holidays?  
21 AM: Um...I'm not sure if I ever had an issue with that. I think it was more through  
22 preschool she didn't want to wear dresses or skirts 'cause they weren't fabulous  
23 enough for her, or fluffy enough.  
24 TR: And does she wear shoes that tie?  
25 AM: Not very much. She's got like one pair right now.  
26 TR: Okay. Does she know how to tie them or does somebody have to tie them for  
27 her?  
28 AM: No.  
29 TR: And this is becoming a lost art I imagine, but can she tell time from an analog  
30 clock?  
31 AM: No.  
32 SH: Do they even still have those? You have that.  
33 TR: Does she have any imaginary friends?

1 (48:51)  
2 AM: No.  
3 TR: How creative is she?  
4 AM: Um...  
5 TR: Does she like to make things out of nothing?  
6 AM: Yeah.  
7 TR: Does she like to draw?  
8 AM: She loves to draw. She really likes to color. I was just saying I just started  
9 noticing her kind of creating her own thing from nothing. She took a glue stick  
10 and made a long man out of it, a little snowman and lace and did all kinds of stuff  
11 to it. I was like "okay."  
12 TR: And that's a new development?  
13 AM: Yeah.  
14 TR: Since when?  
15 AM: Creating something out of nothing. Probably the last 6 months.  
16 TR: You think that's something she may have picked up from kindergarten or from  
17 preschool?  
18 AM: Yeah, could be. Or just getting older and realizing "Hey, I can do this with this  
19 and this with this."  
20 SH: When did she start with imaginary play? Like pretend? Or does she?  
21 AM: She hasn't really been big on that. She's not real big in imaginary.  
22 SH: Okay, like pretend baking or you pretend to eat or...?  
23 AM: I don't know when she got into that.  
24 SH: How about dolls? Does she like to play with dolls?  
25 AM: Oh yeah.  
26 SH: And what doll is her favorite?  
27 AM: I don't think she had a favorite.  
28 SH: What kind of dolls does she...  
29 AM: She's got quite a few and then she's got mine from when I was a kid.  
30 SH: Are we talking like Cabbage Patch dolls or Barbies?  
31 AM: Yes, Cabbage Patch and Cricket.  
32 TR: Who is Cricket? Is she Barbie?  
33 AM: It was a talking one with a cassette.

1 (50:32)  
2 **TR:** Oh, okay.  
3 **AM:** Yeah. She was cool.  
4 **TR:** What about Barbie dolls? Does she have Barbie dolls?  
5 **AM:** She's got Barbies, yeah.  
6 **TR:** How many?  
7 **AM:** Probably 8, 10 maybe.  
8 **SH:** What kind?  
9 **AM:** Little kids? I don't know. Just a bunch of girls.  
10 **SH:** Are they blonde? Brunette? Or is it kind of a mix?  
11 **AM:** I think it's a mix. She's not real big on playing with them. She dresses them up  
12 once in awhile and that's pretty much it.  
13 **SH:** How often would you say she plays with them?  
14 **AM:** Once every 4 months.  
15 **SH:** Any of them have purple hair?  
16 **AM:** I don't think so. She's got a Lala Loopsie doll that has purple plastic hair.  
17 **TR:** Lala Loopsie? I'll have to Google that when we get back to the office. Do you  
18 remember what you did for her birthday? Her 5<sup>th</sup> birthday?  
19 **AM:** 5<sup>th</sup> birthday we went to Jungle Play Land in Mount Vernon.  
20 **SH:** Was that like a party?  
21 **AM:** Yeah.  
22 **SH:** And who came to that?  
23 **AM:** The boys; Steven and Wilmer were there. They were just visiting at that time.  
24 Her dad. My parents. Mike, Debbie...or Debbie and her two girls, grown girls;  
25 Suzie, Kathy. I think Michelle was there, which would be their other sibling.  
26 And then Suzie's son, Ryan.  
27 **SH:** Any of her girlfriends come?  
28 **AM:** Um...no, Cindy did not come...either did Tristan...no. It's kind of far.  
29 **TR:** And what is Jungle Play Land?  
30 **AM:** It's like a big McDonald's play land but way bigger.  
31 **TR:** And jungle themed I would guess?  
32 **AM:** Yep.  
33 **TR:** Did she dress up at all?

1 (52:57)  
2 AM: She had like a birthday dress, not like...  
3 TR: Did she wear any costumes?  
4 AM: What did she wear that day? I don't recall what she wore that day.  
5 TR: Did she spend the day playing, dressing up in costumes?  
6 AM: No.  
7 TR: Okay. Does she ever pretend to have tea?  
8 AM: Yeah, she's got a little tea party set.  
9 TR: A tea party set?  
10 AM: Mmm hmm (yes).  
11 SH: And it's water?  
12 AM: Yep.  
13 TR: And is she good about keeping the water in the tea set?  
14 AM: Nope.  
15 TR: Does she drink it or does it...?  
16 AM: Yep. She makes tea for all of us and I usually just put a big towel down on the  
17 table. It's a plastic tea set and she just pours it back and forth.  
18 TR: Okay. And so water gets all over.  
19 AM: Yeah.  
20 TR: And how often does she play that?  
21 AM: Like once every 3 months.  
22 TR: Can we move on?  
23 SH: Um...So did any other kids come to the Jungle Play Land party? Any of her  
24 friends from preschool?  
25 AM: Um...no. Let's see...I can't recall. I can't recall.  
26 TR: Did you videotape the party or take pictures?  
27 AM: No, but we took a couple pictures. Oh, that's right, we had just moved. So we  
28 moved the date and that kind of messed things up for everybody.  
29 SH: What else did you do for her birthday? Did she have a cake or cupcakes or...?  
30 AM: Oh yeah. We had a cake. And there were water sprinklers going on outside.  
31 Fountains to run in.  
32 SH: Oh. So after they played in the Jungle Play Land?  
33 AM: Yeah, they went outside and got wet and came back in and did cake and presents.

1 (55:08)  
2 SH: What kind of cake? Was it like jungle themed or...?  
3 AM: Uh, no, it wasn't. It was Dora? I think we had a Dora cake. No, it was a princess  
4 cake. It was a princess cake. We have the little figurine still.  
5 SH: Who's her favorite princess?  
6 AM: All of them. I don't think she has a favorite one. Anything that looks like a  
7 princess.  
8 TR: Okay. So then the family get-together on the holidays. Did those all happen at  
9 the same place or would...?  
10 AM: Usually.  
11 TR: And usually where did those take place?  
12 AM: Recently...well now they're at my cousin, Jeff's. But they were usually always at  
13 Sheri's house.  
14 TR: And which Sheri is this?  
15 AM: Morrow.  
16 TR: Aunt Sheri.  
17 AM: Aunt Sheri, yeah.  
18 TR: And why were they at Aunt Sheri's house?  
19 AM: She's kind of always the main family person get-together...get everything  
20 together. She usually had the house to provide for everybody.  
21 TR: She had a big enough house for everyone?  
22 AM: Yeah. And she was always the one that put stuff together.  
23 SH: So did she kind of organize the gatherings?  
24 AM: Yeah. Yeah. She was kind of the center of the family.  
25 TR: Do you know why that's changed?  
26 AM: It's changed now 'cause they have moved and downsized quite a bit.  
27 TR: Okay.  
28 SH: And when did that happen?  
29 AM: Um...not more than 2 years ago. Probably about a year ago.  
30 SH: Where do they live now?  
31 AM: They live in Granite Falls still.  
32 SH: Okay.  
33 AM: Just a different house.

1 (57:02)

2 **TR:** And is there a typical time when...I mean when would the family start coming  
3 over to Aunt Sheri's on a holiday? I guess it would depend on the holiday.

4 **AM:** Yeah it does.

5 **TR:** Like on Easter. Would you go for Easter brunch? Easter dinner?

6 **AM:** Easter is usually probably like noon-ish, 1:00-ish, yeah.

7 **TR:** 4<sup>th</sup> of July?

8 **AM:** 4<sup>th</sup> of July is gonna be evening time. People might show up like 4:00 p.m. Not  
9 too late. Christmas is gonna be...usually 4:00 or 5:00.

10 **TR:** And some family get together on Christmas Eve, some get together on Christmas  
11 Day.

12 **AM:** Ours do it Christmas eve. Yeah.

13 **TR:** And what about Thanksgiving?

14 **AM:** Thanksgiving, probably about 1:00 or 2:00. The last few years we haven't done  
15 big Thanksgivings, we've done immediate family Thanksgivings.

16 **TR:** Okay. What do you guys do? Well let's get specific, for Christmas?

17 **AM:** Hang out. Play with the kids. For Christmas we do a gift exchange with the kids.  
18 We...

19 **TR:** How does that gift exchange work? Does each kid buy a gift that is exchanged  
20 with another kid?

21 **AM:** They're pre-drawn names so everybody has one name. Though that's not really  
22 how it goes 'cause most ...half the family buys for everybody anyways. And then  
23 there's an adult gift exchange...or usually...what is that...?

24 **SH:** Elephant gift? Funny ones?

25 **AM:** No, where you... Everybody brings a present in and you get a number and you  
26 just pick a present and you can take a present from the previous numbers. Yeah.

27 **TR:** That's called a white elephant, right?

28 **SH:** Maybe not. It's called different things to different people.

29 **TR:** 'Cause I just got invited to a white elephant party and I was trying to figure out  
30 what it was. And then after the adult gift exchange, dinner?

31 **AM:** Yeah. Lately we've been doing just a bunch of variety. Everybody brings a  
32 bunch of food. Instead of doing a traditional turkey and mashed potatoes like we  
33 used to, we changed it up and everybody just brings stuff.

1 **(59:16)**  
2 **TR:** Okay.  
3 **AM:** So it's usually just everybody's just hanging out, there's Christmas music.  
4 **TR:** And what time does it end?  
5 **AM:** Whenever. Kind of...  
6 **TR:** When people wander off?  
7 **AM:** Yeah. There's like, you know, the traditional this family leaves right after this,  
8 these guys stay, we linger, you know.  
9 **TR:** And is there alcohol served at these events generally?  
10 **AM:** Mmm hmm (yes).  
11 **TR:** What kind?  
12 **AM:** Usually beer. Christmas sometimes there's some harder, maybe wine.  
13 **TR:** Hard alcohol?  
14 **AM:** Yeah.  
15 **SH:** Like what kind of hard alcohol?  
16 **AM:** Um...probably vodka, whiskey.  
17 **SH:** Okay. Is it something you drink straight or mixed?  
18 **AM:** Usually it's a mix. Usually somebody will bring something different.  
19 **TR:** Is it like an eggnog that has liquor in it or some sort of Christmas type drink?  
20 **AM:** No, it's usually.... There's never usually like a bowl to get from 'cause there's so  
21 many kids. It's usually mixed as you want.  
22 **SH:** Okay, like kind of a bar setup and you would drink?  
23 **AM:** Yeah, pretty much.  
24 **SH:** Okay. Do you get roped into doing the drink making because you have  
25 experience as a cocktail waitress?  
26 **AM:** No, actually I don't.  
27 **SH:** That's nice.  
28 **AM:** I know, right?  
29 **TR:** And it's help yourself? There's nobody whose job it is to make cocktails for  
30 people?  
31 **AM:** It's kind of help yourself. I guess you can usually ask, though, you know, "Oh,  
32 can I have some of your...this or that."  
33 **TR:** Okay. And so do you bring your own or is it provided by Aunt Sheri?

1 (1:00:53)  
2 AM: Everybody kind of brings whatever they wish and shares.  
3 SH: And is that now or how it was a couple years ago? Now it sounds like more of a  
4 potluck.  
5 AM: Yeah. There's always gonna be a little bit of beer and wine. But yeah, it's not  
6 like a big drinking fest, but there's...gonna have some cocktails.  
7 SH: When did it go from more traditional dinner to more potluck?  
8 AM: Um...A few years back.  
9 TR: Is it because of Aunt Sheri downsizing or...?  
10 AM: No, I think we just...we just got sick of the whole turkey and normal stuff. We  
11 wanted more appetizers and fun, funky, different stuff. I think, you know, our  
12 parents got sick of being in the kitchen all this time and the younger version, we  
13 tried to start taking over a little bit more.  
14 TR: And so by "the younger people taking over," the...the concept of the meal sort of  
15 changes?  
16 AM: Yeah. Yeah.  
17 TR: Yeah. So now I want to move to this specific date of the incident involving  
18 Brandon. Are we ready to go there?  
19 SH: Sure.  
20 TR: Okay. Now was there a Christmas get-together on that occasion?  
21 AM: Right.  
22 TR: Where did that take place?  
23 AM: Sheri's house.  
24 TR: And again this is Aunt Sheri?  
25 AM: Correct.  
26 TR: And who was at Aunt Sheri's house on that occasion?  
27 AM: Oh, um...Mike and Debbie. Michelle, Kathy, Susie....  
28 TR: Mike and Debbie, Kathy, Susie.  
29 AM: Michelle. I'm pretty sure they were there. Stephanie. My parents. My brother.  
30 Jeff and Melissa, their kids. Grandma Jenny. Ryan, which is Susie's son. It  
31 seemed like there was so many more kids. Oh, Brian and Misty, which is  
32 Stephanie's brother and their two kids.  
33 TR: And you.

1 (1:03:36)  
2 AM: Me and Mia and my son.  
3 TR: And Brody. So approximately how many people is this?  
4 AM: 25 maybe.  
5 TR: Okay. And do you remember what time the festivities started?  
6 AM: It had just gotten dark.  
7 TR: Had it just gotten dark when you arrived?  
8 AM: Right.  
9 TR: And when you arrived was everyone already there? Or where were you in the  
10 line of people getting there? Towards the beginning? Towards the end?  
11 AM: I think that Christmas I was almost at the end besides my parents.  
12 TR: And Aunt Sheri's house that she lived in at that time, what did it look like? Was  
13 it two-story? One-story?  
14 AM: Yeah, it's a brand-new two-story. Four-car garage on the side. Big, long  
15 driveway. It was a big, beautiful, brand-new house. Everything's downstairs.  
16 Main living quarters. All the bedrooms are upstairs. Fire pit out in the  
17 back...well the side rather.  
18 TR: How many bedrooms were upstairs, do you know?  
19 AM: Three.  
20 TR: And is there a bathroom upstairs?  
21 AM: Yeah. There's a master and then there's a regular bathroom.  
22 TR: And downstairs there's a living room?  
23 AM: Yeah. Living room, family room, kitchen.  
24 TR: Is there a separate dining room from the kitchen or...?  
25 AM: Um...no. The kitchen had an eat-in counter in a space.  
26 TR: Okay. And a bathroom on the...  
27 AM: There was a table actually sitting at the end too, but I wouldn't say it was a dining  
28 room.  
29 TR: And a bathroom?  
30 AM: Mmm hmm (yes).  
31 TR: And was there a separate laundry room?  
32 AM: Mmm hmm (yes).  
33 TR: And an attached garage?

1 (1:05:44)  
2 AM: Yeah, attached garage.  
3 TR: And how large was the garage?  
4 AM: Oh it's huge. It's two-car, oversized garage. Or I guess it's a three-car, oversized  
5 garage.  
6 TR: And who lived in that house besides your Aunt Sheri and her husband?  
7 AM: Brandon, Stephanie and Blake.  
8 TR: And do you know why Brandon and Stephanie were living there?  
9 AM: Them not working.  
10 TR: Neither was working?  
11 AM: Um...Brandon's always kind of worked. Stephanie not so much.  
12 TR: Okay. So it was for financial reasons?  
13 AM: It's easy. It's easy living.  
14 TR: Okay. How long had they been living there with Aunt Sheri and her husband?  
15 AM: You know, they ventured out on their own for 6 months to a year maybe. They  
16 lived...But other than that, they've always lived with Aunt Sheri.  
17 SH: Since their marriage?  
18 AM: Oh, before...way before the marriage. Yeah.  
19 SH: Okay.  
20 AM: They were together for quite a few years before they ever got married.  
21 TR: And Aunt Sheri, did she mind that or...?  
22 AM: I don't think so.  
23 SH: So had Brandon been living there or had he left and come back? I seem to  
24 remember something about him moving out and then moving back in before  
25 Christmas, but...?  
26 AM: Oh yeah. They had like a, you know, some lover's spat or something where  
27 he...they separated. And I guess separate. He moved out. I don't know any  
28 details of it. It's more, you know, my mom talks to her mom.  
29 SH: Did he move out or was he kicked out?  
30 AM: I don't know.  
31 SH: And you didn't really know what was going on?  
32 AM: No, not really. But they had lived... This house that we're talking about now,  
33 they've only lived in for not very long. I think that was our second Christmas

1 there before they had another house in Granite Falls. All the functions were still  
2 there and Stephanie and Brandon had lived with them all through that time too.

3 **(1:08:03)**

4 **SH:** Okay, so when you say "them" in this context, you mean Aunt Sheri had only  
5 been in that house two years?

6 **AM:** Right.

7 **SH:** And it was the second Christmas that Aunt Sheri had been living in that house?  
8 And previously she hosted in Aunt Sheri's other house.

9 **AM:** Right. It's always been at Sheri's house and they've always lived with Sheri  
10 besides 6 months to a year they moved out and had their own apartment in Lake  
11 Stevens.

12 **TR:** Now you say Brandon sometimes worked. What did he do?

13 **AM:** Construction? I think he might've ended up doing something else too. Some  
14 kind of labor job.

15 **SH:** What about Stephanie? You said she didn't work?

16 **AM:** She's worked off and on. She did some banking for a few months and then she  
17 was a gas station cashier for like a year or something like that.

18 **SH:** But it didn't take, or...?

19 **AM:** I don't know.

20 **TR:** Now prior to the date of this Christmas Eve had you had any issues with  
21 Brandon?

22 **AM:** No.

23 **TR:** Had he done anything that ever bothered you?

24 **AM:** No. He had never done anything. I had just gotten some weird feels for myself in  
25 regards to my daughter. But he had never done anything.

26 **TR:** Okay, so were these weird feels, tell me about that.

27 **AM:** A few weeks before that Christmas happened there was some kind of family  
28 function, a birthday or something I think, and they had their bedroom in the  
29 garage. And Mia was in the bedroom with Brandon and the door was closed.  
30 You know, everybody was in the garage and their bedroom is in the garage. You  
31 know, like with a door, you know, a separate bedroom. And I had opened the door  
32 quite a few times. There was nothing. They were just sitting on the bed just  
33 watching...

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33

**(1:10:01)**

**TR:** So the whole family was in the garage and then there's a separate, built-in bedroom?

**AM:** Yeah, throughout the house and the garage, people were walking around, whatever. And then there's the built-in, yeah. And, you know, I looked a few times like "What's my daughter doing?"

**TR:** What was Mia doing in there?

**AM:** Just watching T.V.

**TR:** What kind of T.V. was she watching, do you know?

**AM:** I don't know.

**TR:** Okay.

**AM:** There was, you know... Me and my mom both were like "Why is she in with Brandon?" You know.

**TR:** What was Brandon doing?

**AM:** "Everybody's out here hanging out." Just sitting there watching T.V. Sitting on their bed.

**TR:** So watching the same T.V.?

**AM:** Sitting watching T.V.

**TR:** Was it a kids show? Was it a grown-up show? Do you remember?

**AM:** I wanna say it was a kids show. And me and my mom had both popped in a few times (inaudible words). You know, of course we'd pop in. There was nothing going on so we're like "Okay, quit being ridiculous." But there's just that feeling, you just don't like it.

**TR:** Well what is the source of the feeling, do you know? I mean what made you uneasy about Brandon and...?

**AM:** I guess the fact that my daughter is in there with a boy when...a grown man, sitting in there with the door closed and there's this function going on out here.

**TR:** Now when there were family gatherings would Brandon sometimes go off by himself?

**AM:** I don't think so.

**TR:** So was it unusual for Brandon to be separated from the rest of the family during that function?

1 **AM:** Yes. Yes.  
2 **(1:11:29)**  
3 **TR:** And do you know why that was that day? Why he was away from everyone else?  
4 **AM:** You can only bring up your own thoughts now, you know.  
5 **TR:** Well, I mean, did anyone give you a reason like he was working that day and was  
6 tired? He'd gotten in a fight with his wife? Anything like that?  
7 **AM:** I have no idea. I don't recall them giving one.  
8 **SH:** Did you say anything to him or talk to him?  
9 **AM:** Just normal, you know, "What's going on? What are you guys doing?" "Just  
10 hanging out," you know. Like 20, 25 minutes. We were all right there. Me and  
11 my mom both kept popping in. You know at that point in time we thought "Oh,  
12 we're being kind of weird." Well it turns out we weren't.  
13 **TR:** So the door...And the door was never locked?  
14 **AM:** No.  
15 **TR:** And did Brandon ever object to you opening the door and popping your head in?  
16 **AM:** No.  
17 **TR:** Did you ever ask Mia to come out of the room?  
18 **AM:** No.  
19 **TR:** And when Mia was in the room watching T.V. she was on the bed?  
20 **AM:** Mmm hmm (yes).  
21 **TR:** And Brandon was also on the bed?  
22 **AM:** I don't know. She was either standing right next to the bed or on the bed. But he  
23 also had, you know, all Blake's toys in there and he was younger then. So all the  
24 toys were sitting along the side. So it wasn't like a, you know.. I don't know, it  
25 was a kid's room too. So it wasn't like you're just sitting in here with this grown  
26 man in his bedroom on his bed watching T.V. It's a kid's room too, so it's kind  
27 of...  
28 **TR:** Now is Blake the only child that lived in that house?  
29 **AM:** Correct.  
30 **TR:** And so one would assume Blake would be the only person living in the house  
31 who had toys?  
32 **AM:** No, actually Sheri always had toys for all her grand kids. Jazzy, who is 10 or  
33 something. And then....

1 **TR:** So Aunt Sheri kept toys at her house in addition to whatever toys Blake had.  
2 **(1:13:17)**  
3 **AM:** Yeah.  
4 **TR:** Okay.  
5 **SH:** And where were they? Was there a play room or a family room where the toys  
6 are?  
7 **TR:** Yeah, the family room, there was always a bunch of toys.  
8 **SH:** Could you do me a favor and draw a brief sketch of the garage? I'm kind of  
9 curious about the garage that had a bedroom in it. Because at first it sounded like  
10 a garage and now it sounds like kind of maybe they were using it for other  
11 purposes.  
12 **AM:** Yeah, and they never parked in there, it was always a hangout spot. A workbench  
13 area.  
14 **SH:** It does not need to be to scale or pretty.  
15 **AM:** This is gonna be the porch over here and the doorway. So this is all the house.  
16 Here's the...one garage door, here's the double garage door. This is the garage.  
17 This is the door to...from inside the house to there. And I think it just went back  
18 a little bit. That would probably be the bedroom. This is all the garage area. This  
19 is the outside door. So a big open space and then here was this square.  
20 **SH:** Could you write "bedroom" where the bedroom was? And what is in the big  
21 garage space? Like were there couches or tables or chairs?  
22 **AM:** Let's see...a bunch of tools over here. A bunch of tools.  
23 **SH:** Okay. Write "tools" there.  
24 **AM:** Probably...if I recall for awhile there was just junk. I think it was like Christmas  
25 decorations or birthday party stuff or just stuff. 'Cause usually when we had  
26 functions like baby showers and stuff we'd open up these garage doors and have  
27 chairs in here. So it's always kind of vacant space. The kids would take their  
28 bikes and tricycles and stuff and ride around in circles in here.  
29 **SH:** So when everyone's having a function and their hanging out in the garage, what  
30 are they doing? Are they like standing around the junk?  
31 **AM:** Yeah, standing around the junk. Talking.  
32 **TR:** What was the attraction of the garage at that point do you know?

1 **AM:** 'Cause my aunt was like "My beautiful house, can't mess up my floors, my  
2 bamboo floors." She was such a neat freak about dirt and stuff. So it's always  
3 been in the garage. Thankfully this house was a lot prettier of a garage 'cause  
4 they built it themselves.

5 **(1:15:35)**

6 **TR:** So she would invite the family over, spend time in the house, and make  
7 everybody eat in the garage/

8 **AM:** Pretty much. We would go in and, you know, there's still people inside. But it  
9 just always... And there was no smoking in the house and everybody smokes in  
10 our family almost.

11 **TR:** But there was smoking allowed in the garage?

12 **AM:** Yeah.

13 **TR:** Was there smoking allowed in the bedroom where Brandon was?

14 **AM:** They did smoke in there, yeah.

15 **TR:** "They" meaning Brandon and Stephanie?

16 **AM:** Yeah.

17 **TR:** Okay. And so, you know, if you're having a smoke and talking to people you'd  
18 go in the garage, especially if it's cold out?

19 **AM:** Even if it's...yeah. Yeah.

20 **TR:** Okay. And was the garage heated?

21 **AM:** I think they had like space heaters.

22 **TR:** Okay. Were there space heaters in the bedroom or were there space heaters in the  
23 garage?

24 **AM:** In the garage. I wouldn't say it was a warm garage, but...

25 **TR:** But warmer than outdoors.

26 **AM:** Yeah.

27 **TR:** Okay. Now prior to this date when Mia's off in the garage bedroom with  
28 Brandon, any uneasiness around Brandon?

29 **AM:** No.

30 **TR:** And so the uneasiness in this particular incident was because of the  
31 circumstances, not because of anything Brandon did?

32 **AM:** Right. I would say there was only one other time that I was uneasy. And again,  
33 this is all within the same few months. Brandon and Stephanie were watching

1 Mia at this new house. I remember it was warm out 'cause they were outside  
2 playing. And when I came to pick her up...it must've been...yeah, it must've  
3 (1:17:01) been within...Jorge was gone 'cause that's why they were watching  
4 her. I went to pick her up and knocked on the front door. I don't remember if the  
5 door is glass or just the side is glass but somehow you could see in and down the  
6 hallway. And the bathroom door was open, you can't see in. It just took them  
7 awhile to get there after ringing the doorbell, it took awhile. It's a big house.  
8 And I see Brandon and Mia come out of the bathroom. And he's like "Oh, she  
9 had to go to the bathroom." I was like "that took forever." And didn't even think  
10 anything of it. That was the first time I'd ever...I was a little uncomfortable with  
11 it.

12 **TR:** So it didn't make you uneasy at the time, he'd only made you uneasy in  
13 retrospect?

14 **AM:** Afterwards I thought about it.

15 **TR:** Okay. But at the time you thought nothing of it?

16 **AM:** No, no. And she was, you know, needing help at that time to go to the bathroom  
17 and stuff so it wasn't anything. And Stephanie had happened to be up in the  
18 shower at that point in time, that's why he was assisting her.

19 **TR:** Was Stephanie taking a shower in the same bathroom?

20 **AM:** No, upstairs in the bedroom.

21 **TR:** And were there any other adults in the house at the time besides...?

22 **AM:** No, there was just...

23 **TR:** Stephanie and Brandon?

24 **AM:** Yeah. And their kid.

25 **TR:** And when he was in the bathroom...But you could see down the hallway and you  
26 could see that the bathroom door was open?

27 **AM:** Mmm hmm (yes).

28 **TR:** So during the time Brandon and Mia were in the bathroom, the bathroom door  
29 was open?

30 **AM:** Mmm hmm (yes).

31 **TR:** Okay.

32 **SH:** You said she was needing help at that time to go to the bathroom. What do you  
33 mean?

1 **AM:** Yeah, she would need some assistance, you know, getting her pants down or  
2 getting on the toilet. You know, she was kind of...kind of young to be doing it by  
3 herself I guess.

4 **(1:18:45)**

5 **SH:** Okay. And did they have a potty chair there or was she on the big toilet?

6 **AM:** I'm pretty sure she was on the big toilet, I think.

7 **TR:** How old was Blake at the time?

8 **AM:** Um...

9 **TR:** Was he old enough that he used the toilet or not?

10 **AM:** No, he was not using the toilet.

11 **TR:** Okay, he was diaper.

12 **AM:** Yeah.

13 **TR:** Went in his diaper. Okay.

14 **SH:** You said a moment ago that it gave you uneasiness in retrospect? At what point  
15 did that start? Was it when you drove away from the house and you thought  
16 about it? Or was it after the movie in the garage?

17 **AM:** No. I mean I thought for a second like "God, it took awhile. Why wouldn't you  
18 like come out and be like we're here or leave her on the toilet or come out?" But  
19 I didn't go into too much uneasiness about it, I just thought about it for a second.  
20 It was more or less when I remembered after this happened. I was like "Oh my  
21 God."

22 **TR:** Is this the incident in the garage or is this the incident on Christmas Eve?

23 **AM:** On Christmas eve.

24 **TR:** So there was nothing about that incident where they're in the bathroom together  
25 that would've made you keep Brandon and Mia separate from each other?

26 **AM:** No. No.

27 **TR:** And even this garage incident, you didn't want to keep...There was nothing about  
28 the garage incident that made you want to keep them apart?

29 **AM:** No. I just thought I was getting weird feelings, I was just being too weird. I was  
30 being overprotective.

31 **TR:** Now your mom...but your mom was doing the same.

32 **AM:** Yeah, she was.

33 **TR:** Is that because you said something to her or was she just...?

1 (1:20:10)  
2 AM: No, I think we actually both just gave each other a look like "we don't really...."  
3 We just didn't really care for the situation.  
4 SH: Why?  
5 AM: It just made us both uncomfortable.  
6 SH: Why?  
7 AM: Um...again, he's in there during this family function, the door is closed. I guess  
8 that really...The door is closed. And even though we were easily able to go in  
9 there...  
10 SH: Okay. Did you try propping it open?  
11 AM: Oh yeah. We went in there...I went in there a few times and mom went in there a  
12 few times. All within like a short period of time. And then finally we're like  
13 "Okay, come on Mia," 'cause we were just like.... There was no reason, you  
14 know, just didn't like it.  
15 TR: Well when you popped your head in would you shut the door when you were  
16 done or would you leave the door open?  
17 AM: I would assume I left the door open.  
18 TR: And would somebody else shut the door?  
19 AM: I don't know.  
20 TR: Or was it left propped open after you first popped your head in?  
21 AM: I don't recall that.  
22 TR: Do you recall having to open the door every single time to pop your head in?  
23 AM: Um...I don't know.  
24 TR: Okay.  
25 SH: Is there something in your experience that made you kind of hyper vigilant as a  
26 mom? Any training you'd had? Any experience professionally or personally?  
27 AM: Um...you know, I had been molested when I was younger. So I wasn't oblivious  
28 to the fact of what goes on.  
29 SH: And was your mom aware of that?  
30 AM: Yeah. And so I guess that's why we both thought we were being ...we were like  
31 "Okay, that's why we're being like this, you know, let's not take it out on  
32 anybody." But I should (inaudible word)...that feeling.  
33 SH: Was a relative that you had your...?

1 (1:21:56)  
2 AM: Mmm hmm (yes).  
3 SH: Okay. A male?  
4 AM: Yeah.  
5 SH: And did the police get involved?  
6 AM: Yeah. There was...he went to jail for awhile....  
7 SH: I'm sorry, what?  
8 TR: Well, can I talk to you in the hallway for a second?  
9 SH: Can I go to the bathroom? Do you think we could take a quick break and I could  
10 go to the bathroom and he can have his talk with me?  
11 AA: It's fine with me.  
12 TR: Just one minute. Okay, we took a short break. We're back on tape. The time  
13 right now is 3:07 p.m. And do we still have your permission to record?  
14 AM: Yes.  
15 TR: Okay. So...so moving on from the garage. Did you ever have any conversations  
16 with your mom, you know...Obviously you're both popping your head in. Did  
17 you ever have a conversation with her later, before Christmas Eve, about that  
18 incident?  
19 AM: We did. We were like "We were really uncomfortable," basically "why did that  
20 make us uncomfortable?" and you know, I don't know, we just didn't really like it  
21 and that was pretty much the end of it.  
22 TR: Did you also have a conversation with each other about, you know, "Gosh, are we  
23 overreacting? Are we just being..."?  
24 AM: Pretty much, yeah.  
25 TR: Okay. 'Cause there really was nothing to be suspicious of before this incident?  
26 AM: Right.  
27 TR: Had you ever been suspicious about anyone else in relation to Mia?  
28 AM: No.  
29 TR: Anything at all that you can think of?  
30 AM: (No).  
31 SH: What other men were around Mia?  
32 AM: You mean throughout life?  
33 SH: Yeah. Who else did she....

1 (1:23:30)  
2 AM: Pretty much, I mean, just her dad.  
3 SH: Okay. So she wasn't really exposed to many?  
4 AM: No.  
5 TR: Did she seem to get along with Brandon?  
6 AM: Yeah. Yep.  
7 TR: You know, at a family function would she seek him out or...?  
8 AM: No, I wouldn't say that. But she always smiled and...  
9 TR: Okay. What about the other kids? Do the other kids seem to spend a lot of time  
10 around Brandon? 'Cause it seems like there are a lot of kids in the family.  
11 AM: I wouldn't say...I never noticed anything. Nobody disliked him.  
12 TR: And even now looking back he didn't seem to spend an excessive amount of time  
13 with the kids?  
14 AM: No.  
15 TR: Okay. Now moving to Christmas Eve. We already went through everyone who  
16 was there and what time you got there. Do you know what Brandon had  
17 done...what Brandon's situation was that day? If he had worked or not worked?  
18 AM: I don't know.  
19 TR: Okay. And I mean we can go back with a calendar, but do you know whether  
20 Christmas Eve was on a weekday or a weekend?  
21 AM: I don't remember.  
22 TR: Okay. So what did you...So you came with Mia and Brody?  
23 AM: Mmm hmm (yes).  
24 TR: How did you get there?  
25 AM: By my car.  
26 TR: Did you drive?  
27 AM: Mmm hmm (yes).  
28 TR: And anyone come with you besides your two children?  
29 AM: No.  
30 TR: And what did you do once you got there?  
31 AM: Um...Went right to the kitchen where everybody was. Mia and Brody and his  
32 little cousin, Sammy, were the same age, so was kind of the center of attention for  
33 awhile. They were really young.

1 (1:25:23)  
2 **TR:** Brody and Sam?  
3 **AM:** Sammy.  
4 **TR:** Sammy. And at the time they're infants, right? Are they infants?  
5 **AM:** Mmm hmm (yes).  
6 **TR:** Okay. How old?  
7 **AM:** 6 months.  
8 **TR:** 6 months. So not capable of movement on their own; they have to be carried  
9 from place to place?  
10 **AM:** Right. Right.  
11 **TR:** Did you bring Brody in a stroller or...?  
12 **AM:** No, I think I just took him out of the car seat.  
13 **TR:** Okay, so you were carry...you were holding him. And so you were in the  
14 kitchen. Where was Brandon when you arrived, do you know?  
15 **AM:** Um...I think he was outside. I recall talking to him by the doors. I think he was  
16 outside. 'Cause there was a fire pit like kind of on the side of the house as well.  
17 **TR:** And so people would congregate around the fire pit?  
18 **AM:** Yeah. Kind of....  
19 **TR:** Was there a fire going?  
20 **AM:** Yeah.  
21 **TR:** Okay. And Brandon, he smokes?  
22 **AM:** Yeah.  
23 **TR:** And in this house...Well he could've smoked in the garage, but he could also  
24 smoke around the fire pit?  
25 **AM:** Right.  
26 **TR:** Okay. So...and when you talked to Brandon, do you remember anything unusual  
27 about him?  
28 **AM:** No.  
29 **TR:** Did he seem drunk?  
30 **AM:** No.  
31 **TR:** Have you seen Brandon drunk before?  
32 **AM:** Yeah. He's kind of one of those constant drinkers. He always had a beer in his  
33 hand. So not, you know, not schnockerred.

1 (1:26:49)  
2 **TR:** Have you ever seen him schnockered?  
3 **AM:** Um...nothing that pops out of my head. I'm sure I have, but nothing that really...  
4 **SH:** What is he like drunk? Is he a quiet drunk? Loud drunk? Funny drunk? Angry  
5 drunk?  
6 **AM:** More of a fun...fun.  
7 **TR:** After their wedding did they have a reception?  
8 **AM:** Yeah.  
9 **TR:** Did they get ...Did he get drunk at his wedding reception?  
10 **AM:** Um...I don't know, my daughter was just very, very young so....  
11 **TR:** Oh, so you weren't paying attention to that.  
12 **AM:** Yeah. (Unintelligible word)...like a month or 2 old.  
13 **TR:** Okay.  
14 **SH:** So what's Brandon like when he's sober? Just normally? Like what's his  
15 personality?  
16 **AM:** Very quiet. Very quiet.  
17 **SH:** Quiet? Volatile? Even-keeled? What kind of personality does he have?  
18 **AM:** Um...I'd say if he's not drinking he's just kind of monotone.  
19 **SH:** Okay.  
20 **AM:** He's kind of mellow. Doesn't say a whole lot. Might flash a few smiles in a  
21 conversation.  
22 **SH:** Okay. And has that been consistent since you knew him when he was little? Or  
23 was there a change at some point?  
24 **AM:** I don't recall.  
25 **SH:** Okay. And is that different than when he's drinking it sounds like?  
26 **AM:** Yeah. Drinking, he's a little bit more...a little more talkative. Better mood.  
27 **SH:** Okay. So kind of the happy, social drunk?  
28 **AM:** Mmm hmm (yes).  
29 **SH:** Or drinker.  
30 **AM:** Right.  
31 **SH:** And you said you see him with a beer in his hand? Is that what you usually saw  
32 him drink or did he go to the hard alcohol?  
33 **AM:** No, he would usually have a beer in his hand.

1 (1:28:30)  
2 **TR:** Do you recall if he had a beer in his hand when you saw him outside?  
3 **AM:** Right, he did.  
4 **TR:** And was it a regular beer? Light beer?  
5 **AM:** I would assume it's like a Busch or Budweiser. That's my assumption.  
6 **TR:** Not a fancy beer in a bottle?  
7 **AM:** No. No.  
8 **SH:** What was...how did it work? So you got there. Do people eat? Are there a few  
9 hours before you eat? What does Christmas work like?  
10 **AM:** It was...Let's see. Kind of eat as you get there. Everyone's kind of munching.  
11 There's not really a time to eat, just throughout the whole thing.  
12 **SH:** So there's no sit-down?  
13 **AM:** No. No.  
14 **SH:** So you're in the kitchen, you have Brody in arms. What happens next?  
15 **AM:** Um...we probably trade(?) babies and talk about the babies. Babies go around to  
16 everybody.  
17 **SH:** Where is Mia during that time?  
18 **AM:** She's playing in the I guess play room/tree room, which is the living room.  
19 **SH:** Okay.  
20 **TR:** And you have to go through the living room to get to the kitchen from the front  
21 door or when you enter the house?  
22 **AM:** It's actually a big circle. (Drawing). The stairs are kind of the...You know, the  
23 stairs are here and then the kitchen is over here with living room, formal living  
24 room, which is the tree....  
25 **SH:** Could you write "Tree room" there?  
26 **AM:** Mmm hmm (yes). The tree and then the toys. And they all connect. And then  
27 here's the entryway and they're all open to each other so you can go in a circle  
28 around.  
29 **SH:** Would you mind labeling the entry, the kitchen and that other living...was it  
30 living room?  
31 **AM:** Yeah. This is like where the T.V. and actual sofa is. This is just....  
32 **TR:** So from the kitchen you can actually see into the tree room?  
33 **AM:** Yeah.

1 (1:30:30)

2 **TR:** How was Mia dressed? Did you dress her up?

3 **AM:** Yep. She had a little red, black and white dress on with red tights. Too small of

4 tights.

5 **TR:** And did she dress herself or did you dress her?

6 **AM:** I dressed her.

7 **SH:** Do you have any pictures from that night?

8 **AM:** Yep.

9 **SH:** So it would show her outfit?

10 **AM:** Mmm hmm (yes).

11 **TR:** And you said her tights were too small?

12 **AM:** They were. I just remember I brought a pair of black leggings just in case she

13 decided... 'Cause they went with the dress but it's like "Well just in case you

14 decide to get out of them." They were too small; they kind of hung down.

15 **TR:** Were they too small to the point they were uncomfortable?

16 **AM:** Um...I would've assumed that she would've... They weren't too tight, it was

17 more or less the length. So they were kind of...

18 **TR:** Oh, so they didn't come all the way up to her waist?

19 **AM:** Exactly. Yeah. They came up to the waist but the rest of it was kind of hanging

20 between her legs. It wasn't going all the way up. So "Well we'll bring a pair of

21 black leggings just in case you decide you don't want to wear those."

22 **SH:** So the waist came to the waist but the crotch hung low?

23 **AM:** The crotch hung low, yeah.

24 **SH:** Okay. Kind of like hip-hop jeans or something?

25 **AM:** It's gotta be uncomfortable. Yeah, exactly. But she insisted they were fine.

26 **TR:** So were they too big or too small?

27 **AM:** Too small.

28 **TR:** So if they're too small why is the crotch hanging down if they're all the way...?

29 **AM:** 'Cause there's no more toe room. There's no more....

30 **SH:** No more length in it.

31 **AM:** ....length to pull it up to get the crotch all the way up.

32 **TR:** Oh, okay. 'Cause the legs are longer.

33 **AM:** Yeah.

1 (1:32:01)  
2 **SH:** He's never worn tights.  
3 **TR:** But the...And I assume she's wearing underwear?  
4 **AM:** Mmm hmm (yes).  
5 **TR:** The tights were pulled up over the underwear?  
6 **AM:** Correct.  
7 **TR:** Now...and what color were the tights?  
8 **AM:** Red.  
9 **TR:** Red. And were they textured?  
10 **AM:** Yeah.  
11 **TR:** And how roughly textured were they?  
12 **AM:** I would say like the normal, warm... You know, the warm tights with some...  
13 **TR:** Well I remember like my niece wearing these tights that were...had like rose sort  
14 of design on them and they were actually kind of rough. If you brushed your arm  
15 up against it, it actually was uncomfortable. It was kind of scratchy.  
16 **AM:** No, it was more of a pattern I guess. Thick tights with a pattern.  
17 **TR:** But otherwise smooth texture?  
18 **AM:** No.  
19 **TR:** Not a smooth texture.  
20 **SH:** But soft, not rough?  
21 **AM:** Right.  
22 **SH:** Do you remember what the pattern was?  
23 **AM:** I wanna say like diamonds or...you know.  
24 **TR:** What kind of fabric were they made out of? Do you remember? Like wool?  
25 **AM:** Cotton?  
26 **TR:** Cotton. And was it she who insisted on wearing those tights? Or you?  
27 **AM:** What was that?  
28 **TR:** Who insisted on her wearing these tights that were too small?  
29 **AM:** I think we both wanted her in them. But she wasn't gonna change out of them  
30 once she had them on, so...  
31 **TR:** And under her dress was she wearing a shirt? Undershirt? Anything like that?  
32 **AM:** I think she was wearing a shirt.  
33

1 (1:33:46)  
2 **TR:** And did the shirt go with the dress? Were they meant to be worn together? Or  
3 was it just to keep her warm?  
4 **AM:** It was meant to keep warm, yeah.  
5 **SH:** Did it match kind of in color?  
6 **AM:** It did.  
7 **TR:** Now did she wear a coat too?  
8 **AM:** I'm pretty sure she did.  
9 **TR:** So was the idea of putting her with the shirt as well so she could wander in and  
10 out...? I mean there's stuff going on outside, there's stuff going on inside?  
11 **AM:** It's just...No, just 'cause it's winter and it's not really appropriate whether inside  
12 or outside to be wearing a (inaudible – both speaking).  
13 **TR:** So it could be cold...So she wouldn't get cold even inside the house?  
14 **AM:** Yeah. It's like a tank-top kind of dress you know.  
15 **TR:** Oh, okay.  
16 **AM:** Yeah. Sleeveless I guess.  
17 **TR:** And I assume she's wearing shoes?  
18 **AM:** Yeah.  
19 **TR:** Do you know what kind of shoes she was wearing?  
20 **AM:** (No).  
21 **SH:** So your aunt allows shoes on the carpet?  
22 **AM:** What?  
23 **SH:** Your aunt allowed shoes on the carpet?  
24 **AM:** Um...I think it took awhile. I think we kind of had to talk to her like, you  
25 know...At family functions you could.  
26 **TR:** So did Mia wear her shoes that evening or did she have to take them off when she  
27 got there?  
28 **AM:** I don't remember.  
29 **TR:** Does Mia sometimes like to take her shoes off?  
30 **AM:** Yeah, yeah.  
31 **TR:** And underwear? She was wearing underwear?  
32 **AM:** Mmm hmm (yes).  
33 **TR:** Do you know what kind of underwear?

1 (1:35:10)  
2 AM: No.  
3 TR: And who put on Mia's underwear? Did she put it on or did you put it on?  
4 AM: I did.  
5 TR: And did she like take a bath before... 'Cause this is sort of a holiday. Did she  
6 take a bath before?  
7 AM: I don't remember.  
8 SH: Did you do her hair up or anything?  
9 AM: I'm sure we did her hair. I think it was...I think it was pigtails or ponytails. I  
10 don't recall.  
11 SH: Does she cooperate when you want to do her hair?  
12 AM: Yeah.  
13 SH: Does she want you to (unintelligible word)?  
14 AM: Um...well back then, yeah. Not so much now. She wants it down and long and  
15 beautiful.  
16 TR: Now at the time...at this time...was Mia dressing herself on regular occasions?  
17 AM: No.  
18 TR: So you had to dress her?  
19 AM: Yeah.  
20 TR: And how long was it after this that she started dressing herself?  
21 AM: I don't know.  
22 TR: Now kids sometimes put their socks on inside out and they put their shoes on the  
23 wrong feet. Does Mia do that sometimes?  
24 AM: Um...  
25 TR: Well I should say did she at that time?  
26 AM: I don't know. I assume so.  
27 TR: Well do you ever specifically remember seeing her wearing her socks inside out?  
28 Or looking at her dirty socks where you could see that she must've been wearing  
29 them inside out 'cause they're dirty on the inside?  
30 AM: I don't re....I don't particularly remember a situation.  
31 TR: Okay, what about her underwear? Has she ever put her underwear on inside out?  
32 AM: I don't remember a particular situation.  
33

1 (1:36:54)  
2 **TR:** Okay. Would you remember it? Would it be something that you would  
3 remember if she put on her underwear inside out?  
4 **AM:** Probably not.  
5 **TR:** Okay. So she's in the tree room where the toys are. Now are the toys new toys  
6 for Christmas or just the toys that Aunt Sheri kept for the kids?  
7 **AM:** Yeah, the ones that she kept for the kids.  
8 **TR:** Okay. So how long are you in the kitchen before you go into another room?  
9 **AM:** I don't know.  
10 **TR:** Is there a reason you... I mean are you milling around the entire first floor of the  
11 house visiting?  
12 **AM:** Right. Just kind of socializing with everybody.  
13 **TR:** Okay. And what were the kids...what do the kids do after you got there?  
14 **AM:** Um...just playing amongst each other. There was some kind of mind game thing  
15 that you put your hat thing on for the kids. Something like stare at something and  
16 it moves. I think it had something to do with a hat. I don't really recall what  
17 exactly it was, but the kids were kind of laughing about that.  
18 **TR:** Is this in the tree room?  
19 **AM:** No, this was in the T.V. room.  
20 **TR:** Okay. So the kids are milling around as well, going from room to room?  
21 **AM:** Right. Yeah.  
22 **TR:** How many kids total were there?  
23 **AM:** Let's see...Five? Seems like there were more.  
24 **SH:** When we talk about the T.V. room, is the T.V. on during family gatherings? Or is  
25 it just called the T.V. room 'cause the T.V. is there?  
26 **AM:** Give or take. It's usually on.  
27 **SH:** What's on?  
28 **AM:** T.V.  
29 **SH:** But I mean what is on the television? Is it on news? Is it on...?  
30 **AM:** I don't know.  
31 **SH:** Whatever someone wants to watch?  
32 **AM:** Probably sports.  
33

1 (1:38:42)  
2 **TR:** Does that happen at family gatherings? The sports are on and some of the family  
3 are watching sports? Is that common?  
4 **AM:** Yeah.  
5 **TR:** So at some point do the kids go... Well did you ever see Brandon come in the  
6 house from...? 'Cause last you saw him...  
7 **AM:** I seen him come in and out.  
8 **TR:** And is he coming in and out for a reason like to get a beer? Is he coming in and  
9 out to talk to people?  
10 **AM:** Same thing, mingling. Just mingling.  
11 **TR:** Okay.  
12 **SH:** At some point are presents opened?  
13 **AM:** Mmm hmm (yes).  
14 **SH:** And how does that work?  
15 **AM:** Um...all the kids started getting their presents. We opened them. Got our  
16 presents. Everybody is just kind of scattered throughout the house.  
17 **SH:** And do the kids have to wait to a certain... Like we always make them wait until  
18 after dinner. Do they have to wait until any point before they're allowed to get  
19 their gifts or are they kind of free-for-all?  
20 **AM:** Um...just kind of... We do it all at once. They just kind of wait until the moment  
21 is right I guess, when maybe people are getting a little....  
22 **TR:** And again, there's no organized dinnertime, there's just food out, help yourself?  
23 **AM:** Yeah. Right.  
24 **SH:** So how far in to you getting to the party do the presents happen?  
25 **AM:** Gosh, I don't know. Couple hours.  
26 **TR:** So after the presents are opened, what happens after that?  
27 **AM:** Um...mingling. Pretty much everybody just gets together and chitchats and open  
28 presents and we clean up.  
29 **TR:** But at some point you realize the kids were not on the first floor?  
30 **AM:** Right. They were all upstairs. I know Sheri...There used to be just a piece of  
31 plywood blocking everybody from going upstairs, just 'cause there were young  
32 kids and stuff. Worried about them falling down the stairs.  
33 **TR:** Was Aunt Sheri worried about her house?

1 (1:40:49)  
2 AM: So yeah. So she went up...exactly. There's carpet going up the stairs and then all  
3 up on top.  
4 TR: So the first floor is a wood floor?  
5 AM: Yeah. Sheri went upstairs and was like "You just all go downstairs."  
6 TR: Okay, so Sheri is the one who went upstairs and saw all the kids upstairs?  
7 AM: Yeah.  
8 TR: And is it because you guys suddenly realized "Where are the kids?"  
9 AM: "Why is everybody upstairs?" Yeah. "Everybody go down."  
10 TR: Okay. And so did you yourself see where the kids were upstairs?  
11 AM: Right. I was at the bottom of the stairs. They were all just kind of throughout  
12 Brandon and Stephanie's new bedroom, which is upstairs now, in the hallway.  
13 TR: Okay, so they were both in the room and in the hallway?  
14 AM: Yeah.  
15 TR: And the door was open? And the kids coming in and out of the room?  
16 AM: Yeah.  
17 TR: And what was Aunt Sheri's purpose in getting the kids downstairs? Was it to  
18 protect her house?  
19 AM: Probably.  
20 TR: Okay. So there wasn't any concern that something improper was going on  
21 upstairs?  
22 AM: No, I don't think so.  
23 TR: And did you know that Brandon was upstairs?  
24 AM: No.  
25 TR: And do you know why Brandon was upstairs?  
26 AM: No.  
27 TR: Okay. And do you know how long Brandon had been upstairs?  
28 AM: No.  
29 TR: Now there are other rooms upstairs? There's three bedrooms up there?  
30 AM: Mmm hmm (yes).  
31 TR: How many of those rooms have televisions in them, do you know?  
32 AM: Um...I know that two of them do, I don't know if the third one....  
33 TR: And Sheri had a T.V. in her bedroom?

1 **(1:42:16)**

2 **AM:** Yeah. I think the third one at that time was a spare. I think it was a spare. At one  
3 point in time it was Grandma's room for a minute.

4 **TR:** And had you been in Brandon and Sheri's room upstairs before?

5 **AM:** In Brandon and Stephanie's room? No.

6 **TR:** Oh, sorry.

7 **AM:** I didn't know that they had a bedroom up there, no.

8 **TR:** Okay. So how did you find out there was a television in the room? Oh, it's when  
9 you opened the door and see the television, correct?

10 **AM:** Yeah.

11 **TR:** Okay.

12 **SH:** So you're at the bottom of the stairs, you see the kids, what happens next?

13 **AM:** Everybody's just going down and we go about our business. Go back down  
14 and...

15 **TR:** That includes Mia?

16 **AM:** I don't know if she actually ended up coming down or... I think she stayed up. It  
17 was just kind of like "Okay, all the kids came down, okay, we're cruising back."

18 **SH:** So back where?

19 **AM:** To the kitchen, wherever.

20 **TR:** And it was Aunt Sheri's decision to have the kids come down the stairs?

21 **AM:** Right.

22 **SH:** What happens next?

23 **TR:** Well were you concerned that Mia didn't come downstairs?

24 **AM:** No, I guess I didn't really notice. I seen her, okay, got eye of her, you know.

25 **TR:** And would you have minded if Mia and all the kids were upstairs? You yourself?

26 **AM:** No.

27 **TR:** Okay, so this really is Aunt Sheri directing things and wanting the kids to come  
28 downstairs?

29 **AM:** Yeah. Well yeah. And everything was downstairs. I mean... Like to see what  
30 they're doing.

31 **TR:** Okay. So after the kids come downstairs, what happens next?

1 **AM:** Again, go about our business. Going room-to-room, socializing. And then, you  
2 know, every few minutes, you know, you kind of look for your kid just to make  
3 sure.

4 **(1:44:05)**

5 **TR:** Now are you holding... Are you holding Brody the whole time or is he being  
6 passed to relatives?

7 **AM:** Oh no, he's being passed around. I got him sometimes.

8 **TR:** Could he also be sleeping at certain points where you're not holding him?

9 **AM:** I don't recall. I don't think he was sleeping.

10 **TR:** Okay. So how much time elapses before you realize Mia is not there?

11 **AM:** I wanna say 15...15, 20 minutes.

12 **TR:** And this is 15, 20 minutes after seeing the other kids come back downstairs?

13 **AM:** Right.

14 **TR:** Had any of the other kids gone back upstairs in the meantime?

15 **AM:** When I went back up there there were no other kids up there.

16 **TR:** Okay. But did you...There were no other kids in other rooms upstairs or...?

17 **AM:** No.

18 **TR:** Did you check the whole upstairs?

19 **AM:** No. It was just like... You just don't really go upstairs.

20 **TR:** Now this plywood that blocks the...the egress upstairs...

21 **AM:** Yeah, I don't know if maybe that wasn't there that year or if they just moved it  
22 over.

23 **TR:** Do you remember anyone ever having to move this piece of plywood in order for  
24 the kids to come up and down the stairs?

25 **AM:** I don't recall.

26 **TR:** And when you went up the stairs do you recall having them move the piece of  
27 plywood?

28 **AM:** No.

29 **TR:** Okay. Now why did you go upstairs?

30 **AM:** 'Cause I wanted to get eyes on my daughter.

31 **TR:** And did you just assume she hadn't come...? So had she been downstairs after  
32 the kids came down?

33 **AM:** I don't know.

1 (1:45:37)  
2 **TR:** Okay. And so...  
3 **SH:** Did you look for her downstairs first?  
4 **AM:** Right. You know, you just kind of catch eye of all your kids every few, even  
5 though we're all with family. But still, you just catch everybody and I didn't see  
6 Mia. "Okay, I don't see her anywhere. Okay, well go upstairs."  
7 **TR:** Had Mia also been coming in and out from outside? From the fire pit?  
8 **AM:** No, just mingling around the house and in the garage. The doors are closed,  
9 garage doors.  
10 **TR:** So people were going in and out of the garage as well?  
11 **AM:** Right. Kids were bicycling around.  
12 **TR:** Okay. And the door to the garage was closed while the kids were in the garage?  
13 **AM:** Yeah. Pretty much Melissa was always in there. That's my cousin. She  
14 always...she was always in there watching the kids.  
15 **TR:** Okay. And the door is kept shut to keep the heat from going into the garage?  
16 **AM:** Um...I don't know if it was shut or not.  
17 **TR:** Or 'cause people smoke in there?  
18 **AM:** Yeah, I don't know...  
19 **TR:** To keep the smoke from coming in the house?  
20 **AM:** I don't know if it was open or closed or...  
21 **TR:** Okay, so the garage door wasn't always closed during the party? During the  
22 Christmas party?  
23 **AM:** The garage door from the house to the garage?  
24 **TR:** Yes.  
25 **AM:** I don't recall whether it was opened or closed all the time. The garage door...the  
26 actual garage doors were closed though.  
27 **SH:** Like where the car would exit the garage.  
28 **AM:** Right. They were closed.  
29 **TR:** But normally did they keep the door to the garage open or do they normally keep  
30 it closed?  
31 **AM:** That's usually closed.  
32 **TR:** Okay. Did you go in the garage looking for Mia as well?  
33 **AM:** Mmm hmm (yes).

1 (1:47:14)  
2 **TR:** And obviously she wasn't there.  
3 **AM:** Right.  
4 **TR:** So tell me what happens when you go up the stairs?  
5 **AM:** Um...so I go up and I...and turned right into the bedroom and opened the door.  
6 **TR:** So was the door completely shut?  
7 **AM:** Mmm hmm (yes).  
8 **SH:** And what kind of doors are these? Are these those hollow core pretty light doors  
9 or solid...heavy?  
10 **AM:** No, they're wood. Yeah.  
11 **SH:** Real wood?  
12 **AM:** They're not old, but they're wood. Nice.  
13 **TR:** If you're standing outside the door can you hear what's going on inside the room?  
14 **AM:** I don't know.  
15 **TR:** Could you hear from outside of the room whether the television was on or not?  
16 **AM:** I don't recall.  
17 **TR:** And did you linger at the door before you opened it or you're just going in  
18 looking...?  
19 **AM:** No, I just went right in.  
20 **TR:** Okay. And did you knock?  
21 **AM:** No.  
22 **TR:** And prior to entering that room did you even know Brandon had been upstairs  
23 with the kids?  
24 **AM:** Um....  
25 **TR:** Did Sheri tell you anything about that?  
26 **AM:** I don't recall.  
27 **TR:** Okay. So your mindset as you're opening this door is just "I'm looking for Mia,  
28 is she in this room"?  
29 **AM:** No. And I remember being like uneasy about it. And so maybe I did know that  
30 Brandon was up there too.  
31 **TR:** Okay.  
32 **AM:** I remember I was very uneasy about it. And I opened the door pretty fast. So I  
33 must've known that Brandon was up there.

1 (1:48:51)

2 **TR:** So at this point prior to opening that door you're already uneasy about Mia and

3 Brandon being in a room together or being in a room alone together?

4 **AM:** I think it was the whole situation of being alone in the bedroom with the door

5 closed. Mia didn't come back downstairs. "Why are you upstairs? You're always

6 mingling with everybody. Why are you upstairs? We're at a Christmas party."

7 Just the whole situation, you know. "And we already had this little situation that

8 made me uncomfortable and now you're up and away from everyone. Okay, I

9 don't like it at all."

10 **TR:** Okay. So you think you must've known Brandon was in that room?

11 **AM:** I must have because I remember the feeling of...

12 **TR:** But this time you can't remember (inaudible word – both speaking)....?

13 **AM:** Opening that up...yeah, open up that door.

14 **TR:** So did you make an effort to open the door quickly?

15 **AM:** Yeah.

16 **TR:** And that's because of your apprehension, the fact that you're uneasy?

17 **AM:** Mmm hmm (yes).

18 **TR:** About what might...what the situation was inside that room?

19 **AM:** Right.

20 **TR:** So did you open the door completely? Did you open it just a little bit to look in?

21 How did you open it?

22 **AM:** I opened it completely.

23 **TR:** And do you know...prior to opening that door did you know whether this was just

24 Brandon in a room or did you know it was Brandon's room? If that makes any

25 sense.

26 **AM:** Um...I know I found out that day that that was their bedroom. I don't know if I

27 realized that was their bedroom when the kids went upstairs the first time or if

28 that was right then and there.

29 **TR:** Okay. So tell me... You open the door right away and what...what do you see?

30 **AM:** It's what I hear at first is a bunch of... Just a bunch of fast motion.

31 **TR:** So this is... The door is open.

32 **AM:** So I'm opening the door and there's a bunch of fast motion on the bed, which is

33 right behind the door. 'Cause the door is kind of at an angle. So you open the

1 door and right here is a wall and a T.V. and behind the door while it's open is the  
2 bed.

3 **(1:50:56)**

4 **TR:** Okay.

5 **AM:** So I hear a bunch of commotion and I can see Brandon coming from this side and  
6 over here. And I see him fully clothed with the blankets kind of over his legs  
7 only, just sitting up in bed kind of like he's watching T.V. But it was obvious that  
8 he was...I mean I seen him come and situating over here. The fastness of the  
9 motion and just...

10 **TR:** So when you open the door you can see the television?

11 **AM:** Mmm hmm (yes).

12 **TR:** Is the television on?

13 **AM:** Right.

14 **TR:** And what is on the television?

15 **AM:** Some kind of cartoon. Kid's show.

16 **TR:** Okay. Anything you recognized?

17 **AM:** No, I didn't...

18 **TR:** Okay. Was it a Christmas themed? Could you tell if it was a Christmas themed  
19 cartoon show or just cartoons?

20 **AM:** Just cartoons.

21 **TR:** Okay. I mean obviously that's not your...that's not why you're opening the door,  
22 to see what's on T.V. But you don't remember anything about what that was?

23 **AM:** (No).

24 **TR:** So do you know what position ... Is there a position you believe he was in before  
25 you opened the door?

26 **AM:** I just know that he was...No. I just know that he was for some reason coming  
27 from the side of the bed very fast to this side of the bed. So it was...I don't know.

28 **TR:** And by the end are we talking about the foot and the head of the bed or are we  
29 talking about the two sides of the bed?

30 **AM:** Um...so he's... (Drawing). Here's the...I guess here's the door, how it's angled.  
31 And then it opens right here, kind of stops right there. Here's the T.V. Wall,  
32 wall. Here's the bed. So here's the foot, here's the head. He's kind of coming  
33 from somewhere over here, flopping back here. But he's still in like a sit-up

1 position. So he's leaned against the headboard kind of, more of a sit-up/slouch  
2 (inaudible word)...down, covers.

3 **(1:53:09)**

4 **TR:** And you say he was fully clothed? Do you remember what he was wearing?

5 **AM:** I think a sweatshirt and jeans.

6 **TR:** Was he wearing shoes?

7 **AM:** I don't recall.

8 **TR:** And do you know if he was wearing socks?

9 **AM:** I don't know.

10 **TR:** What about...where was Mia?

11 **AM:** She was over here. I don't know if she was on the bed on her knees or if she was  
12 standing. I just remember seeing like this part of her, you know.

13 **TR:** You mean from like the waist up?

14 **AM:** Yeah. I don't remember if she was kneeling on the bed, sitting up, or if she was  
15 standing there on the side. I don't know.

16 **TR:** Okay. So she could have either been on the bed or standing next to the bed.

17 **AM:** Yeah.

18 **SH:** And you kind of drew a little circle on the picture where...

19 **AM:** Yeah, that's her little head at the end of the bed.

20 **SH:** Okay. Could you draw a little line from that and write "Mia," just so later we'll  
21 know what on earth that...?

22 **TR:** So she's at the end of the bed and Brandon is at the headboard? Am I  
23 understanding correctly?

24 **AM:** Yeah, she's kind of like...Not the very end, but middle-ish end. And he's coming  
25 from over here, flopping back to this position.

26 **TR:** Okay. And are both facing the television?

27 **AM:** Um...no, he's facing the television at this point and she's facing this wall. Like  
28 she's looking directly at me.

29 **TR:** Okay, so she is....

30 **SH:** Like she's looking at the door?

31 **AM:** Pretty much, yeah.

32 **TR:** And so what happens? What do you do next after you open the door and you see  
33 this?

1 (1:54:43)  
2 AM: Um...I look around. I say "Mia, let's go. Let's get out of here." And I'm  
3 carrying her down the stairs.  
4 TR: Why did you carry her?  
5 AM: I don't know.  
6 TR: Well can she negotiate these stairs on two feet?  
7 AM: Yeah, but they're pretty steep.  
8 TR: I mean is it common for you to carry her up and down stairs?  
9 AM: Probably at that point, yeah. She was only 3. It's just easier and faster.  
10 TR: Okay. Is there a reason you wanted to leave fast?  
11 AM: Yeah. The whole situation made me uncomfortable and I absolutely know that  
12 something was going on. Just the whole situation. In your gut feeling and the  
13 reaction with what he was doing, I just.... Ehh...  
14 TR: Okay. Did he have an expression on his face that you remember?  
15 AM: No.  
16 SH: How about Mia?  
17 AM: Mia was more like a kind of deer in the headlights I guess. "Hi."  
18 TR: Before you picked her up did she say anything to you?  
19 AM: (No).  
20 TR: And what did you say when you picked her up? Well did you pick her up inside  
21 the room?  
22 AM: I think I...bedroom...I don't know.  
23 TR: Or did you...Did she walk out the room and then you picked her up? Do you  
24 remember?  
25 AM: I don't recall.  
26 SH: Is it readily apparent that you're unhappy at this point?  
27 AM: No, I don't think he...I would say...I don't know. I mean my motion of how fast  
28 I came in and just...I didn't do anything, I just opened it up, looked around, was  
29 like "Let's go."  
30 TR: Is there a reason you didn't knock on the door?  
31 AM: It's...my daughter was in there, I'm not knocking.  
32 TR: Okay. Do you mean you have this memory of consciously wanting to not give  
33 notice that you're entering this room?

1 (1:56:47)  
2 AM: Right. Pretty much.  
3 TR: Okay. That's fair to say that?  
4 AM: Yeah.  
5 TR: Okay. And when...So do you remember... You don't remember if she was in the  
6 room or outside of the room when you picked her up?  
7 AM: I don't recall.  
8 TR: When you picked her up, how was she dressed? Was she dressed the same way  
9 as when you brought her to the party?  
10 AM: Yeah.  
11 TR: Do you remember if she had her shoes on?  
12 AM: I don't remember.  
13 TR: And her tights. Were her tights up like they were?  
14 AM: Yeah. There was nothing that I recall. It's more what she said to me after that.  
15 TR: Okay. But there was nothing... And you would be on the lookout that clothes  
16 were disheveled, pushed aside, moved away.  
17 AM: Right.  
18 TR: And you didn't see anything like that?  
19 AM: Correct.  
20 TR: So where did you go... You're carrying her, you go down the stairs, what did you  
21 do?  
22 AM: Well as I'm walking her down the stairs...and I don't say anything to her besides  
23 "let's go down," or "let's go," or whatever...she tells me that Brandon told her  
24 not to tell.  
25 TR: What were her exact words?  
26 AM: "Brandon told me not to tell."  
27 TR: So she said the name "Brandon"? She didn't say "He told me not to tell"?  
28 AM: No, she said "Brandon told me not to tell." That was it.  
29 TR: What was her demeanor when she said that to you?  
30 AM: I don't know. I took her into the bathroom. I mean I know that she...obviously  
31 something happened. I mean why would you... Why would anybody be saying  
32 "Don't tell your mom"? What do you mean? Why are you telling a 3 year-old  
33 "Don't tell your mom"? Don't tell your mom what?

1 (1:58:17)  
2 **TR:** Well did she act like she thought she was in trouble?  
3 **AM:** No. She was more...a little bit more kind of shy about it. Like "Brandon told me  
4 not to tell you." Kind of...she just...no... So I took her down to the bathroom.  
5 **TR:** And this is a bathroom where?  
6 **AM:** This is...  
7 **TR:** On the main floor?  
8 **AM:** Yeah. This is the main floor. So we're coming down the stairs and here's like the  
9 bathroom. (Drawing).  
10 **TR:** And unlike the rest of the rooms, this one I assume is enclosed.  
11 **AM:** Correct. And so I took her down, asked her if she needs to go to the bathroom. I  
12 think I was really just taking her in there just so I could talk to her in private.  
13 **TR:** But did you ask her if she needed to go to the bathroom?  
14 **AM:** Uh...I don't really recall. I'm assuming I asked her because I helped her get  
15 undressed and get on the toilet.  
16 **TR:** Okay.  
17 **AM:** But my real reason going in there was ask her questions, you know, quietly. You  
18 know, any more detail. Why she just...asked her what happened, you know. I  
19 don't remember exactly what was said in the bathroom, but I got nowhere. She  
20 wasn't saying anything about anything. So I was like...I mean I had enough, I  
21 knew.  
22 **SH:** What do you mean you got her undressed to go to the bathroom? Just pull her  
23 tights down?  
24 **AM:** Pull her tights down and put her on the toilet.  
25 **SH:** Okay. And does she take her tights and underwear all the way off when she goes  
26 to the toilet?  
27 **AM:** No, they're just at the bottom of her feet.  
28 **SH:** And what kind of questions are you asking?  
29 **AM:** Um... "What's going on?" "What happened?" "Do you want to tell me  
30 something?" "Are you okay?" You know. I don't want to push anything, just  
31 want her to casually tell me.  
32 **SH:** How is she responding?  
33 **AM:** She's... "No. Everything's fine."

1 (2:00:04)  
2 SH: What's her demeanor like?  
3 AM: Just like "la-dee-da" "Nothing's going on." "Everything's fine."  
4 TR: So...so she's sitting on this toilet. Did she actually go potty?  
5 AM: I don't remember.  
6 TR: And she never told you that she had to go potty?  
7 AM: I don't remember.  
8 TR: So was part of you undressing her was just so you could see if there was  
9 something amiss?  
10 AM: Mmm...no, I don't think so. Maybe. I don't recall. She must've said she had to  
11 go to the bathroom 'cause I ... I mean I wouldn't have just sat her on the toilet.  
12 TR: You wanted a private place to talk with her....  
13 AM: That was the main thing is I wanted to talk to her.  
14 TR: And the only room downstairs where there was no one milling around was the  
15 bathroom.  
16 AM: The bathroom, yeah.  
17 TR: Did you talk to anybody before you went in the bathroom? Anyone else  
18 downstairs?  
19 AM: No. I went straight downstairs to the bathroom.  
20 TR: Okay. And shut the door?  
21 AM: Right.  
22 TR: How long were you in the bathroom with her?  
23 AM: Not very long. Just enough to get some questions and realize that she wasn't  
24 comfortable talking yet.  
25 TR: Now when she sits on the...this toilet... You know, every toilet is different.  
26 Every toilet is a different height. Do you know, did her feet reach the ground?  
27 AM: I don't...I don't think so. I don't really recall, but I don't think so.  
28 TR: And do you recall specifically that her underwear and her tights were pulled down  
29 to her ankles?  
30 AM: I do.  
31 TR: And would her tights or her underwear have made contact with sort of the base of  
32 the toilet? Maybe?  
33 AM: I don't think so. That's why I put her up there.

1 (2:01:50)  
2 **TR:** So is she sitting so... I mean she's sitting on the toilet seat. Are her legs extended  
3 so that her clothes don't touch the...the dirty part of the toilet?  
4 **AM:** No, they're dangling. Yeah, that's the whole reason we help the kids get on the  
5 toilet, so they're not touching all over everything.  
6 **SH:** Are you holding on there or is she holding on?  
7 **AM:** No, she's by herself.  
8 **TR:** Okay. So how long are you in the bathroom with her?  
9 **AM:** A couple minutes.  
10 **TR:** And at any point does she...while you're in the bathroom for those couple  
11 minutes, at any point does she act afraid, act hurt, act...?  
12 **AM:** Nope.  
13 **TR:** Like anything is unusual or different?  
14 **AM:** No.  
15 **TR:** And she obviously didn't perceive that she was in trouble for anything?  
16 **AM:** No.  
17 **TR:** Well, I guess you can't say what she perceives. But...  
18 **AM:** She was just....  
19 **TR:** She was acting just normal?  
20 **AM:** Everything was fine(?).  
21 **TR:** So what do you do upon leaving.... Is she with you when you leave the  
22 bathroom?  
23 **AM:** Yeah. So then I take her to my mom...  
24 **TR:** Do you remember did you have to wipe her?  
25 **AM:** I don't remember.  
26 **TR:** Okay.  
27 **AM:** So I take her to my mom who was in the kitchen on the stool. And I sat Mia on  
28 the stool next to her and I said "She is not to move from here."  
29 **TR:** Is there anyone else in the kitchen when you do this?  
30 **AM:** Yeah, there's a lot of people around.  
31 **TR:** Do you remember anyone specific?  
32 **AM:** No. I just remember Stephanie being in that corner, but she wasn't paying  
33 attention.

1 (2:03:15)  
2 **TR:** And did you know your mom was in the kitchen when you went in the kitchen?  
3 **AM:** I was going to find my mom, yeah.  
4 **TR:** And did you have to go into other rooms before you went into the kitchen?  
5 **AM:** No, she just happened to be right there at the bar.  
6 **TR:** And you told your mom what?  
7 **AM:** "Mia is to stay right here."  
8 **TR:** Okay. Did your mom say anything to you?  
9 **AM:** No, she just looked at me like "okay." I think she's pretty smart, you know.  
10 **TR:** What do you mean?  
11 **AM:** You know, she probably knew I was uncomfortable with something.  
12 **TR:** Did she know you had gone upstairs to get Mia?  
13 **AM:** No.  
14 **TR:** And do you know whether or not your mom knew Brandon was upstairs?  
15 **AM:** No.  
16 **TR:** You don't know or she didn't know?  
17 **AM:** I don't know.  
18 **TR:** Okay. So what do you do after you tell your mom to watch Mia?  
19 **AM:** So I tell my mom "She's not to move from here." She said "Okay." I go get  
20 Stephanie and it takes a few minutes to kind of get her out, you know, past the  
21 mingling. I want to talk to her. I don't know why. I don't know why I go to  
22 Stephanie. I guess I'm still in shock that she even said those words to me. As I'm  
23 trying to get Stephanie out...I'm like "Stephanie, let's go over here." I try not to  
24 make a big deal out of it, especially for my daughter's sake. I don't want, you  
25 know, everybody...this big family fiasco. She doesn't need that. So as I'm trying  
26 to get Stephanie out....  
27 **TR:** Where is Stephanie when you find her?  
28 **AM:** She's in the corner of the kitchen.  
29 **TR:** Okay. So she...is she in the kitchen when you tell your mom "Mia is not to leave  
30 here"?  
31 **AM:** Right. But there's music going, mingling, I mean there's...you know. So I'm  
32 trying to get her out and my mom tells me to come back over there and she...My

1 mom said that she asked Mia what was she doing up there...something,  
2 something... Mia leaned over to my mom and said "Brandon licked my pee."  
3 (2:05:07)  
4 TR: So where were you when your mom comes and tells you this?  
5 AM: (Inaudible answer – "I don't know"?).  
6 TR: Were you in the house or outside of the house?  
7 AM: I think we were inside?  
8 TR: Okay. Were you headed somewhere with Stephanie?  
9 AM: I was trying to get her outside to go talk to her, yeah.  
10 TR: And you wanted to go outside for privacy?  
11 AM: Right.  
12 TR: Had you made it outside?  
13 AM: Not yet, no.  
14 TR: Okay. And your mom whispered this to you or she said it to you?  
15 AM: You know, she quietly, very quietly said it to me.  
16 TR: Okay. Do you know how your mom knew that Mia was upstairs? 'Cause you  
17 said your mom said "What were you doing up there?"  
18 AM: (Inaudible answer – "I don't know"?).  
19 TR: Are you sure that's what your mom said to you? Or that she said to Mia, "What  
20 are you doing up there?" "What were you doing up there?"  
21 AM: Um...I don't know about "up there." "What were you doing" something-  
22 something.  
23 TR: Okay. And I imagine your mom was thinking maybe Mia is in trouble?  
24 AM: Possibly, yeah.  
25 TR: And "Why is this happening?"  
26 AM: Yeah, exactly. "What were you doing..."  
27 TR: And you didn't give your mom any explanation when you left with Stephanie?  
28 AM: No. Then she just pops out with that. Like whoa.  
29 TR: Now do you know why she would say that to your mom and not to you?  
30 AM: They're very close. It was kind of like she was feeding us each a little bit of  
31 information. She probably maybe felt like she was gonna get in trouble and  
32 didn't want to go all the way, tell everybody everything? I don't know. But she  
33 said (inaudible words – paper shuffling.)

1 (2:06:37)  
2 **TR:** Okay. So what did you do once you heard that?  
3 **AM:** Then I finally got Stephanie out. I got her in my car 'cause there's people outside  
4 too. And I told her "What I'm gonna tell you is gonna blow your mind and I  
5 understand if you're not gonna completely believe at first 'cause it's somebody  
6 telling you that your husband has done this." It's like you're crazy, you know.  
7 So I tell her and she's crying and kind of hyperventilating and she's like "Okay,  
8 oh my God. Oh my God." And then...  
9 **SH:** And what did you tell her?  
10 **AM:** I told her exactly what happened. I went upstairs, got Mia, and as I was coming  
11 down she said that "Brandon told me not to tell you." And then she told my mom  
12 that he licked her pee.  
13 **SH:** So when you just repeated it right now, you said "Told me not to tell you."  
14 Before you said "He told me not to tell." Do you remember which it was?  
15 **AM:** It was "Tell me not to tell you," meaning me. Yeah.  
16 **TR:** So how long did you talk to Stephanie out in the car?  
17 **AM:** Probably 10 minutes.  
18 **TR:** What more was there to say after what you said to her?  
19 **AM:** I don't know.  
20 **TR:** I mean were you emotional at this time?  
21 **AM:** I was very emotional, yeah.  
22 **TR:** Were you crying as well?  
23 **AM:** I don't recall if I was crying or not at that point. I was more.... "Your husband's  
24 a sicko." "Sorry you're gonna cry about it, but..." You know.  
25 **TR:** So where does it progress from there?  
26 **AM:** So we go back in. And I guess maybe I went to her first because she's got a kid  
27 with him. I guess that's why. I don't know why I went to her first. But we go  
28 back in. It's very casual still; nobody knows.  
29 **TR:** When you go back in where is your mom and where is Mia?  
30 **AM:** I don't remember.  
31 **TR:** And so when your mom came to tell you what Mia said to her, did she leave Mia  
32 in the kitchen?  
33 **AM:** Um...I don't know.

1 (2:09:19)  
2 **TR:** Did she have Mia with her when she came in....?  
3 **AM:** Well she wouldn't have said that in front of Mia. So I don't know if she had left  
4 Mia with somebody. With Grandma maybe? I don't know.  
5 **TR:** Okay.  
6 **AM:** So I go back in and Stephanie goes right upstairs. Brandon is still upstairs.  
7 And...Did she goes upstairs or did she talk to her mom? I think she goes upstairs,  
8 talk to him and then comes and talks to her mom. She confides in her mom and  
9 everything; they're very close. So now the mom knows, Aunt Sheri. And then  
10 it's, you know, all of us kind of chattering about it, going "What the fuck is going  
11 on?" "What's happening?" "This is what happened." "No way!" "Where's  
12 Brandon?" "He's still upstairs." Stephanie goes and talks to him, it's awhile.  
13 Then her attitude kind of changes a little, which is expected. More like "he said  
14 he didn't...."  
15 **SH:** Who?  
16 **AM:** Stephanie. "He said he didn't do this," you know, of course. And then she tells  
17 me that I... "I told him he needs to come down and talk to you right now." A  
18 little bit passes again, he comes down. Me, him, Stephanie, Sheri and my  
19 mom...I think my mom was in there...went into the garage and it was just us and  
20 he's like "There's no way." He's looking at me right in the eyes. "There's no  
21 way. I'd never do that to Mia, I love her." I'm like "Yeah, well I know what she  
22 told me and I know what you did." I'm not emotional at this point. And then,  
23 you know, that was pretty much that. And then I went outside to talk to Stephanie  
24 again and she was in disbelief and just like "Oh my God." Then we packed up  
25 and we left and then we went home.  
26 **TR:** How long were you at the party after you took Mia out of the room?  
27 **AM:** Probably like 45 minutes, maybe an hour.  
28 **SH:** And where was Mia during that time?  
29 **AM:** With my mom. I don't know if she was in the garage with us or not. I would  
30 assume she left Mia with my dad.  
31 **TR:** And was anyone.... When Brandon.... So when Brandon talked to you, was he  
32 drunk?  
33

1 (2:12:03)  
2 AM: Um...not any different than any other day. He'd probably been drinking beer all  
3 day, but was he hammered? Was he drunk? Probably.  
4 TR: Was he showing visible signs of intoxication that you can recall now?  
5 AM: Um...yeah. I mean his eyes were a little, you know...a little...what do you want  
6 to call it?  
7 TR: Watery? Bloodshot?  
8 AM: Kind of maybe a little hazed. But, I mean, clear speech.  
9 TR: And when are his eyes hazed? As he's talking to you after...?  
10 AM: You could tell he's had a few beers, as far as his eyes. As far as, you know,  
11 movement and stuff....  
12 TR: But are you noticing these hazy eyes as you're talking to him and saying he didn't  
13 do it? Or did you notice this beforehand?  
14 AM: No, I just didn't recall in his look and that's just kind of a normal look after so  
15 many beers.  
16 TR: Okay, what about your mom? Had she been drinking?  
17 AM: No.  
18 TR: Does she not drink at family functions?  
19 AM: I don't think she was drinking. If she does she has like one beer.  
20 TR: Okay, what about you? Had you been drinking?  
21 AM: Yes.  
22 TR: And how much had you had to drink?  
23 AM: I had a couple.  
24 TR: And a couple what?  
25 AM: Um...what did I have? I had a shot of fireball.  
26 TR: Fireball? What is that?  
27 AM: It's a flavored whiskey, kind of cinnamon cordial. And I'm pretty sure I brought  
28 some wine. I'm pretty sure I did.  
29 TR: Did you actually drink any of the wine that you brought?  
30 AM: If I recall, if it's the right Christmas, I think me and...yeah, Misty, had a glass,  
31 and Melissa. So I probably had a total of three drinks.  
32 TR: And were you feeling affected at all?  
33 AM: Not significantly. I'm sure I felt a little something....

1 (2:14:04)  
2 **TR:** Is there anything about how much you had to drink that night that would interfere  
3 with your ability to remember the events of that evening?  
4 **AM:** Oh no.  
5 **TR:** Okay. So you went home with Mia. Did you have any more conversations with  
6 her that night?  
7 **AM:** We went into her bedroom and she had brought up...what did she say? Oh, just  
8 random, I wasn't talking about it, "He made a mess down there." So this is kind  
9 of as we were getting pajamas on and stuff. And she said "He made a mess down  
10 there." With Brandon? I don't know if she said "Brandon" or not.  
11 **TR:** So you don't know if she said "Brandon made a mess down there," or "He made a  
12 mess down there"?  
13 **AM:** Correct.  
14 **TR:** And this was random, this wasn't...this wasn't a statement that was solicited by  
15 you?  
16 **AM:** Correct.  
17 **TR:** You weren't talking about Brandon or the incident when she said this?  
18 **AM:** No.  
19 **TR:** Where was Brody when she said this?  
20 **AM:** In the bedroom with us.  
21 **TR:** Okay.  
22 **SH:** His bedroom or her bedroom?  
23 **AM:** Her bedroom.  
24 **TR:** You mean.... You're a single parent basically at this time...  
25 **AM:** Right.  
26 **TR:** So you had to have both kids with you...  
27 **AM:** Right.  
28 **TR:** You can't put Brody in a room by himself.  
29 **AM:** Right.  
30 **SH:** Do you have any idea what time this is?  
31 **AM:** I don't know.  
32 **TR:** Now...So you're undressing her when she says this?  
33

1 (2:15:26)

2 **AM:** Yeah, I think we're getting pajamas on. We're getting ready for bed, you know,  
3 as I'm dressing her, getting her pajamas on, that's what she says.

4 **TR:** So the clothes that she was wearing, what did you do with them when you took  
5 them off?

6 **AM:** We just tossed them in the basket; the laundry basket in her bedroom.

7 **TR:** Is there a reason why you didn't separate them? Suspecting what you suspected?

8 **AM:** I didn't think. Yeah, I guess I wasn't thinking legal part of it. I was thinking my  
9 daughter's emotions and stuff and what she's dealing with instead of...

10 **TR:** And was her demeanor any different that evening before she went to bed? Did  
11 she ever seem upset or...?

12 **AM:** No.

13 **TR:** And when she said "He made a mess down there," did you ever ask her what she  
14 meant?

15 **AM:** I did. And she said, you know, "It's all icky down there," and she's pointing to  
16 her privates. And that was pretty much...I think that was all that was said that  
17 night.

18 **SH:** When she said that did you do anything? Did you look or clean her up or...?

19 **AM:** I don't remember. I think that was my breaking point emotionally. I think that's  
20 when I stopped...yeah. I think that's when I started getting emotional about it.

21 **TR:** Is there a reason you didn't call the police that night?

22 **AM:** Um...I guess I didn't even think about that aspect of it. I guess maybe if it was a  
23 stranger that you would automatically think that. Not that I want to protect him at  
24 all. But I don't know, I guess I just was like "this family member just did this,"  
25 and just the legal part of it wasn't really, you know....

26 **TR:** At this point were you ever unsure about what Mia was saying had happened?

27 **AM:** Oh, absolutely not. I knew she was telling the truth.

28 **TR:** But you weren't confused at all about what she was trying to say?

29 **AM:** Oh no, not at all.

30 **TR:** But at this point she didn't say that Brandon had done anything other than told her  
31 not to tell?

32 **AM:** No, she had also told my mom that he ...

33 **TR:** Right, but what you heard yourself from her?

1 (2:17:49)  
2 AM: What I heard for myself as well was that "He made a mess down there," and she's  
3 pointing down to her privates.  
4 TR: Okay. And so no more conversation about it that evening?  
5 AM: No.  
6 TR: Did you ever have a subsequent conversation with her about it?  
7 AM: Um...I don't think I ever really brought it up. I might've questioned a little bit.  
8 TR: Did you ever get any additional information?  
9 AM: No. And I definitely didn't push it; just asked a couple questions here and there  
10 and if she wanted to tell me...  
11 TR: Now is there a reason you didn't push it? Did somebody tell you not to do that?  
12 AM: I don't want her to have to go through that again; recall and everything. I wanted  
13 her to tell me on her own and I didn't want a big deal made out of it, some drama.  
14 I just wanted to be casual so she's always comfortable telling me this stuff. And  
15 that mommy's not gonna flip out and go crazy on this, you know, "just go ahead  
16 and tell me."  
17 TR: So do you make an effort to not seem emotional when she's talking to you about  
18 it?  
19 AM: Um...not necessarily. I did tell her that, you know, "That wasn't right what he  
20 did and I'm really sorry that happened to you."  
21 TR: So you have told her that?  
22 AM: Yeah.  
23 TR: How many times have you told her that?  
24 AM: Probably just once, maybe twice. And it kind of got brought up again when we  
25 had to come here for the first time.  
26 TR: Okay. So other than the conversations of the night of the incident, has she said  
27 anything to you about Brandon since?  
28 AM: No. No. We actually kind of...we don't mention his name. I think I mentioned it  
29 once or twice and just kind of looked at her to see and there was no reaction.  
30 TR: Does she ever ask about him?  
31 AM: No. But she knows... We'll say "No, Blake's not at his house right now, he had  
32 to go to his dad's for the weekend."  
33 TR: And so does she still see Blake?

1 (2:19:56)  
2 AM: Yeah, she sees Blake.  
3 TR: And does she still see Stephanie?  
4 AM: Yeah.  
5 TR: Now do you know whether or not your mom has ever talked to her about  
6 Brandon?  
7 AM: I don't know. I don't think she has.  
8 TR: Has anyone ever told you not to talk to her about Brandon?  
9 AM: No.  
10 TR: Okay. You just think in your own mind that it's just probably not a good idea?  
11 It's not something you want to do as a parent?  
12 AM: Right. I don't want to bring that up and...tell me what you're comfortable with  
13 and...  
14 TR: Now do you recall making a video with your...I think it's with a cell phone?  
15 AM: Yeah. My flip(?)...my flip(?) video, yeah.  
16 TR: Tell me how that happened.  
17 AM: Um...I vaguely remember that. We were...I remember we were in my bedroom  
18 sitting on the bed. Somehow it came up and she said something and I was like...I  
19 can't even remember what she said...and I was like "Oh my goodness, we gotta  
20 make sure we are videotaping." I don't even know why the camera was on. We  
21 just sat there and....  
22 TR: Did you turn the camera on before she mentioned anything or did she just happen  
23 to mention it while the camera was on?  
24 AM: While the camera was on.  
25 TR: So the camera was rolling for another purpose?  
26 AM: So I just let it go. Probably just doing videos of the baby or whatnot.  
27 TR: Okay. And was she asked any questions to elicit anything about the incident?  
28 AM: What?  
29 TR: Did you ask any questions to elicit a response from her?  
30 AM: I think I did after she had mentioned something. I don't remember what it was  
31 that she...  
32 TR: So have you since...and obviously you meet with Mr. Akoloko(sp) and provided  
33 him a copy of the recording. Have you reviewed the recording since?

1 (2:21:42)  
2 AM: Not since, no.  
3 TR: I think they took the actual card away and kept it as evidence, right?  
4 AM: No, I think I still have a copy of it.  
5 TR: Okay. But you haven't reviewed it since?  
6 AM: (No).  
7 TR: And do you remember...without looking at the video...do you remember what  
8 she says?  
9 AM: I don't remember. I almost forgot about that.  
10 TR: Now...And you said the subject has come up since you brought her here. How  
11 many occasions have you brought Mia here?  
12 AM: Um...I think just two. I mean the first time a couple years ago when we first met  
13 with these guys and Mia talked with the other...the first attorney.  
14 TR: Mr. Akoloko(sp)? His name is a little difficult to say.  
15 AM: Yeah. Yeah.  
16 TR: For people who don't have to say it all the time. And you met Ms. Tupper at that  
17 time as well.  
18 AM: Mmm hmm (yes).  
19 TR: Now Mr. Alsdorf; how many times have you met him?  
20 AM: Um...I think this is my third.  
21 TR: And did Mia come with you on any of those occasions?  
22 AM: She came with...Yeah, both times.  
23 TR: Okay. And did they talk privately with Mia? Ms. Tupper and Mr. Alsdorf?  
24 AM: Uh....  
25 TR: I know we did.  
26 AM: No, I think....right...  
27 TR: Just the other day.  
28 AM: I think it was just...  
29 TR: All of you guys meeting together?  
30 AM: And that was the first one, with Akolokoff and Annette, right? I think the two of  
31 them spoke with Mia.  
32 TR: But Mr. Alsdorf hasn't?  
33 AM: No.

1 (2:23:10)  
2 **TR:** Okay.  
3 **SH:** So you said there was the first time where Mr. Akoloko and Annette spoke with  
4 Mia. And then there was the one last week? Or earlier this week? Was that the  
5 third time?  
6 **AM:** So there was the first time they spoke a couple years ago. And then...  
7 **SH:** Was the third time just earlier this week?  
8 **AM:** And then the second time Mia talking to this one?  
9 **SH:** Any of them. Coming here with you.  
10 **AM:** Oh. So Mia came the first time with the other attorney, then came here... I  
11 thought maybe she'd been here one more time. Then she was here with you guys.  
12 **SH:** And was there a time in between those two?  
13 **AM:** Um...I think I had been here.  
14 **TR:** It's okay to tell us if you don't remember.  
15 **AM:** Yeah, I'm not sure.  
16 **TR:** We're asking an awful lot of questions. And to your knowledge has she said  
17 anything to anyone else about what happened?  
18 **AM:** Not to my knowledge, no.  
19 **TR:** Okay.  
20 **SH:** You said the topic came up when you guys were coming here? Tell me about  
21 that.  
22 **AM:** What do you mean?  
23 **SH:** We asked like "Has this ever come up?" And you said "Well when we had to  
24 come here two years ago it kind of came up again."  
25 **AM:** Oh, about me talking with her. Yeah. 'Cause she had actually said...told Annette  
26 and the other attorney that...what had happened. And so I felt the need to kind of  
27 touch base on it again.  
28 **TR:** And you know that 'cause they told you that she had said that?  
29 **AM:** Right. Did they? I don't know.  
30 **TR:** Well you weren't in the room when they talked to her.  
31 **AM:** I'm assuming. I don't know. Maybe Mia told me.  
32 **TR:** Do you remember?  
33

1 (2:25:03)  
2 **AM:** I don't really remember. So I just felt the need to touch base on it again and let  
3 her know that the reason she's in to talk about it again is to make sure that he  
4 doesn't hurt any other kids and "Sorry that you have to talk about it again. Just  
5 want to make sure he doesn't hurt anybody else and it just wasn't right what he  
6 did to you. And that she's not in trouble at all and I'm very proud of her for  
7 telling these guys."  
8 **TR:** And how did she respond to that?  
9 **AM:** Just whatever.  
10 **TR:** So she didn't have any emotional response to that?  
11 **AM:** No.  
12 **TR:** Has she demonstrated any emotional problems since this incident took place?  
13 **AM:** I don't think any out of the normal toddler, 4 to 5 year-old stuff.  
14 **TR:** Okay, nothing unusual.  
15 **AM:** (No).  
16 **TR:** Nothing out of the ordinary? Nothing that would make you want to consult a  
17 professional?  
18 **AM:** Um...there was one time. And of course she is 5 and I know she gets exploratory.  
19 But there was one time that she was touching a mannequin in the store. I was like  
20 "Oh my God, stop doing that." She kept rubbing the mannequin. I'm like "Stop."  
21 Where her panties were. I'm like "Mia, what are you doing?" She thought it was  
22 funny. I was mortified of course. I'm like "Don't ever do stuff like that."  
23 **TR:** Was this an adult mannequin, a child mannequin?  
24 **AM:** It was adult mannequin.  
25 **TR:** Male mannequin? Female mannequin?  
26 **AM:** It was a female.  
27 **TR:** Female. What kind of store was this?  
28 **AM:** It was Kohl's. And it was in the lingerie department.  
29 **TR:** Oh, so the mannequin was dressed in underwear?  
30 **AM:** Right. And I just... You know, I know they're getting exploratory about that age,  
31 but I also thought it was kind of odd that she was messing with the mannequin.  
32 **TR:** And was she laughing as she did it? Did she think she was (?) being funny?  
33 **AM:** Yeah. Yeah.

1 (2:26:48)  
2 **TR:** And so what did you say to her when she did that?  
3 **AM:** Like "That's not appropriate. Not at all. Do not do that."  
4 **TR:** And did she have a response to that?  
5 **AM:** Not really.  
6 **TR:** Okay. And was anyone else there when that happened?  
7 **AM:** No.  
8 **TR:** Okay. Now Ms. Hardenbrook mentioned earlier...talked to you earlier about  
9 your...your history of being sexually abused. So I wanted to ask you, who is it  
10 that sexually abused you, do you know?  
11 **AM:** Donnie Mathis, which is my brother's...or my dad's brother.  
12 **TR:** Okay. And what county did that happen in?  
13 **AM:** Uh...I assume Snohomish. I was really young.  
14 **TR:** Okay. So geography is not something you'd remember. Do you know...Do you  
15 have much of a memory about what happened?  
16 **AM:** Uh...no. Very vaguely. Very vague.  
17 **TR:** And do you know...is your memory based on what people have told you or is it  
18 based on your own memory of what happened?  
19 **AM:** No, I had actually forgotten, completely forgotten, for years and years and years  
20 until I was like...I don't know how old. Maybe middle school or high school-ish.  
21 For some reason it just came back.  
22 **TR:** And when it came back what did you do?  
23 **AM:** I started questioning my mom about it. She was so uncomfortable and like "I'm  
24 not talking about this." Maybe that's why I reacted the way I did with Mia, more  
25 casual and whatnot.  
26 **TR:** So your mom freaked out when you brought it up?  
27 **AM:** Yeah. She thought I had forgotten.  
28 **TR:** Now had Donnie been prosecuted already?  
29 **AM:** Yeah, he had already served time and we had gone...had been over 10 years, we  
30 had gone through family functions and seeing him and whatnot.  
31 **TR:** And so you didn't remember during that time of seeing him at family functions  
32 that he had done anything to you or had been prosecuted?  
33

1 (2:28:33)  
2 AM: I don't think so. Like I said, it was a big gap of years I totally forgot. And then I  
3 think I remembered and didn't say anything until years later, then I brought it up  
4 to my mom and she was like....  
5 TR: So do you remember anything about the prosecution? Do you remember if you  
6 testified?  
7 AM: No. All I remember is going in to a building and talking with people. And I  
8 remember not telling them what really happened. And I remember being really  
9 close to telling them kind of what happened. But then making up a different  
10 story.  
11 TR: And how old were you?  
12 AM: I was under 7, I know that. But I think I was like....  
13 TR: Well do you remember how old you were?  
14 AM: No, I don't. I was definitely under 7.  
15 TR: And you remember making up a story? What kind of story did you make up?  
16 AM: I just remember kind of chickening out, you know.  
17 TR: And did you say it didn't happen?  
18 AM: "My cousin, it was my cousin."  
19 TR: Not your uncle, your cousin?  
20 AM: "We were just playing house." Yeah, not that she was touching me or anything,  
21 but "Oh no, we were just playing house. Nothing like that happened."  
22 TR: This is what you remember, this is not what somebody's told you?  
23 AM: No, this is what I remember.  
24 TR: Okay. Have you read any of the police reports associated with that incident  
25 since...ever?  
26 AM: No.  
27 TR: And have you ever received counseling for that issue? That prior sexual abuse  
28 that you were exposed to?  
29 AM: Uh...I don't think so.  
30 TR: You don't remember?  
31 AM: I don't remember.  
32 TR: As an adult you've never sought counseling for that?  
33 AM: Right. Correct.

1 (2:30:03)  
2 **TR:** Where is Donnie Mathis nowadays?  
3 **AM:** He's in Lake Stevens.  
4 **TR:** And with Mia, did you ever limit her exposure to Donnie Mathis?  
5 **AM:** Oh yeah. I was so weird about it at first, very weird. I was...He used to live right  
6 down the street from my mom and they had her when I would work. So I'd drop  
7 her off for work and then go pick her up. And if Donnie had come over I was like  
8 "No, I don't want him even looking at my kid." I was so weird about it.  
9 **TR:** So you found out from your mom that she was letting Donnie come over?  
10 **AM:** Yeah just, you know, drop off some food or...He always like to cook and would  
11 drop off food. And he wouldn't stay, hang out, or anything like that. But...  
12 **TR:** And your mom knew that Donnie was a sex offender?  
13 **AM:** Right.  
14 **TR:** And she knew that he had offended against you when you were a young girl.  
15 **AM:** Yeah. Kind of weird, huh?  
16 **TR:** Did you ever say "But mom, what are you thinking?"  
17 **AM:** Oh yeah.  
18 **TR:** And what did she say?  
19 **AM:** When I had kids is when it really started to bother me. I was like "Why would  
20 you let me around him again?" "Why is the family okay with this?" "Why is he  
21 at every family function?"  
22 **TR:** Did she ever have an answer?  
23 **AM:** No. Just...no, not really. It's family. Again, he was on drugs when he did it and  
24 he's served his time, which is...that to me is not justifiable 'cause he went to jail,  
25 it has nothing to do with it, it's not justifiable.  
26 **TR:** Right, the fact that he went to jail doesn't mean...  
27 **AM:** That doesn't mean anything.  
28 **TR:** Right. So how old was he when he did this, do you remember?  
29 **AM:** I don't know.  
30 **SH:** Do you know whether he got any treatment or had any probation?  
31 **AM:** Oh yeah, I think he did. And I'm pretty sure he's registered as a sex offender.  
32 **SH:** Have you ever looked it up online?  
33 **AM:** I have not.

1. (2:31:57)  
2 **TR:** Is Donnie short for Donald?  
3 **AM:** Mmm hmm (yes).  
4 **TR:** And approximately how old is he, do you know?  
5 **AM:** Um...he's probably 53?  
6 **TR:** And do you know, has he ever been told about this? The allegation against  
7 Brandon?  
8 **AM:** I would think so. I don't know.  
9 **TR:** You wouldn't initiate that conversation?  
10 **AM:** My Aunt Sheri kind of talks a lot. But I hope she wouldn't say anything, but...  
11 **TR:** But you wouldn't initiate a conversation with him about this?  
12 **AM:** No.  
13 **TR:** Okay. Do you have anything?  
14 **SH:** Oh yes. You said that Tim and Sheri Mathis live in Granite Falls?  
15 **AM:** Correct.  
16 **SH:** What kind of a residence do they live in? Is it an apartment? A condo? A house?  
17 A mobile home?  
18 **AM:** Right now they are living in the motorhome.  
19 **SH:** And when did that start?  
20 **AM:** A few months back. They were house-sitting and then they came home.  
21 **SH:** Before they started living in the motorhome a few months back, where were they?  
22 What kind of residence were they living in?  
23 **AM:** A nice, three-bedroom residence. Residential place. Granite Falls. Very nice,  
24 very well kept.  
25 **SH:** Why did Aunt Sheri move out of her big, beautiful house with bamboo floors?  
26 (Inaudible words – both speaking)...or what?  
27 **AM:** No, her husband was in construction, they had a construction business, and it all  
28 fell with the market so they pretty much lost everything. Yeah.  
29 **SH:** Sad.  
30 **AM:** Yeah.  
31 **TR:** Did they design that house? I mean the design seems unusual, so...  
32 **AM:** Yeah. It's pretty much a flip of what you would normally see. Yeah, it was...it  
33 was a little different.

1 (2:34:00)  
2 **SH:** So how did laundry...or how does laundry work and did it work with the kids?  
3 Like do you sort their laundry when you're doing it? Do you spray for stains?  
4 Empty pockets?  
5 **AM:** No, usually... Well back then everything used to just get washed together. So all  
6 Mia's clothes would just go. All of them. You know, all Brody's clothes would  
7 go together. Now as they're older and more variety I can separate colors.  
8 **SH:** Did you go through and turn stuff right-side-in so it could wash? Right-side out?  
9 **AM:** No. No.  
10 **SH:** Okay. You do that when it's clean?  
11 **AM:** Pretty much.  
12 **SH:** Okay.  
13 **AM:** Like with Jorge's more than....it'll get cleaner.  
14 **SH:** Do you remember Christmas of 2010? Was that a potluck style Christmas or was  
15 that the more formal, old-school Christmas?  
16 **AM:** It was more potluck. Everybody would bring appetizers and stuff.  
17 **SH:** So the youngins had already taken over?  
18 **AM:** Kind of, yeah. We have a lot more say of what goes on.  
19 **TR:** Is Aunt Sheri's house still in the family or did they sell it to someone?  
20 **AM:** It's gone, yeah.  
21 **TR:** It's gone. Okay.  
22 **SH:** And would you be willing to get the Prosecutor, or let them copy to give to us,  
23 some of the pictures that we talked about? We talked about pictures from that  
24 night.  
25 **AM:** Oh yeah.  
26 **SH:** If there was any picture of her outfit or a picture at Christmas. I think that would  
27 be helpful for everyone.  
28 **TR:** I mean just pictures of the whole party so we have an actual....  
29 **SH:** Yeah, any pictures would be great. Any and all.  
30 **TR:** ....visual image of how everyone was congregated and whatnot.  
31 **AM:** I know there's a couple pictures of the living room with their head things on.  
32 **TR:** Oh, the mind game?  
33 **AM:** Yeah.

1 (2:35:49)  
2 **SH:** Okay. When did Mia....Or we talked a little bit about the doors being solid wood  
3 doors. What kind of handles do they have? Are they the round handle? Are they  
4 like the disability handle with the long, flappy thing?  
5 **AM:** I don't know.  
6 **SH:** And is Mia able to open doors?  
7 **AM:** Yeah.  
8 **SH:** When did that start?  
9 **AM:** Well before then.  
10 **SH:** And had you given her any kind of cautionary talks about being alone with boys  
11 or being alone with men or anything like that?  
12 **AM:** No. The only thing I've ever talked to her about is that her pee needs to be  
13 washed and nobody touches.  
14 **SH:** Okay. And did you just talk about the pee region or did you also talk about...  
15 **AM:** No, it was just the pee region.  
16 **SH:** Okay. Did you use any books for potty training? Like any kids stories that she  
17 liked about potty training?  
18 **AM:** No.  
19 **SH:** And you were videotaping something else with the baby and Mia said something  
20 and so you kept rolling?  
21 **AM:** Yeah.  
22 **SH:** So we talked about the night of at the party, she talks a little more when you get  
23 home. What about the next day? What do you do the next day? So it's the day  
24 after, all of this happened the night before, you're kind of waking up.  
25 **AM:** I don't know. I don't remember.  
26 **SH:** Okay. And at some point you called. So how did that come to be?  
27 **AM:** Yeah. So I guess the first thing was I was gonna call CPS, you know, they got a  
28 kid. (Inaudible words)...going on with his kid. And....So I had found some  
29 numbers off the Internet or something and had gotten the wrong numbers and  
30 redirected and ended up calling some different numbers the next day and then got  
31 a hold of...I thought it was CPS, I don't know who it was though. And then they  
32 were the ones that...They told me to go to the hospital and have her kit done,  
33 even though it had been days later.

1 (2:38:11)  
2 SH: Okay.  
3 AM: I don't know if they're the ones that contacted these guys. I don't really  
4 remember that stuff.  
5 SH: So they tell you to go to the hospital.  
6 AM: They did tell me to do that.  
7 SH: And then how soon do you do that?  
8 AM: I'm pretty sure I did it that day.  
9 SH: Okay, and how does that work? What do you tell Mia?  
10 AM: "We're just gonna go get a checkup from the doctor." And that's what we did.  
11 SH: Okay. And how was her demeanor during that?  
12 AM: Fine. Just normal.  
13 SH: And did she tell the medical staff anything?  
14 AM: No. I don't think she realized that's why she was there.  
15 SH: And did you give them any information about the allegation?  
16 AM: Oh yeah. They, you know, treat it as...the whole sexual assault kit. They brought  
17 in the advocates.  
18 SH: And where was Mia when you gave them this information?  
19 AM: Mia was on the hospital bed with one of the advocates. I think she was with an  
20 advocate. And I was in a separate room with...I don't know if they were from...I  
21 don't know where they were from.  
22 SH: Okay. So you were trying to kind of stay away when you were talking about that?  
23 AM: Oh yeah. It was a separate room. Yeah.  
24 SH: So you're in a separate room, you have the checkup, what happens next?  
25 AM: That was that. I tell them what happened and I gave them clothes then.  
26 SH: Why?  
27 AM: I think once I realized I should've taken her to the hospital to get checked out and  
28 my Grandma Jenny was actually the one who was like "Why didn't you call the  
29 police?" I started realizing "Oh shit." So I took the clothes 'cause I was pretty  
30 sure, you know... She said that he had made a mess down there. So I took what I  
31 was pretty sure...I mean I know what she was wearing on top, but... Gave that to  
32 them. They had me put it in a bag, one of their bags.  
33 SH: And where did you get those clothes from?

1 (2:40:09)  
2 AM: The hamper.  
3 SH: Her hamper?  
4 AM: Mmm hmm (yes).  
5 SH: And did you look at the clothes at all to see if there was a mess, or...?  
6 AM: Uh yeah. Yeah, I didn't see anything like out of the norm.  
7 SH: Do you remember if they were right-side-out, right-side-in?  
8 AM: I don't remember.  
9 SH: Okay. Do you know if you like kind of got them ready for the hospital or if you  
10 just grabbed them and ran?  
11 AM: I think I just grabbed them and put them in a bag and left.  
12 SH: So you go to the hospital, she gets the exam, you give them the clothes. What  
13 happens next in relation to this case?  
14 AM: Um...we went to the room and talked to them. And then that was pretty much it.  
15 We went out and did something, a McDonald's drink or something.  
16 SH: Like something kind of fun?  
17 AM: Yeah. Yeah. Went home and that was that.  
18 SH: Okay. What did you next hear about the case?  
19 AM: Then after that it was...I don't know if they found out that I had contacted  
20 somebody is when Brandon was...he was contacting the Sheriff. Oh, and  
21 then...that's right. He...then it turned into a big sob-fest for him and  
22 (unintelligible word)...blame. He was abused I think physically...I think it was  
23 physically abused by his dad. Beat him up all the time. And he had a horrible  
24 childhood and he feels like committing suicide.  
25 SH: And how do you know this information?  
26 AM: My mom told me. She had talked to Sheri. 'Cause they were trying to get him to  
27 kind of come out and...  
28 SH: Come out? What does that mean?  
29 AM: Fess up I guess.  
30 SH: Oh, to say he did it?  
31 AM: Yeah.  
32 TR: Who is "they"? Your mom and Sheri?  
33 AM: No, Stephanie and Sheri.

1 (2:42:24)  
2 **SH:** And did you talk to Stephanie about it?  
3 **AM:** Um...I don't think I really talked to her after the situation.  
4 **SH:** Even to today?  
5 **AM:** Um...I don't recall. We might've vaguely mentioned something.  
6 **SH:** Okay, so you mostly got it through....  
7 **AM:** Pretty much just we don't really talk about it. Especially considering it's still  
8 open and lingering.  
9 **TR:** So you still see Stephanie, you just avoid the subject?  
10 **AM:** Right. See her at family functions and whatnot.  
11 **SH:** So through Sheri you found out that Brandon was suicidal and had been abused?  
12 **AM:** Through my mom.  
13 **SH:** Oh, through your mom.  
14 **AM:** My mom had been talking to Sheri and they were all upset and... Of course.  
15 **SH:** How did you feel about that?  
16 **AM:** That it was absolutely ridiculous. You know? And maybe that stuff is true, but,  
17 you know, also...all the sudden you're suicidal? Yeah, I bet you are. You just  
18 got caught and you're realizing what's gonna happen. He wants everybody to  
19 back off and...and that's pretty much what happened.  
20 **SH:** Your family?  
21 **AM:** Kind of, yeah, you know. It just kind of seemed like they just kind of... "Oh no,  
22 he's suicidal. He wants to kill himself." You know.  
23 **SH:** Okay. So you did not have that reaction?  
24 **AM:** Oh, no.  
25 **SH:** It sounds like you're kind of put off by that reaction.  
26 **AM:** Yeah. You know, he probably...Obviously he probably did have some kind of  
27 issues, I would assume. I don't know, I'm not a psychiatrist. But I assume  
28 something happened for him to do this. But I don't know. And I know he  
29 was...They were having some like emotional issues stuff before, so...that's why  
30 he was out of the house for awhile. They were almost gonna get a divorce and  
31 they got back together and then this happens. You know, maybe he is suicidal.  
32 **SH:** So you were aware of him having kind of emotional issues with Stephanie? Was  
33 it before this?

1 (2:44:30)  
2 **AM:** Well, you know, being on the verge of divorce and whatnot and...  
3 **SH:** Okay. And prior to that Christmas?  
4 **AM:** Yeah, it had all just happened. You know, hearsay from my mom that was from  
5 Sheri. I don't remember exactly. I think I knew at one point in time what  
6 happened; I don't remember anymore.  
7 **SH:** So there was all this brouhaha. Poor Brandon, he's upset. The family kind of  
8 backed off. What happened next in relation to the case?  
9 **AM:** Um...I guess we came here and everybody kind of got a little more quiet. My  
10 mom didn't really talk to Sheri as much about it.  
11 **SH:** Did you have an impression as to why?  
12 **AM:** My Aunt Sheri talks a lot and she wants everything to be perfect. So we just  
13 didn't feel the need anymore to let people know what was going on as far as the  
14 legal aspect of it. Just not talking about it anymore.  
15 **SH:** Okay. So you came here and you guys had the talk with Mr. Akoloko. And what  
16 was the next thing that happened in regard to the case? Is that before or after the  
17 video? I'm sorry.  
18 **AM:** Uh...I had spoke with Mr....the dude....first I think. Wait, I don't remember.  
19 Pretty sure it was first. And then I think when I came back and I talked to the  
20 detective is when I actually had that tape. Or maybe I talked to him after.  
21 **SH:** Were you at all frustrated that charges hadn't been filed and things (inaudible  
22 words – both speaking)?  
23 **AM:** Oh absolutely. After that it was just kind of... Two years later here we are  
24 finally. Yesterday we come back to talk with me and, you know, it's... Yeah,  
25 very frustrated. I'd like to be over it. The absolutely disgusting part of it is that  
26 he sees his son all the time and he's never done any kind of testing to see if he has  
27 any reaction with little boys, you know. We don't know. And then let alone, I  
28 mean, just whoever else. You know he's remarried now and here he is just going  
29 about his life. And I'm gonna assume with how far it went with Mia, it probably  
30 wasn't his first time. There's probably been other victims. You know, what  
31 really worries me is that Jazzy, Sheri's granddaughter who is like 12 now, was  
32 raised with him. Always staying the night over there, sleeping in the same bed  
33 with him, you know. With them, Stephanie and... You know, 'cause she was a

1 little girl and whatever. And I look back now and I'm like there is no  
2 way...personal belief. Absolutely no reason to believe it besides what happened  
3 to my daughter. There's no way that nothing ever happened to her. It's just  
4 crazy. And her dad had...her mom had asked her a couple of times and talked to  
5 her a little bit about it, you know. Nothing came of it. So yeah, it's just sad he's  
6 still out there and...

7 **(2:47:56)**

8 **SH:** Do you know if CPS has been involved at all?

9 **AM:** I don't think so. Nothing.

10 **TR:** Do you think Jazzy is lying?

11 **AM:** I kinda do, you know. Not that I...I mean how does somebody...what is he, 32 or  
12 something...all the sudden just pop up and do this with this one person who he's  
13 barely around, not married for a long amount of time, and you're gonna tell me  
14 nothing ever happened with this other little girl that was in his bed for all those  
15 years?

16 **TR:** Have you ever talked to Jazzy about it?

17 **AM:** No. That's not my place. Talked to her parents about it. Tell them "Don't be  
18 stupid dude, you gotta make sure you ask about it the right way."

19 **SH:** And what is the right way?

20 **AM:** Comfortable setting. I don't really know what the right way is. I mean I  
21 would...of course I would expect it to be "No, nothing ever happened," especially  
22 now that she doesn't see him. But who knows. I guess it's one of those you'll  
23 never know until she gets older.

24 **AT:** I don't think I'm recording.

25 **TR:** I am. Don't you dare touch my tape recorder.

26 **AT:** I was going to look.

27 **TR:** No, I'm recording. So I'll happily provide you a copy.

28 **SH:** So did you do anything...You were kind of frustrated the case wasn't moving  
29 forward. Did you contact the Prosecutor or try to find out what was going on or  
30 why things weren't moving?

31 **AM:** Oh yeah, I think I called a couple times. I was really frustrated that it kept getting  
32 put off and put off. I just don't understand how can something like this just be put

1 off and put off. And I guess to my knowledge I should have called the police  
2 right then and there that night and had...Maybe it would've been a little different.

3 **(2:49:43)**

4 **SH:** Okay.

5 **AM:** So I guess there's not really any advertisements that tell you what to do with that  
6 stuff.

7 **SH:** So have you gotten updates from the Prosecutor as things have happened in the  
8 case? New evidence or new court dates, that kind of thing?

9 **AM:** Yeah.

10 **SH:** Okay. And what kind of information have you gotten?

11 **AM:** That...Well, another frustrating thing was that it took a year for that evidence to  
12 come back.

13 **SH:** What evidence?

14 **AM:** DNA on the clothes.

15 **SH:** Okay. And what is your understanding of DNA on the clothes?

16 **AM:** Saliva or....semen I guess. I don't know.

17 **SH:** So what's your understanding of...?

18 **AM:** I don't know if that all runs together, if it's separated.

19 **SH:** Okay. So it's your understanding that they found saliva and/or semen that is  
20 Brandon Earl's on the underwear?

21 **AM:** I guess that was never said to me, but I guess that would be my assumption. I  
22 guess that was never actually said to me.

23 **TR:** Were you told what piece of clothing the DNA was found on?

24 **AM:** I don't think so.

25 **SH:** And how did this information happen? Did they call you? Did you call them?

26 **AM:** I think they called me.

27 **SH:** And said?

28 **AM:** Well the case was closed. I was furious, I couldn't believe it. But what do you  
29 do? And then a year later I get a call that "Okay, we're reopening the case  
30 because we've got evidence now."

31 **SH:** Do you remember whether you made the video when the case was closed or  
32 open?

33 **AM:** I think it was open. I'm pretty sure it was open.

1 (2:51:28)  
2 **SH:** So they said they had this evidence and then what did they tell you about the  
3 evidence?  
4 **AM:** Um...I don't recall what they told me about it. Pretty much they had evidence  
5 now and it was being reopened and...I'm pretty sure they said it was closed. It  
6 could've been my assumption. I'm pretty sure they said.  
7 **SH:** Okay. And have you shared that information with anyone?  
8 **AM:** Just my mom.  
9 **SH:** And what did you tell her?  
10 **AM:** That the clothes had finally come back. It took a year and there's DNA.  
11 **SH:** Did you tell her the saliva/semen thing?  
12 **AM:** No, just DNA.  
13 **SH:** And what is your understanding of DNA? Is it like a match? Like you can tell  
14 who it is? Kind of like a fingerprint, it just identifies this one person?  
15 **AM:** Um...kind of. But I think it can trickle down maybe a little bit to kids' DNA.  
16 I'm not sure about DNA. I don't know.  
17 **SH:** Okay. And the trickling down to kids' thing, is that something that you've  
18 learned in the course of this case?  
19 **AM:** I think so, yeah.  
20 **SH:** I need to read my notes one more time.  
21 **TR:** I have just a few questions, can I?  
22 **SH:** Yes, please do.  
23 **TR:** Has anyone in the family told you they don't believe that Brandon did anything?  
24 **AM:** No.  
25 **TR:** So you were told DNA was found belonging to Brandon Earl. Were you ever told  
26 about unidentified DNA also being found?  
27 **AM:** (No).  
28 **TR:** Okay. Now when we talked to you earlier about dressing her that Christmas eve,  
29 you didn't remember what underwear she was wearing. When you went to collect  
30 the clothes to take them to the forensic nurse, do you know how you decided  
31 which pair of underwear she was wearing?  
32 **AM:** I just brought them all. There was only like two in there and I said "It's gotta be  
33 one of the two."

1 (2:53:42)  
2 **TR:** Okay, so you brought all the underwear from the hamper?  
3 **AM:** Yeah.  
4 **TR:** Okay. Do you know anything about raspberries or anyone in your family  
5 performing raspberries on anyone else?  
6 **AM:** Oh yeah. That was one of his excuses, was "No, I was doing raspberries on her  
7 belly and that's all."  
8 **SH:** One of whose excuses?  
9 **AM:** And then I think...  
10 **TR:** When he said that do you know what that was supposed to mean?  
11 **AM:** Yeah, those are, you know, blowing...like, you know...  
12 **TR:** Putting the lips against the skin and blow?  
13 **AM:** Yeah. But to get to her belly you have to lift up her skirt. It's just not  
14 appropriate, period. Anyway...so...  
15 **TR:** Have you ever known anyone in the family to do that? Is that like a common  
16 family tickle thing or...?  
17 **AM:** No.  
18 **TR:** Well how did you know what raspberries meant when he said it?  
19 **AM:** I mean you do it to little kids, you know. Babies. Blow on their belly like that  
20 and they laugh.  
21 **TR:** Have you done that before?  
22 **AM:** Oh yeah.  
23 **TR:** And the kids laugh when you do that?  
24 **AM:** Yeah. And then...I don't know if he later told...I think he later told somebody,  
25 maybe Stephanie, that...or maybe...I don't know...that he missed or ... "I was  
26 blowing raspberries and I missed and I accident...." Okay.  
27 **TR:** The downstairs bathroom in Aunt Sheri's house, who uses that bathroom?  
28 **AM:** Everybody.  
29 **TR:** Is it generally...How clean does Aunt Sheri keep her house. It sounds like she's  
30 pretty...  
31 **AM:** Oh, super clean.  
32 **TR:** ...pretty vigilant.  
33 **AM:** Yeah.

1 (2:55:28)  
2 **TR:** Okay.  
3 **SH:** And that would be the public bathroom, right?  
4 **AM:** Right.  
5 **SH:** So that would probably be the one that was ready for Christmas.  
6 **AM:** Oh yeah. Everything's spiffy.  
7 **SH:** I lost count on drinks. So you said a flavored cinnamon whiskey and then brought  
8 some wine, probably had a glass of wine. But then you said at some point you  
9 thought you had three drinks? Was it two glasses of wine?  
10 **AM:** Well, yeah, counting...One bottle of wine is four glasses. Melissa, Misty, me. So  
11 I probably had three. That's three glasses, so I'm sure I probably finished the  
12 other one.  
13 **SH:** So when you say "wine" you mean probably finished the bottle? The three of you  
14 together?  
15 **AM:** Right. They had a ...well they had a glass each and yeah. So I probably had two.  
16 **SH:** How long were you at the party that night?  
17 **AM:** Quite a few hours.  
18 **SH:** Like 3 hours? 8 hours?  
19 **AM:** No, probably somewhere between 3 and 5.  
20 **SH:** When does Mia go to bed?  
21 **AM:** Um...on functions, kind of just whenever we get done. Holiday functions, yeah.  
22 **SH:** What about normally? What's her normal routine bedtime?  
23 **AM:** Uh...normal? Let's see, what was she doing back then? It's pretty late. It's  
24 probably like 10:00-ish because I would work nights, her dad was working nights  
25 too. So she was always kind of put to bed late and wake up a little later than  
26 normal, for a normal family I guess.  
27 **SH:** Okay. So if Jorge is in the detention and you're working nights, who is watching  
28 her while you're working nights?  
29 **AM:** If I'm working nights it's grandma and grandpa. But for a minute there...for six  
30 months I worked in insurance during the days while he was in there.  
31 **SH:** So did you adjust your schedule while he was gone and worked a different job?  
32 **AM:** Yeah. Yeah.  
33 **SH:** And then while you were working insurance, where would she...?

1 (2:58:08)  
2 AM: She was in preschool.  
3 SH: Okay. So during that time you wouldn't have been working nights? So what was  
4 her bedtime like if you weren't working nights?  
5 AM: Um...it was probably by 9:00.  
6 SH: And did you guys have a routine?  
7 AM: For the most part, yeah. Read a book, sit on her bed, read a book and she just  
8 would go right to bed.  
9 SH: Okay. You indicated earlier that one of the signs that she's tired is that she kind  
10 of melts down. Are there any other signs? Does she rub her eyes?  
11 AM: No, her normal is the two fingers in her mouth.  
12 SH: Does she ever like lay her head down on anything or kind of lay down on the  
13 ground or snuggle up?  
14 AM: No, she's crazy wild. Go, go, go, go, you know.  
15 SH: Okay. So the more tired she'd get the more she'd spiral kind of...?  
16 AM: Yeah.  
17 SH: Does she ever crash? Have you ever kept her up really late and seen what  
18 happens? If the spiral dies out? Or does she always go to bed?  
19 AM: No, she's usually put to bed before that.  
20 SH: And how do you settle her down?  
21 AM: Um...just a casual get ready for bed, kind of take your time, and then it's a book.  
22 SH: Okay.  
23 AM: For some reason that just kind of queues her to (inaudible word).  
24 SH: And when you're done with the book is she in bed and you kind of leave the  
25 room?  
26 AM: Right.  
27 SH: Do you stay until she falls asleep? Or how does that work?  
28 AM: No, I read the book and she lays down and I turn the lights off and I walk out. So  
29 she still has yet to fall asleep.  
30 SH: Nightlight?  
31 AM: Yeah.  
32 SH: And you said that she hasn't been wetting the bed. So she doesn't wear a diaper  
33 at night?

1 (2:59:56)  
2 AM: Correct.  
3 SH: And when did that start?  
4 AM: Um...I don't know.  
5 SH: And would you also be willing to give us any video that you have from the party?  
6 If you have any.  
7 AM: Mmm hmm (yes). I don't think I have any video, no.  
8 SH: Okay. So then I guess pictures. Did you give the Prosecutor all of that video? Or  
9 did you give them just the part where she was talking about stuff?  
10 AM: Uh...they actually got the video from years ago. They took the whole flip. So  
11 they got...too much.  
12 SH: And do you know who you ultimately ended on the phone with...ended up on the  
13 phone with? It sounds like you were trying to call CPS. You were worried about  
14 Stephanie's kid.  
15 AM: No I don't. I know the numbers I was trying to call, they were like "Okay, no,  
16 you want this number," which I thought was CPS. I'm not sure...Maybe it was  
17 the advocate line. I'm not really sure.  
18 SH: It's my understanding that you actually have a prosecutor who's a friend.  
19 AM: Mmm hmm (yes).  
20 SH: An acquaintance. And who is that?  
21 AM: Mara Rizione (sp).  
22 SH: And how do you know Mara?  
23 AM: Um...I've sold her a couple houses. And was a really close friend of her...her  
24 niece.  
25 SH: And do you know what she does for a living?  
26 AM: Mara?  
27 SH: Mmm hmm (yes).  
28 AM: She's a Prosecuting Attorney.  
29 SH: Okay. And how long have you known that?  
30 AM: Um...since I've met her.  
31 SH: Okay. And have you talked to her at all about this case?  
32 AM: Um...I did call finally, actually just like a month or two ago, to... She didn't  
33 know anything about it, but I'd asked her "Was I stupid? Should I have hired a

1 lawyer? Should I hire a lawyer?" 'Cause here it is two years later and...then in  
2 December court got pushed back to January and I was "This is just enough." I  
3 finally had money and I thought "Maybe I should... Do I need to hire a lawyer?  
4 Was I stupid not hiring a lawyer?" So I called her and asked her that and she  
5 pretty much... "No, just keep going forward."  
6 **(3:02:36)**  
7 **SH:** And in your mind what would hiring a lawyer have done?  
8 **AM:** Um...I don't know, stopped the continuance? And got on top of this and not let a  
9 child molester go for two years.  
10 **SH:** Why didn't you call her initially? When you were looking through the  
11 phonebook and finding numbers?  
12 **AM:** Um... I don't know. Kind of personal stuff. Kind of separate I guess. Kind of  
13 more business with her. I sold her a house and bought a house with her, you  
14 know. It's more...we're business.  
15 **SH:** Okay. But you thought about calling her on the DUI when you were arrested for  
16 a DUI, right?  
17 **AM:** Mmm hmm (yes).  
18 **SH:** So why did you think of calling her for the DUI?  
19 **AM:** Probably 'cause, again, you don't know what to do.  
20 **SH:** What do you think should happen in this case?  
21 **AM:** Um...I think he needs to be...His son's safety first. They need to make sure what  
22 he's attracted to and to make sure that he's... You know, of course you want the  
23 little boy to have a dad, but make sure he's not sexually abused is the number one  
24 thing.  
25 **SH:** Has anyone talked to him that you know of?  
26 **AM:** The boy?  
27 **SH:** Mmm hmm (yes).  
28 **AM:** He's really young. I mean he's just now 4. So I don't think so. I'm pretty sure  
29 not. I don't know.  
30 **SH:** Okay.  
31 **AM:** Yeah, I think he definitely needs some help. He probably needs help for the rest  
32 of his life. And I think he needs a consequence too. And like I said, I don't think  
33 jail time is anything justifiable for what he did, but he kind of also needs to know

1 that he's not getting away with it. Don't be doing it anymore. I don't know if jail  
2 time would help him with that. And again, I don't know how...I don't know,  
3 that's pretty severe what he did to my child. That's a lot I think... Maybe he does  
4 need to be locked away forever, you know. If they find that he's got a serious  
5 issue and it wasn't just this one time and he's not curable, then maybe he does  
6 need to be put away. If he's curable, you know, a consequence and... I don't  
7 know how you just let somebody go though. Just wander through the streets,  
8 having done that to kids. I don't know. It doesn't set well with me either, you  
9 know?

10 (3:05:46)

11 **SH:** So you mentioned a test to see what he's attracted to?

12 **AM:** Mmm hmm (yes).

13 **SH:** What do you mean by that?

14 **AM:** Um...I heard about...that they can kind of do this kind of test to see what arouses  
15 him I guess. I guess obviously...You know, we obviously know it's little girls,  
16 but (unintelligible words)..little boy, he would be okay to see his son.

17 **SH:** Okay. And how do you know about those tests?

18 **AM:** Um...I think Annette had told me when I first came.

19 **SH:** And are you aware what he's charged with?

20 **AM:** No.

21 **SH:** Or what his sentence range is? Well (unintelligible words – paper shuffling)?

22 **AM:** Nope.

23 **SH:** And do you have an opinion about the length of prison or jail that's appropriate?

24 **AM:** Not really. Like I said, I don't think it's... It's kind of more of a consequence.  
25 Throw him in there for awhile, realize once you get out if you do it again you're  
26 gonna have to go back. At the same time, like I said, if he's ...if there's any  
27 chance that he might do it again, why let him out?

28 **SH:** Has anyone discussed with you a SOSA program or a treatment alternative to  
29 prison?

30 **AM:** Possibly. What is it?

31 **SH:** Um....

32 **AM:** Oh, just questions?

33 **SH:** Yes. I don't think it's appropriate for me to be....

1 (3:07:13)  
2 AM: Gotcha.  
3 SH: Giving you legal information. So you think it's possible that you might've  
4 discussed something like that?  
5 AM: Uh...possibly.  
6 SH: Okay. But you don't really know (unintelligible words)?  
7 TR: I just have one quick, last little issue. Does Mia believe in Santa Claus?  
8 AM: Yes.  
9 TR: Or at least she says she does. Does Santa Claus come overnight on Christmas  
10 eve?  
11 AM: Yes.  
12 TR: And then there are presents Christmas morning?  
13 AM: Yes.  
14 TR: This year...the year when Jorge was away, were you having a more low-key  
15 Christmas just 'cause of the circumstances? Or was she expecting Christmas  
16 presents the next morning?  
17 AM: Oh she was still expecting...we still did Christmas. Oh yeah.  
18 TR: Okay. So there was Christmas at home in the morning.  
19 AM: Oh yeah.  
20 TR: And she got presents.  
21 AM: Oh yeah.  
22 TR: Okay. That's it.  
23 SH: Did you go anywhere that Christmas day? Do you like go to your parents or go to  
24 some other Christmas day function?  
25 AM: Uh...I don't remember. Let's see. Usually we'd go to my mom's but 2010...I  
26 don't recall where they were living.  
27 SH: Would pictures help you? If you go home and look at pictures of that Christmas?  
28 Would there be pictures from Christmas day and you could tell what residence  
29 you were at?  
30 AM: Um...actually I think my parents came over to my house that morning. Yeah,  
31 they did. Once I got two kids it's a little more difficult, they come to us now. We  
32 don't leave the house.  
33 SH: Okay.

1 **TR:** Alright. So the time right now is 4:55 p.m. We appreciate your time. Annette, I  
2 can email you a copy of the recording.  
3 **AT:** Thank you very much. We're going to get our new recorder soon.  
4 **TR:** I am going to turn the recording device off. I appreciate everybody's time.  
5 **AM:** You know what? They were living with me at the time. My parents were living  
6 with me. They stayed with me for six months.  
7 **TR:** Okay.  
8 **SH:** During the immigration detention time?  
9 **AM:** Yeah.  
10 **SH:** Was that the reason?  
11 **AM:** Yeah.  
12 **TR:** Okay, are we done?  
13 **SH:** Yes.  
14 **TR:** Okay. So now I'm really turning my recording device off. The time is ....  
15  
16 **(END OF INTERVIEW)**  
17

1 I, Anne-Marie Brock, of Brock Transcription Services, LLC, do hereby certify that the foregoing  
2 Report was taken entirely from an audio file provided in reference to State of Washington versus  
3 Brandon J. Earl, Cause Number 12-1-00034-9, Interview of April Mathis on December 14, 2012,  
4 and transcribed to the best of my ability. I have no personal knowledge of the parties involved in  
5 this case.

6  
7  
8  
9  
10  
11  
12

***Anne-Marie Brock***

***12/29/2012***

\_\_\_\_\_  
Anne-Marie Brock, Owner  
Brock Transcription Services, LLC

\_\_\_\_\_  
Date

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**APPENDIX B**

RESPONSE TO STATE'S MOTION FOR  
TRANSFER OF DEFENDANT'S MOTION  
FOR NEW TRIAL ON THE BASIS OF NEWLY  
DISCOVERED EVIDENCE

Snohomish County Public Defender Association  
1721 Hewitt Ave., Suite 200  
Everett, WA 98201  
425-339-6300

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF SNOHOMISH

---

STATE OF WASHINGTON,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Cause No. 12-1-00034-9
	)	COA No. 70144-4-I
BRANDON EARL,	)	
	)	VOLUME 5
Defendant.	)	

---

VERBATIM REPORT OF PROCEEDINGS

---

BE IT REMEMBERED that on February 1, 2013, the  
above-entitled and numbered cause came on for hearing before  
JUDGE THOMAS J. WYNNE, Snohomish County Superior Court,  
Everett, Washington.

A P P E A R A N C E S

For the Plaintiff:	MR. ANDREW ALSDORF Deputy Prosecuting Attorney Snohomish County Courthouse 3000 Rockefeller, MS 504 Everett, Washington 98201
For the Defendant:	MS. SONJA HARDENBROOK Snohomish County Public Defenders Association 1721 Hewitt Avenue, Suite 200 Everett, Washington 98201

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

INDEX OF WITNESSES

NAME OF WITNESS PAGE

TYLER QUICK

Cross Examination by Ms. Hardenbrook 595  
Redirect Examination by Mr. Alsdorf 608, 616  
Recross Examination by Ms. Hardenbrook 615

DETECTIVE FERREIRA

Direct Examination by Mr. Alsdorf 616  
Cross Examination by Ms. Hardenbrook 637  
Redirect Examination by Mr. Alsdorf 644  
Recross Examination by Ms. Hardenbrook 645

KRISTINA HOFFMAN

Direct Examination by Mr. Alsdorf 646  
Cross Examination by Ms. Hardenbrook 710, 747  
Voir Dire Examination by  
Ms. Hardenbrook (without jury) 740, 745  
Voir Dire Examination by  
Mr. Alsdorf (without jury) 743, 746  
Redirect Examination by Mr. Alsdorf 756, 765  
Recross Examination by Ms. Hardenbrook 758

MICHAEL LIN

Direct Examination by Mr. Alsdorf 765  
Voir Dire Examination by  
Mr. Alsdorf (without jury) 789

1 February 1, 2013

2  
3 (The following proceedings were had  
4 outside the presence of the jury)

5 MS. HARDENBROOK: Good morning, Your Honor.

6 This morning the defense conducted a second interview  
7 of Forensic Scientist Michael Lin from the crime lab, as  
8 Mr. Alsdorf has had him rerun some numbers. He came up  
9 with new numbers on the first day of trial on the 28th.

10 We interviewed him. During that interview, it came up  
11 that he had had specific correspondence about his expected  
12 testimony from Mr. Alsdorf. I asked for a copy of that  
13 correspondence, and Mr. Alsdorf said no, citing work  
14 product.

15 I think work product is a little different with an  
16 expert witness. I think I'm entitled to that e-mail where  
17 Mr. Lin and Mr. Alsdorf are communicating about exactly  
18 what Mr. Lin will testify to. I deserve extra notice of  
19 that because he is an expert witness.

20 I think the Court needs to disclose it. If the Court  
21 won't order that I get it, I would ask the Court to do an  
22 in camera review and consider some disclosure.

23 I also want to let the Court know Mr. Lin is not  
24 expected to testify until this afternoon, and I will be  
25 making a motion before then to exclude any reference to

1 his number in regards to the DNA.

2 MR. ALSDORF: With regard to the e-mail  
3 communication, Your Honor, Ms. Hardenbrook's summary of  
4 how that went this morning is accurate. I would be happy  
5 to have the Court review that in camera. It's a half-page  
6 e-mail.

7 THE COURT: Hand it up at this time and I will  
8 look at it right now.

9 MR. ALSDORF: Sure.

10 THE COURT: This appears to be a one-way  
11 communication from you and Mr. Lin.

12 MR. ALSDORF: That's right.

13 MS. HARDENBROOK: There is no response is what I  
14 was told.

15 THE COURT: There is no response from Mr. Lin.

16 MR. ALSDORF: So I guess I could at least help  
17 Ms. Hardenbrook by saying there are four basic questions I  
18 asked. The second question I asked related to  
19 specifically him re-running the number that he has since  
20 performed and disclosed, and so that, to the extent that  
21 he has communicated back to me about that issue, yes, he  
22 has done that.

23 With regard to the other three, he didn't communicate  
24 back to me in e-mail, but we did have a conversation this  
25 morning on those other three items, and he did give me

1 verbal answers to those.

2 MS. HARDENBROOK: I think I'm entitled to any  
3 additional content about the expert that he expects to  
4 have him testify to on the stand. That's all in the  
5 purview of 4.7, if not the Evidence Rule specifically  
6 pertaining to expert witnesses.

7 THE COURT: Do you have any different or  
8 additional information based on this e-mail not already  
9 discovered?

10 MR. ALSDORF: Well, I guess the answer to that  
11 is yes. It's not very specific information, but it's all  
12 things that were covered that were basically raised for  
13 the first time in the defense interview, which is how I  
14 came to respond and request these things.

15 So the answer to Question No. 1, he basically gave me a  
16 confirmatory answer, not a numerical answer.

17 Let's see, I'm trying to remember.

18 THE COURT: Question No. 2 dealt with the number  
19 we are talking about here, so that has been rerun.

20 MR. ALSDORF: Right.

21 Question No. 4, I've decided not to go into that  
22 subject matter with Mr. Lin, but rather with another  
23 scientist, Ms. Hoffman.

24 MS. HARDENBROOK: I'm sorry, I think I missed  
25 that. He said No. 3, he is not going to --

1 MR. ALSDORF: No. 4.

2 MS. HARDENBROOK: Again, I don't know what it  
3 is. The Court can see the questions, but I can't see the  
4 questions.

5 So Mr. Alsdorf is saying he is not going to go into 4  
6 with Michael Lin?

7 THE COURT: That's what he said. That's an  
8 issue you are well aware of has been raised.

9 MS. HARDENBROOK: I don't know what that issue  
10 is, but okay.

11 THE COURT: But he is entitled to communicate  
12 with the witnesses, including the expert. If the expert  
13 does come up with something additional, you are entitled  
14 to know about that, even if it's oral.

15 As to 3, was there anything?

16 MR. ALSDORF: As to No. 3, the answer was yes  
17 and yes. As to the specific information, he did have that  
18 information, but I don't have it in my mind.

19 MS. HARDENBROOK: Again, I have no idea what  
20 that means.

21 THE COURT: All right.

22 I'm not going to disclose Mr. Alsdorf's e-mail to  
23 Mr. Lin. We will file that under seal.

24 MS. HARDENBROOK: So is it my understanding  
25 Mr. Lin gave an unsatisfactory answer to the State, i.e.

1 something that could be considered exculpatory for my  
2 client and, therefore, he is not going to be questioned on  
3 that issue? That would then become Brady information on  
4 No. 4, and I'm entitled to it under Brady.

5 THE COURT: Mr. Alsdorf?

6 MR. ALSDORF: No. No. 4 is more a question of  
7 how Mr. Lin came about any information that he knows on a  
8 particular subject. So I prefer to ask witnesses  
9 questions about things they know more directly. I  
10 determined that his source of knowledge on that particular  
11 subject was more indirect knowledge.

12 THE COURT: No. 4, given that response, does not  
13 appear to be Brady kind of material.

14 MS. HARDENBROOK: Again, I have no idea. I  
15 understand the Court's ruling.

16 THE COURT: Is there anything else at this time?

17 MS. HARDENBROOK: No.

18 MR. ALSDORF: Not from the State.

19

20 (The following proceedings were had in  
21 the presence of the jury)

22 THE COURT: Please be seated.

23 You may proceed.

24 MS. HARDENBROOK: Thank you, Your Honor.

25

1        TYLER QUICK,                    witness herein, after being first  
2    previously sworn, was examined  
3    and testified as follows:

4    **CROSS EXAMINATION**

5        **BY MS. HARDENBROOK:**

6        Q. Good morning, Detective.

7        A. Good morning.

8        Q. So I think when we left off, we were talking about the  
9    swabs and the swabbing of different peoples' mouths to get  
10    reference samples and DNA in this case. We were talking  
11    about the general process for that.

12    Once the swabs are taken out of an individual's mouth,  
13    they are put in a drying box, is that right?

14        A. That's right.

15        Q. The purpose of that is to allow a couple minutes for the  
16    swabs to dry before they are sealed off?

17        A. That's right.

18        Q. Then, they are put -- the two boxes are put into an  
19    envelope, is that right?

20        A. It is.

21        Q. It's your understanding the swabs continue to dry inside  
22    that envelope?

23        A. That's my understanding.

24        Q. That would mean that water molecules would be leaving the  
25    swab?

- 1 A. That's what I understand drying to mean, yes.
- 2 Q. That's even when the swab is in the sealed envelope  
3 because you seal the envelope?
- 4 A. I do.
- 5 Q. You believe the drying is continuing at that point, so  
6 it's drying even in a sealed envelope, is that right?
- 7 A. I believe it is.
- 8 Q. Okay.
- 9 When we say sealed, we mean sealed with tape on the  
10 opening, not like hermetically sealed.
- 11 A. I'm sorry, I don't know what "hermetically" means.
- 12 Q. A vacuum seal so that no molecules can get in and out of  
13 this envelope, right?
- 14 A. It's a paper envelope with tape over the opening.
- 15 Q. Okay.
- 16 When you took Mia's sample to the main evidence, you  
17 would again put on gloves when you were going to seal it  
18 in the envelope, is that right?
- 19 A. I did.
- 20 Q. That's again to prevent putting your own DNA on to any of  
21 those materials?
- 22 A. Right.
- 23 Q. At some point, you got information to contact Stefanie  
24 Earl and Sheri Morrow as possible witnesses in this case,  
25 is that right?

- 1 A. It is.
- 2 Q. That came to you when you were getting Mia's DNA, on the  
3 same day as you got Mia's DNA, is that right?
- 4 A. That's the day I believe I got the phone numbers for them,  
5 the actual contact information.
- 6 Q. You had the address since you first got the case?
- 7 A. That's right.
- 8 Q. On that same day, you picked up the clothing items from  
9 Michelle DeSoto, is that right?
- 10 A. The same day on the 25th, is that what you're asking?
- 11 Q. January 11, I think, is the day you got Mia's DNA.
- 12 A. Right.
- 13 Q. That's the day you got the phone numbers?
- 14 A. Okay. I don't have that report in front of me.
- 15 Q. Would it refresh your recollection if I gave you your  
16 report?
- 17 A. Yes, it would.
- 18 Q. Detective Quick, I would like to hand you what's been  
19 marked as State's Exhibit 41. I would direct you to  
20 Discovery Page 8 at the bottom. Would you let me know  
21 when you read that?
- 22 A. Okay.
- 23 Q. Is your recollection refreshed?
- 24 A. It is.
- 25 Q. The day you got Mia's DNA and Sheri and Stefanie's phone

- 1 numbers, is that the same day you picked up the clothes?
- 2 A. It is the same day.
- 3 Q. That day is January 11, 2011?
- 4 A. That's right.
- 5 Q. You took the transport bag and Mia's reference sample to
- 6 the main property room, is that right?
- 7 A. Yes.
- 8 Q. You put on gloves for that?
- 9 A. For the driving part?
- 10 Q. Not for the driving; once you were there.
- 11 A. Yes, I put them on once I was there.
- 12 Q. Okay.
- 13 You don't remember if you changed gloves between
- 14 handling Mia's reference sample and handling the clothing
- 15 packages?
- 16 A. Once I was there, I didn't actually handle the sample.
- 17 Q. Right. You were handling the outside bag?
- 18 A. Right.
- 19 Q. So you didn't change gloves?
- 20 A. I don't believe I did.
- 21 Q. You opened the outer evidence bag and found four bags
- 22 inside of that, is that right?
- 23 A. The transport bag had four individually packaged clothing
- 24 items.
- 25 Q. It's standard to package individual clothing items

- 1       separately?
- 2   A.   Yes, it is.
- 3   Q.   That's to prevent the individual items from touching each  
4       other?
- 5   A.   They already aren't touching each other because they are  
6       already separately packaged in their own bag. I had  
7       individual items should I need to send a specific item for  
8       testing or specific items we needed for something else.
- 9   Q.   What I meant was within the transport bag, they were each  
10      bagged separately when you got them and opened the  
11      transport back, right?
- 12  A.   They were.
- 13  Q.   That's procedure, in fact, to bag each clothing item  
14      separately?
- 15  A.   That's right.
- 16  Q.   That's because you don't want them to touch each other?
- 17  A.   Right, we don't.
- 18  Q.   Right. They could contaminate each other?
- 19  A.   It's possible.
- 20  Q.   Biological material could transfer from one clothing item  
21      to another clothing item?
- 22  A.   It's possible.
- 23  Q.   You submitted the items for testing and filled out a form  
24      to do that, right?
- 25  A.   I did.

- 1 Q. You specifically requested that they check for saliva?
- 2 A. Yes, I did.
- 3 Q. And for Brandon's DNA?
- 4 A. I did.
- 5 Q. You did not request to have the dress tested?
- 6 A. No.
- 7 Q. You made that decision based on the information you had at  
8 that point?
- 9 A. That's right.
- 10 Q. You tested the underwear and the tights because you were  
11 interested in the genital area of those clothing items, is  
12 that right?
- 13 A. Sorry, I didn't hear if you said "general" or "genital."
- 14 Q. Genital.
- 15 A. Yes.
- 16 Q. On January 25 was the first time you attempted to get  
17 access to the bedroom when this allegedly occurred, is  
18 that right?
- 19 A. That's right.
- 20 Q. You were able to actually access it the following day,  
21 January 26?
- 22 A. That's right.
- 23 Q. We have seen the pictures that you took?
- 24 A. Yes.
- 25 Q. And Stefanie, then Earl, now Waugh, let you into the house

- 1 and freely let you take pictures?
- 2 A. She did.
- 3 Q. That was actually after you had done an interview with
- 4 her?
- 5 A. Right.
- 6 Q. For the interview, you had her come here?
- 7 A. Yes.
- 8 Q. To the main Sheriff's Office on the fourth floor?
- 9 A. I did.
- 10 Q. You didn't have her go to Dawson Place?
- 11 A. No.
- 12 Q. You actually had someone else sit in on the interview?
- 13 A. I did.
- 14 Q. You also made contact with Sheri Morrow by telephone?
- 15 A. I did.
- 16 Q. You chose not to follow up and request an interview from
- 17 her, is that right?
- 18 A. That's right.
- 19 Q. That was based on the fact that she had no direct
- 20 knowledge?
- 21 A. It's a paraphrase of what she told me.
- 22 Q. But you learned that she did have observations of Mr. Earl
- 23 speaking after the accusation came out from that night?
- 24 A. Yeah. My understanding from her was those observations
- 25 were in a group setting where Stefanie also observed them

- 1       and so did April, so there was no individual one-on-one  
2       conversations that she told me about with Brandon.
- 3 Q. It was a short phone conversation, is that right?
- 4 A. Yes, a number of minutes.
- 5 Q. So because she wasn't in the room when it happened and  
6       because she didn't directly speak to Mia, you didn't  
7       bother to interview her?
- 8 A. I did not.
- 9 Q. One of the reasons why you did interview Stefanie is it  
10       was your understanding she had spoken to Brandon after the  
11       accusations came out?
- 12 A. Right, in private.
- 13 Q. These are all the photographs that you took that night, is  
14       that right?
- 15 A. That's right.
- 16 Q. That day.
- 17       You didn't take any other photographs of the house?
- 18 A. No.
- 19 Q. The kitchen or the bathroom?
- 20 A. No.
- 21 Q. The stools where Sherry and Mia sat and talked in the  
22       kitchen?
- 23 A. No.
- 24 Q. Or the garage where April, Sherry, Stefanie, and Brandon  
25       had the confrontation?

- 1 A. Right, I did not.
- 2 Q. Didn't ask to take any of the fabric items from the bed?
- 3 A. No.
- 4 Q. Because now it was about a month later, is that right?
- 5 A. Yes.
- 6 Q. We are on January 26, and it happened supposedly on the  
7 24th?
- 8 A. Correct, that's right.
- 9 Q. In December, December of 2012, you did some additional  
10 work on this case, is that right?
- 11 A. Just last month you are talking about?
- 12 Q. Yes.
- 13 A. Yes.
- 14 Q. That was to get some pictures from Christmas?
- 15 A. There was new information that she was in possession of  
16 photos from that night.
- 17 Q. Okay.
- 18 Had you asked for pictures earlier in your  
19 investigation?
- 20 A. No.
- 21 Q. That's pictures of Christmas, you didn't ask any for  
22 Christmas?
- 23 A. Christmas Eve, is that what you mean?
- 24 Q. Yes.
- 25 A. No, I did not.

- 1 Q. Or Mia's clothes?
- 2 A. No.
- 3 Q. So in December you started working on that and in January  
4 you received the photos, is that right?
- 5 A. That's right.
- 6 Q. January 9, is that right?
- 7 A. Sounds right.
- 8 Q. Okay.
- 9 It was by an e-mail. April Mathis sent you an e-mail  
10 and attached a bunch of photos to it?
- 11 A. I think it was five or six photos.
- 12 Q. We have all of those here today?
- 13 A. Yes, you do.
- 14 Q. I think you indicated on direct that you were pretty new  
15 to this unit when you got assigned this assignment, is  
16 that right?
- 17 A. I would have been in there for a few months at that point.
- 18 Q. Okay.
- 19 Do you remember testifying at the 3.5 that this was  
20 your first detective assignment within the unit?
- 21 A. Yes.
- 22 Q. Because it was?
- 23 A. Because it was.
- 24 Q. You had been on patrol before you were a detective?
- 25 A. That's right.

1 Q. You never spoke with Mia Fuentes about this case?

2 A. No.

3 Q. You did not have her forensically interviewed by a child  
4 interview specialist, is that right?

5 A. That's right.

6 Q. The reason for that is her age at the time of the  
7 interview needed to be over four to qualify under your  
8 standards, is that right?

9 A. That's right.

10 Q. She turned four on July 7 of 2011, is that right?

11 A. Yes, she did.

12 Q. You made no attempt to schedule a forensic interview of  
13 her after she turned four, is that correct?

14 A. That's right. I did not.

15 Q. One of the reasons for that is that it was your  
16 understanding that she had been talked to by her mom by  
17 that point?

18 A. Yes.

19 Q. A forensic interview is not necessarily valuable after a  
20 child has been led, is that right?

21 MR. ALSDORF: Objection. Your Honor, facts not  
22 in evidence.

23 MS. HARDENBROOK: He is testifying about the  
24 reason he made certain decision in the investigation. He  
25 spent a lot of time testifying about similar --

1 THE COURT: I will overrule the objection.  
2 MR. ALSDORF: Objection as to "led."  
3 THE COURT: Please rephrase your question.  
4 BY MS. HARDENBROOK:  
5 Q. It was your understanding that April Mathis had asked  
6 leading questions of Mia Fuentes, is that right?  
7 A. Leading questions of her daughter, yes.  
8 Q. That factored into your decision to not have a forensic  
9 interview done after Mia turned four?  
10 A. It was part of the decision. It was not the sole reason.  
11 Q. That's because a forensic interview is less valuable after  
12 a child has had a conversation like that, is that correct?  
13 A. Can be.  
14 Q. Your training and experience as a Special Investigations  
15 Unit detective has given you the understanding that  
16 children under the age of 10 are impressionable?  
17 A. They are.  
18 Q. That as they developmentally get older, they get less  
19 impressionable, is that right?  
20 A. That's right.  
21 Q. So by the time they're 10, they should be equally  
22 impressionable with an adult?  
23 A. That's my understanding of it.  
24 Q. So you actually had specific training on how children  
25 should be interviewed, even though you're not an interview

- 1 specialist, is that right?
- 2 A. That's right.
- 3 Q. So you took the Harborview Method course?
- 4 A. I did.
- 5 Q. One of the things you tell a parent, because of that  
6 training, when you first contact them is not to question  
7 their child about the case, is that right?
- 8 A. Can you say that again? I'm sorry.
- 9 Q. Because of your training and experience, one of the things  
10 you tell a parent when you first come in contact with them  
11 about a case is not to question their child?
- 12 A. That's right.
- 13 Q. The Snohomish County Sheriff's Office has a specific way  
14 of doing interviews to avoid getting a statement that's  
15 not truthful, and that's the Forensic Interview Method, is  
16 that right?
- 17 A. That's right.
- 18 Q. So I think you testified yesterday, and I want to make  
19 sure I have it right, that you are trained to be  
20 untruthful when interviewing suspects, is that right?
- 21 A. It is a technique that we can use.
- 22 Q. The law allows you to lie?
- 23 A. It does.
- 24 Q. To exaggerate evidence?
- 25 A. It does.

1 Q. Part of the reason for that is it makes someone more  
2 inclined to confess if you let them know how strong the  
3 case is against them?

4 A. That's right.

5 Q. In using these techniques, they are more effective if you  
6 are good at them, is that right?

7 A. I would be speculating, but yes.

8 Q. Okay.

9 So you attempt to be convincing when you are not  
10 truthful to a suspect?

11 A. Naturally.

12 MS. HARDENBROOK: I think that's everything. No  
13 further questions. Thank you.

14 THE COURT: Redirect, then, Mr. Alsdorf?

15 MR. ALSDORF: Thank you.

16

17 **REDIRECT EXAMINATION**

18 **BY MR. ALSDORF:**

19 Q. So you used those techniques because your goal is to be  
20 effective in the interview?

21 A. That's right.

22 Q. Okay.

23 Your techniques appear to have been effective in this  
24 case, didn't they?

25 MS. HARDENBROOK: Objection, calls for

1 speculation.

2 THE COURT: Overruled.

3 A. Yes, they did.

4 Q. Because he started out talking about blowing raspberries  
5 on only her tummy, right?

6 A. That's right.

7 MS. HARDENBROOK: Objection, Best Evidence Rule.  
8 The best evidence is the content of the audio, the audio  
9 itself.

10 THE COURT: Overruled.

11 BY MR. ALSDORF:

12 Q. At some point, he changed?

13 A. That's right.

14 Q. And admitted he had accidentally placed his mouth on her  
15 vagina for 30 seconds?

16 A. Yes, he did.

17 Q. Do you recall when it was in that interview relative to  
18 what you were saying that he came off his original  
19 position of it was only on her tummy? When did he change  
20 that?

21 A. It was at a point I talked to him about wanting to come  
22 clean about what had happened, and I observed him get  
23 tear-eyed, and I asked if it was an accident, and he said  
24 it was, and said it happened one time. It was after that  
25 he started giving the information about how he explained

1 it to have happened.

2 Q. Do you recall talking to him, Brandon Earl, about the  
3 possibility that it might have been an accident?

4 A. Yes.

5 Q. Or the possibility that it might have been curiosity?

6 A. Yes, we did talk about that, as well.

7 Q. So why were you putting those things out there for him?

8 MS. HARDENBROOK: Objection, beyond the scope of  
9 cross.

10 THE COURT: Overruled.

11 A. With those things out there, as I'm monologuing, I'm  
12 basically talking and talking about the case, and I'm  
13 trying to give possible explanations for what has  
14 happened.

15 Q. Well, would you agree that your possible explanations for  
16 what has happened don't really matter?

17 A. No, they don't.

18 Q. So what's the purpose of you saying possible explanations?

19 A. Because he initially said it didn't happen, and I'm trying  
20 to allow him to become more comfortable talking about it,  
21 let him understand that I could possibly see things from  
22 his point of view and understand how something may have  
23 happened.

24 Q. Just to clear up something that may be confusing to the  
25 jury, what's a 3.5 hearing?

- 1 A. A 3.5 hearing is a preliminary hearing before the trial to  
2 determine the admissibility of the statements made by the  
3 defendant during the course of the investigation.
- 4 Q. Basically whether or not we get to play the tape?
- 5 MS. HARDENBROOK: Objection, calls for  
6 speculation, things outside of evidence, and it's not  
7 appropriate.
- 8 THE COURT: The question has been answered.
- 9 MR. ALSDORF: Thank you.
- 10 BY MR. ALSDORF:
- 11 Q. Why didn't you collect the 911 tape that Brandon Earl made  
12 in this case?
- 13 A. Because it's my understanding it had no substantive  
14 information in it other than he wanted a phone call from  
15 me. I don't regularly make copies of my voicemails, for  
16 example, and book those as evidence. He indicated that he  
17 wanted a call and he confirmed that information in our  
18 interview multiple times, so it was unnecessary.
- 19 Q. You answered some questions on cross about whether or not  
20 you change gloves when you're handling the evidence  
21 envelopes that contained Mia's sample or the clothing that  
22 you collected on the same day.
- 23 A. That's right.
- 24 Q. I think you answered that no, you did not change clothes  
25 in that process?

1 A. No.

2 Q. Why not?

3 A. My handling any actual evidence has already been booked --  
4 correction, already been put into an envelope. The action  
5 of touching the envelope is a lot different than touching  
6 the evidence itself.

7 Q. So Ms. Hardenbrook is correct that you didn't take  
8 pictures of the kitchen or any other rooms, right?

9 A. She's correct.

10 Q. Is that something that you would do differently if you had  
11 this to do over again?

12 A. Certainly.

13 Q. Why?

14 A. Since that time, I have been to photography training and  
15 basically learned a lot more about how to take photographs  
16 of a scene even after the fact, so I would do that  
17 differently.

18 Q. Would your choice of how many pictures to take on  
19 January 26, 2011, have anything to do with what happened  
20 in that bedroom about a month prior?

21 MS. HARDENBROOK: Objection, calls for  
22 speculation. I'm not sure why this is even relevant.

23 THE COURT: I'll sustain the objection.

24 MR. ALSDORF: Okay.

25

1 BY MR. ALSDORF:

2 Q. The fabric from the bed; let's talk about that.

3 So you went to Brandon Earl's house on January 26,  
4 2011, for taking pictures, right?

5 A. Yes, I did.

6 Q. Okay.

7 You answered some questions on cross about, no, you did  
8 not take any fabric from the bed?

9 A. I did not.

10 Q. Why did you decide not to do that?

11 A. I believe it would be invaluable evidence. That was the  
12 bed he shared with his wife, and it would be no surprise  
13 to me that there would be biological material on those  
14 sheets from normal activity, and it wouldn't necessarily  
15 prove or disprove anything that may have happened in this  
16 instance.

17 Q. You said that when you became aware that April Mathis had  
18 asked some leading questions of her daughter well after  
19 this incident, that that was part of your reason not to  
20 follow up and interview her, interview Mia forensically?

21 A. That's right.

22 Q. Were there other reasons?

23 A. Yes.

24 Q. What were those?

25 A. For one, the length of time. It had been seven months or

1 so after the actual event, a significant amount of time.  
2 I know that she had been somewhat interviewed by the  
3 forensic nurse and had not readily given any details. So  
4 at that time, I didn't feel like there was reason enough  
5 to do a forensic interview in a structured interview  
6 setting for a newly-turned four-year-old child.

7 Q. In your training and experience, having done these cases  
8 yourself and also having learned about forensic  
9 interviewing through the Harborview Method and otherwise,  
10 are you able to testify how common is it to be able to  
11 conduct a forensic interview of a child within seconds or  
12 minutes after an incident happened?

13 MS. HARDENBROOK: Objection, Your Honor. That  
14 calls for a hypothetical. It doesn't have value to the  
15 jury.

16 THE COURT: I'm going to overrule the objection.

17 A. In my experience in the two-and-a-half years I have been  
18 working in there, it has never happened.

19 Q. Why do you think that is?

20 MS. HARDENBROOK: Objection, calls for  
21 speculation.

22 THE COURT: Sustained.

23 MR. ALSDORF: Nothing further, Detective.

24 Thank you.

25 THE COURT: Ms. Hardenbrook.





- 1 Q. Can you please state and spell your name for the record?
- 2 A. It's Detective Ferreira, F-e-r-r-e-i-r-a.
- 3 Q. Those Rs sound pretty well practiced.
- 4 A. That's my Arkansas accent.
- 5 Q. How are you employed?
- 6 A. I'm a detective with the Sheriff's Office.
- 7 Q. In what county?
- 8 A. Snohomish.
- 9 Q. How long have you been doing that?
- 10 A. Nine years.
- 11 Q. Always in the capacity as a detective in those nine years?
- 12 A. No.
- 13 Q. So can you break it down for the jury how much detective
- 14 work you have done with SCSO otherwise?
- 15 A. I have been a detective for all but one-and-a-half of
- 16 those years.
- 17 Q. In what capacity were you in those first one-and-a-half
- 18 years with the Sheriff's Office?
- 19 A. I was a patrol deputy.
- 20 Q. Any law enforcement experience prior to joining SCSO?
- 21 A. I was a police officer and detective in Bellingham,
- 22 Massachusetts.
- 23 Q. For how long did you do that?
- 24 A. From 1997 until 2005.
- 25 Q. Thank you.

1           So did you do any detective work back there in  
2           Massachusetts?  
3   A.   I did.  
4   Q.   Take us through that since that is where your career  
5           began.  
6   A.   From the beginning?  
7   Q.   Sure. Talk about how you first became a police officer  
8           training-wise.  
9   A.   I went to the police academy, which was about four or five  
10          months long.  
11   Q.   At what point did you have any additional training to  
12          become a detective in Massachusetts?  
13   A.   I had to go through classes to be a detective.  
14   Q.   Okay.  
15          So how extensive are they?  
16   A.   Pretty extensive.  
17   Q.   Did you receive any training in interviewing?  
18   A.   I did.  
19   Q.   When and what kind of training?  
20   A.   I don't remember the exact year, but it would have been  
21          before I was allowed to start working. Then, you have to  
22          take interview technique courses. Because you are a  
23          general detective, you had to take courses in child abuse,  
24          homicide investigation, burglary investigation, crime  
25          scene investigation, DNA collection, interviewing, and

1           interrogation again as part of that training.

2 Q.   That's all back in Massachusetts?

3 A.   Yes, sir.

4 Q.   While you were in Massachusetts did you ever have the  
5       occasion to investigate allegations of sexual crimes  
6       against children?

7 A.   I did.

8 Q.   Can you tell us a little bit about how much of that work  
9       you did back in Massachusetts?

10 A.   In the beginning, it would have been with my partner  
11       solely assisting on his cases, and then going forward from  
12       there to have my own cases to investigate in all the  
13       crimes that I mentioned.

14 Q.   How about is it an automatic process to just transfer from  
15       being a police officer in Massachusetts to coming out to  
16       Washington?

17 A.   No, there is a testing process.

18 Q.   Tell us about that.

19 A.   There was a short written exam that was submitted, and  
20       then there was an oral board with members of the agency,  
21       and I believe the out-going detective was on that, and  
22       then also the supervisor of the unit was on that.

23 Q.   How much training do you have in the collection of DNA  
24       samples?

25 A.   I have been to at least three courses on that.

1 Q. Can you summarize what the important concepts are from  
2 that training about how you are supposed to pay attention  
3 to collecting that DNA sample?

4 A. Sure. They talk about what DNA is, first and foremost.  
5 Then, they talk about the forms it came in, the importance  
6 in current data investigations of DNA, and the proper  
7 collection of it.

8 Q. As to the proper collection of it, what are some of the  
9 important things that a police officer needs to keep in  
10 mind when you're trying to obtain a valid sample from  
11 someone?

12 A. Cross-contamination is one of them, to include how it's  
13 collected and packaged, transported, and then tested.

14 Q. So what are some of the steps that you take to make sure  
15 that you reduce that possibility as much as you can?

16 A. You wear protective gloves.

17 Q. Okay.

18 Am I to understand correctly that when you took a DNA  
19 sample from Brandon Earl in this case on January 7, 2011,  
20 that you actually let him hold the swab and do it in his  
21 own mouth?

22 A. That's correct.

23 Q. Can you tell us why you made that choice as opposed to  
24 doing it yourself?

25 A. I was probably over-thinking it, but I was thinking that

1 with the movement of my hand in the collection that I  
2 could slough some of my own DNA off on it.

3 Q. Okay.

4 But you were wearing gloves, right?

5 A. That's correct.

6 Q. Is it your understanding that sloughing of skin cells  
7 could go through a gloved hand?

8 A. No, but it could have been on my clothing. It could have  
9 traveled down my sleeve.

10 Q. Was Brandon Earl wearing gloves when he used the handle  
11 end of the swab to collect it from his own mouth?

12 A. No.

13 Q. Is that a particular concern for you as far as preserving  
14 evidence?

15 A. Well, no, because I was taking his DNA. If his DNA is on  
16 the cotton tip portion of the stick or it's on the wooden  
17 part of the stick, it's his DNA regardless.

18 Q. Have you used that technique before and since with  
19 subjects in a criminal investigation, specifically letting  
20 them take the sample themselves?

21 A. Yes.

22 Q. I'd like to ask you a little bit about your role in the  
23 interview that day. First of all, is it basically correct  
24 that you sat through the majority of that interview  
25 without saying anything at first?

1 A. Yes.

2 Q. Okay.

3 So what were you thinking and doing during that time  
4 when you were remaining silent?

5 MS. HARDENBROOK: Objection, Your Honor.  
6 relevance. He is not the lead detective. He doesn't have  
7 all the information. He sat in on the interview. His  
8 state of mind in the first half of the interview is not  
9 relevant.

10 THE COURT: Overruled.

11 A. Can you re-ask the question? Sorry.

12 Q. Well, what were you thinking and doing when you were  
13 staying silent through the majority of the first part of  
14 the interview?

15 A. I was just listening and watching.

16 Q. Okay.

17 Were you thinking about how you were going to approach  
18 your portion of the interview?

19 MS. HARDENBROOK: Objection, leading.

20 THE COURT: Sustained.

21 BY MR. ALSDORF:

22 Q. Let me ask you this: Did you go into that interview with  
23 a certainty that you would be following up with Detective  
24 Quick with questions of your own?

25 A. It's usually the course, yes.

1 Q. Okay.

2 So did you interact with Detective Quick beforehand,  
3 before you even met Brandon Earl that day, about any sort  
4 of plan or approach together?

5 A. No.

6 Q. Okay.

7 So tell us how that works, though, as far as the  
8 interplay between two detectives of who is going to go  
9 first and how you're going to approach your portion of the  
10 questions.

11 A. Okay.

12 It's experience and training mixed as far as from my  
13 standpoint of doing these kinds of cases or any kind of  
14 major cases where the lead detective is the detective who  
15 is actually assigned the case, and the assisting detective  
16 will sit in the interview, will watch reactions or  
17 demeanor, will listen to the question and listen to the  
18 answer, and base questions on that.

19 Q. Have you ever heard of the phrase "good cop, bad cop?"

20 A. Yes.

21 Q. So were you trying to play any sort of specific role like  
22 that in this interview?

23 A. No.

24 Q. Okay.

25 Well, when you decided to jump in with your own

1 questions. let me do a little background first.

2 Approximately how many subjects or potential suspects in a  
3 case have you interviewed over the years?

4 A. Hundreds, thousands maybe.

5 Q. Any estimate for the same question, but focusing on child  
6 sex cases?

7 A. Definitely hundreds.

8 Q. In those hundreds of suspect interviews in child sex  
9 cases, can you think of any times where a suspect has  
10 basically been from the get-go, from the start of the  
11 interview, willing to talk about the crime?

12 MS. HARDENBROOK: Objection, relevance, Your  
13 Honor.

14 THE COURT: Overruled.

15 A. Yes.

16 Q. How many of these times can you remember?

17 A. Very few. Maybe five or so, if I had to put a number on  
18 it.

19 Q. All right.

20 So when you go into an interview like this, are you  
21 anticipating that you're going to get a full confession  
22 from someone?

23 A. No. In my experience, it's very difficult for somebody to  
24 readily admit.

25 MS. HARDENBROOK: Objection, beyond the specific

1 training and expertise. He is not a medical doctor. He  
2 is not a psychologist or a psychiatrist. He can't talk  
3 about what's difficult for a human being.

4 THE COURT: He has answered the question no, so  
5 I will sustain the objection to the rest of his answer.

6 BY MR. ALSDORF:

7 Q. If you are not anticipating getting a full confession from  
8 someone, what type of information are you anticipating  
9 that you might be able to obtain from a suspect during an  
10 interview like this?

11 A. Admissions or provable lies.

12 Q. Can you take both of those terms, "admissions" and  
13 "provable lies" and explain what you mean by those?

14 MS. HARDENBROOK: Objection, compound question.

15 BY MR. ALSDORF:

16 Q. Take "admissions" first, that's fine.

17 THE COURT: Go ahead and answer the question.

18 A. It goes to the definition of what a confession is. An  
19 admission would be maybe not admitting to the crime, but  
20 admitting to small things like whether or not they were  
21 alone with the person or what they were wearing or  
22 something like that by saying that they did X, Y, or Z.

23 Q. How about provable lies? What do you mean when you are  
24 talking about that?

25 A. So that could be an admission. It's any statement that

1           they make that we have evidence would be untrue.

2 Q. Why would that be significant at all in your  
3 investigation?

4 A. Well, just to go back to that example of I was never alone  
5 with so-and-so.

6 Q. If someone said that in your hypothetical example, why  
7 would that be significant to you?

8 A. Well, if they were never alone with the person, then it's  
9 possible it didn't happen the way it's described.

10 Q. But if you could prove otherwise, then what would be the  
11 significance?

12 A. Then, it would lend credence to the fact that it's a  
13 corroborating -- it's a corroboration of what we had been  
14 told initially.

15 Q. Now, you did a drawing in your portion of the interview  
16 with Brandon Earl in this case, right?

17 A. Correct.

18 Q. It's already been admitted. If I could confirm that with  
19 the clerk, Exhibit 46 has been admitted. I will hand it  
20 to you.

21                   MS. HARDENBROOK: I believe so.

22                   THE CLERK: Yes.

23                   THE COURT: I believe it was, too.

24 BY MR. ALSDORF:

25 Q. Does that look like the drawing you made when you were in

1 the presence of Detective Tyler Quick and Brandon Earl?

2 A. Yes.

3 Q. Is there any portion of the markings on that drawing that  
4 were not made by you?

5 A. Yes.

6 Q. What?

7 A. Detective Quick signed it.

8 Q. Okay.

9 Did the defendant, Brandon Earl, physically take part  
10 in any of the creation of that drawing?

11 A. No.

12 Q. Okay.

13 Well, tell us about where you were seated. Give us a  
14 picture of how you were seated and drawing that exhibit  
15 with respect to where Mr. Earl was seated when you were  
16 going over it with him.

17 A. I was next to him.

18 Q. Could he see what you were drawing on the paper?

19 A. Yes.

20 Q. Okay.

21 Did there ever come a point where you were specifically  
22 interacting with him about what you were putting down on  
23 that paper?

24 A. Yes.

25 Q. What's your memory of that?

1 A. I had him point out certain characteristics that are on  
2 the sketch, including where he had his mouth.

3 MR. ALSDORF: Could I have the screen down?

4 BY MR. ALSDORF:

5 Q. I'm going to have that drawing put up on the screen. I  
6 guess let me turn it over to you and ask you to explain  
7 the progression of when different portions of that  
8 drawing --

9 MS. HARDENBROOK: Objection, narrative answer.

10 Q. -- were created.

11 THE COURT: Overruled.

12 A. So if my memory serves, I drew the bed first, which is a  
13 pretty bad rectangle. Then, I drew a body, which  
14 apparently was headless. I think I brought that up when I  
15 spoke to him. So just the arms, the torso, the legs, the  
16 bed, and then the portion to the right is him explaining  
17 which part of that is the top and the bottom, which is why  
18 there is two different drawings there.

19 Q. Okay.

20 A. They are both the bed, but I wanted to be clear as to  
21 which was the top or the bottom if you were at the foot of  
22 the bed and looking down on it or looking at it from the  
23 foot.

24 Then, we went through where he was sitting. He talked  
25 about her belly button --

1 Q. Is there a laser pointer up there?

2 A. There is this.

3 Q. I think that's the laser pointer. Being extra careful not  
4 to shine it in anyone's eyes, if that would help you show  
5 what was going on, you can use it.

6 A. Okay.

7 This is that secondary drawing with the top and the  
8 bottom. That's why that's on there. Then, I drew this  
9 portion without these things that were added as I spoke to  
10 him, as was this. I just had him explain to me where were  
11 you, where was she, top and bottom, where her belly button  
12 was because he brought up her belly button, and that's  
13 where his head started. Then, I wanted him to explain  
14 where his head was, which is right there, and then we  
15 went --

16 Q. Show us that again. I didn't catch that.

17 A. I'm sorry?

18 Q. The part where you said you wanted him to explain where  
19 his head was, could you show us that again?

20 A. Here is the belly button, and that is where he said his  
21 head was. So as we went through, he spoke about belly  
22 button and then tummy and then private parts. One of the  
23 reasons why I asked him questions was to clarify what he  
24 meant when he said "tummy" because I think we were going  
25 back and forth, and I wanted to make sure we were talking

1 about private parts and not just the tummy portion.

2 So I asked him what he meant by that, and he said it  
3 was here. I asked him to point it out and he did. I  
4 circled it. That's why I wrote what I wrote right here,  
5 which is basically this is where he said his mouth was.

6 Q. What specific words did you write in that portion of your  
7 interaction with Brandon Earl?

8 A. You want me to read it off?

9 Q. Yes.

10 A. It says "genital area where Brandon placed his mouth."

11 Q. Have you had a chance to listen to the audio of that tape  
12 recently?

13 A. I listened to the audio and I read the transcript.

14 Q. Okay.

15 Are you familiar with the portion of the audio where  
16 you say "so the top of your head --"

17 MS. HARDENBROOK: Objection, Your Honor, best  
18 evidence is the interview itself.

19 THE COURT: The objection is overruled.

20 BY MR. ALSDORF:

21 Q. I'm just going to go through like five lines relative  
22 to --

23 MS. HARDENBROOK: If the Court will note my  
24 continuing objection, then I don't have to interrupt.

25 THE COURT: It's noted.

1 MS. HARDENBROOK: Thank you.

2 BY MR. ALSDORF:

3 Q. Do you remember the part where you say: "So the top of  
4 your head like over here somewhere?" Mr. Earl says:  
5 "Yeah, in sideways." You say: "Okay." Brandon says:  
6 "Yeah." You say: "So your mouth, theoretically, it's not  
7 to scale obviously." And the defendant says: "Right."  
8 "Would be like right in here somewhere?" He says:  
9 "Right."

10 Do you remember specifically what you were doing with  
11 the drawing during that portion of this audio in the  
12 transcript?

13 A. That would have been when we were talking about where the  
14 circle is around the private part area where he said his  
15 mouth was, and that would have been when I wrote that on  
16 the sketch.

17 Q. Okay.

18 Are you familiar with the concept of what's called  
19 minimization in an interview like this?

20 MS. HARDENBROOK: Objection, Your Honor,  
21 relevance. We have not established any expertise on  
22 minimization. We haven't addressed what that terms means.  
23 I'd ask to address it outside the presence of the jury.

24 THE COURT: I will ask the jury to go back to  
25 the jury room.

1  
2 (The following proceedings were had  
3 outside the presence of the jury)

4 THE COURT: Please be seated.

5 Ms. Hardenbrook?

6 MS. HARDENBROOK: Your Honor, it's my  
7 understanding that he is going to try to have the witness  
8 testify to sociological theories about minimization and  
9 speculate as to how certain defendants who are guilty try  
10 to minimize what they are admitting or minimize their own  
11 sexual misconduct.

12 I don't think that's appropriate here. This detective  
13 had a very minimal role in this investigation. He sat in  
14 on one interview and only one interview. That's it. He  
15 hasn't been called as an expert witness. I haven't been  
16 given a CV on this witness. I have not been given any  
17 background information on what his background would be and  
18 why he would have a basis of knowledge for it. I don't  
19 think it's appropriate to go into it in front of the jury.

20 THE COURT: Mr. Alsdorf?

21 MR. ALSDORF: I'm certainly not going to get  
22 into a really broad strokes theory on a large scale of  
23 what sex offenders tend to do as far as minimization goes.  
24 I'm talking about a very specific phenomenon that I  
25 believe Detective Ferreira knows about based on not only

1 his experience, which is extensive, but also his training  
2 in interviewing. That is that this is a phenomenon that  
3 is related to something we have already been talking  
4 about, which is very hard to directly admit to a crime of  
5 this nature.

6 I'm laying the foundation there to talk about how the  
7 defendant keeps coming back to, oh, it was on her tummy,  
8 and how he chose to ask questions to really get to the  
9 heart of the matter. Why do you keep going back to your  
10 tummy? Are you or are you not admitting that you placed  
11 your mouth accidentally on the genital area? So that's  
12 where I'm going.

13 MS. HARDENBROOK: He testified to all of that  
14 without some big sociological theory that would require me  
15 to have some kind of an adequate response, which I haven't  
16 been given notice to do.

17 THE COURT: I'm going to sustain the objection.

18 MR. ALSDORF: Okay.

19 Can I talk about the specifics of did you notice he  
20 kept coming back saying it was Mia's tummy and how did you  
21 approach that in your questions?

22 THE COURT: Without getting into minimization or  
23 theories of that nature, yes.

24 MR. ALSDORF: Okay.

25 MS. HARDENBROOK: I would note my continuing

1 objection to him essentially giving his perspective on my  
2 client's statement. The jury gets to interpret my  
3 client's statement. The best evidence of my client's  
4 statement is my client's statement. That's why we have  
5 the Best Evidence Rule so that people can't just get up  
6 and say what they think a statement says, that they think  
7 is a confession. That is exactly what he is having  
8 Detective Ferreira do.

9 THE COURT: Well, thank you for your speech.

10 MS. HARDENBROOK: I know. Thanks for letting me  
11 get it out not in front of the jury. I feel better.

12 THE COURT: You made your objection for the  
13 record.

14 MS. HARDENBROOK: Thank you.

15

16 (The following proceedings were had in  
17 the presence of the jury)

18 THE COURT: The objection is sustained.

19 Mr. Alsdorf, you may proceed.

20 MR. ALSDORF: Thank you.

21 BY MR. ALSDORF:

22 Q. Did you notice in this interview that you've reviewed the  
23 audio and the transcript for that the defendant kept  
24 coming back to an insistence that he was blowing on Mia's  
25 tummy?

1 A. Yes.

2 Q. Was that a factor for you, something that you wanted to  
3 address in your portion of the questioning?

4 MS. HARDENBROOK: Objection, leading.

5 THE COURT: Overruled.

6 A. I wanted to make sure that we were talking about the same  
7 thing. If it was her tummy, then, obviously, we wouldn't  
8 be here today.

9 MS. HARDENBROOK: Objection, Your Honor. Facts  
10 relating about the truth.

11 THE COURT: I will sustain the objection and  
12 strike that last response. The jury will disregard it.

13 A. (Continued) If it was the tummy and not the genitals, then  
14 it would not have been a crime.

15 Q. So is that something you wanted to clear up in your  
16 portion of the questions?

17 A. It's very important that when I do an investigation that  
18 I'm not sending someone possibly to prison for something  
19 they didn't do, yes.

20 Q. So you made your own attempts, even after Detective Quick  
21 had done so, to determine whether or not you were  
22 talking about the same thing, right?

23 MS. HARDENBROOK: Objection, leading.

24 THE COURT: Sustained.

25

1 BY MR. ALSDORF:

2 Q. Tell us how you approached that concern you just raised  
3 with the jury in your portion of the question?

4 A. So that's why I went back to that specific line of  
5 questioning, and that's why I had him point it out on the  
6 sketch was to make sure that that's what we were talking  
7 about, that it was the private parts and not the tummy.

8 Q. Did you have an opportunity to observe Mr. Earl when you  
9 were interacting with him about the drawing?

10 A. Yes.

11 Q. Did he have any sort of look of confusion on his face?

12 A. He did not.

13 Q. Was he paying attention to you?

14 A. Yes.

15 MS. HARDENBROOK: Objection. He can talk about  
16 behaviors, but not my client's attention.

17 BY MR. ALSDORF:

18 Q. Did he appear to be paying attention to you?

19 A. Yes.

20 MR. ALSDORF: Thank you. I don't have any other  
21 questions.

22 THE COURT: Ms. Hardenbrook?

23 MS. HARDENBROOK: Thank you, Your Honor.  
24  
25



1 Q. Okay.

2 That was before you switched seats with Detective Quick  
3 to sit next to Mr. Earl, is that right?

4 A. No.

5 Q. It was not before then?

6 A. No. Was the conversation before then or was the sketch  
7 before then?

8 Q. The doodle conversation. Something had already been  
9 written because you are talking about it, right?

10 A. Right.

11 Q. It was before the switch, and then there was some  
12 additional writing after the switch.

13 A. But that's not what you asked me. You asked me if I drew  
14 the sketch prior to switching seats.

15 Q. I asked you if you started the sketch and drew much of the  
16 sketch before you switched seats.

17 A. And I answered no.

18 Q. That would be the quantity, not the fact that you hadn't  
19 started drawing, correct?

20 A. Right.

21 Q. You did start drawing before the switch?

22 A. I drew the rectangle.

23 Q. Okay.

24 A. Yes.

25 Q. Then, you switched, got in there, and you did all the

- 1 drawing on the drawing, correct?
- 2 A. Yes.
- 3 Q. You didn't have Mr. Earl draw it out the way he  
4 experienced it?
- 5 A. No.
- 6 Q. That would be the most precise way to get his  
7 understanding of what happened would be to have him  
8 actually draw it out and label it, right?
- 9 A. I would disagree.
- 10 Q. It's not the most accurate of Mr. Earl to have Mr. Earl  
11 draw what he experienced?
- 12 A. I wouldn't say it's more accurate than him telling me and  
13 me drawing it, no.
- 14 Q. There is a discussion on there about how it's not to  
15 scale, is that right?
- 16 A. Yes.
- 17 Q. It's emphasized that it's not to scale, I'm not an artist,  
18 is that right?
- 19 A. Yes.
- 20 Q. At no point did you have Mr. Earl make a mark on the  
21 picture?
- 22 A. No.
- 23 Q. At no point did you have Mr. Earl sign and date the  
24 picture agreeing that that's an accurate representation of  
25 what he experienced?

- 1 A. Right.
- 2 Q. He didn't write any of the words on the picture, is that  
3 right?
- 4 A. That's right.
- 5 Q. You did have Detective Quick sign the picture?
- 6 A. I did.
- 7 Q. You didn't ask Mr. Earl to sign the picture, did you?
- 8 A. I did not.
- 9 Q. He was cooperative throughout your contact with him?
- 10 A. Yes.
- 11 Q. He did not appear reluctant in any behavior way to provide  
12 you a DNA sample, is that right?
- 13 A. No.
- 14 Q. He replied immediately "yeah, have my DNA?"
- 15 A. That's right.
- 16 Q. You guys even shared information with him before he  
17 ultimately made that decision about how it could be used  
18 against him, is that right?
- 19 A. Yes.
- 20 Q. You went into some detail about how it could really be  
21 used against him if he gave it to you and are you sure you  
22 want to give it to us, is that right?
- 23 A. Yes.
- 24 Q. That was before he signed and gave you his DNA?
- 25 A. Correct.

- 1 Q. Let's talk a little bit about the DNA. So you put on  
2 gloves before taking Mr. Earl's DNA, is that right?
- 3 A. Yes.
- 4 Q. Then, you opened the swab package, which is kind of like a  
5 band-aid package?
- 6 A. Yeah, similar, sure.
- 7 Q. Like that idea you pull two tabs apart and it separates?
- 8 A. Yes.
- 9 Q. Kind of sterile packaging to try to keep the swab  
10 protected inside?
- 11 A. Yes.
- 12 Q. You pull it down, and the stick part of the swab comes out  
13 of the top of the packaging?
- 14 A. I pull it down and the stick part is exposed, yes.
- 15 Q. Correct.
- 16 Then, you put the stick towards Mr. Earl for him to  
17 grasp onto the base of the stick with his hand, is that  
18 right?
- 19 A. Yes.
- 20 Q. He was not wearing gloves during that?
- 21 A. No.
- 22 Q. Like you said, his DNA is going to be on it anyway, so you  
23 weren't worried about it?
- 24 A. That's correct.
- 25 Q. You had plenty of gloves, right?

- 1 A. I would say.
- 2 Q. If you wanted him to don gloves, you could have had him  
3 put on gloves?
- 4 A. Yes.
- 5 Q. So he swabs one side of his mouth, and you are talking him  
6 through it telling him how to do it, is that right?
- 7 A. Yes.
- 8 Q. He does it with the other swab on the other side of his  
9 mouth?
- 10 A. Yes.
- 11 Q. Then, because he is holding onto the stick, he places it  
12 into the cardboard drying box?
- 13 A. Who does?
- 14 Q. Brandon Earl.
- 15 A. No.
- 16 Q. So at what point do you take the stick back?
- 17 A. When he's done.
- 18 Q. You hold it on the bottom part with your glove?
- 19 A. The stick part?
- 20 Q. Mm-hmm.
- 21 A. Yes.
- 22 Q. Then, with your gloved hand, you put it in the drying box,  
23 and then seal up the drying box?
- 24 A. I put it in the drying box. I do not seal the drying box.
- 25 Q. So you take off your glove?

- 1 A. I don't believe I ever sealed it.
- 2 Q. Did you give it to Detective Quick to seal?
- 3 A. Yes, I did. The process is to let it dry before you close
- 4 the top.
- 5 Q. How long does that take?
- 6 A. The drying?
- 7 Q. Mm-hmm.
- 8 A. I wouldn't know.
- 9 Q. How long do you give it before putting it in? You talked
- 10 about your training and experience. You have been to
- 11 several DNA classes. How long are you supposed to let it
- 12 dry in the box?
- 13 A. I let it dry for 15 minutes.
- 14 Q. Before putting it in any other packaging?
- 15 A. Correct.
- 16 Q. Is that standard policy?
- 17 A. Yes.
- 18 Q. Could there be problems if you didn't let it dry long
- 19 enough?
- 20 A. Yes.
- 21 Q. What would those problems be?
- 22 A. I believe mold is one of them.
- 23 Q. You didn't participate in any other interviews on this
- 24 case, is that right?
- 25 A. That's right.

1 Q. Or any other facet of the investigation?

2 A. I believe that I testified to that in the hearing, but  
3 when I went back through the reports, I went with  
4 Detective Quick when he took photos.

5 Q. To Sheri Morrow's house on Robe Menzel Road?

6 A. Yes, it was Robe Menzel Road, but I don't know whose house  
7 it was, though.

8 Q. So that means you testified incorrectly under oath at the  
9 other hearing?

10 A. Yes, ma'am.

11 Q. That was a mistake?

12 A. Yes, ma'am.

13 MS. HARDENBROOK: No further questions.

14 Thank you, Detective Ferreira.

15 THE WITNESS: You're welcome.

16 THE COURT: Mr. Alsdorf?

17

18 **REDIRECT EXAMINATION**

19 **BY MR. ALSDORF:**

20 Q. So what did you do with your own gloves after -- let me  
21 rephrase it.

22 You obtained the stick back from Brandon Earl. He just  
23 handed it to you, right?

24 A. Yes.

25 Q. You are wearing gloves?

1 A. Correct.

2 Q. What do you do from there?

3 A. I take my gloves off and I put them in the trash.

4 Q. Okay.

5 Well, what did you do with the stick?

6 A. I gave it to Detective Quick in the drying box. When he  
7 was done with those samples, Detective Quick sealed the  
8 top and put it into like a business envelope.

9 Q. Okay.

10 You watched Detective Quick do that?

11 A. Yes, sir.

12 Q. Was Detective Quick wearing gloves when he did all that?

13 A. He was.

14 MR. ALSDORF: Nothing further.

15 THE COURT: Anything further, Ms. Hardenbrook?

16 MS. HARDENBROOK: Just briefly.

17

18 **REXCROSS EXAMINATION**

19 **BY MS. HARDENBROOK:**

20 Q. So you had gloves. You handed it to Detective Quick to  
21 have him put it in a box?

22 A. In the drying box.

23 Q. Why didn't you just put it in the drying box?

24 A. He was holding the box.

25 Q. Okay.

1 He couldn't hold the box and you put the stick in it?

2 A. He very well could have.

3 Q. He was wearing gloves, too?

4 A. Yes, ma'am.

5 MS. HARDENBROOK: No other questions.

6 Thank you.

7 THE COURT: You may step down.

8 Why don't we take our morning recess now?

9

10 (Court in recess)

11

12 THE COURT: You may call your next witness.

13 MR. ALSDORF: The State calls Kristina Hoffman.

14

15 KRISTINA HOFFMAN, witness herein, after being first  
16 duly sworn, was examined and  
17 testified as follows:

17

18 DIRECT EXAMINATION

19 BY MR. ALSDORF:

20 Q. Can you please state and spell your name for the record?

21 A. My name is Kristina Hoffman, K-r-i-s-t-i-n-a. Last name  
22 is H-o-f-f-m-a-n.

23 Q. How are you employed?

24 A. I'm a forensic scientist at the Washington State Patrol  
25 Crime Lab in Marysville.

- 1 Q. Does the Washington State Patrol Crime Lab have other  
2 offices other than Marysville?
- 3 A. Yes. We have a few crime laboratories throughout the  
4 state.
- 5 Q. Where are they located?
- 6 A. There is one in Vancouver, Washington, over in Spokane, a  
7 Seattle lab, Tacoma, and a smaller one in Kennewick.
- 8 Q. How long have you been a forensic scientist with the  
9 Washington State Patrol?
- 10 A. Just over five-and-a-half years.
- 11 Q. What type of work do you do there?
- 12 A. I'm a scientist in the DNA section, so I examine items of  
13 evidence for biological fluids and/or presence of DNA.
- 14 Q. When you say items of evidence, what sort of the range of  
15 things are you talking about, physical objects you have  
16 had the occasion to examine over the last five-and-a-half  
17 years?
- 18 A. Items can vary for the type of case involved. It's any  
19 item submitted by a law enforcement agency to the crime  
20 lab in their investigation. So items vary from clothing,  
21 blood stains, weapons, and reference samples.
- 22 Q. What's your educational background?
- 23 A. I have a Bachelor of Science Degree in biology from Lake  
24 Forrest University in North Carolina.
- 25 Q. When did you obtain that?

1 A. In 2007.

2 Q. After graduating from college, what additional training or  
3 experience did you undergo to be qualified for your  
4 current position?

5 A. Right after I graduated, I was hired on by the Washington  
6 State Patrol as a Forensic Scientist 1. This is an  
7 in-training position that lasts approximately one year.  
8 It involves training of the new hire through experienced  
9 senior analyst in the determination of different body  
10 fluids and DNA typing.

11 I also underwent a training program through the  
12 National Forensic Science Training Center in Florida as a  
13 part of my training program.

14 Q. Could you talk to us a little bit about that training  
15 program in Florida, what it entails?

16 A. Sure. It's just an in-depth training program on how to  
17 conduct DNA typing and the analysis of the DNA profiles.  
18 I have processed over 100 samples of evidence or items  
19 that would simulate evidence items. I conducted those DNA  
20 typing on those samples.

21 Q. So approximately 100 samples in that training alone.

22 In the last five-and-a-half years, in your actual work  
23 with the State Patrol, do you have any way to estimate how  
24 many items of evidence you processed in that time?

25 A. Well, each case will vary depending on the number of items

1       involved in a case. Some cases have one or two. Some  
2       have over 10; it just depends. On average, every year I  
3       process about 130 cases.

4 Q. So 130 cases. Within those cases, there is really no  
5       telling how many evidence items would be part of any one  
6       case, is that right?

7 A. Correct.

8 Q. Can you talk to us a little bit about the physical space  
9       of the Marysville State Patrol Crime Lab or what type of  
10      building it's in and what types of different rooms you  
11      have in that facility?

12 A. Our crime laboratory in Marysville is a part of the  
13      district office. We have a large room in the laboratory  
14      for the examination of items. We have large examination  
15      tables to sort out whatever item we are looking at.

16         Each analyst has their own individual laboratory bench  
17      where we can perform our types of tests on those samples.  
18      We each work on our own cases from start to finish.

19         We have separate portions of the lab dedicated to  
20      certain steps of DNA typing. Certain steps need to be  
21      kept separate from others to minimize contamination.

22 Q. We will talk about that in a little bit.

23         About how many forensic scientists work with you at the  
24      Marysville location?

25 A. There are five DNA analysts in Marysville, and there are a

1        few chemists and a lab manager, and some property and  
2        evidence custodians.

3    Q. Can you describe for us the workload or backlog of cases  
4        that you receive --

5                MS. HARDENBROOK: Objection, leading.

6                THE COURT: Overruled.

7    BY MR. ALSDORF:

8    Q. The workload or backlog that you receive from law  
9        enforcement, meaning are you always able to get to each  
10       case right away as it comes in?

11   A. We receive multiple cases a day from law enforcement. We  
12       have a wide service area. So the supervisor --

13                MS. HARDENBROOK: Objection, move to strike as  
14       non-responsive.

15                THE COURT: Sustained.

16    BY MR. ALSDORF:

17   Q. When you receive cases from law enforcement, what  
18       determines how fast you're going to be able to get to your  
19       actual scientific work on that case?

20   A. There is my personal workload, court dates. Cases with  
21       court dates take precedence so we can meet the deadline or  
22       on cases where there is public risk.

23   Q. What certifications or accreditations does your lab, the  
24       Marysville Crime Lab with the State Patrol, possess?

25   A. We are accredited through the American Society of Crime

- 1 Lab Directors Lab Accreditation Board.
- 2 Q. That's kind of a mouthful. Can you describe what that  
3 means to be accredited by that organization?
- 4 A. It means our lab protocols are all reviewed by auditors.  
5 Our lab system itself is audited. An audit means it's  
6 kind of an inspection and it has to happen every so often.
- 7 Q. The auditors, the inspectors that are coming in to do that  
8 checking, are they associated with the State Patrol?
- 9 A. No, they are an outside agency.
- 10 Q. So that's for the lab itself.
- 11 How about you personally as a forensic scientist? Do  
12 you have to go through any ongoing proficiency testing  
13 regarding your own qualifications?
- 14 A. Yes. I have to undergo proficiency testing twice a year.
- 15 Q. What's entailed in that?
- 16 A. A proficiency test is a test I receive, and it's a  
17 proficiency test, but it is made up by an outside agency  
18 where I don't know the right answer to the test. I  
19 conduct the test as if it were a normal case. I report  
20 out my results to an external agency. They review the  
21 results and report back if I passed or failed.
- 22 Q. Were you approved as far as that external proficiency exam  
23 testing process when you completed the work on this  
24 specific case?
- 25 MS. HARDENBROOK: Objection, leading.

- 1 THE COURT: Overruled.
- 2 A. Yes.
- 3 Q. Have you maintained that external proficiency  
4 qualification to this day?
- 5 A. Yes.
- 6 Q. Can you talk to us a little bit about how the FBI, the  
7 Federal Bureau of Investigation, is involved, if at all,  
8 in determining or validating the qualifications for a DNA  
9 analyst?
- 10 A. The FBI has a quality assurance standard. It's an audit  
11 document. The DNA section undergoes an audit every year  
12 in order to participate with CODIS, which is a database  
13 that DNA profiles through the FBI.
- 14 Q. Does your lab meet those FBI data assurance  
15 specifications?
- 16 A. We do.
- 17 Q. The lab did also meet those specifications when the work  
18 was performed in this particular case?
- 19 A. Yes.
- 20 Q. Is there any ongoing activity that you take as far as  
21 keeping up-to-breast on developments in this field?
- 22 A. Yes. We're required to meet eight hours of continuing  
23 education every year and I meet those requirements.
- 24 Q. Do you do anything at the State Patrol Crime Lab that's  
25 not specifically related to DNA analysis?

- 1 A. My primary function is DNA and also the CODIS  
2 administrator DNA requirements.
- 3 Q. What does it mean to be the CODIS administrator?
- 4 A. I'm in charge of monitoring CODIS operations in the lab,  
5 which involves processing any match requests or uploading  
6 new profiles into the database. I attend annual  
7 conferences through the FBI that is in regards to CODIS.
- 8 Q. I want to ask some basic background science questions  
9 about what we are even talking about with DNA and the type  
10 of science we will be discussing shortly. So what is DNA?
- 11 A. DNA stands for Deoxyribonucleic Acid and it is the genetic  
12 component in every cell that contains a nucleus. It's  
13 sort of like a blueprint or recipe for our cells that  
14 makes everything we need to survive.
- 15 Q. So you said it's found in nucleated cells in the body?
- 16 A. True.
- 17 Q. Okay.
- 18 So are all the cells in the human body nucleated cells?
- 19 A. Not all of them.
- 20 Q. Can you describe the difference there for the jury?
- 21 A. Mainly it means like red blood cells do not contain a  
22 nucleus, so they would not have DNA. But most every other  
23 cells like skin cells, saliva cells, they would have DNA.
- 24 Q. Are there different types of DNA testing?
- 25 A. There are.

1 Q. What are the types and can you describe a little bit about  
2 each?

3 MS. HARDENBROOK: Objection, compound question.

4 THE COURT: Sustained.

5 BY MR. ALSDORF:

6 Q. What are the types?

7 A. They are in Short Tandem Repeat typing or called STR.

8 There is DNA typing technology that just looks at the Y  
9 chromosome. The Y is a text chromosome of males. There  
10 is also mitochondrial DNA typing.

11 Q. What is mitochondrial DNA typing?

12 A. It's a type of DNA typing that's unique for just  
13 mitochondrial DNA. Mitochondria are for females, and the  
14 cells separate from the nucleus.

15 Q. You said that Y-STR is specific to the male chromosome in  
16 males. Can you tell us about chromosomes in general in  
17 the human body and how the Y chromosome fits into that?

18 A. Everybody has 23 chromosomes. In those are your sex  
19 chromosomes. Females are X and Y, so they have two --  
20 sorry. Females are XX, and so they just have two copies  
21 of that X chromosome inherited, one from your mother and  
22 inherit the other from your father. Males have an X and a  
23 Y.

24 Q. Do you know anything about how a Y chromosome would  
25 compare to, say, a father's or a son's Y chromosome?

1 A. Yes. The Y chromosome is inherited down the paternal  
2 line. So a father will pass down his Y chromosome to his  
3 son.

4 Q. So a father and a son have the same Y chromosome?

5 A. Yes.

6 Q. So you said "STR" stands for "Short Tandem Repeat?"

7 A. Yes.

8 Q. What the heck is that?

9 A. Short Tandem Repeat are segments in our DNA that repeat  
10 multiple times over and over the same sequence. My type  
11 of DNA typing that I perform targets the regions of DNA.

12 Q. So what are you able to tell by targeting regions of DNA?

13 A. The goal is to obtain a DNA profile from the sample.

14 Q. How do you go about doing that?

15 A. So it starts with extracting the DNA from the sample,  
16 which is isolating the DNA from all the other components  
17 in the cell and the substraigh that the DNA is on. Then,  
18 I estimate how much DNA I have in my sample, which also  
19 indicates the quality of the DNA that's there. Then, it's  
20 sort of an amplification or copy stage where I isolate and  
21 target just those areas of DNA that I want.

22 Our type of testing targets 15 of those regions all at  
23 the same time. Then, I will have only those regions that  
24 I am looking at. I will separate them out by size in an  
25 instrument, and the result is a DNA profile. On the

1 computer, it looks like a graph.

2 Q. So correct me if I'm wrong. It sounds like you maybe  
3 described four separate processes there: Extracting,  
4 estimating, amplifying, and separating, is that fair?

5 A. Yes.

6 Q. Did you receive any evidence in the case that we're all  
7 here about today?

8 A. I did.

9 Q. Are there any documents that would help you refresh your  
10 recollection as I ask you questions about that today?

11 A. I generated a crime laboratory report for my examination.

12 MS. HARDENBROOK: Your Honor, I would just ask  
13 the witness let us know before she looks at it. I would  
14 like her to try to testify from her memory before she  
15 refreshes.

16 THE COURT: If you need to look at your report,  
17 please let us know.

18 THE WITNESS: Okay.

19 BY MR. ALSDORF:

20 Q. Showing you State's Exhibit 55, do you recognize that  
21 document?

22 A. I do. I see my signature here and the date I signed it.

23 Q. Generally speaking, what is that document?

24 A. This is the Washington State Patrol Crime Laboratory  
25 Report.

- 1 Q. Did you already say what date you signed it on?
- 2 A. I signed it October 17, 2011.
- 3 Q. Can you tell us first from your independent memory, if
- 4 you're able, a summary of what evidence you received from
- 5 the Snohomish County Sheriff's Office in this case?
- 6 A. Sure. I received two pairs of underwear, a pair of
- 7 tights, a reference sample from Ms. Fuentes, and a
- 8 reference sample from Mr. Earl.
- 9 Q. Five items total?
- 10 A. Yes.
- 11 Q. Did you receive a reference sample from Mia Fuentes?
- 12 A. Yes.
- 13 Q. Is the condition that you receive evidence from law
- 14 enforcement an important part of your analysis?
- 15 MS. HARDENBROOK: Objection, leading.
- 16 THE COURT: Overruled.
- 17 A. Yes.
- 18 Q. So talk to us a little bit about that.
- 19 A. So when I have an item of evidence out in front of me for
- 20 examination, I will document in my notes the condition
- 21 that I received that item. I will look at the labeling on
- 22 the package and the type of seal it has.
- 23 Q. If any of the seals or packaging was compromised when you
- 24 conduct your initial review of the evidence item, would
- 25 that be significant to you?

1 MS. HARDENBROOK: Objection, leading.

2 THE COURT: Overruled.

3 A. Yes, I would note that there was something abnormal.

4 Q. Okay.

5 Did you make any notes of anything being abnormal or  
6 compromised with any of the evidence items you received  
7 from Snohomish County Sheriff's Office upon your initial  
8 review of those items?

9 A. No.

10 Q. Okay.

11 What type of terminology did you use in your report to  
12 refer to specific items of evidence? Did you use numbers  
13 or words or what?

14 A. Numbers.

15 Q. Okay.

16 Where are you getting those numbers from?

17 A. The numbers come from the request for laboratory  
18 examination, which is filled out by the agency, and then  
19 that's all bar-coded with that same number to keep track.

20 Q. So let's do an example. Let's do No. 5. It is State's  
21 Exhibit 17. It looks like there is at least four labels  
22 other than the State's exhibit sticker?

23 MS. HARDENBROOK: Objection, Your Honor. Could  
24 we have the witness testify?

25 THE COURT: I will sustain the objection.

1 BY MR. ALSDORF:

2 Q. Tell us how you would go about interacting with that piece  
3 of evidence upon your initial review, at least to the  
4 extent that you could eventually call it something?

5 A. So the initial review is a visual inspection of the  
6 packaging itself. I note what type of packaging it is,  
7 envelope, paper bag. I look at the seals that are present  
8 on the package. We require that the seals be initialled  
9 from the package across to the tape so that we can detect  
10 if that seal has been disrupted.

11 Also, I will compare the documentation that has the  
12 case number, item number, and compare it to what's on the  
13 documentation received by the lab to make sure that this  
14 item is what is written on the request form.

15 Q. So did you make notes -- well, do you have an independent  
16 recollection of what that particular item of evidence is?

17 A. Well, I can tell based on what's written on here that this  
18 is a reference sample for Mia Fuentes.

19 Q. Okay.

20 At this time, I would ask that you put on some gloves  
21 and use these scissors to open that packaging and show us  
22 what a reference sample actually looks like.

23 Looks like you brought your own gloves.

24 A. Mm-hmm.

25 This is pretty standard for the lab to receive

1 reference samples. A reference is we ask that they be  
2 swabs or --

3 MS. HARDENBROOK: Objection. Non-responsive to  
4 the question.

5 THE COURT: I don't believe there is a question.

6 BY MR. ALSDORF:

7 Q. Can you describe, now that you've taken that item of  
8 evidence out of the bag, what the jury is looking at?

9 A. These are cardboard boxes. In there is a swab for what  
10 would be a Q-tip inside.

11 Q. That cardboard box, is that a drying box?

12 A. Yes, it's designed to dry. It has some holes in here to  
13 allow air to pass through.

14 Q. What's the purpose of that?

15 A. To dry out the swab.

16 Q. Is having a dry swab important at all?

17 A. We ask that because it preserves the DNA better if things  
18 aren't moist so that bacteria can grow and chew up the  
19 DNA.

20 Q. So once you receive -- well, let's first establish what  
21 all you precisely received from Snohomish County Sheriff's  
22 Office. What were all the items of evidence that you  
23 received?

24 A. I received two pairs of underwear, a pair of tights, a  
25 reference for Mia Fuentes and a reference for Mr. Earl.

- 1 Q. Were those items of evidence assigned evidence item  
2 numbers that you referred to throughout your report?
- 3 A. Yes.
- 4 Q. Could you reference those for us?
- 5 A. May I refer to my report?
- 6 Q. Yes.
- 7 A. Item 3 is the reference sample for Mr. Earl.  
8 Item 5 is the reference for Mia Fuentes.  
9 Item 7 is a pair of underpants reportedly belonging to  
10 Mia Fuentes.  
11 Item 8 is a pair of underpants reportedly belonging to  
12 Mia Fuentes.  
13 Item 9 is a pair of tights reportedly belonging to Mia  
14 Fuentes.
- 15 Q. Is there any way to differentiate between the two  
16 underwear pairs, Items 7 and 8?
- 17 A. I referred to them as Item 7 was a pair of Disney brand  
18 underpants, and Item 8 was a Nick Jr. brand.
- 19 Q. Did you assign those names?
- 20 A. They were evident when I opened the items, so I used that  
21 to distinguish them.
- 22 Q. Which item of evidence did you interact with first in this  
23 case?
- 24 A. I would have to look at my case file.
- 25 Q. Okay.

1 Well, let me ask you this: Did you interact with all  
2 of the items on the same day?

3 A. I examined the two pairs of underpants and the tights on  
4 the same day. The references were done later.

5 Q. Why did you do that?

6 A. The procedure that the lab has to minimize contamination,  
7 reference samples are always examined after the other  
8 samples.

9 Q. You followed that procedure in this case?

10 A. Yes.

11 Q. Take us back to that first day when you started examining  
12 the clothing. What did you do?

13 A. I examined one item at a time. It starts out with a  
14 visual examination of the item for any staining or defects  
15 in the fabric or possible trace evidence that I observed.  
16 All of that is documented as I go. Then, I perform the  
17 body fluid identification steps.

18 Q. I think we'll just take it step-by-step as your report  
19 talks about it, okay?

20 Can we talk about Evidence Item No. 7, the Disney  
21 underpants that you examined in this case? I will hand  
22 you what already has been marked and admitted as State's  
23 Exhibit No. 19. Looks like you are changing your gloves.

24 A. Mm-hmm.

25 Q. Why are you doing that?

- 1 A. We change gloves when we look at different items.
- 2 Q. Okay.
- 3 Did I just ask you to do that?
- 4 A. No.
- 5 Q. All right.
- 6 So can you please take out Evidence Item No. 7 using
- 7 whatever procedures you are used to using? Do you have
- 8 independent recollection now that you see that pair of
- 9 underwear of examining that specific thing in relationship
- 10 to this case?
- 11 A. I would have to open it up. Sometimes I will write my
- 12 initials on the actual item.
- 13 Q. Do you always?
- 14 A. Not always.
- 15 Q. Go ahead and see.
- 16 A. I don't think I wrote anything on this one.
- 17 Q. Is there anything on those underwear that helps you
- 18 identify them as the Disney underwear you talked about?
- 19 A. There is a Disney character on the back.
- 20 Q. What did you do first with that pair of underwear?
- 21 A. I don't want to talk over the evidence. Can I lay it
- 22 down?
- 23 Q. Or you can put it back in the bag if that's what makes you
- 24 more comfortable. That's fine.
- 25 A. So the first step is an individual examination noting any

1 stains that I see, what color are they.

2 Q. Did you make any observations in that regard for this  
3 item?

4 A. Yes, I noted that there was some faint yellow staining in  
5 the crotch region of the underpants, and that there was a  
6 slight urine-like odor.

7 Q. Eventually, did you come to talk about different surfaces  
8 of that underwear as interior and exterior surfacing?

9 A. I referred to interior and exterior if it was worn  
10 properly.

11 Q. Okay.

12 On what surface did you notice that yellow staining  
13 that you talked about?

14 A. Well, it was visible on both the interior and exterior,  
15 but it appeared that the deposit was from the interior.

16 Q. Okay.

17 After the visual inspection and, I guess, olfactory  
18 inspection that you also talked about, what type of  
19 testing did you do next?

20 A. I was screening the underwear for the presence of semen.  
21 The first test that I performed is called the Acid  
22 Phosphatase Test or AP for short. I did mapping  
23 techniques where I overlaid a piece of moistened paper to  
24 the interior crotch area of the underpants and applied  
25 pressure on that paper to wick up or blot anything up that

1        might be on the garment itself onto the paper.

2            I applied a chemical to that paper, and it's a color  
3        change reaction with acid phosphatase. If it's positive,  
4        it will be a really bright purple color change, and if  
5        it's negative, it won't change color.

6    Q.    Based on your training and experience, if you did see that  
7        purple color change, what would that tell you about that  
8        piece of evidence?

9    A.    It would indicate the presence of semen, and it would  
10       cause me to do further testing.

11   Q.    Did you get a positive or negative result for acid  
12        phosphatase on that item of evidence?

13   A.    It was a negative reaction.

14   Q.    What test did you do next?

15   A.    I then swabbed the interior and exterior crotch region of  
16        the underpants. So that process is just taking a  
17        Q-tip-like applicator with a cotton tip, rubbing it pretty  
18        thoroughly on the interior area so everything in-between  
19        the seams of each leg. That inner area would be in  
20        contact with the crotch of whoever is wearing it. I did  
21        that for both the interior and exterior surface in an  
22        attempt to do further testing on that garment.

23   Q.    What efforts do you make, if any, to keep your swabs from  
24        the interior and exterior side of that garment separate  
25        from each other?

- 1 A. Well, I used two different separate sterile swabs for each  
2 surface.
- 3 Q. Once you had the swabs obtained, what did you do with  
4 those swabs for further testing?
- 5 A. The cotton tip is removed from the swab, and then it's put  
6 into a small plastic tube, so I can add liquid buffer  
7 solution to extract the cellular material that's on that  
8 cotton material.
- 9 Q. Did you conduct testing on that for anything else other  
10 than acid phosphatase that you've already described?
- 11 A. The swabbing was determined if there were any spermatozoa  
12 present. Spermatozoa are the male reproductive cells  
13 found in semen.
- 14 Q. Did you find any?
- 15 A. No.
- 16 Q. What's p30?
- 17 A. p30 is a component found in semen. It's released from the  
18 prostate gland.
- 19 Q. Did you do any testing on this item of evidence for p30?
- 20 A. Each sample from the interior and exterior was tested for  
21 p30 and it was negative results.
- 22 Q. When you say each sample from the interior and exterior,  
23 are you talking about the same thing that you had just  
24 examined for spermatozoa?
- 25 A. Yes.

- 1 Q. Okay.
- 2 Is that an approved technique within your accredited
- 3 lab?
- 4 A. Yes.
- 5 Q. All right.
- 6 Did you find any evidence of p30?
- 7 A. No.
- 8 Q. What is human amylase?
- 9 A. Amylase is an enzyme found in higher levels of saliva and
- 10 lower levels of other body fluids.
- 11 Q. What are some of the other body fluids where amylase can
- 12 be found?
- 13 A. Fecal material, breast milk, and urine.
- 14 Q. Do you know why it's found in lower levels in those three
- 15 other body fluids besides saliva?
- 16 A. No.
- 17 Q. Okay.
- 18 Well, do you know anything about human biology as it
- 19 relates to your training in this area?
- 20 A. Well, I just know that it's in breast milk probably to
- 21 help in the digestion of the baby receiving the breast
- 22 milk. Amylase breaks down starches and carbohydrates that
- 23 we ingest.
- 24 Q. How would it end up in feces?
- 25 A. I believe it is just because --

1 MS. HARDENBROOK: Objection, Your Honor. It  
2 sounds like the witness is speculating. It sounds like  
3 she lacks special knowledge.

4 THE COURT: I will sustain the objection to this  
5 answer.

6 BY MR. ALSDORF:

7 Q. What's the basis for your knowledge about the question I  
8 just asked?

9 A. Reading literature.

10 Q. Any old literature or what?

11 A. Literature in my training to conduct this test.

12 MR. ALSDORF: Your Honor, is that adequate  
13 foundation?

14 THE COURT: You may proceed.

15 MR. ALSDORF: Thank you.

16 A. (Continued) I read that amylase is likely found in fecal  
17 material because of our digestion process that we have.  
18 Since we have it in our mouths and it's in food, that it  
19 goes through the same pathway, so it would be reasonable  
20 to assume it would be in fecal material, as well.

21 Q. Is that the same theory for why it would be in urine?

22 A. I'm not sure on that one.

23 Q. Okay.

24 Did you detect any evidence -- first of all, what  
25 exactly were you testing to determine if there was amylase

1 on the Disney underpants?

2 A. The same sample I had for the semen testing. Part of that  
3 sample can also be tested for amylase. It's like a  
4 pregnancy test, and it's detecting elevated levels of  
5 human amylase.

6 Q. Is that test capable of telling you how much amylase is  
7 present in any given sample?

8 A. No, it is not quantitative.

9 Q. Okay.

10 So if it is not quantitative, what is it?

11 A. It's qualitative, so is it there or is it not there?

12 Q. Are you aware of any way to scientifically evaluate the  
13 quantity of amylase in any sample?

14 A. No, I'm not.

15 Q. Okay.

16 Well, is that the extent of the testing that you did on  
17 Evidence Item No. 7?

18 A. Per body fluids, yes.

19 Q. Okay.

20 How about for DNA?

21 A. For DNA, I had the same swabbing samples for body fluids.  
22 They were taken for DNA typing, which is the process of  
23 extracting and isolating the DNA.

24 Q. We will talk about those DNA results in a little bit.

25 MS. HARDENBROOK: Objection, Your Honor. I

1 don't think counsel needs to be commenting. They are not  
2 questions.

3 THE COURT: I will overrule the objection.

4 MR. ALSDORF: Thank you, Your Honor.

5 BY MR. ALSDORF:

6 Q. Handing you what's been marked State's Exhibit 20. Looks  
7 like you are going to change your gloves again. I will  
8 offer you this for your pair of gloves.

9 Can you please tell us if you can identify what's in  
10 that item based on the packaging?

11 A. This one is marked with "Item No. 8," and it says it's  
12 "girl's underwear from med exam belonging to vic."

13 Q. Do you see your initials anywhere on that packaging?

14 A. I see the laboratory number, the date I examined the item,  
15 and my initials.

16 Q. What date did you examine the item?

17 A. September 15, 2011.

18 Q. Can you please interact with the item to take the  
19 underwear out and show it to the jury? Is there anything  
20 on that particular item of evidence that helps you  
21 identify it as what it came to be known, the Nick Jr. pair  
22 of underpants?

23 A. I see the Nick Jr. logo here on the garment.

24 Q. Okay.

25 Can you please return it to its packaging?

- 1 A. (Witness complied).
- 2 Q. Did you inspect that item for odor or staining just like  
3 you did the last pair?
- 4 A. Yes, I did a visual exam and noted yellow staining on the  
5 crotch area and a urine-like odor.
- 6 Q. Did you go through that swabbing process on the interior  
7 and exterior, just like the last pair?
- 8 A. Yes.
- 9 Q. Did you use the same procedures?
- 10 A. Yes.
- 11 Q. What did you do in-between interacting with Evidence Item  
12 No. 7 and Evidence Item No. 8?
- 13 A. The work area that the items are laid out on, there is a  
14 clean sheet of paper that's changed in-between each item.  
15 and then the surface of the table is cleaned.
- 16 Q. Is that part of the policies and procedures for your  
17 accredited laboratory?
- 18 A. Yes.
- 19 Q. Did you conduct the semen testing that we talked about for  
20 the previous item?
- 21 A. Yes.
- 22 Q. Okay.
- 23 When I say semen testing, I'm talking about acid  
24 phosphatase, spermatozoa, and p30.
- 25 A. Yes, all three of those tests.

1 Q. You did all three of those tests? Were any of those  
2 positive on the Nick Jr. underpants?

3 A. No.

4 Q. Did you conduct amylase testing on the Nick Jr.  
5 underpants?

6 A. Yes.

7 Q. Tell us about that.

8 A. I had an interior sample and an exterior sample from the  
9 crotch. The interior sample had a positive result for  
10 amylase. The exterior sample had a negative result.

11 Q. Well, do you have any training or experience that would  
12 help inform the jury about how likely amylase would be to  
13 migrate from an interior surface to an exterior surface  
14 just on its own through absorption or soaking?

15 A. It could transfer --

16 MS. HARDENBROOK: Objection, non-responsive.  
17 The question was whether she had training or experience  
18 that would help inform the jury.

19 THE COURT: Sustained.

20 BY MR. ALSDORF:

21 Q. That calls for a yes or no.

22 A. Yes.

23 Q. Based on that training and experience, what's your answer  
24 to the basic question?

25 MS. HARDENBROOK: Objection, lack of foundation.

1 I think she needs to say what training and experience she  
2 has to make that.

3 THE COURT: Overruled.

4 A. Any wet body fluid could change depending on the  
5 substraight from the interior surface versus the exterior  
6 surface, which could be saliva.

7 Q. If that transfer or soaking happened, would you expect to  
8 find a positive amylase result on both the interior and  
9 exterior portions?

10 A. Yes.

11 Q. Okay.

12 So what did you find in this case on the Nick Jr.  
13 underpants related to amylase?

14 MS. HARDENBROOK: Objection, asked and answered.

15 THE COURT: Overruled.

16 A. It was positive on the interior surface and negative on  
17 the exterior surface.

18 Q. Did you also process those same swab samples for DNA  
19 content?

20 A. Yes.

21 Q. What does that mean to process the swab samples separately  
22 for DNA content? Like what does that look like while you  
23 are at your table working?

24 A. It means adding different reagents to the tubes that the  
25 swab material is in. The reagents allow me to modify and

- 1       purify the DNA.
- 2   Q.   Let's move on to a new item of evidence.  You may want new  
3       gloves.
- 4       State's Exhibit 21 -- can you identify -- well, I  
5       should let you know, first of all, that there is a big cut  
6       in the bag that was previously done in the courtroom.  Can  
7       you identify the markings on that bag, what it is related  
8       to this case?
- 9   A.   This bag is marked "red tights from med exam belonging to  
10       vic."
- 11  Q.   Can you please use the opening that's already on there and  
12       extract any items of evidence from that bag?
- 13  A.   (Witness complied).
- 14  Q.   What do you see?
- 15  A.   These are a pair of red tights.
- 16  Q.   Can I have you please return those to the packaging?
- 17  A.   (Witness complied).
- 18  Q.   Is there anything else in that brown paper bag?
- 19  A.   Yes.
- 20  Q.   What do you see there?
- 21  A.   It is a cardboard microscope slide holder that I generated  
22       after my sperm search exam, and this is a foil pouch  
23       containing dried DNA extracts that I generated from this  
24       item.
- 25  Q.   Okay.

1           Could you please return those to the package?

2 A. (Witness complied).

3 Q. Now might be a good time to ask you why is there a

4 separate package of dried DNA extract for the tights and

5 there wasn't for the underwear?

6 A. There was for one of the pairs of underwear.

7 Q. Okay.

8 A. There was those things in there.

9 Q. Which item of evidence are you talking about?

10 A. For the Disney Item 7.

11 Q. I don't want to have you -- well, sure. I think you are

12 used to changing your gloves, right?

13 A. Mm-hmm.

14 Q. Looks pretty much the same as the ones you just described

15 from Evidence Item No. 9.

16 A. Yes.

17 Q. Can I have you return those to the packaging?

18 A. (Witness complied).

19           MR. ALSDORF: Your Honor, will the jury have

20 permission to open things once it's back in the jury room?

21           THE COURT: Yes, and we will supply gloves for

22 that purpose.

23           MR. ALSDORF: Thank you.

24 BY MR. ALSDORF:

25 Q. Let's return to your analysis of the red tights. What did

- 1       you notice when you did an initial visual inspection of  
2       those red tights?
- 3   A.   I noted there was some staining on the feet of the tights,  
4       and there was some hairs that I collected onto a Post-it  
5       Note.
- 6   Q.   What do you mean by there was some staining on the feet?
- 7   A.   I would have to refer to my note, but I think that it was  
8       black staining.
- 9   Q.   If you do have to refer to your report, that's completely  
10      fine.
- 11  A.   It was black staining with light-colored deposits that  
12      were on the exterior bottom of each feet of the tights.
- 13  Q.   How were you determining what to call the exterior surface  
14      when -- you find black staining on a foot area, but you  
15      went and called it the exterior surface. How did you  
16      arrive at that?
- 17  A.   That's in reference to if they were worn how they should  
18      be with the tag on the interior surface.
- 19  Q.   Okay.
- 20       So it's in reference to the tag, not just where the  
21      black staining was, right?
- 22  A.   Right, no.
- 23  Q.   I don't want to cut you off.
- 24  A.   It's just interior and exterior designations just refer to  
25      the different surfaces of the tights if they were worn as

1       they should be.

2   Q.   In reference to the tag that would be on the inside,  
3       right, of any normal clothing item?

4   A.   Right.

5   Q.   Okay.

6       So how did you go about examining this black staining  
7       on the exterior feet of the tights?

8   A.   I didn't do any testing with the black staining.

9   Q.   Okay.

10       What did you do at all about your observations of  
11       staining on the black tights?

12   A.   They were red tights.

13   Q.   Sorry.

14   A.   After that visual inspection, I also used a tool called a  
15       forensic light source, which applies different wave  
16       lengths of light and different body fluids and fibers may  
17       fluoresce under exposure to this type of light.

18   Q.   Did you notice any significant results from your  
19       fluorescent light source testing for that area?

20   A.   The staining on the feet did fluoresce, but I noticed that  
21       there were no body fluid-like stains that fluoresced under  
22       that exposure to light.

23   Q.   Did that cause you to pursue that avenue of your analysis  
24       any further or did it stop right there?

25   A.   No, I continued on with the examination for other body

1 fluids.

2 Q. Tell us what you did in that regard.

3 A. Then, I examined the tights for acid phosphatase and got a  
4 negative result.

5 Q. When you say examined them for acid phosphatase, are you  
6 referring to the swabbing and sampling process you talked  
7 about with the underwear?

8 A. Acid phosphatase was that paper method where you're  
9 blotting up on paper.

10 Q. That was negative?

11 A. Yes.

12 Q. What other testing did you do?

13 A. I connected the sperm search testing and p30 and amylase.

14 Q. The spermatozoa and p30 testing, did that yield any  
15 results?

16 A. It was negative.

17 Q. How about the amylase testing?

18 A. Also negative.

19 Q. Okay.

20 Well, I think you previously testified that you do that  
21 amylase testing by first swabbing and developing a sample  
22 from the swab, right?

23 A. Right.

24 Q. Did you swab -- what areas did you swab on the tights?

25 A. I swabbed the exterior crotch region of the tights.

1 Q. That exterior crotch region is what was negative for  
2 amylase?

3 A. Correct.

4 Q. Why didn't you swab the interior of the crotch on the red  
5 tights?

6 A. Because there was an indication that underpants were worn  
7 beneath the tights.

8 Q. So you say an indication. Where are you obtaining that  
9 information from?

10 A. Before a case is started by me in the lab, I will discuss  
11 the details with the agency representative to find out  
12 what questions they would like answered.

13 Q. Who was that person in this case that you talked with?

14 A. I believe it was Detective Quick.

15 Q. Why is it important for you as a forensic scientist to  
16 have some basic concept of what the allegation is in order  
17 to decide what kind of testing you are going to do and  
18 where?

19 A. It's important for me to know certain details so that I  
20 know where on an item to sample. For example, if there is  
21 a big couch or something and there is an allegation of  
22 sexual assault, it's helpful for me to know where on the  
23 couch to conduct my testing. It helps streamline.

24 Q. Okay.

25 Did you do any DNA extractions with these red tights?

- 1 A. A sample from the exterior crotch region taken for DNA  
2 typing.
- 3 Q. What type of work did you do with the two different  
4 reference samples that you had in this case, the Brandon  
5 Earl reference sample, and then separately I will ask you  
6 about the reference sample from Mia Fuentes?
- 7 A. Reference samples are extracted for DNA. No body fluid  
8 was conducted on those.
- 9 Q. What does it mean to -- I know you talked about the  
10 reagents. What sort of machinery do you use to extract  
11 DNA from a sample like that?
- 12 A. After all the reagents are applied to the sample to  
13 release DNA, we have an extraction tool that's kind of  
14 like a robotic instrument, and it allows me to isolate the  
15 DNA through magnetic beads from the sample.
- 16 Q. Did you process the Brandon Earl reference sample and the  
17 Mia Fuentes sample together at all?
- 18 A. They were processed side-by-side.
- 19 Q. Okay.
- 20 Is that any concern as far as your policies and  
21 procedures that are related to potential contamination?
- 22 A. Could you repeat the question?
- 23 Q. Well, I think you already testified that in general it's  
24 good to keep reference samples separate from questioned  
25 samples, right?

1 A. Yes.

2 Q. Okay.

3 Did the processing of Mia and Brandon's known reference  
4 samples side-by-side, is that a concern for you as far as  
5 cross-contamination goes?

6 A. No.

7 Q. Why not?

8 A. Since they are both reference samples. In addition, the  
9 gender of each is different. There is a female and a  
10 male. So it would be very obvious if there was a sample  
11 switch of the two.

12 Q. So it sounds like, and correct me if I'm wrong, that as  
13 far as DNA goes, you obtained extracts from all of the  
14 clothing items you just described, is that correct?

15 A. Yes.

16 Q. What did you do with those extracts as far as trying to  
17 determine if you had DNA evidence?

18 A. I estimate how much total human DNA was there. In  
19 addition, I estimate how much male DNA was there.

20 Q. Why is it important to know how much human DNA and then  
21 male DNA is in any given sample?

22 A. For cases where the allegation is of a male perpetrator on  
23 a female alleged victim, it's helpful to know if there is  
24 male DNA detected, and also how much male DNA on these  
25 samples where there could be both male and female DNA.

1       When there is an abundance of female DNA, it can inhibit  
2       my type of testing. It can overwhelm the test. So  
3       detecting that male component may not be possible. So  
4       understanding that ratio, it's important.

5 Q.   What do the ratios that you learned on these specific  
6       items of evidence tell you about what kind of testing you  
7       could or should do going forward?

8 A.   Do you want specific data?

9 Q.   Yes.

10 A.   Can I look at my report?

11 Q.   Yes, you can.

12               MS. HARDENBROOK: Your Honor, I object to the  
13       narrative answer. Could she go item-by-item?

14               THE COURT: Let's go item-by-item.

15 BY MR. ALSDORF:

16 Q.   Could you make clear in your answer which item you are  
17       talking about?

18 A.   Yes. So we'll start with Item 7, the Disney underpants.  
19       No male DNA was detected by either extract, the interior  
20       or the exterior. No further testing was conducted.

21       Moving on to Item 8, the Nick Jr. underpants, I  
22       detected male DNA, but the ratio of male to female DNA was  
23       not suitable for conventional STR DNA typing, so I stopped  
24       my testing on that item.

25 Q.   When you say that you noted male DNA on the Nick Jr.

1       underpants, was that from the interior crotch sample or  
2       the exterior crotch sample?

3   A.   It was on both.

4   Q.   Okay.

5       What did you do with that as far as analysis?

6   A.   I stopped analysis of that item.

7   Q.   Well, did you do anything to cause further analysis on  
8       that item to be done?

9   A.   Yes. I reached out to another laboratory through the  
10      State Patrol that conducts additional DNA typing,  
11      specifically, the Y-STR form of DNA typing, to see if this  
12      case would be suitable.

13  Q.   Which specific laboratory did you end up sending samples  
14      to to pursue that avenue?

15  A.   The Spokane lab.

16  Q.   Is that also called the Cheney lab?

17  A.   Yes.

18  Q.   Did you send the extract from both the interior and  
19      exterior to Cheney for analysis?

20  A.   No, just the interior sample.

21  Q.   Why was that decision made to just send the interior  
22      sample?

23  A.   It was based on the quantity of male DNA. There was more  
24      in that one. The Spokane laboratory requested just that  
25      one be sent.

1 Q. Okay.

2 Do you know how you packaged up the DNA extracts from  
3 the interior of the Nick Jr. underpants to be transported  
4 to the Cheney lab?

5 A. When you're done with the DNA extract, a preservative is  
6 applied to that sample which helps preserve the DNA, and  
7 it's dried down to a dried state, and then I put that in  
8 its associated reagent blank. The reagent blank is just a  
9 sample that contains all of my --

10 MS. HARDENBROOK: Objection, non-responsive.

11 THE COURT: Sustained. It is getting to be more  
12 narrative at this point.

13 MR. ALSDORF: Sure.

14 BY MR. ALSDORF:

15 Q. Can you describe the significance of reagent blanks and  
16 then how they are involved with the packaging and  
17 transport to Cheney?

18 A. Reagent blanks are employed with every extraction stage to  
19 detect contamination in the reagents. So every sample  
20 will have a reagent blank associated with it. So I  
21 packaged them together for shipping.

22 Q. Okay.

23 Did you also package other items of evidence for  
24 shipping to Cheney?

25 A. They were reference samples for Mr. Earl in that reagent

1 blank.

2 Q. So how did you package the reference sample for Mr. Earl  
3 and the accompanying reagent blank?

4 A. They were placed into a plastic tube with a screw cap.

5 Q. Is that according to policies and procedures of your lab?

6 A. It's a good practice.

7 Q. Okay.

8 Why is it a good practice?

9 A. It keeps them separate, and it also is a sturdy container  
10 for shipping, so that the tubes that the DNA is in do not  
11 break during shipping.

12 Q. So you talked about a plastic screw-top container. Am I  
13 correct that within that plastic screw-top container,  
14 there was two things: Brandon Earl's reference sample and  
15 its reagent blank?

16 A. Yes.

17 Q. Okay.

18 When you packaged up the extract from the Nick Jr.  
19 underwear, tell us how that was packaged and sent to  
20 Cheney?

21 A. In a similar fashion. The DNA extract and reagent blank  
22 were placed into that plastic container with a screw-on  
23 cap.

24 Q. Were the plastic tubes that each contained two additional  
25 tubes sent together in the same packaging?

1 A. They both went in one envelope.

2 Q. Okay.

3       Given the level of packaging that you have described  
4       for the jury, does that cause a concern for you as far as  
5       the risk of cross contamination between those two things?

6 A. No.

7 Q. So it sounds like you sent those items to Cheney for Y-STR  
8       testing. Did you, however, conduct your own DNA testing  
9       back at the Marysville lab?

10 A. The DNA testing I performed was on the sample from the  
11       tights and the two reference samples.

12 Q. What did you learn about those?

13 A. The DNA profile from the exterior of the tights had male  
14       and female DNA and was a mixture of at least four  
15       contributors.

16 Q. Were you able to develop profiles from that mixture of  
17       four contributors to the extent that you could do any  
18       comparison with the reference samples?

19 A. It was a comparison of the two reference samples to the  
20       mixture on the tights, yes.

21 Q. What did you conclude after making that comparison?

22 A. That Mia Fuentes and Mr. Earl are included as possible  
23       contributors to the exterior surface of the tights.

24 Q. Then, you also generate a statistic that is associated  
25       with that DNA evidence, correct?

1 A. Yes.

2 Q. Can you tell the jury a little bit about what that  
3 statistic is and how you arrive at it?

4 MS. HARDENBROOK: Objection, Your Honor. I'd  
5 ask she say how she arrived at it before she gives the  
6 statistic and lay a proper foundation.

7 THE COURT: Foundation does need to be laid. We  
8 will proceed in that manner.

9 A. The process of generating a statistic to the rarity of a  
10 profile involves using a computer program through the FBI  
11 called CODIS Pop Stat, and it contains population data for  
12 how rare a genetic type is.

13 We will then enter the profile we have from the  
14 evidence into that computer program, and it will generate  
15 a rarity of that profile for the three largest  
16 populations, Caucasian, Black, and Southwest Hispanic. We  
17 report out the most conservative statistic in our report.

18 Q. What do you mean by the most conservative statistic in  
19 your report?

20 A. Well, so if a number is one in 10 and one in five, you  
21 will report out the one-in-five number.

22 Q. Why do you do that? Why do you err on the side of  
23 conservative?

24 A. Because that's a good practice and industry standard.

25 Q. Okay.

1           Based on what you've just described about how you  
2           generate statistics on DNA analysis, what did you find as  
3           far as the statistic that you associated with the DNA on  
4           the red tights?

5   A.   May I read from my report?

6   Q.   Mm-hmm.

7   A.   In the United States population, it is estimated that one  
8           in 29 individuals is a potential contributor to this mixed  
9           profile.

10  Q.   I want to ask you a little bit about your casework over  
11           the years. You already testified a little bit about how  
12           you learned what the basic allegation is in each case that  
13           you perform, is that right?

14  A.   Mm-hmm.

15  Q.   Okay.

16           I think you said you do about 130 cases a year?

17  A.   About, yes.

18  Q.   Okay.

19           So have you ever had the occasion to perform analysis  
20           where the basic factual allegation is a touch of a surface  
21           like, say, a gun handle, as opposed to a potential body  
22           fluid deposit like the allegation in this case?

23  A.   I'm sorry. Can you repeat the question?

24  Q.   Have you had the occasion to do analysis on cases where  
25           the basic factual allegation is a touch rather than a body

1 fluid deposit?

2 A. Yes.

3 Q. Okay.

4 What types of cases are those in your experience?

5 A. They can just be burglary cases, car prowls, bank  
6 robberies, weapons violations.

7 Q. In your experience, in those types of cases when you're  
8 doing DNA analysis based on that kind of fact pattern,  
9 would you expect to find --

10 MS. HARDENBROOK: Objection, Your Honor. It  
11 calls for speculation and I'd ask to address it outside  
12 the presence of the jury.

13 THE COURT: We will ask the jury to go back to  
14 the jury room at this time.

15

16 (The following proceedings were had  
17 outside the presence of the jury)

18 THE COURT: Please be seated.

19 MS. HARDENBROOK: Your Honor, this is one of the  
20 issues that I brought up initially in motions in limine.  
21 When we interviewed this particular witness, she conceded  
22 in the interview that she does not work in a controlled  
23 setting, that she never knows what actually happened to  
24 the object she tests.

25 She has an allegation of either touch versus body

1 fluid, but even in touch allegations, she conceded in our  
2 interview that it could have been that someone had sweat  
3 on their hands, which would have been a body fluid.

4 What is the Court reading?

5 MR. ALSDORF: I handed up a document.

6 THE COURT: Exhibit 54.

7 MR. ALSDORF: As an offer of proof, I will refer  
8 the Court to the last paragraph of Exhibit 54, which is  
9 comments prepared by Kristina Hoffman in response to  
10 defense expert Dr. Riley's report where basically my offer  
11 of proof is that based on her casework experience and  
12 interacting with different types of cases, that the  
13 quantity of DNA that she found on the underpants in this  
14 case is more consistent with the body fluid deposit than  
15 with a touch DNA type of case.

16 MS. HARDENBROOK: Your Honor, that is what  
17 Ms. Hoffman had written the morning we met with her. The  
18 interview of her was after that. So we specifically  
19 inquired how can you say that it's more likely a touch  
20 than a body fluid.

21 She talked about her experience, and that she bases  
22 that on the allegations coming in, and then her testing.  
23 We said, well, when you have an allegation of touching, do  
24 you know that no body fluid touched that object, and she  
25 said, no, I don't. I said when you are testing body fluid

1 objects. do you necessarily always know that it was a body  
2 fluid and not a touch, and she conceded she didn't. She  
3 is not in a controlled environment like a research  
4 laboratory where she, at some point, learned what actually  
5 happened to the object and then tested it.

6 There is research where they have done that, and  
7 Dr. Riley intends to refer to that research. Her  
8 experience is not equivalent to that controlled research  
9 because all she is ever working off of is an assumption  
10 from law enforcement, and there is never a point at which  
11 it is proven up.

12 To be science, it has to be replicable. It has to have  
13 the ability to be replicated. She has to know at the end  
14 of it what the thing was coming in. She simply doesn't  
15 have that opportunity in the way in which she works.

16 So I think she lacks qualification to make that  
17 statement. She has lots of qualifications and she does  
18 really great work, but it is just not research laboratory  
19 work.

20 MR. ALSDORF: I disagree that to qualify as  
21 science or, for the Court's purposes, helpful to the jury,  
22 that you have to have that ultimate determination in every  
23 specific case of what it actually was.

24 Because as I said in motions in limine, when you do  
25 hundreds of cases per year over a period of multiple

1 years, patterns start to emerge in your casework. Perhaps  
2 the questions that Ms. Hardenbrook has raised would be  
3 valuable for her on cross-examination and go to the weight  
4 of Ms. Hoffman's testimony, but certainly her expertise is  
5 sufficient to be helpful to the jury on this issue.

6 THE COURT: It appears to the Court,  
7 Ms. Hardenbrook, your objection goes to the weight and not  
8 the admissibility.

9 MS. HARDENBROOK: Your Honor, I would ask the  
10 Court to briefly review her transcript where she addresses  
11 this exact issue.

12 THE COURT: This witness is being asked to  
13 testify based upon her experience. From looking at the  
14 summary in 54, it refers to four-and-a-half years of  
15 independent casework experience processing 130 forensic  
16 cases per year. So I think she can give the answer to  
17 this question based upon that experience.

18 You may cross-examine. Dr. Riley can have a different  
19 view that you may present to the jury. That does not  
20 preclude this witness from giving an answer to this  
21 question based upon her experience.

22 MS. HARDENBROOK: Thank you. I understand the  
23 ruling.

24  
25

(The following proceedings were had in  
the presence of the jury)

1 THE COURT: Please be seated.

2 We have a few minutes left before the lunch hour. You  
3 may proceed. The objection is overruled.

4 BY MR. ALSDORF:

5 Q. Ms. Hoffman, based upon your casework experience that you  
6 have already described to the jury, do you have any  
7 opinions in your expert capacity as to the relative  
8 quantity of DNA that you would expect to find in a touch  
9 case versus a body fluid deposit case?

10 A. A body fluid deposit is very rich in DNA, so the quantity  
11 of DNA will be much higher than those touch cases,  
12 generally speaking.

13 Q. Can you relate that principal to -- well, first of all,  
14 how much DNA as far as the quantity goes did you locate on  
15 that Nick Jr. interior underwear sample?

16 A. I would have to refer to my case file.

17 Q. Okay.

18 Do you have your case file up there with you?

19 A. I do.

20 MR. ALSDORF: Counsel, do you mind if she refers  
21 to that?

22 MS. HARDENBROOK: I think we properly need to  
23 mark it. Is it something we might have a copy of?

24 MR. ALSDORF: I think we have a copy of it.

25 MS. HARDENBROOK: I think it is appropriate to

1 mark anything she refers to.

2 BY MR. ALSDORF:

3 Q. Let me see if I'm handing you the right thing?

4 A. This is a copy of my case file.

5 MR. ALSDORF: Let me have that marked.

6 BY MR. ALSDORF:

7 Q. This is State's Exhibit 61.

8 MR. ALSDORF: Counsel, I think we are talking

9 about 74 to 286 of discovery.

10 BY MR. ALSDORF:

11 Q. Can you refer to the exhibit document to determine the

12 quantity of DNA that was found on the interior of the

13 Nick Jr. underwear?

14 A. From the interior surface, there was about seven nanograms

15 of male DNA.

16 Q. How many nanograms in a gram?

17 A. There is a billion nanograms in a gram.

18 Q. Am I crazy for thinking that that sounds like an

19 incredibly small amount of DNA?

20 A. It is a small amount, yes.

21 Q. Okay.

22 So seven nanograms is a very small amount of weight

23 period, right?

24 A. Yes.

25 Q. Okay.

1           How about as it relates to the sensitivity of your  
2           ability to test for DNA? How much DNA would you be  
3           looking for to obtain valid results?

4   A. Our ideal target amount is .75 nanograms, so  
5           three-quarters of one nanogram are testing very sensitive.

6   Q. Okay.

7           Now we have those numbers in front of the jury. .75  
8           nanograms that you are targeting to get valid results and  
9           seven nanograms from the interior sample of the Nick Jr.  
10          underpants, can you relate those numbers to what we were  
11          talking about before, which is the relative quantity of  
12          DNA that you would expect to find in a touch case versus a  
13          body fluid deposit?

14   A. So seven nanograms total male DNA is quite significantly  
15          more than what I would find in a typical brief touch  
16          handling case.

17   Q. Okay.

18          Is it more consistent with a body fluid deposit?

19                   MS. HARDENBROOK: Objection, leading.

20                   THE COURT: Sustained.

21   BY MR. ALSDORF:

22   Q. What conclusions, if any, do you have about what type of  
23          contact would have led to the seven nanogram result on the  
24          interior of the Nick Jr. underpants?

25                   MS. HARDENBROOK: Objection, calls for

1 speculation. She can't possibly testify about the kind of  
2 contact that was created.

3 MR. ALSDORF: I'm simply talking of the choices  
4 being body fluid deposit or touch DNA.

5 THE COURT: I will overrule the objection.

6 A. Based on the size of my sample, that initial swabbing, and  
7 comparing that to how much DNA I found, based on my  
8 experience, that amount of DNA is more consistent with a  
9 body fluid deposit compared to a brief contact touch DNA  
10 sample.

11 THE COURT: We are going to stop with that  
12 answer for the noon hour.

13 Members of the Jury, I have a family law proceeding in  
14 here at 1:00 to give a decision on from a previous trial.  
15 I hope that is completed by 1:30. So we will ask you to  
16 be back here by 1:30. If I'm not done quite at 1:30, you  
17 will know I'm still working on the decision with the folks  
18 here on the family law case.

19 Please be back in our jury room by 1:30.

20

21 (Court in recess)

22

23 (The following proceedings were had  
24 outside the presence of the jury)

24

25 MS. HARDENBROOK: Your Honor, the State informed

1 me this morning that they are intending to move to add  
2 another criminal charge in response to the Court's  
3 proposed packet of instructions. The State now wants to  
4 add Child Molest in the First Degree.

5 I'm objecting, of course, on several grounds, the first  
6 and biggest of which is that we are halfway through trial.  
7 I have not asked questions of witnesses towards the  
8 additional defense we would have for Child Mol, nor have I  
9 asked questions and addressed issues going to sexual  
10 gratification, which would be an element of Child Molest.

11 This case was originally filed at the plea bargain of  
12 Child Molest. We declined the State's plea bargain offer,  
13 and they promptly amended it up to Rape of a Child in the  
14 First Degree. We never had notice from the State that  
15 they would go to trial on two charges, never on the omni  
16 application, never on the motions documents, and never in  
17 advance of trial.

18 We confirmed for trial on this charge. I opened the  
19 jury on this charge. I asked all questions relating just  
20 to this charge. So the defense is at a significant  
21 disadvantage if the State changes the rules midway through  
22 the game.

23 MR. ALSDORF: Your Honor, first of all, I want  
24 to say that I do not at this time know if I intend to add  
25 the alternative charge. I don't call it a second charge.

1 I would argue it's in the alternative Child Molest in the  
2 First Degree. What I mean by that, should the jury  
3 convict on both counts, I wouldn't argue he should be  
4 scored as having been convicted of multiple offenses.  
5 That is something for post-conviction, if you will.

6 As far as the timing of all this, I received the  
7 defense proposed jury instructions yesterday. In  
8 particular, one of them was modified WPIC 45.01. Is that  
9 correct, counsel?

10 THE COURT: Correct, 45.01.

11 MR. ALSDORF: Where she was wanting to add the  
12 word "unclothed" into the definition of "sexual organ." I  
13 then consulted with some of my colleagues about legal  
14 authority for that. I haven't been supplied with any from  
15 defense, nor could any of my colleagues find any.

16 Nonetheless, I understand the Court is at least  
17 contemplating and, in fact, has proposed giving the  
18 modified instruction, and I think that if that instruction  
19 is given, the State should be allowed to argue that the  
20 contact that the defendant has admitted to counts as Child  
21 Molestation in the First Degree.

22 Now, whether the timing of this creates any prejudice  
23 for the defense case, I seriously disagree with that. We  
24 can get to that in the event that we make the final  
25 decision about whether or not the modified instruction is

1 going to be given at all.

2 THE COURT: Well, let's talk about the modified  
3 instruction. I looked at that yesterday. I looked at  
4 some of the case law. I looked at the statutes involved.

5 Child Molestation in the First Degree may be proven by  
6 a touching over clothing of the genital areas that is more  
7 than mere fleeting and is done for sexual motivation of  
8 the offender. It is a less serious charge than Rape of a  
9 Child in the First Degree.

10 I don't see any case law one way or the other in  
11 Washington State because there has been no case that has  
12 come up in that respect before an Appellate Court. In  
13 looking at both the statutes, it appears clear to me that  
14 one cannot commit the crime of Rape of a Child in the  
15 First Degree by touching a child through the clothing, and  
16 that the touch must be touched on the unclothed parts of  
17 the child. That is consistent with the statutory intent,  
18 and the fact that we have different offenses with  
19 different elements in that check.

20 I would be prepared to rule as a matter of law that you  
21 can't commit Rape of a Child in the First Degree unless  
22 that occurs between the unclothed genital area of the  
23 child and the defendant in the case. In this case, that  
24 could be a question going back to the jury room. I think  
25 the added word "unclothed" is appropriate.

1           MR. ALSDORF: Very well. Well, I certainly  
2 understand the Court's ruling. I would only ask for the  
3 opportunity to potentially supply briefing on that issue  
4 over the weekend, but I certainly understand the ruling as  
5 of now.

6           THE COURT: Well, I'm not going to rule on your  
7 ability to go back and file an alternative charge. The  
8 Court may agree with the defense in this case. I'm not  
9 going to rule on it at this time, but I may have some  
10 difficulty allowing you to do that at this stage of the  
11 proceedings given the fact you started with that charge to  
12 begin with.

13           MR. ALSDORF: The State's argument would be the  
14 fact the original charge was Child Molestation in the  
15 First Degree actually reduces any potential prejudice the  
16 defense would have in preparing their case. I mean, they  
17 started out thinking of this as a Child Molestation  
18 investigation and, presumably, conducted an investigation  
19 in that vein when that was the actual charge.

20           I would add that the actual defense, in this case,  
21 sure, legally speaking, it is general denial, but the  
22 defendant's own words have been admitted whereby he is  
23 saying this was accidental touching, touching of a  
24 specific area, yes, but accidental in nature. So that's  
25 the defense.

1           So I don't see how the added element that the State  
2           would have to prove that it's sexual, that it is with  
3           sexual intent or sexual gratification, would prejudice the  
4           defense in any way because their defense all along has  
5           been that it's an accident, and that the changing of the  
6           charge or the addition of an alternative charge wouldn't  
7           change their ability to argue what is already their  
8           defense, that it was an accident.

9           THE COURT: Well, we will take it up on Monday.

10          MR. ALSDORF: Thank you.

11          MS. HARDENBROOK: The only reason I wanted to  
12          highlight it for the Court now is if the Court is inclined  
13          to allow the State to amend, I would ask for a mistrial.  
14          If we are going to end up with a mistrial, I just thought  
15          the sooner the better in the sense we may have to have  
16          Dr. Riley drive back to Ellensburg tonight and drive back  
17          on Monday to testify. I don't want to create any more  
18          billing if what we are going to end up with is a mistrial  
19          and we have to do it all over again. That's all I wanted  
20          to bring to your attention.

21          THE COURT: I will give the State a chance to do  
22          their briefing. If I rule on it today, I would probably  
23          say no.

24          MR. ALSDORF: Understood. At least now everyone  
25          is on notice what the various paths are.

1 THE COURT: Correct.

2 MS. HARDENBROOK: Your Honor, I have not  
3 prepared for questioning on the Child Molest charge and  
4 all the fact witnesses that have already testified, so I'm  
5 not planning to go out and serve those people over the  
6 weekend and try to change my whole trial mid-course.

7 THE COURT: Well, at this point, the charge is  
8 Rape of a Child.

9 MS. HARDENBROOK: That's how I would proceed at  
10 this point. Thank you.

11 THE COURT: Are we ready for the jury?

12 MR. ALSDORF: Yes.

13

14 (The following proceedings were had in  
15 the presence of the jury)

16 BY MR. ALSDORF:

17 Q. Ms. Hoffman, I'm going to ask you to interact with State's  
18 Exhibit 24, so if you want to put on gloves for that  
19 purpose, I will allow you time to do so. Thank you. You  
20 will need scissors.

21 Can you take the interior darker Manila envelope there  
22 and remind the jury what you believe that item to be based  
23 on the markings of that envelope?

24 A. Based on what's written on this envelope, it says it's  
25 dried DNA extracts for Y-STR testing from Item 8 and

1 Item 3.

2 Q. Do you remember what Item 8 is?

3 A. I believe it was the Nick Jr. underpants.

4 Q. Do you remember what Item 3 is?

5 A. The reference sample from Mr. Earl.

6 Q. Did those items that are in that envelope obtain a new  
7 identity or evidence number or anything?

8 A. Yes, I designated a new item number, Item KLH-1.

9 Q. What does the "KLH" stand for?

10 A. Those are my initials.

11 Q. What's the purpose of creating this as a brand new  
12 evidence item in the case?

13 A. This is so that my DNA extracts I generated from these two  
14 items could be sent to the Spokane laboratory for Y-STR  
15 testing.

16 Q. Are those the things you testified to before lunch about  
17 how you packaged them in plastic tubes with their reagent  
18 blanks?

19 A. Yes.

20 Q. Okay.

21 Can you please use the scissors and open that document  
22 for the jury -- sorry, that item of evidence for the jury?

23 A. (Witness complied).

24 Q. Now that you've pulled out what appears to be two tubes  
25 from that envelope, can you please take the time to

1 describe what each one is based on the markings?

2 A. One of the tubes is labeled as dried DNA extract, 8  
3 interior or I-N-T for short, and RBK, which is an  
4 abbreviation for reagent blank. It has the laboratory  
5 number. The other tube says dried DNA extract, 3 BJE and  
6 RBK.

7 MR. ALSDORF: Your Honor, I would move to  
8 publish these via the exhibit camera. First, I would move  
9 to admit them as Exhibit 24.

10 MS. HARDENBROOK: No objection.

11 THE COURT: No. 24 is admitted.

12

13 (State's Exhibit No. 24 was admitted  
14 into evidence)

15 MR. ALSDORF: Move to publish.

16 THE COURT: They may be published.

17 BY MR. ALSDORF:

18 Q. I don't want technical difficulties to get in the way of  
19 moving forward.

20 THE COURT: I see the document up here.

21 MR. ALSDORF: I do, too.

22 THE COURT: You can't get beyond that?

23 MR. ALSDORF: There we go. Thank you, Your  
24 Honor.

25

1 BY MR. ALSDORF:

2 Q. Can I have you come down and put those on the document  
3 camera surface?

4 A. (Witness complied).

5 Q. So can you tell the jury, explain to them now that they  
6 can see it, what you mean by the two sample tubes within  
7 the larger tube that you testified earlier about?

8 A. Sure. So you can hopefully see there are two individual  
9 tubes within this container with a blue lid. These darker  
10 areas are the caps, the screw-on caps for each individual  
11 tube.

12 Q. Based on how you have been trained with respect to proper  
13 attention on the issue of cross-contamination, what is  
14 your testimony about whether or not it's an appropriate  
15 method of transport to have those tubes within tubes sent  
16 within a package together to the Cheney lab?

17 A. This is an acceptable method. The screw-on cap is to  
18 prevent contamination.

19 Q. Are each of the smaller tubes within the blue screw top  
20 larger tube, are each of those tubes also sealed with a  
21 lid?

22 A. Yes.

23 Q. Thank you. I will just have you return to the witness  
24 chair and return those to the Manila envelope that they  
25 came out of.

1 Ms. Hoffman, I have to ask you some questions about  
2 money. How much are you charging per hour for the  
3 privilege of us hearing your testimony here today?

4 A. I don't charge any fee.

5 Q. Okay.

6 Did you participate in the defense interview earlier  
7 before you came to court earlier this month?

8 A. Yes.

9 Q. Okay.

10 Did you charge an hourly fee for that?

11 MS. HARDENBROOK: Objection. I ask to address  
12 the Court outside the presence of the jury.

13 THE COURT: All right. The jurors will retire  
14 to the jury room.

15

16 (The following proceedings were had  
17 outside the presence of the jury)

18 THE COURT: Please be seated.

19 MS. HARDENBROOK: Your Honor is particularly  
20 aware that there has been an issue between the Public  
21 Defender's Office and Prosecutor's Office about who pays  
22 for interviews. Until that has been sorted out, both  
23 offices have been taking a position kind of waiting to get  
24 authority from on high, and then both offices preparing to  
25 follow that.

1           In this case, when Mr. Alsdorf asked me for a meeting  
2 with my expert, my understanding was we had to pay for  
3 their expert, so I said, look, I think that you have to  
4 pay for this.

5           We then arranged and we did the interview today, but  
6 there has been no resolution of that issue. No money  
7 exchanged hands today for the defense interview. We have  
8 been waiting for further guidance from the Court. I  
9 understand there was a meeting as recently as Thursday  
10 about it.

11           I don't think that which is in dispute and politics  
12 between the offices is appropriate to come into witness  
13 testimony. That has nothing to do with Dr. Riley. It has  
14 to do with my office's battle with the Prosecutor's Office  
15 over who should pay for interviews. It has nothing to do  
16 with the integrity of any witnesses in the case, and I  
17 don't think it's appropriate.

18           MR. ALSDORF: Your Honor, perhaps I'm too junior  
19 of a member of my office to have been aware of high level  
20 dealings on this issue.

21           THE COURT: I have had Mr. Roe and Mr. Jaquette  
22 in my office along with the presiding judge. Michael  
23 Downes, talking about who pays for what in terms of those  
24 kinds of things just yesterday.

25           MR. ALSDORF: All I can offer to the Court is my

1 experience in this individual case, which is, of course,  
2 the only thing that would be relevant to the jury. I was  
3 told by Ms. Hardenbrook that Dr. Riley would be charging  
4 the Prosecutor's Office \$200 an hour for the privilege of  
5 interviewing him.

6 I certainly think the matter of financial confrontation  
7 for testimony or access to witnesses is a relevant inquiry  
8 that would go to bias. That was the purpose of that  
9 inquiry.

10 MS. HARDENBROOK: His rate is an appropriate  
11 inquiry, and I have no problem with it, but who  
12 particularly is paying for it is not.

13 THE COURT: I'm going to sustain the objection  
14 as to who pays for it. Ultimately, the Court ends up  
15 paying for most of this for non-State employees or the  
16 County.

17 MR. ALSDORF: Understood.

18 THE COURT: I will sustain the objection as to  
19 who pays for it.

20 Bring the jury back in.

21

22 (The following proceedings were had in  
23 the presence of the jury)

23

24 THE COURT: Please be seated.

25

1 BY MR. ALSDORF:

2 Q. Ms. Hoffman, do you have leeway to access the information  
3 of when you extracted the samples from the underwear and  
4 the tights in this case, on what date you did that?

5 A. Yes. That date would be on my extraction worksheet in the  
6 case file.

7 Q. I think you previously said that State's Exhibit 61 is  
8 your case file. I will ask you if that refreshes your  
9 recollection.

10 A. Yes.

11 Q. On what date did that happen?

12 A. On September 19, 2011.

13 Q. On what date were the reference samples from Brandon Earl  
14 and Mia Fuentes extracted?

15 A. October 5, 2011.

16 Q. Do you have a way to determine on what date you packaged  
17 the item that we now know as KLH-1 and sent that to the  
18 Cheney lab for Y-STR testing?

19 A. That would be in my case file, as well. It's October 13,  
20 2011.

21 MR. ALSDORF: Ms. Hoffman, I don't have any  
22 further questions on direct.

23 THE COURT: You may cross-examine.  
24  
25



1 out of an evidence vault, is that right?

2 A. Yes.

3 Q. So you checked out all the items in this case that were  
4 examined, the physical items that were examined the same  
5 day?

6 A. Yes.

7 Q. Okay.

8 That includes the underwear, both underwear, the  
9 tights? Maybe just that, those three, underwear and  
10 tights?

11 A. And two reference samples.

12 Q. You checked them all out of evidence on the same day?

13 A. Yes.

14 Q. Even though it sounds like Mr. Alsdorf just asked you  
15 about the dates things were processed and they were  
16 processed on different days?

17 A. Correct.

18 Q. But you took custody of everything at the same time?

19 A. Correct.

20 Q. Okay.

21 You didn't take any photographs of the packaging of any  
22 of those things?

23 A. No.

24 Q. You took no photographs of the items inside the packaging?

25 A. Correct.

- 1 Q. Between working on items of evidence, they are stored in  
2 your locked storage?
- 3 A. Correct.
- 4 Q. Only one item is taken out of your locked storage at a  
5 time?
- 6 A. Correct.
- 7 Q. I think you talked about an examination table, is that  
8 right?
- 9 A. Yes.
- 10 Q. It would have fresh paper on it for each examination?
- 11 A. Correct.
- 12 Q. The item would be taken out on that paper out of its  
13 original packaging?
- 14 A. Correct.
- 15 Q. You would note the condition of the packaging itself and  
16 write down anything that was wrong with it?
- 17 A. Yes, the overall condition of that packaging.
- 18 Q. After examining a physical item of evidence, you repackage  
19 it in the same packaging?
- 20 A. Correct.
- 21 Q. If there is debris on the paper, you would pick up the  
22 paper and try to get the debris back into that package?
- 23 A. Right.
- 24 Q. Then you throw away the examination paper?
- 25 A. Yes.

1 Q. Clean the table?

2 A. Yes.

3 Q. Then, do it all again?

4 A. Yes.

5 Q. While you're examining items on the examination table,  
6 you're also making copious notes on a sheet of paper, is  
7 that right?

8 A. Yes.

9 Q. You use a notepad of lined paper that's on the exam table  
10 with you?

11 A. Yes.

12 Q. But it's not on the paper?

13 A. Correct.

14 Q. You keep the same pad of paper between your examinations,  
15 is that right?

16 A. Unless I run out of paper and need a new pad.

17 Q. Okay.

18 But you change -- you rip off the particular sheets as  
19 you're done with them and remove them?

20 A. Correct.

21 Q. You would change or clean your pen between items of  
22 evidence?

23 A. Yes, I wipe down my pen.

24 Q. The visual examination of the tights and underwear  
25 happened on September 15, 2011? If it would help you to

- 1       refer to State's --
- 2   A.   No. 61.
- 3   Q.   Please do so.
- 4   A.   The tights and underwear were all examined on
- 5       September 15, 2011.
- 6   Q.   Then, after you did the visual examination of each item,
- 7       then you do the swabbing or the AP test comes in-between?
- 8   A.   An AP test occurred before any swabbing. Each item was
- 9       examined individually.
- 10  Q.   So the physical exam, then the AP, that's the sheet of
- 11       paper that blots stuff up?
- 12  A.   Right.
- 13  Q.   And then the swabbing?
- 14  A.   Right.
- 15  Q.   The AP is the only test you run before the swabbing
- 16       happened, is that right?
- 17  A.   Yes.
- 18  Q.   All the other tests are done on what you had swabbed and
- 19       turned into liquid?
- 20  A.   Correct.
- 21  Q.   I would like to hand you what's been marked as Defense
- 22       Exhibit No. 62. Would you take a look at it? Do you
- 23       recognize that?
- 24  A.   I do.
- 25  Q.   Okay.

1 How do you recognize that?

2 A. This appears to be a drawing that I did during an  
3 interview with you.

4 Q. What was the purpose of that drawing, do you remember?

5 A. That was to convey the area on the underpants that I  
6 swabbed.

7 Q. Okay.

8 That area is the area between stitching, if there is  
9 stitching on a pair of underpants?

10 A. Right, the seams of the leg openings.

11 Q. Okay.

12 Does that fairly and accurately depict the region that  
13 you're aiming for when you swab underwear?

14 A. Yes.

15 MS. HARDENBROOK: I'd ask for the admission of  
16 Defense 62.

17 MR. ALSDORF: No objection.

18 THE COURT: It's admitted.

19

20 (Defendant's Exhibit No. 62 was  
21 admitted into evidence)

22 MS. HARDENBROOK: Permission to publish.

23 THE COURT: It may be published to the jury.

24 BY MS. HARDENBROOK:

25 Q. Ms. Hoffman, when you're swabbing this area, you use the

- 1 swab moistened with sterile water, is that right?
- 2 A. Correct.
- 3 Q. Then, you rub with pressure all around this whole entire  
4 darkened area of the picture, is that right?
- 5 A. Yes.
- 6 Q. You're trying to rotate the swab as you do it to get as  
7 much on the swab as you possibly can from all the material  
8 in that area?
- 9 A. Correct.
- 10 Q. You wear gloves when you are doing the swabbing?
- 11 A. Of course.
- 12 Q. Sounds like you pretty much wear gloves all the time.
- 13 A. In the laboratory, yes.
- 14 Q. You don't remember whether you changed gloves before  
15 swabbing the inside or between swabbing the inside of the  
16 underwear and the outside of the underwear, do you?
- 17 A. For the same item, I don't recall.
- 18 Q. You don't always swab both sides of underpants, is that  
19 right?
- 20 A. Right.
- 21 Q. Because for many materials, they are going to go through  
22 onto the other side?
- 23 A. Yes.
- 24 Q. So if you swab it on one side, it's the same stuff you are  
25 getting on the other side, is that right?

1 A. Correct.

2 Q. Because law enforcement had informed you that there was  
3 potentially an allegation of touching above clothing, you  
4 thought it was particularly important in this case to keep  
5 apart interior and exterior samples?

6 A. Correct.

7 Q. So you individually handled each clothing item, took  
8 samples with a swab, is that right?

9 A. Yes.

10 Q. Then, you put the cottony part of the swab into a tube?

11 A. Yes.

12 Q. I think you do that with a disposable razor?

13 A. Disposable scalpel.

14 Q. Scalpel, okay.

15 You just essentially with a scalpel slice off all the  
16 cottony material?

17 A. Yes.

18 Q. That falls down into the tube?

19 A. The swab is laying on my exam table on a piece of paper,  
20 and I use the scalpel point to tease the cotton away from  
21 the applicator stick, and I pick up that cotton material  
22 and place it into the tube. It's not always a falling or  
23 dropping action.

24 Q. You use the razor or the scalpel, disposable scalpel, to  
25 pick up the cottony stuff and put it in the tube?

1 A. Correct.

2 Q. There was a little bit of testimony about substraight  
3 items. I initially didn't know what that is. So let's  
4 talk about substraight.

5 My understanding now is that that is the non-liquid  
6 matter.

7 MR. ALSDORF: Objection. Your Honor, as to what  
8 her understanding of what it is.

9 THE COURT: I will sustain the objection. I  
10 understand this is cross, but we are dealing with some  
11 issues here I think we need to let the witness testify  
12 about.

13 BY MS. HARDENBROOK:

14 Q. Substraight is the non-liquid matter that ends up in that  
15 tube, is that right, the cottony remnants?

16 MR. ALSDORF: Same objection, Your Honor.

17 THE COURT: Sustained. I will sustain the  
18 objection.

19 BY MS. HARDENBROOK:

20 Q. What is substraight?

21 A. My definition of substraight is whatever the cellular  
22 material is adhering to, so that could be the cotton part  
23 of the swab or it could be the cutting of clothing, fabric  
24 material.

25 Q. So it would be a solid as opposed to a liquid?

1 A. Correct.

2 Q. So after you remove the substraight, the sample is then  
3 processed for DNA using extraction?

4 A. I did my other testing, the p30 and the amylase, and after  
5 that, it is taken for DNA extraction.

6 Q. Right.

7 That's what I want to ask you about now. The  
8 extraction occurred on September 19, 2011.

9 MS. HARDENBROOK: The record should reflect she  
10 is referring to her notes.

11 A. Yes, on the 19th.

12 Q. Okay.

13 All the tubes are out at the same time in a little tube  
14 holder, is that right?

15 A. Yes.

16 Q. Each tube has a hinge lid that shuts?

17 A. Correct.

18 Q. So only one of the tubes is open at a time, is that right?

19 A. Right.

20 Q. You are doing the extractions at the same time for the  
21 reference sample and the three items that you swabbed?

22 A. No, the references were done later.

23 Q. So you have five samples, but two of them are  
24 interior/exterior samples of the same item, is that right?

25 A. Yes.

- 1 Q. Okay.
- 2       So you have five samples all in a tray at one time?
- 3 A. Yes.
- 4 Q. You are putting reagent into each of them, is that right?
- 5 A. Right.
- 6 Q. Basically, those are chemicals?
- 7 A. Right.
- 8 Q. They do different things to help get the DNA in a form  
9       where you can look at it?
- 10 A. Correct.
- 11 Q. So when you put in the reagent, you do it with a pipette.  
12       is that right?
- 13 A. Yes.
- 14 Q. You open each little tube with your finger and then put  
15       the pipette in, is that right?
- 16 A. A gloved finger.
- 17 Q. Then, the tip of the pipette actually kind of drops off  
18       and is disposable, and then you use a different tip on the  
19       pipette for a different tube, is that right?
- 20 A. Correct.
- 21 Q. You are wearing gloves throughout all this?
- 22 A. Yes.
- 23 Q. You are not changing gloves between pipetting and each  
24       tube?
- 25 A. Not technically.

- 1 Q. When you remove the substraight from the tubes, you're  
2 using a sterile wooden stick to do that?
- 3 A. Yes.
- 4 Q. A different stick for each tube?
- 5 A. Correct.
- 6 Q. You then put the tubes into a robot, and it goes through a  
7 20-minute purification?
- 8 A. Yes.
- 9 Q. You put tubes in, it does its thing, and then you take the  
10 tubes out?
- 11 A. Correct.
- 12 Q. Only now they are in different tubes, is that right?
- 13 A. It's purified into a different tube.
- 14 Q. Okay.
- 15 So the robot machine actually pipettes the liquid out  
16 of each tube and puts it into a different tube?
- 17 A. Yes.
- 18 Q. You put the clean pipette tube in the robot before it  
19 runs?
- 20 A. Yes.
- 21 Q. The tubes have no cap when the robot is done with them, so  
22 you screw on a new cap to the tubes?
- 23 A. Yes.
- 24 Q. You are not changing gloves between that because you are  
25 not really touching stuff?

- 1 A. Yes.
- 2 Q. Then, the tubes are stored in a fridge or freezer until  
3 you're ready to do more things with them?
- 4 A. Yes.
- 5 Q. The DNA at some point was quantified?
- 6 A. Yes.
- 7 Q. That means to determine how much DNA is in it?
- 8 A. Yes, an estimation.
- 9 Q. That occurred on October 5 of 2011?
- 10 A. Yes.
- 11 Q. When you're done doing -- when you're done and ready to  
12 store or send the DNA extract, you have it vacufuged to  
13 take all the moisture out?
- 14 A. Yes.
- 15 Q. The vacufuge is like a centrifuge where it also has a  
16 vacuum to take the moisture out?
- 17 A. Yes.
- 18 Q. You did not vacufuge the underpants sample with the  
19 reference sample?
- 20 A. Yes.
- 21 Q. You did the underpants sample first?
- 22 A. Right.
- 23 Q. Because you don't even want to put them in the machine at  
24 the same time?
- 25 A. Right.

1 Q. Because that can cause contamination?

2 A. Correct.

3 Q. Then, you package the DNA extract from the interior crotch  
4 of Nick Jr. with the reference sample from Brandon Earl  
5 and put them in an envelope and sent them off to Cheney?

6 A. Yes.

7 Q. Then, everything else that you had you returned to the  
8 evidence vault because you were done working on this  
9 particular case, is that right?

10 A. Correct.

11 Q. The reference sample for Brandon Earl was processed by you  
12 on September 19, 2011, is that correct?

13 A. No, it was October 5, 2011.

14 Q. Thank you.

15 So essentially that's kind of a similar process. You  
16 cut the cottony tip away from the swab, is that right?

17 A. Yes.

18 Q. You lift it into a tube?

19 A. Yes.

20 Q. You add a bunch of chemicals to it?

21 A. Yes.

22 Q. Take the substraight out?

23 A. Yes.

24 Q. Vacufuge?

25 A. I put in the robot and pipettes for the DNA.

1 Q. That's the purification?

2 A. Right.

3 Q. Then, it is vacufuged?

4 A. When I'm ready to send it to Spokane, yes.

5 Q. It stays in a liquid form until you are ready to send it?

6 A. Correct.

7 Q. So now I want to talk to you a little bit about your  
8 visual inspection of some of the particular items of  
9 evidence. Please let me know if you ever need to look at  
10 the State's exhibit.

11 I want to talk to you first about the tights. It looks  
12 like your physical examination of the three items, you  
13 started with the tights chronologically and you examined  
14 them first?

15 A. May I look at this?

16 Q. Please do so.

17 A. Yes, that's correct.

18 Q. You noted that the tights were received inside out?

19 A. Right.

20 Q. Several possible hairs were observed, collected, and  
21 packaged with evidence?

22 A. Yes.

23 Q. That's where you mentioned the sticky note earlier?

24 A. Mm-hmm.

25 Q. You didn't swab the interior crotch of the tights because

1 the information you had was that the victim was wearing  
2 underwear?

3 A. Right.

4 Q. That was the theory.

5 Despite the fact that they were received inside out?

6 A. Right.

7 Q. Because when you are looking at an item of evidence, you  
8 never know if it has been worn properly, is that right?

9 A. Right.

10 Q. Especially when it's a child's clothing item?

11 A. Right.

12 Q. We talked about the semen. So there is no semen, no p30,  
13 negative for amylase, is that right?

14 A. Correct.

15 Q. Again, this is the exterior crotch area of the tights?

16 A. Right.

17 Q. Is the crotch area of the tights similar to the crotch  
18 area you swabbed when doing underwear?

19 A. Roughly, yes.

20 Q. Okay.

21 So it kind of correlates to this drawing?

22 A. Yes.

23 Q. DNA of at least four people, maybe even many more than  
24 that, was found on the exterior crotch of the tights, is  
25 that right?

- 1 A. Correct.
- 2 Q. One in 29 of the US population could be a potential  
3 contributor to that?
- 4 A. Let me just make sure.
- 5 Q. Please do so.
- 6 A. Yes, that was the statistic generated.
- 7 Q. There was no specific major contributor to that group, was  
8 there?
- 9 A. Correct.
- 10 Q. You found Mia and Brandon were both included as possible  
11 contributors?
- 12 A. Correct.
- 13 Q. It's possible Brandon Earl's DNA is not in that sample?
- 14 A. I'm not able to exclude him, no.
- 15 Q. It's possible that Mia Fuentes' DNA was in that sample?
- 16 A. Same thing. I wasn't able to exclude her.
- 17 Q. Law enforcement didn't direct any further testing on the  
18 tights for DNA, is that correct?
- 19 A. Not to my knowledge.
- 20 Q. So I next would like to talk to you about the Disney  
21 underpants and the visual examination is where we will  
22 start. When visually examining the Disney underpants, you  
23 noted a slight urine-like odor?
- 24 A. Yes.
- 25 Q. You are not right up in them. You are kind of table

1 height away when you are smelling this odor?

2 A. Right. I'm not purposefully smelling items of evidence.  
3 It just was something I noticed during my visual exam, so  
4 I noted it.

5 Q. Okay.

6 You wouldn't necessarily want to get that close. You  
7 could inject your own DNA into it?

8 A. Right.

9 Q. Found some possible hairs and left them in place?

10 A. Yes.

11 Q. Light yellow staining was noted in the crotch area?

12 A. Correct.

13 Q. You eventually tested the swab from the Disney underpants  
14 for amylase, and it came back negative?

15 A. Correct.

16 Q. So you made a conclusion that there was no indication that  
17 saliva was detected there?

18 A. Correct.

19 Q. No male DNA was detected in the extracts from the pair of  
20 Disney underpants?

21 A. Correct.

22 Q. In your interview with me in January, you indicated that  
23 there was a possible signal of male DNA on the exterior of  
24 Item 7, but not a detectible amount, is that right?

25 A. Yes.

1 Q. Explain that.

2 A. Our quantification, it has to reach a certain threshold to  
3 be "detected," to be given a quantitation value. But in  
4 the software that I used in that determination, there is a  
5 place that you can look below that threshold to see if  
6 there is a possible signal that is present, but it's not  
7 coming up over that threshold. So there was no possible  
8 signal below threshold, but no detectible amount.

9 Q. Okay.

10 That was of male DNA, not just general DNA?

11 A. Correct.

12 Q. I would next like to talk to you about the Nick Jr.  
13 underpants, Item 8. You did a similar initial visual  
14 observation on those?

15 A. Yes.

16 Q. Possible hairs noted and left in place?

17 A. Yes.

18 Q. In this one, you found some apparent red fibers that  
19 seemed to be embedded in the yellow staining, is that  
20 right?

21 A. Yes.

22 Q. That was in the interior crotch, and you decided to leave  
23 those fibers in place in the yellow staining?

24 A. Yes.

25 Q. The yellow staining, in this case, you noted as yellow.

- 1 not light yellow?
- 2 A. Yes.
- 3 Q. It also had the slight urine-like odor?
- 4 A. Yes.
- 5 Q. Again, that's from about a foot away. You're not getting  
6 right down in there to smell it?
- 7 A. Correct.
- 8 Q. The staining in 8, Item 8, was darker than the staining in  
9 Item 7 since you described them differently in your notes.  
10 is that right?
- 11 A. Yes.
- 12 Q. You swabbed Item No. 8, the Nick Jr. underpants, inside  
13 and out, is that right?
- 14 A. Yes.
- 15 Q. Did you do the inside first?
- 16 A. I'm not sure which one I did. I can look at my case file,  
17 though.
- 18 Q. Sure. Thank you.
- 19 A. For Item 8, I swabbed the interior crotch area first, and  
20 then followed that by the exterior crotch region.
- 21 Q. Again, you most likely would not have changed gloves  
22 because you're on the same item?
- 23 A. Correct.
- 24 Q. No semen, no p30?
- 25 A. Correct.

1 Q. Each sample, each swab from the Nick Jr. underpants, was  
2 tested for amylase, is that right?

3 A. Correct.

4 Q. It looks kind of like a pregnancy test where you put a  
5 liquid on it and then there is an area where something  
6 changes color to indicate whether it's positive or  
7 negative?

8 A. Right. We compare it to a pregnancy test because it works  
9 in that similar fashion where you get a line, a visible  
10 line, in the detection window. Two lines is positive.  
11 One line is negative.

12 Q. Okay.

13 Those lines can vary from very dark to very light, is  
14 that right?

15 A. Yes.

16 Q. In this case -- well, let me back up. You put a liquid  
17 sample onto the card, and after 10 minutes, the liquid  
18 will migrate up the card, and then a line will appear if  
19 it's positive or two, as you described?

20 A. Right.

21 Q. No photograph was taken of the results in this case?

22 A. Correct.

23 Q. You noted in your notes, but didn't include in your  
24 report, that the amylase results in this case was faint,  
25 is that right?

1 A. It was a faint line.

2 Q. You take a faint line to be a positive response?

3 A. Correct.

4 Q. I think you testified on direct that you took that to be a  
5 positive human amylase result, which could indicate the  
6 presence of saliva?

7 A. Correct.

8 Q. Or feces, breast milk, or urine?

9 A. Correct.

10 Q. It's a presumptive test rather than a conclusive test, is  
11 that right?

12 A. It's presumptive or confirmatory. Those are the two  
13 types, and this test is presumptive.

14 Q. Okay.

15 Confirmatory is where you can look under the microscope  
16 and see spermatozoa, and then you know they are there  
17 because you saw them, right?

18 A. I would more define confirmatory is that you can confirm  
19 the presence of a body fluid because whatever you're  
20 detecting is only in that one body fluid. It couldn't  
21 come from any other source.

22 So in your example of spermatozoa, confirmatory for  
23 semen, that is a confirmatory test because spermatozoa are  
24 only in semen, no other body fluid.

25 Q. So this is presumptive because it could have been any

- 1 number of liquids of those fluids that you listed?
- 2 A. Right. Amylase is found in other fluids.
- 3 Q. In your initial report to law enforcement, you listed the  
4 possible other sources of amylase were feces or breast  
5 milk, is that right?
- 6 A. Right, those two were included as possible.
- 7 Q. You didn't actually include that urine could be a  
8 contributor of amylase, is that right?
- 9 A. Right.
- 10 Q. Which would be particularly important in this case since  
11 there was a urine-like odor and possible urine-like  
12 staining, is that right?
- 13 A. Could you repeat the question?
- 14 Q. There were indications in this underwear that there could  
15 have been urine, is that right?
- 16 A. Right.
- 17 Q. So that would be something important to note in one's  
18 report?
- 19 A. Right, which I noted in the report the urine-like odor and  
20 staining.
- 21 Q. Right, but not that a possible contributor of the amylase  
22 could have been urine?
- 23 A. Right. I use what's reported in our manual.
- 24 Q. Which is the breast milk and feces?
- 25 A. Correct.

1 Q. Validation studies are studies to determine whether  
2 something is valid, is that fair to say?

3 A. Yes.

4 Q. There are a couple different kinds of validation studies,  
5 is that right?

6 A. That's right.

7 Q. There is a commercial validation study. That's where the  
8 manufacturer will perform to insure that their test is  
9 reliable and works, is that right?

10 A. Yes.

11 Q. To insure that the test is specific for whatever it is  
12 testing for and doesn't cross-react?

13 A. Yes.

14 Q. The manufacturer's study in this case found there is no  
15 cross-reactivity with urine?

16 A. Yes.

17 Q. That was the manufacturer's study was done sometime before  
18 the lab did their own study, which was in '96, so the  
19 manufacturer's study was sometime before '96?

20 A. The laboratory validation was in 2006.

21 Q. So 2006, thank you.

22 So the manufacturer's study would have been done  
23 sometime before 2006?

24 A. Yes.

25 Q. So the commercial validation study happens at the

1 manufacturer's?

2 A. Yes.

3 Q. They publish that so that labs that are looking at buying  
4 their possible tests can see it's attributes and what it  
5 reacts to?

6 A. Yes.

7 Q. The Washington State Patrol, before they use a particular  
8 test in the lab, they do their own validation study?

9 A. That's correct.

10 Q. To make sure it reacts as expected?

11 A. Yes, in our own facility, using our own procedures.

12 Q. The Washington State Patrol did a validation study in 2006  
13 on this amylase test that you used in this case?

14 A. Correct.

15 Q. According to that validation work, the test did react to  
16 urine, is that right?

17 A. Yes. There were two types of urine samples tested. There  
18 was a swab of urine and then also neat liquid urine was  
19 tested.

20 Q. Right. The difference is that neat liquid urine was put  
21 right on the -- well, it was in a tube and then the other  
22 chemicals were added?

23 MR. ALSDORF: Your Honor, I object to the form  
24 of the question at this point.

25 THE COURT: I'll sustain the objection to the

- 1 form of the question.
- 2 BY MS. HARDENBROOK:
- 3 Q. Neat urine is straight liquid urine, is that right?
- 4 A. Correct.
- 5 Q. In this case, the swab urine that was tested in the  
6 Washington State Patrol validation study was pipetted onto  
7 a swab?
- 8 A. Yes.
- 9 Q. It was not swabbed from a dry urine sample, is that right?
- 10 A. I don't believe so.
- 11 Q. In fact, no validation work was done on a dry urine sample  
12 at the Washington State Patrol, is that right?
- 13 A. I'm not sure if the swab was wet or dry before it was  
14 tested on the card, but in terms of swabbing a dry urine  
15 stain, I don't think so.
- 16 Q. Virtually all the urine that someone working at the  
17 Washington State Patrol Crime Lab would generally come in  
18 contact with would be dried on a potential piece of  
19 evidence?
- 20 A. Yes.
- 21 Q. It would be safe to assume that wet versus dry, the  
22 component of amylase in urine, should retain it's  
23 functionality?
- 24 A. Right. I don't think there would be a difference.
- 25 Q. You also testified that the test for amylase is not

- 1 quantitative, is that correct?
- 2 A. That was in the interview.
- 3 Q. Okay.
- 4 You don't remember talking about it. Well, is it? Is
- 5 it quantitative?
- 6 A. No.
- 7 Q. What that means is it can't reliably be used to test how
- 8 much saliva is there?
- 9 A. How much amylase is there.
- 10 Q. It's either something is there or something is not?
- 11 A. Correct, right.
- 12 Q. But in the commercial validation study in this case, the
- 13 manufacturer actually says that a weak positive result can
- 14 be seen with breast milk, fecal samples, and that saliva
- 15 results should be strong, is that right?
- 16 A. I'm not sure their wording.
- 17 Q. Would it refresh your recollection to take a look at their
- 18 validation study?
- 19 A. Sure.
- 20 Q. Do you have a copy of their validation study in your case
- 21 file?
- 22 A. No.
- 23 Q. When we met and talked, you actually gave me a copy of the
- 24 manufacturer's validation study, is that right?
- 25 A. I didn't give you a copy.

1 Q. You passed one on?

2 A. Yes.

3 Q. Can I have you look at Packet 61, Discovery Page No. 168?  
4 Do you recognize that?

5 A. Yes. It's part of our internal validation of this amylase  
6 test used in this case.

7 Q. It's actually a photograph of the test itself so that you  
8 can see the results, is that right?

9 A. Yes, there are some photographs of the card.

10 Q. It looks like -- do you have a color copy or a  
11 black-and-white copy in front of you?

12 A. This is a color copy.

13 Q. How would you describe the positive result of the urine  
14 sample in that picture from the Washington State Patrol  
15 internal validation study?

16 A. A positive result.

17 Q. In this case, you described our positive result as faint.  
18 Would that term similarly appear to this result?

19 A. Yes, that is a faint line.

20 Q. I'd like to have you take a look at Defense Exhibit  
21 No. 63. Do you recognize that?

22 A. It's the exact same thing I'm looking at.

23 Q. Does it fairly and accurately depict your understanding of  
24 the results showing that urine has amylase in the  
25 Washington State Patrol validation study?

1 A. For neat liquid urine, yes.

2 MS. HARDENBROOK: Defense would request  
3 admission of Defense Exhibit No. 63.

4 THE COURT: Is there any objection to 63?

5 MR. ALSDORF: I object to foundation and  
6 relevance. I would be happy to address that in front of  
7 the jury or otherwise.

8 THE COURT: Well, let's ask the jury go back to  
9 the jury room.

10

11 (The following proceedings were had  
12 outside the presence of the jury)

13 THE COURT: Can I see Exhibit 62?

14 MS. HARDENBROOK: Sure.

15 MR. ALSDORF: Your Honor, the nature of my  
16 objection is I believe Ms. Hoffman has already testified  
17 that the strength of a line as it appears in this amylase  
18 test is not relevant to the result of this presumptive,  
19 not confirmatory, test in that you either see a line or  
20 you don't. She doesn't evaluate the strength of the line  
21 in determining whether or not there is a positive result.

22 So based on that testimony, I'm not sure how the  
23 strength of the line is relevant at all to the jury,  
24 especially when we are talking about a validation study  
25 that is more likely to confuse the jury when we're

1 talking -- when what the jury will really have to figure  
2 out is the testing that was done in this particular case,  
3 not a validation study.

4 MS. HARDENBROOK: There is a couple reasons why  
5 it's relevant. First, this is a photograph of the same  
6 type of test that was administered in this case. We have  
7 established no photograph was taken of the results in this  
8 case. I think it would be helpful to the jury to see it  
9 because of that.

10 It's also helpful to the jury to see it because it is a  
11 faint result. The result in our case was faint. There is  
12 indication from the manufacturer's validation study that a  
13 faint result could indicate some cross-reactivity.

14 I think the State's arguments go to weight, not  
15 admissibility.

16 THE COURT: Well, we heard about the validation  
17 study. I think this is more likely to be confusing to the  
18 jury than helpful in that the strength of the line is not  
19 necessarily determinative of anything. So a visual  
20 exhibit could cause more confusion to the jury than aid  
21 them. So I'm going to sustain the objection.

22 MS. HARDENBROOK: Your Honor, I would like to  
23 try to lay additional foundation because I now finally  
24 found the validation study.

25 THE COURT: If you would like to take this up

1 outside the presence of the jury with this witness, you  
2 may.

3

4

**VOIR DIRE EXAMINATION**

5

**BY MS. HARDENBROOK:**

6

Q. I'm handing you what is marked as Defense Exhibit 64. Do  
7 you recognize that document, Ms. Hoffman?

8

A. Yes, I do.

9

Q. Is that the commercial validation study for the product  
10 you used in this case?

11

A. Yes.

12

Q. I'd like to draw your attention to Page No. 14 and over to  
13 Page No. 15. This is the section of validation study that  
14 is addressing other bodily fluids that can react with the  
15 test, is that correct?

16

A. Yes. The heading says "Amylase in Breast Milk and Fecal  
17 Samples."

18

Q. The commercial validation study instructs that with breast  
19 milk and fecal samples, they found a weak positive result?

20

A. Yes.

21

Q. While samples of actual saliva produced strong positive  
22 results?

23

A. Yes, that's what it says.

24

Q. The manufacturer used those results to conclude that

25

saliva is many more times reactive to the RSID test strips

1 than fecal samples and breast milk, is that right?

2 A. That sound right, but I would have to read it to see what  
3 it exactly says.

4 Q. If you need to take the time to do that, please do so. I  
5 think it's just on 14 and 15, so take a moment.

6 MR. ALSDORF: I would ask that she be allowed to  
7 review the entire study. It is already established that  
8 this is not the State Patrol's study at all. This is the  
9 manufacturer's study.

10 THE COURT: It's the manufacturer's study.

11 MS. HARDENBROOK: Which she provided to us  
12 because she had it in her file when we were interviewing  
13 her.

14 THE COURT: Let's just take a recess and give  
15 you a few minutes to read the entire study. This will be  
16 our afternoon recess.

17 MS. HARDENBROOK: Thank you, Your Honor.

18

19 (Court in recess)

20

21 BY MS. HARDENBROOK:

22 Q. Ms. Hoffman, you had the opportunity during the afternoon  
23 break to review the entirety of the commercial validation  
24 study that we were discussing, is that right?

25 A. Yes.

- 1 Q. The manufacturer does indicate on Page 7 that it's not a  
2 quantitative test for the amount of saliva, is that right?
- 3 A. Yes.
- 4 Q. But then in the discussion about detection of amylase in  
5 non-saliva bodily fluids, the manufacturer addresses weak  
6 versus strong positive results, is that right?
- 7 A. Yes.
- 8 Q. The manufacturer associates weak positive results with  
9 breast milk and feces, is that right?
- 10 A. I interpreted it in the discussion that basing conclusions  
11 of the test based on the strength of the lines, we should  
12 be cautious in that because they had weak positive results  
13 of fecal material and breast milk.
- 14 Q. So in fact, the manufacturer says you should be careful in  
15 determining any weak positive signals because it could  
16 indicate minimal amounts of saliva, fecal matter, breast  
17 milk, or insufficient sample extraction, is that correct?
- 18 A. Yes.
- 19 Q. The sample we had in the Brandon Earl case in the interior  
20 of Item 8 was a faint positive signal, right?
- 21 A. Yes.
- 22 Q. It is the photograph of the same kit we have been  
23 discussing giving a weak signal comes from the Washington  
24 State Patrol validation study, and that similarly shows a  
25 weak signal, is that right?

1 A. In this other exhibit you handed me?

2 Q. The one-page color exhibit. Thank you.

3 This also shows a weak or a faint positive result on  
4 this test we're discussing, is that right?

5 A. Yes, I would call that a faint line.

6 MS. HARDENBROOK: So Your Honor, I do think  
7 relevancy and foundation have been established. We have a  
8 faint line. In this case, we have a faint line on that  
9 picture. That is from the validation study rather than  
10 our case. They didn't take a picture in our case.

11 I think this will aid the jury in understanding what  
12 Ms. Hoffman means by a faint line and putting that in the  
13 context of our case and the State's use of a particular  
14 kind of amylase test.

15 THE COURT: Mr. Alsdorf?

16 MR. ALSDORF: Would I be allowed to voir dire,  
17 as well?

18 THE COURT: Yes.

19 MR. ALSDORF: Thank you.

20

21 **VOIR DIRE EXAMINATION**

22 **BY MR. ALSDORF:**

23 Q. So you said something about your interpretation of this  
24 manufacturer's validation study suggesting what now about  
25 whether or not to even consider the strength of the line?

1 A. My interpretation of their discussion is that if you are  
2 basing your conclusion on the strength of the line, you  
3 need to be cautious because of all the factors.

4 Q. Okay.

5 In fact, the State Patrol does not base its conclusion  
6 on the strength of the line, correct?

7 A. Correct.

8 Q. Okay.

9 You do not do the thing that the manufacturer warns you  
10 to be cautious about doing?

11 A. Correct.

12 Q. Okay.

13 Isn't there also something in that study about strength  
14 of the line not being used for forensic interpretation?

15 A. Correct.

16 Q. Can you point us to that portion of the study?

17 A. I believe it was on Page 7. They used the scoring of the  
18 strength of the line for this validation purpose only and  
19 that's not used for forensic application of the test.

20 Q. Okay.

21 The one-page color exhibit that's Defense Exhibit 63,  
22 this is a picture from the State Patrol's internal  
23 validation study, right?

24 A. Correct.

25 Q. Not the separate manufacturer's study that has been the

1 subject of much discussion lately, right?

2 A. Correct.

3 MR. ALSDORF: Your Honor, I think this is pretty  
4 clearly --

5 MS. HARDENBROOK: Can I have some responsive  
6 voir dire?

7 THE COURT: Go ahead.

8

9 VOIR DIRE EXAMINATION

10 BY MS. HARDENBROOK:

11 Q. Ms. Hoffman, you indicated that you thought -- that your  
12 interpretation of this validation study discussion was  
13 that one should be cautious in interpreting the strength  
14 of a signal, a positive result, is that right?

15 A. Yes.

16 Q. In fact, what they're telling you to be cautious about is  
17 any interpretation of a weak result because it could have  
18 several other causes, isn't that correct?

19 A. Right, because also strong positive lines also could not  
20 be saliva because it's a presumptive test.

21 Q. What the manufacturer says specifically is that caution  
22 should be used interpreting weak signals because it could  
23 be caused by either minimal saliva, fecal sample, breast  
24 milk or inefficient sample extraction, is that right?

25 A. Yes.

1 Q. They go on to say "but a strong positive result indicates  
2 but does not prove the presence of saliva."

3 A. Yes.

4 Q. So they don't have those same concerns about the other  
5 fluids creating a result when the result is a strong  
6 positive?

7 A. Right.

8 Q. They have those concerns only in interpreting a weak  
9 positive result?

10 A. Well, if it's minimal saliva, that would be saliva.

11 Q. But there would be a concern about a weak result?

12 A. Yes.

13

14

**VOIR DIRE EXAMINATION**

15 **BY MR. ALSDORF:**

16 Q. The manufacturer's validation study doesn't discuss urine  
17 at all, correct?

18 A. They did sampling.

19 Q. In this discussion about strength of the line indicating  
20 potential other fluids, they don't even talk about urine,  
21 right?

22 A. Right. This is in reference to fecal material and breast  
23 milk.

24 Q. Okay.

25 You had no part in the conducting of the manufacturer's

1 validation study, right?

2 A. Correct.

3 Q. Nor in the State Patrol's internal validation study,  
4 right?

5 A. Correct.

6 MR. ALSDORF: Your Honor, I think it's pretty  
7 clear that this is confusing and not helpful to the jury.

8 THE COURT: Well, I'm going to stay with my  
9 original ruling. Testimony may be helpful to the jury on  
10 these validation studies. The jury is not trained in  
11 reading these documents, nor do we have the time to try to  
12 train the jury how to read these. I think it's more  
13 confusing than helpful, so the Court is going to exclude  
14 Exhibit 63.

15 Let's bring the jury back in.

16

17 (The following proceedings were had in  
18 the presence of the jury)

19 THE COURT: You may proceed.

20 MS. HARDENBROOK: Thank you, Your Honor.

21

22 **CROSS EXAMINATION**

23 **BY MS. HARDENBROOK:**

24 Q. So Ms. Hoffman, the amylase results in this case was  
25 faint, is that right?

- 1 A. It was a faint positive line.
- 2 Q. The results that we discussed in the Washington State  
3 Patrol validation study where urine reacted to this  
4 particular test, that was also faint positive?
- 5 A. The neat liquid urine produced a faint line.
- 6 Q. That's what I had you look at a picture of?
- 7 A. Yes.
- 8 Q. The manufacturer of this product actually addresses and  
9 cautions users in regard to the interpretation of weak  
10 positive results, is that right?
- 11 A. Yes.
- 12 Q. The manufacturer says such results could indicate minimal  
13 saliva, other bodily fluids, like fecal or breast milk or  
14 inefficient sample extractions, is that right?
- 15 A. Yes.
- 16 Q. Male DNA was detected in the extracts from the Nick Jr.  
17 underpants, is that right?
- 18 A. Yes.
- 19 Q. That's both in the interior of the underpants and the  
20 exterior of the underpants, is that right?
- 21 A. Correct.
- 22 Q. The interior swab had .2 nanograms per microliter?
- 23 A. That's the number I remember, yes.
- 24 Q. The exterior swab had .0745 nanograms per microliter?
- 25 A. Let me check.

1 Q. Please do so.

2 For the record, that is Exhibit No. 61?

3 A. Yes.

4 Q. Thank you.

5 A. Yes. The sample from the exterior had .0745 nanograms per  
6 microliter.

7 Q. I think you said that there are a billion nanograms in one  
8 gram.

9 A. Yes.

10 Q. Because there was a higher amount of male DNA in the  
11 interior of the underpants, that's the one you sent in for  
12 testing, is that right?

13 A. Right, in conjunction with talking with the Y-STR analysis  
14 scientist.

15 Q. They wanted the one with the more DNA, is that right?

16 A. I think so.

17 Q. Okay.

18 So we can't really say anything about the male DNA on  
19 the outside of the Nick Jr. underpants because it simply  
20 wasn't tested?

21 A. Correct.

22 Q. It was your understanding that the reason that the tights,  
23 the multiple contributors to the crotch area exterior of  
24 the tights, that that was not tested further because it  
25 might not really be of evidentiary value. Is that your

- 1 understanding?
- 2 A. For the Y-STR?
- 3 Q. Why there was no further DNA testing after you found that  
4 there were at least four contributors?
- 5 A. Well, because I obtained a profile from the tights.
- 6 Q. But there was no attempt to figure out who the other  
7 contributors to that sample were?
- 8 A. In terms of reference samples?
- 9 Q. Correct.
- 10 A. Correct. No further investigation was done at the lab.
- 11 Q. Because there were at least two and maybe more profiles of  
12 DNA on the exterior crotch of the tights and no effort was  
13 made to find out who that was?
- 14 A. Not by myself.
- 15 Q. One possible explanation for that would be that there  
16 could be anyone who held the child or touched the child  
17 that night in a non-criminal way?
- 18 MR. ALSDORF: Objection, speculation.
- 19 MS. HARDENBROOK: She is a DNA expert.
- 20 THE COURT: Sustained.
- 21 BY MS. HARDENBROOK:
- 22 Q. The DNA on the exterior of the tights could have been  
23 consistent with touch DNA?
- 24 A. That's possible.
- 25 Q. There was more male DNA on the exterior crotch of the

- 1 tights than female DNA, is that right?
- 2 A. Yes.
- 3 Q. You've talked about your experience doing touch DNA and  
4 doing bodily fluid DNA, is that right?
- 5 A. Yes.
- 6 Q. You have experience with both?
- 7 A. I do.
- 8 Q. It's your understanding that if underpants came in contact  
9 with wet urine, it's possible that DNA could transfer onto  
10 those underpants from wet urine?
- 11 A. Yes.
- 12 Q. In your experience, urine dried on the outside of a toilet  
13 can be sticky?
- 14 A. If it's not completely dry.
- 15 Q. In such circumstance, if it's not completely dry, it would  
16 be more likely to transfer to something that touched it  
17 than, say, dry urine on a piece of paper?
- 18 A. Yes.
- 19 Q. Because things transfer better if they are wet?
- 20 A. Yes.
- 21 Q. In your experience in several years working at the crime  
22 lab, you have learned that some peoples' bodily fluids  
23 just have more DNA than other people, is that right?
- 24 A. The amount of DNA is variable.
- 25 Q. There is a name for people like that? Excreters? Is that

- 1 a term that came up in our interview? Do you recognize  
2 that term?
- 3 A. Like in terms of just shedding cells, they could be a  
4 shedder or slougher. I'm not sure what the exact term is.  
5 but it's just a term to describe someone who sheds a lot  
6 of DNA just naturally from their hands, for example.
- 7 Q. We have come to know that people like this exist because  
8 of forensic testing, is that right?
- 9 A. I think so, yes.
- 10 Q. Touched items can yield DNA?
- 11 A. Yes.
- 12 Q. Touch DNA varies widely?
- 13 A. It does.
- 14 Q. It could be a small amount or it could be a much larger  
15 amount?
- 16 A. Yes.
- 17 Q. You testified about your experience with touch DNA in  
18 regard to objects testing in the lab like firearms?
- 19 A. Yes.
- 20 Q. Does that include bullet casings or anything of that  
21 nature or just the guns themselves?
- 22 A. It can include all of that, anything with a weapon.
- 23 Q. What all objects have you tested in the context of touch  
24 DNA?
- 25 A. I have tested bullet casings, cartridges, ones that have

1       been fired and ones that haven't been, magazines from a  
2       weapon, guns, knife handles, bank counters such that maybe  
3       a bank robber was seen on video surveillance touching a  
4       certain location, pens. I have examined pieces of paper  
5       like written in confession letters or ransom letters.  
6       Those are off the top of my head, but I'm sure there is  
7       quite a few more.

8   Q.   What would you say the bulk of your experience with touch  
9       DNA has dealt with, what type of objects, or has it been  
10      all of those in equal parts?

11  A.   I'm not sure if there is a larger number of one item.

12  Q.   So in dealing with guns, magazines, cartridges, bullet  
13      casings, heat can destroy DNA, is that right?

14  A.   Yes.

15  Q.   Okay.

16           So if a weapon is fired and produces any heat or a  
17      bullet casing going down the barrel produces heat, that  
18      can destroy DNA, right?

19  A.   Yes.

20  Q.   It makes it harder to look later when you're testing for  
21      DNA?

22  A.   Yes.

23  Q.   You don't do Y-STR testing or you haven't done it at the  
24      Marysville lab, is that right?

25  A.   I recently became qualified to perform Y-STR testing. I

1       have been signed off. I'm in the process of starting my  
2       first batch of cases right now.

3   Q.   So you are about to, but you haven't yet started doing  
4       that type of DNA?

5   A.   Correct.

6   Q.   So you are unable to say in this case how something got  
7       there, is that right?

8   A.   Correct.

9   Q.   So you can't say how the faint amylase response -- why  
10      that happened, right?

11  A.   I can't testify to how DNA got there, no.

12  Q.   Or what caused the positive response on the amylase test?

13  A.   Right. It's just presumptive.

14  Q.   In this case, you sent the 8 interior sample over to the  
15      Cheney lab, and you had about 36 microliters available for  
16      their testing in Cheney, is that right?

17  A.   That was my -- I think it was maybe 35 microliters, 36.

18  Q.   So it was around that level and that was before you  
19      vacufuged it?

20  A.   Right.

21  Q.   You had about five milliliters of the RBQ available for  
22      Cheney, is that right?

23  A.   I would have to look.

24  Q.   Please do so.

25               MR. ALSDORF: Your Honor, I would object to the

1 form of the question. I don't think the jury knows what  
2 RBQ is.

3 THE COURT: I will sustain the objection. I  
4 don't know what RBQ is.

5 BY MS. HARDENBROOK:

6 Q. What is RBQ?

7 A. RBQ is the name of the reagent blank. It's just my  
8 abbreviation for it.

9 Q. In fact, that abbreviation was on some of the packaging  
10 that you testified about earlier in the case, right?

11 A. Yes.

12 Q. So the approximate volume of the reagent blank to  
13 accompany the underwear sample sent to Cheney was about  
14 five milliliters left over?

15 A. It was five microliters.

16 Q. Microliters.

17 That is significantly smaller than the amount that you  
18 had of the actual sample, is that right?

19 A. For the interior underwear, yes.

20 Q. Okay.

21 Is that a problem that your reagent blank was so much  
22 less than the sample? Are you going to run out of reagent  
23 blank in such a circumstance?

24 A. I wouldn't say it's a problem. It's more of a factor to  
25 consider. That was because I had taken that reagent blank

1 forward when I analyzed the sample from the tights. So I  
2 had to match how much I used of the tights sample with my  
3 reagent blank.

4 So it's a factor to consider that there is only five  
5 microliters left of the reagent blank, so that would need  
6 to be taken into consideration if you took a sample from,  
7 say, the underwear.

8 Q. Because you would want to balance out the amounts that you  
9 had in further testing, is that right?

10 A. Right. You would want to match whatever you're testing  
11 from the evidence with what's on the reagent blank.

12 Q. Because that's the way the reagent blank can do its job  
13 and tell you if there was any reagent contamination?

14 A. Correct.

15 MS. HARDENBROOK: No further questions.

16 Thank you.

17

18 **REDIRECT EXAMINATION**

19 **BY MR. ALSDORF:**

20 Q. Ms. Hoffman, all this talk about validation studies and  
21 faint lines, dark lines, I want to talk about that a  
22 little bit.

23 What's your interpretation of that manufacturer's  
24 validation study, what it tells you to consider about  
25 whether or not a line is faint or dark or anything else?

1 A. That if you are basing your conclusion on the strength of  
2 the line, you should be cautious in that they were doing  
3 that in the validation for their purposes, but in a  
4 forensic application of the test, it's not quantitative.

5 Q. Okay.

6 So basically don't judge by the strength of the line?

7 A. That was their recommendation.

8 Q. Okay.

9 Does the Washington State Patrol judge by the strength  
10 of the line?

11 A. No.

12 Q. I want to ask you about the State Patrol's validation  
13 study, your own -- well, not you personally, but your  
14 agency's validation study that was done in 2006. There  
15 was some testimony on cross about how neat liquid urine  
16 resulted in a faint line.

17 A. Yes.

18 Q. Okay.

19 Can you compare that to any other urine testing that  
20 was done in that validation study?

21 A. The other urine sample tested during the validation was a  
22 swab of urine and that was different in that when we have  
23 a swab of something of a body fluid or item, it's  
24 initially extracted in that buffer solution that I  
25 mentioned earlier. A portion of that liquid is then added

1 to the test card with the running buffer. The running  
2 buffer is just what helps a sample migrate up the card.  
3 In our validation, that swabbed sample of urine was  
4 negative.

5 Q. The amylase test that you performed or, rather, the  
6 evidence collection that you performed from the interior  
7 of the Nick Jr. underpants in this case, that was swab  
8 based, correct?

9 A. Correct.

10 Q. I think you testified on cross that things transfer better  
11 when they're wet. Would saliva fall into that category?

12 A. Yes.

13 Q. How many total male DNA profiles were there on the inside  
14 of those Nick Jr. underpants?

15 A. I don't know. I did not perform any testing on that  
16 sample.

17 Q. Okay.

18 But you sent it to Spokane for testing?

19 A. Yes.

20 MR. ALSDORF: Thank you, Ms. Hoffman. I don't  
21 have anything further.

22

23 **RE-CROSS EXAMINATION**

24 **BY MS. HARDENBROOK:**

25 Q. The reason you didn't do any testing of your kind of DNA

1 testing on the inside of the Nick Jr. underpants is  
2 because the male DNA was overwhelmed by the amount of  
3 female DNA, is that right?

4 A. Yes.

5 Q. So it was like 75 times the amount of female DNA in those  
6 underpants as male DNA, is that right?

7 A. I'm not sure on the specific ratio.

8 Q. Please refer to Exhibit 61.

9 A. Yes. So the interior sample from the Nick Jr. underpants,  
10 the male-to-female ratio I calculated was approximately  
11 one to 70.

12 Q. That means there was 70 times more female DNA than male  
13 DNA in those underpants?

14 A. Roughly, yes.

15 Q. Let's talk about the Washington State Patrol validation  
16 study for urine. The urine that resulted in a weak  
17 positive on the test utilized in this case from the  
18 validation study, that was urine put right on the test, is  
19 that right?

20 A. It was, yes, liquid urine in conjunction with that running  
21 buffer added to the card.

22 Q. The swab was a dry swab or a swab upon which neat urine  
23 was put. Then, the swab was processed, and that liquid  
24 was put on the card, is that right?

25 A. Right. The swab is placed in a volume of liquid, and a

1 portion of that liquid is added to the running buffer and  
2 run.

3 Q. So that was not the kind of swabbing on this case where  
4 you swabbed from a dry area and turned that into a  
5 solution. is that right?

6 A. Right. So both of those samples are swabs of something,  
7 and those swabs are treated the same, though. The  
8 difference is in the validation, it had liquid urine added  
9 to the swab and then processed. Then, in this case, it  
10 was a swab of a garment. I don't know what was there. So  
11 it's a swab of something, but the swabs are treated the  
12 same.

13 Q. But they start out -- one of them started out in contact  
14 with the liquid and one of them started out in contact  
15 with a garment?

16 A. Correct.

17 Q. So in the validation study, the Washington State Patrol  
18 did not swab a garment and then test that to see if that  
19 reacted on the amylase test?

20 A. Correct.

21 Q. They used liquid urine both of the times they tested in  
22 the validation study?

23 A. Right.

24 Q. One of which has a positive weak result and one of which  
25 has no result?

1 A. Right.

2 Q. You indicated that your interpretation of the  
3 manufacturer's validation study discussion was that you  
4 should use caution when interpreting any strength of a  
5 result on this test. Is that your testimony?

6 A. Yes.

7 Q. But in fact, doesn't the manufacturer's expression --

8 MR. ALSDORF: Objection, ER 701 and 702. We  
9 have already litigated this issue, Your Honor.

10 THE COURT: Sustained.

11 MS. HARDENBROOK: I'm confused. I'm not sure if  
12 we can address this outside the presence of the jury.

13 THE COURT: We will ask the jury to go back to  
14 the jury room.

15

16 (The following proceedings were had  
17 outside the presence of the jury)

18 MS. HARDENBROOK: Your Honor, she just testified  
19 to this a minute ago with me. The Court didn't allow me  
20 to get into the photograph, but --

21 THE COURT: I thought we pretty much covered  
22 this subject.

23 MS. HARDENBROOK: Right. Then, he recrossed on  
24 it and gave a different interpretation of it. All I'm  
25 trying to do is say that the manufacturer was not saying

1 use caution in all. The manufacturer said use caution in  
2 weak cases because weak could indicate all these other  
3 things that shouldn't be relied on.

4 Mr. Alsdorf just asked her if you should use caution  
5 with every result.

6 THE COURT: Mr. Alsdorf?

7 MR. ALSDORF: Your Honor, I think we are well  
8 into the area of this being not helpful to the jury in  
9 interpreting what was actually on the samples in this case  
10 when we're getting so deep in the weeds about a  
11 manufacturer study reference to a Washington State Patrol  
12 validation study when everyone or, at least, Ms. Hoffman,  
13 the only one who has ever been asked, has been pretty  
14 consistent saying or entirely consistent in saying that  
15 the strength of the line does not matter in the results.

16 THE COURT: I think this has been covered and  
17 covered and covered. The jurors are now trying to decide  
18 where it is they are going to watch the Superbowl rather  
19 than listening to what's happening in the courtroom.

20 MS. HARDENBROOK: The defense position is that  
21 if Mr. Alsdorf got to go into it on redirect, I should be  
22 able to recross on it. I understand the Court's ruling.

23 THE COURT: You did recross.

24 MS. HARDENBROOK: No. I got an objection and  
25 the jury left before she answered the question.

1 THE COURT: You had just asked her --

2 MS. HARDENBROOK: I was clarifying her testimony  
3 on redirect, and then I was about to ask her my final  
4 question on recross.

5 THE COURT: The questions was: "You indicated  
6 that your interpretation of the manufacturer's validation  
7 study discussion was that you should use caution in  
8 interpreting any strength of a result on this test. Is  
9 that your testimony?" Her answer was "yes."

10 MS. HARDENBROOK: Then, my clarification was but  
11 didn't the manufacturer on Page 15 say a weak signal --  
12 caution should be used with a weak signal because it can  
13 indicate minimal amounts of saliva, a different substance,  
14 or even inefficient sample extraction.

15 MR. ALSDORF: I have a foundation objection to  
16 even referring to what the manufacturer's study says when  
17 we don't have anyone testifying about how that test was  
18 performed. All we have is Ms. Hoffman saying she didn't  
19 have any part of the test. The State Patrol did their own  
20 testing because they didn't do that manufacturer's test.

21 THE COURT: I think we have gone as far as we  
22 can go with the manufacturer's test given the lack of any  
23 foundation for how it was conducted.

24 We have a report here which --

25 MS. HARDENBROOK: Then, I don't think it's

1 appropriate my last question remain in the record if I'm  
2 not allowed to ask the next question.

3 MR. ALSDORF: We can strike the question.

4 THE COURT: Do you want to strike the question  
5 about interpretation of the manufacturer's validation  
6 study?

7 MS. HARDENBROOK: Yes, I do. It was only set up  
8 to put her testimony in contrast to the actual validation  
9 study and how they are, in effect, different. The State  
10 is not allowing me to ask my next question or the Court is  
11 not, so I don't think it's appropriate to have that  
12 hanging out there.

13 THE COURT: All right. Let the jury come back  
14 and ask your last question. That has got to be the end of  
15 it. I think we are really beyond at this point what the  
16 foundation was for this validation study. I'll allow it.

17 Bring the jury back in.

18

19 (The following proceedings were had in  
20 the presence of the jury)

21 BY MS. HARDENBROOK:

22 Q. Ms. Hoffman, the manufacturer of the test used in this  
23 case cautioned about interpreting a weak positive signal  
24 because it can indicate minimal amounts of saliva, fecal  
25 sample, breast milk, or even inefficient sample

1 extraction, is that correct?

2 A. Yes.

3 MS. HARDENBROOK: No further questions.

4 Thank you.

5

6 REDIRECT EXAMINATION

7 BY MR. ALSDORF:

8 Q. Ms. Hoffman, the 70-to-1 female-to-male ratio that you  
9 talked about from the interior of the Nick Jr. underpants,  
10 does that change your conclusion that you already  
11 testified to earlier today about your findings in that  
12 area?

13 A. No.

14 MR. ALSDORF: Nothing further.

15 THE COURT: You may step down. You are excused.

16 The State may call their next witness.

17 MR. ALSDORF: The State calls Michael Lin.

18

19 MICHAEL LIN, witness herein, after being first  
20 duly sworn, was examined and  
testified as follows:

21

22 DIRECT EXAMINATION

23 BY MR. ALSDORF:

24 Q. Good afternoon, sir.

25 A. Good afternoon.

1 Q. Will you please state and spell your name for the record?

2 A. My name is Michael Lin. First name is spelled  
3 M-i-c-h-a-e-l. The last name is spelled L-i-n.

4 Q. How are you employed?

5 A. I'm employed as a forensic scientist at the Spokane Crime  
6 Laboratory of the Washington State Patrol.

7 Q. How long have you been doing that?

8 A. I have been there for almost five years now.

9 Q. Can you take us through some of the training and  
10 experience -- well, let's start with your education.

11 What was your education in order to become a scientist?

12 A. I did my undergraduate work at the California Institute of  
13 Technology where I was graduated with a Bachelor of  
14 Science Degree in biology. I there went on to graduate  
15 school at UCLA and was graduated with a PhD in cellular  
16 and molecular pathology.

17 Q. What word did you say before molecular pathology?

18 A. Cellular and molecular pathology.

19 Q. Thank you.

20 Is your work with the Washington State Patrol your  
21 first professional position as a forensic scientist?

22 A. Yes, it is.

23 Q. What sort of work do you do at the Cheney lab?

24 A. I am specialized in DNA analysis that involves examining  
25 evidence items for possible sources of DNA, such as body

1 fluids like blood or saliva or semen. Then, if there are  
2 potential sources of DNA, I can attempt to extract the DNA  
3 from those items and determine DNA profiles from them.

4 Q. Okay.

5 Do you ever have the occasion in your line of work to  
6 conduct analysis on samples or extracts that other  
7 forensic scientists have already developed?

8 A. Yes, I do.

9 Q. Can you describe that a little bit?

10 A. Sometimes other analysts will do an initial examination of  
11 an item and determine possible source of DNA. Then, that  
12 scientist will extract the DNA and then that could be  
13 given to another analyst, such as myself, for determining  
14 the DNA profile.

15 Q. Tell us a little bit about the Cheney laboratory and any  
16 accreditations that it might have.

17 A. The Cheney laboratory is accredited by the American  
18 Society of Crime Laboratory Directors Laboratory  
19 Accreditation Board.

20 Q. Is there any specific accreditation in the area of Y-STR  
21 testing?

22 A. Yes, there is. We are accredited by the organization I  
23 just mentioned.

24 Q. For that specific area?

25 A. For that specific area.

1 Q. Okay.

2 How about you as an individual professional in the area  
3 of DNA analysis? Are there any ongoing qualifications  
4 that you have to show in order to be accredited on any  
5 ongoing basis?

6 A. Well, we do have a continuing educational requirement  
7 where every year we have to have a minimum of eight hours  
8 of continuing education. As DNA analysts, we also undergo  
9 what is called proficiency testing where we have to  
10 perform essentially a mock casework of a project twice a  
11 year to demonstrate that we can properly do DNA analysis.

12 Q. Who do you have to show that proficiency to twice a year?

13 A. We use an organization called Collaborative Testing  
14 Services. They provide the samples for our proficiency  
15 testing. We report the results to them, and then they  
16 determine if the answers are correct or not.

17 Q. Can you tell us a little bit about the difference between  
18 STR DNA testing and Y-STR DNA testing?

19 A. The two types of DNA testing are very similar. They are  
20 similar in that they focus on certain regions of DNA that  
21 we are interested in in determining a profile. The  
22 difference between them is the target that's being looked  
23 at.

24 With regular STR testing, that focuses on a number of  
25 genetic regions throughout the human genome. Y-STR

1 testing focuses on certain regions on the Y chromosome,  
2 which is found only in males.

3 Q. So is it correct that the Y chromosome we are talking  
4 about is just one of 23 chromosomes that humans have in  
5 their DNA?

6 A. It's one of 46 chromosomes. There are 23 pairs.

7 Q. So 23 pairs, thank you.

8 That limitation, does the fact that Y-STR testing only  
9 focuses on that one chromosome as opposed to many, does  
10 that have -- can you describe how that affects Y-STR  
11 analysis as it's compared to regular STR analysis?

12 A. Regular STR analysis focuses on a number of locations on a  
13 lot of chromosomes in the human genome. Because from  
14 that, we can use the data from regular STR testing to try  
15 to pin a DNA profile -- to connect a DNA profile to a  
16 specific individual.

17 With Y-STR testing, it focuses on the Y chromosome  
18 only. The Y chromosome is inherited from father to son,  
19 passed on paternally. Because of that, we cannot use  
20 Y-STR testing to identify a particular individual as a  
21 source of a Y-STR profile.

22 Q. What could you identify as far as Y-STR goes, if not a  
23 single individual?

24 A. Y-STR testing could be used to connect a DNA profile to a  
25 particular male line, a particular inheritance line passed

1 from father to son, so forth.

2 Q. How long have you been doing Y-STR testing?

3 A. I have been doing Y-STR testing for about two,  
4 two-and-a-half years.

5 Q. Do you know how long the Washington State Patrol Crime Lab  
6 in Cheney has been doing Y-STR testing?

7 A. The whole Washington State Patrol system has been doing  
8 Y-STR testing since 2009.

9 Q. Do you know how that 2009 start date compares to when  
10 Y-STR testing started becoming commonplace in the general  
11 nationwide forensic scientific community?

12 MS. HARDENBROOK: Objection. It states facts  
13 not in evidence.

14 MR. ALSDORF: I'm seeing if he knows the fact.

15 THE COURT: Overruled.

16 A. No, I do not know that information.

17 Q. Okay.

18 So can you tell us how you first became involved in the  
19 case that we're all here about today?

20 THE WITNESS: Your Honor, may I refer to my case  
21 notes?

22 THE COURT: Yes. Please let us know when you  
23 need to look at the notes. Try to answer the question  
24 without your notes. If you need to use your notes, just  
25 let us know.

1 THE WITNESS: Thank you.

2 BY MR. ALSDORF:

3 Q. Did you provide your entire case file and case notes to me  
4 for the purpose of providing them to all the parties in  
5 this case?

6 A. Yes, I did.

7 THE COURT: Do we have a marked set?

8 MR. ALSDORF: It's actually on disk, Your Honor.

9 THE COURT: Okay.

10 MS. HARDENBROOK: I think if there is reference  
11 to it on the record, that we need to have it marked.

12 THE COURT: We need to have something marked,  
13 not right now.

14 MR. ALSDORF: I would be happy to complete the  
15 record in that regard, Your Honor.

16 THE COURT: Okay.

17 MS. HARDENBROOK: That is fine by me.

18 THE COURT: We will deal with that later.

19 Go ahead.

20 A. (Continued) This was a case initially worked by Forensic  
21 Scientist Kristina Hoffman at the -- -

22 MS. HARDENBROOK: Your Honor, I'm sorry. Could  
23 we give it a number now so we can refer to it on the  
24 record, and the record will be clear later what we are  
25 referring to?

1 THE CLERK: No. 65.

2 A. (Continued) This was a case worked by Kristina Hoffman at  
3 the WSP, Washington State Patrol, Marysville Crime Lab.  
4 She had done some initial examination of the items in this  
5 case and had performed some DNA extractions. She also  
6 quantitated the DNA from a number of the items for a total  
7 human DNA and the male DNA amounts that are present in the  
8 extracts that she obtained.

9 Q. Are those quantities that you just mentioned important to  
10 you when you receive them for potential Y-STR work?

11 A. Yes, they are.

12 Q. Why are they important?

13 A. It could be important because, whenever possible, we  
14 prefer to do regular STR testing as opposed to Y-STR  
15 testing. Y-STR testing, the limitation being we cannot  
16 specify a particular individual as the source of the DNA.  
17 As I mentioned, we prefer to do regular STR testing.

18 Where Y-STR testing becomes very useful is if there is  
19 a potential mixture of DNA, and one of the sources of the  
20 DNA might be female. If there is a substantial amount  
21 more female DNA than male DNA in a sample, doing a regular  
22 STR test would pretty much pull the profile from the  
23 female DNA without picking up the male profile.

24 Y-STR testing, because it focuses solely on the male  
25 DNA, is useful in the situation such as that. So

1 determining the relative quantity of male DNA and total  
2 human DNA tells me, as a Y-STR analyst, how to proceed.

3 Q. What was the specific nature of the evidence that you  
4 received from Kristina Hoffman related to this case? What  
5 did you receive and how did you receive it?

6 MS. HARDENBROOK: Objection, compound question.

7 THE COURT: Sustained.

8 BY MR. ALSDORF:

9 Q. What did you receive, sir?

10 THE WITNESS: Your Honor, if I may refer to my  
11 notes.

12 THE COURT: Go ahead.

13 THE WITNESS: Thank you.

14 A. What I received was a Manila envelope which contained a  
15 number of tubes within that envelope, and they were  
16 reported to contain DNA extracts from an evidence item in  
17 this case and a reference sample from a Mr. Brandon Earl.

18 Q. Did this envelope that had evidence inside of it, did it  
19 have any sort of name from Kristina Hoffman?

20 A. She had labeled the item KLH-1.

21 Q. I'm handing you State's Exhibit No. 24, a couple of  
22 envelopes there. I will ask you to refer to the smaller  
23 interior envelope and ask if you can determine what that  
24 is. I should warn you that it is open.

25 A. It appears to be the envelope that I received from

1 Kristina Hoffman.

2 Q. Thank you.

3 I will ask you to put on a pair of gloves for the  
4 purpose of taking out what is inside that envelope. It's  
5 already open.

6 Can you identify from the markings on those two tubes  
7 what those things are?

8 A. From the markings on the tubes, these are the tubes that I  
9 received from Ms. Hoffman.

10 Q. I saw you looking down at your case file --

11 A. Yes.

12 Q. -- Exhibit 65 when you were doing that. What were you  
13 comparing?

14 A. I was comparing the names I had written down based on the  
15 notes that I took when I received these tubes.

16 Q. Okay.

17 Is it important to note the condition of tubes such as  
18 that and its associated packaging when you receive them  
19 from any outside source?

20 MS. HARDENBROOK: Objection, leading.

21 THE COURT: Overruled.

22 A. Yes, it's important to note what we receive.

23 Q. Why is it important?

24 A. One of the reasons is so that later on in a situation such  
25 as courtroom testimony, we can identify the item in

1 question.

2 Q. Okay.

3 If packaging was compromised or if a tube was cracked,  
4 would it be important?

5 A. Yes, it would be important to note.

6 Q. Why would that be important?

7 A. Because a potential break in the package containing DNA  
8 extract could lead to potential contamination or loss of a  
9 sample.

10 Q. Did you make any note of any compromised packaging or  
11 cracked tubes or anything else that would indicate  
12 potential cross-contamination of that evidence when you  
13 first received it?

14 A. I did not note any potential break or compromise in the  
15 packaging.

16 Q. Is Kristina Hoffman's sample, KLH-1 that you are holding  
17 there, the only Y-STR sample that you have ever received  
18 at Cheney -- sorry, the only DNA extract that you have  
19 received for the purpose of further Y-STR testing?

20 A. No, it is not.

21 Q. Okay.

22 Can you testify to generally how you receive those type  
23 of samples from forensic scientists throughout the State  
24 Patrol system?

25 A. They are generally sent to me in a similar situation as

1 this where the DNA extracts are contained in separate  
2 tubes.

3 Q. Okay.

4 In your professional expert opinion, is the packaging  
5 that we see there in Item KLH-1 sufficient to prevent  
6 cross-contamination?

7 MS. HARDENBROOK: Objection, leading.

8 MR. ALSDORF: It could be a yes or no.

9 THE COURT: Overruled.

10 A. I'm sorry, could you restate the question?

11 Q. If your professional opinion, is the way that Item KLH-1  
12 is packaged sufficient to prevent cross-contamination?

13 A. In my opinion, it is sufficient to prevent  
14 cross-contamination.

15 Q. Even if they were mailed together in the same package?

16 A. Even if they were mailed together in the same package  
17 because they are separated individually.

18 Q. What did you go about doing with those items in order to  
19 perform Y-STR testing?

20 A. Based on the quantitation values of the DNA that  
21 Ms. Hoffman had performed, I did a process called  
22 amplification where I added a number of chemical reagents  
23 to the extract to amplify certain regions of the DNA on  
24 the Y chromosome for the Y-STR testing.

25 Then, I ran the amplified samples in an instrument that

1 we have where it can separate out those fragments that we  
2 are interested in. Then, I was able to determine a  
3 profile from the extracts.

4 Q. Okay.

5 I heard you talk about amplification and then  
6 separation?

7 A. Yes.

8 Q. Are those two separate processes?

9 A. They are separate processes.

10 Q. Can you describe how those two separate processes occur in  
11 time and space within your laboratory?

12 MS. HARDENBROOK: Objection. It calls for a  
13 narrative answer and a compound question. Deal with it  
14 one at a time.

15 THE COURT: I will sustain the objection.

16 BY MR. ALSDORF:

17 Q. Do you do the amplification process first?

18 A. I do the amplification process first.

19 Q. Can you take us through a brief summary of what that  
20 entails?

21 A. It involves adding a number of chemicals from a kit that's  
22 designed for amplifying certain regions of DNA on the Y  
23 chromosome. What that kit does is it's essentially a  
24 photocopier, if you will, for DNA. It focuses on certain  
25 regions of DNA that we are interested in and it makes

1 multiple copies of those.

2 Q. Is there any type of machinery that is used for this?

3 A. We use an instrument known as a thermal cycler that goes  
4 through a program with a number of different temperatures  
5 to perform this process.

6 Q. Do you perform the thermal cycling amplification stage of  
7 this process with the interior sample from what was  
8 reported to be from the Nick Jr. underwear along with the  
9 reference sample of Brandon Earl? Did you do that  
10 together?

11 A. I did those in the same amplification batch.

12 Q. Describe what that means.

13 A. We often do this amplification process in a group of  
14 tubes. Each individual tube might contain an extract from  
15 a different item.

16 Q. So how many tubes does the thermal cycler machine have?

17 A. The thermal cycler is capable of holding up to 96 tubes at  
18 a single time.

19 Q. Okay.

20 What, if any, precautions do you take to make sure  
21 cross-contamination is not an issue in this thermal  
22 cycling process?

23 A. Well, we add the extracts to each tube individually one at  
24 a time. Only one tube is opened at a time, and that helps  
25 reduce the possibility of cross-contamination.

1 Q. I saw you doing something with your thumb while you were  
2 explaining that. Can you use words to tell the jury what  
3 you mean, what you are actually doing?

4 A. The tubes have a cap on top, and it is a cap that is held  
5 by a hinge from the cap to the remainder of the tube  
6 itself, and so it basically flips open. It flips open and  
7 then flips back down. When it goes back down, it snaps in  
8 place.

9 Q. Okay.

10 Would there ever be any reason for -- I presume you are  
11 wearing gloves during this process?

12 A. Yes, I do.

13 Q. Would there ever be any reason for your gloved fingers to  
14 touch the actual substance that's in the tubes?

15 A. No, there would not be a reason.

16 Q. Okay.

17 What happens after the amplification process? I think  
18 you said separation begins.

19 A. Yes. It's a process where we put the amplified DNA onto  
20 an instrument, and then that instrument separates out the  
21 fragments according to size.

22 Q. How long does that process take?

23 A. It depends on the number of samples that are being used on  
24 the instrument. For a particular injection onto the  
25 instrument, it takes about 40 minutes to perform.

1 Q. What, if any, precautions do you take during that  
2 amplification process to make sure that  
3 cross-contamination is not an issue?

4 A. Did you say amplification process?

5 Q. Sorry, separation process.

6 A. We add the amplified products into the plate that we use  
7 for the separation. There are a number of ways to do it.  
8 I generally use what's known as a multi-channel pipetter.  
9 It's an instrument that will pick up a multiple number of  
10 the amplified DNA samples at one time, but keeps them  
11 separate from each other, so that they can be added onto  
12 the plate at the same time, but with some distance  
13 in-between them.

14 Q. I will just have you return the tubes to the interior of  
15 the envelope there.

16 A. (Witness complied).

17 Q. What happens after separation?

18 A. After separation, we can determine the profile of the DNA  
19 from the size of the fragment and how they are labeled by  
20 the amplification kit.

21 Q. How do you go about doing that?

22 A. That's done by computer. We have a software program that  
23 can analyze the data that comes off the separation  
24 instrument.

25 Q. Are you trained in the use of that software and computer

1 program?

2 A. Yes, I am.

3 Q. Tell us what you learned when you went through that  
4 process with the two tubes that we have come to know as  
5 KLH-1?

6 A. Well, I did the amplification and separation process for  
7 the interior underwear sample. I had the reference sample  
8 for Mr. Brandon Earl. What I was able to obtain from the  
9 underwear interior sample is what's known as a single  
10 source Y-STR profile. That is, it comes from one  
11 individual. The profile was a match for the Y-STR profile  
12 of Mr. Earl.

13 MS. HARDENBROOK: Objection, move to strike. I  
14 would like to address the Court outside the presence of  
15 the jury as a foundational objection.

16 THE COURT: I will ask the jury to go back to  
17 the jury room.

18

19 (The following proceedings were had  
20 outside the presence of the jury)

21 THE COURT: Please be seated.

22 MS. HARDENBROOK: Your Honor, it's my  
23 understanding that under the foundational DNA thesis of  
24 Copeland and Buckner in the State of Washington, the Court  
25 has held that under normal DNA, which is much more

1 established than the relatively new field of Y-STR DNA,  
2 that analysts are not allowed to testify to a specific  
3 match, but they are able to testify to a probability.

4 He was about to testify to a match, which I think would  
5 even be impermissible in the well-defined field of STR  
6 DNA, and is even more problematic in this field of Y-STR  
7 DNA, especially given what we have learned in the last 24  
8 hours of the change in statistics.

9 Because of the significant variation in statistics on  
10 Y-STR of the function of the increase in size of the Y-STR  
11 database, such a number would not be helpful to the jury  
12 in this case. A year ago, that number was 1 in 2,800.  
13 This week, that number changed to 1 in 4,400.

14 We did an interview with Mr. Lin this morning where he  
15 discussed at length his knowledge and understanding of  
16 where that number comes from. He does not have an  
17 adequate basis or understanding for where that number  
18 comes from. It is a function of the sample size of the  
19 particular database that the Washington State Patrol uses.

20 It's not the database associated with the manufacturer  
21 of their Y-STR kit. It is a different database. It has  
22 very limited sample size.

23 The most recent test was only run against 13,000  
24 individuals. That's all. That's a very small amount as  
25 far as research and data sample size.

1           Mr. Lin acknowledged in our interview this morning that  
2           that number has changed drastically in just the last year  
3           because of additional people being added to that, that we  
4           could expect, if additional samples were added tomorrow,  
5           that the number could change dramatically again.

6           That if someone with Mr. Earl's Y-STR profile happened  
7           to be submitted to the database, it could change  
8           significantly in the other direction tomorrow. That it is  
9           a function only of a 95 percent confidence interval,  
10          general statistical formula that he has no idea where the  
11          data comes from in this database. He thinks it's some  
12          private manufacturers. He's not aware of whether it has  
13          any relationship to the US population in terms of racial  
14          or ethnic percentages.

15          He has no idea how they come up with the number that  
16          they come up with. For example, most recently it was run  
17          against 13,000, and the statistic came up that it should  
18          happen one in every 4,400. Yet in 13,000, Mr. Earl's  
19          prototype wasn't found anywhere in 13,000. So that shows  
20          that the statistical probability is actually wrong.

21          The statistic is internally contradictory. If you  
22          would expect to see it 1 in 4,400, you run it against  
23          13,000, it shows you the statistic is essentially  
24          meaningless.

25          There is a concern because this database is made of a

1 majority of African-Americans. Another significant  
2 percentage is from the Southwest, people of Hispanic  
3 heritage, not necessarily representative of Mr. Earl, who  
4 was a known subject in this case when the test was run.

5 Both times Mr. Lin ran the number through the database,  
6 he did not select any reduced ethnicity to try to focus on  
7 anything more particular to Mr. Earl.

8 He, when we talked to him, did not even know the  
9 demographic make-up of that database. Since he ran the  
10 number the first time, new alleles have been added to the  
11 database.

12 He doesn't know why the Washington State Patrol uses  
13 that particular database, whether there are other  
14 databases that are more reliable, whether the population  
15 between those multiple databases are shared or not.

16 He told us this morning that he doesn't think the  
17 Washington State Patrol submits things to the database.  
18 Their website says they do. He just does not have an  
19 adequate understanding of this information.

20 All the information we have been able to gather from  
21 the database is that it is essentially a meaningless  
22 number. In a few years, when it has a significant sample  
23 size, it may be very helpful when it becomes more like  
24 regular DNA, but right now it is so small that it doesn't  
25 tell the jury anything, especially when it can vary so

1 much in such a short amount of time, having nothing to do  
2 with Mr. Earl.

3 Any individual run through the database who does not  
4 match someone in the database would have the same figure.  
5 That is one in 4,400. So anyone run through the database  
6 today where there is not a match would have that number.

7 Mr. Lin couldn't talk about how that number would  
8 change if Mr. Earl's type was all of a sudden in the  
9 database. He has inadequate information to lay the  
10 foundation for this. Under the case law, he should not be  
11 allowed to testify to a specific match.

12 THE COURT: Mr. Alsdorf?

13 MR. ALSDORF: Your Honor, what I think I hear  
14 counsel trying to do is conduct some the sort of a Frye  
15 hearing or a motion to suppress evidence in the middle of  
16 trial, which I think is entirely inappropriate in the  
17 first place.

18 Any basis to do that sounds like it comes from the fact  
19 that this database does, in fact, get updated over time,  
20 and that is in fact true, but the last update of the  
21 database in this case was -- and Mr. Lin, correct me if  
22 I'm wrong -- July of 2012.

23 This has been a known issue for some time in this case.  
24 Mr. Lin will testify that the primary factor and the fact  
25 that the statistic changes is that the sample size

1 changes. I think that is something that will be readily  
2 understandable to the jury.

3 THE COURT: I can't rule on the objection  
4 without hearing some testimony from Mr. Lin. All of this  
5 is based upon an interview that I was not present at. So  
6 I don't know what questions were asked. I don't know what  
7 he would say now in the courtroom. I think we have to  
8 conduct that hearing.

9 I wouldn't characterize this so much as a Frye hearing,  
10 but a foundational objection based on this witness'  
11 knowledge of the database. I certainly agree that the  
12 case law does require testimony on DNA evidence to be  
13 given as a statistical probability rather than a match.  
14 That is what folks are doing is giving a statistical  
15 probability of a likelihood that this person's DNA is the  
16 DNA in question.

17 MR. ALSDORF: Sure. I would be happy to do that  
18 voir dire right now. I would also add to that, as an  
19 offer of proof, that we just interviewed the defense  
20 expert, Don Riley, over the lunch hour, and he  
21 acknowledged that he takes no issue with the database that  
22 the Washington State Patrol uses to perform Y-STR testing.  
23 So there's that.

24 Can I begin with --

25 THE COURT: Well, I think we may as well just

1 let our jury go at this point. Then, we will take a few  
2 minutes and do some of this now. We are not going to get  
3 done with you today, sir. Let's bring the jury back out.

4 MR. ALSDORF: Your Honor, what are we going to  
5 tell them about why they are being let go early?

6 THE COURT: Some issues I need to take up with  
7 counsel.

8 MR. ALSDORF: All right.

9

10 (The following proceedings were had in  
11 the presence of the jury)

12 THE COURT: Please be seated.

13 Members of the jury, I still need to take up some of  
14 the issues raised with counsel. I'm just going to let you  
15 go at this point so I can talk with counsel. We are  
16 almost at that time anyway.

17 So we are going to be continuing testimony of this  
18 witness on Monday morning. Please remember the  
19 instructions of the Court. Do not discuss this case with  
20 each other or anyone else. If for any reason illness or  
21 anything else happens over the weekend and you are unable  
22 to get here Monday morning, please call in and talk to  
23 Mr. Cummings. We will give you a phone number to call.

24 Leave your notebooks in the jury room. Please do not  
25 attempt to do any independent research on your own on this

1 case or any of the subjects raised in this case during the  
2 course of the weekend.

3 I'm going to ask you to be back here at 9:30 Monday  
4 morning. I'm going to ask you first to come downstairs --  
5 that won't work either.

6 I'm just going to ask you to be here at 9:00 on Monday  
7 morning. I may still have issues to take up with counsel  
8 while you are back in the jury room for awhile.

9 We have a new crop of jurors down in the jury lounge  
10 downstairs for more trials next week, so that will  
11 interfere with the orientation of those jurors if I have  
12 you go down there.

13 Have a good weekend. Please be back here at 9:00  
14 Monday morning.

15

16 (The following proceedings were had  
17 outside the presence of the jury)

18 MS. HARDENBROOK: May I briefly address funding  
19 for Dr. Riley? I'm releasing him because he clearly is  
20 not going to get to testify today. If I bring him on  
21 Monday, will the Court reauthorize it?

22 THE COURT: Yes.

23 MS. HARDENBROOK: Thank you.

24 THE COURT: Mr. Alsdorf.

25

## 1 VOIR DIRE EXAMINATION

2 BY MR. ALSDORF:

3 Q. Can you describe for the Court what allele information is  
4 that you would obtain from the Y filer kit?5 A. Allele information refers to the sizes of the peaks that  
6 are pink in the profile from the amplification and the  
7 separation process.8 Q. In order for you to take the scientific information from  
9 the DNA itself and turn that into a statistic, you use a  
10 database, right?

11 A. That's correct, I use a database.

12 Q. What database is that?

13 A. We use the US Y-STR database.

14 Q. Can you describe your understanding of what that database  
15 is?16 A. The database results from a collection of Y-STR profiles  
17 from a number of different samples that are submitted to  
18 it.19 Q. Have you testified about your use of that specific  
20 database in courts of the State of Washington before?

21 A. Not before.

22 Q. Okay.

23 Do you know if your colleagues have testified about  
24 those results in the courts in the State of Washington  
25 before?

1 A. I believe they have, although I don't have any specifics.

2 I cannot cite any specific examples.

3 Q. Okay.

4 It's a relatively small database compared to the larger  
5 STR database, correct?

6 A. The STR database is different from the Y-STR database.

7 Q. Describe how.

8 A. The STR database used to determine a statistical frequency  
9 of profiles is collected from a number of different  
10 individuals, but the size of the database is not as  
11 important as the frequency of a profile for the STRs.

12 For the Y-STR database, we have to look at the full  
13 profile of the Y-STR database, and so the size of that  
14 database determines the frequency of the profiles.

15 Q. How does the size of the database, the Y-STR database,  
16 change over time?

17 A. The Y-STR database has increased over time.

18 Q. Has the increase of the size of the database been a factor  
19 in the changing of the statistics of a profile that would  
20 be observed zero times in that database?

21 A. Yes.

22 Q. Can you describe that?

23 A. As more profiles are added to the database, the events in  
24 which the profile is not seen in the database, the  
25 frequency would increase over time because there are more

1 samples that are being compared.

2 Q. Okay.

3 When this profile was run against the database when you  
4 originally performed the run -- well, first of all, what  
5 date did you perform that original run?

6 THE WITNESS: Your Honor, can I consult my  
7 notes?

8 THE COURT: Go ahead.

9 A. I did that initial test on November 17 of 2011.

10 Q. Do you know how many profiles were in the database on  
11 November 17, 2011, when you ran it the first time?

12 A. I don't know the total number of profiles. I know how  
13 many profiles it was searched against at the time.

14 Q. Yes, that's what I'm asking.

15 A. They were searched against 8,487 total individuals.

16 Q. When you ran it the second time, what date did you run the  
17 numbers?

18 A. The second time, I ran it on January 28 of 2013, and the  
19 number of profiles it was searched against was 13,248.

20 Q. So that is an increase of approximately just under 5,000  
21 more profiles when you just ran the numbers, right?

22 A. About that, yes.

23 Q. How would that increase of 5,000 more profiles affect the  
24 numbers that you obtained?

25 A. It would decrease the frequency of observing that profile

1 in a general population.

2 Q. Am I correct that both times you ran the numbers, the  
3 profile that you were running was observed zero times in  
4 the database?

5 A. That is correct. Both times it was not observed in the  
6 database.

7 Q. Okay.

8 So if it was observed zero times, why wouldn't you just  
9 report the actual number that it was run against, like say  
10 one in 13,248 instead of what you ultimately reported,  
11 which is what, by the way?

12 A. The first time I ran the profile, I reported that the  
13 profile was observed zero times in the database, and is  
14 not expected to occur more frequently than one in 2,800  
15 male individuals.

16 Q. So 2800, but the actual number of samples it was run  
17 against is 8,487, right?

18 A. Yes.

19 Q. Why are you using a lower number, a lower frequency, than  
20 the actual sample size?

21 A. Well, it's actually a higher frequency, one in 2,800  
22 versus 8,487. The database calculates what's known as a  
23 95 percent confidence interval based upon the frequency of  
24 the kinds of profiles described in the database.

25 Q. Describe for the Court what a confidence interval is and

- 1        why you use a confidence interval as opposed to anything  
2        else.
- 3    A.    The confidence interval determines the relative percent of  
4        the time at which one could be confident that the true  
5        value of that statistic falls within that range.
- 6    Q.    When you say true value of the statistic, okay. let's take  
7        the one in 2,800 number, okay, as an example. When you  
8        say the true value of the statistic lies within that range  
9        95 percent of the time, which figure are you referring to,  
10       the one or the 2,800?
- 11   A.    Ninety-five percent of the time the expected frequency of  
12        that profile would be no more than one in 2,800  
13        individuals.
- 14   Q.    Okay.
- 15        So it could be something less than one in 2,800?
- 16   A.    Correct. It might be one in 5,000.
- 17   Q.    Okay.
- 18        So in that way, you're making a conservative report of  
19        the frequency that it would be observed in the US  
20        population?
- 21   A.    Yes.
- 22   Q.    Why are you conservative in your reporting?
- 23   A.    We are fairly conservative in our reporting because that's  
24        our approach scientifically to use the statistic that  
25        might include potentially more contributors in the

1 population than fewer.

2 Q. Okay.

3 Do you know whether the use of 95 percent confidence  
4 intervals is something that's generally accepted in the  
5 scientific community?

6 A. Yes, it is.

7 Q. Okay.

8 When you ran the numbers the second time, what was the  
9 95 percent confidence interval about the frequency that  
10 that profile would be observed in the US population?

11 A. The second time I ran it, the 95 percent confidence  
12 interval gave a frequency of one in 4,400 male  
13 individuals.

14 Q. Let's talk about how the allele information is actually  
15 input into the database. Do you call someone up on the  
16 phone or go to a database store? What do you do?

17 A. There is a website that the database has. The profile  
18 from the Y-STR profile can be inputted into that website.

19 Q. That method of input via a website, is that a  
20 generally-accepted practice in the scientific community?

21 A. Yes, it is.

22 Q. So if you were allowed to testify to the statistics that  
23 you generated in this case, what's the language that those  
24 statistics are phrased in in the reports that you  
25 generated?

1 A. The conclusion statement from my report is: "The Y-STR  
2 profile obtained from the interior crotch area of the  
3 Nick Jr. underpants matches the Y-STR profile of  
4 Brandon J. Earl. Therefore, neither Brandon J. Earl nor  
5 any of his paternal relatives can be excluded as the donor  
6 of the human male DNA from this sample. This Y-STR  
7 profile has been observed zero times in the US Y-STR  
8 database and is not expect to occur more frequently than  
9 one in 2,800 male individuals in the US population.  
10 Statistics are calculated using US Y-STR database (2.5)."  
11 Then, it gives the address of [www.USYSTRdatabase.org](http://www.USYSTRdatabase.org).

12 Q. Is that the specific language from your conclusion based  
13 on your November 17, 2011, run of the numbers?

14 A. Yes.

15 Q. Okay.

16 I assume that most of the words would be the same based  
17 on your January 28, 2013, run of the numbers, right?

18 A. Yes. Most of the words are the same; only the statistics  
19 change.

20 Q. What's the difference?

21 A. The frequency of observing that profile, so instead of one  
22 in 2,800 male individuals, my second report has one in  
23 4,400 male individuals.

24 Q. It was also run against a different version of the  
25 database, right?

1 A. That's correct, Version 3 of the database.

2 Q. Okay.

3 In your professional opinion, how would those  
4 statistics be helpful to a lay juror's understanding of  
5 the Y-STR analysis that you performed in this case?

6 A. It would give an idea of how frequently to expect that  
7 profile to appear randomly from a random individual in the  
8 population.

9 Q. The US male population?

10 A. The US male population.

11 MR. ALSDORF: Nothing further.

12 THE COURT: All right. It's almost 4:30. You  
13 obviously are going to need more time on Monday to take up  
14 your questions.

15 MS. HARDENBROOK: Thank you, Your Honor.

16 THE COURT: Mr. Lin, we are going to ask you to  
17 be back here on Monday morning at 9:00.

18 THE WITNESS: There might be an issue as I would  
19 have to travel from Spokane. I will have to get flight  
20 arrangements made for that. It probably will not be until  
21 Monday morning itself that I could talk to basically my  
22 office.

23 THE COURT: I will have the jurors here at 9:00  
24 Monday morning. So one way or another, we need to have  
25 you here at 9:00 Monday morning. You can work with the

1 prosecutor on getting here at that time. We do need you  
2 here at 9:00 Monday morning. Sorry about that.

3 THE WITNESS: I will have to see what I can do.

4 THE COURT: I had matters shipped down the hall  
5 because of the length of this trial, too.

6 So 9:00 Monday morning.

7 MS. HARDENBROOK: The parties should provide  
8 additional briefing on the State's motion to amend at that  
9 point? The State said they were still deciding. Could we  
10 set a deadline by which they need to let me know?

11 THE COURT: They need to let you know by the  
12 time they rest, I guess.

13 MS. HARDENBROOK: Okay.

14 MR. ALSDORF: Understood, Your Honor.

15 THE COURT: This is your last witness, correct?

16 MR. ALSDORF: Correct.

17 THE COURT: That's my understanding. By the  
18 time the State has rested, it's too late to move to amend.

19 MS. HARDENBROOK: The defense position is it's  
20 too late now, but I understand.

21 THE COURT: I will at least entertain the motion  
22 before the State rests. I may not allow it, but I will  
23 entertain it.

24 MR. ALSDORF: I get that.

25 THE COURT: We will be in recess.  
(Court in recess)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**APPENDIX C**

RESPONSE TO STATE'S MOTION FOR  
TRANSFER OF DEFENDANT'S MOTION  
FOR NEW TRIAL ON THE BASIS OF NEWLY  
DISCOVERED EVIDENCE

Snohomish County Public Defender Association  
1721 Hewitt Ave., Suite 200  
Everett, WA 98201  
425-339-6300

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF SNOHOMISH

---

STATE OF WASHINGTON,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Cause No. 12-1-00034-9
	)	COA No. 70144-4-I
BRANDON EARL,	)	
	)	VOLUME 6
Defendant.	)	

---

VERBATIM REPORT OF PROCEEDINGS

---

BE IT REMEMBERED that on February 4, 2013, the  
above-entitled and numbered cause came on for hearing before  
JUDGE THOMAS J. WYNNE, Snohomish County Superior Court,  
Everett, Washington.

A P P E A R A N C E S

For the Plaintiff:	MR. ANDREW ALSDORF Deputy Prosecuting Attorney Snohomish County Courthouse 3000 Rockefeller, MS 504 Everett, Washington 98201
For the Defendant:	MS. SONJA HARDENBROOK Snohomish County Public Defenders Association 1721 Hewitt Avenue, Suite 200 Everett, Washington 98201

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

INDEX OF WITNESSES

NAME OF WITNESS PAGE

MICHAEL LIN

Voir Dire Examination by  
Mr. Alsdorf (without jury) 802  
Voir Dire Examination by  
Ms. Hardenbrook (without jury) 805

MICHAEL LIN

Direct Examination by Mr. Alsdorf 838  
Cross Examination by Ms. Hardenbrook 850  
Redirect Examination by Mr. Alsdorf 884

MICHAEL LIN

Direct Examination by Mr. Alsdorf 901  
Cross Examination by Ms. Hardenbrook 902  
Redirect Examination by Mr. Alsdorf 906

ANNETTE TUPPER

Direct Examination by Ms. Hardenbrook 909  
Cross Examination by Mr. Alsdorf 914

DR. DONALD RILEY

Direct Examination by Ms. Hardenbrook 916  
Cross Examination by Mr. Alsdorf 945  
Redirect Examination by Ms. Hardenbrook 957

TYLER QUICK

Direct by Ms. Hardenbrook 961

1 February 4, 2013

2  
3 (The following proceedings were had  
4 outside the presence of the jury)

5 THE COURT: We have all the jurors back in the  
6 jury room and everyone is here and we are ready to  
7 proceed.

8 MR. ALSDORF: Your Honor, good morning. Andrew  
9 Alsdorf for the State.

10 My understanding of where we are is we are in the  
11 middle of an outside-the-presence-of-the-jury foundational  
12 hearing regarding whether or not Mr. Lin can testify to  
13 the statistics that were generated when he put a specific  
14 allele low side information into the publically-available  
15 Y-STR database.

16 I would like to ask him one or two follow-up questions  
17 about his understanding of how that database is  
18 maintained, organized, and compiled, and then very quickly  
19 hand it over to Ms. Hardenbrook for voir dire.

20 THE COURT: Okay.

21 MS. HARDENBROOK: Your Honor, can I clarify? It  
22 was my understanding that the Court already found that he  
23 could not testify to a match. That is pretty established  
24 in DNA case law, that he can't say it's Brandon Earl's.

25 THE COURT: It has to be statistical

1 probability.

2 MR. ALSDORF: Let me make clear that when  
3 Mr. Lin uses the word "match." in both his report and last  
4 Friday afternoon, he is not saying that the DNA is Brandon  
5 Earl's. He is saying something very different, which is  
6 that the Y-STR profile, which is a very narrowly-focused  
7 haplotype, and it happens to be inherited as a group from  
8 paternal relative to paternal relative, that those 17 low  
9 side that he examined are matched between the underwear  
10 and the defendant's reference sample.

11 I think that's going to be very clear. I don't know  
12 how he can describe it any other way. Perhaps he can use  
13 the word "identical." It's not the State's intention to  
14 somehow argue that the DNA is Mr. Earl's because I agree  
15 that the science doesn't rise to the level of being able  
16 to say that.

17 THE COURT: Well, if he is allowed then to  
18 complete the answer, you can bring out the statistics on  
19 that issue.

20 MR. ALSDORF: Yes.

21 THE COURT: So with that understanding, we will  
22 proceed. I'm sure the defense will cross-examine on that  
23 issue if we get there.

24 MS. HARDENBROOK: Is there a jury issue?

25 THE COURT: Here is what the juror said: "It

1 would be a hardship on me. Juror No. 14, if it's going on  
2 where you need me to serve past Tuesday at 5 p.m." I have  
3 already told them he needs to be here on Tuesday. "I  
4 would like to explain."

5 MR. ALSDORF: Mr. Lin is my last witness. The  
6 State will be resting this morning.

7 THE COURT: The State does not have a motion to  
8 amend the Information?

9 MR. ALSDORF: Correct.

10 MS. HARDENBROOK: My concern would be that I  
11 don't think there is any boundaries on deliberations. I  
12 have concerns about having a juror on there who has to  
13 leave Tuesday at 5:00 and they rush deliberations as a  
14 result.

15 I think at some point an inquiry is appropriate. It  
16 doesn't necessarily have to be now.

17 THE COURT: We will keep the juror there at this  
18 point, but will take it up with that juror later on today.

19 MS. HARDENBROOK: Thank you, Your Honor.

20 THE COURT: Sir, you are still under oath.

21 THE WITNESS: I understand.

22 THE COURT: Thank you for your cooperation in  
23 being here today.

24 THE WITNESS: You're welcome.  
25

1        MICHAEL LIN,                    witness herein, after being  
2    previously sworn, was examined and  
3    testified as follows:

3

4

**VOIR DIRE EXAMINATION**

5

**BY MR. ALSDORF:**

6

Q. Mr. Lin, good morning.

7

A. Good morning.

8

Q. Just for the record, we are still outside the presence of  
9 the jury. I just have a few follow-up questions for you  
10 about the database, the US Y-STR database.

10

11

What's your understanding of who maintains that  
12 database?

12

13

A. The database is maintained by the National Center for  
14 Forensic Science.

14

15

Q. What type of organization is that?

16

A. It's a non-profit organization.

17

Q. Do you know how they go about collecting the samples that  
18 contribute to that database?

18

19

A. They solicit sample submissions from a number of different  
20 agencies throughout the country.

20

21

Q. Let me turn your microphone on.

22

What type of organization submits samples?

23

A. Private organizations such as Applied Biosystems,

24

ReliaGene, and Promega submit samples to the database, as

25

well as crime laboratories throughout the country,

1 including the FBI laboratory.

2 Q. Has the State Patrol itself submitted samples to this  
3 database?

4 A. Yes, there are 40 samples that are submitted.

5 Q. Only 40?

6 A. Only 40.

7 Q. Well, I assume that the State Patrol has collected more  
8 than 40 Y-STR profiles over the years, correct?

9 A. I don't know the exact number.

10 Q. Let me ask you why is it that the State Patrol doesn't  
11 routinely upload every Y-STR it generates into this  
12 database?

13 A. There are a number of reasons. One is that the ethnicity  
14 of the sample has to be submitted to the database for  
15 inclusion into the right category. We do not routinely  
16 collect that information. Another reason is that the  
17 samples that are collected in Y-STR cases would come from  
18 suspects, and that might lead to a subset of the database  
19 being represented by suspect samples that are submitted.

20 Q. Okay.

21 Why would the submission of suspect samples -- I will  
22 strike that question.

23 Are you familiar with an organization called SWGDAM?

24 A. Yes, I am.

25 Q. Is that an acronym?

1 A. Yes, it is.

2 Q. Can you explain what that organization is, your  
3 understanding of it?

4 A. SWGDAM is short for Scientific Working Group on DNA  
5 Analysis Methods. They are a group of forensic scientists  
6 throughout the country at the national, state, and local  
7 level who provide guidelines on DNA analysis, and also  
8 give ideas for revisions to the Quality Assurance  
9 Standards issued by the FBI.

10 Q. Has that particular working group ever offered any opinion  
11 on the use of the US Y-STR database in interpreting Y-STR  
12 statistics?

13 A. Yes, they have.

14 Q. Have you relied on that working group's opinion in that  
15 area?

16 A. Yes, I have.

17 Q. Do you know if other forensic scientists rely on that  
18 working group's opinion in that area?

19 A. Yes, I do.

20 Q. What is that working group's opinion in that area?

21 A. Their opinion is the US Y-STR database should be used for  
22 determining frequencies of Y-STR profiles.

23 MR. ALSDORF: Thank you. I don't have anything  
24 else.

25 THE COURT: Ms. Hardenbrook?

## 1 VOIR DIRE EXAMINATION

2 BY MS. HARDENBROOK:

3 Q. Good morning.

4 A. Good morning.

5 Q. So it's my understanding that you have gotten some  
6 additional information over the weekend. So let's start  
7 by talking about any additional information, consultation  
8 that you have gotten.

9 What's the first new information that you reviewed or  
10 discussed over the weekend?

11 A. I reviewed the information about the US Y-STR database.

12 Q. Off the website?

13 A. Off the website.

14 Q. Had you done that previously?

15 A. I had a brief look before.

16 Q. So it's not something you reviewed in preparation for your  
17 initial testimony on this case, is that right?

18 A. Not for my initial testimony.

19 Q. It was only reviewed because of the foundational  
20 objection, is that right?

21 A. Yes, I studied more about this subject matter.

22 Q. So it wasn't something that you were super familiar with  
23 when you were running this test or testifying before the  
24 jury yesterday?

25 A. There were a number of points I was asked on cross that I

1 had not remembered.

2 Q. In fact, I had interviewed you Friday morning about much  
3 information that comes from that website, and you didn't  
4 know many of the answers to that, right?

5 A. You had interviewed me Friday morning and there were a  
6 number of questions that I wasn't entirely sure on.

7 MS. HARDENBROOK: It's my understanding the  
8 Court has had the opportunity to review that transcript,  
9 so I'm not going to retake all of that testimony.

10 THE COURT: I haven't read all of it, but I  
11 think I got through about seven pages before I came on the  
12 bench. It was just presented to me this morning.

13 I will take a look at it.

14 MS. HARDENBROOK: That's okay. I will ask the  
15 questions and get the answers today.

16 BY MS. HARDENBROOK:

17 Q. It's my understanding Mr. Alsdorf just asked you about an  
18 organization that gives an opinion that you should use the  
19 US Y-STR database, is that right?

20 A. Correct.

21 Q. There is a website associated with that group?

22 A. There is.

23 Q. In fact, there is a web page that I was specifically  
24 referred to. Did you review that website over the  
25 weekend?

1 A. I'm not sure if it's the same one.

2 Q. Okay.

3 It's the "DNA Initiative Advancing Criminal Justice  
4 Through DNA Technology." Would it help to take a look at  
5 it?

6 A. It would help me.

7 MS. HARDENBROOK: I only have one copy. Do you  
8 have an extra copy?

9 MR. ALSDORF: I believe it might be marked as an  
10 exhibit now.

11 MS. HARDENBROOK: Already?

12 MR. ALSDORF: No, I did not mark that.

13 BY MS. HARDENBROOK:

14 Q. Mr. Lin, I'm handing you what's been marked as Defense  
15 Exhibit No. 72. You can review that. Is that something  
16 you're familiar with?

17 A. This looks new to me. I don't recall seeing this before.

18 Q. Okay.

19 Is that the organization that you were talking to  
20 Mr. Alsdorf about?

21 A. This refers to the National Center for Forensic Science.  
22 It does not refer to SWGDAM.

23 Q. Okay.

24 It's your understanding the National Center for  
25 Forensic Science is what?

1 A. It's a non-profit organization funded by the National  
2 Institute of Justice.

3 Q. It maintains the Y-STR database?

4 A. It maintains the Y-STR database in conjunction with the  
5 University of Central Florida.

6 Q. Okay.

7 The organization admits that the database is going to  
8 become more reliable as it gets larger, is that right?

9 A. Yes, there will be more specific frequencies of Y-STR  
10 profiles as the database size increases.

11 Q. As it fills out to you graphically and ethnically, it will  
12 increase the scientific and forensic efficacy of the  
13 database, is that right?

14 A. As the size of the database increases, it will increase  
15 the efficacy.

16 Q. Right.

17 Has the US Y-STR database been updated since you were  
18 in court with me on Friday?

19 A. Yes, it has.

20 Q. It has. It was last updated on the 2nd, is that right?

21 A. Yes.

22 Q. So were you to run Mr. Earl's allele haplotype profile,  
23 full profile, today against the database, it could give us  
24 a completely different number yet again, is that right?

25 A. It could give a different frequency.

- 1 Q. We haven't run it since it was updated, so we don't know  
2 that?
- 3 A. Correct, it has not been run.
- 4 Q. You knew it was updated, but did not rerun the number?
- 5 A. I did not rerun the number.
- 6 Q. The information gets into the database by you going to a  
7 website, is that right?
- 8 A. That is correct.
- 9 Q. It's a publically-available website, and it has little  
10 drop-down menus for each allele to be entered?
- 11 A. Correct.
- 12 Q. The number of alleles that you can insert into the  
13 database actually changed between the first time you ran  
14 Mr. Earl and the second time you ran Mr. Earl, is that  
15 right?
- 16 A. I'm sorry, repeat the question.
- 17 Q. The number of alleles available to input to run through  
18 the system, that number actually changed between your two  
19 runs, is that right?
- 20 A. That is correct.
- 21 Q. It increased. More alleles were available the second time  
22 run than the first time?
- 23 A. Yes, there were.
- 24 Q. It's your understanding that those different alleles are  
25 associated with a different task kit than the ones the

- 1 Washington State Patrol uses?
- 2 A. That's correct.
- 3 Q. You indicated that the primary -- that the contributors to  
4 the Y-STR database were the Washington State Patrol  
5 contributed 40 samples, is that right?
- 6 A. That's correct.
- 7 Q. That some labs contributed samples, is that also correct?
- 8 A. Correct.
- 9 Q. I think you also mentioned the FBI contributed.
- 10 A. Yes.
- 11 Q. Marshall University contributed?
- 12 A. I would have to double-check the list.
- 13 Q. How about the Orange County coroner?
- 14 A. That I do not recall.
- 15 Q. Okay.
- 16 How about the San Diego Sheriff?
- 17 A. That I do not recall.
- 18 Q. The University of Arizona?
- 19 A. Yes, they are a contributor.
- 20 Q. The University of North Texas?
- 21 A. Yes.
- 22 Q. In fact, if you go to the website, you can get a specific  
23 breakdown of the number of samples that were contributed  
24 by each of these organizations, is that right?
- 25 A. Correct.

1 Q. Another thing you can get on the website is a breakdown of  
2 the ethnic contribution to the website, is that correct?

3 A. Correct.

4 Q. In fact, one of the reasons why the Washington State  
5 Patrol has not given samples to the database on a larger  
6 scale is that you have to have that ethnic information  
7 when you input samples?

8 A. That is correct.

9 Q. That is because the Y chromosome is different in that it's  
10 the same for everyone throughout a whole paternal line, is  
11 that right?

12 A. Yes, it is.

13 Q. With regular DNA, more traditional DNA testing, there was  
14 variety even among father and son of DNA?

15 A. Correct.

16 Q. Because are looking at more DNA off just the Y chromosome?

17 A. Looking at more DNA, but also with regular DNA analysis,  
18 there is inheritance from the mother.

19 Q. So in regular DNA analysis, you don't have the concern  
20 that it could be reflecting someone in the paternal line  
21 exactly?

22 A. That is correct.

23 Q. So in Y-STR analysis in particular, ethnicity is more  
24 important than in regular DNA, is that correct, because  
25 it's directly inherited?

- 1 A. More important in what sense?
- 2 Q. In the sense that if you look at anyone and their paternal  
3 line, like surnames, for example? Surnames are inherited,  
4 is that right?
- 5 A. Generally, yes.
- 6 Q. Right. If your dad is a Johnson, often the son is going  
7 to be a Johnson?
- 8 A. Yes.
- 9 Q. The same way that names are inherited paternally, that is  
10 how the Y chromosome travels, is that right?
- 11 A. That's how it's inherited.
- 12 Q. That would lead us to believe that different ethnic groups  
13 would have different ratios within that ethnic group of  
14 certain Y chromosomes?
- 15 A. There could be differences in the relative frequencies of  
16 the Y haplotype.
- 17 Q. So for example, if you were -- with the surname analogy,  
18 let's continue that. If you are looking in Texas and  
19 you're searching for a Gonzales, you may come up with a  
20 lot of hits in the surname search, is that right?
- 21 A. It would be possible.
- 22 Q. It would be less frequent if you are in Snohomish County,  
23 for example, and doing a surname search under Gonzales?
- 24 A. It could be.
- 25 Q. Just because the ethnic populations would differ, and that

- 1       could indicate that the paternal lines are differently  
2       clustered?
- 3   A.   There could be differences.
- 4   Q.   In fact, 30 percent of the contributions to the Y-STR  
5       database are from African-American individuals, is that  
6       right?
- 7   A.   I would have to check that number.
- 8   Q.   Mr. Lin, I would like to hand you what is marked as  
9       Defense Exhibit No. 73, and direct you to the second page.  
10      Does that refresh your recollection about what percentage  
11      of contributors to the Y-STR database is African-American?
- 12  A.   On this side sheet, it says for Version 3.1, the database,  
13      that 30.1 percent are African-American.
- 14  Q.   So now, since February 2, there is a Version 3.1, is that  
15      right?
- 16  A.   Yes.
- 17  Q.   The version you ran Mr. Earl under most recently was the  
18      3.0 version?
- 19  A.   Correct.
- 20  Q.   So you can't even tell us today what the ethnic breakdown  
21      was of the database under 3.0, is that right?
- 22  A.   Not off the top of my head.
- 23  Q.   Because the database has updated it since then, so the  
24      information they have available to us doesn't reflect the  
25      3.0 numbers?

1 A. Not on this sheet.

2 Q. Okay.

3 Hispanic is also a big contributor to the database, at  
4 least the 3.1 version. Around 17 percent of the database  
5 is Hispanic, is that right?

6 A. I would have to look. Here it says 17.3 percent.

7 Q. Because of that, when you search the database, you are  
8 able to search for a particular ethnicity, is that right?

9 A. It is possible to search for ethnicity.

10 Q. The Washington State Patrol does not do that?

11 A. We do not. We searched the entire database.

12 Q. When you did the most recent search of Mr. Earl, the  
13 number you came up with in relation to the whole database,  
14 is that his haplotype would not be expected to be found in  
15 more than 4,400 individuals, is that right?

16 A. Correct.

17 Q. But if you had been searching just for Caucasians, that  
18 number would change to one in 1,908 individuals, is that  
19 right?

20 THE WITNESS: Your Honor, may I consult my case  
21 file?

22 THE COURT: Yes, you can refer to your case  
23 file.

24 MS. HARDENBROOK: I think we have a marked  
25 version, State's 65.

1 MR. ALSDORF: That won't have the most recent  
2 run in it.

3 THE COURT: If that is from Friday, it obviously  
4 would not have the most recent run.

5 MS. HARDENBROOK: Well, I think that's the most  
6 recent time he ran my client was before then.

7 Are you sure it's not in here?

8 MR. ALSDORF: No, I'm not sure.

9 BY MS. HARDENBROOK:

10 Q. Mr. Lin, do you want to look at State's 65 and see if it  
11 is in there? I believe during the interview, you made a  
12 copy for us.

13 A. This looks like the first run that I did.

14 Q. The first run?

15 I will mark mine. I will have you compare it with  
16 yours that you have in your case file so we can have it  
17 marked in the record in just a second.

18 I'm handing you what's been marked as Defense Exhibit  
19 No. 74. Can you compare it to what you have in your file  
20 and let me know if that's the same document?

21 A. It is.

22 Q. Okay.

23 I would like to ask you some questions about it. So  
24 when you most recently ran Mr. Earl and came up with the  
25 one in 4,400, the computer print-out actually told you it

1        would be a lower number for Caucasians, is that right?  
2    A.    It would be a more frequent number.  
3    Q.    Okay.  
4        A more frequent number, which would be one in every  
5        1,908 individuals?  
6    A.    Correct.  
7    Q.    That is significantly different than 4,400, wouldn't you  
8        say?  
9    A.    It is different.  
10   Q.    Okay.  
11        The bottom number, the big number, is less than half?  
12   A.    Correct.  
13   Q.    The print-out also tells you how many Caucasian  
14        individuals are in the database, that it was searched  
15        again, is that right?  
16   A.    That's correct.  
17   Q.    That was 5,712 individuals?  
18   A.    Yes.  
19   Q.    Again, this is under the 3.0 version, which has changed  
20        again before today?  
21        Do you have any information about how the make-up of  
22        the Y-STR database compares to the US population?  
23   A.    I do not.  
24   Q.    But it is your understanding that the numbers you get from  
25        the database are supposed to be meaningful in relation to

1 the US population?

2 A. Yes.

3 Q. So in November of 2011, that number was one in 2,800 for  
4 Mr. Earl's haplotype, is that right?

5 THE WITNESS: Your Honor, if I may just consult  
6 the date.

7 MS. HARDENBROOK: Please do so.

8 THE COURT: Go ahead and refer to it.

9 A. Yes, in November of 2011.

10 Q. Then, in January of 2013, that number was one in 4,400, is  
11 that right?

12 A. Correct.

13 Q. That's almost a doubling of that bottom number?

14 A. Almost a doubling.

15 Q. So it changed significantly in a year and two months, is  
16 that right?

17 A. It has changed.

18 Q. Your understanding is the only reason that number has  
19 changed is because more samples were inputted into the  
20 Y-STR database?

21 A. That's correct.

22 Q. Anybody whose Y-STR profile is not found in the database  
23 would have the exact same number as Mr. Earl, is that  
24 right?

25 A. That is right.

- 1 Q. So the number doesn't vary at all in relation to the  
2 particulars of someone's profile if it's not in the  
3 database?
- 4 A. That is correct.
- 5 Q. So if in November of 2011, it was one in 2,800, and a year  
6 later it's one in 4,400, wouldn't one of those statistics  
7 have to be incorrect?
- 8 A. Not necessarily. The frequency that is determined is  
9 based on the size of the database at the time and the  
10 statistical correction that is made to it. It's a  
11 limitation of the database size and statistical method  
12 that can be applied to it.
- 13 Q. If that data is so limited by the database size, then how  
14 is it of any value to us if a year ago we would understand  
15 that in the US population his Y-STR profile would not be  
16 expected more than one in 2,800, and a year later it's  
17 markedly different? How is that helpful to us?
- 18 A. It is helpful because as the size of the database  
19 increases, it allows one to determine more specific  
20 frequency. The value that's determined by the website is  
21 a highly conservative value. The true value of the  
22 observed Y-STR profile might be less than one in 4,400.
- 23 Q. So if it's highly conservative and it's highly variable,  
24 and sporadically apparently updated, how does that help us  
25 understand anything better about the facts of this case?

1 How is that helpful to the jury?

2 A. It gives an idea about how much weight to give the  
3 evidence based on the possibility of finding the random  
4 profile in the US population.

5 Q. But a year ago, we would have told the jury they could  
6 give weight associated with one in 2,800, and now we are  
7 telling them it would be one in 4,400. Today it could be  
8 a completely different thing. How does that tell us  
9 anything about the US population?

10 A. The statistic gives an idea about the frequency we could  
11 expect. The statistic is calculated at a time that the  
12 profile is searched.

13 Q. Are you familiar with the Ceiling Principle?

14 A. I have heard of it.

15 Q. But it's not something you use?

16 A. It's not routinely used in the current DNA analysis.

17 Q. What's the principle at work here?

18 A. The principle at work in --

19 Q. In the Y-STR testing in what you are proposing to testify  
20 to the jury. What is the scientific principle at work?

21 It's not the Ceiling Principle. Is it the Product  
22 Principle. What principal are we talking about  
23 scientifically?

24 A. It's the Counting Method that's used in this database.

25 Q. The Counting Method essentially means you are taking a

1 group that may not be representative and you're telling us  
2 whether it's in there or whether it's not in there, is  
3 that right?

4 A. It's determining the number of times the profile is seen  
5 in the database.

6 Q. Right.

7 But there is no relation of the database to being  
8 somehow representative of the greater population, say, of  
9 the United States?

10 A. There is a relationship. The profiles that are submitted  
11 come from the US population.

12 Q. But not like percentage-wise? They don't reflect the  
13 ethnic breakdown of the country nationally?

14 A. They may or may not. The reason that a statistic measure  
15 is applied for frequency is to account for that.

16 Q. Your understanding of how it relates to the US population  
17 is that all of the submissions are from the US? Is that  
18 your testimony?

19 A. Yes.

20 Q. How does the US Y-STR website calculate the frequency rate  
21 for the haplotype in this case?

22 A. It calculates a frequency by applying a 95 percent  
23 confidence interval.

24 Q. That means we can be 95 percent confident in the number it  
25 turns out, is that right?

1 A. It means 95 percent of the time that one looks for a true  
2 frequency of the profile, it would fall within the range  
3 of the frequency that's given out.

4 Q. When we interviewed you on Friday, you were not aware that  
5 the Washington State Patrol had contributed any data to  
6 the database, is that right?

7 A. That is right.

8 Q. How did you learn that was incorrect information?

9 A. I reviewed it on the website.

10 Q. So other than reviewing the website, what other  
11 preparation did you do over the weekend on this issue?

12 A. Other preparation?

13 Q. Yes.

14 A. Consultation with a number of people.

15 Q. How did that change your opinion in this case? What  
16 additional information did that give you?

17 MR. ALSDORF: Objection, relevance.

18 THE COURT: I'll overrule the objection.

19 A. I'm sorry?

20 Q. This consultation, how did that impact your testimony  
21 today? What additional information did you gather?

22 Strike that.

23 Tell me about that. Tell me about the additional  
24 consultation.

25 A. Just in general?

- 1 Q. Please.
- 2 A. Going over the US Y-STR database to insure different  
3 particulars, and a number of questions being answered  
4 about the Washington State Patrol's submission.
- 5 Q. Those were like supervisors that you asked about the  
6 Washington State Patrol submission?
- 7 A. I'm sorry?
- 8 Q. I'm just trying to understand what it was you did over the  
9 weekend that's new. You said you consulted with people  
10 and you reviewed the website.
- 11 A. Yes.
- 12 Q. What information did you gather from your consultations  
13 with others?
- 14 A. More particulars about the US Y-STR database.
- 15 Q. Did you learn why Washington State Patrol does not  
16 ethnically search cases?
- 17 A. Not particularly that.
- 18 Q. That was one of the questions we talked about on Friday,  
19 right?
- 20 A. I think one of our areas. I'm not sure it was Friday.
- 21 Q. You said it was an official Washington State Patrol policy  
22 to search through all the ethnicities.
- 23 A. Yes.
- 24 Q. We still don't know why that is?
- 25 A. We do not take ethnicity into account.

- 1 Q. So if in the recent update of the US Y-STR database  
2 someone with Mr. Earl's profile, his haplotype, was  
3 entered into that database, would that change our number?  
4 Could that change your number?
- 5 A. That could.
- 6 Q. How could it change our number? Would it increase the  
7 frequency with which we would expect to see the haplotype?
- 8 A. I think it would increase, but I have no way of  
9 determining that without actually running the profile.
- 10 Q. Because you're not privy to exactly what information they  
11 take in and how they process it on the website, is that  
12 fair to say?
- 13 A. They don't give a list of the profiles that are there  
14 updated.
- 15 Q. Similarly, if when they recently updated it they put in a  
16 bunch more haplotypes which did not match Mr. Earl, then  
17 the frequency with which you would expect to see his  
18 haplotype type in the US population would get less  
19 frequent, is that right?
- 20 A. If there were no profiles that matched Mr. Earl that were  
21 added, it would decrease the frequency.
- 22 Q. So the number could change in either direction based on  
23 the update that happened over the weekend?
- 24 A. It could.
- 25 Q. The size of or the sample that Mr. Earl's haplotype was

1 run against in November of 2011 was 8,487 individuals, is  
2 that right?

3 A. Yes.

4 Q. The number of individuals it was ran against more recently  
5 in December was 13,248 individuals, is that right?

6 A. Yes, 13,248.

7 Q. Okay.

8 Again, we don't know how many individuals would be in  
9 the database today if it was run against those?

10 A. No, not without running it.

11 Q. So with the most recent run against the database where we  
12 had the 13,000 number, the Caucasian number within that  
13 was still only 5,700 approximately?

14 A. It was 5,712 in January when I ran it most recently.

15 Q. So my understanding of the 95 percent confidence interval  
16 is that they take each data point and put it on a graph,  
17 and the 95 percent is kind of like if they drew a line and  
18 all of those points of data would be expected to be within  
19 that range. The line is the 95 percent confidence  
20 interval. Is that your understanding of how it works?

21 A. It gives a range of values within which 95 percent of the  
22 time the true value would be within that range.

23 Q. So it would only be expected to be outside of that range  
24 five percent of the time?

25 A. Correct.

- 1 Q. The 95 percent confidence level is a general scientific  
2 theory, is that right?
- 3 A. Yes.
- 4 Q. It's not specific to DNA?
- 5 A. Not specific to DNA.
- 6 Q. So the only scientific theory that you're aware of or the  
7 two that are involved here is the 95 percent confidence  
8 interval, which is not DNA specific, is that right?
- 9 A. Correct.
- 10 Q. And the Counting Method?
- 11 A. Correct.
- 12 Q. Is the Counting Method DNA specific or is that also a  
13 general scientific principle?
- 14 A. It can be a general scientific principle.
- 15 Q. That is not the method that's used with more traditional  
16 DNA, is that right?
- 17 A. That's correct.
- 18 Q. Right now they use the Product Rule?
- 19 A. The Product Rule is involved.
- 20 Q. That's because regular DNA got to a point its databases  
21 are very, very big and, as a result, very, very reliable?
- 22 A. No, actually.
- 23 Q. Okay.
- 24 A. The Product Rule is because at each genetic location, the  
25 frequency of alleles is inherited independently for other

1 prototypes.

2 Q. That's why the Product Rule cannot apply to Y-STR because  
3 it is not unique. You share Y-STR with your paternal  
4 line?

5 A. You share Y-STR with the paternal line and all the alleles  
6 are inherited as a group.

7 Q. So if you ran 100 peoples' profiles through the US Y-STR  
8 database, you would expect five percent of those results  
9 to be improper, would be outside the range?

10 A. No, not necessarily.

11 Q. Okay.

12 How not? Isn't that what the 95 percent confidence  
13 interval tells me, that five percent of the time the  
14 number that is turned out would be wrong?

15 A. I'm sorry. Say that again.

16 Q. If it's 95 percent confident, it's five percent not  
17 confident, is that right?

18 A. Five percent of the time the range, the true value, would  
19 lie outside of the range.

20 Q. Outside of the number that you are talking to us about, is  
21 that right?

22 A. Yes.

23 Q. Okay.

24 You have done how many Y-STRs in your time at the  
25 Washington State Patrol?

1 A. Possibly a dozen cases roughly.

2 Q. That started in what year?

3 A. In 2010.

4 Q. I think we talked before how you testified in one Y-STR  
5 case, is that right?

6 A. Yes, previously.

7 Q. In our interview, I think you told me you didn't really  
8 get into the nitty-gritty of Y-STR?

9 A. Correct.

10 MS. HARDENBROOK: I have no further questions.  
11 Thank you.

12 THE COURT: Anything else?

13 MR. ALSDORF: Well, of course I could keep  
14 going, but the Court is the one who needs to make a  
15 determination on foundation. If the Court thinks there is  
16 a specific part of this that is lacking, I would be happy  
17 to try to address it or the Court can try to address it  
18 with Mr. Lin.

19 The State's position is that Mr. Lin has adequately  
20 described how the confidence interval accounts for, in a  
21 statistical way, any discrepancy between this database and  
22 the true US population. It's intentionally conservative.  
23 In that way, it is helpful and reliable to the jury based  
24 on how Mr. Lin explains it.

25 So I think all of Ms. Hardenbrook's argument goes to

1 cross-exam, which she is now fully prepared to do. Her  
2 arguments go to weight and not admissibility.

3 THE COURT: Ms. Hardenbrook?

4 MS. HARDENBROOK: I'm not sure if it's  
5 appropriate to argue in front of Mr. Lin.

6 THE COURT: Mr. Lin, why don't you step down?  
7 We will ask you to wait out in the hall for just a minute.

8 MS. HARDENBROOK: My understanding is that we  
9 are discussing the admissibility of expert testimony  
10 basically on the prong of is it helpful to the jury.

11 The fact that the statistics can change so markedly  
12 within a year shows us that the statistics are not correct  
13 because clearly it can't have been one in 2,800 a year ago  
14 and one in 4,400 now.

15 The population of the United States has not doubled or  
16 has not been a significant enough change in the population  
17 to have both of those statistics being 95 percent  
18 accurate. The fact that the statistic changed again over  
19 the weekend shows us how unreliable those numbers are.  
20 They are not yet to the level of traditional DNA.

21 The other thing that's left reliable about Y-STR DNA is  
22 that it only looks at one chromosome, only looking at the  
23 Y. So you don't have different chromosomes to compare as  
24 you do in traditional DNA. You don't have the principle  
25 that the Court went over in Buckner and Copeland and found

1 that the scientific community had accepted DNA, that it is  
2 reliable, that these numbers that the jury can attach so  
3 much weight to come from somewhere, that they mean  
4 something, that they actually tell us something about the  
5 wider world.

6 In this case, we have no such information. There is no  
7 relation between the information in the Y-STR database and  
8 the US population, other than all the people put in it  
9 come from the United States. That does not make it  
10 representative.

11 Using the Counting Principle, you're assuming them to  
12 be representative of the US population, because only if  
13 they are does it tell us something about the wider  
14 population.

15 We know from physiological research that juries love  
16 numbers. They love numbers especially in the context of  
17 DNA. So we have to be careful in getting those numbers,  
18 especially when those numbers are variable, fluid, and do  
19 not have a lot of meaning, as is the case here.

20 The State should definitely not be able to go into any  
21 kind of a match or saying that the profile is the profile  
22 of Mr. Earl. That is exactly what the Court did not allow  
23 in Copeland and Buckner. Even with much more reliable  
24 data, they still said it should be said in a number, in a  
25 predictive or a probability expression rather than the

1 conclusion of an actual match. I also submit that the  
2 number has no import here.

3 On Friday -- Your Honor has seen the transcript --  
4 Mr. Lin did not know anything about this database. Today  
5 he still knew very little about the database, and he  
6 essentially reviewed what's in the public record. That  
7 means a juror could go on there and essentially plug in  
8 information and get something.

9 He is not allowed to give us the scientific basis that  
10 we need for this number to mean something. He is not able  
11 to convey that to the jury. In doing so, it's not  
12 helpful, and the Court should exclude it.

13 THE COURT: I have heard enough argument in this  
14 matter. Mr. Lin didn't know this would be an issue when  
15 he showed up in court here on Friday to testify. He found  
16 out that there was an issue regarding his scientific  
17 principles on which his testimony would be based in the  
18 database involved when he showed up here.

19 Given the fact we are conducting this hearing during  
20 the course of the trial with the jury waiting in the jury  
21 room on Day 6 of a five-day trial, it's not surprising  
22 that the witness would go back and check the database and  
23 look at the underlying issues that have been raised by  
24 counsel and be able to testify to some of those on Monday.  
25 I see nothing surprising or improper about that if that is

1 being suggested here.

2 Theoretically, if we had every person in the United  
3 States in the Y-STR database, and we ran the numbers of  
4 profile of a person every day, we would not get the same  
5 number every day because that population of the United  
6 States changes from day to day. So these numbers,  
7 although they are different at the times they are run,  
8 cannot be said to be incorrect, and they are correct given  
9 the limitations of the size of the database available to  
10 run against on that particular day. That fact does not  
11 make testimony inadmissible. It's a fact the jury may  
12 consider in giving weight to that testimony.

13 I'm not going to exclude the testimony. I think the  
14 testimony is helpful to the jury. The jury may give such  
15 weight as it deems appropriate to that testimony. The  
16 testimony must be expressed in terms of statistical  
17 probabilities. The scientific methodology tested in the  
18 scientific community, the testimony we have here, has been  
19 given in many other cases. I see one other case cited  
20 here by counsel, State vs. Bander, a June 2009 Division I  
21 case, 150 Wn.App. 690.

22 The Court will allow testimony as to statistical  
23 probabilities in this case on the two runs that were made.

24 Is there anything else?

25 MS. HARDENBROOK: Not from the defense.

1           MR. ALSDORF: Just so counsel knows about the  
2 whole update of the database this weekend, I think it was  
3 a surprise to everyone. Of course, we didn't know that  
4 this would be a six-day trial. The database was updated  
5 this weekend.

6           I did ask Mr. Lin if he could rerun the numbers again  
7 on Version 3.1 of the database. He said the reason why he  
8 didn't feel comfortable doing that is because he needs his  
9 results to be peer-reviewed, and there wasn't enough time  
10 for that to be accomplished. That is something I may go  
11 into with him if counsel brings it up.

12           THE COURT: Okay.

13           In terms of the rest of the day, it's now about 10:00,  
14 and the jury has been back there about an hour. I want to  
15 get the jury out here and Mr. Lin's testimony before the  
16 jury. The State is then going to rest at the conclusion  
17 of that. In terms of defense testimony, what can we  
18 expect today?

19           MS. HARDENBROOK: I intend to briefly call  
20 Detective Quick to the stand. I intend to briefly call  
21 Annette Tupper from the Prosecutor's Office to the stand.  
22 I expect to have Dr. Riley, my expert witness, testify.

23           THE COURT: We will be able to accomplish that  
24 all today?

25           MS. HARDENBROOK: I believe so. We may even get

1 to closings today.

2 THE COURT: I hope so because I have the civil  
3 motions calendar tomorrow morning. I have summary  
4 judgments and things I need to read during the course of  
5 the day to prepare for that.

6 MS. HARDENBROOK: I will need to make a Green  
7 motion outside the presence of the jury once the State  
8 rests, so I don't know if we can get Lin done before we  
9 break before the mid-morning break. That might be a  
10 natural place for me to do that.

11 THE COURT: Let's bring our one juror out here,  
12 Juror No. 14, and deal with that first. Then, we will  
13 take our morning break and then run through the rest of  
14 the morning.

15  
16 (Juror No. 14 was brought into the  
17 courtroom)

18 THE COURT: All right, sir. You are in Seat  
19 No. 14 as a juror in this matter. I have a communication  
20 from you that says: "It has or will become a hardship on  
21 me if I'm going to need to be required to serve past  
22 Tuesday at 5 p.m." Do you want to explain?

23 JUROR NO. 14: Yes, Your Honor.

24 THE COURT: Go ahead.

25 JUROR NO. 14: When we were selected last week,

1       you had assured us that we would be done Friday.  
2       Obviously, that hasn't happened. I actually started  
3       vacation on Friday and had a ski trip plan, and it was a  
4       week-long trip, and we were going to spend the night in  
5       Vancouver. We were supposed to leave today. That ticket  
6       has been non-refunded, so I have incurred that.

7       I would like to go back to -- I drove 80 miles  
8       yesterday to come back to be here in anticipation that we  
9       will be done Tuesday night, so I can drive back.

10             THE COURT: You drove here from Vancouver today?

11             JUROR NO. 14: No, from Mount Baker.

12             THE COURT: Mount Baker.

13             JUROR NO. 14: We were going to go from Mount  
14       Baker to Vancouver for a night tonight. That ticket has  
15       been non-refunded. I want to go back and finish my  
16       vacation in Mount Baker. I would like to leave Tuesday  
17       night.

18             This is not something new. I have shared this  
19       information with my jurors that I had this trip planned,  
20       and I'm upset about it. It's not good. I will work with  
21       it, but last week you said we should be done by Tuesday.

22             THE COURT: That was our best prediction at that  
23       point in time.

24             JUROR NO. 14: I understand that. I feel like I  
25       have done more than --

1 THE COURT: I have to agree. I certainly  
2 apologize for the inconvenience this has caused you.

3 Is there any objection to releasing this juror?

4 MR. ALSDORF: No, Your Honor.

5 MS. HARDENBROOK: No, Your Honor.

6 THE COURT: All right, sir. We are going to  
7 release you at this time.

8 JUROR NO. 14: Thank you, Your Honor.

9 THE COURT: So let the other jurors know we are  
10 going to take our morning recess, and we will be ready to  
11 go in 15 minutes.

12

13 (Court in recess)

14

15 THE COURT: Ms. Hardenbrook?

16 MS. HARDENBROOK: For clarification, will the  
17 Court strike the last sentence Mr. Lin testified to before  
18 the jury? He said there was a match to Mr. Earl.

19 THE COURT: That's what he said.

20 Is there any objection? I'm not sure the jury  
21 remembers what was the last thing he said on Friday.

22 MR. ALSDORF: That's the thing. Whether or not  
23 we get to use the "M" word or not, I intend to go into the  
24 details of that with Mr. Lin as far as there was a  
25 17-point comparison between the Y-STR profile on the

1       underwear and the defendant's reference sample.  
2       Point-by-point they were identical or the same or matched.  
3       "Match" is the word he used in his report. I think it's  
4       appropriate. In no way are we suggesting that there is an  
5       overall identification, conclusive identification based on  
6       this, but it's the language that's used in his report, and  
7       I think it's appropriate.

8               MS. HARDENBROOK: My understanding of the case  
9       law is that that conclusion can only be expressed in terms  
10      of a number. He can say I compared. I looked at 17  
11      points, and my conclusion is I cannot exclude Mr. Earl  
12      from the one in 4,400 that could have contributed this  
13      sample.

14             I don't think he needs to testify to the specific  
15      alleles matching. I think that amounts to the same thing.  
16      You are saying this is a DNA match to Mr. Earl. The case  
17      law says it can only be expressed in terms of --

18             MR. ALSDORF: Keep in mind that the case law in  
19      this area is there is autosomal DNA which alleles differ  
20      from allele to allele. When you're dealing with Y-STR  
21      profiles, they are inherited as a group. In that way, a  
22      match is more meaningful in a Y-STR case. I think Mr. Lin  
23      will adequately explain that.

24             THE COURT: Well, I'm not going to strike that  
25      testimony as long as that testimony is now clarified for

1 the jury in terms of what he means by that.

2 MR. ALSDORF: Sure. That will be my first  
3 question.

4 MS. HARDENBROOK: The Court is now letting him  
5 say it's a match?

6 THE COURT: No. I'm merely saying that it must  
7 be clarified to get into the statistical probability, and  
8 all the other testimony that we have talked about.

9 So let's bring out the jury.

10

11 (The following proceedings were had in  
12 the presence of the jury)

13 THE COURT: We will ask the jurors at this point  
14 to shift because we have one juror in a lower seat, and  
15 Juror No. 14 has been excused because of prior planning.  
16 So everybody can shift down. That's fine for our  
17 purposes. Please be seated. That's a more comfortable  
18 position for you.

19 JUROR NO. 1: I can see a little bit better.

20 THE COURT: You may proceed.

21 MR. ALSDORF: Thank you, Your Honor.

22

23

24

25

1        MICHAEL LIN.                    witness herein, after being  
2    previously sworn, was examined and  
3    testified as follows:

4    **DIRECT EXAMINATION**

5        **BY MR. ALSDORF:**

6        Q. Mr. Lin, good morning.

7        A. Good morning.

8        Q. On Friday afternoon, you were testifying about -- I  
9    believe you testified that the Y-STR profile from the  
10    inside of the Nick Jr. underwear matched the Y-STR profile  
11    of Brandon Earl's reference sample. Do you remember that  
12    testimony?

13        A. I did say that.

14        Q. Okay.

15    What specifically did you mean by that?

16        A. By that, I meant the data of the profile from the Nick Jr.  
17    underpants is the same as that of the reference sample for  
18    Mr. Earl.

19        Q. Okay.

20    When you say "data of the profile," how many points of  
21    data are we talking about and where does that come from?

22        A. There are 17 genetic locations that are analyzed with  
23    Y-STR testing, and the data comes from each of those 17  
24    locations.

25        Q. So you compared the 17 genetic locations from the

1 underwear sample to the defendant's reference sample?

2 A. That is correct.

3 Q. Okay.

4 Was there any difference in those 17 point-by-point  
5 comparisons?

6 A. There was no difference.

7 Q. Now, talk to the jury about how you take that information  
8 and generate statistics based on that information.

9 A. The information from those different genetic locations are  
10 searched against a database, and there is a website that's  
11 used to access that database.

12 Q. All right.

13 Let's talk about the database a little bit. What's it  
14 called?

15 A. It is called the US Y-STR database.

16 Q. Do you know who organizes or maintains that database?

17 A. The National Center for Forensic Science organizes the  
18 database.

19 Q. How did they come to -- well, what kind of an organization  
20 is that?

21 A. It is a non-profit organization.

22 Q. What's your understanding of how that non-profit  
23 organization came to possess a collection of Y-STR  
24 profiles?

25 A. They request a submission of Y-STR profiles from various

1 agencies.

2 Q. Like what sorts of agencies?

3 A. Private companies such as Applied Biosystems or Promega  
4 get samples to their database, and there are crime  
5 laboratories throughout the country such as the FBI that  
6 also submit samples.

7 Q. Does the Washington State Patrol ever submit samples?

8 A. Yes, 40 have been submitted by the Washington State  
9 Patrol.

10 Q. Only 40?

11 A. Only 40.

12 Q. Okay.

13 Why doesn't the Washington State Patrol submit every  
14 sample that it takes to the US Y-STR database?

15 A. There are a number of reasons. One is that the ethnicity  
16 of the sample has to be reported as a sample is submitted.  
17 We do not collect that as a matter of policy when we  
18 process samples.

19 Q. Are there any other reasons?

20 A. The submission of samples -- we process our case work in  
21 our labs. So a lot of the samples could conceivably come  
22 from those of suspects that are in cases. So submitting  
23 those profiles to the database might give a subset of the  
24 database being related to suspects.

25 Q. What's the size of this database compared to, say, the

1 CODIS database that deals with standard DNA analysis?

2 A. The CODIS DNA database has many more samples than the US  
3 Y-STR database.

4 Q. Do you know approximately how big the US Y-STR database  
5 is?

6 A. It's at least 23,000 samples. I don't have the exact  
7 figure off the top of my head.

8 Q. How does that compare -- you don't need exact figures, but  
9 how does that compare to the CODIS database of standard  
10 DNA?

11 A. The CODIS standard database, at least hundreds of  
12 thousands, maybe even millions.

13 Q. So how does the size of the database affect the  
14 statistics that are reported when you're using it to  
15 generate statistics?

16 A. The size of the database for Y-STR profiles is the primary  
17 factor that determines the calculated frequency of  
18 observing a Y-STR profile.

19 Q. So is it fair to say that the larger the database, the  
20 more reliable the number coming out of that database?

21 A. The larger the database, the more specific the frequency  
22 of the observed profile can be calculated.

23 Q. So would you basically agree that the US Y-STR database is  
24 a relatively small database for statistical purposes?

25 A. I would agree that it's a relatively small database

1 compared to the US population.

2 Q. Okay.

3 So what specific method is employed by this database to  
4 make sure that the numbers coming out of that database  
5 have anything to do with the entire US population?

6 A. The database calculates a 95 percent confidence interval,  
7 and the statistic produced by the confidence interval is a  
8 highly conservative value that takes into account the  
9 relatively small size of the database and what they call  
10 sampling errors might be introduced to the database.

11 Q. Okay.

12 You said highly conservative value?

13 A. Yes, I did.

14 Q. In what way could a number be conservative or anything  
15 else? Can you try to explain that for the jury?

16 A. Conservative meaning that a statistic that could  
17 potentially include more people as possible contributors.

18 Q. Okay.

19 Let's get into the numbers that you actually obtained  
20 in this case. First of all, is using this  
21 publicly-available database to input genetic information,  
22 is that something you reasonably rely on as a forensic  
23 scientist in your field?

24 A. Yes, it is.

25 Q. Okay.

1           Do you know that other forensic scientists in your  
2           field also rely on this website to generate statistics for  
3           Y-STR?

4   A.   Yes.

5                   MS. HARDENBROOK:  Objection, lack of personal  
6           knowledge.

7                   THE COURT:  Overruled.

8   A.   (Continued) Yes, other forensic scientists do use the  
9           database.

10   Q.   In fact, isn't this the recommended database for use in  
11          generating statistics in this particular area?

12                   MS. HARDENBROOK:  Objection, leading.

13                   THE COURT:  Overruled.

14   A.   Could you restate the question?

15   Q.   In fact, isn't this use of this particular database the  
16          recommended database for generating statistics in Y-STR  
17          cases?

18   A.   Yes, it is the recommended database.

19   Q.   Who is doing that recommending?

20   A.   An organization known as SWGDAM or the Scientific Working  
21          Group on DNA Analysis Methods.

22   Q.   Tell us a little bit about what that working group is.

23   A.   It is an organization of forensic scientists at the  
24          national, state, and local level throughout the United  
25          States.  They make a number of recommendations and

1 guidelines in DNA analysis.

2 Q. I'm going to be handing you State's Exhibits 56, 59, and  
3 70, and we will refer to them in turn. So starting with  
4 State's Exhibit 56, what do you see there?

5 A. I see a copy of the crime laboratory report that I had  
6 written in November of 2011.

7 Q. Is there information in there about your use of the Y-STR  
8 database to generate statistical information in this case?

9 A. Yes, there is information.

10 Q. Okay.

11 So tell us what you did in November of 2011 to generate  
12 a statistic using that database.

13 MS. HARDENBROOK: Your Honor, if we could have  
14 him let us know when he is looking at the exhibit, that  
15 would be helpful.

16 THE COURT: Yes, can you do that?

17 THE WITNESS: Yes.

18 MS. HARDENBROOK: Thank you.

19 THE COURT: Just let us know when you are  
20 looking at the exhibit.

21 THE WITNESS: Okay.

22 THE COURT: Just so the jurors will know you are  
23 looking at a document.

24 THE WITNESS: I'm just going to go ahead and  
25 look at this.

1 A. I searched the profile obtained from the Nick Jr.  
2 underpants into this database.

3 Q. What did you find?

4 A. I found that this Y-STR profile was observed zero times in  
5 the database and it is not expected to occur more  
6 frequently than one in 2,800 male individuals.

7 Q. One in 2,800 male individuals in the world?

8 A. In the US population.

9 Q. Okay.

10 So now let's apply that to the 95 percent confidence  
11 interval concept that you testified about. Describe for  
12 the jury the difference between the true value and the  
13 range that this one in 2,800 refers to.

14 A. The one in 2,800 individuals is the 95 percent confidence  
15 interval that's calculated by the website. As I referred  
16 to earlier, it's a highly conservative value. So the true  
17 value of their frequency might be much less than the one  
18 in 2,800 individuals.

19 Q. Okay.

20 So if the true value was one in 10,000, would that be  
21 within the range of --

22 MS. HARDENBROOK: Objection, calls for  
23 speculation. He can't testify as to what the true value  
24 may be. He can testify as to a statistic and he has done  
25 so.

1 MR. ALSDORF: I'm not asking him to opine on  
2 what the true value is. I'm asking him more about the  
3 range.

4 THE COURT: Let's hear the entire question.

5 MR. ALSDORF: Yes.

6 BY MR. ALSDORF:

7 Q. If the true value was one in 10,000, would that fall in  
8 what you characterized as a highly conservative 95 percent  
9 confidence interval range of one in 2,800?

10 MS. HARDENBROOK: Defense renews the objection.

11 THE COURT: I will overrule the objection.

12 A. Yes. A value of one in 10,000 would fall within this  
13 range.

14 Q. As would a value of one in a million?

15 A. Yes, it would.

16 Q. How about one in a billion?

17 A. That value would also fall within the range.

18 Q. Okay.

19 So on the other side of 95 percent, there is five  
20 percent, right?

21 A. Correct.

22 Q. Tell us what we would be learning five percent of the  
23 time?

24 A. Five percent of the time, the true value would be expected  
25 to fall outside of the range.

1 Q. So something less than one in 2,800?

2 A. Something more frequent than one in 2,800.

3 Q. So like one in 2,000, for example, would be within that  
4 five percent of rather unexpected results, right?

5 A. Yes.

6 Q. Okay.

7 Now, what is the single biggest factor of how  
8 statistics coming out of this database change over time?

9 A. The biggest factor is the size of the database. As more  
10 samples are added to the database, that affects the  
11 calculated frequency.

12 Q. Did you ever have a chance to run the profile of what was  
13 inside the Nick Jr. underpants after your initial run from  
14 November 2011?

15 A. Yes, I did.

16 Q. Is there a document in front of you that reflects that  
17 subsequent run?

18 A. Yes, State's Exhibit 59.

19 Q. What is that, State's Exhibit 59?

20 A. It is a copy of the crime laboratorial report that I wrote  
21 in January of this year.

22 Q. Who requested that you put another run of the numbers  
23 through the database?

24 A. You did, sir.

25 Q. What did you find?

- 1 A. Looking at the State's exhibit, the Y-STR profile was  
2 observed zero times in the US Y-STR database, and is not  
3 expected to occur more frequently than one in 4,400  
4 individuals in the US population.
- 5 Q. One in 4,400?
- 6 A. That's correct.
- 7 Q. What was the specific date when you ran that number?
- 8 THE WITNESS: If I may consult my case file.
- 9 THE COURT: You may.
- 10 A. I ran that on January 28 of this year.
- 11 Q. When you ran that number on January 28, 2013, what was the  
12 most recent update to the database that had occurred prior  
13 to that?
- 14 A. Prior to --
- 15 Q. Looking for a date, yes.
- 16 When you ran the number on January 28, when had the US  
17 Y-STR database most recently been updated?
- 18 A. At that time, it was last updated on July 29 of 2012.
- 19 Q. Did you learn anything about the US Y-STR database this  
20 weekend?
- 21 A. Yes, I did.
- 22 Q. What did you learn?
- 23 A. I learned there was an update of the database this last  
24 Saturday.
- 25 Q. Okay.

1           Did I ask you if you could do yet a third run of the  
2 numbers based on this Saturday update of the database?

3           MS. HARDENBROOK: Objection, hearsay.

4           THE COURT: Overruled.

5 A. You did comment about whether I had done a search.

6 Q. Okay.

7           Had you done a search?

8 A. I did not do one.

9 Q. Did you do one?

10 A. I did not.

11 Q. What's the reason why you did not?

12 A. As with all of our crime laboratory work, if I had done  
13 another search, I would have to have had it peer-reviewed,  
14 go through the peer-review process where another qualified  
15 forensic scientist looks at the material to see if it is  
16 acceptable, and there was no time for me to get that  
17 accomplished.

18 Q. By the way, did the overall sample size of the database  
19 increase or decrease between July of 2012 and this last  
20 Saturday?

21 A. The size of the database increased.

22 Q. That's what you already called the primary factor that  
23 affects the statistics, right?

24 A. Yes, I did.

25           MR. ALSDORF: Thank you, Mr. Lin. No further

1 questions.

2 THE COURT: You may cross-examine.

3 MS. HARDENBROOK: Thank you, Your Honor.

4

5

**CROSS EXAMINATION**

6 **BY MS. HARDENBROOK:**

7 Q. Good morning, Mr. Lin.

8 A. Good morning.

9 Q. So Mr. Lin, you have been with the Washington State Patrol  
10 Crime Lab for almost five years?

11 A. That is correct.

12 Q. All right.

13 You are in the DNA division?

14 A. The DNA section.

15 Q. You do both traditional autosomal DNA testing and Y-STR,  
16 is that right?

17 A. That is correct.

18 Q. The traditional testing, you have done it about 100 times?

19 A. On the order of about that.

20 Q. Okay.

21 Y-STR DNA testing, you have done between eight and a  
22 dozen times, is that right?

23 A. About that, about a dozen times.

24 Q. There are eight other analysts besides yourself at the  
25 Cheney lab?

- 1 A. Eight other DNA analysts.
- 2 Q. Three of them are Y-STR qualified?
- 3 A. Four of them are Y-STR qualified.
- 4 Q. Is one of those people who's qualified Lorraine Heath,  
5 your supervisor?
- 6 A. Yes, she is.
- 7 Q. Y-STR is a more particularized kind of DNA. Instead of  
8 looking at multiple chromosomes, you are only looking at  
9 one chromosome, is that right?
- 10 A. That is correct.
- 11 Q. It's the Y chromosome which only males have?
- 12 A. That's correct.
- 13 Q. It is a chromosome where you get the whole thing if you're  
14 a man from your father, from your grandfather, from your  
15 great-grandfather, is that right?
- 16 A. Only on the father's side of the inherited line.
- 17 Q. Everyone in a paternal line of a family is going to have  
18 the exact same Y chromosome profile, is that right?
- 19 A. Yes.
- 20 Q. In looking at the Y chromosome, there are only certain  
21 regions of the Y chromosome that you are looking at, is  
22 that right?
- 23 A. That is correct.
- 24 Q. Which ones you look at depends on which commercial testing  
25 kit you're using to do your DNA analysis, is that right?

- 1 A. Yes, it does differ according to kit.
- 2 Q. The Washington State Patrol kit looks at 17 regions of the  
3 Y chromosome?
- 4 A. That's right.
- 5 Q. At the crime lab, you have a bunch of different equipment  
6 available to you to help your work in the lab, is that  
7 right?
- 8 A. Yes, we do.
- 9 Q. That includes a camera. You have a camera available for  
10 use should you want to use it?
- 11 A. Yes.
- 12 Q. You have never contaminated a sample with your own DNA  
13 that you know of, is that right?
- 14 A. That's correct, not that I know of.
- 15 Q. At least once you detected another analyst's DNA in what  
16 you were processing, is that right?
- 17 A. Yes, that's right.
- 18 Q. When that happens, there is an investigation to figure out  
19 the cause of the contamination?
- 20 A. Yes, we do try to find the cause.
- 21 Q. This has happened to you twice?
- 22 A. Maybe twice.
- 23 Q. You don't specifically know what happened either of those  
24 two times, is that right?
- 25 A. I would have to check the files.

- 1 Q. It could be just proximity, somebody being too close, is  
2 that your understanding?
- 3 A. There is a possibility that proximity could be a factor.
- 4 Q. Because it's possible to transfer DNA from one object to  
5 another object, is that right?
- 6 A. That is correct.
- 7 Q. Depending on many variables?
- 8 A. There could be a number of factors involved.
- 9 Q. Including how close the items were?
- 10 A. That could be a factor, depending whether there was  
11 contact and how much so.
- 12 Q. What kind of contact? You mean whether there was friction  
13 or rubbing?
- 14 A. Yes, that would be a factor.
- 15 Q. Whether they were wet or dry?
- 16 A. It could be a factor, but depending on how the samples  
17 were handled.
- 18 Q. How heavily saturated a piece of fabric is that contains  
19 DNA?
- 20 A. Yes, that could be a factor.
- 21 Q. You have received the DNA extracts in this case from  
22 Kristina Hoffman?
- 23 A. Yes.
- 24 Q. Via UPS?
- 25 A. I don't recall by which method, but they did come from

- 1 her.
- 2 Q. They came from the mail?
- 3 A. They came through some sort of delivery.
- 4 Q. Okay.
- 5 It's not a special like DNA delivery service. It's one  
6 of the standards methods of delivery?
- 7 A. Yes, it is.
- 8 Q. It was one package that came, and it contained all the  
9 extracts in it, is that right?
- 10 A. It was one package containing the extracts, but the  
11 extracts were separately contained.
- 12 Q. Right. They were in separate plastic tubes?
- 13 A. Correct.
- 14 Q. Each tube had two tubes inside it?
- 15 A. That's right.
- 16 Q. So you received a total of four screw-cap tubes, is that  
17 right?
- 18 A. That is correct.
- 19 Q. You would have noted if the screw caps were not intact?
- 20 A. Yes, I would have noted that.
- 21 Q. Because that could have been an indication of  
22 contamination?
- 23 A. Correct.
- 24 Q. You don't normally photograph incoming evidence?
- 25 A. Depends on the item of evidence.

- 1 Q. You would just -- if something was unusual, you would  
2 write it down, not necessarily photograph it, is that  
3 right?
- 4 A. That could be the situation.
- 5 Q. You received the extracts in dried form?
- 6 A. Yes, they were dried.
- 7 Q. So you added liquid to turn them back into a liquid form?
- 8 A. Yes, I did.
- 9 Q. To do that, you use a pipette?
- 10 A. Yes. Yes, we do.
- 11 Q. Generally you look at evidence before you look at  
12 reference samples?
- 13 A. In general, yes.
- 14 Q. The reason to do that in general is to process -- so you  
15 don't cross-contaminate, is that right?
- 16 A. That is right.
- 17 Q. Because the reference is who you are looking for. So if  
18 you process it before you process the evidence, it could  
19 increase the likelihood of contamination?
- 20 A. That is correct.
- 21 Q. You can't remember in this case what order you processed  
22 them in, is that right?
- 23 A. When you say "processed," do you mean the liquefaction?
- 24 Q. Anything; how you interacted with them. When we spoke to  
25 you, you weren't able to recall which order you generally

1 processed them in, whether you did the evidence before the  
2 reference as is the normal procedure.

3 A. When I resuspend the samples, I don't recall off the top  
4 of my head. In general terms, I do do evidence before  
5 references. For example, in amplification and  
6 quantitation, I do do evidence samples before references.

7 Q. But you didn't do those processes in this case. You  
8 didn't do the amplification and the purification.  
9 Kristina Hoffman did those, right?

10 A. Kristina Hoffman did with extraction and the quantitation.  
11 I did the amplification and the further down-the-stream  
12 process.

13 Q. Okay.

14 The amplification, that is where everything is copied?

15 A. That's right. Various DNA segments are copied.

16 Q. While your general practice is to do evidence before  
17 reference, you don't remember whether you did that in this  
18 case?

19 A. For amplification, I did evidence before reference  
20 samples.

21 Q. How do we know that? Did you write it down somewhere that  
22 you did that?

23 A. I have a list that I write down in the amplification  
24 batch, and I go in order down that list.

25 Q. You used Kristina Hoffman's quantification numbers to do

1 your work, is that right?

2 A. That is right.

3 Q. She had calculated 15.05 nanograms per microliter of total  
4 human DNA, is that right?

5 THE WITNESS: Your Honor, if I may consult my  
6 case file.

7 THE COURT: Yes.

8 MS. HARDENBROOK: Please do.

9 MR. ALSDORF: For the record, that is State's  
10 Exhibit 65 that has been furnished as a copy of that.

11 A. I'm sorry. Could you state the question again?

12 Q. That Ms. Hoffman had calculated 15.05 nanograms per  
13 microliter of total human DNA.

14 A. That is correct.

15 Q. Okay.

16 And that .207 nanograms per microliter were male DNA?

17 A. Right. .207.

18 Q. So that leaves 14.78 nanograms per microliter is the  
19 female DNA, is that right?

20 A. Approximately so.

21 Q. So about 70 times as much female as male?

22 A. I can't quite do that math off the top of my head.

23 Q. Okay.

24 A lot more female than male?

25 A. Yes, significantly more.

1 Q. In fact, that's one of the reasons you were pursuing the  
2 Y-STR testing?

3 A. Correct.

4 Q. So you added water back into the extracts, is that right?

5 A. I will just double-check. Yes, I did.

6 Q. First, you add water, and again we're doing it with a  
7 pipette?

8 A. That's correct.

9 Q. We are changing the pipette tip between each tube?

10 A. Yes, the pipette tip gets changed.

11 Q. You're aiming for about .5 nanograms of DNA in your Y  
12 filer tube.

13 A. .5 nanograms of DNA 40 amplification process.

14 Q. Okay.

15 There are a billion nanograms in one gram, is that  
16 right?

17 A. Yes.

18 Q. So .5 nanograms is an incredibly small amount?

19 A. It is a small amount.

20 Q. So after you added the water to the tubes, then you add  
21 the reagents, the chemicals?

22 A. What I did is I took a portion of the liquid extracts 40  
23 amplification process, and that's where I added the  
24 reagents for the amplification process.

25 Q. Those reagents include some fluorescent dyes that help to

- 1 show the DNA later down the line?
- 2 A. Yes, they do.
- 3 Q. You also add a buffer solution to the tube?
- 4 A. Yes, there is a buffer solution.
- 5 Q. Again, all of these things are with a pipette?
- 6 A. Yes, with a pipette.
- 7 Q. Then, the tubes get capped?
- 8 A. Yes, it does.
- 9 Q. The reference sample was handled in a similar way as the  
10 evidence sample, is that right?
- 11 A. In a similar way, in terms of setting up 40 amplification.
- 12 Q. Although you didn't have to dilute significantly the  
13 reference sample because there was a lot more DNA?
- 14 A. If I may check my results.
- 15 Q. Please do. It's State's 65.
- 16 A. I'm sorry. Could you repeat the question again?
- 17 Q. You had to dilute the reference sample down because it had  
18 too much DNA?
- 19 A. Yes, I did.
- 20 Q. That's typical of reference samples because they usually  
21 have a good amount of DNA on them?
- 22 A. Yes, reference samples do have a lot of DNA.
- 23 Q. You wear gloves when you're handling the tubes?
- 24 A. Yes, I do.
- 25 Q. You would have changed gloves at least once between

- 1 handling the evidence and the reference sample?
- 2 A. Yes, I would.
- 3 Q. Then, they get added to a Thermocycler?
- 4 A. That's correct.
- 5 Q. A Thermocycler is kind of like an oven?
- 6 A. It has a heated element that can go to a certain
- 7 temperature.
- 8 Q. So you put the tubes in and it goes through a cycle of
- 9 temperatures to process them?
- 10 A. It goes through a cycle of temperatures to amplify the
- 11 regions of DNA that we're interested in.
- 12 Q. That has been analogized to photocopying?
- 13 A. Yes, kind of like a photocopying process for DNA.
- 14 Q. But just kind of the parts you're interested in?
- 15 A. Correct.
- 16 Q. There is room for 96 tubes in the Thermocycler?
- 17 A. Yes, there are.
- 18 Q. There were 11 other tubes in the Thermocycler with the
- 19 underwear sample?
- 20 A. I'll just check my file.
- 21 Q. Please do so.
- 22 A. Yes, 11 other tubes.
- 23 Q. Including the reference sample for Mr. Earl?
- 24 A. Yes.
- 25 Q. The Thermocycler takes about four hours to process?

- 1 A. Approximately four hours.
- 2 Q. Next you load the amplified DNA onto a capillary  
3 electrophoresis instrument, is that right?
- 4 A. Yes. Following amplification, it needs to get loaded onto  
5 a capillary electrophoresis instrument.
- 6 Q. In this case, that instrument happened on a separate day  
7 than the amplification, is that right?
- 8 A. If I can double-check here.
- 9 Q. Please do so.
- 10 A. Yes, it was on a separate day.
- 11 Q. You are not exactly sure where the samples were overnight,  
12 is that right?
- 13 A. I do not recall that.
- 14 Q. They could have been left in the amplification instrument?
- 15 A. They could have been.
- 16 Q. Or they could have been stored in a freezer?
- 17 A. Yes, they could have been.
- 18 Q. The capillary electrophoresis instrument separates DNA  
19 fragments according to size, is that right?
- 20 A. Yes, it does.
- 21 Q. It also detects specific fluorescent dyes that could be  
22 attached to the DNA fragments you're interested in?
- 23 A. Correct.
- 24 Q. To do this, you take a portion of the amplified DNA,  
25 combining it with other reagents, and put it into a plate

- 1       inside the instrument, is that right?
- 2   A.   Yes, I do.
- 3   Q.   The plate has been analogized to a dinner plate with a
- 4       bunch of little wells in it for liquid?
- 5   A.   It's a rectangular-shaped plate with wells that go down.
- 6   Q.   Okay.
- 7       They are a couple centimeters deep, these wells?
- 8   A.   I'd say at least that.
- 9   Q.   Samples could be pipetted in individually into those wells
- 10       or with a multi-channel pipette, is that right?
- 11   A.   That is right.
- 12   Q.   It's your practice to use a multi-channel pipette?
- 13   A.   It is my practice to do so.
- 14   Q.   That's kind of like a pitchfork where it has a number of
- 15       pipettes all connected and equal distance apart?
- 16   A.   Yes.
- 17   Q.   So you can put the multi-channel pipette into four tubes,
- 18       pipette up liquid, and then lift it over and put it into
- 19       the capillary electrophoresis instrument?
- 20   A.   I can pipette it up and put it into the plate that then
- 21       gets loaded onto the instrument.
- 22   Q.   Okay.
- 23       So we load the plate and lift the plate and put the
- 24       plate into the instrument?
- 25   A.   Yes.

- 1 Q. There is nothing covering these wells, is there? They  
2 don't have a little cap or a lid covering the top of the  
3 well?
- 4 A. When the plates go in, the wells are uncovered at that  
5 time.
- 6 Q. You didn't write down which samples were in the  
7 multi-channelled pipette when you loaded the plate, is  
8 that correct?
- 9 A. I did not write it down in my case file.
- 10 Q. Okay.
- 11 So we don't know, is that right?
- 12 A. Don't know off the top of my head, but I might be able to  
13 figure it out.
- 14 Q. You were not changing gloves between pipettings because  
15 you weren't really touching anything, is that right?
- 16 A. Correct. There would be no need to change gloves.
- 17 Q. Then, you put the plate in the machine, is that right?
- 18 A. Yes.
- 19 Q. Okay.
- 20 Then, the machine does its work?
- 21 A. Yes, it processes the samples.
- 22 Q. It sounds like the instrument inserts electrodes to pull  
23 up the DNA and the fragments that are present in the  
24 wells, is that right?
- 25 A. It goes through an electrokinetic process where the

1 electrodes are inserted into the wells and the DNA  
2 fragments are migrated into the electrodes.

3 Q. Okay.

4 Then, there is a separate wash cycle so the machine is  
5 kind of washing itself between inserting the electrodes in  
6 the different wells?

7 A. Yes, it does.

8 Q. All right.

9 The capillary electrophoresis instrument is attached to  
10 a computer?

11 A. It is.

12 Q. The computer then produces the electronic data for the  
13 DNA?

14 A. It does.

15 Q. Then, that's the data you used to put into the website  
16 that you talked about with Mr. Alsdorf?

17 A. Well, I can process the data on my own desk computer.  
18 From there, I can get the data from the profile for  
19 searching into the website.

20 Q. So did you get the data from the capillary electrophoresis  
21 instrument or do you get it from a different instrument?

22 A. The data gets saved onto a computer attached to the  
23 instrument and then we can copy the data from that  
24 computer to our own for analysis.

25 Q. So it does originate from that computer, but you can copy

1 that and use it at your own station?

2 A. Yes.

3 Q. So let's talk a little bit more about the amplification  
4 process. So it's your testimony that the evidence and  
5 reference extracts were amplified at different times?

6 A. They were amplified in the same amplification batch.

7 Q. Okay.

8 So they were amplified together?

9 A. They did go through the Thermocycler at the same time.

10 Q. But obviously in their own tubes?

11 A. In their own tubes.

12 Q. Presumably, okay.

13 To try to protect, you put evidence and reference  
14 extracts that were being amplified together in  
15 non-adjacent tubes, is that right?

16 A. That helps to keep them separate.

17 Q. Amplifying evidence with reference in the same  
18 amplification is permitted by Washington State Patrol  
19 policies?

20 A. It is.

21 Q. So let's talk a little bit about this database. So you  
22 get this data from the capillary electrophoresis  
23 instrument. It gives you some -- does it come out in  
24 number or letter form?

25 A. The data comes in peaks and then numbers are assigned to

1 the peaks.

2 Q. Okay.

3 So you would get a different number for each of the 17  
4 places that you're looking on the Y chromosome?

5 A. We look for a number at each of those locations.

6 Q. Then, when you want to get a read-out from the US Y-STR  
7 database, what you do is you go to a website and you  
8 insert each of those separate numbers for those 17 menu,  
9 is that right?

10 A. Yes, that's right.

11 Q. When you do that, you make a print-out of the numbers  
12 you've inputted so that you can make sure you input the  
13 right numbers?

14 A. Yes, we do make a print-out.

15 Q. Then, you have a colleague review that with your case file  
16 to make sure you put in the right number?

17 A. That's right.

18 Q. That's what you talked about earlier as far as  
19 peer-review?

20 A. It is part of the peer-review process.

21 Q. What else goes into it?

22 A. It goes into the overall scientific approach to a case  
23 just making sure that from a scientific point of view that  
24 the work is done according to approved Washington State  
25 Patrol protocols and that the results are scientifically

1       valid.

2   Q.   So if you had been able to run the new number over the  
3       weekend when the database was updated again, what would  
4       you have needed to do to have it peer-reviewed?

5   A.   I would have had to have the data sent to a peer-reviewer,  
6       another qualified analyst, and that person would have to  
7       look over the data and then indicate their approval.

8   Q.   Is that the only step you would have had to do to get it  
9       peer-reviewed?

10  A.   Almost certainly, I would have written right into a  
11       report.  The peer-reviewer would check that report to make  
12       sure the facts on it correlate with the notes in my case  
13       file.

14  Q.   Okay.

15       So essentially, in order to have run it over the  
16       weekend, you would have had to take your case file, go to  
17       the website, plug it in, print it out, and then have a  
18       qualified colleague review the print-out and the results  
19       to make sure they were proper?

20  A.   Yes, that would have been the process.

21  Q.   One such qualified colleague would be Lorraine Heath, your  
22       supervisor?

23  A.   Yes, she would be qualified.

24  Q.   Okay.

25       In fact, Ms. Heath is present with us in the courtroom

1       today, is she not?

2   A.   Yes, she is.

3   Q.   You two flew over from Spokane today, is that right?

4   A.   Did not fly.

5   Q.   You drove together?

6   A.   I drove. I'm sorry, I flew over and then she drove

7       across.

8   Q.   She has been here throughout the morning and you have

9       actually gotten to speak with her in the hall?

10  A.   Yes, that's correct.

11  Q.   Any effort to run the numbers and have her look at them?

12  A.   No, I did not.

13  Q.   So there is two ways the database can change, is that

14       right? It can give you a number that tells you it would

15       be found more frequently or a number that tells you it

16       would expect to be found less frequently, is that right?

17  A.   I'm sorry, could you say that again?

18  Q.   My understanding is there is two ways the database could

19       change. One way would be it would give you a number which

20       would tell you -- you would see this profile more

21       commonly. The other is it can give you a number telling

22       you you would see this profile less commonly?

23  A.   The number could change either way.

24  Q.   Okay.

25       It may be a completely different number today than it

1       was when you ran it on the 28th of January?

2   A.   It could be a different number.

3   Q.   Could be more frequent that you would see this profile?

4   A.   Depending on the profiles that were added, it could be

5       more frequent or less frequent.

6   Q.   The ethnic composition of this database is not

7       representative of the US population, is that fair to say?

8   A.   I could not say that off the top of my head.

9   Q.   Okay.

10       So can you tell us what the ethnic representation of

11       this database is?

12   A.   There are five big groups within the database: Caucasian,

13       African-American, Asian, Hispanic, and Native American.

14   Q.   In fact, in doing a search in the database, you can target

15       what ethnicity you are looking for, is that right?

16   A.   It's possible to target ethnicity.

17   Q.   Okay.

18       When we have a chromosome that you inherit wholly

19       paternally, along a paternal line, it could therefore be

20       more associated with ethnicity than typical DNA?

21   A.   That could be a factor.

22   Q.   Okay.

23       In this case, you did not search under the Caucasian

24       setting with Mr. Earl's profile, is that right?

25   A.   I did not.

- 1 Q. Because it's Washington State Patrol policy to search  
2 against the whole database, is that right?
- 3 A. Yes, that's our approach.
- 4 Q. In fact, when you do a search against the whole database,  
5 it turns out a number and tells you what you would have  
6 gotten if you had searched for his particular ethnicity,  
7 is that right?
- 8 A. It does give a print-out by breakdown according to  
9 ethnicities.
- 10 Q. When you got the one in 4,400 number in regard to  
11 Mr. Earl's haplotype, the database turned out a much more  
12 common number for a Caucasian search, is that right?
- 13 THE WITNESS: If I may, Your Honor.
- 14 THE COURT: Go ahead.
- 15 MS. HARDENBROOK: Please do so. Again, it's  
16 State's 65.
- 17 A. You're referring to the run I did in January, right?
- 18 Q. That's correct.
- 19 A. It gives frequency for Caucasians of one in every 1,900  
20 individuals.
- 21 Q. Okay.
- 22 That is more frequently than the one in 4,400 number  
23 that you testified to, is that right?
- 24 A. It would be more frequent.
- 25 Q. Okay.

- 1           Let's talk briefly about the compilation of the  
2           database. You can actually go on the website and see who  
3           all has contributed information to this database, is that  
4           right?
- 5   A. That's correct. That information is on the website.
- 6   Q. You don't know how the database decides to include people  
7           who are submitted or exclude people who are submitted, is  
8           that right?
- 9   A. The database requests that submitting agencies go through  
10           a proficiency test to prove that they can generate data  
11           correctly from samples.
- 12   Q. But you're not aware of how they either accept or reject  
13           submitted samples?
- 14   A. I'm not aware of which samples they would choose to keep  
15           versus not to keep.
- 16   Q. You're not aware of whether there is duplication in the  
17           system, whether samples that are from the same individual  
18           could be submitted from multiple organizations?
- 19   A. The profiles are checked for duplications so that  
20           duplicate profiles are removed.
- 21   Q. The primary contributor to the database is Applied  
22           Biosystems, is that right?
- 23   A. I don't know that off the top of my head.
- 24   Q. Would it refresh your recollection to take a look at  
25           Exhibit No. 73?

- 1 A. With the latest version of the database, it appears  
2 Applied Biosystems had more samples submitted than anyone  
3 else.
- 4 Q. Who is the next most common contributor?
- 5 A. According to this, the FBI.
- 6 Q. Who is next?
- 7 A. Next would be Promega.
- 8 Q. That's a private company?
- 9 A. It is a private company.
- 10 Q. They market forensic kits?
- 11 A. They do. They do make kits.
- 12 Q. How about Applied Biosystems? Do they make forensic kits?
- 13 A. They do.
- 14 Q. If I could have you turn the page on Defense Exhibit  
15 No. 73, I would like to talk to you about the ethnic  
16 breakdown of the database. Could you let me know what  
17 percentage is of African-American descent?
- 18 A. According to this, 30.1 percent.
- 19 Q. How about Caucasian?
- 20 A. Caucasian, 37.7 percent.
- 21 Q. How about Hispanic?
- 22 A. Hispanic, 17.3 percent.
- 23 Q. What's the next highest category?
- 24 A. According to this, Asian.
- 25 Q. What is the statistic associated with it?

- 1 A. It's 8.4 percent.
- 2 Q. Do you have any idea if these relate to the ethnic  
3 breakdown of the United States?
- 4 A. I do not know that off the top of my head.
- 5 Q. So these percentages of ethnicity may have no relation to  
6 the United States population?
- 7 A. There may be differences in the relative percentages.
- 8 Q. As this database gets larger, it will give us better  
9 accuracy as far as statistics go, is that right?
- 10 A. It would give more specific frequencies for profiles.
- 11 Q. As a database gets bigger, it's going to change the  
12 numbers. The numbers it turns out will change less  
13 because additional samples won't be such a great  
14 percentage of the database itself, is that right?
- 15 A. It's tough for me to say, but I can envision that being  
16 the case. As the database size gets to such a large  
17 amount, that adding the same amount of samples would  
18 change the frequency less.
- 19 Q. Because if we have a database of 500 and we add another  
20 50, that could make numbers change a certain amount, is  
21 that right?
- 22 A. Yes, I could envision that.
- 23 Q. If you had a database that is 500,000 and we added 50  
24 samples, that might expect to change it in a lot less of a  
25 degree?

1 A. Yes, I would think so.

2 Q. So essentially, the bigger the database, the better the  
3 data?

4 A. The bigger the database, the more accurate the frequency  
5 would be expected.

6 Q. So when you ran Mr. Earl's haplotype, his information on  
7 those 17 places, when you ran that through the database in  
8 November of 2011, it was searched against 8,487  
9 individuals, is that right?

10 THE WITNESS: If I may just look at my report.

11 THE COURT: You may.

12 A. Yes, 8,487.

13 Q. When you ran it again in January of 2013, it was run  
14 against 13,248 individuals, is that right?

15 A. That's correct.

16 Q. We don't know how many are currently in the database, is  
17 that right?

18 A. I do not know that off the top of my head.

19 Q. The most recent running, if you had run it just against  
20 Caucasian individuals in the database, it only would have  
21 run it against 5,712 individuals, is that right?

22 A. According to the information given out, yes.

23 Q. Its statistics generated by that would be the one in 1,908  
24 figure?

25 A. Yes.

1 Q. If by chance the updates over the weekend added a profile  
2 similar to Mr. Earl's to the database, we would expect  
3 that the number turned out by the database today would  
4 show an expectation to see that profile more frequently,  
5 is that right?

6 A. Hard for me to say without running the data itself, but  
7 that is a possibility.

8 Q. The statistic one in 2,800 in November of 2011, that was  
9 95 percent confident, is that right?

10 A. That was with a 95 percent confidence interval applied.

11 Q. The new statistic in January of 2008, one in 4,400, also  
12 95 percent confidence interval.

13 A. I think you mean January this year.

14 Q. I'm sorry, January 2013.

15 A. Yes, that statistic is with 95 percent confidence applied.

16 Q. So when you were in the courtroom on Monday -- never mind.  
17 Strike that.

18 You testified this morning that one of the reasons why  
19 the Washington State Patrol does not submit samples to the  
20 US Y-STR database is that it could over-represent suspects  
21 within that database, is that correct?

22 A. Yes, I did say that.

23 Q. But in fact, many of the samples submitted to the database  
24 are from law enforcement sources, is that right?

25 A. There are a number of agencies that do submit samples.

1 Q. That would be suspect samples?

2 A. I do not know that. I have no information on how they  
3 collected their samples or who they're from.

4 Q. The Federal Bureau of Investigation, for example,  
5 submitted around 5,000 samples. I'm handing you  
6 Defense 73. Is that approximately correct, around 5,000  
7 from the FBI?

8 A. Approximately.

9 Q. The Washington State Patrol Crime Lab in Vancouver  
10 actually submitted those 40 samples to the database, is  
11 that right? It wasn't the Cheney lab.

12 A. That's correct.

13 Q. So you're not able to tell us with your testimony today  
14 how the DNA got to the Nick Jr. underwear, is that right?

15 A. I cannot tell the method by which the DNA got onto them.

16 Q. Whether it could be from a human hand touching the  
17 underpants?

18 A. Based on the amount of DNA that was taken in quantitation,  
19 in my experience it would not come from a touch contact.

20 Q. So your experience has been, I think you testified on  
21 direct, solely in the Washington State Patrol Crime  
22 Laboratory?

23 A. Yes.

24 Q. That's been your work experience.

25 At the Washington State Patrol Crime Laboratory, you

1 work in -- it's not a research lab, is that correct?

2 A. That's correct.

3 Q. So when evidence comes to you, there may be an idea about  
4 what happened to that evidence, but you never really get  
5 to find out if it was touched such that you would find  
6 touch DNA, is that correct?

7 A. I'm sorry, could you repeat that?

8 Q. For example, if you get a gun from law enforcement and  
9 they want you to look for touch DNA, you never get to find  
10 out what really happened to that gun, is that right?

11 A. Sometimes we are given a scenario of how an item might be  
12 involved in a case.

13 Q. Right. But you never know for sure what happened?

14 A. I don't know for sure. I go based on the notes and  
15 reports and communications from officers or investigators.

16 Q. Right.

17 In a research study, there are actual tests where  
18 researchers will know what happened. For example, they  
19 will touch a cup, and then have the cup tested, is that  
20 correct?

21 A. That is a potential research scenario.

22 Q. That is where it's a known -- you know what happened so  
23 that the research that comes out on the other end is based  
24 on actual facts and not suspicions from law enforcement?

25 A. Could you rephrase that again?

1 Q. In a research laboratory where it's controlled, where  
2 somebody does the act at the beginning, that is, either  
3 touch or not touch or body fluid transfer, there is a  
4 known outcome. But you have to work in the real world  
5 where you don't necessarily know what happened?

6 MR. ALSDORF: Your Honor, I object to  
7 speculation based on a hypothetical study and methods of a  
8 hypothetical scientist.

9 THE COURT: I will sustain the objection to the  
10 form of the question. You may rephrase your question.

11 BY MS. HARDENBROOK:

12 Q. You never know where evidence has been before it comes to  
13 you, is that right?

14 A. I don't have direct experience of where evidence comes  
15 from.

16 Q. Right.

17 So you are working on basically the theories that you  
18 get from law enforcement?

19 A. That is a factor in getting an idea of what happened with  
20 a particular item.

21 Q. You don't get the satisfaction at the end of it of finding  
22 out what actually happened or see a video of what actually  
23 happened to confirm your experience with a particular  
24 evidence item?

25 A. No, it doesn't work that way in real life.

1 Q. Right.

2 So in this case, there is the possibility that the DNA  
3 could have gotten to the Nick Jr. underpants from a human  
4 touching the underpants, is that correct?

5 MR. ALSDORF: Objection, asked and answered.

6 THE COURT: It has been asked and answered.

7 MS. HARDENBROOK: I'm about to impeach. To do  
8 that, I need to confirm his statement.

9 THE COURT: With that understanding, you may  
10 proceed.

11 MS. HARDENBROOK: Thank you.

12 A. Could you state the question again, please?

13 Q. I will clarify.

14 I interviewed you in this case, didn't I?

15 A. Yes, you did.

16 Q. You allowed me to record that interview?

17 A. Yes.

18 Q. And a condition of my recording that interview was to give  
19 you a copy of that recording, is that right?

20 A. Yes.

21 Q. Okay.

22 In that interview, I asked you if it was possible or my  
23 investigator asked you if it was possible if the DNA on  
24 the underwear could be from a human touching it, and you  
25 said "yes," is that correct?

1 A. I do not recall that off the top of my head.

2 Q. Would it refresh your recollection to take a look at a  
3 transcript from our interview?

4 A. It might.

5 Q. Thank you.

6 Mr. Lin, I'd like to hand you what is marked as Defense  
7 Exhibit 37. I will direct you to Page 31 of that  
8 document. If I could have you read Line 25 down a few  
9 lines, and look up when you're done.

10 A. Yes. It says: "There is a possibility --"

11 Q. To yourself, I'm sorry. Read it to yourself and look up  
12 when you're done.

13 A. Okay.

14 Q. Does that refresh your recollection about whether we asked  
15 you that question and what your answer was?

16 A. Yes, it does.

17 Q. When we asked you the question: "Is it possible it could  
18 be a human hand touching the underpants," you said  
19 "correct."

20 A. I did answer in the affirmative, but I also qualified that  
21 by saying if there was enough male DNA, that's possible.

22 Q. Before we asked you about the human hand touching the  
23 underpants, that's when you said: "If there was enough  
24 male DNA."

25 A. I'm sorry.

1 Q. So we talked about transfer by a touch. You said: "If  
2 there is enough male DNA." We gave you an example of the  
3 hand touching the underwear, and you said: "Correct."

4 A. I did.

5 Q. It's also possible it got there from a body fluid  
6 belonging to a male?

7 A. That is a possible source.

8 Q. And body fluids can be transmitted in any number of ways?  
9 Sneezing?

10 A. There could be a number of ways to transfer.

11 Q. Including sneezing?

12 A. Including sneezing.

13 Q. Coughing?

14 A. If there was liquid coming out.

15 Q. Urine?

16 A. Urine, because of the potential less amount of DNA in  
17 urine compared to a body fluid like blood or semen or  
18 saliva --

19 MS. HARDENBROOK: Objection, lack of personal  
20 knowledge. I would like to address the Court outside the  
21 presence of the jury.

22 MR. ALSDORF: He is just answering the question  
23 counsel asked.

24 THE COURT: I'm not going to excuse the jury at  
25 this point.

1 MS. HARDENBROOK: I interviewed Mr. Lin, and he  
2 indicated that the only basis upon which he has to  
3 differentiate --

4 MR. ALSDORF: Your Honor, objection, objection.

5 THE COURT: That is an improper use of a prior  
6 interview.

7 MS. HARDENBROOK: I'm trying to address the  
8 objection in the presence of the jury.

9 THE COURT: I'm going to overrule the objection.  
10 Mr. Lin may answer the question. If you have another  
11 question, you may ask it.

12 A. Could you state the question, please?

13 MS. HARDENBROOK: At this point, I have no idea.  
14 So maybe Your Honor could read it back.

15 THE COURT: You said: "Coughing?" He said:  
16 "If there is liquid coming out." You said: "Urine?" He  
17 began to answer that, and then you made an objection.

18 BY MS. HARDENBROOK:

19 Q. Urine is the question before you.

20 A. Yes. Well, compared to other body fluids like blood or  
21 semen or saliva, urine we would expect less DNA to be  
22 present.

23 Q. When you and I discussed this exact topic in the  
24 interview, I asked you your authority for that opinion, is  
25 that correct?

1 A. You did inquire.

2 Q. You indicated that it was not necessarily based on tests  
3 performed; just kind of more hearsay, is that right?

4 A. I may have used words to that effect.

5 Q. Then, I would have clarified it's nothing you learned in  
6 your training, and you said "nothing I learned in my  
7 training," right? Would it help to look at it?

8 A. Maybe.

9 Q. Defense No. 37. It started on the prior page, if that  
10 would help you look at it.

11 So when I asked you about your basis of knowledge for  
12 that opinion, you said it was not based on your training,  
13 is that right?

14 A. Yes.

15 Q. Then, I asked: "Is it on your first-hand experience?"  
16 And you said: "No, it's not based on my first-hand  
17 experience."

18 A. Correct, I did say that.

19 MS. HARDENBROOK: No further questions.

20 Thank you.

21 THE COURT: Redirect.

22 MR. ALSDORF: Thank you, Your Honor.

23

24

25



1 with respect to a third run of the numbers in this case?

2 Do you even have access to your office at this time?

3 MS. HARDENBROOK: Objection, compound question,  
4 leading.

5 THE COURT: Sustained.

6 BY MR. ALSDORF:

7 Q. Where have you been all weekend, Mr. Lin?

8 A. I have been in this area.

9 Q. Is this area where you live and work normally?

10 A. No, it is not.

11 Q. Okay.

12 It's been established that your supervisor, Lorraine  
13 Heath, is here in the courtroom today. When did you first  
14 see her this weekend, from this weekend to today?

15 A. I first saw her last night.

16 Q. Okay.

17 Would you be willing to engage in a peer-review process  
18 with Ms. Heath if you didn't have to generate an official  
19 report about what you did?

20 A. That would depend on whether or not she would give  
21 approval for such a process.

22 Q. Okay.

23 Assuming she gave approval, would you be willing to do  
24 it?

25 A. Yes, it would be straightforward to do it.

1 MR. ALSDORF: Well, I think I'll have a motion  
2 for the Court in a few minutes, then.

3 MS. HARDENBROOK: Objection. We don't need  
4 counsel's comments.

5 THE COURT: Sustained.

6 BY MR. ALSDORF:

7 Q. So these differences between the racial make-up of the  
8 database versus the actual racial make-up of the United  
9 States population, is there anything that accounts for  
10 that difference statistically in the number you're  
11 reporting?

12 A. The 95 percent confidence interval is to account for any  
13 potential differences.

14 Q. Do you know whether or not those 40 samples that the State  
15 Patrol submitted to the US Y-STR database were suspect  
16 samples or anything else?

17 A. They were Asian samples that were submitted voluntarily  
18 for inclusion into the database.

19 Q. So as to whether or not they were suspect samples, do you  
20 know?

21 A. No, I do not know.

22 Q. Okay.

23 So there has been some conflicting information about  
24 just how much DNA we're talking about on the inside of the  
25 Nick Jr. underpants. Are you familiar with a figure of

1 seven nanograms in this case?

2 A. I would have to see my file for that.

3 Q. Please do.

4 A. I'm not seeing where that figure might be.

5 Q. Okay.

6 Well, there has been testimony about it already.

7 MS. HARDENBROOK: Objection. It's not  
8 appropriate to advise the witness about testimony.

9 THE COURT: Sustained.

10 MR. ALSDORF: Very well.

11 BY MR. ALSDORF:

12 Q. When you said .207 nanograms of male DNA from the  
13 underwear sample, how is that related to any other figures  
14 that might exist in this case?

15 MS. HARDENBROOK: Objection, relevance.

16 THE COURT: Overruled.

17 A. Well, the .207 nanograms per microliter male DNA is  
18 significantly less than the amount of female DNA. It  
19 would be roughly equivalent to about seven nanograms of  
20 total male DNA in the underwear sample that was sent to  
21 me.

22 Q. Explain exactly what you mean by it would be roughly  
23 equivalent to that. How are you getting from one figure  
24 that is .207 to some other figure that is closer to seven  
25 nanograms?

1 A. The .207 is a concentration of DNA, so that's a unit of  
2 nanograms per microliter. One can multiply that by a  
3 certain volume in microliters, and that gives a total  
4 amount of DNA.

5 Q. Do you have a professional opinion about the -- about what  
6 it means to have a quantity of seven nanograms of DNA on  
7 the inside of an underwear sample as far as how it got  
8 there?

9 MS. HARDENBROOK: Objection, calls for  
10 speculation. He has already testified he doesn't have  
11 foundation.

12 THE COURT: I will overrule -- excuse me. I  
13 will sustain the objection to this question.

14 MR. ALSDORF: As to basis for foundation, Your  
15 Honor, I can address that.

16 THE COURT: Well, you may rephrase the question.

17 MR. ALSDORF: Okay.

18 BY MR. ALSDORF:

19 Q. So yes or no, do you have a professional opinion about the  
20 quantity of seven nanograms of DNA being more or less  
21 consistent with a particular method of that DNA getting  
22 there?

23 A. Yes, I do have an opinion.

24 Q. Okay.

25 What's the basis for that opinion?

1 A. The basis for that opinion is my experience in DNA case  
2 work and working with varying amounts of DNA.

3 Q. Okay.

4 You may or may not have talked about it with counsel by  
5 saying "hearsay." What do you mean by hearsay?

6 A. The term "hearsay" basically meaning consultation with a  
7 number of colleagues at work.

8 Q. Okay.

9 Well, is that something that scientists do with one  
10 another? In your lab, is it reasonably relied upon in  
11 your forensic community to discuss topics of this nature  
12 with other scientists?

13 A. Yes, it is. Sometimes we depend on the experiences of  
14 others.

15 Q. Based on those bases for your opinion that you just talked  
16 about, what is your opinion about the quantity of DNA and  
17 the likely source of it getting there?

18 MS. HARDENBROOK: Objection. He just testified  
19 he lacks knowledge. It's not on his own training and  
20 experience, but it's hearsay.

21 THE COURT: Overruled.

22 A. Could you state the question again, please?

23 Q. I will have it read back.

24 THE COURT: "Based on those bases for your  
25 opinion that you just talked about, what is your opinion

1 about the quantity of DNA and the likely source of it  
2 getting there?"

3 A. Seven nanograms of DNA is a substantive amount of DNA.  
4 Sometimes there's a lot more than what we would get in a  
5 touch DNA case. Sometimes in touch DNA case, we are lucky  
6 if we get one or two nanograms. So this is a pretty  
7 substantive amount.

8 Q. There was some reference on cross to the potential that  
9 samples could have been left in a machine for a period of  
10 time, but you didn't recollect whether or not that was the  
11 case. Do you remember that question?

12 A. I do remember that question.

13 Q. If the samples were left in the machine for a period of  
14 time, does that create any concern for you about  
15 cross-contamination risk?

16 A. No, it does not.

17 Q. Why not?

18 A. Because the tubes are sealed within the Thermocycler,  
19 there isn't a possibility of cross-contamination across  
20 tubes.

21 Q. Okay.

22 Well, there is also some testimony on cross about you  
23 using this multi-channel pipette during the amplification  
24 process, is that right?

25 A. During the process following that, the set-up for the

1 capillary electrophoresis.

2 Q. Got it.

3 So do you have any potential concerns about  
4 cross-contamination in that particular part of your  
5 process?

6 A. I do not.

7 Q. Why not?

8 A. Because the tips that are used in the multi-channel  
9 pipette are set a fixed amount apart. So there is no  
10 possibility of contact across tips.

11 Q. Okay.

12 Are you careful when you're doing this?

13 MS. HARDENBROOK: Objection, leading.

14 THE COURT: I'll sustain the objection.

15 BY MR. ALSDORF:

16 Q. How do you go about your work, Mr. Lin, when you are using  
17 multi-channel pipettes, for example, to conduct your  
18 analysis with an eye towards cross-contamination?

19 A. Well, I only open the tubes that I'm going to use the  
20 multi-channel pipette with at that time. I then use a  
21 multi-channel pipette to pull up the liquid amplified DNA,  
22 move that over to the plate, add those samples, discard  
23 the tips, close the tubes that I originally pulled from,  
24 open up a new set of tubes that I'm going to use the  
25 pipette, and repeat the process I did for the first set of

1 tips.

2 Q. Are those the same processes you use to pass your regular  
3 proficiency exams?

4 A. They are.

5 Q. Have you ever had any issues with those processes during  
6 those proficiency exams?

7 A. Never had a problem.

8 Q. The methods that you just described, are those approved by  
9 your supervisor?

10 MS. HARDENBROOK: Objection, leading.

11 THE COURT: Overruled.

12 A. Yes, they are approved.

13 Q. Okay.

14 You mentioned that your laboratory is accredited.  
15 Could you remind us of the agency that accredits you  
16 again?

17 A. Yes. The accrediting agency is the American Society of  
18 Crime Laboratory Directors Laboratory Accreditation Board.

19 Q. Would the policies about cross-contamination that we have  
20 been discussing here today, were those the policies when  
21 that Board granted your laboratory accreditation?

22 A. Yes, they were.

23 Q. Do you make available evidence in these cases for testing  
24 by outside sources if it's requested?

25 MS. HARDENBROOK: Objection, Your Honor. I'd

1 ask to address the Court outside the presence of the jury.

2 THE COURT: All right. I don't know where you  
3 are going with this, so we will excuse the jury.

4

5 (The following proceedings were had  
6 outside the presence of the jury)

7 THE COURT: Please be seated.

8 MS. HARDENBROOK: Your Honor, it's my  
9 understanding that Mr. Alsdorf is about to burden shift  
10 and get Mr. Lin to testify about the ability the defense  
11 would have to put on evidence against what he's doing. I  
12 have no burden to put on evidence. I don't think it's  
13 appropriate to put that before the jury or to argue that  
14 to the jury. I think that's classic burden shifting, and  
15 I don't think the testimony should be allowed.

16 THE COURT: Mr. Alsdorf?

17 MR. ALSDORF: Your Honor, I intended that one  
18 question and one question only. I didn't reference  
19 anything connected to a defense expert, but in reality, I  
20 have been put on notice that the defense expert, Don  
21 Riley, will be testifying in this case, and as soon as he  
22 does so, it will be a fair inquiry to determine what steps  
23 he took to investigate any of the potential evidence in  
24 this case.

25 So it's simply a one-question set-up for what I know to

1 be part of the defense case based on offers of proof that  
2 have been made.

3 MS. HARDENBROOK: Your Honor, I don't agree if I  
4 put on any evidence, the jury gets to speculate why I  
5 didn't put on other evidence. That shifts the burden.  
6 That would make the jury think it's 50-50 and I would have  
7 to put on evidence on par with the State. I do not, in  
8 fact, have to do that.

9 He is inviting the jury to speculate. It sounds like  
10 he intends to invite the jury to speculate again during  
11 the testimony of my expert.

12 THE COURT: Well, I don't know what Mr. Riley is  
13 going to say on the witness stand, but apparently he  
14 didn't do any testing.

15 MS. HARDENBROOK: It was never requested.

16 MR. ALSDORF: Yes, that would be the whole  
17 point. If he takes this issue with the policies and  
18 procedures of the State Patrol Crime Lab, that he thinks  
19 their procedures aren't any good and his are better, it  
20 seems a natural follow-up to ask him why he didn't take it  
21 upon himself to test the evidence that would have been  
22 available to him.

23 That is not burden shifting. The State remains charged  
24 with the burden of proving elements of a crime beyond a  
25 reasonable doubt. When it comes to assessing the

1       credibility of a scientist like Dr. Riley, I think it's an  
2       entirely fair question to ask him what scientific methods  
3       he used or chose not to use when he reached his expert  
4       conclusions in this case.

5               MS. HARDENBROOK: That invites the jury to  
6       speculate into decisions of counsel. Mr. Riley doesn't  
7       get to make decisions on the case; I do.

8               THE COURT: The expectation is that Mr. Riley  
9       will give testimony critical of procedures in the lab?

10              MR. ALSDORF: That's right.

11              MS. HARDENBROOK: He will talk about risk of  
12       cross-contamination and the point which he thinks there  
13       could be a weakness in the procedures. Mr. Riley was  
14       never asked to test anything by defense. It is not  
15       Dr. Riley's decision. The fact that Mr. Alsdorf is trying  
16       to put this in front of the jury invites them to speculate  
17       about my strategic decisions in the case because I direct  
18       my experts. That is not an appropriate inquiry.

19              THE COURT: I'll sustain the objection.  
20       Let's bring the jury back in.

21  
22                                      (The following proceedings were had in  
23                                      the presence of the jury)

24              THE COURT: The objection is sustained.  
25       Do you have further questions of this witness?

1 MR. ALSDORF: Your Honor, I do not have any  
2 further questions at this time, but I would ask the  
3 Court's permission to reopen this witness on the issue  
4 that I think we're all familiar with.

5 MS. HARDENBROOK: Objection. I think this would  
6 be appropriate to talk about outside the presence of the  
7 jury, which we just were.

8 THE COURT: Well, apparently counsel and I are  
9 not finished with this discussion. So we will ask the  
10 jurors to go back to the jury room.

11  
12 (The following proceedings were had  
13 outside the presence of the jury)

14 THE COURT: Please be seated.  
15 Are you talking about resubmission of numbers based  
16 upon the Saturday update of the database?

17 MR. ALSDORF: That's right, Your Honor.  
18 The issue that precluded us from generating an official  
19 report was generating an official report. The actual  
20 crunching of the numbers is something that can happen  
21 relatively quickly. I understand that the peer-review  
22 process can also happen relatively quickly and have the  
23 number by the end of the lunch hour.

24 So this is something that defense counsel went into  
25 more than I did on her cross, and I think that squarely

1 put it into a relevant area of inquiry that the State  
2 should be allowed to follow up with what Mr. Lin has said  
3 he is willing to do.

4 MS. HARDENBROOK: Your Honor, with all due  
5 respect, at some point in a case the evidence needs to be  
6 final. We keep dragging out when that point is. We are  
7 on Day 6 of what I thought was a four-day trial. I don't  
8 think the State should be doing additional running of  
9 numbers over the lunch hour on the sixth day of trial.

10 THE COURT: Well, there is apparently  
11 newly-discovered evidence based on an update of the  
12 database that took place Saturday after we expected this  
13 trial would be completed.

14 MS. HARDENBROOK: They could have done it  
15 yesterday. His supervisor was here yesterday. They just  
16 don't like the fact that I pointed it out to the jury.  
17 They had an explanation to the jury why they hadn't run  
18 it. That explanation is actually not maybe necessarily a  
19 good one, and so now they want to change that.

20 They had the opportunity to run the numbers before  
21 today, before we finished voir dire even with this  
22 witness. They chose not to do that. Now that I pointed  
23 out that they chose not to do that, they are trying to do  
24 it.

25 It's impossible to defend a case when the facts keep

1 shifting under my feet as the State does continuing  
2 investigation.

3 THE COURT: Well, the State hasn't done  
4 continuing investigation. The case has lasted longer than  
5 anticipated. The basis for the evidence in the case has  
6 changed during that period of time. Now that you have  
7 made an issue of this, the State should be allowed to  
8 present that testimony if, in fact, they can do so.

9 MS. HARDENBROOK: Your Honor, if I can just note  
10 for the record, with all due respect, that Monday is the  
11 first time the State tried to rerun the numbers. They  
12 waited until the first day of trial. Now they are doing  
13 it on the sixth day of trial for a second time.

14 THE COURT: Well, if the database hadn't changed  
15 on Saturday, it wouldn't be an issue. So I think the jury  
16 is entitled to hear that if the State is able to get  
17 there.

18 I think you and Mr. Lin and his supervisor will have to  
19 discuss that.

20 MR. ALSDORF: I have already communicated with  
21 the supervisor to understand that it's entirely possible.  
22 Based on Mr. Lin's answers on the stand, I think it's  
23 entirely possible. My intention is to do it as soon as  
24 possible.

25 THE COURT: The jury is entitled to hear that.

1 MR. ALSDORF: Thank you.

2 MS. HARDENBROOK: I ask we not have the State  
3 rest if they know they are calling this witness at 1:00.

4 THE COURT: That's what he is saying. He is not  
5 going to rest. He would like to recess at this point to  
6 do that, and come back at 1:00 and present that testimony.  
7 We can reopen direct for that purpose to present  
8 newly-discovered evidence.

9 MS. HARDENBROOK: So my suggestion would be  
10 since he is on direct right now, we recess. So instead of  
11 me having to finish cross and then him reopen --

12 THE COURT: That's exactly what we are going to  
13 do.

14 MS. HARDENBROOK: It would be less confusing.

15 THE COURT: That is exactly what we are going to  
16 do.

17 Bring the jurors out. We will tell the jurors they are  
18 excused for lunch. We will take this up again at 1:00.

19

20 (The following proceedings were had in  
21 the presence of the jury)

22 THE COURT: Members of the Jury, we are going to  
23 break for lunch at this time. We are going to come back  
24 at 1:00. At that time, we will proceed with further  
25 testimony.

1           So please leave your notebooks in the jury room, and be  
2 back in the jury room not later than 1:00.

3  
4   (Court in recess)

5  
6   (The following proceedings were had  
7 outside the presence of the jury)

8           MS. HARDENBROOK: Without a speech or anything,  
9 I just want to renote my objection, my foundational  
10 evidence rule objection to any number of testimony by the  
11 State's witness, Michael Lin. A search was done through  
12 the US Y-STR database over the lunch hour, and they have  
13 yet a new number of one in 5,200. I have been given a  
14 copy of it.

15           It's my understanding that Lorraine Heath, who is in  
16 the courtroom, was the peer-reviewer, and her initials are  
17 on the document I got. It's my understanding the State  
18 will proceed with testimony of Michael Lin about it.

19           I understand the Court's prior ruling. I expect it to  
20 apply here. I just wanted to make sure for appeal that I  
21 made my record.

22           THE COURT: You have made your record.

23           This doesn't appear to be, in terms of nature of the  
24 testimony, anything that hasn't already been covered and  
25 that both sides have been aware of, but this is

1 application of the evidence to the new database that first  
2 became available on Saturday.

3 MR. ALSDORF: Correct.

4 THE COURT: So I'm going to overrule the defense  
5 objection and allow the State to proceed.

6 MR. ALSDORF: Thank you.

7 THE COURT: Please bring in the jury.

8

9 (The following proceedings were had in  
10 the presence of the jury)

11 THE COURT: The State at this point wishes to  
12 reopen direct examination.

13 MR. ALSDORF: Thank you, Your Honor.

14

15 MICHAEL LIN, witness herein, after being  
16 previously sworn, was examined and  
17 testified as follows:

17

18 DIRECT EXAMINATION

19 BY MR. ALSDORF:

20 Q. Good afternoon, Mr. Lin.

21 A. Good afternoon.

22 Q. Did you have a chance to run the Y-STR profile of the  
23 interior sample from the Nick Jr. underpants through the  
24 newest version of the US Y-STR database?

25 A. I did.

1 Q. Did you go through any sort of peer-review process when  
2 you did that?

3 A. Yes, the results were peer-reviewed.

4 Q. Did you do it using the publicly-available website that  
5 you testified about before?

6 A. I did.

7 Q. Why don't you tell the jury what you found?

8 A. Consulting State's Exhibit No. 75, the profile from the  
9 interior of the Nick Jr. underpants was observed zero  
10 times in the database, and the profile expected no more  
11 than 1 in 5,200 male individuals.

12 MR. ALSDORF: Thank you. Nothing further.

13 THE COURT: Ms. Hardenbrook?

14 MS. HARDENBROOK: Thank you, Your Honor.

15

16 **CROSS EXAMINATION**

17 **BY MS. HARDENBROOK:**

18 Q. Mr. Lin, in the new information that we got over  
19 lunchtime, if you had run Mr. Earl's profile solely  
20 against Caucasian individuals in the database, that number  
21 would be one in every 2,016 individuals, is that right?

22 A. Yes.

23 Q. There are currently 6,035 Caucasian individuals in the  
24 database that Mr. Earl's sample was ran against?

25 A. Yes, 6,035.

- 1 Q. If tomorrow someone sharing Mr. Earl's Y-STR profile was  
2 added to that database, we would expect the number to  
3 change again, is that right?
- 4 A. It might possibly change.
- 5 Q. If someone with his profile was added to the database, we  
6 would expect that the number churned out by the database  
7 is we would see this more frequently, is that right?
- 8 A. Yes, we would see a potentially more frequent occurrence.
- 9 Q. You testified before the lunch break on redirect that  
10 there was -- that the male DNA in the interior of the  
11 underpants was a significant amount of DNA, is that right?
- 12 A. Yes, I commented on that.
- 13 Q. And that is seven nanograms?
- 14 A. Seven nanograms.
- 15 Q. There are a billion nanograms in one gram?
- 16 A. A billion nanograms in one gram.
- 17 Q. There was 70 times more female DNA in the interior of the  
18 underpants than male DNA, right?
- 19 A. I'm not quite sure.
- 20 Q. If you need to refer, please do so. I think you would be  
21 referring to State's 65 for the record.
- 22 A. Approximately 70 times.
- 23 Q. Okay.
- 24 You testified there is not much DNA in urine, is that  
25 right?

- 1 A. Compared to other body fluids.
- 2 Q. That's based on kind of a hearsay around the lab, what  
3 you've heard from other scientists in your lab.
- 4 A. From consultation with other scientists in the lab.
- 5 Q. But not your own experience?
- 6 A. Not from direct experience.
- 7 Q. Not from your educational training?
- 8 A. Not from the educational training.
- 9 Q. If there is less DNA in urine, then why is there 70 times  
10 as much female DNA in the underpants than male DNA?
- 11 A. I'm sorry, could you restate that, please?
- 12 Q. If there is not very much DNA in urine, why is there so  
13 much female DNA in the underwear?
- 14 A. The situation you are suggesting, the female DNA could  
15 have come from any potential source.
- 16 Q. Touch?
- 17 A. This amount of female DNA I would not necessarily expect  
18 from just a simple touch contact.
- 19 Q. What else?
- 20 A. Could be from potential body fluid that is deposited on  
21 the surface.
- 22 Q. Such as?
- 23 A. It's hard to say exactly, but probably body fluid. A lot  
24 of DNA might be like blood or saliva or semen.
- 25 Q. So female blood or female saliva would account for the

- 1 great amount of female DNA in the underpants?
- 2 A. That's hard to say without other testing that could  
3 confirm the presence of the body fluid.
- 4 Q. So in your expert scientific opinion, what else could it  
5 be? You said it's too much to be touch. Obviously, it's  
6 not female semen. You suggested blood or female saliva.  
7 Anything else?
- 8 A. If there was prolonged contact over a period of time,  
9 there might be enough skin cells collected on the surface.
- 10 Q. So prolonged touch?
- 11 A. Prolonged touch.
- 12 Q. I think you testified that Lorraine Heath, your  
13 supervisor, who is in the courtroom, peer-reviewed your  
14 new statistics from the database, is that right?
- 15 A. She did.
- 16 Q. Did you ask her to come over for your testimony on Monday?
- 17 A. I did not ask her.
- 18 Q. Okay.
- 19 Are you aware of why she came to observe your testimony  
20 if you did not ask her?
- 21 A. She came to observe and to help consult with me on the  
22 case.
- 23 Q. So she came to observe and consult with you, but not at  
24 your request?
- 25 A. Correct, not at my request.

1 Q. Are you familiar with the range of nanograms of DNA  
2 expected from touch in published studies on that topic?

3 A. I'm not familiar.

4 MS. HARDENBROOK: I have no further questions.

5 THE COURT: Redirect?  
6

7 **REDIRECT EXAMINATION**

8 **BY MR. ALSDORF:**

9 Q. When you said that the amount of female DNA on the  
10 interior of those underwear could result from prolonged  
11 touch, how much time are we talking about?

12 A. It would be more time than just a simple contact with the  
13 surface.

14 Q. Okay.

15 Like, for example, wearing a pair of underwear for an  
16 entire day?

17 MS. HARDENBROOK: Objection, calls for  
18 speculation.

19 THE COURT: I'm going to sustain the objection.  
20 You haven't established sufficient foundation.

21 MR. ALSDORF: Very well.

22 **BY MR. ALSDORF:**

23 Q. What was your last answer? It would have to be more than  
24 a simple contact?

25 A. Yes.

1 Q. So like how much more than a simple contact?

2 A. Prolonged wearing.

3 Q. Do you have any way of quantifying what you mean by  
4 prolonged wearing?

5 A. Not necessarily. It would depend on the individual and  
6 how many skin cells might be released upon contact.

7 Q. Okay.

8 Would sweat play a factor at all in these variables?

9 A. Sweat could play a factor.

10 Q. Okay.

11 The amount of time worn by the individual would also be  
12 a factor?

13 A. Yes.

14 MR. ALSDORF: Thank you. Nothing further.

15 THE COURT: Ms. Hardenbrook?

16 MS. HARDENBROOK: No further questions.

17 Thank you.

18 THE COURT: All right, sir. You may step down.

19 You are excused.

20 THE WITNESS: Thank you.

21 THE COURT: If we have any marked exhibits, make  
22 sure we get those.

23 MR. ALSDORF: Your Honor, I'm happy to finally  
24 announce that the State rests.

25 THE COURT: Thank you.

1           Members of the jury, we will ask you to go back to the  
2 jury room while I take something up with counsel.

3  
4                                 (The following proceedings were had  
5 outside the presence of the jury)

6           THE COURT: Ms. Hardenbrook.

7           MS. HARDENBROOK: Thank you, Your Honor.

8           The defense would make a standard half-time motion  
9 under State vs. Green, arguing that in the light most  
10 favorable to the State, no reasonable trier of fact could  
11 find beyond a reasonable doubt. I won't provide further  
12 argument. I defer to the Court.

13           MR. ALSDORF: Neither do I have a specific  
14 argument.

15           THE COURT: The Green motion is denied, the  
16 Court finding there is enough evidence for a trier of fact  
17 to the find the defendant guilty in this case.

18           Ms. Hardenbrook, do you have your first witness ready?

19           MS. HARDENBROOK: Let me check.

20           MR. ALSDORF: While we have the jury excused, we  
21 might as well check on an offer of proof from  
22 Ms. Hardenbrook about whether or not she intends to get  
23 into any statements made by Mia Fuentes because, of  
24 course, that was the subject of pretrial motions that was  
25 reserved.

1 I would maintain my objection to any of that. I don't  
2 see any legal way that would come in.

3 MS. HARDENBROOK: That's not my plan, Your  
4 Honor.

5 THE COURT: Thank you.

6 MR. ALSDORF: Very well.

7 THE COURT: Who is your first witness?

8 MS. HARDENBROOK: Annette Tupper. I agreed to  
9 call her first to get her out of here.

10

11 (The following proceedings were had in  
12 the presence of the jury)

13 THE COURT: The Court has been advised Annette  
14 Tupper is the first witness for the defense.

15 Ms. Tupper, step up here, please.

16

17 ANNETTE TUPPER, witness herein, after being first  
18 duly sworn, was examined and  
19 testified as follows:

20

**DIRECT EXAMINATION**

21 **BY MS. HARDENBROOK:**

22 Q. Good afternoon, Ms. Tupper.

23 A. Good afternoon.

24 Q. Could you please state your full name and spell it for the  
25 court reporter?

1 A. Annette Tupper, A-n-n-e-t-t-e, T-u-p-p-e-r.

2 Q. Ms. Tupper, are you employed?

3 A. I am.

4 Q. How are you employed?

5 A. I'm employed as a victim witness advocate with the  
6 Snohomish County Prosecutor's Office.

7 Q. Were you employed in that capacity in April 2011?

8 A. Yes, I was.

9 Q. Did you have occasion to come in contact with an April  
10 Mathis?

11 A. Yes.

12 Q. How did that come to be?

13 A. She was a witness in the Brandon Earl case. I normally  
14 contact witnesses, schedule appointments to meet with them  
15 and the prosecutor.

16 Q. Were you present during a discussion of the facts of the  
17 case with Ms. Mathis?

18 A. I was.

19 Q. In that conversation, she indicated to you that she had  
20 one shot of Fireball and two beers, is that correct?

21 A. That's correct.

22 Q. She didn't mention drinking wine?

23 A. Not to my recollection.

24 Q. She also described going up to the bedroom initially  
25 before Mia was up there alone?

1 A. I'm sorry, could you repeat the question?

2 Q. Sure.

3 April also described to you going up to the bedroom  
4 initially before she found Mia alone up there?

5 A. Yes.

6 Q. She described seeing kids in the room?

7 A. To the best of my recollection, yes.

8 Q. Including Nathan, Blake, and Mia?

9 A. I don't remember who the children were.

10 Q. Would it refresh your recollection to take a look at a  
11 memorandum drafted about that conversation?

12 A. Yes, it might.

13 Q. I'm handing you Defense Exhibit 76. I direct you to  
14 Page 2, the top paragraph. If you could read that to  
15 yourself and look up when you're done.

16 Did that refresh your recollection?

17 A. Yes, it did.

18 Q. Did April tell you that she saw Nathan, Blake, and Mia in  
19 that bedroom?

20 A. Yes, she did.

21 Q. And that the kids were horsing around?

22 A. I don't remember that being the words she used.

23 Q. Would it refresh your recollection about the words she  
24 used to take a look at the exhibit?

25 A. Yes.

1 Q. Please do so.

2 A. Yes.

3 Q. Did that refresh your recollection?

4 A. Yes, it does.

5 Q. Indeed, she did see the kids horsing around?

6 A. Yes.

7 Q. And Brandon was on the bed?

8 A. Correct.

9 Q. Also in that conversation, you learned April's  
10 understanding of Mia's exact wording in that case?

11 MR. ALSDORF: Objection, Your Honor, hearsay.

12 MS. HARDENBROOK: Prior inconsistent statement.

13 MR. ALSDORF: I thought we just covered this,  
14 Your Honor.

15 THE COURT: I thought we just talked about that.

16 MS. HARDENBROOK: I'm confused. With this  
17 witness?

18 THE COURT: Let's ask the jury to go back to the  
19 jury room.

20

21 (The following proceedings were had  
22 outside the presence of the jury)

23

24 MS. HARDENBROOK: My understanding, Your Honor,  
25 is I'm not going into any of Mia's statements to Annette  
Tupper, but I was asking Annette Tupper about what April

1       said the wording was in that statement. There has been  
2       much testimony whether it was "pee-pee" or "peep" or  
3       "pee." Ms. Tupper heard "peep." p-e-e-p. That was the  
4       statement I was attempting to elicit; nothing that Mia  
5       told Annette Tupper.

6               MR. ALSDORF: I maintain my double-hearsay  
7       objection.

8               THE COURT: Well, it is double-hearsay. It's  
9       her understanding of what April heard from Mia.

10              MR. ALSDORF: Actually, triple, because she got  
11      it from Sherry Mathis in-between.

12              THE COURT: Yes.

13              MS. HARDENBROOK: Your Honor, it's a prior  
14      inconsistent statement. Ms. Mathis was allowed to testify  
15      about her understanding of Mia's statement and about Mia's  
16      term for her vaginal area. That's an issue in the case.  
17      How is the jury to interpret what Sherry said she heard?

18              If April does not consistently describe that word,  
19      that's becomes relevant to the defense, not for the truth  
20      of the matter asserted, but because it's inconsistent and  
21      it's therefore impeachment.

22              Ms. Mathis did not recall the conversation with the  
23      victim advocate when I attempted this impeachment with  
24      Ms. Mathis herself. I invited her to look at a copy of  
25      the prosecutor's summary. She said it would not refresh

1 her recollection. The impeachment of Ms. Mathis had to  
2 end at that point.

3 I believe the proper way to then impeach on that  
4 statement is to then call a fact witness to say that was  
5 the statement she made.

6 THE COURT: You're trying to impeach the  
7 statement by asking this witness what April's  
8 understanding was of what Mia said to Sherry. I'll  
9 sustain the objection.

10 Let's bring the jury back out.

11  
12 (The following proceedings were had in  
13 the presence of the jury)

14 MS. HARDENBROOK: Ms. Tupper, no, further  
15 questions.

16 THE COURT: Redirect? Well, not redirect; we  
17 are at cross.

18  
19 CROSS EXAMINATION

20 BY MR. ALSDORF:

21 Q. Ms. Tupper, good afternoon.

22 A. Good afternoon.

23 Q. The exhibit you just had to refresh your recollection, who  
24 is the author of that?

25 MS. HARDENBROOK: Objection, relevance.

1 THE COURT: Overruled.

2 A. Edirin Okoloko.

3 Q. What was his professional role at the time that memo was  
4 drafted?

5 A. He was the assigned prosecutor to the case at that time.

6 Q. Why do memorandums like that get generated in a case like  
7 this?

8 MS. HARDENBROOK: Objection, relevance.

9 THE COURT: Overruled.

10 A. Could you repeat the question, please?

11 Q. Do you have any knowledge of why a memorandum would get  
12 generated by the prosecutor on the case at that time in a  
13 case such as this?

14 A. Ordinarily, if there is any information that is new that  
15 was not known before.

16 Q. In fact, Mr. Okoloko would have an ethical obligation to  
17 disclose that information, correct?

18 A. That is correct.

19 Q. You take part in that process by keeping detailed notes of  
20 the conversation, correct?

21 A. That is correct. My notes are to refresh my own memory of  
22 the conversation.

23 MR. ALSDORF: Thank you. Nothing further.

24 THE COURT: Ms. Hardenbrook?

25 MS. HARDENBROOK: No redirect. Thank you.

1 THE COURT: You may step down. Thank you.

2 The defense may call its next witness.

3 MS. HARDENBROOK: I would call Dr. Riley. I  
4 have to go fetch him. Just a moment.

5 The defendant calls Dr. Don Riley.

6

7 DR. DONALD RILEY, witness herein, after being first  
8 duly sworn, was examined and  
testified as follows:

9

10 DIRECT EXAMINATION

11 BY MS. HARDENBROOK:

12 Q. Good afternoon, Dr. Riley.

13 A. Good afternoon.

14 Q. Could you please state your full name for the record and  
15 spell it for the court reporter?

16 A. Donald Eugene Riley, R-i-l-e-y.

17 Q. Dr. Riley, how are you employed?

18 A. I'm currently retired from the VA Medical Center in  
19 Seattle and the University of Washington School of  
20 Medicine Department of Urology. I'm semi-retired because  
21 I still have a consulting business in forensic DNA.

22 Q. Are you employed by the State of Washington?

23 A. Not any longer, no.

24 Q. Dr. Riley, could you take me through your education?

25 A. Yes. I have a Bachelor of Science Degree in chemistry and

1 a PhD in biochemistry. I have two years post-doctoral  
2 training in biochemistry, and that's focusing on DNA.

3 I did my post-doc work, finished that back in '78, and  
4 since then I was a full-time research scientist for over  
5 30 years.

6 Q. Where did you complete your undergraduate?

7 A. That was in Pullman, Washington.

8 Q. How about your PhD in biochemistry?

9 A. That was at the University of Washington in Seattle.

10 Q. And your post-doctoral fellowship?

11 A. That was at Princeton University in Princeton, New Jersey.

12 Q. Let's go through your professional positions.

13 A. Okay.

14 I was assistant member at the Fred Hutchinson Cancer  
15 Research Center for four years. From there, I went to the  
16 Departments of Genetics and Medical Genetics at the  
17 University of Washington where I was a research associate  
18 for about eight years. Then, I went into the School of  
19 Medicine, and I was an assistant professor there in the  
20 Department of Urology for seven or eight years. Then, I  
21 was promoted to associate professor. Then, I retired in  
22 2011 as an associate professor.

23 Q. What's the difference between an assistant professor and  
24 associate professor?

25 A. Well, at the University of Washington, the assistant

1 professors have basically -- I mean, this varies a little  
2 with the department. Basically, they have about six years  
3 to establish that they are able to publish and obtain  
4 grant funds and essentially survive within the scientific  
5 system. Then, if they sort of pass that bar, then they  
6 are promoted to associate professor.

7 At associate professor, there is no -- sometimes you  
8 hear "publisher." There is no bar you have to cross. You  
9 can complete your career as associate professor, which I  
10 did, although some people do go on and become full  
11 professors, as well.

12 Q. Besides your work as a professor, have you had any other  
13 professional positions?

14 A. Well, I have had a consulting business in DNA since about  
15 1993. I consult in forensic DNA cases. I also consult  
16 for drug companies. They are coming out with a new class  
17 of drugs that sort of targets DNA. Actually, they target  
18 the RNA usually, which is the product that comes off the  
19 DNA. So I serve as a consultant. I think I have worked  
20 with 10 or so drug companies now.

21 Q. Do you get paid for your consulting work?

22 A. Yes.

23 Q. How does that work?

24 A. I charge \$200 an hour. That's for most anything that I  
25 do. That includes reviewing cases, organizing data,

1 travel, time for testifying. I just charge for my time.  
2 Sometimes I prepare exhibits and that type of thing, and I  
3 just charge the same rate for all of that time.

4 Q. Do you have a daily maximum that you bill?

5 A. Yes, I don't charge more than 10 hours a day.

6 Q. Does that mean you sometimes work more than 10 hours a  
7 day?

8 A. Yes.

9 Q. Have you had occasion to run a DNA lab?

10 A. Yes.

11 Q. Can you tell me about that?

12 A. Well, yes. When I was an associate professor -- I'm  
13 sorry, an associate member in the Department of Genetics,  
14 I pretty much took over that lab. The professor I was  
15 working under was considering retirement himself or at  
16 least was slowing down, so I directed the main technician  
17 in that lab.

18 From there, I went to the Department of Urology where I  
19 set up a DNA lab and ran it there at the University of  
20 Washington for 10 years. Then, we moved it to the VA,  
21 which is on Beacon Hill in Seattle. I ran that. I set up  
22 that lab and ran it there for another 10 years.

23 In the meantime, I was hired as a consultant back in  
24 around 1990 to set up a forensic DNA lab, which I did.  
25 Then, they went on to become a successful forensic lab.

1       Then, around 1996 and '97, I built my own forensic DNA  
2       lab. I hired a contractor who added two new rooms to my  
3       house, and I set up the labs in that area. I was tired of  
4       commuting at the time, so I wanted the lab to be right  
5       there, so yes.

6   Q.   In your decades of experience running labs, have you had  
7       occasion to develop an opinion about appropriate policies  
8       and procedures for working with DNA?

9   A.   Yes.

10  Q.   Tell me about that.

11  A.   Well, that involves all the years of PhD training and even  
12       the chemistry training, PhD training and the post-doctoral  
13       work and then all the research. In 30 years of research,  
14       you do develop a sense of what procedures work and what  
15       procedures don't work and what to rely on and what not to  
16       rely on, and that type of thing.

17  Q.   You mentioned research and publication. So let's talk  
18       about that for a minute. Have you had occasion to  
19       publish?

20  A.   Yes.

21  Q.   How many articles have you contributed to that went to  
22       publication?

23  A.   I have about 74 articles that are published in the  
24       anonymously peer-reviewed scientific literature. That's  
25       the standard, considered the gold standard. Papers are

1        anonymously peer-reviewed. Basically, that means my work  
2        was reviewed by people whose names I don't know. They are  
3        not my friends. They are not my acquaintances. They are  
4        people selected by an editor or by a program director at,  
5        let's say, the NIH funding. So that's how that works.  
6        It's driven by anonymous peer-review in that setting.

7    Q. What's the idea behind anonymous peer-reviews?

8    A. Well, no one likes to be criticized. So the idea there is  
9        that it spares the reviewer any sort of wrath or revenge  
10       that the authors might have when they get their reviews.  
11       No one enjoys being criticized.

12        So the scientific system is set up to work on anonymous  
13        peer-review. We learn as graduate students that we need  
14        to deal with those reviews. When we get, let's say, a  
15        review that finds some problems, we really have to go in  
16        and fix those problems before we go and try to publish  
17        again. So it's actually a hard system to understand if  
18        you haven't been through it, but I can tell you it's a  
19        very difficult system. It's not an easy thing to get a  
20        paper published in that system.

21    Q. You said you have contributed to 74 such articles?

22    A. Yes.

23    Q. How many have you been the primary author of?

24    A. Well, it's the majority of them. I'm not sure the exact  
25        number, but I think it's at least two-thirds of them.

1 Q. Have you ever had occasion to identify particular strains  
2 of DNA?

3 A. Yes. I have looked at a number of different species and  
4 strains and their DNA, and I have made discoveries of  
5 original DNA sequences and that type of thing. Those are  
6 the things that I have published about.

7 Q. Are you familiar with "Nature" as a publication?

8 A. The journal. "Nature," yes, I am.

9 Q. Tell me about that journal.

10 A. Well, it's considered pretty much the top scientific  
11 journal. The only other journal that comes close is a  
12 journal called "Science." "Nature" is the premier  
13 British scientific journal and "Science" is sort of the  
14 American counterpart to it. "Nature" is the top journal.

15 Q. Although you are retired, do you continue to review  
16 current literature in your area of expertise?

17 A. Yes, I do.

18 Q. Talk to me about that.

19 A. Well, I follow the journals. I'm mainly interested in new  
20 developments. Of course, with forensic DNA consulting and  
21 the drug company consulting, I have to pretty much stay  
22 abreast of what's going on in those fields.

23 Q. If you would like any water at any time, there is a  
24 pitcher and cup right there.

25 A. Thank you.

1 Q. Have you had occasion to review any materials on the case  
2 of Brandon Earl?

3 A. Yes.

4 Q. You were paid to do that?

5 A. I was paid for my time, yes.

6 Q. What materials did you review?

7 A. I reviewed the laboratory reports, the laboratory bench  
8 notes. I reviewed the electronic data that were  
9 generated. Those are collected by a computer when the DNA  
10 fragments are going through the analyzer. So I reviewed  
11 those. I reviewed some literature on, you know, things  
12 like amylase in urine versus saliva and that type of  
13 thing.

14 Q. So you reviewed research as it related to the case  
15 materials in this case?

16 A. Correct, yes.

17 Q. Did your review of case materials in this case, along with  
18 your decades of experience and professional expertise,  
19 lead you to any conclusion about the reliability of the  
20 forensic tests or forensic evidence in this case?

21 A. Yes.

22 Q. What was that opinion?

23 MR. ALSDORF: Objection to foundation.

24 THE COURT: I'll sustain the objection.

25

1 BY MS. HARDENBROOK:

2 Q. Well, let's talk more about what you reviewed. So you  
3 reviewed lab reports and bench notes. What are lab  
4 reports?

5 A. Well, in this case, those are the brief reports that the  
6 Washington State Patrol Crime Lab put out regarding this  
7 case, and they just describe the items that they examined  
8 and some of the test systems that they used and the  
9 results and their conclusions about what they observed.

10 Q. You also said that you reviewed the electronic data  
11 generated. Tell me more about that.

12 A. The final stage, as far as physical handling of the  
13 samples, is a step where the DNA fragments are sent  
14 through an analyzer and it separates them out according to  
15 their sizes. This instrument is connected to a computer  
16 that collects all the size data. So all that goes onto  
17 the hard drive of that computer, and then the forensic  
18 labs will usually send out copies of that data and they  
19 will send it on a computer CD. So I get that. Then, I  
20 run it on my own computer and do an analysis of my own  
21 using the data that they captured.

22 Q. You also mentioned bench notes. What are bench notes?

23 A. Well, bench notes is kind of a broad term. When the  
24 analyst is examining the samples, they will pull out a  
25 sample. In this state, it's usually in a Manila envelope.

1 We put it on the bench, and then they will record what the  
2 labels are on the package. They might make a drawing of  
3 the package or of what's inside there.

4 Then, when they extract it, they will state what kind  
5 of extraction buffer they are using and that kind of  
6 thing. So it's all the notes that they take while they're  
7 processing the DNA.

8 Q. How about communication logs? Did you review  
9 communication logs in this case?

10 A. Yes.

11 Q. Tell me about those. What are those?

12 A. Communication logs, there are two main kinds. There are  
13 the handwritten ones, and those usually record results of  
14 telephone conversations and those are usually included in  
15 the bench notes. Then, the other type that we see more  
16 and more nowadays would be e-mails, e-mails sent between  
17 the different analysts.

18 In this case, there were two labs involved, so they  
19 were e-mailing back and forth, so that is part of what I  
20 mean by communication log.

21 Q. How about contamination logs? Do you have occasion to  
22 review those? Without telling me what are in them, what  
23 are contamination logs?

24 A. Well, the State Patrol Lab calls them -- I believe they  
25 call them discrepancy logs. They can be called

1       contamination logs or discrepancy/contamination if you  
2       want. Those just record when an analyst notices, let's  
3       say, a DNA profile in one of their reagent blanks. Their  
4       reagent blank is there to detect contaminants and it's not  
5       supposed to have any DNA profile. But if they do see it  
6       in it, they will record that as a discrepancy or a  
7       contamination event. So that usually gets one page in the  
8       log where they describe the fact they saw this. They  
9       describe more or less what they think caused it. They  
10      describe the actions taken to possibly prevent it in the  
11      future.

12 Q. Did you also have occasion to review crime lab reports in  
13      this case?

14 A. Yes.

15 Q. How many of those did you review?

16 A. As I recall, it was two. There was one from the  
17      Marysville lab and one from the Cheney lab.

18 Q. Any other materials that you can think of that you  
19      reviewed on the Brandon Earl case?

20 A. I did spend a fair amount of time in the research  
21      literature.

22 Q. So first I'd like to talk to you about DNA. With all of  
23      your experience researching DNA, running DNA labs, and  
24      your understanding of appropriate procedures and protocols  
25      for running DNA labs, did your review of these case

1 materials bring you to any opinion on any weaknesses in  
2 the DNA process in this case?

3 MR. ALSDORF: Objection, leading.

4 THE COURT: Sustained.

5 MS. HARDENBROOK: Foundational. I think I'm  
6 entitled to lead for foundation.

7 THE COURT: I will sustain the objection.

8 BY MS. HARDENBROOK:

9 Q. Did you reach an opinion about the DNA process in this  
10 case?

11 A. Yes.

12 Q. How did you come to that opinion?

13 A. By reviewing the reports, the bench notes, the e-mails,  
14 communication logs, and the electronic data, as well as  
15 scientific literature.

16 Q. Did you have occasion to listen to any interviews that  
17 were conducted of State's witnesses?

18 A. Yes.

19 Q. Do you remember any of the people that those were with?

20 A. Yes.

21 Q. Who were they?

22 A. Kristina Hoffman and Michael Lin.

23 Q. Okay.

24 Having reviewed all that material, did you develop an  
25 opinion?

1 A. Yes.

2 Q. What was that opinion?

3 A. I thought that the conclusions were very risky and, I  
4 think, misleading. Do you want me to explain why I think  
5 that?

6 Q. Please.

7 A. Okay.

8       The biggest mistake a DNA lab can make is getting a  
9 false match and not realizing it. So in other words, they  
10 get a result where they think the evidence matches a  
11 particular person. That can happen in a false way,  
12 basically erroneously. The way it can happen is if the  
13 lab gets any of the defendant's DNA into the evidence  
14 because of what they did in the lab. If they get some of  
15 his DNA into that evidence, it's going to appear to match  
16 him, and this type of thing does happen. It can be very  
17 misleading. The biggest counter-measure, the most  
18 important way of preventing that, is to keep the  
19 defendant's DNA away from the evidence.

20       In this case, that wasn't consistently done. The  
21 defendant's DNA was delivered to the lab --

22               MR. ALSDORF: Your Honor, I'll object to the  
23 narrative answer at this point.

24               THE COURT: Sustained.

25

1 BY MS. HARDENBROOK:

2 Q. What specific examples did you see where Mr. Earl's  
3 reference DNA was not kept away from the evidence DNA in  
4 this case?

5 A. It was clear that his sample was delivered to the lab with  
6 the underwear sample. They were delivered at exactly the  
7 same time and date. That suggested to me that they were  
8 most likely also stored together.

9 Secondly, his sample and the evidence, the underwear  
10 sample, were mailed together in the same package from  
11 Marysville to Cheney.

12 Then, finally, at Cheney, the underwear sample and his  
13 sample were actually worked on at the same time. They  
14 were out on the bench together, according to my reading,  
15 in the same test tube rack with each other.

16 Q. Do you have an idea of what part of the process it was  
17 when Mr. Earl's sample and the reference sample -- sorry,  
18 Mr. Earl's sample and the evidence sample were together on  
19 the same rack, what part of the process that was?

20 A. It looked to me like they were together on what's called  
21 the amplification stage, which is a critical stage where  
22 they are going to copy and amplify the DNA that is there.  
23 That is a super-sensitive method that essentially works by  
24 growing the DNA, just as though if you caught a few cold  
25 virus particles, you can catch a cold because your body

1 replicates that nucleic acid.

2 This process in the lab is called PCR. It works on the  
3 same principal. It takes whatever DNA is there and grows  
4 it. So it is very important to be aware that contaminants  
5 will grow as well or be amplified as well. That is just a  
6 critical thing.

7 With this technology, the literature, all through its  
8 history, have showed how people have been led down the  
9 wrong path sometimes by thinking they had a true result  
10 and then it turned out they didn't.

11 MR. ALSDORF: Your Honor, I object to him  
12 classifying the literature that way without specifics.

13 MS. HARDENBROOK: He is an expert talking about  
14 his review of the literature. I think it's appropriate.

15 THE COURT: I will overrule the objection.

16 BY MS. HARDENBROOK:

17 Q. You can continue.

18 A. This is a known limitation and problem with this  
19 technology. Lots of us use it because it is powerful. If  
20 you use it carefully, it can be a very important, very  
21 powerful technology, but it does have that limitation.  
22 It's so sensitive that it will pick up a very minor  
23 contaminant and amplify it and give you a result. If you  
24 are not careful about keeping things separate, it can give  
25 you a false result.

1 Q. So what would you have recommended or how would you have  
2 done this differently?

3 A. Well, throughout the history, I would have kept the  
4 evidence separate from the known standard of the defendant  
5 and separate from the standard of the victim. By  
6 standard, I mean their DNA sample. I would have, I think,  
7 sent out memos to the police agency just requesting that  
8 they keep those things separate. Then, in my lab, I would  
9 have kept them separate. I think that Kristina Hoffman  
10 did keep them separate except for the part where she  
11 mailed it to Cheney.

12 There are major labs in the United States. There is a  
13 major --

14 MR. ALSDORF: Non-responsive, Your Honor.

15 THE COURT: Sustained.

16 BY MS. HARDENBROOK:

17 Q. Are you aware of any labs that do it differently, do it  
18 how you recommend it should be done?

19 A. Yes, I am.

20 Q. What labs would those be?

21 A. The Massachusetts State Police Laboratory has a completely  
22 separate lab for the reference samples. They also keep  
23 all their samples in heat-sealed plastic pouches rather  
24 than paper envelopes. I think that those two practices  
25 are superior to what was done in this case.

1 Q. In this case, the reference sample for Brandon Earl and  
2 the evidence sample from the interior of the underwear  
3 were sent in separate plastic tubes within plastic tubes  
4 in the same package from Marysville to Cheney. Is that a  
5 concern?

6 A. The plastic tubes are an improvement over the paper  
7 envelopes. However, the fact that they are together means  
8 that someone was working on Mr. Earl's known DNA sample in  
9 the same timeframe that they were putting samples in the  
10 evidence tubes. They could have gotten a little of his  
11 DNA on their gloves and transferred that unknowingly to  
12 the cap of the tube that has underwear. Since his sample  
13 has so much more DNA in it, it's a real risk in my mind.  
14 I think it's just, in my opinion, much better to just keep  
15 them separate.

16 Q. Does it necessarily require having a completely separate  
17 lab like in Massachusetts?

18 A. Well, it doesn't necessarily require that, but I think  
19 that that is a good idea.

20 Q. Is there a way that the Washington State Patrol could do  
21 it more cost-effectively and yet safely?

22 A. Yes. It wouldn't cost much to keep the reference sample  
23 separate. These labs work on samples in batches anyway.  
24 Even in this case, they were working on multiple other  
25 cases while they are working on this case. It wouldn't

1 cost much more to just work on the references separately  
2 in a separate lab and work on the evidence by itself in  
3 another lab. You could still get some  
4 cross-contamination, but it's not very likely it will lead  
5 to a false match.

6 Q. Why is a false match so worrisome?

7 A. Well, it's basically telling the jury that a defendant  
8 matches some evidence when, in fact, that's just something  
9 that happened in the lab. That's why it's a concern. It  
10 might be a false result.

11 Q. Are those, in your professional expert opinion, more or  
12 less likely to be caught by the lab than when an analyst  
13 injects their own DNA into something they are working on?

14 A. It's less likely because if a defendant's DNA contaminates  
15 evidence, people will just think he matches it, that he  
16 put it there.

17 If an analyst gets their own DNA in there, they know  
18 they don't have anything to do with the crime scene and  
19 they know their own profiles. So it's sort of informative  
20 that that happens that sometimes they get their own DNA in  
21 there, but it's not that harmful. If you get a  
22 defendant's sample in there accidentally, it could be very  
23 harmful to his life.

24 Q. Dr. Riley, are you familiar with the amount of male DNA  
25 attributed to the interior -- rather, the quantity of male

1 DNA attributed to the interior of the Nick Jr. underpants  
2 in this case?

3 A. Yes.

4 Q. What is your understanding of that amount?

5 A. The total amount, according to my calculations, was eight  
6 nanograms.

7 Q. That was you rounding up from --

8 MR. ALSDORF: Objection, leading.

9 THE COURT: Sustained.

10 BY MS. HARDENBROOK:

11 Q. Was that a number you saw in the lab reports or did you  
12 reach that number on your own?

13 A. I reached it on my own.

14 Q. How did you reach it on your own?

15 A. Well, basically, I took the measured concentration of male  
16 DNA, which the lab measures, and then I just multiplied  
17 that by the volume of the sample before it was dried down,  
18 and that gives you the amount.

19 Q. Is there any rounding involved?

20 A. There may have been. May I check my notes?

21 Q. Sure. We just need to mark them.

22 Before you say anything, may I borrow your notes, show  
23 them to the State, and then have them marked, please?

24 Thank you.

25 Dr. Riley, I'm now handing you what has been marked as

1 Defense Exhibit No. 78. Would you refer to that and let  
2 me know if there was any rounding in your coming to the  
3 figure of eight nanograms?

4 A. Well, yes.

5 Q. How was it rounded?

6 A. Well, the actual number I obtained was 8.28 nanograms, and  
7 I just rounded to 8.

8 Q. You arrived at the 8.28 nanograms by multiplying the  
9 concentration with the volume?

10 A. Yes.

11 Q. Have you had occasion to, in your direct experience,  
12 interact with different amounts of DNA?

13 A. Yes.

14 Q. How?

15 A. Well, I ran DNA labs for about 30 years. So yes, you  
16 interact with lots of different amounts of DNA.

17 Q. Did that include varying sources of the DNA?

18 A. Yes.

19 Q. Are you familiar with literature on that topic, as well?

20 A. Yes.

21 Q. Without telling me what it is, do you have a conclusion  
22 about the amount of eight nanograms of DNA?

23 A. I do, yes.

24 Q. What is that conclusion?

25 MR. ALSDORF: Your Honor, I have a foundation

1 objection.

2 THE COURT: Do you need to take that up out of  
3 the presence of the jury?

4 MR. ALSDORF: I think Your Honor would prefer  
5 that, yes.

6 THE COURT: We will ask the jury to go back to  
7 the jury room.

8

9 (The following proceedings were had  
10 outside the presence of the jury)

10

11 THE COURT: Please be seated.

12 Mr. Alsdorf?

13 MR. ALSDORF: Your Honor, he said that the basis  
14 for his opinion in this particular area comes in part from  
15 his experience in DNA labs over 30 years. The way  
16 Ms. Hardenbrook's questions were crafted kind of left out  
17 the aspect of the fact that I don't believe Mr. Riley has  
18 any forensic DNA analysis experience which would be the  
19 type of experience required to obtain this type of  
20 expertise.

21 MS. HARDENBROOK: Defense actually disagrees. I  
22 think the research setting is a better place to develop  
23 this kind of expertise because you are looking at known  
24 contributions. You can touch something and then test what  
25 that touch leaves. So it's actually superior for getting

1 that kind of experience.

2 The Court did allow the forensic scientists, who have  
3 experience in the real world by comparison where they  
4 don't know the origin of the items they tested, allowed  
5 them to testify about the amount of DNA.

6 So I think it's appropriate for someone with decades of  
7 experience running DNA labs, consulting both for private  
8 companies and forensically, to render an opinion on that  
9 same amount of DNA.

10 THE COURT: The question was: "Without telling  
11 me what it is, do you have a conclusion about the amount  
12 of eight nanograms of DNA?"

13 MS. HARDENBROOK: I think he said "yes," and  
14 then I asked the next question.

15 THE COURT: He said "yes," and then you asked:  
16 "What is that conclusion?"

17 MR. ALSDORF: My issue is with the question that  
18 preceded that question that attempted to lay the  
19 foundation based, in part, on his experience. I'm still  
20 not hearing an offer of proof that Dr. Riley has actually  
21 conducted the type of thing that Ms. Hardenbrook  
22 suggested, which is known touch DNA forensic testing in a  
23 laboratory setting. Maybe he has, but I don't think that  
24 foundation has been laid.

25 MS. HARDENBROOK: I don't think he has to

1       testify about him having done the research if he ran DNA  
2       labs for 30 years and is familiar with different amounts  
3       of DNA in that setting, and reviewed the literature on  
4       DNA, consulted, and worked for drug companies. He does  
5       have the expertise to address this factually.

6                THE COURT: Well, he has testified he ran DNA  
7       labs for about 30 years and interacts with a lot of  
8       different amounts of DNA. So that, based on the  
9       literature, establishes foundation.

10               MR. ALSDORF: Very well.

11               THE COURT: So I will overrule the objection.  
12       Bring the jury back in.

13

14                               (The following proceedings were had in  
15                               the presence of the jury)

16               THE COURT: The objection is overruled.

17       You may proceed.

18       BY MS. HARDENBROOK:

19   Q. Dr. Riley, what is your opinion about the amount of DNA in  
20       this case?

21   A. It's a very small amount. It's enough to do the test  
22       used, but they are super, super sensitive tests, and it's  
23       still a very small amount of DNA. It's around roughly  
24       one-tenth. Like if I touched this, and someone swabs that  
25       for my DNA, they will, on average, pick up about 50

1 nanograms of DNA. Here we are only talking about eight  
2 nanograms. So this is consistent with casual touching or  
3 less than that.

4 Q. How are you aware of the average of 50 nanograms for touch  
5 DNA?

6 A. Well, there was a study of touch DNA done by a scientist,  
7 whose name is Ben Vanoorschot, I believe. I think he had  
8 a co-author. What they did was study items that people  
9 touched, like fountain pens, ballpoint pens, briefcase  
10 handles, telephone receivers. Then, they swabbed those  
11 and found out how much DNA they could get. On average, it  
12 was about 50 nanograms from those items.

13 Q. How many nanograms are in a gram?

14 A. There are a billion nanograms in a gram.

15 Q. Okay.

16 Dr. Riley, what is this?

17 A. It's a tube labeled Trocomare. I'm not sure how to  
18 pronounce it. It is Trocomare Original Organic Herb  
19 Seasoning Salt.

20 Q. Okay.

21 Does it address a serving size?

22 A. Yes, one-quarter teaspoon or one gram.

23 Q. Is there a measuring instrument in front of you on the  
24 witness stand?

25 A. Yes.

1 Q. What is that measuring instrument?

2 A. This is a quarter teaspoon measuring device.

3 Q. Would you please open that seasoning salt and take out a  
4 measuring device full of the substance and put it in that  
5 plastic baggy?

6 MR. ALSDORF: Object under 703, Your Honor. I  
7 don't believe it's helpful to the jury.

8 MS. HARDENBROOK: This is for illustrative  
9 purposes to show the jury what a gram is so they can  
10 conceptualize what a billionth of a gram is.

11 THE COURT: I'll allow it.

12 A. (Witness complied).

13 Q. If you could seal that baggy up.

14 A. (Witness complied).

15 Q. So if there are a billion nanograms within something --  
16 well, first of all --

17 THE COURT: First of all, let's mark that so it  
18 can be used for illustrative purposes in the courtroom.

19 BY MS. HARDENBROOK:

20 Q. Dr. Riley, is a nanogram measuring mass or weight or size?

21 A. It's mass.

22 Q. Okay.

23 That means how big something is?

24 A. Yes. The mass is related to the weight. Like on the  
25 surface of planet earth, they are the same thing. In

1 space, there would be a difference, things would be  
2 weightless, but they would still have mass. You can think  
3 of it as the weight we are looking at.

4 Q. So is a nanogram something that can be seen with the naked  
5 eye?

6 A. Oh, no. No, you wouldn't. In fact, it would be smaller  
7 than a single one of those grains. You'd never see a  
8 nanogram.

9 Q. How about eight nanograms?

10 A. I doubt you would be able to see it.

11 MS. HARDENBROOK: Your Honor, I request  
12 permission to publish this to the jury.

13 THE COURT: You may just show that to the jury.

14 BY MS. HARDENBROOK:

15 Q. Dr. Riley, did you have the opportunity to look at any  
16 information on amylase in this case?

17 A. Yes.

18 Q. What did you review on the topic of amylase in this case?

19 A. Well, the lab ran a test for amylase, and they use it as a  
20 test for saliva. What I knew from the Department of  
21 Urology is that amylase is a urinary enzyme, too; it's not  
22 just from saliva.

23 I refreshed my memory on clinical laboratory science,  
24 and amylase is present in everyone's urine. The range of  
25 value in normal healthy people is a big range. It's about

1 the 10- to 20-fold. The urinary amylase and the salivary  
2 amylase are very closely related. The structures of both  
3 those proteins are completely worked out since 1995. They  
4 are 97 percent similar proteins. A number of  
5 investigators have mentioned that they have detected  
6 amylase in urine.

7 Q. Was there anything you specifically reviewed in this case  
8 that confirmed that conclusion?

9 A. Well, yes. I reviewed the laboratory's own validation  
10 study, and that included study of two urine samples. One  
11 of them was positive with this same test that they are  
12 using for saliva, and the other one was negative.

13 Then, the manufacturer has a validation study, as well.  
14 There are a variety of research papers. I would say half  
15 the time people confirm that they can find amylase in  
16 urine, but in any case, in clinical laboratory science,  
17 it's very well known that we have amylase in our urine.

18 Q. You said something about in the Department of Urology, you  
19 were aware of a urinary enzyme. Are there any medical  
20 tests that test for amylase in urine?

21 A. Yes.

22 Q. Why?

23 A. Doctors will order a urinary amylase test in cases of  
24 unexplained abdominal pain. The amylase is basically a  
25 marker for pancreatitis. We secrete it normally in our

1 urine, but in pancreatitis, they run it more. That's why  
2 they run it, and it is commonly run in clinical labs.

3 Q. Does your understanding of amylase, your experience in the  
4 Department of Urology at the University of Washington, and  
5 your review of materials in this case, lead you to a  
6 conclusion about amylase, a conclusion that was put forth  
7 by the lab in this case?

8 A. Yes.

9 Q. What was that conclusion about their conclusion?

10 A. Well, the lab thought they had an indication of saliva.  
11 I strongly disagree because they found out on a  
12 urine-soaked garment, in fact, according to the notes, it  
13 sounded like there were layers of urine there, a really  
14 thick layer of urine. She tested that and she got a weak  
15 amylase positive and thought that indicated saliva. But I  
16 don't think that could be said because urine has amylase.  
17 People have detected it with the same test, including in  
18 that validation study that I mentioned at the State  
19 Patrol. They got a positive urine sample with that same  
20 test. So I don't even understand why the lab would be  
21 saying they think there is an indication of saliva.

22 If they are saying that, I strongly disagree. I don't  
23 think there is any indication of saliva in that sample.

24 Q. Are you aware that there was more than one pair of  
25 underpants examined in this case?

1 A. Yes.

2 Q. Do you know what the result was on the other pair of  
3 underpants?

4 A. Well, the other pair was negative.

5 Q. Negative for amylase?

6 A. Yes.

7 Q. Do you have an opinion about that?

8 A. Well, it could just be that there was less urine on it or  
9 she didn't sample quite as much. On the one pair of  
10 underwear where she said she found amylase, that was a  
11 weak result. She noted it as a faint result. She also  
12 noted that on that pair of underwear, it sounded like some  
13 caking where some threads or fibers were caught in the  
14 urine, the dried urine.

15 On the pair of underwear where she got no amylase, that  
16 was noted as being a light urine stain. So I think there  
17 was a difference in amounts comparing those two pairs of  
18 underwear.

19 Q. When you say less amounts, you are referring to less  
20 amounts of what?

21 A. Urine and, therefore, amylase. Whatever amount of amylase  
22 the child had in her urine -- I mean, there is going to be  
23 more of that amylase if there is more urine.

24 MS. HARDENBROOK: No further questions.

25 Dr. Riley. Thank you.

1 THE COURT: The State may cross-examine.

2 MR. ALSDORF: Thank you.

3

4 CROSS EXAMINATION

5 BY MR. ALSDORF:

6 Q. Dr. Riley, good afternoon.

7 A. Good afternoon.

8 Q. So let me start at the beginning, at least the beginning  
9 of your consulting on forensic DNA cases. That goes back  
10 about how far?

11 A. Well, I started being paid for that in '93, but I was  
12 having cases being brought to me by other scientists. The  
13 staff asked my opinion. So I consulted, but wasn't paid  
14 for a year or year-and-a-half before I started my own  
15 business.

16 Q. You have consulted in hundreds of cases, correct?

17 A. Correct, yes.

18 Q. It's correct that you've consulted precisely zero times  
19 for the prosecution in those cases?

20 A. Well, that's not exactly true. I have consulted with  
21 three prosecutors, but as far as being hired goes, I have  
22 not consulted for the prosecution, although I certainly  
23 would be willing to talk to them if they asked me to.

24 Q. It just so happens that those requests don't come your  
25 way?

1 A. Not very often, no.

2 Q. Okay.

3       So you were in the courthouse on Friday, right?

4 A. Yes.

5 Q. We all thought that you were going to testify that day,

6       right?

7 A. Right.

8 Q. You had traveled from your residence in Ellensburg?

9 A. Yes.

10 Q. Being paid the whole time?

11 A. Yes.

12               MS. HARDENBROOK: Objection, Your Honor,

13       relevance.

14               MR. ALSDORF: It goes into an area she took up

15       on direct.

16               THE COURT: Overruled.

17       BY MR. ALSDORF:

18 Q. So suffice it to say, Friday was probably one of those

19       10-hour-plus days for you on this case, right?

20 A. Yes.

21 Q. \$2,000?

22 A. That is what I would charge, yes.

23 Q. Right.

24       Today will probably be another one of those days,

25       right?

1 A. Yes.

2 Q. Approximately how many hours have you consulted on this  
3 case besides your work last Friday and then today?

4 A. I would say roughly 20 hours.

5 Q. I heard you mention something about creating a DNA  
6 laboratory out of your house in the 1996-1997 period?

7 A. Yes.

8 Q. What was the purpose of that, of taking on that venture?

9 A. Well, I mainly wanted to have my own laboratory. I've  
10 worked in labs a good part of my life, and started getting  
11 some money from consulting. The first thing I thought of  
12 was buy scientific equipment, which I did, and remodeled  
13 my house. I was seriously thinking about running that as  
14 a business.

15 Q. It turned out that business venture didn't go so well,  
16 correct?

17 A. Right. I actually didn't have that much time to promote  
18 it or anything. I was busy with my research and  
19 consulting. So it never took off, that's true.

20 Q. Within a year, you abandoned the project, correct?

21 A. That's not correct. It was more like two years.

22 Q. Okay.

23 A. I never really abandoned it. We had a family situation  
24 where we had to move. So I never really abandoned that  
25 lab. In fact, I still have all the equipment from it.

1 Q. Is it just in your house?

2 A. Sorry?

3 Q. Is it just in your house?

4 A. It's in storage now.

5 Q. Okay.

6 Is it true that you have no actual hands-on forensic  
7 casework experience in the area of DNA analysis?

8 A. No, that's not true.

9 Q. Well, have you ever worked for a crime lab conducting  
10 casework in criminal cases like Ms. Hoffman and Mr. Lin?

11 A. Well, yes. The lab that we were just talking about at my  
12 house, I did work two cases in that lab. To set up one of  
13 these, you have to do quite a bit of background work to  
14 make sure everything is working. I actually was hired to  
15 do two different cases there.

16 As I mentioned, around 1990, I was hired to set up a  
17 forensic DNA lab, so I did design a forensic DNA lab and  
18 set it up.

19 Q. So a total of two cases over the last 30 years where you  
20 have done actual hands-on forensic casework, is that  
21 accurate?

22 A. Yeah. I think if you want to put it that way. Of course,  
23 the research labs -- this technology came from research  
24 labs, so the techniques we are using are the same as the  
25 forensic would be labs.

1 Q. You don't have any hands-on experience doing Y-STR  
2 testing, do you?

3 MS. HARDENBROOK: Objection, beyond the scope of  
4 direct. There was no testimony about Y-STR on direct.

5 THE COURT: Sustained.

6 BY MR. ALSDORF:

7 Q. You haven't been subjected to proficiency testing as  
8 dictated by the FBI Quality Assurance Standards, have you?

9 A. No.

10 Q. Dr. Riley, do you agree with the principle that control  
11 blanks -- well, control samples and reagent blanks are an  
12 important process as it relates to protecting against  
13 cross-contamination?

14 A. Yes.

15 Q. Do you agree that, in fact, those control samples and  
16 reagent blanks are the most likely way to determine  
17 whether or not cross-contamination has occurred in any  
18 given case?

19 A. As far as detecting defendant's DNA as getting out of its  
20 tube, those are the best way, although not fool-proof.

21 Q. Do you agree that the control samples and reagent blanks  
22 in this case exhibited no signs of contamination?

23 A. That's correct. But the reagent blank for the underwear  
24 was compromised.

25 Q. In your opinion because of what?

- 1 A. They were running out of it. By the time Ms. Hoffman sent  
2 it to the lab in Cheney, she had run out of most of it.  
3 So she only sent five microliters and she was actually  
4 supposed to have about 36 microliters.
- 5 Q. That is something that Michael Lin took care of on his  
6 end, correct?
- 7 A. No, he didn't. There is no way to take care of it. All  
8 he did was add back the five microliters that Kristina  
9 Hoffman said there was.
- 10 Q. Do you agree when samples are sent from one lab to  
11 another, best practice dictates you send it in a dry form?
- 12 A. I don't necessarily agree with that, no.
- 13 Q. Okay.
- 14 Well, then, is it your testimony that a dried extract  
15 has just as much potential for contamination as a liquid  
16 sample?
- 17 A. I think so, yes.
- 18 Q. Well, Dr. Riley, isn't it true that you can't point to  
19 anything specific to show that contamination actually  
20 occurred in this specific case?
- 21 A. That's correct.
- 22 Q. Mostly what you're offering is concerns about the fact  
23 that it may have happened?
- 24 A. Yes.
- 25 Q. One of the things you said is that when this type of

1       contamination occurs, you're concerned about it because a  
2       scientist may not know that it happened, right?

3   A.   That's true.

4   Q.   Okay.

5       But then I also heard you say that you know for a fact  
6       that it has happened.

7   A.   Yes.  Those would be different situations where a person  
8       knows and doesn't know.

9   Q.   Now, this article that you talked about in the journal,  
10       "Nature," the one that talks about touch DNA versus other  
11       kinds of DNA, right?

12  A.   Yes.

13  Q.   You cited that as a one-page abstract, correct?

14  A.   No, it's not an abstract.  That's a paper.  It is one  
15       page, but it's not an abstract.

16  Q.   Okay.

17       Well, do you recall that I interviewed about this  
18       specific subject and asked you whether or not that article  
19       was peer-reviewed?

20  A.   Yes.

21  Q.   The answer was no, it was not?

22  A.   I did not say that.  I never agreed to that.

23  Q.   Tell us what you said, then.

24  A.   I said it's extremely unlikely that a paper would be  
25       published in "Nature" and not be peer-reviewed.  I

1 secondly told you that that paper has signs of it being  
2 peer-reviewed, specific signs that I'm familiar with.

3 Q. You didn't tell us what those were.

4 A. Yes, I did. The papers are a very efficient one-page  
5 article. Researchers do not normally submit one-page  
6 articles to journals. They usually only do that if they  
7 are forced to do it by the reviewers. That's why I'm  
8 fairly certain that paper was heavily reviewed with  
9 recommendations as to how long it should be in that  
10 journal. The journal "Nature," it has always been thin.  
11 It's a weekly journal. It's thin. I think it is made to  
12 be read in one sitting. They don't waste space. They  
13 don't let authors go on and on with 30 pages. They will  
14 often recommend reduction in sizes to a paper. I'm sure  
15 that is what happened in that paper.

16 Q. Isn't it true that this particular article does not deal  
17 with one-time touch, but rather objects that are handled  
18 regularly by specific individuals, things like a pen or  
19 that person's phone that they use all the time?

20 A. But I think that's not the experiment. They are just  
21 talking about common objects that people handle on a  
22 regular basis, but they are not -- as I recall, they are  
23 not taking pens that have belonged to someone for a year  
24 and then analyzing that.

25 Q. Okay.

1 Tell me what this paragraph means, then, the one that  
2 starts with "swabs of objects" right there.

3 MS. HARDENBROOK: Your Honor, could we get the  
4 exhibit number on the record?

5 THE COURT: What's the number on that?

6 THE WITNESS: No. 80, Your Honor.

7 THE COURT: Thank you.

8 A. Well, as far as that one paragraph, I don't know. You  
9 might be right. It's hard to tell. But they do check  
10 pre-cleaned objects, as well, in the study.

11 Q. Okay.

12 As far as the paragraph that I was right about, they  
13 found that someone's regularly-handled pen has an average  
14 of 1.6 nanograms of DNA, right?

15 A. Well, if that's what you're reading. I don't recall that  
16 specifically.

17 Q. I will have you check my numbers. They are not my numbers  
18 anyway.

19 A. Yes, I do see that.

20 Q. Okay.

21 Dr. Riley, did you consult with any documentation in  
22 this case outside the realm of the scientific literature  
23 prepared by -- well, sorry, I won't call it literature,  
24 but the reports, laboratory documentation from Ms. Hoffman  
25 and Mr. Lin?

1 A. Well, yes. The research articles like the one we just  
2 were talking about, as well as a number of other ones.

3 Q. Did you read the police reports in this case?

4 A. I did, yes.

5 Q. Okay.

6 Did you listen to audio interviews of any of the  
7 non-scientific witnesses in this case?

8 A. No.

9 Q. One of the things you say -- you wrote a four-page report  
10 for us, right?

11 A. Right.

12 Q. When I say "us," the parties in this case, not the jury.

13 A. I don't recall the specific length, but that's possible,  
14 yes.

15 Q. Well, a four-page report should sound familiar to you,  
16 correct?

17 A. It's quite possible.

18 Q. You have submitted a four-page report in many cases,  
19 Dr. Riley, wouldn't you agree?

20 MS. HARDENBROOK: Objection, argumentative. We  
21 can mark a copy of it. Perhaps that would be the best way  
22 to get the question answered.

23 THE COURT: Let's go ahead and mark a copy.

24 MR. ALSDORF: I've already got one up here.

25

1 BY MR. ALSDORF:

2 Q. State's Exhibit 66.

3 A. It is four pages, yes.

4 Q. Which is pretty much how long your reports always are when  
5 you produce a report after consult?

6 MS. HARDENBROOK: Objection, argumentative.

7 THE COURT: Overruled.

8 A. I don't know what the average is. Some are shorter and  
9 some are longer.

10 Q. One of the things you say at the end is that "finally it  
11 is possible that the male DNA found on the underpants was  
12 deposited due to the alleged activity," correct?

13 A. It's possible.

14 Q. Right.

15 There is no real way for you to say how much more  
16 possible that is than any of the concerns you raised for  
17 the jury, isn't that correct?

18 A. I can't quantify those two alternative theories, no.

19 Q. Do you agree, as it relates to potential  
20 cross-contamination issues, if a scientist happened to be  
21 changing gloves between their handling of a questioned  
22 sample and a reference sample, that that would help  
23 protect against cross-contamination?

24 A. It would help, yes.

25 Q. Do you agree the practice of using disposable pipette tips

1 and discarding those regularly in-between the interaction  
2 with questioned samples and reference samples would also  
3 help protect against cross-contamination?

4 A. It would help, yes.

5 Q. Didn't you also acknowledge in your interview with me that  
6 you have no particular concern with the Washington State  
7 Patrol Crime Laboratory --

8 MS. HARDENBROOK: Objection, beyond the scope of  
9 direct with this witness about Y-STR. He is attempting to  
10 ask about the Y-STR database.

11 MR. ALSDORF: I'm amazed that she could predict  
12 my question, Your Honor.

13 THE COURT: Let's hear the entire question  
14 before I overrule.

15 BY MR. ALSDORF:

16 Q. That you had no problem with the State Patrol's use of the  
17 Y-STR database?

18 MS. HARDENBROOK: I was right. Objection. No  
19 testimony on direct with this witness on the Y-STR  
20 database, any of that.

21 THE COURT: I will sustain the objection.

22 BY MR. ALSDORF:

23 Q. Well, Dr. Riley, you've raised some potential concerns,  
24 but isn't it true you have no direct evidence that any of  
25 those concerns actually resulted in contamination in this

1 case?

2 A. That's true.

3 MR. ALSDORF: Thank you. Nothing further.

4 THE COURT: Redirect?

5 MS. HARDENBROOK: Thank you, Your Honor.

6

7

**REDIRECT EXAMINATION**

8 **BY MS. HARDENBROOK:**

9 Q. Dr. Riley, do you still have that study in front of you  
10 that Mr. Alsdorf marked?

11 A. No, I don't.

12 Q. Hand you back State's Exhibit No. 80. Mr. Alsdorf had you  
13 read the amount of nanograms found on a pen that had been  
14 handled over a period of time. I'd like to have you read  
15 the amount of a briefcase handle.

16 A. Yes. The average or mean was 75 nanograms per handle.  
17 The N equals 3 there. It means they tried three different  
18 briefcase handles, and got an average of 75 nanograms on  
19 them.

20 Q. Okay.

21 Mr. Alsdorf asked if you were subject to proficiency  
22 testing by the FBI, and you indicated that you were not.  
23 Have you been subjected to any kind of an examination or  
24 review by other professionals within the scientific  
25 community?

1 A. Yes.

2 Q. Tell me about that.

3 A. Well, every time I submit a paper or a grant proposal,  
4 that gets reviewed by, I would say, an average of four to  
5 five different scientists who are anonymous. They are my  
6 peers as judged by the editors of those journals and the  
7 program directors.

8 Q. You also testified that you were of the opinion that the  
9 reagent blank of the underwear sample was compromised in  
10 this case?

11 A. Yes.

12 Q. Explain that.

13 A. Well, basically they ran out of reagent blank before it  
14 ever got sent to Cheney, before the underwear ever got  
15 sent to Cheney.

16 Q. Why is that a problem?

17 A. That's the only thing that's going to tell you if you've  
18 got contamination. If it's compromised, you are basically  
19 working in the dark. That's a very important safety  
20 measure that's not really in place.

21 Q. That's not something Michael Lin could have fixed?

22 A. No.

23 Q. Why not?

24 A. The reagent blank is created when the first extraction is  
25 done, and that would have been done in Marysville. There

1 is no way Michael Lin could recreate that reagent blank.  
2 I mean, he could create his own reagent blank, but it just  
3 wouldn't cover all that history from the first extraction  
4 in Marysville through everything that happened at that lab  
5 and in the mail and so on.

6 Q. A reagent blank travels with an actual sample throughout  
7 its whole life as it goes through the lab?

8 A. Yes. Yes, except it doesn't cover the period before the  
9 lab. So if the sample got contaminated in storage before  
10 it was delivered to the lab, the reagent blank wouldn't  
11 detect that even if it's not compromised.

12 Q. Mr. Alsdorf also asked you about whether it was your  
13 opinion that there was less likelihood of contamination  
14 from dried samples as opposed to liquid samples. You said  
15 that was not your opinion. Could you explain why that is  
16 not your opinion?

17 A. Dried samples can become aerosolized. They can form dust  
18 and get into the air. Liquid sample can become  
19 aerosolized, too. There is not a huge difference unless  
20 we are talking about maybe direct contact. Dried samples  
21 form dust. Our human DNA gets into house dust and  
22 building dust. That has been shown where people have  
23 gotten profiles from dust.

24 Q. You testified on cross that scientists may not know  
25 contamination is happening, but you know it has happened.

1 Mr. Alsdorf said, well, how is that possible?

2 A. Yes.

3 Q. Could you explain how that is possible?

4 A. Yes. I wasn't talking about the same samples. I mean, if  
5 the lab has a reagent blank and they develop it and it  
6 shows up as one of their co-worker's DNA profile, then  
7 they know they have got a contamination event there. I  
8 know, too, because I know that the reagent blank is  
9 supposed to be blank. So with those, you know when you've  
10 got contamination.

11 On the other hand, if the defendant's DNA is  
12 accidentally introduced into the evidence, it's possible  
13 no one will ever know because it will appear it matches.  
14 That is why it is so important to keep his sample away  
15 from the evidence.

16 MS. HARDENBROOK: No further questions,  
17 Dr. Riley. Thank you.

18 THE COURT: Mr. Alsdorf?

19 MR. ALSDORF: Nothing further.

20 THE COURT: You may step down.

21 THE WITNESS: Thank you.

22 THE COURT: You may call your next witness.

23 MS. HARDENBROOK: The defense would recall  
24 Detective Quick to the stand.

25 THE COURT: Detective, you are still under oath.

1 THE WITNESS: Thank you.

2

3 TYLER QUICK, witness herein, after being  
4 previously sworn, was examined and  
5 testified as follows:

6

7 DIRECT EXAMINATION

8 BY MS. HARDENBROOK:

9 Q. Good afternoon, Detective.

10 A. Good afternoon.

11 Q. In November of 2011, did you receive any communication  
12 from the Washington State Patrol Crime Lab?

13 A. I am not certain on the date without any reference  
14 materials, but I do remember receiving communication from  
15 them.

16 Q. Would it make you more certain if you could see a copy of  
17 your report?

18 A. Yes, it would.

19 Q. I'm going to be hand you what's been marked as 41, 44, and  
20 45. I'm not sure which exhibit it may be in. Would you  
21 like to take a minute and review those?

22 A. Can you be more specific as to the date or the type of  
23 communication?

24 Q. Sure. Any communication from Kristina Hoffman in November  
25 of 2011.

A. None of these reports document that actually.

1 Q. That packet doesn't go far enough?

2 A. Are you talking about her initial report?

3 Q. I am.

4 A. Okay.

5 Like I said, I don't know the exact date, but I  
6 obviously did receive that report.

7 Q. You learned in that report about her results on the  
8 tights, is that correct?

9 A. Which results are you referring to?

10 Q. I was going to have you tell me.

11 A. I apologize. I don't have a copy of her report. I do  
12 have my follow-up. I did find that place where it  
13 indicates that I received it, but I don't actually have  
14 that with me.

15 Q. Would it aid your recollection to look at Ms. Hoffman's  
16 crime lab report from that time period?

17 A. Yes, it would.

18 Q. I'd like to hand you what's been marked as State's Exhibit  
19 No. 55.

20 A. Thank you.

21 Q. Did you learn something about the tights?

22 A. Yes.

23 Q. What did you learn about the tights that Ms. Hoffman  
24 tested?

25 A. Several things.

1 Q. Okay.

2 Was there DNA found on the tights?

3 A. Yes, there was.

4 Q. Where was that DNA found?

5 A. Exterior crotch.

6 Q. How many contributors?

7 A. At least four.

8 Q. Did you make a decision about whether or not to have  
9 further -- did you make a decision whether or not to try  
10 to figure out the sources of that DNA?

11 A. I did.

12 Q. What was that decision?

13 A. I decided not to pursue that at that time.

14 Q. Why is that?

15 A. Well, there were several reasons. The first reason is  
16 your client was the only person who told me they had had  
17 any contact with his mouth to that area. That was  
18 consistent with the victim's disclosure. She only  
19 identified one person and that was your client.

20 Additionally, there was only one profile of DNA found  
21 on the interior of the underwear.

22 Q. So you didn't think you needed to test the exterior crotch  
23 any further?

24 A. Not at that time.

25 Q. Did you have an understanding about how the DNA could have

1 gotten on the exterior crotch of the underwear that made  
2 it less valuable as evidence?

3 A. I'm not sure I understand your question, sorry.

4 Q. In addition to not needing that evidence, was there any  
5 reason that you thought it wouldn't be meaningful whose  
6 DNA was on the exterior crotch of her underwear?

7 A. I don't think I would characterize it as not meaningful,  
8 but less significant than whose DNA was on the interior,  
9 yes.

10 Q. Okay.

11 Why was it less significant that several peoples' DNA  
12 was on the outside of the crotch tights?

13 A. Because DNA in that area doesn't necessarily indicate  
14 criminal activity.

15 Q. It could have gotten there by touching?

16 A. Or holding the child.

17 MS. HARDENBROOK: No further questions,  
18 Detective Quick. Thank you.

19 THE COURT: Mr. Alsdorf, do you have any  
20 questions?

21 MR. ALSDORF: No.

22 THE COURT: You may step down, sir.

23 MS. HARDENBROOK: The defense rests.

24 THE COURT: Is there any rebuttal testimony from  
25 the State?

1 MR. ALSDORF: Can I have a moment, Your Honor?

2 THE COURT: Yes.

3 MR. ALSDORF: No rebuttal evidence, Your Honor.

4 THE COURT: Members of the jury, I'm going to  
5 ask you to go back to the jury room for just a moment  
6 while I talk about instructions on the law with counsel.

7

8 (The following proceedings were had  
9 outside the presence of the jury)

10 THE COURT: Please be seated.

11 Counsel, you have previously received a packet of  
12 instructions from the Court. These include the State's  
13 instructions and the one instruction from the defense in  
14 lieu of the State's instruction that says: "Sexual  
15 intercourse means any act of sexual contact between  
16 persons involving the unclothed sex organs of one person  
17 and the mouth or anus of another."

18 Does the State have any exceptions to the Court's  
19 proposed instructions?

20 MR. ALSDORF: Yes, Your Honor. I do have an  
21 exception to the modification of, I believe it's WPIC  
22 45.01, that would add the word "unclothed." I previously  
23 stated my reasons for those objections on the record, but  
24 I would reiterate that I think actually everyone agrees  
25 that there is no case law directly on point in this area

1 and that, as such, the State should be free to argue from  
2 the standard WPIC instruction.

3 THE COURT: Anything further from the defense on  
4 that?

5 MS. HARDENBROOK: The defense does concede that  
6 this is an issue of first impression, but in my review of  
7 the case law regarding cases where there is both Child  
8 Molest and Rape of a Child charged where the Court has  
9 been determining whether Child Mol. is a lesser-included  
10 of Rape in the First Degree or, I guess, in any degree, it  
11 has been clear from the review of case law, you cannot  
12 commit Rape of a Child through clothing under the third  
13 definition of "sexual intercourse," which is what the  
14 State has decided to proceed on in this case. That's why  
15 I altered the instruction and requested it from the Court.

16 THE COURT: I think the altered instruction with  
17 the word "unclothed" is appropriate in this case so the  
18 jury has no confusion over what sexual intercourse means  
19 in the context of this case.

20 As a matter of law, I don't believe that the crime of  
21 Rape of a Child in the First Degree can be committed by  
22 putting one's mouth over the clothing of a child. It has  
23 to be unclothed sex organs.

24 A sexual touching that is more than mere fleeting and  
25 is done for the purpose of sexual gratification of a

1       defendant would constitute Child Molestation in the First  
2       Degree, which is where this case started.

3           So given the statutory scheme and some of the cases I  
4       have looked at, I'm going to make that finding and give  
5       this instruction in this case.

6           Does the defense have any exceptions to the proposed  
7       instructions?

8           MS. HARDENBROOK: My one is an exception and an  
9       objection and just to the 401. The State prefers the  
10      language with "abiding belief" in it. The defense does  
11      not prefer that language. I realize that the Court of  
12      Appeals does not necessarily agree with me that that  
13      lowers the burden of proof, but I contend that it still  
14      does. I merely note that for the record.

15          THE COURT: It's noted that for the record. I  
16      will give the instructions as proposed.

17          MS. HARDENBROOK: Your Honor, can I get an extra  
18      copy of the packet for my client? I'm not really good at  
19      sharing with them.

20          THE COURT: Yes.

21          Let's make sure we have the numbers here right.

22          MR. ALSDORF: I'd prefer another copy, too, Your  
23      Honor, if it's possible.

24          MS. HARDENBROOK: What's the Court's plan  
25      regarding scheduling? I do expect my closings to be quite

1       lengthy.

2               THE COURT: Well, I do have a civil motions  
3 calendar at 9:30 tomorrow morning. So my plan would be to  
4 get the copies of the instructions, instruct the jury, and  
5 go immediately into closing arguments.

6               MS. HARDENBROOK: How late can we continue going  
7 today would be my question?

8               THE COURT: How long do you think you need for  
9 closings?

10              MS. HARDENBROOK: I think I need at least an  
11 hour, maybe more. So depending on how long Mr. Alsdorf  
12 takes, I need to know when the courthouse will shut down  
13 such that I can quit talking in advance of that time.

14              MR. ALSDORF: I could confine myself to an hour  
15 between my two closings.

16              THE COURT: Well, if we get these instructions  
17 going here, we will go until around 5:00ish.

18              MS. HARDENBROOK: I will arrange for that.

19              THE COURT: We will try to get done with  
20 closings, send the jurors back to the jury room to select  
21 a presiding juror, and let them go home for the day.

22              I understand you need to make some arrangements on  
23 childcare.

24              MS. HARDENBROOK: I will do that.

25              MR. ALSDORF: Your Honor, for the purpose of

1 just my own --

2 THE COURT: I have 10 instructions here.

3 MR. ALSDORF: -- knowledge of what the jury will  
4 have access to in deliberations, when they want to listen  
5 to the tape again of the defendant's statement, will they  
6 have access to the transcript?

7 THE COURT: Jon, let's send you out and get 15  
8 copies.

9 MR. ALSDORF: During the time when they are  
10 listening to the tape, will they have access to the  
11 transcript?

12 THE COURT: Is that a clean computer?

13 MR. ALSDORF: It is not.

14 THE COURT: We are not going to send the  
15 transcript back to the jury room. We can get a clean  
16 computer over in Court Administration to send back to the  
17 jury so it can be played back in the jury room.

18 MR. ALSDORF: Understood.

19 THE COURT: They had an opportunity to see the  
20 transcript and take notes on it on what was said. We will  
21 get that for tomorrow and send that back tomorrow to the  
22 jury room.

23 MR. ALSDORF: Thank you.

24 MS. HARDENBROOK: Thank you, Your Honor.  
25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

(Court in recess)

(The following proceedings were had in  
the presence of the jury)

THE COURT: We will proceed with instructions on  
the law. We will hand those out to you. After I read  
them, we will launch into final arguments of counsel. I  
expect we will be here until after 5:00 tonight to get  
done with the arguments because we need to get this case  
to the jury. I don't want to delay any further doing  
that. We will hold you here longer to accomplish that  
this afternoon.

JUROR NO. 4: I forgot my glasses.

THE COURT: Yes, you will need your glasses.

(The Court's instructions were read to  
the jury by the Court)

THE COURT: You will now hear the arguments of  
counsel. Please give your attention to Mr. Alsdorf.

MR. ALSDORF: Thank you, Your Honor.

Could I have the screen down, please?

Ladies and gentlemen, a three-and-a-half-year-old girl  
told you, through her mother and her grandmother, exactly  
what happened to her on Christmas Eve 2010. What she told  
to her mother and to her grandmother, her most trusted

1 caregivers, was something that a three-and-a-half-year-old  
2 child simply doesn't make up or imagine, doesn't just come  
3 up with that out of nowhere.

4 She happened to describe, over the course of that  
5 evening, an act which, as adults, we probably all  
6 recognize to be something that happened, but we probably  
7 don't recognize that it happens all the time to little  
8 kids. She described oral sex between a man and a woman,  
9 but she described it that it happened to her: He licked  
10 my pee-pee. Brandon told me not to tell. He got up and  
11 shut the door. He made a mess down there.

12 I got up in my opening statement -- seems like a long  
13 time ago now -- and told you that this case was going to  
14 be all about you using your common sense and bringing back  
15 years of experience that you collectively have as citizens  
16 in this country, in this county, and bring it in that jury  
17 room with you in order to put things together, in order to  
18 form a picture in your mind of exactly what happened in  
19 that bedroom that only two people know what really  
20 happened.

21 I asked you to draw on the evidence that you would hear  
22 about what happened on the night in question from the  
23 witnesses in the case, people who saw things, people who  
24 heard things, and you have done that now. I ask you to  
25 draw on what you learned about what the defendant himself

1       said about what happened. You've heard that audio now.  
2       You got a chance to read the transcript along with that  
3       audio. You will not get a chance to read that transcript  
4       again, by the way, but you will get to play that audio as  
5       many times as you want. You heard that side of the  
6       evidence in the case.

7       I also told you that there would be a lot of forensic  
8       evidence in this case and, indeed, there was. We spent a  
9       lot of time talking about the forensic evidence in this  
10      case. To summarize, I'm talking about the amylase on the  
11      inside of those Nick Jr. underpants, along with the seven  
12      nanograms of male DNA that, according to two forensic  
13      scientists with the Washington State Patrol, is more  
14      consistent with the body fluid deposit, saliva, according  
15      to the State's theory of the case, than it is with any  
16      sort of touch or transfer. That is hugely important.

17      None of those categories of evidence are in and of  
18      themselves what I'm asking you to hang your hat on to know  
19      beyond a reasonable doubt that the defendant placed his  
20      tongue on that little girl's vagina with nothing in the  
21      between.

22      I'm asking you to draw on the collection of evidence  
23      that you heard last week and this that you have an abiding  
24      belief that you know this happened. I will talk to you  
25      about that in a little bit.

1           First of all, about those three categories, I want to  
2 talk to you about what you learned about the factual  
3 testimony from that night. You did hear from witnesses,  
4 particularly April and Sherry Mathis, who had the most  
5 direct ability to interact with little Mia on that night.

6           You heard a mother in April Mathis -- well, according  
7 to defense's theory in opening would present to you as  
8 someone who was hypersensitive to the issue of sexual  
9 abuse, someone who was looking to confirm what she knew to  
10 be true because she was suspicious about everything at  
11 every turn.

12           Is that the woman that presented here on the witness  
13 stand? I would argue that is entirely not the case. I  
14 would argue to you that, if anything, April Mathis  
15 presented as someone who is very conflicted about the  
16 horrible news that she learned on that night.

17           You heard her break down in tears when she described at  
18 first not wanting the defendant to go to jail, that she  
19 only wanted him to get help, that she didn't want a big  
20 confrontation that night that would affect her daughter or  
21 could result in someone going to jail for murder. She  
22 wanted to keep this within the family at first.

23           This isn't a woman who is motivated by any sort of  
24 improper motive or improper speculation about what  
25 happened. All she did was go looking for her daughter

1       when she was missing from 10 to 15 to 20 minutes. When  
2       she opened the door and got into that room, she heard a  
3       massive -- heard and saw a big repositioning on that bed.  
4       She couldn't quite make it out, but you saw her describe  
5       it physically as best that she remembered, that she  
6       remembered the defendant basically returning to a sitting  
7       position, having been leaned over towards Mia. She  
8       remembered that the covers were disturbed.

9       Compare that to Stefanie Waugh, formerly Stefanie Earl,  
10      who said, oh, no, the covers were completely made like a  
11      hotel the whole time.

12             MS. HARDENBROOK: Objection, facts not in  
13      evidence.

14             MR. ALSDORF: The fact is, ladies and  
15      gentlemen --

16             THE COURT: I will overrule the objection.

17             MR. ALSDORF: I will take a moment to speak  
18      about that. Finally, you get to decide what happened in  
19      this case. You are the people who determine what are the  
20      facts, what's not. You get to stop listening to me talk.  
21      You get to stop listening to Ms. Hardenbrook talk. You  
22      get to rely on your notes and your memories, and you guys  
23      get to decide what happened in this case. If there is  
24      ever a disagreement about what I remember or what  
25      Ms. Hardenbrook remembers, the fact is you guys get to be

1 the deciders of that, okay?

2 What you learned from that night is that one thing that  
3 Mia said happened, there has been some differing testimony  
4 about the words she used. Did she say "peep?" Did she  
5 say "pee-pee?" Did she say "pee?" Those are the kinds of  
6 differences you expect to fade over time. This is over  
7 two years ago this happened.

8 The telephone game that you heard Tyler Quick talk  
9 about with the defendant in his interview. Some things  
10 you don't forget. You don't forget the basic gist of what  
11 your daughter or granddaughter told you on that night on  
12 Christmas Eve, delivered in that way.

13 By the way, one word has not changed about what Mia  
14 said happened to her. She said "licked." No one has ever  
15 said Mia said anything other than "licked." Kids know  
16 what "lick" means. She didn't say "kiss." She didn't say  
17 "blow raspberries" or "blow bubbles" or "blow butterflies"  
18 or "zerbert," if you have ever heard that one before. She  
19 said "lick" and that is huge. She is describing something  
20 that she should not know about. She found out about it on  
21 that night.

22 You heard evidence of an actual motive in this case  
23 and, no, I'm not talking about anyone coming right out and  
24 saying that the defendant is sexually attracted to Mia or  
25 anything quite so overt as that, but you have evidence

1 that can give you a glimpse into the defendant's state of  
2 mind because Mia talked about it.

3 Mia talked about "Brandon told me not to tell." Well,  
4 if Brandon told her not to tell, he is hiding something.  
5 He has got a guilty conscience. He knows what he doesn't  
6 want Mia to talk about. Thank goodness, she did.

7 You know that Brandon got up to shut the door. Why did  
8 he do that? Why do you make it so that you are the only  
9 one alone in a room with someone who is not related to  
10 you? The only possible reason to do that is the reason  
11 that Sherry Mathis basically has a policy that no kids  
12 should ever be alone in a room with another adult that  
13 they don't know.

14 Evidence of the defendant's motive. You know that he  
15 had the opportunity to do this. Ten, 15, 20 minutes,  
16 whatever --

17 MS. HARDENBROOK: Objection, facts not in  
18 evidence. There was no testimony about 20 minutes.

19 MR. ALSDORF: I disagree. Stefanie Waugh talked  
20 about it.

21 THE COURT: I will overrule the objection.

22 As counsel has indicated, the jury is the final decider  
23 in terms of what the facts are that have to be proven in  
24 this case.

25 MR. ALSDORF: Whatever it is, 10, 15, 20, I know

1 it's hard to wrap your mind around the fact that how could  
2 someone be so bold and so stupid to do this during a  
3 Christmas party. That does boggle the mind, but so does  
4 the fact that these crimes happened at all. We know it  
5 did. It happened to Mia.

6 You heard evidence about whether or not Mia was ever  
7 alone with the defendant after everything hit the fan that  
8 night. Who is the only person who ever talked about that?  
9 The former Stefanie Earl. She said, oh, yeah, I remember  
10 after all this happened and we had the big confrontation  
11 in the garage, then at least one or two more times Mia was  
12 up there laying down with the defendant again. How  
13 preposterous is that idea from April Mathis' perspective  
14 and from the defendant's perspective? You heard April  
15 categorically deny that she would ever allow Mia to be  
16 alone with the defendant after this accusation came up.  
17 It simply doesn't make sense.

18 On the flip side, neither does it make sense for the  
19 defendant or his wife to even allow that to happen even if  
20 the allegation is completely false. He has just been  
21 accused of molesting a child. Oh, it's April Mathis' job  
22 to make sure she knows where her child is and, you know,  
23 no reason to be concerned about whether or not that child  
24 ever ends up alone in the room with that person again on  
25 that evening. That does not make sense, and it should

1 tell you a great deal about how to assess the credibility  
2 of Stefanie Earl.

3 Keep in mind that Stefanie Earl had a chance to talk  
4 with the defendant for at least five minutes up in the  
5 bedroom when she described herself as pushing and  
6 insisting that the defendant should go down and confront  
7 April and Sherry about these accusations. Why would she  
8 have to push him on that issue? Why wouldn't the  
9 defendant -- of course, she also said he sprang right up,  
10 okay? So there are two very inconsistent things.

11 Why should she have to push and insist at all?  
12 Shouldn't the defendant be angry and outraged that he has  
13 been accused of something like this? I would submit to  
14 you, ladies and gentlemen, that the defendant knew that he  
15 had been caught. The defendant knew that someone knew  
16 what he did and that his instructions to a  
17 three-and-a-half-year-old girl about not telling, that  
18 somehow had been ignored, and that he was in trouble.

19 No one saw the defendant blowing any sort of  
20 raspberries or whatever you want to call it on different  
21 children that night. There has been plenty of testimony  
22 about, oh, sure, Brandon Earl has given raspberries to  
23 kids in the past. No one said it happened that night;  
24 certainly not Mia. Mia was very clear what happened to  
25 her. It was a lick. It wasn't a kiss or a blow or a

1 raspberry or anything else.

2 You've actually heard some testimony about Mia's  
3 behavior that night. You heard that she started out  
4 playful, basically part of the group with all the other  
5 kids, racing up and down the stairs, everything like that,  
6 interacting with the defendant who, by the way, she never  
7 has had any problem with before this happened. But  
8 somehow that changed when April sprang into that room and  
9 she saw -- well, she demonstrated it to you with her eyes  
10 more than she did talk about it with words. You saw in  
11 April's eyes she was trying to recreate a look of  
12 surprise, a deer in the headlights that she saw her  
13 daughter have in that moment on that bed.

14 After that moment, when Mia came down the stairs and  
15 whispered that Brandon told me not to tell, and then told  
16 her grandma what happened on the stool in the kitchen,  
17 grandma described her as quiet. She was quiet for the  
18 rest of the evening. That's about all the evidence that  
19 you would expect to find from a three-and-a-half-year-old  
20 girl who just had something happen that didn't hurt, okay?  
21 It might have tickled. It might have even felt good,  
22 okay?

23 But she doesn't know. She doesn't know if what  
24 happened was wrong or anything about it. She shouldn't  
25 know anything about it. She was quiet. She was probably

1 picking up on the fact that the grown-ups around her in  
2 her life were becoming more and more disturbed about the  
3 information that they were learning.

4 You have enough evidence before you to know that  
5 something was definitely wrong with the defendant that  
6 night. Counsel said in her opening that he just wasn't  
7 feeling it, and that's probably a good way to describe it.  
8 He wasn't feeling it. He licked it. He licked Mia.

9 You know that he went up to his room before any of the  
10 other adults were tired at this party and sort of withdrew  
11 himself from this social gathering. You know that he was  
12 drinking. You know that he was having troubles with his  
13 wife, that he had worked hard that day.

14 I would submit that you also have evidence that he was  
15 initially reluctant to come down and confront these  
16 allegations. It doesn't make sense other than in the  
17 context of someone who has something going on in their  
18 mind that would cause him to try to do something like this  
19 and who is then caught for doing it.

20 Let's talk about the defendant's statement a little  
21 bit. You heard Detective Ferreira and Detective Quick  
22 talk about that interview. The interview was on display  
23 for you to assess and critique and mostly determine are  
24 the things the defendant says on that tape credible in the  
25 slightest? I would submit to you that, no, they are not.

1           Detective Ferreira talked about that, generally  
2 speaking, it is not going to happen that someone walks  
3 into a police station and fully confesses to one of these  
4 horribles crimes. It just doesn't happen. It's the  
5 rarest of occasions.

6           What you are looking for is admission and provable  
7 lies. There are ample of both of those things in the  
8 defendant's statement for you to find. Why would there be  
9 provable lies other than the natural conclusion of that,  
10 which is the defendant knows he has been caught? He knows  
11 that he is locked into a statement that basically is  
12 consistent with whatever you saw in that garage that  
13 night. He is going to try to explain it the best way that  
14 he knows how. Do you remember those words? He tried to  
15 explain it the best way he knew how.

16           Well, nice try. Provable lies. He said he had never  
17 been alone with Mia ever before this incident. It's on  
18 the tape. You can hear it for yourself. We know that's  
19 not true because of what we learned about that birthday  
20 party in the garage that happened a few weeks before all  
21 this in which we have multiple witnesses saying that  
22 Brandon was alone with Mia during that time.

23           You heard Brandon talk about how drunk April Mathis was  
24 at this party and how she was basically the only one who  
25 was having a drinking problem at the party and everyone

1 else was keeping it safe and sober, basically. Does that  
2 jibe with your memory of what people testified to as far  
3 as how much people had to drink?

4 Keep in mind this is over two years ago, right? Is  
5 each person going to remember exactly what they drank?  
6 No. That's one of those things that falls into the  
7 category of that kind of detail fades with time.

8 Like when April told you that she had a shot of  
9 Fireball and one to two glasses of wine, and maybe,  
10 according to Annette Tupper, the defense witness, you  
11 could add a beer or two on top of that, over a period of  
12 multiple, multiple hours.

13 How does that compare to Sheri Morrow who had four,  
14 five, six shots of whiskey, which was abnormal for her  
15 because she was sad about certain people that weren't  
16 going to be at the party? Or with Stefanie Earl, who  
17 admitted that she had many drinks over the course of that  
18 evening.

19 You heard the defendant on that tape say, no, he was  
20 sure, he was sure that Mia was wearing jeans or slacks.  
21 He remembers. Keep in mind, this statement was taken on  
22 November 7, 2011, so that is two weeks after this  
23 incident.

24 MS. HARDENBROOK: January.

25 MR. ALSDORF: Yes, January 7, 2011. I added a 1

1 in there. Thank you, counsel.

2 So two weeks after the incident. Of course, he places  
3 his own mouth over that girl's vaginal area. So you  
4 figure two weeks after that, if it's an accident, you are  
5 going to remember what kind of pants those were. But here  
6 it is. Red tights taken on the night of the incident. So  
7 was he just not remembering two weeks later? Or did he  
8 have a reason to lie? Did he have a reason to worry about  
9 what might be found in that area?

10 Here is another thing, another provable lie. He says  
11 in that statement that April came upstairs and flung the  
12 door open, not once but twice, before everything hit the  
13 fan, okay? He basically does a repeat of April came in,  
14 flung the door open, Mia was by my side, and then he told  
15 her to take the kid away, she did so, and then, all of a  
16 sudden, it happens all over again. That's the time that  
17 April whisks her daughter out of the room, goes  
18 downstairs, and then everything goes from there.

19 He is the only person who testifies to two different  
20 incidents happening that way. Remember I talked a few  
21 minutes ago about Stefanie Earl being the only one who  
22 testified to an incident after everything hit the fan  
23 where, all of a sudden, Mia was upstairs again  
24 inexplicably with the defendant after this happened?

25 Those two things, in and of themselves, are entirely

1        improbable. don't make sense at all. But when you compare  
2        them together, and realize husband and wife had talked  
3        about this before both of them talked to the police, you  
4        realize that someone just got their story wrong. It was  
5        supposed to be two times, right? There was supposed to be  
6        the time that April flung the door open and took her  
7        daughter downstairs. There was supposed to be the time  
8        afterwards when inexplicably Mia was there after the  
9        incident.

10        The defendant made a mistake. He said inexplicably  
11        that April came upstairs and flung the door open two times  
12        before any of this happened, and that is not supported by  
13        any of the evidence. It helps you know that the defendant  
14        was lying.

15        What are some of the admissions that the defendant  
16        made? Well, the biggest one -- this is probably the  
17        biggest one in the whole case really. That from a common  
18        sense perspective, 30 seconds is no act. That's  
19        impossible. Think about that for a second or 30. An  
20        accident down there in the genital region of a  
21        three-and-a-half-year-old child. Is he saying that he  
22        missed? Mia's body is too tiny that he just missed his  
23        mark for 30 seconds? Why does it take 30 seconds to  
24        figure that out?

25        There is a second hand on the clock behind you and the

1 accident starts now. He is blowing. He is blowing his  
2 raspberries. It has been five seconds. It's an accident.  
3 Is he figuring it out yet? It has been 10 seconds now.  
4 He's still blowing, still making that raspberry sound,  
5 tickling that girl. But you are in the wrong place. Is  
6 it an accident yet? It's 20 seconds. When do you figure  
7 out it is an accident and you keep blowing and blowing and  
8 blowing? And now, 30 seconds is over. That's no  
9 accident.

10 It's not like Detectives Quick or Ferreira put those  
11 words in his mouth. Listen to the tape. He came up with  
12 that estimate. They gave him multiple chances to go back  
13 on that and he tried. I will get to that in a minute.  
14 But he confirmed it was 30 seconds, no more, no less; not  
15 10 minutes, not one minute, 30 seconds.

16 You didn't really hear this on the tape, but you heard  
17 Detective Quick talk about it that there comes a point  
18 when the defendant gets teary-eyed, and Detective Quick is  
19 talking about I can see how it's tearing you up inside,  
20 how you want to come clean about this, and his answer,  
21 "yeah." What does that tell you about what was going on  
22 in that man's mind?

23 Now, it's understandable that it would be hard for  
24 anyone, even someone who has done this, to come to terms  
25 with what they have done, because it's a horrible crime.

1       So even people that would have done this don't want to  
2       necessarily think of themselves as someone who could have  
3       done this. You have seen evidence of that in the  
4       defendant's own statement.

5       For example, how he keeps coming back to the tummy.  
6       Even though you hear him say in that audio that he himself  
7       acknowledges inappropriately placing his mouth in her  
8       genital area for 30 seconds by accident, of course. He  
9       keeps trying to come back to tummy. Why does he keep  
10      doing that? Because he can't bring himself to come to  
11      terms internally with what he has done.

12      Another evidence of that is how he keeps saying, well,  
13      on the night when this all blew up and I had to go  
14      downstairs and confront the allegation, they kept saying I  
15      had touched Mia. Well, no, that wasn't the accusation.  
16      The accusation is that you licked Mia. When he keeps  
17      trying to bring it back to touch, you can see the  
18      minimization that Detective Quick talked about. You can  
19      see how hard it would be to admit that you have done  
20      something like this.

21      I encourage you to review the defendant's statement as  
22      many times as you want and think to yourself does this  
23      even come close to providing a reasonable explanation for  
24      what happened in that room. I submit that you will each  
25      come to the conclusion that the answer to that is a

1       resounding no. Once you know that the defendant's story  
2       isn't worth the tape that it's recorded on, you can make a  
3       number of other different conclusions from there.

4             What does it mean that you know he's lied? It tells  
5       you a great deal. It tells you that he knows that the  
6       very few words that that little girl said about what  
7       happened are the real version of what happened.

8             I want to talk a little bit about the physical  
9       evidence, the forensic evidence in this case. Just as a  
10       practical matter, you guys get all the exhibits that have  
11       been admitted into evidence, with a few exceptions, that  
12       basically include the pictures and the actual physical  
13       property, okay? You don't get transcripts. You don't get  
14       police reports. That's the way the Rules of Evidence  
15       work. Maybe you wish --

16             MS. HARDENBROOK: Objection, Your Honor. They  
17       get their instructions on the law from the Court.

18             THE COURT: I'll sustain the objection on the  
19       comment on the Rules of Evidence.

20             MR. ALSDORF: Fair enough.

21             THE COURT: The Court has instructed the jurors  
22       regarding what they will see.

23             MR. ALSDORF: You will get what you get. Don't  
24       get upset. That's what I tell my kids.

25             I would encourage you to not be worried about

1 interacting with that evidence back there, okay? You  
2 don't need to be concerned with wearing gloves or  
3 protecting anything in the future, okay? This evidence is  
4 yours now. You can interact with it however you want. To  
5 the extent you are comfortable, I will encourage you to do  
6 that because it's important.

7 What you learned about the evidence in this case is  
8 that -- I'll take it item-by-item. These are the little  
9 tights that Mia was wearing that night. First of all,  
10 Kristina Hoffman interacted with all the evidence in this  
11 case in a way that basically defines the professionalism  
12 that is expected of those forensic scientists at the  
13 Washington State Patrol Crime Laboratory.

14 You didn't hear Dr. Riley take any issue with how  
15 Kristina Hoffman interacted with evidence as a scientist.  
16 I would submit that's because she is beyond reproach in  
17 that area. What she found when she examined the tights  
18 was that, first of all -- and this is a big, huge "first  
19 of all" -- the tights were negative for amylase on the  
20 exterior crotch portion of the tights.

21 How can a negative result be significant in a case like  
22 this? Well, it just proves the defendant's theory. Well,  
23 I suppose the defendant's theory is actually that there  
24 were jeans or slacks.

25 MS. HARDENBROOK: Objection. He can't possibly

1 know what the defendant's theory is.

2 THE COURT: Sustained.

3 MR. ALSDORF: The defendant said that there were  
4 jeans or slacks on that child. We know that that's not  
5 the case. But whatever was on that child, he said he had  
6 his mouth down there for 30 seconds. You would expect, if  
7 he was blowing raspberries on a clothed surface for 30  
8 seconds, that there is going to be saliva on those clothes  
9 that would result in an amylase hit on the crotch of the  
10 tights. That's a huge problem with the defendant's story.

11 Kristina Hoffman also found a mixture of DNA by  
12 standard DNA analysis that was consistent with at least  
13 four contributors of which the defendant and Mia were both  
14 included in that list of potential contributors. But the  
15 statistic is relatively significant, right, because it is  
16 one in 2,900 people in the US population who could also  
17 have been contributors to that mainstream.

18 I submit to you that is evidence of plenty of people  
19 basically picking up that child during the night, okay,  
20 interacting with Mia in a way that's entirely appropriate.  
21 That's because, keep in mind, we are talking about the  
22 exterior of her garments. So it's really not that  
23 significant in the context of trying to figure out did the  
24 defendant lick that girl's vagina with nothing in-between.

25 I hate to keep coming back to these terms, but that's

1        what this case is about. Sometimes it's difficult to talk  
2        about these things, and I hope you can get over that in  
3        your deliberations, but we need to confront what this  
4        allegation is.

5            You know that the tights were worn correctly. I expect  
6        that there will be some argument made about suggesting  
7        that you can't know whether the tights were worn  
8        inside-out or right-side-in or anything in-between, but  
9        consider this. The tights came to Kristina Hoffman  
10       inside-out, okay? Anyone who uses your common sense or  
11       has interacted with small children or even any of you  
12       ladies on the panel who take off your own tights know that  
13       the quickest, easiest way for tights to be taken off  
14       someone is to have them end up inside-out, okay? You  
15       actually have to be pretty careful about that process in  
16       order to make them come off in a way that's not  
17       inside-out.

18           Second, you know that the stains on the bottom of the  
19       feet of those tights were on the exterior, if you are  
20       referencing tags on the garment. If there is stains on  
21       the bottom of the feet on the outside, that is indicating  
22       Mia was walking around, picking up things on the bottom of  
23       her feet, by wearing them the correct way, right-side-out.

24           So moving to the Disney underwear. Well, as it  
25       happens, once all the testing was completed on the two

1 pairs of underwear, it turns out that the Disney underwear  
2 certainly were not the pair that Mia was wearing that  
3 night. It falls into the category of the proof is in the  
4 pudding really. Well, one of those pairs of underwear had  
5 the quantity of DNA that is consistent with the body fluid  
6 deposit from the defendant and one of them didn't.

7 The Disney underwear didn't, but there are still some  
8 things you can learn in this case based on those Disney  
9 underwear. One thing that you can learn is that the  
10 yellow staining on that Disney underwear being on the  
11 interior portion shows that she wore that pair of  
12 underwear correctly, right? That's circumstantial  
13 evidence that she wears her underwear correctly in  
14 general.

15 I would also point out that both of these pair of  
16 underwear have graphics on them, right, like a pretty  
17 picture related to Disney or Nick Jr. You can see that  
18 for yourself back in the jury room. Well, that also is  
19 circumstantial evidence that these pairs of underwear were  
20 worn correctly because one thing that a child likes or is  
21 proud of, I want the Disney underwear, I want the Nick Jr.  
22 underwear, I want the fairy or the princess to be showing,  
23 to be the right-side-out.

24 But the biggest scientific significance of the Disney  
25 underwear is that those, too, were negative for amylase.

1       So what does that have to do with anything if we are  
2       saying that this pair was worn on that night? Here is  
3       what it has to do with it. There is going to be an  
4       argument. I anticipate, that any amylase result, like  
5       Dr. Riley said, any amylase result on the inside of any  
6       underwear has to be from a false positive for urine,  
7       right? That's the argument.

8       Well, there we have the Disney underwear with yellow  
9       staining, negative for amylase. It says it all.

10       The Nick Jr. underwear. This is the pair that Mia wore  
11       on that night. The proof is in the pudding. The  
12       defendant said that there would be no reason -- no reason  
13       -- for his saliva, for his DNA, to be on the inside of  
14       that little girl's underwear. What have we just found out  
15       through a meticulous, rigorous course of testimony over  
16       the past week? We found out that, in fact, the defendant  
17       was wrong about that.

18       The yellow staining, the graphics on the underwear,  
19       those are the things that help you know that this pair of  
20       underwear was worn the correct way, the right-side-out.

21       About the quantity of DNA, it's seven nanograms. It's  
22       easy to get up here and say there is a billion nanograms  
23       in a gram. Look at this amount of salt, right? It's just  
24       impossible to fathom how small seven nanograms is. From a  
25       real world perspective, yes, that is true, okay? There is

1 no doubting that. But this is the world of scientific  
2 forensic analysis, DNA analysis using machines that are  
3 incredibly sensitive and where incredibly small amounts of  
4 things can result in powerful evidence. That's what  
5 happened in this case.

6 Don't discount the seven nanograms just based on some  
7 sort of false equivalency of holding up a bag of salt and  
8 saying it is even way smaller than this. How could this  
9 be? Listen to what the scientists say. Listen to what  
10 Kristina Hoffman and Michael Lin say about seven  
11 nanograms.

12 Based on their hundreds of cases a year -- Kristina  
13 says she does about 130 cases a year. She has been doing  
14 this about five years. She is day-to-day in the trenches  
15 doing forensic casework on cases from all over the state  
16 that come to her. She is telling you that based on her  
17 training and experience of interacting with scenarios and  
18 fact patterns in like gun handle cases or a banknote case  
19 or wiping a counter from a bank robbery, cases that she  
20 has had real world experience of trying to learn whether  
21 DNA comes from a touch or from some sort of body fluid  
22 deposit, she is telling you this is consistent with a body  
23 fluid deposit.

24 Sure, Dr. Riley can get up here and earn his \$2,000 for  
25 the day and write a four-page report and tell you he

1 disagrees. But how many cases has he done of forensic  
2 case analysis in the past 30 years? You heard him. Two  
3 cases.

4 You know, if I was in that position to make that kind  
5 of money and have to do that amount of work, you know, who  
6 knows what decision I would make? I do know what decision  
7 I would make, but that is not relevant.

8 MS. HARDENBROOK: Objection. Counsel is  
9 testifying.

10 THE COURT: Sustain the objection. I'll strike  
11 counsel's comment.

12 MR. ALSDORF: Thank you, Your Honor.

13 The ones in the trenches that do this kind of work are  
14 the ones who can tell you reliably, incredibly, what the  
15 evidence they see before them means. Michael Lin and  
16 Kristina Hoffman both said it is consistent with a body  
17 fluid deposit.

18 Don't forget the exterior of those underwear were  
19 negative for amylase. So that just feeds a theory that  
20 somehow saliva transferred from the crotch of the tights  
21 which, by the way, was negative for amylase, through the  
22 exterior of her underwear which, by the way, was negative  
23 for amylase, and somehow magically ends up on the interior  
24 of that underwear, defeats that theory entirely.

25 This is critical because the State has to prove he made

1 direct contact with that girl's genitals with no clothing  
2 in-between.

3 Beyond a reasonable doubt, when you combine all of the  
4 evidence that you have heard in this case from what  
5 happened in that room from the witnesses who know anything  
6 about it, including Mia, including the words of the  
7 defendant, and when you combine that with what you know  
8 about physical forensic evidence in this case, it does add  
9 up to proof beyond a reasonable doubt.

10 Think of the numbers that you've heard. You have heard  
11 a lot of numbers as far as the one in 2,800. That was the  
12 initial number that Michael Lin came up with when he put  
13 the Y-STR profile from the inside of those underwear  
14 through the statistical website and came up with that  
15 statistic that that profile would expect to be seen in  
16 approximately -- well, no more frequently than one in  
17 2,800 men in the US population. But there is some  
18 limitations about that database, right? The State has  
19 never tried to make any more of this evidence than what it  
20 actually shows.

21 What that number shows is a 95 percent confidence  
22 interval that tries to take into account all of the sample  
23 size issues or the racial disparity issues that counsel  
24 will no doubt point out and enable you to say with 95  
25 percent certainty, the most conservative thing we can say

1 about this DNA is that it wouldn't be expected to be seen  
2 in more than one in 2,800 individuals in the US  
3 population. That is back in November 2011 when the  
4 database was relatively smaller. The database grows over  
5 time and that only makes sense. That's the primary factor  
6 in what changes the number.

7 So when Michael Lin ran the number earlier this week --  
8 sorry, earlier this month in January of 2013, rather, sure  
9 enough, the database had grown, more samples had been  
10 submitted, and it's now one in 4,400.

11 You know, we thought this case was going to be a  
12 five-day case, and I'll apologize for any role I took in  
13 making it more than a five-day case. I know you are  
14 anxious to get this in your hands. One of the things that  
15 happened, unbeknownst to anyone, is that database got  
16 updated this Saturday, okay, February 2.

17 The State is not trying to hide anything from this  
18 jury. To the extent that it was possible, and it turned  
19 out that it was, the State had Michael Lin rerun the  
20 numbers on the new database and, sure enough, more  
21 profiles had been added to the database and, sure enough,  
22 as we stand here today, the best estimate is that profile  
23 wouldn't appear in more than one in 5,200 men in the US  
24 population, okay? So this is an illustrative graph of  
25 those three datapoints. Are we starting to see a trend

1 here? What's that number going to look like in five years  
2 from now or 10 years from now when the database is  
3 significantly bigger?

4 That brings me to a very important issue, which is your  
5 abiding belief in the truth of the charge. This is no  
6 doubt not an easy decision because you know that a lot of  
7 things are in the balance here. I would submit that  
8 justice hangs in the balance.

9 The jury instructions talk about that you have been  
10 satisfied that the elements of the crime have been proven  
11 beyond a reasonable doubt if you have an abiding belief in  
12 the truth of the charge. What the heck does that mean?

13 Well, everyone has their own interpretation of what  
14 that means, but I would submit to you that you have been  
15 satisfied to a degree of having an abiding belief in the  
16 truth of the charge. If you take everything that you know  
17 about this case from all the categories, not just the  
18 categories that Dr. Riley reviewed or concentrated on, but  
19 everything, and if you are able to tell yourself that a  
20 month from now or a year from now or five years from now  
21 or 10 years from now that you know what happened in this  
22 case, that you know that Mia was telling the truth about  
23 what happened, and she didn't have any reason to make this  
24 up or to even know about what this meant, if you know what  
25 happened in that room, you are satisfied beyond a

1 reasonable doubt.

2 Ladies and gentlemen, I ask you to do the right thing.  
3 Be careful with the evidence, but follow your instincts,  
4 follow your gut, use your common sense, and work with each  
5 other to arrive at the only just verdict in this case,  
6 which is one of guilty.

7 Thank you.

8 THE COURT: Please give your attention to the  
9 argument of Ms. Hardenbrook.

10 MS. HARDENBROOK: The problem with making  
11 assumptions is that once we make an assumption, we believe  
12 it's the truth. We treat it as the truth. Whether we  
13 know it or not, it will turn the information coming in  
14 through that assumption. Ladies and gentlemen, this is a  
15 case about the danger of assumptions and how, followed to  
16 their conclusion, they can cause a catastrophe.

17 I thank you, counsel, Your Honor, ladies and gentlemen  
18 of the jury for your time, for your attention, and for  
19 your careful deliberation. My time to speak with you, my  
20 time to be with you is almost ended. Pretty soon, the  
21 case is going to be in your hands. You have a tough job.

22 After I finish speaking with you, I won't get a chance  
23 to respond again because the State bears the burden.  
24 Because they have to prove beyond a reasonable doubt what  
25 happened, they get another chance to address you.

1           If new arguments come up in that time, remember that I  
2           don't have a chance to respond, and I will need you to do  
3           that for me in the jury room. Think about what I might  
4           have said, the evidence I might have countered that with,  
5           and deliberate amongst yourself.

6           I would like to take some time to review the  
7           instructions with you, the evidence, and the startling  
8           lack of evidence in this case.

9           Where you begin makes all the difference. We came off  
10          a hotly-contested political season like we talked about in  
11          voir dire. When you had a conversation with someone about  
12          politics a few months ago, where they started that  
13          conversation is usually where they ended that  
14          conversation. But today you are charged to begin with  
15          innocence and to hold onto that innocence unless or until  
16          the State can overcome it with actual evidence, not with  
17          assumptions, not with conjecture, not with throwing out  
18          nasty words and thoughts we don't want to have in our head  
19          about something terrible happening to a child, but with  
20          actual evidence.

21          Jury Instruction No. 2 tells you that the defendant is  
22          presumed innocent in all portions during the trial until  
23          deliberations. The instructions also tell you that you  
24          are the sole judges of the credibility of the witnesses.  
25          You decide what's believable, who is believable, what

1 comports with common sense, and what does not. I urge you  
2 to hold onto your common sense and to weigh it against the  
3 behavior of witnesses in this case to see whether that  
4 behavior makes sense and whether that behavior can help us  
5 understand what happened and what did not happen in the  
6 case.

7 Benjamin Franklin once said the tenet to underpin our  
8 system of justice is the idea that it's better to have a  
9 hundred guilty go free than put one innocent in prison.  
10 Is it okay a week from now to sit back in your kitchen and  
11 think, after acquitting Mr. Earl, I wonder if he did it?  
12 That is okay. That is our system of justice. That is  
13 what our country was founded on. Is it okay to look back  
14 a week from now, after having convicted Mr. Earl, and  
15 think I wonder if he didn't do it? Ladies and gentlemen,  
16 that's not okay. That's a failure in our judicial system.

17 I'd like to talk to you about the testimony and  
18 reasonable inferences I think you can draw from that  
19 testimony. April Mathis. Is it okay to like April  
20 Mathis? Of course. She obviously loves her daughter a  
21 lot. Seems to be a good mom. Really has strong feelings  
22 about this case. But do these strong feelings alone mean  
23 it happened? Does her getting emotional on the stand mean  
24 she has enough facts to know what happened? Not  
25 necessarily.

1           She said she was on good terms with Stefanie and  
2           Brandon until this incident; so close that Stefanie lived  
3           with her at one point. No longer close with Stefanie. No  
4           fights with Brandon. He is not that type of person. Had  
5           nothing bad to say about Brandon. She told us about Mia  
6           now. She is a happy, bubbly, five-year-old girl in  
7           school, a total girl.

8           Talked about how she has restricted Mia's access to  
9           television, especially when she was younger, like three.  
10          Didn't want her sitting in front of the tube vegging out.  
11          Only wanted her to watch educational programing. Perhaps  
12          that's why Mia was so keen on watching TV at Aunt Sheri's.  
13          Mia often leaves a pile of clothes on the floor when she  
14          undresses herself. Fifty percent of the time they may get  
15          in the hamper. Mia had her own hamper not shared with  
16          other family members at that time.

17          Mia was potty-trained at the time and needed help to  
18          wipe and she sat on a big seat, which means for someone  
19          who is three, she has to hold onto the side of the toilet  
20          and kind of balance there. Her underwear and her tights  
21          were hanging down around her legs at the base of the  
22          toilet.

23          Kids that were present at Christmas 2010 were Mia,  
24          Brody, Nathan, Jazzie, Sammy, and Blake. Two of those  
25          were infants. The rest were running around the house all

1 night.

2 April was mingling, talking with folks, and eating.  
3 She admits she had drinks, but doesn't remember exactly  
4 what she had to drink. Is that a surprise? No. But that  
5 does tell us that she may be making an effort to try to  
6 bolster her testimony. She may be trying to make herself  
7 sound as good as possible to be believed because she  
8 believes it so much.

9 Sheri was pretty candid with you, Sheri Morrow, about  
10 how much she had to drink. She was pretty embarrassed  
11 about it on the stand. Stefanie Waugh was pretty upset  
12 about what she had to drink. The only person who wasn't  
13 consistent about it was April, and maybe she just wants to  
14 make sure that she is believed.

15 First time upstairs. She testified on direct that she  
16 was never upstairs in that house until she saw Mia alone  
17 in the bedroom. At the end of direct. Mr. Alsdorf  
18 confirmed how many times did you go upstairs to Brandon's  
19 room? Once. Are you sure? Positive. But remember on  
20 cross? She remembered previously telling people that she  
21 had been up in the room, that she told Quick she had been  
22 up in the room and seen him playing. In fact, that's how  
23 she knew it was a bedroom before she went up and found Mia  
24 there because she had been in that room.

25 Annette Tupper said she told her she had been in the

1 room, kids were horsing around, Brandon was on the bed,  
2 kids were playing.

3 She described also on direct seeing Mia at the top of  
4 the stairs. A bunch of kids were at the top of the stairs  
5 coming down, but then said she walked away and didn't  
6 remember if Mia came down or not. That means Mia either  
7 went back in that bedroom of her own accord or that Mia  
8 went downstairs and then went back up to that bedroom of  
9 her own accord. That's not consistent with Mr. Earl  
10 trapping Mia in the bedroom, getting up and closing the  
11 door. April saw her up on the landing with all the other  
12 kids.

13 For 10 to 15 minutes, didn't see Mia. Went back  
14 upstairs because that's the last place she saw her.  
15 Remember on cross she admitted that she told us she went  
16 to the garage, that she was worried even that Mia could  
17 have gotten out into the street, could be anywhere. She  
18 opened doors at that time. She had access to anywhere in  
19 the house.

20 Went upstairs to find Mia, went fast, went quietly,  
21 uneasy, upset, knew what was going on in that room before  
22 she opened the door. Opened the door fast. She described  
23 it banging against the bed. Don't you think that would  
24 shock the heck out of anybody who was in that room to have  
25 someone come banging into the room? Could that explain

1 kind of the "hi, mom" expression on her daughter's face?  
2 She described it as a deer in the headlights, but she also  
3 described it like "hi, mom."

4 She talked about how she heard a commotion. I submit  
5 to you that the fish got a little bit bigger on the stand.  
6 It had initially been described as a sound and hearing  
7 something, but once she could look and everything was  
8 normal, became kind of this observed rolling, different  
9 than how she described it closer in time to the event to  
10 Dale Fukura, to Deputy Koziol, to Detective Quick.

11 Blanket half over his legs. That's a contradiction.  
12 If he is rolling over from the side, how does he have  
13 blankets on his legs? If he was truly rolling, they would  
14 be under him, and then he would roll over, and they would  
15 no longer be under him. So the fish on the stand isn't  
16 even consistent with the roll in the blanket.

17 Told Fukura everything was normal. Didn't tell Koziol  
18 about the shift or adjusting, the first police officer she  
19 got to talk to about her story. Described it to Quick as  
20 a readjustment. Notice how it left off at the end of  
21 direct examination after she acted it out? Well, I didn't  
22 say I saw his body. Well, it was more of an appearance.  
23 Brandon was facing the TV, slouched in bed while watching  
24 TV, cartoons on television, no expression on Brandon's  
25 face that she recalls.

1 Her description of the bedroom. Is it credible that  
2 the bed was in a different place? Does it even matter?  
3 She was only there once. Stefanie lived there. If April  
4 was right, if the door did lock or if the door would have  
5 hit the bed, that would be all the more reason it would be  
6 shocking to anyone in the room for the door to slam open  
7 into the bed, jerk someone awake, surprise a child sitting  
8 on the bed or standing next to the bed.

9 That's another thing. April didn't remember where Mia  
10 was. She was either kneeling on the bed or she was  
11 standing next to the bed. Wouldn't that be kind of  
12 important? Because if Mr. Earl is doing this whole roll  
13 thing away from Mia, if Mia is off the bed, how can he be  
14 rolling away from her?

15 Notices the clothing, looking at the clothing of her  
16 daughter, and it's fine. Nothing disheveled, nothing  
17 looked like it had been adjusted. On the look-out for  
18 clothing to be pushed aside and she didn't see it. April  
19 described her demeanor as panicky. She grabbed Mia,  
20 snatched her, and left.

21 On direct, nothing about questioning Mia. Nothing  
22 about asking what was she doing in that room. Mom is  
23 panicky, but she is not asking questions. Yet she told  
24 Dale Fukura, the first authority person she got to talk to  
25 about this incident, asked her what she was doing in that

1 room and she said nothing. She said TV.

2 Closer in time, she described questioning Mia before  
3 Mia said anything on the stairs. Mia, what are you doing?  
4 Nothing. Watching TV. Brandon told me not to tell. Do  
5 you think maybe Mia wasn't supposed to tell that she  
6 wasn't watching educational television? Cartoons?  
7 Simpsons? I don't know. It's possible.

8 Her tights were up like originally. No problem with  
9 her clothing. So her mom, knowing something happened  
10 because she already reached that conclusion, takes her to  
11 the bathroom. She took her to the bathroom for the  
12 primary purpose of getting her alone and talking to her.  
13 Of course, she is concerned. She's a mom. But she is so  
14 concerned that she is asking questions at this point for  
15 three minutes in the bathroom. She can't tell us any of  
16 the questions she asked, what she might have said.

17 She undressed Mia and had Mia get on the potty. So she  
18 had the opportunity to observe those clothes to interact  
19 with Mia to see if anything was amiss, and there was no  
20 observations, even though she was sure of what happened up  
21 in that bedroom.

22 Mia's demeanor was fine. Repeatedly April said her  
23 demeanor was fine. She hadn't said anything. She didn't  
24 find anything wrong. Mr. Alsdorf tried to throw her a  
25 softball in the bathroom. She wasn't answering questions.

1 Is that normal for her not to answer questions? April  
2 said, yes, it was normal for her not to answer her mom's  
3 questions.

4 She got nowhere. Mia was nonchalant, acting like  
5 everything was normal. Didn't act afraid or hurt.  
6 Everything was fine. Why did you take her to the  
7 bathroom? Well, I didn't want anyone to know. I wanted  
8 to keep it quiet. Really, then, you go and confront  
9 someone's wife, and then have a confrontation in the  
10 garage? Is that really how we keep it quiet? Maybe we  
11 take the kid and leave.

12 Her demeanor was la-dee-da. Doesn't remember the  
13 specific questions she asked Mia, which are really  
14 important in cases of children this young, children who  
15 can understand that their parents are wanting the answer  
16 they are not giving them, and then give that answer.  
17 That's why we have forensic interviewing.

18 Talked to grandma. Put her on a stool and said she is  
19 not to move. Clearly could have given the impression to  
20 anyone, including Mia, that she was in trouble, something  
21 is going on. Then they were surprised that Mia is quiet?

22 April went and talked to Stefanie. Isn't that a little  
23 bit odd? Wouldn't you hurt the guy or take the kid and  
24 leave? She said she talked to Stefanie five minutes to  
25 get to the car, 10 minutes in the car. April says she

1       came back in and Stefanie went up for 15 minutes, came  
2       back down, and then went up again for 15 minutes to talk  
3       to Brandon up in the bedroom, but nobody else said that.  
4       April's own mom says it was a couple minutes after I heard  
5       the statement from Mia, and I went out to the garage and  
6       they were all in there, and I told them what happened.  
7       Stefanie remembers it much more quickly, too.

8               But for April, the drama had built up into this saga  
9       where he won't come down and he won't come down and we are  
10      reading into that.

11             The garage confrontation. Brandon, Stefanie, April,  
12      Grandma Sherry, so April's mom, and maybe Aunt Sheri heard  
13      about raspberries. This isn't something that Mr. Earl  
14      thought of later to explain DNA. This is consistent from  
15      Day 1.

16             Brandon's behavior. He was shaking his head, looking  
17      at her in the eye. Saying no, I didn't do this. She  
18      stayed at the party for awhile afterwards and then decided  
19      to leave.

20             Mom says Mia has always used the word "pee" or maybe  
21      the word "peep." But admits it has been a little changed  
22      over time. Well, they are all very similar words, but you  
23      have to remember we are talking about a three-year-old,  
24      and we're reading a lot into the words of a  
25      three-year-old. So that precise wording is actually

1 really important. It's a big deal. Not because we are  
2 trying to be hard on mom, but because we want to make sure  
3 we get this right.

4 It's more important to know the exact words of the  
5 child than what the mom or grandma's impression was of  
6 what the child said. That's the only way we can rule out  
7 if there was a mistake, if it was misunderstood, if there  
8 was something else she was referring to, if she was  
9 talking about the blowing of raspberries.

10 The one thing consistent about April in regards to that  
11 term was it never has been "pee-pee." April has never  
12 said it was "pee-pee." Every other time, "pee." "peep."  
13 but never "pee-pee." That's the one thing that Sherry  
14 said she knew it was that term because that was a specific  
15 term. Makes you wonder what else it could have been.

16 April stayed at the party trying to talk stuff out.  
17 Again, that's a little inconsistent with her being quiet.  
18 Also, a little weird that she can't say when she saw Mia  
19 next. So the State thinks it's ridiculous that Stefanie  
20 Waugh said she saw Mia coming down the stairs once or  
21 twice after the allegation came out, but yet Sherry Mathis  
22 and April Mathis couldn't tell us where Mia was at that  
23 point. They didn't know where Mia was. That's a little  
24 strange.

25 They went home with the kids. By now, it's late in the

1 evening. We have a three-year old child, lots of  
2 stimulation, been running around with her cousins since  
3 4:00 or 5:00. April said she brought it up, but admits on  
4 cross when she talked about it previously, she hasn't been  
5 able to tell people how the topic came up at home with  
6 Mia.

7 Brought up the door closing. No specific wording. The  
8 one sexual phrase, April is reading sexual things into  
9 that phrase. It could be her describing when Brandon  
10 kicked them out of the room. She could be describing any  
11 number of things. But since mom thinks she already knows  
12 what happened, that fairly benign statement becomes  
13 sexualized. Same thing with "made a mess," "made a mess  
14 down there." In April's mind, that becomes a description  
15 of oral sex when that's not really what's in the  
16 statement.

17 Did the kids make a mess in the room? There is  
18 evidence of that. Could she have been talking about that?  
19 It's possible. Mia's demeanor was fine. She was not  
20 upset when talking about these things with her mom. Her  
21 mom was getting her undressed at that exact time when she  
22 is talking about a mess and mom doesn't notice anything  
23 and mom doesn't preserve anything. She can't tell us  
24 anything about the state of the clothes that night.

25 Mr. Alsdorf pushed it to the point of being ridiculous.

1 Are you trained in detecting saliva with your naked eye?  
2 Of course not. She had a lot going on. Anyone who has  
3 seen CSI or really any television crime show knows  
4 something about forensic evidence.

5 April has been through this before. There was no  
6 effort made to preserve the evidence. She can't even  
7 remember if she had a specific conversation at the party  
8 about preserving forensic evidence. Admitted she didn't  
9 go through and turn clothing right-side-out, which means  
10 the shirt under her dress with spittle inside of it from  
11 the raspberries could have been inside-out in that hamper  
12 with Mia's underwear just taken off her body. We know  
13 they were moist because they were soaked in urine. They  
14 were warm. That is ripe for cross-contamination.

15 The garage incident. Why is the garage incident  
16 important? Well, it's important because it shows how  
17 sensitive April is to this issue, and it also is important  
18 because it shows us how her memory compares with others.  
19 April builds this up in her mind, and it becomes this  
20 incident in the garage where my mom and I popped in like  
21 three to four times, we were really concerned about it.

22 Mom doesn't say that. I propped the door open. I  
23 always do that. Even when it's just kids playing, I prop  
24 the door open. That is just my rule.

25 She just didn't like the idea of any man alone in a

1 room with her daughter, which makes sense with her  
2 background, but it does mean she is a little sensitive to  
3 the issues and cautious.

4 Admitted it was a kids' room, that there were toys in  
5 there, and a TV. It's suspicion just based on the  
6 situation alone. Didn't take steps after that to keep Mia  
7 and Brandon apart. Admits she was being over-protective  
8 and hypervigilant. Knew Brandon wasn't socializing that  
9 night. But also admitted she knew he moved out and back  
10 into this house sometime before Christmas.

11 We only have pictures of Christmas 2010. We did ask  
12 about them in a defense interview and got them in January,  
13 two years after the incident.

14 There is no information that anyone talked to the kids.  
15 How about Nathan? Nathan is in the picture. He is maybe  
16 eight, nine. Does anyone talk to him and say, hey, was  
17 Brandon blowing raspberries in the room while you were  
18 there? That might be helpful to know. Quick knew Nathan  
19 was there early on. No effort to talk to him.

20 The report to police. You heard from April that she  
21 had a prior experience when she was Mia's age, that she  
22 was molested, that it was promptly reported to law  
23 enforcement. So why wouldn't she? Is it possible she  
24 didn't report it for four days because she built it up in  
25 her mind over those four days? That she connected the

1 dots between things that weren't really connected, and  
2 made herself very sure of it, and then finally contacted  
3 the police? It's possible.

4 Claims she spent a day trying to call CPS, but couldn't  
5 get through, had the wrong Hotline number. Today with  
6 Google, it's pretty easy to get in touch real quick with  
7 anyone you want to find. Maybe she just wasn't that sure  
8 yet.

9 Went to the hospital and took clothing from the hamper.  
10 She said she took both pairs, all the underwear that was  
11 in the hamper. Remember, this is four days later. This  
12 is the 28th of December. That supposedly happened on the  
13 24th of December. So why are there only two pairs of  
14 underwear in the hamper? She was wearing one on the 24th.  
15 You would think there would be one on the 25th, maybe the  
16 26th, maybe the 27th, the 28th. Maybe she was still  
17 wearing that one. You would think there would be several.  
18 Again, no one has asked these questions.

19 Why stay at the party? Why didn't she know where Mia  
20 was? Maybe she just wasn't sure, and she just kept  
21 thinking and thinking about it, and over time, she built  
22 in her head, and she connected these dots.

23 Admitted together in the hamper. Admitted the clothes  
24 were together in a bag to take to the hospital. This is  
25 ripe for cross-contamination if a towel was in there, if

1 any wet clothes were in there or the clothes touched each  
2 other on the way into the hamper, on the way out of the  
3 hamper, on the floor where Mia took them off.

4 We heard much testimony about how sensitive DNA is and  
5 what small, small amounts we are dealing with, and how  
6 super careful we need to be. We have clothes covered in  
7 innocent DNA touching undergarments, and nobody seems  
8 concerned about it at all.

9 We talked in voir dire about secondary transfer. Yet  
10 the State doesn't seem to have a problem with the fact  
11 that the clothes were all together for four days.

12 The hospital failed to really ask about it. April said  
13 several times she remembers the feeling from that night.  
14 She doesn't remember the facts. Is it hard to recall the  
15 details? Yes. Do you remember how you felt? Yes. How  
16 she felt was horrible. We would never want to be in that  
17 position. But feeling that something happened is very  
18 different than something actually happening. We have to  
19 work from facts, not from assumptions, not from emotional  
20 conclusions.

21 Said she remembered every time her daughter said  
22 something. You don't forget something like that. Yet  
23 those were some of the things that were inconsistent. She  
24 doesn't have the memory to prove it happened. She has the  
25 emotion to do that. That's not enough.

1           Sherry Mathis, grandmother of Mia and Brody, doesn't  
2 remember details. Some things she does remember.  
3 Remembers being in the company of Mia. April was carrying  
4 her, went right to mom. Mia is quiet. Grandma could tell  
5 by Mia's face something was not right. So fair to say,  
6 Mia figured it out, plus April wasn't taking me with her.  
7 She was looking for Stefanie, which was kind of weird.  
8 April left the kitchen to find Stefanie. Again, this is  
9 not what April said. April said she waited around in the  
10 kitchen for a long time and then outside for a long time,  
11 and then they came back in and there was upstairs stuff.

12           That's not what her mom says. Her mom says it was  
13 brief, that she was sitting there next to Mia and made  
14 efforts to figure out what happened, questioning what did  
15 you do? Mia gave her answers, nothing, playing, watching  
16 TV.

17           Sherry said it could have been both those things, and  
18 then Sherry gave her the grandma look, like what, and  
19 that's when she said Mia leaned over and said: "He licked  
20 my pee-pee." Sherry told us for the first time on the  
21 stand during trial that she asked who. That is important  
22 for a few minutes. It's important because this is new  
23 information two years after the fact from a witness who  
24 says she can't remember very well. It's important because  
25 it indicates she didn't know who Mia was talking about.

1 Mia just said "he."

2 Says she is 100 percent sure because when you hear  
3 something like that, you're not going to forget it, but  
4 yet she got the details wrong about how it came to be, and  
5 testified on direct it wasn't in response to questioning.

6 Although it begs the question, if mom and grandma will  
7 never forget the statements they heard, why are they  
8 getting it wrong? Perhaps they misunderstood it,  
9 paraphrased it. Did not tell Quick that she asked Mia who  
10 she was talking about. That was in January of 2011, close  
11 in time. Did not tell the defense that she asked who, and  
12 that was in December of 2012. New information two years  
13 later. Not that she is trying to make it up, but she  
14 believes so strongly she is telling it. She has paid more  
15 attention to the feeling than the facts.

16 As soon as she recovered from Mia's statement, she went  
17 to the garage. Who is in the garage but April and  
18 Stefanie and Brandon? Directly contradicts April had a  
19 saga where Mr. Earl wouldn't come downstairs and Stefanie  
20 had to go get him twice.

21 Asked Sherry how much time passed. Probably a minute.  
22 On cross, she expanded that to one or two minutes. How  
23 long was Mia next to you? A couple of minutes maybe. In  
24 the garage, Sherry says Brandon explained he was blowing  
25 butterflies. All through direct, she is testifying about

1 butterflies. I understood about butterflies. The problem  
2 is it was raspberries. When we talked about it on cross,  
3 she remembered, oh, raspberries. What does that tell us  
4 about Sherry's memory? That maybe she remembers the  
5 feeling or the gist and not the words. In a case where we  
6 place so much weight on a few words by a child, words are  
7 important, not just the feeling.

8 Sherry admitted that she recognized the act (counsel  
9 demonstrates by making sound), and that she had done that  
10 on the kids when they were little, and they responded by  
11 giggling. At some point in the garage, Sherry just walked  
12 away and went back to the kitchen. She then told the  
13 other Sheri, Sheri Morrow, what was going on. Again, this  
14 is kind of odd when the effort is to keep things quiet and  
15 to not let it out.

16 She doesn't remember when she saw Mia next. This is  
17 noteworthy. If you want to protect your granddaughter,  
18 why did nobody know where she was at this point? Why is  
19 it so far beyond the realm of possibility that she went  
20 back up and down the stairs?

21 Grandma, April's mom, does not remember whether she  
22 talked to April about calling the police that day. That's  
23 what she did when something happened to April when April  
24 was younger. No immediate sense, no sexualized displays,  
25 no inappropriate touching. The only unusual behavior

1 grandma came up with was the behavior in crowds, which is  
2 how April describes Mia when she was three. She was not  
3 shy one-on-one, but in groups, she was. The garage  
4 bedroom, again. Sherry contradicts April, said it's always  
5 her policy to keep the door open.

6 Let's talk about Dale Fukura. Does so many of these  
7 exams that she does not have an independent memory. She  
8 is very careful in how she gathers information and works  
9 very hard to be precise. She has had training about being  
10 precise about the information that she gets from the  
11 parent and the child. She is trained to separate the  
12 parent and the child because if they are together, don't  
13 necessarily get the most accurate information. This  
14 contradicts what Mr. Alsdorf is saying about her most  
15 trusted confidences, going to her mom and grandma. Yet,  
16 Detective Fukura says you will get more accurate  
17 information if you slit them up.

18 Recorded mother's history very precisely. Recorded  
19 things in order. The word she got from Mia was "peep,"  
20 had her spell it, p-e-e-p, to make sure. April told her  
21 of sudden movement, but could not explain what she meant  
22 because everything in the room looked normal.

23 April tells Dale Fukura that she did question Mia. She  
24 said what were you doing. She got an answer of nothing,  
25 they were watching TV. Mom was unclear in providing

1 history whether there was body fluids involved. Mom was  
2 unsure if Mia's underwear had been worn on Christmas Eve.  
3 It was important to Dale Fukura that she learned that  
4 April had been a victim herself because it can bring back  
5 the trauma, the emotion, to have your child go through  
6 something similar. That may help us understand April's  
7 process.

8 She gathered notes on Mia's development, that Mia named  
9 one color, counted one block, stand on one foot for two  
10 seconds. During the head-to-toe check-up, described Mia  
11 perfectly fine with the private portion of the exam.  
12 Packaged the clothing, put them in individual bags, even  
13 though they came all together. Why? Because it's  
14 important to keep each item separate. You don't want them  
15 transferring biological material with each other. They  
16 had been together for days.

17 She wore gloves, but she didn't change gloves between  
18 handling each item. So that's another point at which  
19 there could have been secondary transfer from her gloves  
20 to the evidence item. Did a superficial exam of the items  
21 and didn't see any biological matter. She would have  
22 noted it if she did.

23 Deputy Koziol is the first law enforcement to speak  
24 with April and Sherry. He recorded what she told him as  
25 he was typing. There was no mention of Brandon saying not

1 to tell. No mention to him of the "closed the door." He  
2 would have recorded it if he heard. He was typing as he  
3 spoke with them.

4 Let's talk about Detective Quick. This is his first  
5 detective assignment. He has had training in child  
6 interviewing. He knows that kids have varying levels of  
7 suggestibility. They become less suggestible as they get  
8 older. That the Sheriff's Office will not do a forensic  
9 interview of anyone under the age of four. Why is that  
10 important? That tells you how reliably they view  
11 statements of children under the age of four. They made  
12 no exception in this case. There was nothing about Mia at  
13 this time that made them make an exception, that her  
14 statement would be more reliable than the average  
15 three-year-old.

16 Training and experience says it is much more difficult  
17 for a child to talk to a stranger about this. Yes. That  
18 is the exact opposite of what Dale Fukura said. She said  
19 it's very important to get the child alone or they may say  
20 what their parent wants them to say or not say something  
21 because their parent is there.

22 Detective Quick admitted he had contact information or  
23 at least an address for the crime scene when it was first  
24 assigned to him. Yet he doesn't get there for an entire  
25 month. He had Brandon at an interview in early January.

1 Doesn't ask for access to the house. He interviews April,  
2 calls her at 10:05, and she is in his office already  
3 recording the interview by 10:37. We know she lives in  
4 Lake Stevens. His office is in Everett. That's pretty  
5 quick.

6 Tells us April is on board. Something had changed  
7 since Christmas Eve. She is now on board with law  
8 enforcement. The interview is 23 minutes long. The audio  
9 is recorded at Dawson Place, just he and April. He  
10 learned what Mia had been wearing. The raspberry  
11 explanation, that it took place on a bed with sheets. The  
12 term was "peep." Said it is extremely important to get  
13 the term properly in a sex case coming from a child. Did  
14 not discuss the alcohol consumption of witnesses, although  
15 it clearly happened at a Christmas party.

16 Then interviewed Sherry. Had her come to Dawson Place,  
17 Sherry Mathis. Just he and her. That interview was even  
18 shorter, 14 minutes long. You saw how long it took to  
19 have people tell their story in court. Fourteen minutes  
20 long for a case such as this? Learned from Sherry that  
21 "pee-pee" was the only term used for that part of the  
22 body, and learned the raspberry discussion again. Did not  
23 discuss alcohol consumption.

24 Detective Quick knew that Brandon called 911, but  
25 wasn't interested in what he said. Didn't bother to

1 listen to the 911 tape. Didn't bother to preserve the 911  
2 tape. Reviewed the CAD summary of the 911 interaction,  
3 but admitted they can be wrong.

4 Yet admitted for his investigation he wanted to take  
5 advantage of the fact that Brandon wanted to talk to him.  
6 Said I can't make him talk to me, so I got to take  
7 advantage of that. Met with him on January 6. Had  
8 Mr. Earl come to headquarters in this building. Brought a  
9 partner for safety. It's policy to do so in such  
10 interviews.

11 This was interesting. Mr. Alsdorf said: Did you make  
12 a detailed plan for your interview? Detective Quick said  
13 I wish that I had unlimited time on every case. But yet  
14 you see him now sitting through trial for five days. He  
15 spent more time watching this trial, watching this case,  
16 than apparently he did investigating the case. Maybe we  
17 are putting the effort into the wrong end of the case.  
18 Doesn't have time to make up a concrete plan for an  
19 interview, but can be available to watch.

20 Conducted a suspect interview. Described his strategy.  
21 I want provable lies. Making an effort to identify with  
22 Brandon. Make it easy for him to confess to a crime. It  
23 could be embarrassing evidently to confess to a crime, so  
24 he wants to make it easy on him emotionally.

25 But there is absolutely no discussion from Detective

1 Quick about how those tactics influence him. True, they  
2 are supposed to help get confessions from guilty people,  
3 right? But the purpose for the investigation is a search  
4 for the truth, right? That is what he said at the outset,  
5 I search for the truth. He is not even contemplating how  
6 these tactics would affect an innocent person in his  
7 suspect interview.

8 His training and practice include lying, lying to  
9 people he interviews. To treat them like a good guy, to  
10 try to see things from their view, trying to get  
11 disclosures, trying to emphasize how strong his case is  
12 because this is effective in getting confessions. What  
13 does it do to someone who is innocent in that position?

14 Mr. Alsdorf asked how had he had people confess  
15 immediately when they came in, but didn't talk about has  
16 he had innocent people confess. How does he treat that?

17 Went over the right to record and Brandon readily  
18 agreed. Can't remember whether he had video capabilities  
19 at the time. Emphasized that Brandon could go at any  
20 time. It was about an hour-long interview.

21 Don't you suppose if Detective Quick had talked to  
22 April or Sherry for an hour, there would be  
23 inconsistencies we could talk about there? More  
24 inconsistencies?

25 I submit that you should listen to the recording, that

1       you should listen to it multiple times. That you should  
2       listen to it with the presumption of innocence, and see if  
3       it's not exactly what an innocent person would tell you.  
4       Call 911. You hear you are accused. What do you do? You  
5       reach out. I want to talk about it. I want to talk about  
6       what happened. You go in voluntarily. You waive rights.  
7       I have nothing to hide. I want to talk to you. Oh, will  
8       you give me your DNA? Sure, take my DNA.

9       It emphasizes the strength of their case. They said  
10       Mia has made several consistent disclosures again and  
11       again that you put your mouth by her vagina. Listen to  
12       the tape. That's how they describe it to him. So if you  
13       are an innocent person who knows you haven't had  
14       inappropriate contact with a child, and all you know you  
15       did was blow raspberries, what conclusion does that lead  
16       you to?

17       This is a child you love and trust. You're not  
18       defensive. You're not saying that child is a liar. You  
19       are trying to figure out where this is coming from. You  
20       are trying to solve the puzzle. Why would she think that?  
21       Why did she say that? All I was doing was blowing  
22       raspberries. I guess if she is saying it consistently, I  
23       must have done it. I must have accidentally done it.

24       Listen to the interview and you will hear him say again  
25       and again "accidentally." I was on her tummy, yes, that's

1 probably how it happened. That's probably how I  
2 accidentally did it. Her tummy is not that big, and he  
3 kept demonstrating the sound (counsel demonstrates by  
4 making sound). It's not as ridiculous as the State is  
5 making it sound. Please listen.

6 They emphasize his DNA would be used against him on the  
7 recording to try to block out a confession. He didn't  
8 hesitate at all. Okay, okay. Listen initially when they  
9 bring up DNA, he says okay as if he was willing to give it  
10 to him right then. They talk to him another half hour.  
11 They tell him how it could be used against him. It  
12 shouldn't be in certain places. It's not going to be  
13 there, is it? Are you sure you still want to give it to  
14 us? Again, no hesitation, yeah, sure.

15 Is that the comments of someone who knows they are  
16 caught on Christmas Eve? Who knows what he did? No.

17 Offers theories of curiosity, but every time Brandon  
18 denied it. It wasn't like that. I didn't do anything.  
19 This whole "it's tearing you up" and him getting teary.  
20 An innocent person accused of something horrible like this  
21 by a child they love and trust is not going to be  
22 emotional? Is not going to be torn up by it? Listen for  
23 yourself.

24 Brandon did his own DNA swabs. Not normal. Would have  
25 gotten his DNA because he wasn't wearing gloves on the

1 stick part of the swab, as well. Probably should have  
2 been wearing gloves. Quick wore gloves just to handle the  
3 drying box.

4 Then, if you notice, Quick admitted he previously  
5 testified under oath in a hearing on this case incorrectly  
6 about two issues. So that's in a courtroom under oath a  
7 couple things wrong, when he wrote a report to help him  
8 remember things right. Yet Mr. Earl can't get anything  
9 wrong in his hour-long interrogation?

10 Detective Quick could have checked out Brandon's  
11 explanation of raspberries by talking to other kids.  
12 Detective Quick told us about DNA biological transfer, how  
13 sensitive it can be. That it can transfer when you touch  
14 anything. Every time you touch something, there is a  
15 potential of leaving behind DNA. Training has become so  
16 small and so precise that small amounts of biological  
17 matter can be found on evidence items.

18 He interviewed Stefanie. Did you see he made her come  
19 to the Sheriff's Office. He had someone else present for  
20 that interview. Before he interviewed Stefanie, now  
21 Waugh, then Earl, he was already treating Stefanie like a  
22 suspect. Didn't have her go to Dawson Place. Didn't  
23 interview her one-on-one like he had with the other women.

24 She was cooperative. Said hey, sure, come to the  
25 house, take pictures, same day. Then, he only took a few

1 pictures. Did not take the fabric from the bed. That was  
2 interesting, if you remember why. Because he assumed  
3 Brandon's DNA would be all over that bed. So wouldn't  
4 that pose a significant risk of getting DNA from that bed  
5 under that theory on someone's clothes, such that it could  
6 cross-contaminate in a hamper? So much DNA on it he is  
7 not going to collect it? Wouldn't it be important if  
8 Mia's fluid was on there? Couldn't that be important in a  
9 case with this kind of allegation?

10 Is it okay to like Detective Quick? Of course. This  
11 may not be his best detective work. It was his first  
12 case. Very brief interviews.

13 It was interesting at one point, Detective Quick said  
14 when he was packaging evidence at the evidence locker, he  
15 didn't change gloves between them. Mr. Alsdorf got up and  
16 said, oh, but why didn't you? You were just holding  
17 packages. You didn't need to change gloves, right? Then,  
18 that begs the question why was he wearing gloves, right?  
19 I mean, if it's not important, if you are not touching  
20 anything, not transferring anything such that you need to  
21 change gloves, why are you wearing them?

22 Didn't talk to anyone else in the party. Why? Why was  
23 this the way the investigation went? Well, maybe because  
24 he took the same approach April did. He kind of assumed  
25 it happened after a 23-minute interview and 14-minute

1 interview, and went from there. That blinded his  
2 investigation. It hampered the information the State has  
3 before you today.

4 Let's talk about Detective Ferreira. He was present  
5 just for the interview. He spoke with Brandon about the  
6 picture, but didn't give Brandon the opportunity to make  
7 markings on it. He asked him where stuff was, but never  
8 let Brandon do it. Never let Brandon write words.

9 He said on cross that he thought it would be more  
10 accurate if he drew it than to have Brandon draw what  
11 Brandon was trying to explain. Not necessarily more  
12 accurate if you are assuming that person is innocent and  
13 they are trying to explain it to you, but it certainly  
14 could be a tool to use against them if you are assuming  
15 they are guilty, and you are going to draw the picture to  
16 kind of convey that impression.

17 Seems unfair to draw the picture for someone unless the  
18 point isn't to accurately reflect, and instead to gain  
19 evidence of guilt, which is what an interview is all  
20 about.

21 Mr. Earl was cooperative throughout. He kept saying  
22 "tummy." Mr. Alsdorf wants you to know he kept saying  
23 "tummy" because he wasn't admitting what happened. Maybe  
24 he was saying "tummy" because he blew bubbles on her  
25 tummy.

1           Stefanie Waugh. What does she tell us? Memory not  
2           great from this night. She remembers something. The kids  
3           were there. They were playing upstairs with Brandon,  
4           wrestling around, being kids, constant up and down. She  
5           recalls April being glassy-eyed. The confrontation  
6           happened. She described Brandon having no reluctance.  
7           They were up there for maybe five minutes. Jumped up and  
8           went down. Not 20 minutes. Not big drama to get Brandon  
9           down.

10          They went to the garage. They explained about the  
11          raspberries, and nobody knew where Mia was. Then,  
12          Stefanie saw her later coming down the stairs. Doesn't  
13          say she saw her alone in the room with Brandon again  
14          afterwards. Just said that she saw Mia coming down the  
15          stairs.

16          Consistent with the fact that neither April nor Sherry  
17          can tell us where Mia was after the accusation. Stefanie  
18          didn't tell him what to say. She didn't get her story  
19          together. Stefanie told you about Blake, her son that she  
20          loves, that she would not put in danger.

21          Mr. Alsdorf wanted to make a big deal out of the fact  
22          that she was wanting to go down there and confront the  
23          allegation. That's because she believed him. It wasn't  
24          because she was trying to cover up him hurting a child  
25          when they have a child together.

1           Sheri Morrow. Neat housekeeper. Had a problem with  
2 urine on the toilet during parties. Embarrassed. Drank  
3 more than usual. She said there was a discussion about  
4 forensic evidence that night, that she was going to test  
5 it if they were not going to.

6           Her recollection of the statement was it made her  
7 pee-pee all wet. Said those are the exact words Sherry  
8 used with her. Heard about raspberries. She called them  
9 bubbles previously. Only heard about the garage thing  
10 after Christmas. She was there and didn't remember  
11 anything unusual happening at the garage incident.

12          Let's talk about the forensics. The tights. What do  
13 the tights tell you? There is at least four peoples' DNA  
14 on the exterior crotch of the tights. Now, Mr. Alsdorf  
15 wants the exterior crotch of the tights to be the area  
16 where, in Detective Ferreira's picture, Mr. Earl's mouth  
17 was. But Ms. Hoffman drew a very explicit picture of what  
18 she considers the crotch area to be and what she swabbed.

19          The front of the tights where raspberries would have  
20 been blown is not where she swabbed. It's the actual  
21 crotch fabric that's between the legs and underneath. So  
22 the fact there is no amylase or saliva on that exterior of  
23 the tights from the crotch region doesn't show that he  
24 wasn't blowing bubbles over the tights. She just didn't  
25 bother to test outside of that limited area. No effort to

1 see if there is other peoples' DNA intervening because of  
2 secondary transfer. Because they knew it was just people  
3 holding her, yet they don't think about how that could  
4 cross-contaminate and could explain what we have in the  
5 underwear.

6 The Disney underwear. Hoffman described light  
7 staining, urine-like odor. On cross, I said was there  
8 more yellow staining in one than the other? Yes. The  
9 Nick Jr. had darker yellow staining. So there wasn't as  
10 much of a urine stain in the Disney underwear, so we  
11 wouldn't necessarily expect a urinary response to amylase.  
12 The Nick Jr. underwear had such a thick stain, it had  
13 texture to it. She testified there were red fibers  
14 actually in the stain; not in the fabric, but in the  
15 stain. So that is a hearty urine stain.

16 You heard the testimony. Dr. Riley said there is no  
17 evidence of saliva, so a weak response is indicative of  
18 urine. There are tests that test for amylase in urine.

19 Then, there is Michael Lin, who's testing things at the  
20 same time, who is amplifying the exact point in time where  
21 you are making a little teeny tiny bit of DNA, a lot more  
22 DNA, and he has the reference and the evidence samples  
23 together in that machine.

24 Then, he talks about how there is, in the next machine,  
25 a plate with open wells, and he uses a multi-channelled

1 pipette to bring it over the well. That means that  
2 pipettes of fluid are going over these wells. Could  
3 anything have dropped out of the pipette into a well?  
4 They are not covered at that point. Everywhere else in  
5 the process, there had been lids on all the tubes or  
6 screw-tops. Nothing at that point. Is it possible it was  
7 cross-contaminated in the lab? Yes. Maybe more likely in  
8 the laundry basket or the bag on the way to the hospital  
9 or the gloved hands touching different items at the  
10 hospital while looking at them.

11 When you review all of the testimony, you are going to  
12 be left with some questions. If April was so sure it  
13 happened, why didn't she report? Why are we reading so  
14 much into four non-sexual statements throughout the night?  
15 One of them you could arguably make sexual, but the other  
16 ones?

17 Why didn't law enforcement try to vet Brandon's story?  
18 You want a provable lie? Okay. Check it out. Talk to  
19 kids. Test evidence that would or would not be there if  
20 his story was correct.

21 You heard Brandon testify, and I ask you to listen to  
22 it again and again and again. You can hear him be  
23 consistent. You can hear the officers get kind of a  
24 little bit annoyed consistently. You can hear how  
25 cooperative he is, how there is no hesitation at all in

1 complying with whatever they requested.

2 How is Brandon supposed to know that DNA was so  
3 sensitive that it would cross-contaminate? He didn't  
4 know. There didn't seem to be any DNA there. Is that  
5 what would happen if you are innocent and accused of  
6 something like this? You would do exactly what Brandon  
7 Earl did, and let's hope there is no cross-contamination,  
8 that a tiny amount of nanograms didn't get in the wrong  
9 place and get amplified.

10 Because the burden is on the State to prove the crime,  
11 they are given the resources to investigate it. They are  
12 usually first on the scene. They have trained people to  
13 investigate. They have forensic interviewers. They have  
14 crime labs. Mr. Alsdorf made a big deal out of the fact  
15 that Dr. Riley was paid for his testimony. If you think  
16 about it, crime lab employees are paid for their  
17 testimony, too. They are full-time employees. They work  
18 for the crime lab. Testifying is part of their job  
19 duties.

20 The State is making a lot of hay out of the 30-second  
21 thing. Clearly, when they were talking about it, it was  
22 confusing. They keep trying to pin down how long his  
23 mouth was on her vagina. He said five minutes. For five  
24 minutes, he was doing all these raspberries. Five  
25 minutes? They keep trying to get a time. It's clear, if

1       you listen to it, that he keeps talking about the time he  
2       is blowing raspberries and may have accidentally gone  
3       there.

4       He hears what Mia is telling them and tries to  
5       understand it because he knows and trusts her. So he is  
6       trying to process it and admitting maybe something could  
7       have accidentally happened.

8       Brandon told you he didn't touch Mia in a sexual way.  
9       He was blowing raspberries and may have accidentally. You  
10      even heard the impression he may have accidentally been in  
11      that region, but it wasn't sexual and it wasn't  
12      intentional. You've heard a lot of testimony about little  
13      statements Mia made through the night or sketchy forensic  
14      evidence.

15      After hearing all of that, you may not know what the  
16      heck happened. If you don't know what the heck happened  
17      that night, then you are definitely not sure beyond a  
18      reasonable doubt that a crime happened that night.

19      A reasonable doubt. One reasonable doubt. May be  
20      guilty, you must acquit. Probably guilty, you must  
21      acquit. One single reasonable doubt in your mind and you  
22      must acquit.

23      The presumption of innocence is hard. We talked in  
24      voir dire about how it's not natural or moral. It's not  
25      how we approach everyday life. When we see someone pulled

1 over on the side of the road, we don't assume them  
2 innocent. I would like to give you an example to help you  
3 get in the frame of mind of starting with innocence.

4 You're at home, you're watching television, you see a  
5 politician or sports star walking up the steps of the  
6 courthouse, lights flashing. There is an allegation of  
7 drug use or bribery. They look pretty guilty, don't they?

8 But then picture it's someone that you know, someone  
9 that for you would start with innocence, a friend, a  
10 family member, someone from church. All of a sudden,  
11 walking up those steps, they don't look so guilty. I'm  
12 not going to believe that allegation unless you prove it  
13 to me beyond a reasonable doubt. That, ladies and  
14 gentlemen, is the presumption of innocence. That is where  
15 you start your deliberation.

16 In closing, I would like to share with you my top 10  
17 reasons to doubt. You may have your own. Here is a  
18 Top 10.

19 No. 1. Amylase weighs against a sexual touching. If  
20 there was a mess down there, you better believe we would  
21 have a strong amylase result. We would have a lot of  
22 saliva. We would have a lot of amylase.

23 No. 2. If there was really a mess down there, mom  
24 would have noticed it in the bathroom or at bedtime. We  
25 have neither.

1           No. 3. No one contacted the authorities for four days.

2           No. 5 (sic). DNA secondary transfer. We talked about  
3           it in voir dire. There are several options for how it  
4           could have happened in this case in addition to possible  
5           contamination.

6           No. 6. The child was questioned about sexual touching  
7           before the only arguable sexual disclosure. Did she ask  
8           to be touched there? Did she ask to be touched there? It  
9           would be good to know. We don't.

10          No. 7. Coddled together three non-sexual statements  
11          and tried to make them into a coherent story of what  
12          happened.

13          No. 8. Brandon sought out the police and volunteered  
14          his DNA.

15          No. 9. Forensic interviews aren't done on kids under  
16          four because they are not reliable. We got to be careful  
17          who we're relying on.

18          No. 10. April assumes molestation first and everything  
19          else after.

20          Be careful. In your deliberations, be careful. This  
21          is a big deal. This is a serious crime. It should make  
22          you cautious. This is the time to be that model juror, to  
23          listen to each other, to discuss the topics, review the  
24          law.

25          When you consider the evidence presented in this case,

1 when you weigh it against your common sense, it's going to  
2 bring you to one conclusion: That nothing sexual  
3 happened, that nobody hurt Mia, that Brandon Earl is not  
4 guilty.

5 Thank you.

6 THE COURT: Thank you.

7 The State has one last opportunity to address the jury.

8 MR. ALSDORF: Okay. Thank you, Your Honor.

9 I'm sure you need a break. I know the hour is late and  
10 I know you are ready to get this case. One thing I'm not  
11 going to do is go point-per-point on the facts of what you  
12 remember because I know that at this time you are ready to  
13 determine the facts for yourself based on what you've  
14 heard, and I'm going to ask you to do that.

15 Don't let this guilty man go free. Benjamin Franklin's  
16 words were powerful, but it underscores just how important  
17 your job is here. Justice hangs in the balance.

18 I'm not going to go point-per-point on whether the  
19 underwear was soaked or whether Nathan was eight or nine  
20 or five or six or anything else. You guys can determine  
21 that.

22 What I want to talk to you about is when you get back  
23 there, how are you going to interact with each other when  
24 inevitably issues come up where someone might have a  
25 different opinion than another person? Ask yourself.

1 Challenge yourself. You can start with the basic premise  
2 that basically everyone would agree with, the sort of  
3 general thing that people throw out there all the time:  
4 Anything's possible. People say that stuff all the time.  
5 Anything's possible.

6 Ask yourself this: Are you being reasonable? That  
7 thing that you throw out there, is it possible that a  
8 secondary transfer could have contaminated the results in  
9 this case when everything you know from the experts who  
10 are doing the work in the field tells you this DNA came  
11 here from a body fluid deposit. So are you being  
12 reasonable to engage in the speculation that is being  
13 invited about secondary transfer or policies and  
14 procedures being followed at the lab that are accredited  
15 by the FBI, that these analysts take very serious as far  
16 as their professional reputations go, and have it  
17 engrained into their habit to bring gloves to court and  
18 start changing gloves out without being asked? These are  
19 things that I'm asking you to consider. Are you being  
20 reasonable in putting forward these doubts that may come  
21 up in the jury room?

22 You know what? This case is about real life. Am I  
23 going to stand here and tell you that it was an ideal  
24 situation for those clothes to be in a hamper for four  
25 days? Of course I'm not. But this is how real life cases

1       happen. There is no evidence that any of the defendant's  
2       DNA or Blake Earl's DNA -- and Blake Earl is the  
3       defendant's son and also a potential contributor to that  
4       Y-STR profile -- there is no reasonable explanation for  
5       that Y-STR profile to end up in one place and one place  
6       only, inside of that girl's underwear.

7       Don't engage in some sort of magic amylase theory that  
8       would have amylase start on the outside of someone's  
9       clothes, transfer through some tights or jeans or slacks  
10      without leaving any amylase on the tights or the imaginary  
11      jeans or slacks, transfer through the outside of  
12      underwear, leave no amylase trace on the outside of that  
13      underwear, and magically just somehow appear on the inside  
14      of the underwear in a quantity sufficient for these  
15      experts to tell you that it is consistent with a body  
16      fluid deposit.

17      Be reasonable with each other and challenge each other.  
18      Are you really being reasonable about that or are you not?  
19      Is it reasonable to engage in the speculation about this  
20      amylase potentially coming from a false positive on urine  
21      when the only testing that was referenced in this case in  
22      which a false amylase result came from urine was a very  
23      specific laboratory experiment conducted by the Washington  
24      State Patrol? Because, thank you very much, they would  
25      like to insure for themselves that the tests that these

1 manufacturers are selling to them are what they say they  
2 are.

3 The State Patrol found that in only one circumstance  
4 urine can cause that amylase result. That's when you take  
5 a pipette, take it from neat liquid urine -- and I have  
6 only heard the term "neat" for scotch, and now forevermore  
7 you will think of it with urine. Congratulations. You  
8 take neat liquid urine and you drop it on the test strip,  
9 and that is what can cause the laboratory setting that  
10 amylase is positive. Note that when you swipe or swab  
11 with a Q-tip or swab like the scientists did in this  
12 particular case, that that does not, in the laboratory  
13 validation study result, in a false amylase --

14 MS. HARDENBROOK: Objection, facts not in  
15 evidence.

16 THE COURT: I will overrule the objection. The  
17 jurors will determine for themselves what the evidence  
18 shows.

19 MR. ALSDORF: It's a false equivalency is what  
20 it is. You would not be being reasonable to latch onto  
21 that false equivalency and say that somehow there is some  
22 other explanation for how that amylase and, therefore,  
23 saliva got inside that underwear.

24 The only reasonable explanation is something that our  
25 minds are not necessarily trained to want to believe. In

1 fact, I would argue that our minds are trained not to  
2 believe that these things happen.

3 It is so easy to get back there and work to try to find  
4 a way that this might have happened that doesn't have to  
5 say that anyone is bad. It doesn't have to say that a  
6 crime was committed. I can understand how it's human  
7 nature to want to the try to work and try to find that  
8 explanation.

9 But you know what? Sometimes the most simple  
10 explanation for something is the one that's accurate. In  
11 this case, the most simple explanation for how that  
12 forensic evidence got to the inside of Mia's underwear is  
13 because it got there exactly how she said it got there.

14 When she didn't know what oral sex was, when she didn't  
15 know what she should or shouldn't be describing about that  
16 act, she told people that she knew exactly what had  
17 happened to her. She said "lick." She said "he licked my  
18 pee-pee." That, as it turns out, is the simplest  
19 explanation of how that forensic evidence got there.  
20 Don't let this guilty man go free.

21 Thank you.

22 THE COURT: Members of the jury, I told you  
23 before that we are going to send you back to the jury  
24 room, and I will ask you to do one thing before you leave  
25 today, and that is to select a presiding juror. We then

1 are going to release you for today and ask you to come  
2 back tomorrow morning at 9:00.

3 There is one more thing we need to do. We have 13 of  
4 you here now. One of you is the alternate juror. We  
5 haven't yet determined who that is. We are going to  
6 decide that at this time by a random draw from this box.

7 THE CLERK: The alternate is Juror No. 10.

8 THE COURT: Juror No. 10, Mr. Snyder, is the  
9 alternate juror. If you have a coat or anything back  
10 there, we will ask you to get that. Do you have anything  
11 in the jury room?

12 JUROR NO. 10: Yes.

13 THE COURT: Go ahead and get anything you have  
14 back there and bring it back here, and I will have further  
15 instructions for you while the jurors select a presiding  
16 juror.

17 Ladies and gentlemen, remember the instructions of the  
18 Court. Now that the case is submitted to the jury for  
19 jury deliberations, it's even more important that you  
20 decide this case based only on the evidence you heard in  
21 the courtroom and the Court's instructions on the law and  
22 that you not discuss this case with anyone else.

23 Please don't attempt to do any research on your own.  
24 Don't go home tonight and do a Google search on any of the  
25 terms you heard here in the courtroom. That would be

1       improper.

2           Please come back tomorrow morning directly back to our  
3 jury room at 9:00. The presiding juror may notify  
4 Mr. Cummings and our clerk that all the jurors are  
5 present. Please do not begin deliberations tomorrow  
6 morning until all jurors are present. When all of you are  
7 here, we will then sent back the exhibits to the jury  
8 room.

9           At this time, the jurors will retire to the jury room  
10 to select a presiding juror. Leave your notebooks in the  
11 jury room. You are then excused for the day.

12

13                               (The following proceedings were had  
14 outside the presence of the jury)

15                               (Juror No. 10 is present in the  
16 courtroom)

17           THE COURT: Sir, you are the alternate juror in  
18 the case. It's likely we are not going to need you  
19 further in the case. In case somebody can't be back  
20 tomorrow, becomes ill overnight, we still can call you to  
21 come in and participate during deliberations. That's why  
22 we had you sit through the entire case.

23           We are going to get your phone number so we can call  
24 you and let you know the jury has reached a verdict and  
25 what has happened in the case. We will also make sure you

1 have our phone number. In case you think maybe we have  
2 forgotten about you, you are free to call.

3 We would like to thank you right now for your time and  
4 your attention to the evidence in the case. The Court  
5 very much appreciates that.

6 MR. ALSDORF: Your Honor, I would ask that --

7 JUROR NO. 10: What about my notes?

8 THE COURT: Please leave your notes with  
9 Mr. Cummings.

10 MR. ALSDORF: Your Honor, I would ask also be  
11 instructed he follow the instruction not to discuss the  
12 case.

13 THE COURT: As with the other jurors, you are  
14 still under the instruction not to talk about the case or  
15 do any independent research on the case because you could  
16 be called back. Have a good evening.

17 We will be in recess.

18

19 (Court in recess)

20

21

22

23

24

25

FILED

2014 AUG -1 PM 3: 29

SONYA KRASKI  
COUNTY CLERK  
SNOHOMISH CO. WASH



CL16971600

SUPERIOR COURT OF WASHINGTON  
FOR SNOHOMISH COUNTY

THE STATE OF WASHINGTON,	
	Plaintiff,
v.	
EARL, Brandon J.,	
	Defendant.

No. 12-1-00034-9

STATE'S MOTION TO TRANSFER  
MOTION FOR RELIEF FROM JUDGMENT

**I. MOTION**

The State of Washington moves for an order transferring the defendant's Motion for New Trial to the Court of Appeals, for consideration as a personal restraint petition. This motion is based on CrR 7.8(c)(2), the accompanying Declaration of Lorraine Heath, and the following memorandum.

**II. FACTS**

On February 5, 2013, a jury found the defendant guilty of first degree rape of a child. This court can consider its own recollection of the evidence at trial. For the convenience of the court, the Court of Appeals' summary of that evidence is attached. A copy of the transcript will be provided to the court on request.

One of the witnesses at trial was Dr. Michael Lin, a Forensic Scientist from the Washington State Patrol Spokane Crime Lab. Dr. Lin testified that a Y-STR DNA profile

STATE'S MOTION TO TRANSFER--1

 ORIGINAL

139

matching the defendant was found on the victim's underpants. There was disputed testimony about whether the DNA could have come from touch rather than from a bodily fluid. There was also evidence that it could have come from urine rather than saliva.

Following his testimony in this case, Dr. Lin was suspended from casework. This was based on concerns that his testimony *understated* the significance of the test results. Dr. Lin subsequently resigned from the Crime Lab. Declaration of Lorraine Heath at 6 ¶ 12.

The defendant has now filed a motion for a new trial. This is based on Crime Lab documents that purportedly call into question the validity of Dr. Lin's lab work.

Accompanying this motion is a declaration from Dr. Lin's supervisor. This declaration explains the concerns about Dr. Lin's work and the circumstances surrounding his suspension.

### **III. ISSUE**

Should this case be transferred to the Court of Appeals for consideration as a personal restraint petition?

### **IV. ARGUMENT**

The defendant has filed a motion for a "new trial." Judgment of conviction has, however, already been entered. A new trial would be meaningless as long as that judgment remains in effect. The defendant is therefore seeking relief from that judgment. Motions for relief from judgment are governed by CrR 7.8.

Such motions can be either resolved by this court on the merits or transferred to the Court of Appeals. The standards governing this choice are set out in CrR 7.8(c)(2):

The court shall transfer a motion filed by a defendant to the Court of Appeals for consideration as a personal restraint petition unless the court

determines that the motion is not barred by RCW 10.73.090 and either (i) the defendant has made a substantial showing that he or she is entitled to relief or (ii) resolution of the motion will require a factual hearing.

The provisions of this rule are mandatory. If the requirements for transfer are satisfied, the court may not decide the motion – even if the motion is clearly unfounded. State v. Smith, 144 Wn. App. 860, 184 P.3d 666 (2008).

Under this rule, this court should resolve three issues: (1) Is the motion barred by RCW 10.73.090? (2) Has the defendant made a substantial showing that he or she is entitled to relief? (3) Will resolution of the motion require a factual hearing?

**A. THE DEFENDANT’S MOTION IS NOT BARRED BY RCW 10.73.090.**

RCW 10.73.090(1) sets a time limit on motions to vacate judgments, motions for new trial, and other forms of “collateral attack.” Such a motion must be filed within one year after the judgment becomes “final.” When a judgment is appealed, it becomes “final” when the appellate mandate is issued. In the present case, that has not yet occurred. As a result, the one-year time limit has not even begun to run. The motion is not barred by RCW 10.73.090.

**B. THE DEFENDANT HAS NOT MADE A SUBSTANTIAL SHOWING OF ENTITLEMENT TO RELIEF.**

The defendant claims that he is entitled to a new trial based on newly discovered evidence. Ruling on a motion a motion for new trial requires a “fine balance” between the functions of the judge and the jury. Although the judge has broad discretion, that discretion does not give the judge license to substitute its judgment for that of the jury. State v. Williams, 96 Wn.2d 215, 221-22, 634 P.2d 868 (1981).

When a new trial is sought on the ground of newly discovered evidence, the moving party must demonstrate that the evidence

(1) will probably change the result of the trial; (2) was discovered since the trial; (3) could not have been discovered before trial by the exercise of due diligence; (4) is material; and (5) is not merely cumulative or impeaching.

Id. at 223 (court's emphasis). Here, the "newly discovered evidence" fails at least two portions of the test: (a) it is merely impeaching and (b) it is not evidence that will probably change the result of the trial.

**1. If The Only Purpose Of New Evidence Is To Discredit Evidence Produced At Trial, A New Trial Cannot Be Granted, Unless The New Evidence Devastates Uncorroborated Testimony Establishing An Element Of The Crime.**

"When the only purpose of new evidence is to impeach or discredit evidence produced at trial, a new trial cannot be properly granted." State v. Sellers, 39 Wn. App. 799, 807, 695 P.2d 1014, review denied, 103 Wn.2d 1036 (1985). Here, the sole purpose of the new evidence is to discredit the testimony of Dr. Lin. The evidence has no direct bearing on the facts of the case. It thus constitutes evidence that is "merely impeaching." Even *if* the evidence would probably change the result of the trial, that would not be enough to warrant a new trial. The five factors set out in Williams are conjunctive. "The absence of any one of the five factors is grounds for the denial of a new trial or the reversal of the grant of a new trial." Williams, 96 Wn.2d at 223 (citations omitted).

The Court of Appeals has, however, recognized an exception to the rule barring new trials based on newly discovered impeachment. "Impeaching evidence can warrant a new trial if it devastates a witness's uncorroborated testimony establishing an element of the offense." State v. Savaria, 82 Wn. App. 832, 838, 919 P.2d 1263 (1996). In Savaria, the defendant was charged with harassment. The *sole* evidence of the alleged harassment was the victim's testimony. The defendant testified that she had called her father after receiving the threat, and the father corroborated this testimony. After trial,

STATE'S MOTION TO TRANSFER--4

the defendant discovered evidence of telephone records concerning that call. The opinion does not describe the records, but it indicates that they "devastate[d]" her credibility. Under such circumstances, a new trial was required.

The court applied the holding of Savaria in State v. Roche, 114 Wn. App. 424, 59 P.3d 682 (2002). That case involved prosecutions for possession of methamphetamine. The witness in question was the analyst who tested the substances. After trial, he admitted that he had been stealing drug samples for his personal use. There was also evidence that he had been "dry labbing" – that is, reporting "test results" for samples that he had not tested. Id. at 429. The court held that this evidence was not "merely impeaching" because it was "critical, with respect to [the analyst's] own credibility, the validity of his testing, and the chain of custody." Id. at 438.

The situation in the present case is significantly different than those in Savaria and Roche. In Savaria, the impeached witness's testimony was the sole evidence of the threats that constituted the crime. In Roche, the impeached witness provided essential evidence of a necessary element – the identity of the substances that the defendants possessed. In the present case, Dr. Lin's testimony did not directly establish any element. Proof of the elements came from the victim's statements and the defendant's own admissions. Dr. Lin's testimony simply provided some corroboration for that testimony. Even if Dr. Lin had not testified at all, or if the jury had completely disbelieved his testimony, there was sufficient evidence for the jury to convict the defendant..

Nor did the testimony "devastate" Dr. Lin's testimony. In Roche, the new evidence showed that the witness had lied in his testimony in other cases and may have fabricated evidence. In Savaria, the opinion is not clear, but it appears that the new

evidence contradicted the witness's testimony at trial. In the present case, the evidence at most shows that Dr. Lin may have made some errors in his lab work. This evidence may *reduce* his credibility, but it does not "devastate" his credibility as in the other cases.

The defendant argues that the new evidence warrants a new trial because it goes to the "heart of Dr. Lin's qualification" and "puts the integrity of the YSTR DNA evidence against Mr. Early in question." Motion for New Trial at 16. This argument would basically eliminate requirement (5) from the Williams test – that the new evidence not be "merely impeaching." If the impeachment is insubstantial or the witness unimportant, requirement (1) would not be satisfied – the evidence would not "probably change the result of the trial." If any evidence that satisfies requirement (1) also satisfies requirement (5), then requirement (5) is meaningless. This is not what Williams holds. All five requirements must be satisfied to justify a new trial.

Under Savaria and Roche, evidence is not "merely impeaching" if it "devastates a witness's uncorroborated testimony establishing an element of the offense." The new evidence in the present case does not satisfy that standard. It does not "devastate" Dr. Lin's testimony – it merely provides some further impeachment. His testimony was not "uncorroborated" – it was *corroborative* of other testimony. His testimony did not "establish a material element of the offense." – it corroborated other testimony that established an element.

Since the special rule of Savaria and Roche does not apply, this case is governed by the general rule. A new trial cannot be granted on the basis of new evidence that merely impeaches or discredits evidence produced at trial. Sellers, 39

Wn. App. at 807. Because this is the only effect of the new evidence in the present case, a new trial cannot properly be granted.

**2. Since The DNA Results Could Not Have Resulted From Contamination By Dr. Lin, The Court Cannot Conclude That The New Evidence Would Probably Change The Result Of The Trial.**

Even if the evidence is not considered to be "merely impeaching," it still would not justify a new trial. It is not sufficient that newly discovered evidence *may* change the outcome of the trial. Rather, the trial court must be able to conclude that the evidence *will* probably change the result. State v. Peele, 67 Wn.2d 724, 731, 409 P.2d 663 (1968). The new evidence here does not satisfy that standard.

To begin with, the DNA evidence must be viewed in context. Contrary to the defendant's claim, the DNA result was not the "primary evidence" against the defendant. The direct proof of the crime came from the victim's statements. This was strongly corroborated by the defendant's statements to police. He told them that his face was "accidentally" in contact with the victim's genital area for 30 seconds. Ex. 58 at 27, 38. It is highly unlikely that a jury would believe that a 30-second contact between the defendant's face and the victim's genitalia was "accidental." The victim's statements were further corroborated by her mother's observations of a "commotion" when she found the defendant in bed with the victim. 3 RP 279.

The DNA test results provided some further corroboration of this contact. The defense was, however, successful in minimizing the impact of this evidence. There was evidence that the DNA could have been deposited by casual touching. 6 RP 939. There was evidence that it could have represented urine from a dirty toilet seat. 6 RP 943-44; 4 RP 520. There was evidence that it could have been transferred from a reference sample because of improper packaging. 6 RP 932. All of this evidence significantly

STATE'S MOTION TO TRANSFER--7

reduced the significance of the DNA evidence. In light of this evidence, there is little likelihood that further impeachment of the DNA evidence would have changed the result.

There are three possible exculpatory theories of how the defendant's DNA got into the sample tested by Dr. Lin: (1) it came from some bodily substance other than saliva; (2) it came from contamination before he handled the samples; or (3) it came from contamination resulting from his improper handling of the samples. None of these theories are supported by new evidence to an extent that would probably change the result of the trial.

With regard to theory (1), the new evidence is *inculpatory*. The deficiency in Dr. Lin's testimony was that it *exaggerated* the likelihood that the DNA came from some other source. He did not show adequate familiarity with information concerning the quantity of DNA expected from touch or urine samples. This lack of familiarity was one of the reasons he was removed from casework. According to his supervisor's declaration, correct testimony would have been that the amount of DNA detected with inconsistent with either of these sources. Declaration of Lorraine Heath at 5-6, ¶ 11.c.-d. The new evidence on this point would make conviction more likely, not less.

With regard to the theory (2), the new evidence is irrelevant. It does not question the lab work of anyone other than Dr. Lin. It therefore casts no new light on whether errors in that lab work occurred.

With regard to theory (3), the new evidence could be considered exculpatory. It cannot be said, however, that this evidence would *probably* change the result of the trial. This is because contamination from mis-handling by Dr. Lin is not a reasonable

explanation of the test results in this case. As his supervisor's declaration points out, male DNA was extracted from the sample *before* Dr. Lin ever handled the evidence. If that DNA came from someone other than the defendant (or his paternal relatives), and if the sample was then contaminated with the defendant's DNA, then *two* DNA profiles would have been found – one from the defendant, and the other from the person whose DNA was on the underwear. There were not, however, two male DNA profiles – there was only one. Accordingly, that profile could not have resulted from Dr. Lin's mishandling of the sample. Declaration of Lorraine Heath at 3 ¶ 6.

There is no evidence that Dr. Lin has *ever* mishandled a sample in a way that resulted in contamination. The WSP Crime Lab has procedures in place to detect contamination. Declaration at 2 ¶ 4. None has ever been detected in any of Dr. Lin's lab work. Declaration at 3 ¶ 5. Even if that might have happened in some other case, however, it did not happen in *this* case. The presence of male DNA *before* he handled the sample, combined with the detection of only a *single* profile, ensure that this profile was not the result of contamination.

The defendant's motion contains references to a possible Brady violation. He does not, however, seek a new trial on this ground. Nor is there any basis for granting one. The relevant constitutional requirements are explained in In re Gentry, 137 Wn.2d 378, 396, 972 P.2d 1250 (1999):

Due process requires the State to disclose evidence that is both favorable to the accused and material either to guilt or to punishment. . .

[E]vidence is "material" and therefore must be disclosed ... only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. . . A "reasonable probability" of a different result is ... shown when the

government's evidentiary suppression undermines confidence in the outcome of trial.

It is doubtful that a scientist's mistakes made years earlier during training rise to the level of "exculpatory evidence." Even if they did, however, there is no reasonable probability that this evidence would have led to a different result. As already pointed out, the test results in this case cannot be reasonably explained as the result of contamination from Dr. Lin's improper lab procedures.

In short, there is no basis for this court to conclude that the new evidence will *probably* change the result of the trial. As a result, the defendant has not made a substantial showing of entitlement to relief.

**C. THE DEFENDANT IS NOT ENTITLED TO A FACTUAL HEARING.**

Under CrR 7.8(c)(a), a motion to vacate judgment must be "supported by affidavits setting forth a concise statement of the facts or errors upon which the motion is based." As discussed above, the factual materials submitted by the defendant do not establish an adequate basis for a new trial. Absent adequate factual support, the defendant is not entitled to a hearing.

**V. CONCLUSION**

This motion is not barred by RCW 10.73.090. The defendant has not made a substantial showing of entitlement to relief. There is also no need for a factual hearing. Under CrR 7.8(c)(2), the motion should be transferred to the Court of Appeals for consideration as a personal restraint petition.

Respectfully submitted on August 1, 2014.

MARK K. ROE  
Snohomish County Prosecuting Attorney

By:   
\_\_\_\_\_  
SETH A. FINE, WSBA # 10937  
Deputy Prosecuting Attorney

2014 JUL 14 AM 9:57

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE

STATE OF WASHINGTON,	)	No. 70144-4-1
	)	
Respondent,	)	
	)	
v.	)	
	)	
BRANDON JOSEPH EARL,	)	UNPUBLISHED OPINION
	)	
Appellant.	)	FILED: July 14, 2014

---

VERELLEN, A.C.J. — The right to present a defense does not entitle a criminal defendant to present minimally relevant evidence if the State has a compelling interest that outweighs the defendant's need for such information, especially where the trial court admits ample evidence pertinent to the defense theory.

Brandon Earl was convicted of rape of a child. His defense theory was that the reporting witnesses, the victim's mother and grandmother, were predisposed to assume the worst after he was found alone with the child and the child told her mother that Earl "told me not to tell" and told her grandmother that Earl "licked my pee-pee."<sup>1</sup> Earl presented evidence that the child's mother was molested as a child and argued that this biased the mother and grandmother. The trial court admitted the evidence that the mother was abused 20 years ago, but excluded evidence that the mother's abuser, a relative, was present at the same family gathering where Earl allegedly raped her

---

<sup>1</sup> Report of Proceedings (RP) (Jan. 30, 2013) at 284, 360.

No. 70144-4-1/2

daughter. Earl failed to present a foundation linking the identity and presence of the mother's abuser to his defense theory. The State's interest in excluding the potentially confusing and speculative evidence was compelling and outweighed Earl's minimal need to present the excluded evidence. The parties dispute whether an appellate court applies a de novo or abuse of discretion standard of review. Under either standard, we affirm. Earl was not denied his right to present a defense, and the ruling was within the trial court's discretion.

Earl also argues that the prosecutor's "we know" references in closing argument were misconduct. But he failed to object to the arguments, the arguments were not flagrant or ill intentioned, and a curative instruction would have negated any resulting prejudice.

We reject Earl's argument that cumulative error deprived him of a fair trial. His statement of additional grounds for review also lacks merit.

We affirm his judgment and sentence.

#### FACTS

On December 24, 2010, Earl returned home from work to a family Christmas party. He went upstairs to his bedroom to rest. Several children, including Earl's son, were in his bedroom watching cartoons. Earl contends that he gave the children "raspberries," i.e., blew on their stomachs, and sent them downstairs. He later told officers that M.F., the three-year-old daughter of his wife's cousin, returned to the room.

M.F.'s mother testified that she became concerned when she saw most of the children downstairs, but not M.F. She decided to look for M.F. When she got to Earl's bedroom door and found it closed, she opened it quickly. She testified that Earl and

No. 70144-4-1/3

M.F. were in close proximity on Earl's bed, but they separated quickly when she opened the door:

When I opened it, I could hear a bunch of commotion. I look around, and I can see Brandon coming from the left side of the bed, kind of readjusting, sitting up to the right side of the bed. The covers were over his bottom half, fully dressed. [M.F.] is more towards the foot of the bed on the left side.<sup>2</sup>

She carried M.F. out of the room. The mother testified that as she did so, M.F. said that Earl "told me not to tell."<sup>3</sup>

The mother took M.F. downstairs and tried to get M.F. to tell her what happened, but she would not. She took M.F. to M.F.'s grandmother. The mother found Earl's wife. The two conversed in a parked car.

While the grandmother was watching M.F., M.F. stated, "He licked my pee-pee."<sup>4</sup> The grandmother asked who did, and M.F. answered, "Brandon."<sup>5</sup>

That night, M.F. went straight to bed and slept in the clothes she had worn that day. M.F. told her mother as she was getting ready for bed that "[h]e made a mess down there."<sup>6</sup>

Two days later, December 26, 2010, the mother took M.F. to a sexual assault examination in Everett. M.F. made allegations consistent with her report to her grandmother that Earl had orally raped her. Evidence was collected, including a

---

<sup>2</sup> Id. at 279.

<sup>3</sup> Id. at 284.

<sup>4</sup> Id. at 360. The mother testified that there may have been confusion about M.F.'s exact words, whether she said "pee-pee," or "peep," or "pee." She explained that "Pee" or "peep" was the word that she and M.F. used to refer to a vagina. Id. at 294.

<sup>5</sup> Id. at 362.

<sup>6</sup> Id. at 296.

No. 70144-4-1/4

physical examination, DNA<sup>7</sup> swabs of M.F.'s body, and the clothes M.F. wore the night before. Police were given two pairs of underwear that M.F. had been wearing around that time. Male DNA was found on one of the pairs in an amount "more consistent with a body fluid deposit compared to a brief contact touch."<sup>8</sup> The DNA analysis disclosed a profile identical with Earl's, found in less than 1 in 5,200 males. Amylase, an enzyme found in saliva and other body fluids, was found on the inside of the crotch area of the same pair of M.F.'s underwear.

Earl admitted to police that he was alone with M.F. on his bed, that he placed his mouth on her exposed lower torso when "blowing raspberries," and emphasized that his face likely touched her vaginal area for "thirty seconds."<sup>9</sup> He gave conflicting statements about whether the contact with her vaginal area was over or under M.F.'s clothing.

Earl was charged with first degree rape of a child and tried by jury. M.F. was not competent to testify. Her mother, grandmother, and Earl's then ex-wife all testified at trial, along with forensic scientists and police officers. Earl's statement to police was admitted.

The jury convicted Earl as charged. The court imposed an indeterminate sentence with a standard range minimum of 113 months and a maximum term of life.

Earl appeals.

---

<sup>7</sup> Deoxyribonucleic acid.

<sup>8</sup> RP (Feb. 1, 2013) at 696.

<sup>9</sup> Exhibit 58 at 27.

DISCUSSION

*Right to Present a Defense*

Earl argues that the trial court violated his right to present a defense by excluding evidence potentially relevant to the jury's assessment of the reliability of the perceptions of M.F.'s mother and grandmother.

"The right of an accused in a criminal trial to due process is, in essence, the right to a fair opportunity to defend against the State's accusations."<sup>10</sup> Defendants have the right to present relevant evidence; however, defendants have no constitutional right to present irrelevant evidence.<sup>11</sup> Relevance depends on "the circumstances of each case and the relationship of the facts to the ultimate issue."<sup>12</sup> Evidence of high probative value cannot be restricted, regardless of how compelling the State's interest may be, if doing so deprives a defendant of the ability to testify to their version of the incident.<sup>13</sup>

Evidence of "minimal relevance . . . 'may be excluded if the State's interest . . . is compelling in nature."<sup>14</sup> Such evidence "may be deemed inadmissible if the State can

---

<sup>10</sup> Chambers v. Mississippi, 410 U.S. 284, 294, 93 S. Ct. 1038, 35 L. Ed. 2d 297 (1973).

<sup>11</sup> State v. Gregory, 158 Wn.2d 759, 786 n.6, 147 P.3d 1201 (2006). Testimony must be relevant to be admissible. ER 402. Evidence is relevant if it tends to prove or disprove the existence of a fact and that fact is of consequence to the outcome of the case. ER 401; Davidson v. Municipality of Metro. Seattle, 43 Wn. App. 569, 573, 719 P.2d 569 (1986).

<sup>12</sup> State v. Rice, 48 Wn. App. 7, 12, 737 P.2d 726 (1987). Evidence offered to impeach a witness is relevant if it tends to cast doubt on the credibility of the person being impeached and the credibility of the person being impeached is a fact of consequence to the action. State v. Allen S., 98 Wn. App. 452, 459-60, 989 P.2d 1222 (1999).

<sup>13</sup> State v. Jones, 168 Wn.2d 713, 720-21, 230 P.3d 576 (2010).

<sup>14</sup> Id. at 723 (quoting State v. Hudlow, 99 Wn.2d 1, 16, 659 P.2d 514 (1983)).

No. 70144-4-I/6

show a compelling interest to exclude prejudicial or inflammatory evidence.”<sup>15</sup> The State’s interest “is to preclude evidence that may interfere with the fairness of the trial.”<sup>16</sup> “The State’s interest in excluding prejudicial evidence must also ‘be balanced against the defendant’s need for the information sought,’ and relevant information can be withheld only ‘if the State’s interest outweighs the defendant’s need.’”<sup>17</sup>

Earl argues the court should review his claim de novo, citing State v. Jones.<sup>18</sup> The State argues that the trial court’s decision whether to admit evidence, even when a constitutional challenge is raised, is reviewed for an abuse of discretion, citing our Supreme Court’s decisions in State v. Darden<sup>19</sup> and State v. Hudlow.<sup>20</sup> Under either standard, we affirm.<sup>21</sup>

The trial court permitted Earl to elicit evidence that M.F.’s mother was molested as a child, but precluded questioning concerning the fact that her molester was a

---

<sup>15</sup> State v. Darden, 145 Wn.2d 612, 622, 41 P.3d 1189 (2002) (citing State v. Hudlow, 99 Wn.2d 1, 16, 659 P.2d 514 (1983) (“We believe the ‘compelling state interest’ requirement is the proper method of balancing the defendant’s right to produce relevant evidence versus the state’s interest in limiting the prejudicial effects of that evidence.”)).

<sup>16</sup> Id.

<sup>17</sup> Jones, 168 Wn.2d at 720 (quoting id.).

<sup>18</sup> 168 Wn.2d 713, 230 P.3d 576 (2010).

<sup>19</sup> 145 Wn.2d 612, 41 P.3d 1189 (2002).

<sup>20</sup> 99 Wn.2d 1, 659 P.2d 514 (1983).

<sup>21</sup> Recently, in State v. Franklin, \_\_\_ Wn.2d \_\_\_, 325 P.3d 159, 162 n.2 (2014), our Supreme Court stated that an appellate court reviews a trial court’s decision to exclude evidence for abuse of discretion, even though that case considered an evidentiary ruling implicating constitutional rights to present a defense. The court noted the presumption of prejudice if an evidentiary ruling denies a constitutional right, and makes no reference to the de novo standard of review.

No. 70144-4-I/7

relative who was at the same party where Earl allegedly raped M.F.<sup>22</sup> Earl contends that this evidence "would have corroborated the defense theory that the mother's accusation was the result of overreaction based on her own experience," and that the trial court violated his constitutional right to present a defense by excluding it.<sup>23</sup>

The State argued to the trial court that the evidence was minimally relevant and invited speculation:

Basically, the argument here is that there is very little probative value and the prejudicial value is very high. Jurors have a hard time accepting or understanding that sexual abuse like this occurs at all. For evidence to come in that 20 years ago [the mother] was sexually abused by someone who ultimately pleaded guilty and served time, and after serving time in community custody was welcomed back into the family, I really don't see how that is very probative in anything but a speculative way to the relevant factors of this case.

... I think it's an invitation for the jury to engage in improper speculation and to inject their inherently conflicted feelings about sexual abuse and sexual abuse victims into a case where they should really be concentrating on what happened between Brandon Earl and [M.F.] in that bedroom.<sup>[24]</sup>

Earl's counsel argued that the evidence was probative to the mother's state of mind:

[The mother] even said it was something more likely to make her be hypervigilant and more sensitive to these issues. It goes to her state of mind and can help the jury understand that kind of behavior.<sup>[25]</sup>

The trial court and Earl's counsel engaged in the following colloquy:

---

<sup>22</sup> It is not disputed that the relative who abused M.F.'s mother was present at the Christmas Eve gathering. After having served his sentence, the uncle was forgiven by the family and welcomed at family gatherings.

<sup>23</sup> Appellant's Br. at 1.

<sup>24</sup> RP (Jan. 28, 2013) at 183-84.

<sup>25</sup> Id. at 185.

COURT: Well, I will agree with you part way. I think it is probative that [the mother] was sexually abused as a child. I don't see who the defendant was at that time has any probative value.

COUNSEL: He was present that night with children in the house.

COURT: So what? There is no evidence that he was a suspect or likely a perpetrator of sexual abuse on [M.F.].

COUNSEL: I would never suggest that. I insist it goes to [the mother's] emotionality that night and her paranoia.

COURT: That's speculation. There is nothing to support that. The fact that she was a victim of sexual abuse I think explains her hypervigilance on the part of [M.F.]. I think you are entitled to let the jury know that. I think it has no probative value that [the mother's abuser] was the perpetrator of that sexual abuse and that he was present that night.<sup>[26]</sup>

The trial court granted the State's motion in part, limiting Earl's cross-examination of the mother to the fact of her own prior sexual abuse, but excluding details, including that the mother's abuser was present at the Christmas party where Earl allegedly abused M.F.:

COURT: I'm not going to go down that road. The fact that [the mother] was sexually abused previously has probative value. Beyond that, I'm not going to allow the defense to get into that area. I just don't see the probative value. It invites the jury to speculate.<sup>[27]</sup>

Earl's counsel renewed the argument the following day, proposing limits on the cross-examination, agreeing not to use the evidence as other suspect evidence, and suggesting a limiting instruction to ensure against jury confusion.

The court declined to revisit its earlier ruling to exclude the evidence, explaining:

COURT: I think the defense can adequately argue its facts and theory to the jury in that the Court is allowing the defense to bring

---

<sup>26</sup> Id. at 185-86.

<sup>27</sup> Id. at 187.

out that [the mother] was sexually molested as a child. You can bring out the age that she was at that time.

.....

... But beyond that, getting into the facts of it ... does invite the jury to speculate. ... It further leads the jury to start confusing the evidence, the facts in this case with facts in the case years ago with [the mother].<sup>[28]</sup>

The critical inquiry is whether Earl's need for the information outweighed the State's interest in excluding the evidence. We conclude it did not.

The evidence Earl sought to admit was, at most, minimally relevant. Earl contends that the excluded evidence was relevant to his theory that the mother and grandmother were predisposed to believe the worst and jump to conclusions because of the abuse the mother suffered as a child and the grandmother's discovery of that abuse. But Earl did not offer expert opinion testimony or other evidence that the presence of the mother's abuser influenced the mother's or grandmother's perceptions at the time of Earl's offense. The impact of the presence of the mother's abuser on the mother's or grandmother's perception is not obvious. The abuse happened 20 years earlier. The mother long ago forgave the abuser, who is now a welcomed member of the family. Earl failed to persuasively link the identity and presence of the mother's abuser to his defense.

Earl's need for this evidence was minimal. Unlike Jones, the trial court here did not exclude all evidence related to the defense theory. The trial court admitted evidence that the mother was sexually abused 20 years earlier. The mother admitted that the prior abuse made her hypervigilant about her daughter and that she was

---

<sup>28</sup> RP (Jan. 29, 2013) at 206-07.

potentially overly paranoid about Earl being alone with her daughter on a previous occasion. These facts allowed Earl to argue his defense that the mother and grandmother were biased by the mother's earlier abuse trauma. Especially where the defense offers no foundation establishing the significance of the excluded evidence, the need for such minimally relevant evidence is marginal.

Evidence of minimal relevance "may be excluded if the State's interest . . . is compelling in nature."<sup>29</sup> The State's interest in excluding the evidence was based on concerns that the admission of the evidence would invite the jurors to speculate and would lead them to confuse the evidence. These are valid considerations regarding the fairness of the fact-finding process. In the circumstances here, the reasons for exclusion outweigh Earl's minimal need for the evidence regarding the mother's past abuser.

Under either the *de novo* standard of review or the abuse of discretion standard, we conclude that there was no denial of the constitutional right to present a defense and that the evidence was properly excluded.

*Prosecutorial Misconduct*

Earl contends that the prosecutor committed misconduct in closing argument by "improperly aligning himself with the jury, placing the prestige of his office in the balance, and expressing a personal opinion on the complainant's credibility and Earl's guilt."<sup>30</sup> Particularly, Earl argues the prosecutor used "we" statements to suggest either

---

<sup>29</sup> *Jones*, 168 Wn.2d at 723 (quoting *Hudlow*, 99 Wn.2d at 16).

<sup>30</sup> Appellant's Br. at 22.

that the prosecutor and his office had determined certain facts to be established, or that the prosecutor and the jurors were on the same "side," with Earl on the other. Although he did not object at trial, he argues that reversal is required because the misconduct was incurable by instruction and substantially likely to affect the verdict.

To prevail on a claim of prosecutorial misconduct, a defendant is required to show that the prosecutor's conduct was both improper and prejudicial.<sup>31</sup> To establish prejudice, the defendant must show a substantial likelihood that the misconduct affected the verdict.<sup>32</sup> Where the defendant fails to object at trial, any errors are waived unless the misconduct was so flagrant and ill intentioned that an instruction would not have cured the prejudice.<sup>33</sup> We consider the prosecutor's alleged improper conduct in the context of the total argument, the issues in the case, the evidence addressed in the argument, and the jury instructions.<sup>34</sup>

Earl challenges the following statements by the prosecutor:

*I know it's hard to wrap your mind around the fact that how could someone be so bold and so stupid to do this during a Christmas party. That does boggle the mind, but so does the fact that these crimes happened at all. We know it did. It happened to [M.F.]*<sup>[35]</sup>

*He said he had never been alone with [M.F.] ever before this incident. It's on the tape. You can hear it for yourself. We know that's not true because of what we learned about that birthday party in the garage that happened a few weeks before all this in which we have multiple witnesses saying that [Earl] was alone with [M.F.] during that time.*<sup>[36]</sup>

---

<sup>31</sup> In re Glasmann, 175 Wn.2d 696, 717, 286 P.3d 673 (2012).

<sup>32</sup> Id.

<sup>33</sup> Id.

<sup>34</sup> State v. Anderson, 153 Wn. App. 417, 430, 220 P.3d 1273 (2009).

<sup>35</sup> RP (Feb. 4, 2013) at 976-77.

<sup>36</sup> Id. at 981.

The defendant said that there were jeans or slacks on that child. We know that's not the case.<sup>37</sup>

The defendant said that there would be no reason—no reason—for his saliva, for his DNA, to be on the inside of that little girl's underwear. What have we just found out through a meticulous, rigorous course of testimony over the past week? We found out that, in fact, the defendant was wrong about that.<sup>38</sup>

Nothing in the prosecutor's arguments was sufficiently inflammatory as to be beyond reach of an appropriate curative instruction. Courts have discouraged the frequent use of the phrase "we know" and related formulations during jury arguments because the identity of the referenced group "we" may be ambiguous.<sup>39</sup> But the use of such phrases is generally improper only "when it suggests that the government has special knowledge of evidence not presented to the jury, carries an implied guarantee of truthfulness, or expresses a personal opinion about credibility."<sup>40</sup> Here, the prosecutor did not offer personal assurances about the credibility of the State's witnesses or imply the existence of corroborative evidence not admitted.<sup>41</sup> A prompt objection and curative instruction could have negated any potential prejudice. No objection was interposed

---

<sup>37</sup> Id. at 989.

<sup>38</sup> Id. at 992.

<sup>39</sup> United States v. Younger, 398 F.3d 1179, 1191 (2005).

<sup>40</sup> United States v. Bentley, 561 F.3d 803, 812 (8th Cir. 2009).

<sup>41</sup> See Younger, 398 F.3d at 1191 (no misconduct where prosecutors used the phrase "we know" to "marshal evidence actually admitted at trial and reasonable inferences from that evidence, not to vouch for witness veracity or suggest that evidence not produced would support a witness's statements"; Bentley, 561 F.3d at 812 (prosecutor's frequent use of "we know" during closing argument was proper reference to evidence presented to the jury and reasonable inferences that could be drawn from the evidence); United States v. Ruiz, 710 F.3d 1077, 1086 (9th Cir. 2013) (prosecutor's use of "we know" properly summarized evidence admitted at trial and reasonable inferences and did not suggest that evidence not admitted would support a witness's statement).

No. 70144-4-1/13

and no curative instruction was requested. Accordingly, the issue was waived by Earl's failure to object in the trial court.

*Other Issues*

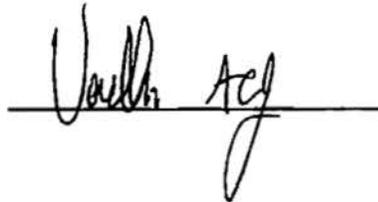
Because we determine there was no error in the exclusion of evidence and the issue of prosecutorial misconduct is waived, there was no cumulative error.

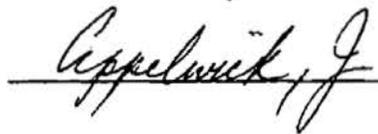
In his statement of additional grounds, Earl contends that M.F.'s mother and his ex-wife smoked marijuana the night of the alleged rape and that this was relevant to their ability to perceive events. But the record on appeal does not contain any of these alleged facts. On this record, no relief is warranted.

Affirmed.

WE CONCUR:

Handwritten signature of Schneider J. written over a horizontal line.

Handwritten signature of Vaughn ACJ. written over a horizontal line.

Handwritten signature of Appelwick J. written over a horizontal line.

SUPERIOR COURT OF WASHINGTON  
FOR SNOHOMISH COUNTY

THE STATE OF WASHINGTON,

Plaintiff,

v.

EARL, Brandon J.,

Defendant.

No. 12-1-00034-9

DECLARATION OF  
LORRAINE HEATH

Lorraine Heath states the following

1. I am a Supervising Forensic Scientist in the DNA Section of the Washington State Patrol Spokane Crime Lab. As such, I perform body fluid screening and DNA analysis on criminal cases submitted to the lab as well as supervising other scientists in the section. I have 15 years of experience in forensic DNA analysis in laboratories in the United States, Canada, and the United Kingdom. I have a B.S. degree in Forensic Science and Biology from the University of Toronto as well as a M.Phil. (Masters of Philosophy) degree from John Moores University in Liverpool, U.K. My Masters degree was awarded for my research and thesis regarding the use of DNA analysis for forensic soil comparisons. A copy of my Curriculum Vitae is attached.

2. I was the supervisor of Dr. Michael Lin. I personally observed his testimony in this case. I have also reviewed the following documents: (a) Dr. Lin's lab notes relating  
DECLARATION OF LORRAINE HEATH-1

to his testing in this case; (b) Dr. Lin's personnel file; (c) the Motion for New Trial on the Basis of Newly Discovered Evidence. This declaration is based on my personal knowledge, my review of the sources listed above, and my training and experience.

3. Dr. Lin was hired by the Washington State Patrol Crime Lab in February, 2008. He was in training status until December, 2009. He began performing independent case work in January, 2010. On March 1, 2013, he was removed from active case work pending completion of a work improvement plan. He resigned from the Crime Lab in June, 2013.

4. This lab uses a wide variety of procedures to prevent and detect contamination. Specifically for detection of contamination, reagent blanks or negative controls are used throughout all processes. This means that a blank sample is run with all casework samples to ensure the detection of any contamination of reagents/chemicals or the consumable plasticware in which we perform our chemical reactions. In addition, the DNA profiles from all scientists are on file. Part of the analysis of the data produced during DNA typing of casework involves the comparison of any unknown evidence profiles to the staff profile database to detect any contamination from them. Cross contamination is prevented via rigorous adherence to proper protocols regarding sample handling and evidence examination. Unknown evidence profiles are also compared to other samples processed in the same batch to detect cross contamination. Reference samples are processed separately from evidence samples to ensure no cross contamination occurs from the reference sample to the evidence. We also use the actual DNA profile, along with the biological screening results, to determine if cross contamination has occurred.

5. All of these procedures were in use throughout the time that Dr. Lin worked at this Lab. In no instance has there been any indication that his work involved either cross contamination between evidence samples, cross contamination between evidence samples and reference samples, or contamination with his own DNA.

6. With regard to the testing in this case, Dr. Lin's lab notes indicated that he properly followed Crime Lab procedures. There are only two possible explanations for the profile matching Brandon Earl: (a) Mr. Earl (or someone with an identical Y-STR profile) was the source of the male DNA on the underwear; or (b) the sample was contaminated before it came into Dr. Lin's possession. Male DNA was detected on the underwear by Forensic Scientist Kristina Hoffman before the sample came into Dr. Lin's possession. If Dr. Lin had contaminated the sample with the reference sample from Mr. Earl, we would expect another male profile to have also been detected to account for the male DNA detected in the sample during the earlier testing. Since no such profile was detected, it is not reasonable to conclude that the profile matching Mr. Earl was the result of contamination during Dr. Lin's processing of the samples.

7. Attachments A, B, and C to the Motion for New Trial relate to counseling that occurred while Dr. Lin was doing supervised casework after having just completed his training program. It is not uncommon for new scientists to have shortcomings while putting their training into practice. The purpose of the additional training with co-signed cases is to catch these errors and rectify them. Dr. Lin was not permitted to complete independent casework until the issues were rectified and therefore, no cases were jeopardized.

8. Attachment D refers to the use of an analyst's own saliva as a positive control to check that the reagent being used, in this case phadebas paper, was working correctly. Although the way Dr. Lin was checking his reagent is clearly not best practice as he risked contaminating evidence with his own DNA, it is something that would be easily detected via downstream quality controls. While the other issue documented in this written counselling is also not best practice, the primary result of his unnecessary screening was a waste of time and money rather than compromising the case or its results.

9. Attachment E documents a minor infraction that presented another opportunity for improvement in efficiency by critiquing his use of more reagent blank controls than needed for a proficiency test. Dr. Lin's failure to use the case approach worksheet was a failure to follow the directions of his supervisor monitoring his work rather than an action that could result in any case he was working being compromised.

10. Attachment H refers to another instance of Dr. Lin's failure to follow his supervisor's instructions. This in no way impacted the quality of his case work.

11. Attachments F and G refer to weaknesses in Dr. Lin's answer to questions during a defense interview and trial in this case. The effect of these answers was to significantly understate the significance of the lab results. Areas of weakness included the following:

a. Dr. Lin was vague about how he avoided contamination, especially with regards to questions on the proximity of samples to each other. Many of the questions that he was asked could have been answered by reference to his lab notes. For example, he stated that he didn't know what order he rehydrated samples. This

information was in his notes. He used a multichannel pipette to load samples but stated he didn't know which samples were loaded together. Again, this information was in his notes.

b. There were a wide range of questions regarding the Y-STR statistical database. Dr. Lin performed poorly on most of them. Specifically, he incorrectly stated that ethnicity was more important in Y-STR testing. He did a poor job of explaining why we don't report a single ethnicity statistic (the database size, and specifically the small number of samples from certain ethnic groups, has a disproportional effect on the reported frequency). He didn't know the criteria for acceptance of samples into the database or that it is checked for duplicates. He incorrectly answered a question regarding the probability being more frequent if a similar profile was added to the database – the addition of a similar profile would not have that effect on the frequency of the profile that he reported. He was unclear on the composition of the Y-STR statistical database. He performed similarly poorly during the same line of questioning during his pre-trial defense interview.

c. There was some questions regarding touch DNA. Dr. Lin failed to qualify most of the statements made by distinguishing between which statements/hypotheticals were more or less likely than others. He was questioned regarding his familiarity with the amount of DNA obtained from touch samples as reported in published literature. He responded that he had no familiarity with this information. He should have explained that he was familiar with the general amount of DNA expected from touch samples, even though he was not familiar with specific numbers from specific articles. He also failed to discuss his own experience with touch DNA samples. Correct testimony would

have been clear that the amount of male DNA present in this sample was not consistent with a touch DNA source.

d. There were a variety of questions regarding the possibility that the Y-STR profile was from urine. He incorrectly claimed that he was never trained in urine analysis. In the interview he was very unclear regarding which body fluids had more DNA than others. He couldn't correctly answer whether sterile urine would have DNA - it doesn't, the only DNA present in urine is from skin cells. He stated that he "assumed" urine had less DNA in it than blood, semen, or saliva - this is not an assumption, but a fact. Again, correct testimony would have been clear that the amount of male DNA present in this sample was not consistent with the source being urine.

12. Dr. Lin was not removed from casework because of any concerns about the quality of his work within the laboratory. He was removed because his understating of the evidence could have jeopardized the result of this case. The Job Performance Improvement Plan was intended only to rectify his problems with courtroom testimony, as there were no concerns regarding his laboratory casework.

Signed at Cheney Washington this 30<sup>th</sup> day of July, 2014.

  
LORRAINE HEATH

## CURRICULUM VITAE

**Lorraine E. Heath**  
Washington State Patrol  
Spokane Crime Lab  
580 W. 7<sup>th</sup> St.  
Cheney, WA, 99004  
(506) 625-5453 (ph)/(509) 625-5440 (fax)

### **EDUCATION:**

Master of Philosophy in Forensic DNA Profiling of Soil,  
Liverpool John Moores University, UK, 2005

Post Graduate Certificate in Teaching & Learning in Higher Education  
Liverpool John Moores University, UK, 2002

Bachelor of Science in Forensic Science and Biology  
Honours with High Distinction  
University of Toronto, Canada, 1998

### **PROFESSIONAL EXPERIENCE:**

- 07/08-Present      **Supervising Forensic DNA Scientist**, Washington State Patrol Crime Lab,  
Spokane, WA
- Perform and report results of forensic serological examinations and DNA analyses (STR and Y-STR).
  - Crime scene investigation and bloodstain pattern interpretation.
  - Supervise forensic scientists in DNA section.
- 01/07-07/08      **Forensic Biology Scientist**, Centre of Forensic Sciences, Sault Ste. Marie,  
Ontario, Canada
- Performed and reported results of forensic serological examinations and DNA analyses (STR and Y-STR).
- 03/04-12/06      **DNA Criminalist**, Arizona Department of Public Safety Crime Lab, Phoenix,  
AZ
- Performed and reported results of forensic serological examinations and DNA analyses (STR and Y-STR).
  - Crime scene investigation and bloodstain pattern interpretation.
- 09/01-03/04      **Forensic Science Lecturer**, Liverpool John Moores University, Liverpool,  
UK
- Taught undergraduate forensic science courses.
  - Co-ordinated and supervised undergraduate research projects.
  - Performed research on forensic DNA analysis of soil.
- 05/00-09/01      **Forensic DNA Technician**, Lothian & Borders Police Forensic Lab,  
Edinburgh, UK
- Performed and reported results of forensic STR DNA analyses

**PROFESSIONAL EXPERIENCE (cont'd):**

01/99-05/00           **DNA Criminalist**, Kansas City, MO Police Department Crime Lab, MO  
    • Validated and performed forensic STR DNA analyses.

04/98-01/99           **Technical Sale Representative**, Helixx Technologies, Etobicoke, Canada  
    • Biotechnology product development, testing, and sales.

**PROFESSIONAL TRAINING:**

**Root Cause Analysis – When Blaming the Analyst Completely Misses the Point** (4 hours), American Academy of Forensic Sciences Annual Meeting, Seattle, WA, 2014

**Managing the 21<sup>st</sup> Century Forensic Science Organizations** (8 hours), American Academy of Forensic Sciences Annual Meeting, Seattle, WA, 2014

**ArmedXpert DNA Mixture Analysis Software Training** (8 hours), NicheVision, Seattle, WA, 2013

**Amplifying Productivity in Today's Forensic Laboratory** (4 hours), American Academy of Forensic Sciences Annual Meeting, Washington DC, 2013

**Calculating Likelihood Ratios Incorporating a Probability of Drop-Out** (4 hours), American Academy of Forensic Sciences Annual Meeting, Washington DC, 2013

**Advanced Y-STR Training** (8 hours), Sorenson Forensics, Portland, OR, 2013

**HID Future Trends in Forensic DNA Technology**, Life Technologies, Seattle, WA, 2012

**Plexor HY System and Analysis Software Training** (8 hours), Promega, Spokane, WA, 2012

**Combined DNA Index System (CODIS) 7.0 Training** (20 hours), FBI, Portland, OR, 2012

**Crime Scene Analysis and Reconstruction** (40 hours), Green Forensics, Shelton, WA, 2012

**Advanced DNA Mixture Interpretations and Statistical Approaches** (16 hours), American Academy of Forensic Sciences Annual Meeting, Atlanta, GA, 2012

**Bloodstain Pattern Analysis II** (40 hours), Bevel & Gardner, Shelton, WA, 2012

**Statistical Methods for DNA Evidence** (8 hours), International Conference on Forensic Inference and Statistics, Seattle, WA, 2011

**ASCLD/LAB Internal Auditor Training** (32 hours), American Society of Crime Lab Directions/Laboratory Accreditation Board, Emeryville, CA, 2011

**Bloodstain Pattern Interpretation from Photographs** (4 hours), International Association for Identification Annual Conference, Spokane, WA, 2010

**PROFESSIONAL TRAINING (cont'd):**

**Bloodstain Pattern Interpretation on Clothing** (4 hours), International Association for Identification Annual Conference, Spokane, WA, 2010

**Crime Scene Fingerprint Processing** (8 hours), Washington State Patrol, Spokane, WA, 2010

**Advances in Forensic DNA Analysis** (10 hours), American Academy of Forensic Sciences Annual Meeting, Seattle, WA, 2010

**Bullet Trajectory Analysis** (10 hours), Washington State Patrol, Seattle, WA, 2009

**Firearms Safety Handling Procedures** (6 hours), Washington State Patrol, Seattle, WA, 2009

**DNA Mixture Analysis** (24 hours), Northwest Association of Forensic Scientists Fall Conference, Fort Collins, CO, 2009

**DNA Population Statistics & Likelihood Ratios** (24 hours), George Carmody, Seattle, WA, 2009

**Advanced GeneMapper ID-X Software Training**, Applied Biosystems, Seattle, WA, 2009

**Forensic Y-STR Training** (34 hours), Marshall University Forensic Science Centre, Huntington, VA, 2009

**Future Trends in Forensic DNA Technology**, Applied Biosystems, Seattle, WA, 2009

**Combined DNA Index System (CODIS) Training**, FBI, Arlington, VA, 2009

**Leadership in Police Organizations**, Washington State Patrol, Shelton, WA, 2008

**Quality Assurance Standards Auditor Training**, FBI, Arlington, VA, 2008

**Future Trends in Forensic DNA Technology**, Applied Biosystems, Seattle, WA, 2008

**Human Identification e-Symposium on DNA Interpretation**, The Forensic Institute, UK, 2008

**Homicide Investigation, Trial Preparation and Testimony**, American Academy of Forensic Sciences Annual Meeting, Washington DC, 2008

**GeneMapper ID-X Next Generation Forensic Data Analysis Software and Expert System**, Applied Biosystems, Webinar, 2007

**Expert Evidence in Criminal Proceedings**, Osgoode Hall Law School, Canada, 2007

**Forensic DNA Statistics** (24 hours), Bruce Budowle, Toronto, Ontario, Canada, 2007

**Annual Workshop on DNA Technology**, Centre of Forensic Sciences & Promega, Canada, 2007

**PROFESSIONAL TRAINING (cont'd):**

**Human Identification e-Symposium on Profiling Degraded and Low Amounts of DNA**, The Forensic Institute, UK, 2007

**Forensic DNA Statistics** (24 hours), Bruce Budowle & John Planz, Tucson, AZ, 2006

**Math and Physics for Bloodstain Pattern Analysis** (40 hours), Ontario Police College, Canada, 2006

**Future Trends in Forensic DNA Technology**, Applied Biosystems, Phoenix, AZ, 2006

**DNA Mixture Interpretation** (24 hours), George Carmody & Ray Wickenheiser, Phoenix, AZ, 2006

**Statistical Analysis of Forensic DNA Evidence** (16 hours), George Carmody, Phoenix, AZ, 2006

**Promega 2005 Summer Expedition**, Phoenix, AZ, 2005.

**Basic & Advanced Bloodstain Pattern Recognition** (80 hours), MVP Forensics, Scottsdale, AZ, 2005

**Parentage and Mixture Statistics**, International Symposium on Human Identification, Phoenix, AZ, 2004

**Y-STRs: Practical Considerations and Interpretation Issues**, International Symposium on Human Identification, Phoenix, AZ, 2004

**Future Trends in Forensic DNA Technology**, Applied Biosystems, Phoenix, AZ, 2004

**Forensic Serology Training**, Arizona Department of Public Safety, Phoenix, AZ, 03/04-05/04

**Advanced Course on Forensic Human Identification** (35 hours), Forensic Toxicological Service Analytical Unit, St. George's Hospital Medical School, London, UK, 2003

**Y-Chromosome Analysis & Its Application to Forensic Casework**, American Academy of Forensic Sciences Annual Meeting, Atlanta, GA, 2002

**Basic Fingerprinting Technology**, American Academy of Forensic Sciences Annual Meeting, Atlanta, GA, 2002

**Blood Pattern Analysis**, Forensic Alliance Ltd, Oxford, UK, 2001

**Bond Solon Courtroom Skills and Cross Examination Training**, Lothian & Borders Police Forensic Lab, Edinburgh, UK, 2001

**STR Analysis Data: Processing, Interpretation and Storage**, American Academy of Forensic Sciences Annual Meeting, Seattle, WA, 2001

**PROFESSIONAL TRAINING (cont'd):**

**Sexual Offences Investigation**, Lothian & Borders Police Forensic Lab, Edinburgh, UK, 2000

**Death Investigation**, Jackson County Medical Examiner's Office, Kansas City, MO, 1999

**Crime Scene Investigation Techniques Course (80 hours)**, Kansas City Police Department, Kansas City, MO, 1999

**ABI Prism 310 Capillary Electrophoresis and AmpFISTR PCR**, PE Biosystems, Kansas City, MO, 1999

**Search & Seizure and Courtroom Demeanor**, Jackson County Prosecutor, Kansas City, MO, 1999

**Internship**, Firearms & Toolmarks Section, Centre of Forensic Sciences, Toronto, Canada, 1998

**Death Investigation Conference**, Jefferson Parish Coroner, New Orleans, LA, 1995

**Crime Scene Investigation and Evidence Collection**, Peel Police, Mississauga, Canada, 1995

**CONFERENCES ATTENDED:**

**International Conference on Forensic Inference and Statistics – 2011**

**International Association for Identification Annual Conference – 2010**

**Northwest Association of Forensic Scientists Fall Conference – 2009**

**Annual National CODIS Conference – 2013, 2012, 2008**

**American Academy of Forensic Sciences Annual Meeting – 2014, 2013, 2012, 2010, 2008, 2004, 2002, 2001, 1998, 1997**

**International Symposium on Human Identification (Promega) – 2004**

**Canadian Society of Forensic Science Annual Conference – 1996, 1995**

**PUBLICATIONS/PRESENTATIONS:**

**Heath, L. and Saunders, V.**, Spatial Variation in Bacterial DNA Profiles for Forensic Soil Comparisons. *Canadian Society of Forensic Science Journal*, 41(1), 29-37, 2008.

**DNA Evidence Identification, Collection and Preservation for Law Enforcement.** Presented via the U.S. Department of Justice Community Oriented Policing Services to law enforcement personnel in Phoenix, AZ, Reno, NV, and Huntsville, TX (filmed for training DVD production). Also presented in 'Train the Trainer' format in Salt Lake City, UT. 2006

**Heath, L. and Saunders, V.**, DNA Profiling for Forensic Soil Comparisons. *Journal of Forensic Sciences*, 51 (5), 1062-1068, 2006.

**PUBLICATIONS/PRESENTATIONS (cont'd):**

**Heath, L.** and Saunders, V., DNA Profiling for Forensic Soil Comparisons. Paper presented at American Academy of Forensic Sciences Annual Meeting, Dallas, TX, 2004

Harland, J., Reid, A., Pitt, S., Prosser, M. and **Heath, L.** Do Student Feelings About Their Term-Time Employment Relate to Any Effects on Their Work? Paper presented at Society for Research into Higher Education Annual Conference, Glasgow, UK, 2002

**GRANTS AWARDED:**

Forensic Science Foundation Acorn Grant, 2003

**PROFESSIONAL AFFILIATIONS:**

Fellow (Molecular Biology) – American Board of Criminalistics, 2011-Present

Member – International Association of Bloodstain Pattern Analysts, 2005-Present

Fellow – American Academy of Forensic Sciences, 2013-Present

Full Member – American Academy of Forensic Sciences, 2005-2013

Provisional Member – American Academy of Forensic Sciences, 2002-2005

Trainee Affiliate – American Academy of Forensic Sciences, 2000-2002

Student Affiliate – American Academy of Forensic Sciences, 1997-2000

Full Member – Forensic Science Society, 2001-2003

Member – Missouri Division of International Association of Identification, 1999-2000

Student Member – Canadian Society of Forensic Science, 1996-1998

ORIGINAL

RECEIVED

JUN 12 2014

PROSECUTING ATTORNEY  
FOR SNOHOMISH COUNTY

BY \_\_\_\_\_  
FOR \_\_\_\_\_

SONYA KRASKI  
COUNTY CLERK  
SNOHOMISH CO. WASH

2014 JUN 12 PM 3:29

FILED



CL16776551

STATE OF WASHINGTON

SUPERIOR COURT OF WASHINGTON FOR SNOHOMISH COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

EARL, BRANDON J.

Defendant

) Case No.: 12-1-00034-9

) MOTION FOR NEW TRIAL ON THE BASIS  
) OF NEWLY DISCOVERED EVIDENCE

**I. MOTION**

COMES NOW Defendant, Brandon Earl, by and through his attorney of record Sonja Hardenbrook, of the Snohomish County Public Defender Association, and moves the Court for a new trial on the basis of newly discovered evidence pursuant to CrR 7.5, CrR 7.8(b), RCW 10.73.100, Article I, Section 3 of the Washington State Constitution and the Fourteenth Amendment to the U.S. Constitution.

Dated this 12<sup>th</sup> day of June 2014.

SONJA HARDENBROOK, WSBA #35386  
Attorney for Defendant

MOTION FOR NEW TRIAL  
BASED ON NEWLY  
DISCOVERED EVIDENCE- 1

Snohomish County Public Defender Association  
1721 Hewitt Ave., Suite 200  
Everett, WA 98201  
425-339-6300

137

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**II. AFFIDAVIT OF COUNSEL**

I, Sonja Hardenbrook, am the attorney appointed to represent the defendant, and  
declare:

1. On January 12, 2012 Brandon J. Earl was arraigned on an information charging one count of child molestation in the first degree against M.F., alleged to have occurred on December 24, 2010.
2. May 30, 2012 the defense filed a supplemental discovery request specifically addressing crime lab records regarding Mr. Earl and the analysts who performed work on his case. Attachment M.
3. On August 17, 2012 Mr. Earl was arraigned on an amended information charging one count of rape of child in the first degree against M.F. on December 24, 2010.
4. On January 9, 2013 the defense interviewed Michael Lin, forensic scientist at the Washington State Patrol Crime Laboratory in Cheney, Washington. Mr. Lin was responsible for processing the YSTR DNA analyzed by the Washington State Patrol in this case, including separating out the YSTR from the regular DNA, amplifying the YSTR, and comparing it with Mr. Earl's YSTR profile.
5. February 1, 2014 the defense again interviewed Michael Lin, forensic scientist at the Snohomish County Prosecuting Attorney's Office in Everett, Washington.
6. During the final week of January 2013, Mr. Earl stood trial before the Honorable Judge Thomas J. Wynne.
7. The State's case consisted of:

MOTION FOR NEW TRIAL  
BASED ON NEWLY  
DISCOVERED EVIDENCE- 2

Snohomish County Public Defender Association  
1721 Hewitt Ave., Suite 200  
Everett, WA 98201  
425-339-6300

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

- a. M.F. found not competent to testify at trial due to lack of memory
  - b. Some of M.F.'s child hearsay statements admitted at trial, but some were excluded to do coaching by her mother caught on video.
  - c. Mr. Lin testified that the YSTR profile found inside M.F.'s underpants (fished out of a hamper where they sat for up to 5 days after the alleged incident) was the same as Mr. Earl's YSTR profile. Mr. Lin's report was dated November 30, 2011.
  - d. Kristina Hoffman testified that the faint result of amylase found inside M.F.'s underpants (fished out of a hamper where they sat for up to 5 days after the alleged incident) could be due to the presence of urine or saliva.
  - e. In response to defense expert testimony regarding contamination, Mr. Lin and Ms. Hoffman testified to various procedures they used to prevent cross-contamination and asserted that there was no actual evidence of cross-contamination by these analysts in these labs.
  - f. The State argued in closing that the WSP lab is a professional organization and strictly adheres to guidelines to prevent contamination and that there was no specific evidence to assume those guidelines were not followed in this case.
8. Defense theory of the case:
- a. No crime occurred.
  - b. The Amylase on the underpants was from urine, as was consistent with the dark yellow staining, odor, & texture unique to that stained underwear.
  - c. The YSTR on the underpants was a result of cross contamination either

1 while the underpants were inside-out in the hamper for 5 days before  
2 collection *or at the crime lab while the unknown and known samples were*  
3 *being processed in tandem.*

4 d. Dr. Riley testified as a DNA expert for the defense. Dr. Riley concluded  
5 that the minute amounts of DNA involved in the case were of an amount  
6 attributable to cross-contamination DNA, that several of the lab  
7 procedures may have resulted in contamination, and that pre-impound  
8 contamination was also a considerable possibility (in the hamper).

9 e. Child hearsay statements were the result of M.F.'s mother and  
10 grandmother's paranoia & misunderstanding, based on their heightened  
11 emotional state because the man who sexually abused M.F.'s mother  
12 (M.F.'s grandmother walked in and caught him) was present at the family  
13 function that night.

14  
15  
16 9. On February 4, 2013 after a 6 day trial the jury convicted Mr. Earl.

17 10. On March 27, 2013 Mr. Earl was sentenced and ordered to the Department of  
18 Corrections under an indeterminate sentence. He appealed his conviction and  
19 his direct appeal is still pending before the Court of Appeal, Division 1 under  
20 No. 70144-4-1.

21 11. On March 27, 2014 the Snohomish County Public Defender Association  
22 learned that Michael Lin had been put on disciplinary restriction as a result of  
23 his testimony in the Earl case. A public disclosure request revealed that Mr.  
24 Lin's performance as a forensic scientist was poor and ultimately led to his  
25 leaving the Washington State Patrol while still on the disciplinary restriction  
26

1 which resulted from the Earl case. Such documents include the following  
2 relevant items, identified by attachment letter:

3 A. 6/16/09 Job Performance Documentation Record indicating that Mr. Lin  
4 was using inappropriate procedure and failing to follow corrective advice  
5 in a way that was "continu[ing] to compromise low level cases."

6 Attachment A.

7  
8 B. 9/29/09 Interoffice Communication detailing concerns about Mr. Lin's  
9 casework quality, including that he struggled with "basic serology  
10 screening techniques, DNA case approach, and following directions."

11 Attachment B.

12 C. 12/4/09 Interoffice Communication detailing Mr. Lin's past struggles with  
13 "basic serology screening techniques, DNA case approach, and following  
14 directions." It also described his delayed sign-off as an independent  
15 forensic scientist, despite receiving 7 co-signs more than most trainees  
16 (most trainee's complete only 5). The communication includes the  
17 conclusion that "At this time you do not possess the requisite skills to  
18 function as an independent DNA analyst." Attachment C.

19  
20 D. 4/27/10 Job Performance Documentation Record detailing an incident  
21 where Mr. Lin "placced a known saliva sample within close proximity of  
22 evidence. Both the known sample and the evidence were being screened  
23 with the same piece of phatebas paper at the same time. You showed a  
24 high level of disregard to the preservation and integrity of the evidence."  
25 Similarly, Mr. Lin was "observed using phatebas paper to screen panties  
26

1 that had visible fecal material. This is inappropriate use of this screening  
2 method. . . . The result was positive; however it was in close proximity to  
3 the fecal staining and is most likely due to diffusion from the fecal  
4 material. The result is meaningless.” The performance report also  
5 includes the conclusion “You have consistently struggled with case  
6 approach. We have made great efforts to help you by placing you on a  
7 JPIP, mentorship by senior scientists, extra cosign cases, the study of  
8 several complete case files, monitoring your case approach and counseling  
9 regarding your approach on each case. You have not progressed. No  
10 improvement has been demonstrated. Breaches of quality control  
11 procedures and poor case approach can have a detrimental effect on  
12 criminal casework, and therefore cannot be tolerated.” Attachment D.

14 E. 5/4/10 Job Performance Documentation Record describing how during a  
15 review of a case file Mr. Lin's “case approach work sheet . . . was  
16 incomplete. There is little ambiguity to this sheet. [He] was specifically  
17 told to use this sheet with every case to address [his] deficiencies with  
18 case approach. It is absolutely unacceptable that the tools that were given  
19 to [him] to enhance [his] job performance were ignored.” The document  
20 goes on to describe inappropriate use of reagent blanks. Attachment E.

22 F. 2/1/13 Corrective Action Plan described that forensic scientist Lin “had  
23 difficulty in more than one area including responses to questions about  
24 statistics applied to YSTR results despite having attended a refresher  
25 workshop on YSTR the week before.” The document planned  
26

1           preventative action by removing Mr. Lin from casework & suspending  
2           any new case assignments. Attachment F.

3           G. 2/4/13 Case Testimony Performance Evaluation describes Mr. Lin's  
4           testimony in the instant case of Brandon Earl. According to his supervisor  
5           Lorraine Heath, Mr. Lin "failed to demonstrate knowledge/competence.  
6           He also made technically incorrect statements and often failed to  
7           appropriately qualify statements (probability of contamination, likely  
8           effect of database size on frequency of suspect's profile, and the  
9           probable/possible sources of DNA on item)." Overall he "gave the  
10          impression of being unfamiliar with both his case file, SOPs and various  
11          areas of QA/QC." The reviewer credits the prosecutor and judge with  
12          making Mr. Lin look more competent than he was "The prosecutor, with  
13          help from Michael's supervisor, was able to 'save' the situation despite his  
14          testimony rather than because of it . . . . There were numerous instances  
15          where the prosecutor and/or the judge saved him from appearing even  
16          more incompetent and it is completely inappropriate to rely on them to do  
17          so." Attachment G.

18          H. 2/8/13 Job Performance Documentation Report details two incidents  
19          involving Mr. Lin failing to comply with supervisor instructions. The first,  
20          is during his trial testimony in Earl. Apparently "when [his] supervisor  
21          asked [him] on Friday the nature of the foundational hearing that was  
22          occurring, [he] indicated that it was not very important and that it could be  
23          discussed later. Given that the hearing was addressing [his] ability to  
24          discussed later. Given that the hearing was addressing [his] ability to  
25          discussed later. Given that the hearing was addressing [his] ability to  
26          discussed later. Given that the hearing was addressing [his] ability to

1 testify to the portion of the case of primary importance (the Y-STR match  
2 and associated statistic), it is incredible you felt this was not important.  
3 You were either trying to be evasive and hide the situation from your  
4 supervisor, or you truly had no idea of the potential impact of the hearing  
5 on your own credibility, WSPs credibility, and the ability of other Y-STR  
6 analysts to testify in future cases.” This report also describes that the  
7 prosecutor’s office offered, and Lin accepted, accommodations for him to  
8 stay in a hotel in Seattle over the weekend between his Friday and  
9 Monday testimony. Apparently Mr. Lin did so without approval from his  
10 supervisor. Attachment H.

11  
12 I. 2/19/13 Email from James Tarver to Michael Lin documents Mr. Lins  
13 removal from regular casework duties until a Job Performance  
14 Improvement Plan (as a result of the testimony evaluation of 2/4/13) is  
15 implemented and successfully completed. Attachment I.

16  
17 J. 3/1/13 Letter from Erik Neilson to Ralph Keaton provides notification of  
18 Mr. Lin’s removal from caseload. It summarizes the problem as follows  
19 “In a recent testimony regarding Y-STR analysis, the analyst gave a very  
20 poor testimony, being unable to appropriately respond to several questions  
21 regarding subject matter that he should have known and been very familiar  
22 with. . . . He will be allowed to complete casework he has already started  
23 but is removed from additional cases until he has successfully completed  
24 the [Job Performance] improvement plan.” Attachment J.

25  
26 K. 4/1/13 Job Performance Improvement Plan relates that Mr. Lin did not

1 "currently have the ability to provide expert testimony of the high quality  
2 needed to function as a Forensic Scientist 3." It described the problems as  
3 including "technically incorrect" statements during testimony.

4 "inappropriately qualified or unqualified statements; equivocation where  
5 none was warranted; the appearance you were unprepared, untrained and  
6 unforthcoming; the use of inappropriate terminology despite counseling  
7 immediately prior to your testimony." Mr. Lin also "demonstrated  
8 deficient testimony not only on Y-STR analysis but also  
9 screening/serological examinations, as well as on general procedures that  
10 would apply to all types of DNA casework." Attachment K.

11  
12 L. 10/28/13 Interoffice Communication indicates that Mr. Lin resigned from  
13 the Washington State Patrol crime lab prior to completing the corrective  
14 action plan. Attachment L.

15  
16 12. May 1, 2014 defense counsel made a public disclosure request to the  
17 Snohomish County Prosecutor's office for all internal communications  
18 regarding forensic scientist Michael Lin, in an effort to discover and provide  
19 such information for the court in support of this motion.

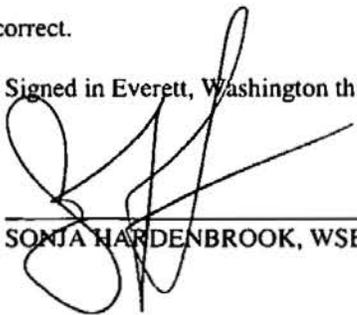
20 13. May 7, 2014 defense counsel was informed that the PDR was being  
21 processed, and that initial documents would be provided starting June 19,  
22 2014. Defense counsel will supplement the record with any relevant  
23 documents released pursuant to the PDR once received.<sup>1</sup>  
24

25  
26 <sup>1</sup> Division I in State v. Roche, found information of internal Snohomish County Prosecutor communications  
illuminating to their inquiry regarding a trial court's denial of a motion for new trial based on newly discovered  
evidence, in that case malfeasance of a crime lab technician who tested the drugs. The defense in the instant case is  
vetting whether similar documents exist regarding Michael Lin.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed in Everett, Washington this 12<sup>th</sup> day of June, 2014.



SONJA HARDENBROOK, WSBA #35386

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**ARGUMENT**

**The Court Should Grant Relief of a New Trial Because There is newly Discovered Evidence that would Change the Outcome of the Trial**

In Washington, the criminal rules together with RCW 10.73.100 provide a basis for relief from judgment based on newly discovered evidence. CrR 7.5(a)(3) authorizes trial courts to grant a new trial where there is “[n]ewly discovered evidence material for the defendant, which the defendant could not have discovered with reasonable diligence and produced at the trial.” CrR 7.5(a)(3). CrR 7.5 requires motions to be filed within “10 days after the verdict or decision.” CrR 7.5. Under CrR 7.5 the Court has discretion to extend the time for filing.

Likewise, CrR 7.8(b) authorizes trial courts to relieve a party from a final judgment for “newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under rule 7.5.” CrR 7.8(b). Motions under CrR 7.8(b)(2) shall be made “not more than 1 year after the judgment, order or proceeding was entered or taken, and is further subject to RCW 10.73.090, .100, .130 & .140.” CrR 7.8(b)(2).

Similarly, RCW 10.73.100 provides for post-conviction relief on the basis of “[n]ewly discovered evidence, if the defendant acted with reasonable diligence in discovering the evidence and filing the petition or motion.” RCW 10.73.100(1). RCW 10.73.090 bars such a motion or petition “filed more than one year after the judgment becomes final” and provides that “a judgment becomes final on the last of the following dates: (a) . . . ; (b) The date that an appellate court issues its mandate disposing of a timely direct appeal from conviction; or (c) . . .”

However, RCW 10.73.100 exempts petitions or motions based solely on newly discovered evidence from the 1 year timeline of .090.

1 In the instant case, Mr. Earl's motion for relief from judgment is within the 1 year CrR  
2 7.8 timeline as defined by RCW 10.73.090, since his direct appeal of conviction is still pending  
3 before the Court of Appeal, Division 1 under No. 70144-4-1. Further, CrR 7.8 explicitly refers  
4 to RCW 10.73.100 which exempts petitions or motions based solely on newly discovered  
5 evidence from the 1 year timeline of .090.

6 Under the criminal rules and RCW 10.73.100 a new trial based on newly discovered  
7 evidence is compelled where a defendant can show that the evidence:  
8

- 9 1. Will probably change the result of the trial;
- 10 2. Was discovered since the trial;
- 11 3. Could not have been discovered before the trial by the exercise of  
12 due diligence;
- 13 4. Is material; and
- 14 5. Is not merely cumulative or impeaching.

15 *State v. Williams*, 96 Wash.2d 215 (1981). The absence of one of the five factors defeats the  
16 request for a new trial. *Williams*, 96 Wash.2d at 223. The decision whether to grant a new trial  
17 "rests within the sound discretion of the trial court, and a denial will not be reversed except for  
18 an abuse of that discretion." *State v. Swan*, 114 Wash. 2d 613, 642 (1990) citing *State v. Wilson*,  
19 71 Wash.2d 895, 899, 431 P.2d 221 (1967); *State v. Hobbs*, 13 Wash.App. 866, 869, 538 P.2d  
20 838, review denied, 85 Wash.2d 1019 (1975); see also *State v. Barry*, 25 Wash.App. 751, 757,  
21 611 P.2d 1262 (1980). "A court abuses its discretion where the decision was manifestly  
22 unreasonable, or based on untenable grounds or reasons." *State v. Roche*, 114 Wash. App. 424,  
23 435, (Div 1 2002) citing *Moreman v. Butcher*, 126 Wash.2d 36, 40 (1995).

24 **1. The Newly Discovered Evidence Would Change the Result of Trial**

25 The newly discovered evidence would change the result of the trial in Mr. Earl's case.  
26 The primary evidence against Mr. Earl was the DNA YSTR "match" as examined and testified to  
by Michael Lin. As the United States Supreme Court has acknowledged:

MOTION FOR NEW TRIAL  
BASED ON NEWLY  
DISCOVERED EVIDENCE- 12

Snohomish County Public Defender Association  
1721 Hewitt Ave., Suite 200  
Everett, WA 98201  
425-339-6300

1 DNA testing can provide powerful new evidence unlike anything known  
2 before.” *District Attorney’s Office for Third Judicial Dist. v. Osborne*, 557  
3 U.S. 52, 62, 129 S.Ct. 2308, 2316, 174 L.Ed.2d 38 (2009). Given the  
4 persuasiveness of such evidence in the eyes of the jury, it is important that  
5 it be presented in a fair and reliable manner.

6 McDaniel v. Brown, 558 U.S. 120, 136, 130 S. Ct. 665, 675, 175 L. Ed. 2d 582 (2010). In the  
7 case at bar, Mr. Lin’s supervisors acknowledged that Lin testified inaccurately and made  
8 statements without properly qualifying them in Mr. Earl’s trial. At a new trial, the fact of Lins  
9 prior false testimony and lack of proper qualifying statements may be used to bar his  
10 qualification as an expert or to defeat the chain of custody. If Lin is allowed to testify at retrial  
11 such statements will go far to diminishing the aura of infallibility with which jurors view DNA  
12 evidence. In preparation for a second trial, the authors of Lin’s disciplinary records will be  
13 questioned in detail regarding Lins particular falsehoods and improper qualification in the initial  
14 Earl trial.

15 Michael Lin’s newly disclosed employment records document a pattern of deviating from  
16 established procedure even after correction from supervisors. Such records detail his high risk to  
17 cross-contaminate and fundamental lack of understanding about DNA. Given this backdrop, the  
18 fact that Mr. Lin’s testimony regarding the source of the DNA in M.F.’s underwear was the  
19 primary evidence in the trial and conviction of Mr. Earl, confirms that the verdict would be  
20 different upon retrial. Further, Mr. Lin’s handling of the evidence puts the chain of custody at  
21 risk, in a way that could impact whether any YSTR “match” is admissible in a retrial.

22 **2. The Newly Discovered Evidence Was Only Discovered After the Trial**

23 The newly discovered evidence was received by the defense in late March of 2014, over a  
24 year after the trial was concluded.  
25  
26

1           **3.     The Newly Discovered Evidence Could Not Have Been Discovered Before**  
2                           **Trial By the Exercise of Due Diligence**

3           All the newly discovered evidence came to light in 2014 only because Michael Lin came  
4 up as a witness in an unrelated case also being handled by the Snohomish County Public  
5 Defender Association. In 2013, when the defense learned that Mr. Lin was no longer employed  
6 by the WSP, it began to do some digging into why. An investigation determined that: 1) Mr. Lin  
7 was put on disciplinary restriction because of the Earl case; and 2) that Mr. Lin had historically  
8 poor performance as a DNA analyst, predating his work on the Earl case. Clearly, the defense  
9 could not have discovered *by any means* the new evidence which did not exist until after trial and  
10 was created only as a result of Mr. Lin's poor performance. Regarding the evidence that did  
11 exist pre-trial, Attachments A-E, the information was not provided despite diligent and thorough  
12 defense investigation. The defense interviewed Mr. Lin twice before trial, requested and  
13 received Mr. Lin's entire case file, hired an independent DNA expert Don Riley who authored a  
14 report and testified at trial regarding potential contamination, and made a specific Defense  
15 Supplementary Discovery Request pertaining directly to the DNA and crime lab records. In that  
16 May 2013 request, the defense specifically demanded "copies of all contamination and  
17 discrepancy entries or logs in the laboratory's possession" and follow up information on such  
18 incidents. Attachment M. Yet the poor performance reviews were never disclosed to the  
19 defense.  
20  
21

22           Attachments A-E should have been turned over as *Brady*<sup>2</sup> material pre-trial, particularly  
23 given the centrality of the YSTR DNA reliability to the case and the dispute over potential  
24

25 <sup>2</sup> In Brady v. Maryland, the United States Supreme Court held that "suppression by the  
26 prosecution of evidence favorable to an accused upon request violates due process where the  
evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of  
the prosecution." Brady v. Maryland, 373 U.S. 83, 87, 83 S. Ct. 1194, 1196-97 (1963). As a

1 contamination while at the crime lab for processing. In Brady v. Maryland, the United States  
2 Supreme Court held that "suppression by the prosecution of evidence favorable to an accused  
3 upon request violates due process where the evidence is material either to guilt or to punishment,  
4 irrespective of the good faith or bad faith of the prosecution." Brady v. Maryland, 373 U.S. 83,  
5 87, 83 S. Ct. 1194, 1196-97 (1963). As a result, prosecutors are required to hand over any  
6 evidence within their control that is favorable to an accused. In Giglio v. United States the  
7 Supreme Court encountered a case where evidence about the credibility of a central state witness  
8 was withheld. In reversing the conviction, the court noted that "[w]hen the 'reliability of a given  
9 witness may well be determinative of guilt or innocence,' nondisclosure of evidence affecting  
10 credibility falls within this general [*Brady*] rule." Giglio v. United States, 405 U.S. 150, 154, 92  
11 S. Ct. 763, 766, 31 L. Ed. 2d 104 (1972) citing *Napue v. Illinois*, 360 U.S. 264, 79 S.Ct. 1173  
12 (1959). Yet, records existed but were not disclosed that indicated Mr. Lin had a well established  
13 history of violating protocols, even after correction, in a way that risked and resulted in  
14 contamination. Further, the State asked questions in re-direct of Mr. Lin to bolster his credibility  
15 and present the appearance that he properly followed WSP Crime Lab procedures. Even after  
16 trial, the State did not inform Mr. Earl nor his defense counsel of Mr. Lin's incorrect testimony  
17 or subsequent disciplinary action that resulted from it.

#### 20 4. The Newly Discovered Evidence Is Material

21 The newly discovered evidence is material to Mr. Earl's defense, because the entire  
22 defense in this case was that no crime occurred and the YSTR DNA was the result of  
23 contamination. The fact that Mr. Lin's performance in his role as a DNA analyst was so poor

24  
25 result, prosecutors are required to hand over any evidence within their control that is favorable to  
26 an accused.

1 and that he failed to follow his laboratory policy to such an extent that he was detected and  
2 reprimanded goes a long way to suggesting contamination in Mr. Earl's case. It also raises  
3 questions about the chain-of-custody necessary for admission of the DNA evidence against Mr.  
4 Earl. See State v. Roche, 114 Wash. App. 424, 436 (Div 1 2002) for discussion of importance of  
5 chain of custody questions raised by newly discovered evidence.

6  
7 **5. The Newly Discovered Evidence Is Not Merely Cumulative or Impeaching**

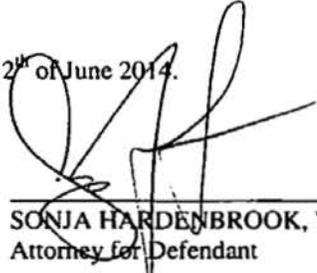
8 The newly discovered evidence is not merely cumulative or impeaching. After Mr. Lin's  
9 testimony in this case he was removed from all new casework assignments, demonstrating that  
10 the Washington State Patrol crime lab had significant concerns about his ability to perform his  
11 essential job functions. Such information is not merely impeaching, but goes to the heart of his  
12 qualification to handle and testify about DNA. This is vital information for Mr. Earl, as YSTR  
13 DNA was the center of the State's case against him. The newly discovered evidence also  
14 implicates Mr. Lin's ability to maintain the chain of custody of the evidence he worked on and  
15 testified to in the case. Mr. Earl's case is analogous to the case of State v. Roche, where a  
16 forensic scientist at the crime lab was found to have been stealing heroin that he was suppose to  
17 test and ingesting the drugs during work hours. Despite the fact that the suspected drugs in  
18 Roche were methamphetamine, and not heroin, and that the methamphetamine could have easily  
19 been retested for retrial, Division 1 reversed and remanded for a new trial on the basis that the  
20 scientist's misconduct put the *entire* chain of custody in question. Division 1 found that the  
21 misconduct discovered post-conviction was substantive, not merely impeaching, and put the  
22 entire conviction in question. Similarly, in the case at bar Mr. Lin's historic and perpetual poor  
23 handling of the DNA puts the integrity of the YSTR DNA evidence against Mr. Earl in question.  
24 Because Mr. Lin may have contaminated the unknown sample with the known sample of DNA  
25 volunteered by Mr. Earl, a simple re-test of the DNA evidence will not remedy the problem.

1 Contamination cannot be undone. Thus, as in Roche the entire chain of custody has been put in  
2 jeopardy.

3 **CONCLUSION**

4 For the aforementioned reasons, defense respectfully requests that the court grant  
5 Brandon Earl a new trial on the basis of newly discovered evidence.

6  
7  
8 Respectfully submitted this 12<sup>th</sup> of June 2014.

9  
10  
11   
12 \_\_\_\_\_  
13 SONJA HARDENBROOK, WSBA #35386  
14 Attorney for Defendant  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**ATTACHMENT A**

**MOTION FOR NEW TRIAL  
BASED ON NEWLY  
DISCOVERED EVIDENCE- 18**

**Snohomish County Public Defender Association  
1721 Hewitt Ave., Suite 200  
Everett, WA 98201  
425-339-6300**



**JOB PERFORMANCE DOCUMENTATION RECORD**

EMPLOYEE Michael Lin DATE 6/16/09

EMPLOYEE STATUS  PROBATIONARY  TRIAL SERVICE  
 PERMANENT  NON-PERMANENT

COUNSELING  POSITIVE RECOGNITION

**DETAILS:**

Bio-haz trash is taking way too long and it seems to be using too many receptacles. Some contaminated lids were also observed in the laboratory. Please make sure to monitor that in the future. Bill Culnane will meet with you on Monday 6/29, and he will go over the process again.

You were advised again that if you are not able to meet deadlines, you need to inform your supervisor. Your EZ-1 competency was not complete on time and you failed to notify me. This was previously documented.

Kristi advised you during your co-signs that mixing your sperm cell pellets with your pipette was not appropriate, you continued to do so. What you understood completely contradicts Kristi's reported instructions. I clarified this for you by telling you to stop mixing by pipetting during the washes of sperm fraction pellets, and also pointed out that you were not taught that technique here.

You can loose your pellet, and continue to compromise low level cases. You were again advised to listen and follow the directions of the senior scientists that are training you.

An incident during your co-signs also caused concern. When you were examining a sexual assault slide, you noted a high level of epithelial cells. You gave it a cursory look, not a thorough exam, and then went on to do the second digest, without noting any sperm on the first slide. Kristi examined the first slide and identified spermatozoa. Though a second slide may be good idea, you may have a low level sample and thus may waste precious sample or you may truly get a negative second slide, which in may cause an incorrect conclusion.

You will continue to do more co-signs, with an emphasis on sexual assaults.

Michael Lin  
EMPLOYEE'S SIGNATURE

Michael Lin  
EMPLOYEE'S PRINTED NAME

BADGE NO.  
(IF APPLICABLE)

6/16/09  
DATE

Lisa Turpen  
SUPERVISOR'S SIGNATURE

Lisa Turpen  
SUPERVISOR'S PRINTED NAME

BADGE NO.  
(IF APPLICABLE)

6/16/09  
DATE

cc: Supervisor Desk File (documentation file)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**ATTACHMENT B**

**MOTION FOR NEW TRIAL  
BASED ON NEWLY  
DISCOVERED EVIDENCE- 19**

**Snohomish County Public Defender Association  
1721 Hewitt Ave., Suite 200  
Everett, WA 98201  
425-339-6300**

**INTEROFFICE COMMUNICATION**

**WASHINGTON STATE PATROL**



**TO :** Mr. Michael Lin, Crime Laboratory Division/Spokane

**FROM :** Ms. Lisa Turpen, Crime Laboratory Division/Spokane

**SUBJECT:** Job Performance Improvement Plan

**DATE :** September 29, 2009

**PROBLEMS IDENTIFIED AND OUTLINED IN SPECIFICS:**

As reflected in your evaluation dated August 25, 2009, and as well as your Job Performance Documentation records dated 4/10/09 and 6/16/09, I am concerned about your casework quality, your time management skills, and your inappropriate attitude. You have not been progressing as expected in your path to becoming an independent casework analyst. You have struggled with basic serology screening techniques, DNA case approach, and following directions.

**PERFORMANCE OBJECTIVES SET:**

The following Job Performance Improvement Plan is an attempt to address and resolve specific areas of concern, as well as outline efforts necessary to correct these deficiencies.

**EXPECTATIONS:**

It is important that you understand the significance of your deficiencies and the impact they have to others within the DNA section. You are expected to perform the job functions assigned to you and to complete your assignments in a timely manner and other assigned duties in the standard prescribed time limits.

You have been employed at the WSP Crime Lab for approximately 18 months. You have not been signed-off as an independent forensic scientist, though you have had several rounds of co-signed cases. Typically five co-signs are given to a trainee, you have completed twelve. At this time you do not possess the requisite skills to function as an independent DNA analyst. The following expectations will need to be applied immediately upon receipt of this IOC.

1. You will be expected to spend two weeks at other laboratories where you will observe experienced DNA scientists.
2. You will meet with Dr. Gary Shutler, Crime Laboratory Division DNA Technical Leader. He will be training you as well as evaluating your skills and knowledge.
3. The site visits and meeting with Dr. Gary Shutler will take place within the first 30 days of the Job Performance Improvement Plan.
4. The remaining time that you have in the first 30 day period will be used to observe your fellow senior scientists in the Spokane Laboratory.



5. Following completion of your site visits and your appointment with Dr. Shutler you will complete 4 co-signed cases with either DNA supervisor in the next 30 day period. The supervisors will evaluate your work and provide feedback on ways to improve your documentation, approach, and timeliness. You need to schedule work time with the supervisors 24 hours in advance. These four cases must also be in peer review status within the second 30 days of this plan.
6. Corrections on all peer reviewed case files will be made within 2 working days of the return of the case file to you.
7. You must continue completing your non-casework duties within the prescribed timelines.
8. You will not work more than forty hours in a work week. You will not work any paid overtime or compensatory time until the Job Performance Improvement Plan has been completed, unless there is an unforeseen court obligation. If a situation arises requiring OT/Comp time, it is necessary to obtain prior approval from either DNA Supervisor or from Laboratory Manager, Mr. Kevin Fortney.
9. You will follow directions given to you by the experienced scientists that are training you.
10. You are expected to interact with others in the workplace in a respectful manner.
11. If you foresee difficulties in meeting any of these deadlines, you are expected to present your reasoning to your supervisor prior to the established deadline.

**METHODS OUTLINED TO MEET THOSE OBJECTIVES:**

In order to improve your case approach, timely completion of assignments, and your attitude, you will meet weekly with your supervisor to discuss the activities performed in the prior week and those scheduled for the up-coming week. You may do this via email during the weeks that you are visiting other laboratories.

**CONTROLS INVOLVED:**

This job performance improvement plan outlines the expectations for you as they relate to the quality of your work performance, your timely completion of work, your attitude towards your senior DNA analysts, and your prioritization of your assigned duties to ensure all are completed within required timelines.

You and I will meet weekly to measure your progress or lack of progress with meeting the objectives and expectations outlined in this Job Performance Improvement Plan. The progress or lack of progress achieved will be discussed and documented. As mentioned above, we will accomplish this via email the two weeks that you are conducting your site visits.

Mr. Michael Lin  
Page 3 of 3  
September 29, 2009

**TIMEFRAMES FOR FOLLOW-UP:**

Over the next 60 days, we will review your performance and I will assess if improvements have been made in the areas indicated in this document. After the first 30 days, on November 2, 2009, there will be a review of the tasks completed to that point. There will be a final review at the conclusion of this Job Performance Improvement Plan on December 1, 2009 where I will make a determination based on your level of success in meeting the above expectations. Failure to successfully complete the expectations may result in further action, to include disciplinary action.

**SUPPORT:**

It is my goal to provide you every opportunity to be successful in your position. You will need to convey if you need any assistance, clarification, or information to assist you in a positive outcome. If you feel that personal issues may be impacting your ability to perform your job, you are encouraged to contact the Washington State Employee Assistance Program (EAP) by way of the Department of Personnel at (360) 753-3260, or you may contact our staff Psychologist, Dr. Dan Clark.

Michael A. Lin 9/29/09  
Employee Date Supervisor Date  
Lynn McIntyre 9/29/09

LMT:imt

cc: Debbie Chavira, Human Resource Division  
Kevin Fortney, Spokane Crime Laboratory Manager  
Lynn McIntyre, Crime Laboratory Division Manager  
Dr. Gary Shutler, DNA Technical Leader

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**ATTACHMENT C**

MOTION FOR NEW TRIAL  
BASED ON NEWLY  
DISCOVERED EVIDENCE- 20

Snohomish County Public Defender Association  
1721 Hewitt Ave., Suite 200  
Everett, WA 98201  
425-339-6300

## INTEROFFICE COMMUNICATION

# WASHINGTON STATE PATROL



**TO:** Mike Lin, Forensic Scientist 2

**FROM:** Lisa Turpen, Supervising Forensic Scientist

**SUBJECT:** JOB PERFORMANCE IMPROVEMENT PLAN CONCLUSION

**DATE:** December 4, 2009

### PROBLEMS IDENTIFIED AND OUTLINED IN SPECIFICS:

As reflected in your evaluation dated August 25, 2009, and as well as your Job Performance Documentation records dated 4/10/09 and 6/16/09, I am concerned about your casework quality, your time management skills, and your inappropriate attitude. You have not been progressing as expected in your path to becoming an independent casework analyst. You have struggled with basic serology screening techniques, DNA case approach, and following directions.

### PERFORMANCE OBJECTIVES SET:

The following job performance improvement plan is an attempt to address and resolve these issues and to identify specific areas of concern, as well as outline efforts necessary to correct these deficiencies.

### EXPECTATIONS:

It is important that you understand the significance of your deficiencies and the impact they have to others within the DNA section. You are expected to perform the job functions assigned to you and to complete your assignments in a timely manner and other assigned duties in the standard prescribed time limits. The following expectations will need to be applied immediately upon receipt of this IOC.

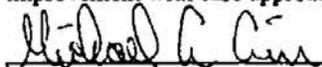
1. You have been employed at the WSP Crime Lab for approximately 18 months. You have not been signed-off as an independent forensic scientist, though you have had several rounds of co-signed cases. Typically five co-signs are given to a trainee, you have completed twelve. At this time you do not possess the requisite skills to function as an independent DNA analyst.
2. You will be expected to spend one week at other laboratories where you will observe experienced DNA scientists. **This was fulfilled. The feedback from the laboratories that hosted Mike was positive.**
3. You will then meet with Dr. Gary Shutler, Washington State DNA Technical Leader. He will be training you as well as evaluating your skills and knowledge. **This was fulfilled.**
4. The site visits and meeting with Dr. Gary Shutler will take place within the first 30 days of the job performance improvement plan. **This was fulfilled.**
5. The remaining time that you have in the first 30 day period will be used to observe your fellow senior scientists in the Spokane Laboratory. **This was fulfilled.**



6. Following completion of your site visits and your appointment with Dr. Shutler you will complete 4 co-signed cases with either DNA supervisor in the next 30 day period. The supervisors will evaluate your work and provide feedback on ways to improve your documentation, approach, and timeliness. You need to schedule work time with the supervisors 24 hours in advance. These four cases must also be in peer review status within the second 30 days of this plan. Although not all four cases made it into peer review, this was fulfilled. Mike worked diligently to screen and extract his cases and he did so in an efficient manner. Three of the cases became problematic. Additional work had to be completed on one case, Y-STR became the only good resolution for a second case, and the third case needed a consumption note while the officer was out of town. Unfortunately situations like these are out of the analyst's control. Mike made a good effort into thinking about the best ways to approach these less than straightforward situations.
7. Corrections on all peer reviewed case files will be made within 2 working days of the return of the case file to you. N/A, as none made it through peer review.
8. You must continue completing your non-casework duties within the prescribed timelines. This was fulfilled.
9. You will not work more than forty hours in a work week. You will not work any paid overtime or comp time until the job performance improvement plan has been completed, unless there is an unforeseen court obligation. If a situation arises requiring OT/Comp time, it is necessary to obtain prior approval from either DNA Supervisor or from Laboratory Manager, Mr. Kevin Fortney. This was fulfilled.
10. You will follow directions given to you by the experienced scientists that are training you. This was fulfilled.
11. You are expected to interact with others in the workplace in a respectful manner. This was fulfilled.

**FOLLOW-UP:**

Mike has successfully completed his Job Performance Improvement Plan. Mike has stayed on track and worked independently when he had the opportunity. Mike's feedback regarding his site visits was excellent. Mike took this as an opportunity to really improve. Three of four cases ended up being somewhat problematic, but this is typical of casework. When these situations arose, Mike took the time and critically thought of ways to approach these difficult decisions. Mike showed great improvement with case approach and streamlined techniques.

	12/4/09		12/4/09
Employee	Date	Supervisor	Date

Cc: Debbie Chavira, Human Resource Division  
 Dr. Gary Shutler, DNA Technical Leader  
 Kevin Fortney, Spokane Crime Laboratory Manager  
 Lynn McIntyre, Crime Laboratory Division Manager

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**ATTACHMENT D**



**JOB PERFORMANCE DOCUMENTATION RECORD**

EMPLOYEE Michael Lin

DATE 4/27/10

EMPLOYEE STATUS  PROBATIONARY  TRIAL SERVICE  
 PERMANENT  NON-PERMANENT

COUNSELING

POSITIVE RECOGNITION

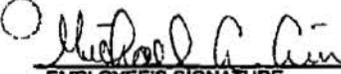
**DETAILS:**

On Friday April 23<sup>rd</sup> you were observed in the laboratory screening evidence. During this examination you used phatebas paper. This paper is used to screen for the presence of amylase, a component of saliva.

As with all of our reagents, it is necessary to check that they are working properly before they are used to screen evidence. This procedure is to be separated by time and space to avoid the risk of contamination. You placed a known saliva sample within close proximity of evidence. Both the known sample and the evidence were being screened with the same piece of phatebas paper at the same time. You showed a high level of disregard to the preservation and integrity of the evidence. Another analyst in the laboratory witnessed this, and confronted you regarding this practice. She did direct you to remove a small portion from the phatebas paper and QC that separately in another room. When I asked you on Monday April 26<sup>th</sup>, about how you QC phatebas paper, you described the method that the senior analyst prescribed to you on Friday, which prior to Monday April 26<sup>th</sup>, you did not use this method. You were evasive in answering my simple question. I have counseled you in the past about leaving known samples used to QC reagents lying on your bench. This was also witnessed by me on Monday April 26<sup>th</sup>. You are to discard your known samples immediately after the reagent check. The quality systems we have in place are vital to the integrity of the evidence and reliability of the results. We are to minimize contamination events to the best of our ability. These practices are of great concern. In many cases we do not have the ability to go back to the evidence for a second time.

Also on Friday April 23<sup>rd</sup>, you were also observed using phatebas paper to screen panties that had visible fecal material. This is an inappropriate use of this screening method. Amylase is also found in fecal material, which you agreed upon in my office yesterday, April 27<sup>th</sup>. The result was positive; however it was in close proximity to the fecal staining and is most likely due to diffusion from the fecal material. The result is meaningless. Your use of this test in this manner is an indication of your lack of understanding appropriate case approach. You wasted a lot of time and expensive reagents, and now will have to deal with writing the results in your report.

You have consistently struggled with case approach. We have made great efforts to help you by placing you on a JPIP, mentorship by senior scientists, extra cosign cases, the study of several complete case files, monitoring your case approach and counseling regarding your approach on each case. You have not progressed. No improvement has been demonstrated. Breaches of the quality control procedures and poor case approach can have a detrimental effect on criminal casework, and therefore cannot be tolerated. Further quality control or case approach lapses will result in you being removed from casework and you will be re-trained.

<u></u> EMPLOYEE'S SIGNATURE	<u>Michael L. Lin</u> EMPLOYEE'S PRINTED NAME	<u></u> BADGE NO. (IF APPLICABLE)	<u>4/29/10</u> DATE
<u></u> SUPERVISOR'S SIGNATURE	<u>Lisa M. Turpen</u> SUPERVISOR'S PRINTED NAME	<u></u> BADGE NO. (IF APPLICABLE)	<u>4/27/10</u> DATE

cc: Supervisor Desk File (documentation file)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**ATTACHMENT E**

**MOTION FOR NEW TRIAL  
BASED ON NEWLY  
DISCOVERED EVIDENCE- 22**

**Snohomish County Public Defender Association  
1721 Hewitt Ave., Suite 200  
Everett, WA 98201  
425-339-6300**



**JOB PERFORMANCE DOCUMENTATION RECORD**

EMPLOYEE Michael Lin DATE 5/4/10

EMPLOYEE STATUS  PROBATIONARY  TRIAL SERVICE  
 PERMANENT  NON-PERMANENT

COUNSELING  POSITIVE RECOGNITION

**DETAILS:**

On Tuesday May 4<sup>th</sup>, you came into my office with a case file that you wanted me to review. During the review of this case file, I came across your case approach work sheet that was incomplete. There is little ambiguity to this sheet. You were specifically told to use this sheet with every case to address your deficiencies with case approach. It is absolutely unacceptable that the tools that were given to you to enhance your job performance were ignored. Every step on this sheet is to be signed off before you proceed.

We also discussed your use of reagents blanks in your proficiency test. I was advised by FS5 Loraine Heath that you used an unnecessary number of reagent blanks. Upon further discussion with you, it became clear that you do not understand our reagent policy. I asked you why you would use two reagent blanks for your proficiency. Your response was that you needed two so you could have the option of performing a single Profiler Plus reaction or Profiler Plus and COfiler together. This is never an option with a proficiency. If your yield is too low on a proficiency item, you must go back and re-sample. You do not have the option of performing a single amplification. This is just another example where you do not execute proper case work procedures.

<u><i>Michael L. Lin</i></u> EMPLOYEE'S SIGNATURE	<u>Michael L. Lin</u> EMPLOYEE'S PRINTED NAME	<u></u> BADGE NO. (IF APPLICABLE)	<u>5/4/10</u> DATE
<u><i>Lisa M. Turpin</i></u> SUPERVISOR'S SIGNATURE	<u>LISA M. TURPIN</u> SUPERVISOR'S PRINTED NAME	<u></u> BADGE NO. (IF APPLICABLE)	<u>5/4/10</u> DATE

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**ATTACHMENT F**

## Corrective Action Plan

Incident Date: 2/1/13 Date Notified: 2/3/13

Assigned to: Dr. Gary Shutler

Employee Involved: Dr. Michael Lin

Case Number 411-000146

**1. Describe the incident or attach the Notification of Nonconformance form (CLD-NLN-4015).**

The analyst was rated poorly in a recent defense interview and testimony performance on a YSTR analysis case. He had difficulty in more than one area including responses to questions about statistics applied to YSTR results despite having attended a refresher workshop on YSTR analysis the week before. According to LIMS records he has testified 7 times since 2011 with 4 monitored. This is his first unsatisfactory report.

**2. Root cause analysis and results:**

The analyst is uncomfortable with and does not perform well during defense interview and in court for YSTR testimony involving challenges. This may be due to a lack of confidence in answering questions where Michael feels he doesn't have enough depth of knowledge despite having successfully completed the YSTR training plan and a recent refresher course.

**3. Immediate Corrective Action Steps taken:**

His supervisor, Lorraine Heath, traveled on-site to provide instructional assistance in person when she learned of Michael's earlier testimony difficulties and resulting foundational hearing. The hearing and continued testimony was monitored and rated. He was allowed to provide YSTR testimony however it was still rated as unfavorable.

**4. Preventative Action(s) planned:**

Removal of the analyst from casework followed by a Job Performance Improvement Plan (JPIP). Lorraine Heath was assigned to draft the JPIP.

**5. Timeline with milestones for completion of corrective action:**

Suspension of new case assignments effective 2/19/2013

Commencement of a JPIP 3/19/2013

Completion of JPIP by 5/17/2013

**Signatures:**

Plan approved by /s/ Erik Neilson Date: 3/15/13

Lab Manager /s/ Jayne Aunan Date: 3/15/13

Supervisor /s/ Lorraine Heath Date: 3/19/13

Employee /s/ Michael Lin Date: 3/19/13

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**ATTACHMENT G**

## Court Testimony Performance Evaluation

Name: Michael Lin Evaluator: Lorraine Heath

Date: 2/4/13 Court (name/location): Snohomish Superior, Everett

Case Number/Type of Case: 411-146, Child Sexual Assault

Prosecutor: Andrew Alsdorf Approximate length: 2.75 hrs

### I. Technical Knowledge

Appropriate use and clarity of technical terminology, effective demonstration of conclusions, accuracy and knowledge/competence

While there were a few areas where Michael was able to give clear explanation, there were many areas where he failed to demonstrate knowledge/competence. He also made technically incorrect statements (such as comments on the effect of ethnicity on the US Y-STR database and the inclusion of suspects in the database as well as failure to mention vaginal secretions as the likely source of the DNA in the crotch of the victim's underwear) and often failed to appropriately qualify statements (probability of contamination, likely effect of database size on frequency of suspect's profile, and the probable/possible sources of DNA on item).

### II. Communication Skills

Ability to speak effectively, grammar, non-verbal communication, impartiality, tone, voice projection and talking to the jury, appropriate eye contact, professional appearance, demeanor, ability to convey technical information to jury/judge in a clear and concise manner.

Michael was professional in appearance, had good tone and voice projection, and appropriately addressed, and made eye contact with, the jury. When questions were in his comfort zone, he did a good job of conveying technical information in a clear manner, but in areas he was less confident he tended to equivocate, leave sentences unfinished, and give unclear and/or unqualified answers. In addition, he often understated his training and experience and generally gave a poor, unconfident, unprepared impression to the jury and the judge. He was unforthcoming with the prosecutor and defense, despite prior preparation regarding the questions that would be asked (through direct communication and defense interviews). He continued to use inappropriate terminology, such as the word "hearsay," despite repeated counseling from his supervisor.

### III. Case Preparation

Organization of materials, familiarization with the case, case report and notes, knowledge of operation procedures, quality assurance and control procedures, and validation studies

Michael gave the impression of being unfamiliar with both his case file, SOPs, and various areas of QA/QC. He often answered questions with "I don't know" (or similar) when the information was in his case file. He could not answer questions regarding why certain procedures are used (such as using the whole Y-STR database for statistics, rather

than individual ethnic groups), he equivocated on how he performed the work (giving the impression that contamination was more likely than it was), and he did not make it clear that there was latitude within the SOPs such that what he did was acceptable (such as leaving amplified samples in the freezer or in the thermocycler overnight – both are OK so it didn't matter that he didn't note, or remember, which had occurred). Despite knowing the areas most likely to come up on cross examinations (based on two prior defense interviews), he still failed to properly prepare himself with knowledge in those areas despite more than ample time to do so.

**IV. Other Comments/Recommendations**

A portion of this testimony included a foundational hearing wherein Michael's status as an expert, and his ability to testify to the Y-STR match statistic, was in question. Not only did Michael testify poorly in the hearing, he failed to realize the potential impact of an adverse ruling on himself and other WSP scientists. The prosecutor, with help from Michael's supervisor, was able to "save" the situation despite his testimony rather than because of it. He failed to realize, after a poor performance in a defense interview (weeks prior to the trial), that there was a potential problem, thus necessitating last minute attempts by his supervisor to assist him rather than proper, prior preparation. He demonstrated a lack of understanding/recognition of the effect his testimony could have on the case as a whole, his future credibility, and future testimony by other WSP Y-STR analysts. There were numerous instances where the prosecutor and/or the judge saved him from appearing even more incompetent and it is completely inappropriate to rely on them to do so.

[Signature]  
Evaluator's Signature/Date

LIMS/date 2/14/13

Michael A. Cain 2/14/13  
Examiner's Signature/Date

LIMS/date 2/14/13

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**ATTACHMENT H**



**JOB PERFORMANCE DOCUMENTATION RECORD**

EMPLOYEE Michael Lin DATE 2/8/13

EMPLOYEE STATUS  PROBATIONARY  TRIAL SERVICE  
 PERMANENT  NON-PERMANENT

COUNSELING  POSITIVE RECOGNITION

**DETAILS:**

This past weekend, for the second time in less than 6 months you demonstrated an inability to follow the directions of a supervisor. You advised your supervisor on Friday, February 1 that your testimony in Everett was not completed and that you were required to returned to testify at 9am on Monday morning. Your supervisor gave you the option of returning on your Friday evening flight and returning to Everett Sunday evening (or Monday morning depending on timing) or staying with family you have in the area over the weekend. You opted to stay with family. Your supervisor found out on Sunday that you, instead, stayed in a hotel room all weekend at the State's expense (through the prosecutor's office). This was not an appropriate use of State resources and was not one of the options your supervisor gave you on Friday afternoon. You only told your supervisor of this deviation when she indicated she was coming over to assist you with the case and asked where you were staying. This behavior is unacceptable and is bordering on insubordination. If you did not want to stay with your family over the weekend, you should have told your supervisor on Friday and we would have made appropriate travel arrangements to handle your testimony on Monday. If the prosecutor offered you a hotel room over the weekend after you spoke with your supervisor, you should have contacted your supervisor to request permission to accept the offer. Further, when your supervisor asked you on Friday the nature of the foundational hearing that was occurring, you indicated that it was not very important and that it could be discussed later. Given that the hearing was addressing your ability to testify to the portion of the case of primary importance (the Y-STR match and associated statistic), it is incredible that you felt this was not important. You were either trying to be evasive and hide the situation from your supervisor, or you truly had no idea of the potential impact of the hearing on your own credibility, WSP's credibility, and the ability of other Y-STR analysts to testify in future cases. Given your training and education on legal issues, your supervisor finds the latter hard to believe and you could have sought clarification if you were unclear when you spoke with your supervisor on Friday. Instead, your actions necessitate extensive inconvenience for your supervisor and expense for the State that could have been avoided with full disclosure during the Friday conversation.

Previously, in October 2012, you went to perform your monthly duty of cleaning the post-PCR room and discovered that the mop you usually use, which is stored in the foyer to the room, was missing. You sent an email asking the section if they knew of the whereabouts of the mop. You later located the mop yourself in the reagent preparation room. Your supervisor was out of the office that day (Monday, Oct. 29) so you approached Erica, the other DNA supervisor, about the situation and asked her opinion regarding the mop having been potentially used in a pre-PCR area. She admitted that it was her fault it had been moved, in response to a flooding situation in the reagent preparation room, and that she hadn't realized it was "dedicated" to the post-PCR room. She also explained to you, with supporting scientific reasoning, why she felt it was not a problem and that it was also OK for you to return the mop to its normal storage location and use it for your monthly cleaning. When you left her office, you gave her the impression that you were satisfied with her answer. The next day, the section had a general meeting in the afternoon and you added the mop as an agenda item. You then proceeded to announce that you had found the mop in the reagent preparation room and ask the

group if they were "OK" with this situation. You had already received an answer, from a supervisor, regarding the situation – asking the group for their opinion was inappropriate and unnecessary. If you were uncomfortable with Erica's initial response to you, you should have addressed it directly with her or spoken to your supervisor about it (who was available prior to the section meeting). While it is important that you address quality issues, regardless of their source, it is not appropriate for you to call out a supervisor in an open meeting with other staff members after the supervisor has already addressed, and given you directions in the matter, without either directly discussing your concerns with that supervisor or with the other supervisor. In discussions with both you and Erica, your supervisor determined that your overall interactions and response to Erica's directions have improved since this incident, but you need to be more aware of the appearance/impression your actions give to others.

<u>Michael L. Lin</u> EMPLOYEE'S SIGNATURE	<u>Michael L. Lin</u> EMPLOYEE'S PRINTED NAME	 BADGE NO. (IF APPLICABLE)	<u>2/8/13</u> DATE
<u>Lorraine Heath</u> SUPERVISOR'S SIGNATURE	<u>Lorraine Heath</u> SUPERVISOR'S PRINTED NAME	 BADGE NO. (IF APPLICABLE)	<u>2/8/13</u> DATE

cc: Supervisor Desk File (documentation file)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**ATTACHMENT I**

MOTION FOR NEW TRIAL  
BASED ON NEWLY  
DISCOVERED EVIDENCE- 26

Snohomish County Public Defender Association  
1721 Hewitt Ave., Suite 200  
Everett, WA 98201  
425-339-6300

**From:** Tarver, James (WSP)  
**To:** Lin, Michael (WSP)  
**Cc:** Graham, Erica (WSP); Heath, Lorraine (WSP); Aunan, Jayne (WSP); Shutler, Gary (WSP); Neilson, Erik (WSP); Johnston, George (WSP)  
**Subject:** Suspension of new case assignments  
**Date:** Tuesday, February 19, 2013 3:23:01 PM  
**Sensitivity:** Confidential

---

Hi Mr. Lin,

As we work-through the issues regarding your testimony evaluation dated February 4, 2013, please complete current case requests where work has already commenced. Other case requests assigned to you will be reassigned. Please do not resume regular casework duties until a *Job Performance Improvement Plan* has been implemented, and you have been notified that it is successfully completed.

Please direct any questions to FS5 Erica Graham or Dr. Gary Shutler. Thanks.

*James A. Tarver*  
*Crime Laboratory Division Commander*  
*Washington State Patrol*  
*2203 Airport Way South, Suite 250*  
*Seattle, WA 98134*  
*Ph. 206.262.6050 / Fax 206.262.6033*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**ATTACHMENT J**

MOTION FOR NEW TRIAL  
BASED ON NEWLY  
DISCOVERED EVIDENCE- 27

Snohomish County Public Defender Association  
1721 Hewitt Ave., Suite 200  
Everett, WA 98201  
425-339-6300

CHRISTINE O. GREGOIRE  
Governor



JOHN R. BATISTE  
Chief

STATE OF WASHINGTON  
WASHINGTON STATE PATROL

2203 Airport Way South, Suite 250 • Seattle, Washington 98134-2045 • (206) 262-6020 • [www.wsp.wa.gov](http://www.wsp.wa.gov)

March 1, 2013

Director Ralph Keaton  
American Society of Crime Lab Directors  
Laboratory Accreditation Board  
139 J Technology Drive  
Garner, NC 27529

Dear Mr. Keaton:

This communication is to inform you of nonconformance on the part of a DNA analyst in our Spokane Crime Laboratory. In a recent testimony regarding Y-STR analysis, the analyst gave a very poor testimony, being unable to appropriately respond to several questions regarding subject matter that he should have known and been very familiar with. A job performance improvement plan is being prepared to bring him up to the level of competency expected for his position, with a goal of successful completion in 60 days from issuance. He will be allowed to complete casework he has already started but is removed from additional cases until he has successfully completed the improvement plan.

If you have any questions please contact me at (206)-262-6113 or via e-mail at:  
[Erik.Neilson@wsp.wa.gov](mailto:Erik.Neilson@wsp.wa.gov).

Sincerely,

A handwritten signature in black ink that reads "Erik Neilson".

Mr. Erik Neilson, Quality Assurance Manager  
Forensic Laboratory Services Bureau  
Washington State Patrol

ERN:em

cc: Ms. Jayne Aunan, Spokane Crime Laboratory  
Ms. Lorraine Heath, Spokane Crime Laboratory  
Mr. James Tarver, Crime Laboratory Division

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**ATTACHMENT K**

APR 03 2013



### Job Performance Improvement Plan

See also the *Supervisor/Employee Reference Manual* procedure on "The Job Performance Improvement Process."

30 Working Days.  60 Working Days  90 Working Days

HRD Assigned Tracking Number  
13-1201

Effective Dates 04/01/13 through 06/24/13

Improvement Plan for: Michael Lin	DOP Personnel Number 20021935	OR	Badge No.
District/Detachment FLSB-CLD-Spokane DNA B	Date 3/25/13	Phone Number (509) 625-5456	
Address 580 W 7 <sup>th</sup> St, Cheney, WA, 99004			
Supervisor's Name Lorraine Heath	Rank Forensic Scientist 5		

#### Problems Identified and Outlined in Specifics

As reflected in the court testimony monitoring form addressing your testimony in Snohomish County Superior Court on February 2<sup>nd</sup> and 4<sup>th</sup>, 2013 and associated defense interviews, it is evident that you do not currently have the ability to provide expert testimony of the high quality needed to function as a Forensic Scientist 3. This Job Performance Improvement Plan (JPIP) is designed to address this deficiency.

An overall lack of confidence in your knowledge resulted in very poor performance when under pressure from the defense counsel in both the interviews and the courtroom. Your testimony included technically incorrect statements; inappropriately qualified or unqualified statements; equivocation where none was warranted; the appearance you were unprepared, untrained, and unforthcoming; the use of inappropriate terminology despite counseling immediately prior to your testimony; responses of "I don't know" to questions that either you should have known the answer to, or to which the answer was contained in the case file; and a failure to recognize the impact of your poor performance reflecting poorly on yourself and on other scientists in the Washington State Patrol (WSP). Although the specific case that triggered this JPIP was a Y-STR case, you demonstrated deficient testimony not only on Y-STR analysis but also screening/serological examinations, as well as on general procedures that would apply to all types of DNA casework.

Your position as a Forensic Scientist 3 (FS3) is vital to the Spokane DNA section and to the customers you support. Your primary responsibility is to produce DNA casework of consistently high quality. A critical component of this is to provide effective expert testimony. Even though not all cases go to court, a FS3 must be prepared for testimony on any case. If appropriate expert testimony cannot be reliably provided, your casework efforts are wasted.

#### Performance Objectives Set

The following work improvement plan is an attempt to address and resolve these issues and to identify specific areas of concern, as well as outline efforts necessary to correct these deficiencies.

It is important that you understand the significance of your deficiencies and the impact they have on the customers the division serves and others within the DNA section. The following expectations will need to be applied immediately upon receipt of this document.

1. Cease performing casework and peer review until the satisfactory completion of this JPIP.

## Job Performance Improvement Plan



2. Observe expert DNA evidence courtroom testimony to increase knowledge of appropriate testimony.
3. Increase knowledge on the use of screening testing, results interpretations, implications, and limitations.
4. Increase knowledge of standard operating procedures that affect all DNA casework.
5. Increase knowledge of issues specific to Y-STR casework and testimony, especially regarding statistical interpretations of the results and their foundational principles.
6. Increase confidence during testimony and interviews, especially under pressure from defense counsel.
7. You will not volunteer for, or participate in, any duties other than those that you are already assigned without prior approval from a supervisor.
8. You must continue completing your non-casework duties within the prescribed timelines.
9. You will not work any paid overtime or comp time until the job performance improvement plan has been completed, unless there is an unforeseen court obligation.

### Methods Outlined to Meet Those Objectives

1. Any court testimony or court-related interviews that occur during this JPIP will be observed by your supervisor.
2. You will observe any DNA or screening court testimony by any DNA scientist during this JPIP unless otherwise directed not to do so by your supervisor.
3. To improve knowledge of standard operating procedures that affect all DNA casework, you will review the appropriate manual sections, assume all section instrument maintenance, cleaning, temperature monitoring, and other quality control duties during the time frame of this JPIP.
4. Attend the Expert Witness – What Makes a Credible Witness webinar on April 25, 2013 at 1pm EST (<http://view.mail.advantagebusinessmedia.com/?j-fe951771716d057971&m-fe9715707266027173&ls=fdes16767d64037e771c7971&l=feed157277610475&s=fc601075716c057e7710&jb=ffc14&ju=fe6910787464017e7414&=0>)
5. Complete the 90-minute online How to Be a Good Expert Witness course offered by RTI International ([https://www.forensiced.org/training/courseapp.cfm?csection=Expert Testimony](https://www.forensiced.org/training/courseapp.cfm?csection=Expert%20Testimony))
6. To improve your knowledge on the use of screening testing, results interpretations, implication, and limitations and issues specific to Y-STR casework, you will read the articles listed in Appendix A attached to this document.
7. In addition to the articles listed in Appendix A, you will locate and read at least 10 additional articles that you feel would assist you in improving your court testimony and knowledge of the areas where you had difficulties testifying (i.e. foundational principles in the statistical approach for the US YSTR data base).
8. You will review transcripts from your defense interview and compose how you would answer those questions if asked again.
9. You will have a total of 4 mock courts during this JPIP. The first 3 will cover specific topics (screening, SOPs, and Y-STRs), while the final mock court will cover all areas as could be expected in true court testimony. These exercises will be conducted by various individuals including, but not limited to, supervisors, FS4s, the DNA Technical Leader, other senior scientists, and external members of the criminal justice community. At least one of the mock court exercises will be videotaped.

## Job Performance Improvement Plan



### Controls Involved

You will meet monthly with your supervisor to measure your progress or lack of progress with meeting the objectives and expectations outlined in this Job Performance Improvement Plan.

You will receive verbal and written feedback from all participants and any observers of each mock court exercise.

You will provide documentation when you have completed the two online trainings (Items 4 & 5 above) along with a written synopsis of what you learned from each course and how it relates to your previous poor testimony.

As you locate the additional articles required in Item 7 above, you will have them approved by your supervisor prior to reading them.

### Time Frames for Follow-Up

Over the next 60 days, we will review your performance and I will assess if improvement have been made in the areas indicated in this document. The mock court exercises will take place approximately every 15 days after this JPIP commences. After the first two mock court exercises there will be a review of your performance to that point. There will be a final review at the conclusion of this work improvement plan. I will make a determination based on your level of success in meeting the above expectations. Failure to successfully complete the expectations may result in further action, to include disciplinary action.

Employee Signature <i>Michael Lin</i>	Print Name Michael Lin	Date 3/27/13
Supervisor Signature <i>Lorraine Heath</i>	Print Name Lorraine Heath	Date 3/27/13
Commander Signature <i>James Tanner</i>	Print Name James Tanner	Date 3-28/13
HRD Manager Review Signature <i>BEN LASTIMADERO</i>	Print Name BEN LASTIMADERO	Date 04/11/13

Forward a copy of the Job Performance Improvement Plan at the beginning of the performance period to the Human Resource Division for placement in the employee personnel file.

For Supervisor Use Only	
HRD Contacted:	Follow-Up Meeting On:
Ongoing Deficiencies Discussed On:	Improvements Demonstrated:
HRD Contacted:	Follow-Up Meeting On:
Ongoing Deficiencies Discussed On:	Improvements Demonstrated:
HRD Contacted:	Follow-Up Meeting On:
Ongoing Deficiencies Discussed On:	Improvements Demonstrated:

# Job Performance Improvement Plan



For HRD Use Only	
<input type="checkbox"/> HRD Secretary Supervisor – Logging	Date
<input type="checkbox"/> Manager – Review	Date
<input type="checkbox"/> HRC – Personnel File	Date

**Michael Lin Job Performance Improvement Plan 2013 – Appendix A**

Wickenheiser, R.A. Trace DNA: A Review, Discussion of Theory, and Application of the Transfer of Trace Quantities of DNA Through Skin Contact. *J. Forensic Sci.* 2002; 47(3), 442-450.

Phipps, M. and Petricevic, S. The Tendency of Individuals to Transfer DNA to Handled Items. *Forensic Sci. Int.* 2007; 168, 162-168.

Low, A., Murray, C., Whitacker, J., Tully, G., and Gill, P. The Propensity of Individuals to Deposit DNA and Secondary Transfer of Low Level DNA from Individuals to Inert Surfaces. *Forensic Sci. Int.* 2002; 129, 25-34.

Johnson, D.J., Calderaro, A.C., and Roberts, K.A. Variation in Nuclear DNA Concentrations During Urination. *J. Forensic Sci.* 2007; 52(1), 110-113.

Budowle, B., Ge, J., Chakraborty, R. Basic Principles for Estimating the Rarity of Y-STR Haplotypes Derived from Forensic Evidence.  
<http://www.promega.com/geneticidproc/ussymp18proc/oralpresentations/Budowle.pdf>

Nakazono, T., Kashimura, S., Hayashiba, Y., Hara, K., Matsusue, A., and Augustin, C. Dual Examinations for Identification of Urine as Being of Human Origin and for DNA-Typing of Small Stains of Human Urine. *J. Forensic Sci.* 2008; 53(2), 359-363.

Redd, A.J., Chamberlain, V.F., Kearney, V.F., Stover, D., Karafet, T., Calderon, K., Walsh, B., and Hammer, M.F. Genetic Structure Among 38 Populations from the United States Based on 11 U.S. Core Y Chromosome STRs. *J. Forensic Sci.* 2006; 51(3), 580-585.

Kenna, J., Smyth, M., McKenna, L., Dockery, C., and McDermott, S.D. The Recovery and Persistence of Salivary DNA on Human Skin. *J. Forensic Sci.* 2011; 56(1), 170-175.

Billie, T., Bright, J., and Buckleton, J. Application of Random Match Probability Calculations to Mixed STR Profiles. *J. Forensic Sci.* 2013; 58(2), 474-485.

Richert, N.J. Swabbing Firearms for Handler's DNA. *J. Forensic Sci.* 2011; 56(4), 972-975.

Soares-Vierira, J.A., Billerbeck, A.E.C., Iwamura, E.S.M., Zampieri, R.A., Gattas, G.J.F., Munoz, D.R., Hallak, J., Mendonca, B.B., and Lucon, A.M. Y-STRs in Forensic Medicine: DNA Analysis in Semen Samples of Azoospermic Individuals. *J. Forensic Sci.* 2007; 52(3), 664-670.

Budowle, B., Ge, J., Aranda, X.G., Planz, J.V., Eisenber, A.J., and Chakraborty, R. Texas Population Substructure and Its Impact on Estimating the Rarity of Y STR Haplotypes from DNA Evidence. *J. Forensic Sci.* 2009; 54(5), 1016-1021.

All information provided on the US Y-STR Database website: <http://usystrdatabase.org/>

Chapters 13 and 18 in Advanced Topics in Forensic DNA Typing: Methodology by John M. Butler, Elsevier, 2011.

**Michael Lin Job Performance Improvement Plan 2013 – Appendix A**

**Washington State v Aaron Robert Bander – YSTR Counting Method Challenge – Court of Appeals Decision June 8, 2009**

**SWGAM letter to NJ March 1, 2012**

**YSTR training material on STRbase including Ballantyne & Butler on YSTRs Jan 2012  
SWGAM presentation**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**ATTACHMENT L**

**INTEROFFICE COMMUNICATION**

**WASHINGTON STATE PATROL**



**TO:** Mr. James Tarver, CLD

**FROM:** Dr. Gary Shutler, FLSB/SAS

**SUBJECT:** Corrective Action Report

**DATE:** October 28, 2013

---

Since the analyst involved in this corrective action has resigned, the corrective action plan is essentially concluded. No further actions are recommended.

GGG: ggs

cc: Mr. Erik Neilson, FLSB/SAS

Mr. Gene Lawrence, CLD/Spokane-Cheney Crime Laboratory

Ms. Lorraine Heath, CLD/Spokane-Cheney Crime Laboratory

Ms. Erica Graham, CLD/Spokane-Cheney Crime Laboratory



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**ATTACHMENT M**

ORIGINAL

FILED

2012 MAY 30 PM 3: 34

SONYA KRASKI  
COUNTY CLERK  
SNOHOMISH COUNTY WASH

MAY 30 2012

PROSECUTING ATTORNEY  
FOR SNOHOMISH COUNTY

RECEIVED

STATE OF WASHINGTON

SNOHOMISH COUNTY SUPERIOR COURT

STATE OF WASHINGTON

Plaintiff,

vs.

EARL, BRANDON J.,

Defendant.

NO. 12-1-00034-9

DEFENSE SUPPLEMENTAL  
DISCOVERY REQUEST

COMES NOW THE DEFENDANT and makes the following demand for specific  
discovery listed below, in reference to the YSTR / DNA and HUMAN ANALYSE evidence to  
be offered by the State in this case. CrR 4.7(d)

## **CASE FILES**

Please provide legible copies of complete laboratory case files. Please include copies of any written material on the case file covers.

## **CONTAMINATION/DISCREPANCY RECORDS**

1. Please provide copies of all contamination and discrepancy entries or logs in the laboratory's possession.
2. For each contamination event, please provide a description of measures used to correct and prevent further contamination.

## **QUANTITATION**

1. Please provide high quality images (photographs or films) of all Quantiblot images generated in this case. If scan printouts are provided, please make sure they are first generation images rather than copies.
2. If real-time PCR was used to quantitate, please provide product accumulation curves in color.
3. Please provide all laboratory notes and records related to quantitation in the instant case.

## **COMPUTER GENERATED DATA**

1. Please provide printed copies of electropherograms generated for each sample in the instant case. These should include, but not be limited to: All GeneScan, Genotyper and GeneMapper electropherograms for every sample, positive control, negative control and reagent blank associated with testing in the instant case.
2. Please include electropherograms for negative controls and reagent blanks even if no size data were generated.
3. Please include legible electropherograms for any contaminating DNA appearing in negative controls samples or in extraction blank samples.
4. Please include legible electropherograms for any positive controls or other known samples that gave other than expected results.
5. If available, please provide electronic matrix files (\*.mtx) used in the instant case.
6. Please provide complete electronic copies of all electronic data associated with the instant

case. Electronic data should include, but not be limited to, all electropherograms, instrument run logs, Genescan files, Genotyper files GeneMapper files and injection lists in the instant case on CD.

#### **TESTING FOR SEMEN, BLOOD GROUP TYPES, SALIVA AND SECRETOR STATUS**

1. Please provide all bench notes, correspondences and reports relating to the testing for semen, blood group typing, saliva and secretor status in the instant case.
2. Please provide quality photomicrographs for microscopic fields used to determine the presence of sperm.
3. Please provide quality photographs of the results of any test cards used to test for p30 (PSA).
4. Please provide written procedures and protocols used in testing for blood, saliva or semen. This material should include, but not be limited to procedures for testing for acid phosphatase (AP) or P30 (PSA).

#### **SAMPLE PACKAGING**

1. Please provide digital photographs of all sample packages and sub-packages. Photographs should include but not be limited to, front and rear views of each package.
2. Please include photographs of packages and sub-packages as they were delivered to the DNA laboratory.
3. If available, please include photographs of packages as stored prior to delivery to the DNA laboratory.

#### **SAMPLE HISTORY**

1. Please provide complete sample histories for all samples tested in the instant case. Sample histories should include but not be limited to: the method and date of collection, storage container types, storage temperatures, storage locations and the time of storage at each location.
2. Please provide copies of all chain of custody documents for each item of evidence subjected to DNA testing starting with the first description or "log entry" for each item through to the current disposition of that item of evidence. This information should include the amount of evidence material which was consumed in testing, the amount of material which remains, and where and how the remaining evidence is stored

(temperature and type of container).

#### **LABORATORY PERSONNEL**

Please provide current resumes, CV and job description for laboratory personnel who performed laboratory work in the instant case.

#### **Proficiency tests**

1. Please provide copies of complete laboratory files for external proficiency tests taken by analysts in the instant case.
2. Please include the name of the test distributor, the test numbers and dates.
3. Please provide the analyst's specific code and webcode (if any) for each proficiency test.

#### **DATABASES AND CALCULATIONS**

1. Please specify the names and sources of any databases used to determine profile frequencies or random match probabilities in the instant case.
2. Please provide copies of all handwritten or typed notes generated during statistical calculations in the instant case.
3. For any CODIS or NDIS databases searched, please provide the number of individual profiles present in the database.
4. If the defendant was identified through a database search (CODIS, NDIS or other) please provide a summary of dates and locations where the defendant's known samples have been processed. Please include names of DNA analysts who processed the known samples.

#### **VALIDATION STUDIES**

1. Please provide copies of all documents in the laboratory's possession that relate to validation studies for mixed DNA samples.
2. Please provide copies of all documents in the laboratory's possession that relate to validation studies that establish minimal sample quantity that the laboratory will test. Such studies are sometimes referred to as sensitivity studies.
3. Please provide copies of all documents in the laboratory's possession that relate to validation studies for the testing of degraded DNA samples.

#### **PUBLICATION OF THE TEST PROCEDURE FOLLOWED IN THE INSTANT CASE**

Please provide copies of any scientific papers, in the possession of, or known by the testing laboratory, which contain detailed characterization of the specific STR testing systems used in the instant case. This is not intended as a broad request for citations to PCR use in general or STR testing in general. The request includes scientific journal references specifically describing use of test systems used in this case published subsequent to 2008. Bibliographic style citations may substitute for copies especially where the citations have only peripheral or indirect relevance to the test procedures used in this case.

#### **UNPUBLISHED STUDIES**

Please provide copies of any and all unpublished data, reports, or learned treatises on which the experts have relied in interpreting test results in this case or upon which they intend to rely at trial.

#### **CORRESPONDENCE**

Please provide legible copies of all written correspondence, scientific reports, memos, email messages, notes and telephone logs related to the instant case.

#### **MANUFACTURER'S BULLETINS, AMENDMENTS, REVISIONS NOTICES AND DIRECTIVES.**

Please provide copies of all bulletins, amendments, revisions, notices, directives or other written material indicating manufacturer-initiated changes to the test systems used. Please include any publications or written material supplied to the laboratory that describe changes to the test systems used. The request includes, but is not limited to, any changes in PCR primer DNA sequences.

#### **LABORATORY MANUAL/PROTOCOL**

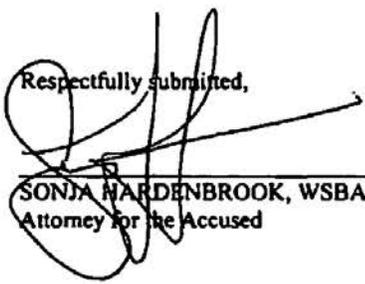
Please provide copies of laboratory manuals and protocols in use at the time of testing in the instant case. Please include manuals, protocols and other written procedures describing methods of sample collection, sample storage, sample tracking, sample processing and sample examination. Please include manuals and protocols for DNA extraction, PCR, quantitation, and analysis by capillary electrophoresis.

**ACCREDITATION**

Please provide copies of all certificates of accreditation held by the DNA testing laboratory.

DATED THIS 30 May 2012

Respectfully submitted,



SONJA HARDENBROOK, WSBA #35386  
Attorney for the Accused

DISCOVERY REQUEST  
OF DEFENDANT

SNOHOMISH COUNTY PUBLIC DEFENDER  
1721 HEWITT AVENUE, SUITE 200  
EVERETT, WASHINGTON 98201  
(425) 339-6300