

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

SHERRY ELLIS, et al.,)
)
 Plaintiffs,)
 vs.) No.
) 16-CV-00019-HE
 DANIEL HOLTZCLAW, et al.,)
)
 Defendants.)

 TABATHA BARNES, et al.,)
)
 Plaintiffs,)
 vs.) No.
) 16-CV-0184-HE
)
 CITY OF OKLAHOMA CITY, et al.,)

 ADAIRA GARDNER, individually,)
)
 Plaintiff,)
 vs.) No.
) 16-CV-0349-HE
)
 DANIEL HOLTZCLAW, et al.,)
)
 Defendants.)

 ROSETTA GRATE,)
)
 Plaintiff,)
 vs.) No.
) 16-CV-0412-HE
)
 THE CITY OF OKLAHOMA CITY, et al.,)
)
 Defendants.)

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VIDEOTAPED DEPOSITION OF DANIEL HOLTZCLAW
TAKEN ON BEHALF OF THE PLAINTIFFS
IN LEXINGTON, OKLAHOMA
ON OCTOBER 21, 2019

REPORTED BY: KAREN B. JOHNSON, CSR

1 2014; correct?

2 A If that's what the record states.

3 Q And Lieutenant Arthur Gregory never spoke
4 to you about your involvement in the EIP program
5 during for the first quarter of 2014; is that
6 correct?

7 A I can't remember anything specifics with
8 the use of force with any of my supervisors.

9 Q Okay. But this question is related to the
10 EIP program.

11 A Right. I -- I can't remember.

12 Q And -- and Lieutenant Gregory did not
13 speak to you about use of force incidents and
14 complaints that you had during the first quarter of
15 2014; correct?

16 A I can't remember.

17 MR. SOLOMON-SIMMONS: All right. I pass
18 the witness.

19 RE CROSS-EXAMINATION

20 BY MR. CASEY:

21 Q Very quickly. Sorry. Very quickly,
22 Andrew Casey again. Do you deny that Adaira
23 Gardner's DNA was found on the inside of your
24 zipper?

25 A I don't deny it because that's what they

1 had -- the state provided as fact.

2 Q Do you have any reason to dispute the idea
3 that Adaira's DNA was on the inside of your zipper?

4 A If that's what they stated was factual,
5 then --

6 Q Do you have any evidence to dispute it?

7 A Evidence to dispute it?

8 Q Yeah.

9 A I don't understand your question.

10 Q Do you have any evidence to dispute the
11 idea that Adaira Gardner's DNA was on the inside of
12 your zipper?

13 A As far as how it got there, I don't
14 understand, what are you --

15 Q No, before we get there, I want to know,
16 do you dispute that it was there?

17 A That's what they're stating.

18 Q Do you have any reason to dispute it?

19 A I don't understand how it got there.

20 Q Okay. But --

21 A I don't understand your question.

22 Q -- you don't have any reason to believe
23 that it wasn't there?

24 A That's what they're stating was there.

25 Q I understand what you said earlier about

1 Gaylynn Gieger's explanation of it, but how -- fair
2 enough, but what I want to know is, what's your
3 explanation for how it got there?

4 A I believe through the understanding of
5 touch DNA and how I come in contact with people, no
6 matter male or female, I'm going to pat down. So
7 for instance, perfect example in front of us, if
8 this is your water -- water bottle right now, and I
9 said, hey, man, can I drink this, I grab this, and
10 you get pissed off at me, no, no, don't drink it, so
11 I give it back to you, you take your water battle
12 back, put your hand right here, my DNA is going to
13 be right there, that's a fact, that's nice.

14 So what my understanding I believe is that
15 through a course of me always pat searching anyone
16 that comes before my -- comes inside the vehicle,
17 that through my course of taking of -- maybe using
18 the rest room, unzipping my pants, that -- that her
19 DNA came from there.

20 Q Do you remember what Adaira Gardner was
21 wearing that day?

22 A I don't.

23 Q Do you remember if she was wearing
24 sleeves?

25 A (Shakes head).

1 Q Do you remember if she was wearing a shirt
2 at all?

3 A I remember there was two plastic bags or a
4 plastic bag that she had in her possession, I think
5 I remember that, and maybe a purse or some kind of
6 purse.

7 Q Do you remember if she was wearing a
8 T-shirt kind of like yours?

9 A I can't remember as far as --

10 Q Do you remember if she was wearing
11 spaghetti straps?

12 A I can't remember as far as what she was
13 wearing.

14 Q Do you remember if she was wearing pants
15 or shorts?

16 A Summertime, I -- she could have been
17 wearing shorts.

18 Q Do you remember if you touched her skin?

19 A I'm sure I touched her skin, I'm sure I
20 touched her hands as definitely a pat search.

21 Q You're for sure about hands?

22 A Yes. When I was trained in the -- not
23 academy, but trained in gangs, our way of basically
24 to pat search someone, individual, or put them in
25 custody is to interlace their fingers. As they

1 interlace their fingers, I'm going to push down
2 towards -- this is all from behind. This way it
3 unstabled you in a position where you're uneven on
4 your feet, you're unbalanced. It doesn't hurt the
5 individual, it just puts them in a position where
6 you're unbalanced.

7 Obviously going to ask them to spread
8 their legs, because people will hide stuff through
9 experience wherever they want to hide it down low,
10 but if it's a female, obviously I'm going to do the
11 same thing for them, in a position like this, I'm
12 going to grab one hand like this over top.

13 THE WITNESS: Can I do this on you?

14 MR. JOHNSON: Sure.

15 MR. CASEY: Yes. Feel free to
16 demonstrate.

17 THE WITNESS: So say this is individual,
18 even -- can I talk out loud and place this down?

19 Q (By Mr. Casey) Yeah. Your microphone
20 will still -- you're good.

21 A So as I approach the person, I'm going to
22 say put your hands behind your back, interlace your
23 fingers, so, again, he's interlacing his fingers
24 like this. I'm going to go ahead and say I'm going
25 to go and push them downwards, relax, relax, so

1 still holding his -- interlacing his fingers, see
2 how he's getting unbalanced. It's not hurting his
3 person, but I'm in control right now, so, therefore,
4 I have my hand over gripped his hands right now.

5 I could feel tension in his fingers if he
6 wants to get combative, you can't do anything
7 without your hands first and foremost. I'm going to
8 ask him to spread your feet, he's already unbalanced
9 by the position I'm putting him in, so this way, it
10 gives me officer safety. This basically tells me if
11 he's going to act up or not. Especially as a
12 female, I'm going to back hand side, going to grab
13 my other hand, switch sides, side, boom, always try
14 to stay at the side of the level, so he can't back
15 kick me or anything like that. My foot is right by
16 his foot in that situation, so my hands are touching
17 his hands, again, me touching him, her, I touch
18 that, and I obviously used the rest room, pull my
19 penis out of my zipper, my DNA is going to be on
20 there.

21 Q I want to make sure I understand this,
22 what cause did you have to place her in that
23 position?

24 A I can't remember if it was a call or
25 whatnot, but I know that there was three individuals

1 at that time, again, I think it was Melanie (sic)
2 and Face and her, and at that time, you have three
3 individuals per one officer, so, therefore, as far
4 as officer safety -- I mean, regardless if it's male
5 or female, that's three against one, so I'm going to
6 place one individual in the backseat, I'm going to
7 place one in front of my front bumper, I'm going to
8 place one on the side curb, just take a seat.

9 Q Which one did you place where?

10 A I can't remember that.

11 Q Do you remember if you placed Adaira in
12 the backseat?

13 A I can't remember.

14 Q Do you remember if you placed Adaira in
15 the front?

16 A I can't remember which person was placed
17 where, but the meaning of where I placed them was to
18 interview each one of them to see if their story
19 matched, and their story did not match.

20 Q Did you perform that maneuver whenever you
21 took Adaira back to her house?

22 A If I performed that maneuver, it was
23 before she got into my vehicle.

24 Q Did you perform that maneuver whenever you
25 got her to her front door?

1 A No.

2 Q So whenever you discovered her the second
3 time, you would have performed that maneuver a
4 second time?

5 A Again, you asked this and I answered, it
6 was -- it doesn't matter if you're 30 minutes, 10
7 minutes, you get out of my sight, you go somewhere,
8 I'm going to pat search you again, you're going to
9 get inside my vehicle, I'm going to pat search you,
10 make sure there's no weapons on board.

11 Q And that's the explanation of -- let me
12 ask you this, was Melanie's DNA discovered on the
13 inside of your zipper?

14 A From my understanding, no.

15 Q Was Face's DNA discovered on the inside of
16 your zipper?

17 A There was actually male DNA found on
18 the -- on the zipper.

19 Q Okay.

20 A Again, ineffective by my counsel, Scott
21 did not disclose that to me, nor did the prosecution
22 explain that to the jury members.

23 Q And for sure, Adaira Gardner's was on the
24 inside of your zipper?

25 A From what they state, yes.