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

JANNIE LIGONS, *et al.*,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	Case Nos.: CIV-16-19-HE
	)	CIV-16-184-HE
CITY OF OKLAHOMA CITY,	)	CIV-16-349-HE
a municipal corporation, *et al.*,	)	CIV-16-412-HE
	)	
Defendants.	)	

DEFENDANT HOLTZCLAW'S REPLY TO THE OBJECTIONS OF THE CITY ON THE MOTION TO COMPEL DISCOVERY

Defendant Daniel Holtzclaw, through the undersigned counsel, hereby replies to the various objections of the City of Oklahoma City to his motion to compel discovery (Doc. 378, filed September 20, 2021):

1. SAMPLES WILL NOT BE CONSUMED: The City asserts that the evidentiary DNA will be consumed if tested by Holtzclaw's experts. This is not true. The method of examination of the pants/belt will be non-destructive high resolution photographs and viewing with an Alternate Light Source which detects the presence of bodily fluids as they fluoresce.

The reasons why the uniform pants, belt, DNA items, and DNA raw data are

needed by Holtzclaw in order to rebut the claims against him made by the Plaintiffs, and to specifically determine whether the fly of the pants are associated with vaginal fluid from Plaintiff Gardner, and more generally whether body fluids (such as vaginal fluid or saliva) was detected on the fly of the pants, which relates directly to the allegations made by Plaintiff Lyles.

The DNA expert for the City during the criminal trial, Elaine Taylor, was also deposed in this case. *See* attached exhibit 1. She testified that large digital photographs of the pants were sent on a CD to prosecutor Gayland Gieger. *Id*. 157-58. The City has refused to produce these photographs to Holtzclaw.

Holtzclaw requires his expert to examine and possibly test the pants if any latent stains are observed in the photographs. Taylor did not examine the pants with an Alternate Light Source (ALS), performed no body fluid tests, and did not test to see if cells were present (and, if so, what type/kind of cells). She did not use the ALS because she was looking for touch DNA, not fluids. *Id*. 98.

In addition, testing by Holtzclaw is needed to acquire information about male contributors. Male DNA was found on all four DNA items from the fly of the uniform pants. *See* attached exhibit 2 (Summary of Opinions by Holtzclaw expert Dr. Michael J. Spence) at 9-11. The presence of unknown male DNA is material to the Holtzclaw defense because supports his position that non-intimate DNA transferred

to the fly of the pants (which also explains the presence of female DNA), and to explore the possibility of DNA contamination of the uniform pants.

The City and the police department have provided no evidence about the number of male contributors to DNA found on the fly of the uniform pants, and Ms. Taylor testified erroneously at trial that the two DNA items from inside the fly of the pants contained no evidence of male DNA at all. *Id*. 11.

2. DISCOVERY WILL NOT RE-LITIGATE CRIMINAL CASE: The City asserts that access to the uniform pants, belt, DNA samples, and the DNA analysis of the raw data files are simply an effort by Holtzclaw to re-litigate the criminal case. This is not true. These items are need by Holtzclaw to rebut the assertions by Plaintiff Lyles that he sexually assaulted her on June 18, 2014, through the unzipped fly of his uniform pants (which were taken into evidence by the Oklahoma City Police Department later that same day).

There is no re-litigation because Holtzclaw was *acquitted* of the allegations made by Lyles. Thus, the assertion by Lyles is at issue in this civil case.

Lyles testified at trial, and at her deposition in this case, that she was raped by Holtzclaw. *See* Trial Transcript 3626-38; Deposition Transcript 48, 55. Her specific allegation is that Holtzclaw "just unzipped his fly" and removed his penis from his pants with the sexual assault (oral sex) occurring immediately thereafter.

3. CAMPBELL RUDDOCK: Ruddock is the Lab Manager of the Oklahoma City Police Department lab. He wrote a review of Tayor's trial testimony after February 1, 2017, when Holtzclaw had filed his direct appeal criticizing her findings and testimony at the criminal trial. Holtzclaw believes that his review will contain impeachment evidence against Taylor.

For example, Taylor made errors in her trial testimony such as claiming that Holtzclaw's non-intimate DNA was not on the fly of his uniform pants, and she provided other testimony that the State used erroneously to bolster its claim that vaginal fluid was associated with DNA obtained from the fly of the pants.

This means that her errors in forensic science impact not just the question of whether DNA of the fly of the pants was associated with vaginal fluid from Plaintiff Gardner, but more generally to whether vaginal fluid was detected on the fly of the pants at all, which relates specifically to the allegations of Plaintiff Lyles.

The attached Deposition excerpts of Campbell Ruddock (exhibit 3) show that his written review of Taylor's trial testimony in the criminal case contains impeachment evidence because the City prevented him from discussing the content of his written review.

Ruddock testified at the secret hearings in the criminal case concerning Taylor's work. *Id*. 56-57. He criticized Taylor's work as "confused" and confusing.

Id. 19-21. Also, that there is an innocent explanation for the DNA on Holtzclaw's pants, and she gave too much weight to the possibility of the presence of vaginal fluid, and that it cannot be substantiated that vaginal fluid was the source of the DNA. *Id*. 25-26; 29-30; 45.

4. ROCKY GREGORY DNA PROFILE: Holtzclaw requests his DNA profile because he failed to wear gloves during evidence collection, and can be shown on the video of Holtzclaw's questioning by officers inserting his bare hand into the evidence bag prior to Holtzclaw placing his pants and belt inside the bag. This is evidence that his DNA may have contaminated this evidence.

In fact, during Det. Gregory's deposition in this case, he was shown a photograph of his hand inside the evidence bag containing the pants and the belt and testified that it was his hand and that he should have had gloves on. He also testified that the DNA lab has a profile of his DNA.

5. PLAINTIFF GRATE POLICE REPORTS: Holtzclaw requests the police reports of Plaintiff Grate's four prior rape allegations, possible mental health intervention, and her interaction with Officer Jeff Sellers. The City claims a lack of notice about which police reports are at issue. Counsel for Holtzclaw made a scriveners error by not including an exhibit detailing them to his Motion to Compel, but the City seems to not comprehend the fact that the requests are outlined

specifically in the Motion to Compel. *See* attached Exhibit 4 (Doc. 223) at 5.

Holtzclaw outlined by police case number and date the police reports he requests, with the only correction to the last one which should read:

6) OCPD Case Number 95-005225 (09/01/1995)

One reason why these police reports were not requested earlier was that Holtzclaw was not aware until recent Open Records Act requests were completed that the prior rape allegations appear to include impeachment evidence against Plaintiff Grate.

These reports are specifically identified, will not require the City to engage in a fishing expedition, and should be readily accessible by the City in its own police records.

Respectfully submitted,

s/ James L. Hankins
James L. Hankins, OBA# 15506
MON ABRI BUSINESS CENTER
2524 N. Broadway
Edmond, OK 73034
Phone: 405.753.4150
Facsimile: 405.445.4956
E-mail: jameshankins@ocdw.com

Counsel for Daniel Holtzclaw

CERTIFICATE OF SERVICE

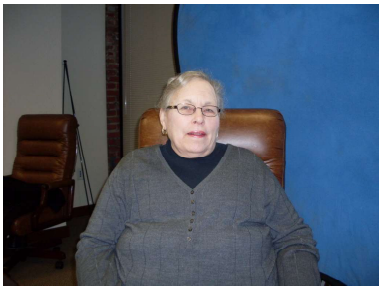
I hereby certify that on September 27, 2021, I filed the foregoing document with the Clerk of this Court and that, based upon the records on file in this case, the Clerk of Court will transmit Notice of Electronic Filing to those registered participants of the Electronic Filing System.

s/ James L. Hankins

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF OKLAHOMA

JANNIE LIGONS, SHANDAYREON HILL, TABATHA BARNES, TERRI MORRIS, SYRITA BOWEN, CARLA JOHNSON, KALA LYLES, Plaintiffs, vs. CITY OF OKLAHOMA CITY, a municipal corporation, DANIEL HOLTZCLAW, BILL CITTY, BRIAN BENNETT, ROCKY GREGORY, JOHN AND JANE DOES, all in their individual capacity, Defendants.	) No. CIV-16-184-HE



VIDEOTAPED DEPOSITION OF ELAINE MARIE TAYLOR

TAKEN ON BEHALF OF THE DEFENDANTS

IN OKLAHOMA CITY, OKLAHOMA

ON JANUARY 15, 2019

REPORTED BY: KAREN B. JOHNSON, CSR

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EXHIBITS

that mean that a sexual assault occurred?

A No.

Q Have you worked on a case where you concluded that DNA transferred due to touch DNA or indirect touch DNA without body fluids such as saliva or blood?

A I'm sorry, have I ever worked on a case --

Q Yeah.

A -- of -- with touch DNA?

Q Yes, like that. Yes.

A Well, when I first started working on the Holtzclaw case, the scenario that I was told was that Jannie Ligons was stopped -- was stopped on a traffic violation and she was in Holtzclaw's -- the back seat of Holtzclaw's scout car, and that there was oral sodomy committed. Okay. From that point of view, I made a really big assumption that there was a possibility that I could find Jannie Ligons' epithelial cells on the front of his pants, just because I thought maybe she would try to steady herself, and --

Q Okay.

A -- that's what I went for was the epithelial -- the possibility of epithelial cells being on the front of his pants. I did not do any

alternate light source testing of any kind because I was not thinking it was going to be saliva or vaginal fluids or semen at that point, I was only looking for her epithelial cells to corroborate her story that she told.

Q So can we -- and thank you for explaining that. So, and this would go back to your normal protocol and procedure, before you start testing on a case, do you try to get some of the factual or what -- what the authorities are telling you is the factual background of the case, like what is this and why would I be testing it?

MR. SMITH: Object to the form. You can answer if you understand it.

THE WITNESS: Well, I'm not real clear on exactly what you are trying to ask, ma'am, I'm sorry.

Q (By Ms. Zellner) Okay. That's fine. No, we'll -- and we'll have those points where my question isn't clear. I'm just -- let's go back to the information you just provided, you said that you were told that the Holtzclaw case involving Jannie -- Jannie Ligons was an oral sodomy case; right?

A That's correct, yes.

Q Right.
A And --
Q And so did you -- go ahead.
A And at some point, she, Jannie Ligons, ended up in the back seat of his scout car.
Q Right.
A And I -- if I'm not mistaken, I believe the reason her car was swabbed was he went and did a search for I don't know what.
Q Okay. But the bottom line is that you were not able scientifically to confirm that there had been an act of oral sodomy; is that right?
A That's correct, yes.
Q Okay. Now, at a certain point in time, I think around June 19th of 2014, you received Holtzclaw's uniform pants and belt; is that right?
A It was his Velcro belt that was in the keepers. His --
Q Okay. So do you receive the belt first?
A No, the belt was still in the keepers of his pants, so it was actually one, one item of evidence in a brown paper -- a sealed brown paper sack.
Q Okay. Had you -- had you looked at the video of Holtzclaw's interrogation that revealed the

collection of the pants and putting them into a bag?

A I didn't see that until the -- the news media showed it sometime later on.

Q Okay. And did -- when you saw it later on, did you recognize -- did you recognize Detective Gregory as having collected the pants?

A Yes, ma'am.

Q Okay. And let me hand you, if the court reporter's got Exhibit 1 marked.

(Exhibit Number 1 marked for identification and made part of the record)

Q (By Ms. Zellner) Right. Now, I have a screen shot from that video of Detective Gregory reaching into the bag, if he does not have gloves on, does that create a possible contamination problem?

A It's -- anything is possible, ma'am.

Q A probable contamination problem?

A Well, that, I don't know because I've never actually swabbed brown paper sacks to see if they were contaminated or if they were clean or exactly what, so, you know, to say it's -- it's probable or it's possible, anything is possible, I can't answer the probability on that one.

Q When an officer is involved in evidence collection, isn't it a requirement that the officer have gloves on to prevent transfer DNA from happening to an item of evidence, isn't that just standard protocol?

A It's standard protocol, yes, ma'am.

Q Okay. So if an officer is transferring evidence into an evidence bag without gloves on, it creates a contamination issue, wouldn't you agree?

MR. SMITH: Object to the form. You can answer it if you understand it.

THE WITNESS: Well, there are people who are shedders, which means they slough their cells --

Q (By Ms. Zellner) I know what it is, yeah.

A -- very easily. A shedder is more likely to contaminate something than a non-shedder, and as far as -- as this is concerned, I don't know whether he's a shedder or not.

Q Do you believe the shedder/non-shedder distinction was still being made in 2014, hadn't that been discredited by scientists?

MR. SMITH: Object to the multiple forms of questions. You can answer it if you understand.

THE WITNESS: Ma'am, I'm not aware.

Q (By Ms. Zellner) Is it your belief, as

you're sitting here today, that a forensic scientist still make a distinction between a shedder and a non-shedder in doing DNA analysis?

A I think it might -- it's possible. I mean, if -- if you look at everybody's hands around this table, I know winter is a terrible time, my hands get extremely dry, and the possibility of me shedding cells right here constantly is very real, so if the shedder/non-shedder is scientifically been disproven, then my statement is irrelevant.

Q If Detective Gregory had transferred his own DNA to the inside of the evidence bag, that bag could be swabbed, right, to test for his DNA inside the bag?

A Sure. It could. But --

Q Okay.

A -- I was never aware of any facts that he did not have gloves on when he opened this brown paper sack.

Q Right. And what I -- what I've given you in Exhibit 1 is a photograph of him without gloves on reaching into the bag.

A Ma'am, in some ways, it's really hard for me to tell, because he has a long-sleeved shirt on and usually the gloves come -- come way up

underneath. On me especially, they come up to about -- about here (indicating). And --

Q So we can't -- okay. So you can't say definitively whether he had gloves on or not, we're just talking in general about someone not wearing gloves and touching the inside of an evidence bag, so we'll ask Detective Gregory that question.

A Yeah, I think that's better.

Q All right. When you got -- when you got the pants to test, you took samples, correct, a couple of samples on the pants?

A On the front, yes, on either side of the zipper and I unzipped the zipper and the little piece of cloth that the zipper sits on, I swabbed that and then the other side.

Q Okay. And so let me hand you what we've marked as Holtzclaw Exhibit Number 2.

(Exhibit Number 2 marked for identification and made part of the record)

Q (By Ms. Zellner) Those are -- do you see Exhibit 2?

A Yes, ma'am.

Q Those are the -- those are the Holtzclaw pants and belt after you had taken them out of the

marked as Holtzclaw Exhibit 3.

(Exhibit Number 3 marked for identification and made part of the record)

Q (By Ms. Zellner) Have you look at that photograph. Can you describe for me what this photograph shows about Holtzclaw's pants?

A This is the interior fly area of his pants, which I was requested by Gayland Giegers to swab to see if there was any DNA of value on the inside of his pants. Like I said, when I first started this case, my concern was for the outside and the possibility of transfer epithelial cells from Jannie Ligons. I never thought anything about the interior of his pants.

Q Okay. We'll get to those second two swabs that you do in a minute, but let's go to Holtzclaw Exhibit 4.

(Exhibit Number 4 marked for identification and made part of the record)

Q (By Ms. Zellner) So we've marked --

COURT REPORTER: One second, hang on.

MS. ZELLNER: Sure.

Q (By Ms. Zellner) The 17Q1, your swab, and

17Q2, have we accurately marked on Holtzclaw Exhibit 4 in the black rectangles where you swabbed the pants?

A On Q2, it was completely down on that area of fabric, it's a little bit past where the bottom of your -- your square is on Q2.

Q Okay. So if we just show each other, so on Q2, I believe what you're telling me is you swabbed down further on the pants; is that right?

A Yes. That is correct.

Q Do you go below -- okay, do you go -- do you intersect Q1 at all or do you just go down in that space that isn't marked on our --

A I just went down on the space that's not marked. If you look at the front of the pants, that -- that fabric that holds the zipper, I swabbed the whole thing, which is kind of covered up a little bit by the -- the way the pants are sitting.

Q All right. So am I correct then -- what are the results of that swabbing?

A I'm going to have go get my --

Q Q1.

A I got to get my file out, is that okay?

Q Okay. That's fine. Oh, of course.

A 17Q1 and Q2 from the front of the pants

are both mixtures.

Q Yes. And can you tell from the mixtures, are they -- is there any evidence of male DNA?

A On Q1, the XY in the amelogenin says it's a male. On Q2, the Y is a minor component, so the major part of it could be a female.

Q Can you rule out on Q1 that there's the presence of a male?

A On Q1, no.

Q Yes.

A I cannot.

Q Okay. And can you rule out, same question on Q2, that there's a presence of a male?

A There's a minor component, which is --

Q So because there's a -- go ahead.

A Which is below our call standards, the parentheses means that it's present, but it's below the standard that we would normally call a sample or make -- make a conclusion whether or not this person was present.

Q Is that -- would you say it's below a stochastic threshold?

A Yes.

Q Going back to the way Holtzclaw's uniform and pants were put together in one package, should

A Well, the news media, because they had 3,000 or 4,000 of my e-mails.

Q When you say the computer's wiped clean, is there any system where they copy and keep the material or is it simply just destroyed?

A I think all of the case file photographs are moved to another disc, but honestly, ma'am, I have not a clue. I mean, once I retired and, you know, the protocols that they -- they put in place, if they weren't followed, then I have no control over that.

Q Other than the several thousand e-mails that were not deleted, was there anything else you learned of that had not been deleted from your computer?

A I -- I -- that was the only thing that I was aware of.

Q Did the lab maintain a staff DNA database to detect instances of contamination?

A The laboratory staff and some of the crime scene people, yes.

Q And do you -- at the time of your retirement, do you have any idea about contamination on cases that you'd worked on, percentages of those cases?

A I believe there were six contamination issues that Campbell presented to Mr. Smith that were mine.

Q Were the six contamination issues different cases or was it all one or two cases, do you know?

A As best I can remember, it was different cases.

Q Do you know those case names?

A I don't have it, have them with me. I don't know what they were.

Q Is there a written -- okay. Is there a written record of those cases?

A Yes, ma'am, there is.

Q And do the six contamination cases, does that span your entire career?

A No, it -- it was -- the contamination issues were only kept up with after we were ASCLD lab accredited.

Q Which year did that occur, when you were ASCLD accredited?

A It was 2000 and something, I -- I don't remember for sure, and it all came on the heels of -- of a issue with one of our former analysts.

Q And that was Joyce Gilchrist?

A Yes, ma'am.

Q And during your career, what period of time did you work with Joyce Gilchrist, how many years?

A Up until she was actually fired, which from 1989 to -- I believe it was 2001. It was when the twin towers came down in New York City is the year that I remember. Was it 2001?

Q Did you, during that time you worked with Joyce Gilchrist, were you ever instructed by her to destroy any evidence?

A I don't know if you would call it destroy, we would have every once in a while our evidence in our freezers and refrigerators and storage areas were so full that we couldn't -- there was no place to put anything, so Joyce would get a list of cases from detectives that were either not ever going to be worked or they had already been solved and they didn't need the evidence, and as a combined unit, we would pull the case files that were on the list and then put them in a box, and they would take them down to an area and the city would dig a big hole and the evidence was shoved in that hole and it was set on fire.

Q And was that done, was the location of

that by some type of a river or water?

A It was down by the Oklahoma River at someplace, I'm not 100 percent sure.

Q Right. Did you ever observe that process by the Oklahoma River, were you ever present when they were digging the hole and putting the evidence in it?

A I think I was there one time.

Q And then what did you observe when you were there?

A That the city dug a great big huge hole and the boxes that the destroy -- the evidence to be destroyed in was shoved into that big ol' hole, it was set on fire, and then they would cover it up.

Q Okay. And you observed that on one occasion?

A Yes.

Q And how many times did -- under Ms. Gilchrist's tenure, how many times was that done where evidence was taken down, removed from the evidence vaults and taken down and destroyed, once a year?

A Every couple of years, I think, maybe every three to five years.

Q And when that was happening, it -- it

the Gilchrist proceedings?

A There was only one major proceedings against Joyce and that was her predetermination hearing. I was asked to testify in state court on one of her cases, but she was present, so she could testify about her own case and the judge decided that that was what needed to be done, was I didn't work the case, I only collected some evidence at the scene, so, you know, in that light, I never really testified, you know, on any of her proceedings, other than when she was -- it was being determined whether or not she should be fired.

Q And the state case that you testified on, do you remember the name of that case?

A It was a double homicide and it was two young men that had gone in to -- to kill some -- a couple that was treading on their turf, but it was -- the time I testified and this incident occurred, it was a hung jury, so it ended up being retried again. And all I can remember --

Q Did you testify --

A Remember that they were all Hispanic.

Q Okay. Did your staff database contain DNA profiles of Detective Davis and Detective Gregory?

A No, we didn't have detectives in our staff

database, only ourselves and some of the crime scene people, simply because they --

Q Did you --

A -- come in contact with the evidence initially.

Q Okay. When you were testing the fly of Holtzclaw's pants to eliminate people, did you, in fact, do elimination of people that were in contact with the pants that worked for the lab?

A No, I did not, I felt like there was -- there was no precursors that there was anything wrong with the collection of the evidence.

Q Did you -- did you check to make sure that your own DNA wasn't on the pants?

A Not really.

Q Okay. Is your DNA profile, was it kept on file in the lab?

A Yes, it should still be there.

Q Okay. When you -- after you finished testing, so the first round of testing, 17Q1 and 17Q2, from the outside of the fly, what do you do then with the pants? Please describe what you physically did.

A They were returned to the brown paper sack they were collected in and that sack was taped shut

and I placed it in our evidence storage area within the laboratory.

Q Did you fold or roll the pants and the belt to put them back in the bag?

A I don't remember, ma'am.

Q Okay. But you're the one who put the pants and the belt back in the bag; right?

A Yes, I am.

Q On April 29th, 2015, you returned the pants and the belt to OCPD evidence about nine months after you got them; right?

A Do you have a piece of paper that says that? I -- I don't remember.

Q I do. I would rather not have to dig it out, but would it -- the question I want to ask is, would it be unusual for you to have kept these items of evidence for nine months if you, in fact, kept them for nine months?

A Okay. Do you have a date of 10-23, 2015, is that --

Q I have a date of April 29, 2015 that you returned the pants and belt to OCPD evidence.

A Okay. I'm not going to disagree with that.

Q And what -- what would be the storage

conditions in the lab, like temperature, humidity, that sort of thing, was that all regulated?

A Yes, it is. And in the storage area, we each have our own area that we put our evidence, so we can go back to it or, you know, it's --

Q Okay.

A We just don't -- nobody ever messes with anybody else's evidence, period.

Q Do you believe that testing for saliva is part of serology?

A Yes.

Q How is the alternative light source used in forensic testing?

A Well, it's used to see if you can find a specific stain that will -- that's going to fluoresce, usually semen and saliva are in the -- the UV range, that they're very close, but semen -- seminal stains are -- are kind of a really bright yellow, but saliva stains are kind of dull and yellow, so you sort -- you can pretty much tell the difference once you've seen that using a light source, you know, that this -- possibility of this being semen is very great as opposed to this sample that is possibly saliva.

Q And you did use the ALS, the light source

on Rosetta Grate's case on the underwear and you got a positive result, do you remember that, for acid phosphatase?

A Let me get her file out.

Q Sure.

A On Item Number 2, the underwear, yes, I did get a positive ALS.

Q Yes. And then I think the acid phosphatase test then was negative for the seminal fluid?

A Yes. That is --

Q Do you see that?

A That's correct.

Q What I want to ask -- is there anything else you want to add?

A On all -- all three samples.

Q So why did you not test Holtzclaw's uniform pants for body fluids?

A Because I was only looking for touch DNA on the front, I wasn't looking for a liquid, like saliva.

Q So even though there was an allegation of oral sodomy, you weren't looking for a liquid like saliva?

A Not on the front of his pants. Like I

said, I -- I was specifically looking for touch DNA where I thought maybe she would have kind of steadied herself, I don't know if women do that or not, but I was just trying to think of the idea of, you know, what all -- what could have happened at that point.

Q And I think that you testified, you said at trial, "At the time, I felt that an amylase test would not have aided anybody in the investigation of this particular case," that was your trial testimony, that's at Page 4092. Why did you think that doing the amylase test would not have potentially helped the investigation?

A Because amylase is found in more than just saliva.

Q Did anyone ever request that you test the pants for saliva?

A Yes.

Q And who was that?

A Detective Davis, but our lab --

Q She asked you to --

A Excuse me.

Q Okay. I was just trying to track what you're saying. So Detective Davis asked you to test the pants for saliva, and then what -- what was your

response to her?

A Okay. Because we are no longer proficiency tested on that body fluid, I could not do it.

Q Okay. So even if you had wanted to test for saliva, you could not have done that?

A That's correct.

Q Okay. Can you tell me what the different -- first, let's go just through a couple things that -- was any proficiency testing done for saliva at all at the lab?

A No.

MR. SMITH: Ever? Sorry, go ahead and answer.

THE WITNESS: No.

Q (By Ms. Zellner) Never?

A Never.

Q Okay. What does a positive test for presumptive -- positive result for presumptive testing mean?

A That we used an AP spot or hemastix to determine if the fluid or the sample, it was blood or semen, and once we determined what it possibly was, then we would determine whether or not we would -- where we would go from there as far as DNA

testing or further testing for the different body fluids.

Q What does a confirmatory test positive result mean for a single body fluid?

A That we have actually confirmed that there is semen present in a sexual assault case, or that the sample is blood and then we would proceed on, except animal blood will do -- test the same, using hemochromogens, as human blood, so the -- the test after that is DNA because we don't have any animal DNA in our databases.

Q Can you tell me the name of the presumptive tests that are done for blood?

A Hemastix, hemochromogens, we have a test for human, and then we will occasionally use lumenal, but lumenal has been banned from use.

Q Is lumenal banned because of the --

A Carcinogenic possibilities.

Q Okay. What about urine, can you tell me a presumptive test for urine?

A The Jaffe test.

Q Okay.

MR. SMITH: There's about five minutes left on the DVD.

Q (By Ms. Zellner) Okay. What about

saliva?

A It was an iodine plate that we used.

Q So just so I'm clear, so the pants could have been tested for that -- for saliva using the iodine plate?

A We have the chemicals, but as far as being proficiency tested, you know, in that area, we are not, so basically Campbell said you can't do it because you're not proficiency tested in it anymore.

Q And did Campbell Ruddock tell you specifically in regard to the Holtzclaw uniform pants that you could not do saliva testing on them because you were not proficiency qualified?

A Well, when it came up, I told Kim that we couldn't do it, and she said, well, would you check with Campbell and make sure, and I asked him and he said, that's correct, we are not proficiency tested in that particular body fluid anymore, so you can't do it.

Q So just so the record's clear, so it's actually Mr. Ruddock that tells you not to do the saliva testing on Holtzclaw's pants?

A Well, actually, it was me that initially said we could not, because number one, we're not proficiency tested, and number two, it was basically

a serology test that I did for years and years and years before the ASCLD procedures came in, and even though I had performed the test prior to, I couldn't do it because we are no longer proficiency tested in that particular fluid.

Q So we were -- we were talking about the presumptive tests that can be done for different bodily fluids, what about sperm, what is the presumptive test?

A Acid phosphatase, confirmatory is an Oppitz stain of the actual dried fluid, and then we have a P30 test that we can do.

Q What about a presumptive test for vaginal fluid cells?

A For vaginal fluid by themselves, we have none.

Q Okay. So you did not have the Lugol's iodine test?

A No.

Q What about the Dane's staining method for the vaginal fluid?

A Ma'am, the only staining method that we ever used and have in our laboratory is the Oppitz, the Christmas-tree stain.

Q And that's for sperm; correct?

A Yes.

Q Okay. So just -- just so the record's clear, so there was no testing available at the time you were doing the testing on Holtzclaw's pants for vaginal fluid cells?

A I don't believe there is a test.

Q Okay. So are you aware of the Lugol's iodine test?

A You know, I think I've heard it over the years, but I never was proficient. Like I said, that was not what was available in our laboratory.

MR. SMITH: Okay. The DVD is over.

MS. ZELLNER: Okay. So we will take a break.

THE VIDEOGRAPHER: Off the record.

(Break taken from 10:29 to 10:40)

THE VIDEOGRAPHER: Back on.

Q (By Ms. Zellner) Let me just, Ms. Taylor, let me go back on your testimony about the proficiency testing for saliva, was the lab at one point qualified and then it became unqualified to do saliva testing?

A Well, when we were actually a serology-based laboratory only, you know, we did all the presumptive tests and that type of thing, and,

yeah, we -- I did many a saliva test, you know, for looking for cigarette butts and just, you know, various and sundry samples, but at what point the determination was made that we were not going to do any more saliva testing, I honestly don't know, it was sometime around the point that we were accredited through ASCLD lab.

Q All right. You had mentioned earlier that there were six separate cases where there was a contamination issue with your testing, and I know from doing this work a lot of times, there's always contamination for every lab analyst, but do you remember any of the names of those cases, of the six?

A The only thing that Campbell ever put on a contamination scenario was the case number and the incident number. As far as the names, I don't remember what cases they were. I know one of the contaminations was Campbell himself and the other was me, and then there were -- the other ones, I think, I believe, if I'm not mistaken, just flat could not be sourced.

Q And do you remember the defendant's name in any of them or you didn't know the names because of the way it's processed?

A The only name I usually ever know in any of my cases is the victim. Occasionally the detectives will put a suspect name. In this case, I knew it was Holtzclaw because Kim typed it that way, but as far as other defendants, when my -- when subpoenas come over that it's the state versus somebody, I usually -- I have no idea who that person is unless I've received buccal swabs and recognize the name.

Q In the six contamination cases, do you remember any of the victims' names?

A No, I don't. Like I said, the only information that Campbell usually put on a contamination letter or incident was the incident number and then the laboratory number, because those are the two major numbers that the department and the lab use.

Q Right. Let me ask you a question, I know that you retired at a certain point, then after you retired, were you subsequently suspended --

A Suspended?

Q -- for a period of time?

A Suspended?

Q Yeah. Were you ever suspended?

A No.

analyzed. Now, you know, criticize me all night and all day for not doing something, but I followed policies and procedures that our laboratory has set in stone, which includes we cannot do a saliva test because we're not proficiency tested on that.

Q What about the alternative light source, because you used it on Grate's test, but -- on her examination of evidence, but then you didn't use it on Ligons and, you know, why did you decide one time to use it, then you didn't use it?

A On Grate's case, I -- I was specifically told that the lady told Kim Davis that after the oral sodomy, she spit it in her hand and she wiped it on that chair back, okay, it's black, it's doesn't appear to have anything on it, so I used the alternate light source and I circled some areas that were maybe a little questionable, and then I did AP spot on them and they were negative. So the difference is, I was looking for a specific body fluid that was stated to have been on that chair, where I wasn't looking for a specific body fluid on his pants, I was looking for touch DNA, so.

Q You were looking for the victim's touch DNA on his pants?

A Yes, that is correct.

Q Okay. So when you were swabbing -- let me go back, let me check, did you -- did you quantify how much DNA was in items 17Q3 and 17Q4, the inside of the fly, right and left side, was there a quantification done?

A I would had to have done a quant. Yes, on Page 10-B there is a quant done and actually, those items, it looks like, yeah, looks like those were the only items that were run, and that's in my case file.

Q Can you tell me what the -- okay. What were the quantities on those two, Q3, 17Q3 and Q4?

A 2.19 times 10 to the minus 1, and 2.60 times 10 to the minus 1. Or .219 and .260.

Q And were those nanograms or what were those?

A I believe that's the quantity, point.

Q Yeah. .219 nanograms, .260 nanograms?

A Yes.

Q Okay. So did the DNA quantification step calculate the concentration of male DNA in addition to the total DNA?

A Yes. And it was quanted at .0102 and .0117. And the male to female ratio was 1 to 20 for -- for Q3 and 1 to 21 for Q4.

MR. SMITH: An hour. 1:00.

MS. ZELLNER: Okay. We will see you then. Thank you.

(Lunch break was taken from 12:03 to 1:02)

THE VIDEOGRAPHER: Back on.

(Exhibit Number 9-A marked for identification and made part of the record)

Q (By Ms. Zellner) So, Ms. Taylor, can you identify -- I inadvertently handed you the Roseanne Grate exhibit, DNA exhibit, and I should have been -- handed you Exhibit what we've marked 9-A, can you identify that document for the record?

A These are the quantitation results from 10-9 of '15 for Items Number 13Q3, 13 -- or excuse me, 17Q3, 17Q4, and the reagent blank for the Q and the reagent blank for the -- the plate.

Q All right. And, again, if you could just tell me on the Y quantity, what quantity is reflected in this document for the Y quantity?

A It is 0.0102.

Q And then on the second one, what is it?

A It is 0.01176. The ratio of male to female for the first one is 1 to 20, for the second one, 1 to 21.

than 6-A?

A Yes, Q2 was.

Q What are the areas of expertise that you were qualified to testify in court about?

A Basically serology and DNA. I guess it was considered under biology.

Q Have you ever been testified -- have you ever testified as an expert in physiology of sex organs and reproduction?

A No, that was the SANE nurse's job.

Q And you're not -- right. You're not -- you're not a forensic nurse; correct?

A Correct.

Q Had you had any training in regard to rape victims and the human body's response to sexual intercourse?

A I attended a sex crimes school and then we were given a little bit of training at the FBI in sexual assaults.

Q Okay. Did you get specific training about a young woman, a 17 year old, and her ability, physical ability to produce lubrication?

A No, but at one time I was a 17-year-old female and I kind of remember what it was like to be well-lubricated.

Q And so the testimony you gave at trial at Page 4065, quote, A young woman of her age would be very likely to have quite a bit of lubrication and that lubrication could transfer cells, if, in fact, that is what occurred." That was not based on your expertise as a serologist, but rather just personal experience?

A I would say personal experience, I mean, I'm a female, I think I have an idea of how my body responds to things and how other females do. Now, I'm not sure if a male could testify to a 17 year old's response to a sexual type situation.

Q Okay. Did you complete any tests to determine the type of cells from which the DNA from the fly of the pants originated?

A Well, they were cells that contained DNA or I wouldn't have been able to get a profile.

Q Okay. But did you do any tests to determine if that DNA could have come from blood cells, muscle cells, immune system cells?

A No.

Q Okay. Are blood cells, muscle cells and immune system cells the same as epithelial cells?

A Red blood cells are the only cells in the human body that you cannot obtain DNA from because

their sole function is to carry oxygen to and from different body -- body parts.

Q Is there any way to confirm that the DNA on Holtzclaw's pants came from epithelial cells?

A They came from cells that contained DNA.

Q Yeah, my question is different. Is there any way to confirm that the DNA on Holtzclaw's pants came from epithelial cells?

A Well, that's kind of what I was looking for in the beginning on the front of his pants, were just epithelial cells that transferred from Jannie Ligons' hands, but I don't have a specific test to determine that they came from her hands.

Q Okay. What is a source attribution error, source attribution error?

A Not familiar with the term, ma'am.

Q Okay. So you testified numerous times at trial that the DNA derived from Gardner, is it theoretically possible that another individual happened to have the same alleles as Gardner as the 16 loci tested, but different DNA elsewhere on the genome?

A I don't remember that question.

Q Okay. Are you -- let me give you a few more. Were you -- when you were employed at OCPD,

A Yeah, that was my understanding.
Q Okay. Did you ever have the opportunity to review those e-mails?
A No.
Q Okay. Did you have e-mail communication with Detective -- or with your son-in-law, Detective Gregory --
A Before --
Q -- about the case?
A About the case? No.
Q Yeah, about the case. Okay. How about did you have any e-mail communication with Kim Davis about the case?
A No.
Q Before or after?
A No.
Q Okay. And with -- okay. No communication at all?
A No.
Q Who did you communicate with by e-mail about the case, did you communicate with the prosecutor, Gieger?
A I think the only thing as far as e-mail is concerned is he was wanting copies of my photographs from the case file and he -- there was no way,

apparently they're -- I don't -- the gigabytes on their computers wouldn't handle the amount of gigabytes that I was trying to send, so we needed to make a separate DVD and send it by mail to him, that was the only communication that I had with him or Lori McConnell about the case as far as an e-mail was concerned.

Q Okay. And how do you know that there were several thousand of your e-mails that weren't deleted?

A Because the news media said they were reading 3 or 4,000 of my e-mails to find out what I had said or didn't say to people within the department about Daniel Holtzclaw.

Q Okay. So that number is coming from some news media report is what you're saying; right?

A Yes.

Q Do you know at the time you retired how many e-mails were on your server?

A I don't know.

Q Was it more than 3,000?

A Ma'am, I have no idea.

Q Okay. Were your personnel records, do you know, were they the topic of the hearings that were held in the summer of 2017?

Summary of Opinions

Michael J. Spence, Ph.D.

I. Introduction and Summary of Qualifications

1. I received my Bachelors of Science and Masters of Science degrees in Microbiology from the University of Texas at El Paso in 1983 and 1985, respectively. In December 1990, I earned my doctorate degree in Molecular Biology from New Mexico State University. From 1991 through early 2003, I worked in DNA research—predominantly cancer research—at the University of Vermont-Department of Molecular Genetics (Burlington, VT), and the Boise V.A. Medical Center (Boise, ID).

2. From May 2003 through May 2007, I trained and worked as a Forensic Biologist with the Indiana State Police (ISP), Evansville Regional Laboratory. For the next eight months, I served as the interim Technical Manager of Forensic Testing Laboratories, a start-up forensic DNA analysis company—located in Las Cruces, New Mexico.

3. In February 2008, I founded Spence Forensic Resources. For the past twelve years, I have been providing my services as a Forensic DNA Consultant—operating out of Las Cruces, New Mexico. I have reviewed over 1050 cases involving the investigation of forensic biology and DNA. These cases have originated from over 90 different forensic DNA laboratories located in thirty U.S. states. I have been qualified and testified as an expert DNA witness in 137 trials/hearings in Indiana, New Mexico, Texas, Arizona, Maryland, Colorado, Michigan, South Carolina, Florida, California, Iowa, Oklahoma, Louisiana, and Arkansas. My Curriculum Vitae has been provided **(Exhibit 1)**.

4. The Daniel Holtzclaw case was first brought to my attention in April, 2016. Appellate counsel representing Officer Holtzclaw expressed an interest in utilizing my expertise in forensic biology/DNA to examine various documents. These documents included, but were not limited to the following: Forensic Examination Reports—released by the Oklahoma City Police Department (OCPD) Crime Laboratory, analyst bench notes, worksheets from evidence examination, DNA extraction and quantification, electropherograms—which are graphical printouts of the DNA data, population statistical calculations, law enforcement investigative reports, and trial testimony transcripts and evidence. After completing my examination of these documents, I was asked by counsel for the defense if I had an opinion as to whether the State's DNA analyst had testified in a manner which was consistent with the forensic biology/DNA data. Also, in recognition of the fact that no DNA expert testified for the defense, I was asked whether or not additional facts could have been presented, for clarifying the position of the defense. My assessments were summarized in an appellate affidavit that was released on January 30, 2017. A copy of this affidavit is provided **(Exhibit 2)**.

5. On March 20, 2020, I received a request to consider being listed as a forensic DNA expert witness for Daniel Holtzclaw—regarding federal civil rights lawsuits that are scheduled to be heard later in 2020. I accepted this request. Upon my agreement to assist Mr. Holtzclaw with the scientific aspects of the pending legal processes, I was provided with additional materials to facilitate preparation of this Summary of Opinions. A portion of the newly accumulated information bears relevance to processes that have occurred after the release of my January, 2017, appellate affidavit. The following is an updated assessment of the case components, and a summary of my anticipated opinions that will be covered during the legal processes scheduled in the coming months.

II. Essential scientific components facilitating the conviction of Officer Holtzclaw

6. The scientific components that facilitated the conviction of Daniel Holtzclaw centered upon results reported from four evidence items: **Item 17Q1**, **Item 17Q2**, **Item 17Q3**, and **Item 17Q4**. These were swabs collected from the outer and inner surfaces of the fly located on the dark blue uniform pants collected from Officer Holtzclaw. A complaining witness, Ms. Adaira Gardner, made a statement to investigators, alleging that she had been digitally and vaginally assaulted by the defendant—at about 9:30 p.m., on June 17, 2014. The duration of the alleged vaginal assault was approximately 10 minutes, through the fly of Officer Holtzclaw's unzipped—but still buckled—uniform pants. The presence of DNA from Ms. Gardner within the results from the above-listed evidence swabs has never been in dispute. Beyond the presence of her DNA, a multitude of perplexing observations were voiced at the trial of Daniel Holtzclaw. The scientific inaccuracy of those courtroom representations was even more troubling.

III. Three instances of scientific perjury—relevant to the trial of Daniel Holtzclaw

7. **Perjury—regarding misguided assertions of "very possible" vaginal secretions**: As part of her sworn testimony, the reporting OCPD analyst, Ms. Elaine Taylor, advised the jury—regarding an alleged rape—as follows: **"A young woman of her age would be very likely to have quite a bit of lubrication"**. Further, Ms. Taylor testified as follows: **"…that lubrication could transfer cells…"** (see Page 4065, lines 18-20). Refer to the March 21, 2019, deposition conducted with the OCPD DNA Laboratory Manager, Mr. Campbell Ruddock. In that deposition, Mr. Ruddock (Ms. Taylor's supervisor) was questioned by the attorney—Ms. Kathleen Zellner, (Page 40-41): **Ms. Zellner: "Do you think that a scientist testifying about the biological capability of a 17-year-old to produce lubrication is within the realm of that scientist's expertise?" Ruddock: "No. No, I don't. As a DNA analyst we're really encapsulated within DNA, our ability to get a profile from DNA." Zellner continued: "...would that be beyond the purview of what a scientist should be testifying about?" Ruddock: "It's definitely not something I would include in the testimony."**

8. Further into Ms. Taylor's trial testimony, her enormously irresponsible statements—regarding vaginal lubrication—were reiterated at the end of Page 4073 (lines 20-24). Counsel for the prosecution asked: **"Does that fact and this evidence also contribute to your opinion about when discussing contact DNA it is much more likely for it to be transferred if the epithelial cells are contained in a liquid such as vaginal fluid?"** Ms. Taylor's response: **"That's a very good possibility."** Doubling down on this solicitation of perjury, the prosecution revisited this key issue during closing arguments (Page 4307, lines 8-13), by referring to the presence of biological material from Ms. Gardner as follows: **"…the most important thing about Adaira Gardner is the fact that DNA from the walls of her vagina was transferred in vaginal fluids onto the outside and inside—not of his pockets, not of his cuff, not where he sits, but of the exact location she says his penis came in contact."**

9. Again, the commentaries outlined above—regarding imaginary vaginal secretions—were presented to the Holtzclaw trial jury, without ***any*** scientific support. After the trial, on February 5, 2016, the prosecutor spoke to a journalist with ***KOKO 5 News***, Oklahoma City—Ms. Erielle Reshef—and asserted the following **(Exhibit 3)**: **"The skin cells were transferred through the body fluids of a 17-year-old girl after he raped her. That's what the evidence was. That's what the jury heard and certainly that's what they convicted him of. They [the defense] tried to explain DNA from a 17-year-old girl that ends up inside his pants at the areas where his privates are. Quite frankly, their explanation was not believable because you can't explain that."** On December 13, 2016, the prosecutor voiced similar statements, this time with Oklahoma City ***News 4*** journalist—Ms. Ali Meyer **(Exhibit 4)**: **"The fluid containing the skin cells is absorbed into the pants. That's what we have. If Mr. Holtzclaw or his supporters are advocating that there is a test that determines that this is vaginal fluid, they are lying. There is no test that does that."** Unfortunately, this prosecutor lacks a rudimentary knowledge of forensic biology/DNA. Consequently, his statements to media sources were profoundly flawed and misleading. Within forensic biology/DNA testing facilities across the U.S., there is indeed a common, presumptive strategy for assessing the presence of vaginal secretions. Crime lab analysts can examine the surfaces of various evidence items, using multiple-wavelength light sources. With very few exceptions, **A**lternate **L**ight **S**ource (ALS) instruments are routinely used to illuminate visible fluorescence on various surfaces. These areas reveal clues toward the presence of stains that might be vaginal secretions, or might be other body fluids. During the investigation of Officer Holtzclaw's dark blue uniform pants, Ms. Taylor inspected the fly area of those pants—using a source of bright light and a magnifying lens (Page 4084, lines 2-4). She observed absolutely ***no*** stains or discolorations. Efforts are underway to gather a number of photographs—at the highest resolution—showing the crumpled up pants, as well as close up photos of the fly area (**all photos are designated as Exhibit 5**). Despite having an expensive ALS instrument at her fingertips (estimated cost=$22,112), Ms. Taylor—inexplicably—chose ***not*** to utilize this resource.

While ALS illumination can provide only a 'presumptive' positive test result, these instruments are extremely unlikely to provide **'false negative'** results—when a vaginal secretion deposit is genuinely present on the target area. Consequently, one is compelled to ask: **"Why didn't the OCPD analyst simply go ahead and check the fly area of the uniform pants—using ALS?"** The troubling answer is as follows: In the event that the results had indicated a **'positive'** fluorescence stain, that may have been dismissed as a false positive—perhaps due to a trace quantity of urine. However, in the event that the examination revealed a complete lack of any fluorescence, that result would have deeply undermined any future plans for courtroom speculation that ***imaginary*** vaginal secretions were present on the uniform pants—supporting the theory of a crime.

10. Refer to the 2010 article authored by Dr. John Butler and Dr. Carolyn R. Hill, bearing the title: **"Scientific Issues with Low Amounts of DNA" (Exhibit 6)**. Within this peer-reviewed article, these authors describe what is universally known in forensic biology/DNA analysis as the **"Stop Testing Approach"**. This approach stems from the concerns of crime lab managers and analysts—that running a specific test might have little value toward revealing incriminating results. On the flip side, a negative result could undermine the successful pursuit of a conviction. Ms. Taylor adeptly avoided any negative ALS result—which would have been unfavorable for the prosecution. Rather than risk the ***only*** useful test that could illuminate the presence/absence of vaginal secretions, the OCPD Crime Lab chose to **Stop Testing**. Ms. Taylor then proceeded to perjure herself with statements that vaginal secretions were most likely present. These statements were made under oath, despite the fact that her initial observation of the pants—under bright light, with a magnifying glass—had failed to reveal any hint of discolorations. In the event that the opposition argues that the lead author of this **'Stop Testing'** publication, Dr. John Butler, is either an unqualified scientist, or a proponent for defense causes, please note that such assertions could not be further from the truth. Dr. Butler is currently a fellow at the National Institute of Standards and Technology (NIST), and is serving as the NIST Vice-Chair on the Commission of Forensic Science. Dr. Butler also serves on the Scientific Working Group on DNA Analysis Methods (SWGDAM). This internationally respected scientist has written several textbooks on forensic DNA typing, covering all aspects of the underlying molecular genetic methods, the application to forensic casework, and bio-statistical interpretation of results. Dr. Butler serves as the Forensic DNA Section Editor for the Encyclopedia of Forensic Sciences (2nd Edition). Among many other awards, in 2003, Dr. Butler received the distinguished Scientific Prize of the International Society for Forensic Genetics.

11. **Principles of DNA Transfer:** Today's remarkably sensitive technology can detect trace DNA/low copy number (LCN) DNA quantities on a multitude of surfaces found within any crime scene. The same holds true, regarding surfaces within any residence, workplace, or vehicle, etc.—where no crime has occurred. Over a century ago, Professor Edmond Locard established the world's first forensic science lab.

Dr. Locard postulated the importance of transfer events, in the context of criminal case investigations. His ideas evolved into the **Locard Exchange Principle**—stating that **"Every contact leaves a trace."** Locard's principle applies more appropriately to modern DNA analysis than its application toward the detection of any other form of trace evidence. Today's state-of-the-art DNA detection technology can produce a full DNA profile from less than ½ of one billionth of a gram of DNA. In order to recover this much DNA, a crime lab analyst needs fewer than 100 cells. A single drop of human blood contains approximately 400,000 DNA-containing cells. A single drop of saliva contains approximately 500,000 salivary epithelial cells. A single drop of semen contains approximately 3 million spermatozoa. Most applicable to the investigation into allegations targeting Officer Holtzclaw, the average human being, from head-to-toe, sheds approximately 2 million skin cells, ***during the course of a single minute***. Revisiting the December 13, 2016, interview with Ms. Ali Meyer **(Exhibit 4)**, the Daniel Holtzclaw trial prosecutor asserted the following: **"If what they are trying to get people to believe, which is not accurate, is that it (DNA) could transfer from a purse, to hands, to pants, to inside of pants, uh, significantly, Daniel Holtzclaw's own DNA was not found on the inside of his uniform pants. I think that speaks probably louder than anything I could argue as to the ability of someone's skin cells from their hands to get transferred to a piece of fabric."** Again, the individual offering these baseless, misguided statements lacks ***any*** rudimentary knowledge that is required for understanding how biological material might be deposited onto evidence—let alone the proper collection and testing of that evidence. The motivation for disingenuously claiming that Daniel Holtzclaw's DNA was not on the fly of his own uniform pants, was to manipulate jurors into believing that ordinary, nonintimate DNA transfer events are exceptionally improbable. This notion is further discredited below.

12. Refer to a recent, comprehensive review of criminal casework and DNA transfer events **(Exhibit 7)**. This peer-reviewed 2019 article cites **298** previous works of research, and is entitled: **"DNA transfer in forensic science: A review"**. Within the abstract of this review, van Oorschot, et al., stated that: **"Understanding the variables impacting DNA transfer, persistence, prevalence and recovery (DNA-TPPR) has become increasingly relevant in investigations of criminal activities to provide opinion on how the DNA of a person of interest became present within the sample collected."** Further, the authors emphasized: **"The discovery that DNA can be detected from non-visible biological material left on a surface merely through touching it by hand, and the extrapolation of this observation to contact with skin in general, drastically broadened the types of items that could be targeted to obtain DNA profiles and the variety of situations in which DNA profiling could be applied. This discovery of the ability to generate profiles from touched objects was initially met with *disbelief* by many within the forensic community, but once verified, became a welcome tool for law enforcement agencies. Within several jurisdictions, samples collected from touched objects now represent more than half the total number of samples processed for DNA profiling."**

Apparently, the Holtzclaw trial prosecutor, acting as a self-appointed authority on DNA transfer, can be counted as one of the sparse few individuals who continue to adhere to their **"disbelief"** in the ability of modern technology to generate forensic DNA profiles from objects that have merely been touched. Refer to the 2016 peer-reviewed article from S. Jones et al., in **Science and Justice**, entitled ***"DNA transfer through nonintimate social contact"***, **(Exhibit 8).** Profoundly applicable to the Holtzclaw case, the authors state that: **"…in those allegations where the complainant and suspect are known to have been in contact with each other prior to the alleged incident, it is important to know whether or not findings support an allegation of sexual intercourse as opposed to nonintimate contact."** The authors also pointed out that: **"…female DNA is detectable on the penis of a male following sexual intercourse after a period of 24 hours has elapsed."** The authors also noted that after two minutes of unprotected sexual intercourse without ejaculation, the DNA obtained from the male's underpants **"…was the result of a secondary transfer of female vaginal material via the penis. This is expected to have comprised a wet transfer of vaginal material (and visible staining was found on the underwear)."** In contrast, the authors reported as follows: **"In this study, no matching female DNA was detected on any of the penile samples taken 6 hours after the staged nonintimate social contact events.** The authors also emphasized the following: **"...no matching female DNA was detected on the inside front of the 44 items of male underwear used in this research following staged contact of a nonintimate nature and subsequent secondary transfer to the penis (during simulated urination). In contrast, DNA matching the female participant was detected in this area of underwear worn following unprotected sexual intercourse."** And **"visible staining was found on the underwear"** after only two minutes of sexual intercourse without ejaculation. Unfortunately, the investigation team assigned to the Holtzclaw case collected ***only*** the uniform pants from the accused officer, and never bothered to collect the most vital items of evidence—his underwear, and a swab sample from his penis. The authors of the Jones et al. article summarized their results—in part—as follows: **"...DNA can occasionally transfer to the waistband and outside front of underwear worn by a male following staged nonintimate social contact." The authors also noted that "DNA corresponding to the DNA profile of the female participant was detected on four of the 30 penile shaft samples."** Again, it is vital to emphasize that Detective Davis and Detective Gregory collected Officer Holtzclaw's pants—precisely 20 hours and 43 minutes after the alleged assault of Ms. Gardner. It is puzzling that these investigators were somehow content with confiscating a fundamentally uninformative pair of pants—rather than targeting the profoundly more useful samples from the man's underwear and genital area.

13. **California v. Lukis Anderson: Scientific Proof of DNA Transfer:** Despite the mountains of forensic research initiatives—establishing that DNA transfer can play a significant role in the landscape of any investigation—the disbelievers of this fact were not fully disproven until the latter part of 2012. On November 29, 2012, a group of

thieves invaded a mansion in Monte Sereno, California, about 10 miles southwest of San Jose. The intruders tied up the owner of the home, and placed duct tape around his mouth/nose area. The perpetrators gathered valuables, and fled the scene. When law enforcement officers and paramedics arrived at the home, they realized that excessive duct tape had caused the homeowner to suffocate. DNA results were recovered from various evidence items. Most notably, a complete DNA profile— found on the fingernails of the murder victim—provided a CODIS database hit, and a perfect match to Mr. Lukis Anderson. In the fall of 2012, Lukis was a homeless, hardcore alcoholic, who spent the majority of his time wandering the streets of downtown San Jose, and hustling for spare change. Lukis and other individuals were charged with the homicide. After Lukis spent the next several weeks in jail, a series of unexpected revelations began changing the landscape of the investigation. Upon reviewing records from the evening of the home invasion/homicide (November 29, 2012), the defense team—working on behalf of Lukis—uncovered the following series of events: **1)** Lukis consumed an enormous quantity of alcohol that evening; **2)** He collapsed within an aisle located in a downtown San Jose market; **3)** Lukis was transported in an ambulance, to the Santa Clara Valley Medical Center; **4)** The near-comatose man spent that entire night detoxing at the medical facility: **5)** Lukis was not discharged until the morning of November 30th—many hours after the home invasion/homicide had taken place—ten miles away—in Monte Sereno. To be clear, the time frame of this detox event spanned long before, and long after the time frame of the home invasion, and the murder. Ultimately, yet another careful review of the medical records revealed that there were two names—two paramedics—who administered aid to the nearly comatose Lukis Anderson, in downtown San Jose. Three hours later, those same two names appeared again—on documents from the initial response at the mansion where the home invasion/homicide had occurred. There is no simple explanation—as to precisely ***how*** the contact with the paramedics, their fingers/gloves, their uniforms, their medical instruments, vectored a 10-mile DNA transfer event from San Jose to Monte Sereno. It is especially baffling, considering the 3-hour time delay between the call to provide aid to Lukis, and the call to the scene of the homicide.

14. During the course of the past five years, I have been writing/updating a book chapter that bears the title: **"Forensic Use of DNA"**. This will be **Chapter 8**, within a 3-volume reference set, entitled: **"The Litigator's Handbook on Forensic Medicine, Psychiatry and Psychology" (Exhibit 9)**. This collection of works is projected to go to press—via Thomson-Reuters-West—during the Fall of 2020. My 55,200-word chapter includes sections discussing DNA transfer events, the Locard Exchange Principle, the 2019 review article from Roland van Oorschot, et al., the Lukis Anderson case, and the illuminating contents of Page 36. This page, back in 2015, and at this very moment, continues to be worded as follows: **"As the frosty weather begins to dominate each winter, litigators should devote some time for a few observations. Take a stroll through your local shopping mall. Visit the homes of some friends, family, or neighbors. Numerous nasal cavities are draining.**

Infected individuals are coughing and sneezing. Crumpled up facial tissues exist in abundance. Although we cannot see them, we know that common cold and influenza viruses are spread from hand-to-surface and hand-to-hand. Trillions of viral particles are spread by infected individuals to door handles, telephones, computer keyboards, car keys, steering wheels, stairway railings, currency, vending machines, TV remote controls, pens, pencils, clothing, and bedding. The list seems endless. If a person is not sufficiently cautious, it only takes a number of days for viruses to replicate themselves in the human respiratory system. In the eyes of the average person, the structure and mobility of DNA differs marginally from the structure and mobility of viruses. Although our genetic molecules are not at all invasive and infective, DNA and viruses are quite similar in that they are both submicroscopic clumps of matter. Transfer events do indeed occur with both of these forms of matter in much the same way. Any person who argues against the prevalence of DNA transfer events in our homes, our workplaces, our vehicles, and within crime scenes, must also doubt that infectious agents are able to spread among human populations. Such an argument is intuitively frivolous." Consider that this section of a book chapter on DNA was written ***before*** mainstream society had ever heard of COVID-19—and long before our world and countless economies have been turned upside down by the 7000-mile spread of this terrible infectious agent—from Wuhan, China, to the rest of the world. We have all heard—during the Holtzclaw trial—the argument that a vaginal secretion transfer of DNA is much more plausible—as opposed to an incidental, nonintimate spread of the invisible molecular material. In light of our current pandemic crisis, how convincing does this vaginal secretion nonsense sound now?

15. **Events during contact with the key complaining witness—Ms. Gardner:** Refer to the May 22, 2019, deposition with Ms. Adaira Gardner (Pages 56-57). The witness responded to a question about the initial traffic stop, executed by Officer Holtzclaw. Ms. Gardner stated that **"…he (Holtzclaw) searched us all and let us go."** The witness was referring to searches of herself, as well as her companions, Ms. Melodie Coleman, and Mr. Nathaniel John Davis. Later, Ms. Gardner stated: **"He searched all three of us, so I don't know how long it would take to search three people and run their names. Probably around 15 minutes, give or take."** Later she added**: "He searched my purse on that occasion."** All of the above comments on the traffic stop were corroborated within a 2019 deposition from Daniel Holtzclaw himself. In addition to the initial pat search, Officer Holtzclaw subsequently searched Ms. Gardner a second time, before allowing her to enter his police cruiser. Refer to a video that has been provided **(Exhibit 10)**, demonstrating the process by which Officer Holtzclaw was trained to conduct routine pat searches. Clearly, these searches require skin-to-skin contact events. It is notable that neither Ms. Coleman, nor Mr. Davis, were ever required to provide a DNA reference sample—for comparison to the unaccounted for genetic profiles discovered on the fly area of Holtzclaw's uniform pants.

16. **Manipulation of Ms. Adaira Gardner's testimony—regarding vaginal secretions:** Much later in her May 22, 2019, deposition (Pages 146-147), Ms. Gardner addressed the moments leading up to her testimony at the trial of Daniel Holtzclaw. Upon being approached by the prosecutor, Ms. Gardner stated as follows: **"Gayland Gieger came to me and he told me I believe you, out of all the other women I believe you. And I said why. And he said, because we were looking for a match of DNA that we found inside his police pants and it was you, we found your vaginal fluid on the inside and outside his police pants."**

17. A key question within the Daniel Holtzclaw investigation and trial was as follows: Was the ***quantity*** of Ms. Gardner's DNA on the fly of the uniform pants suggestive of vaginal secretions—and a sexual assault, or was the DNA yield more suggestive of an ordinary, nonintimate DNA transfer event? Let us review the female DNA quantities recovered from **Item 17Q1**, **Item 17Q2**, **Item 17Q3**, and **Item 17Q4**. First, note that from **Items 17Q1** and **17Q2**, Ms. Taylor measured only the total DNA—with no estimation of the male DNA contribution within those samples. While examination of the electropherogram (egram) from **17Q2** showed male DNA, data from the **17Q1** egram revealed that the male contribution was actually ***greater*** than the female contribution. Ms. Taylor's analysis provided an estimation of 39.9 nanograms (ng) of total DNA from **Item 17Q1**. Ms. Gardner's DNA contribution was less than 20 ng. On one hand, Ms. Taylor disingenuously testified that Daniel Holtzclaw could be excluded from ***all four*** fly areas on the uniform pants. On the other hand, counsel for the defense at the Holtzclaw trial failed to inquire about any precise DNA quantification estimates. Most troubling, counsel for the defense never explored—through cross-examination of Ms. Taylor—any explanation of this predominant male—revealed on **Item 17Q1**. These ineffective counsel errors will be corrected in the coming months. First, the **Item 17Q1** DNA yield will be re-examined. This time, the proper technology will be utilized, for the estimation of ***both*** the total DNA—as well as the ***male*** DNA. This will—for the first time—confirm what we already know—that there is more male DNA present, by comparison to the estimation of DNA from Ms. Gardner. This will also further address the unexplored questions: **"Who is this major male, and how did his DNA end up on the fly of a law enforcement officer's uniform pants?"**

18. The unidentified male DNA recovered from the **Item 17Q1** area of the fly must have resulted from an incidental, nonintimate DNA transfer event, rather than a crime. Male DNA cannot be correlated with vaginal secretions—as males do not produce those. It is faulty to conclude—on one hand—that 20 ng of male DNA is from a routine, nonintimate contact event, whereas a similar quantity of DNA from Ms. Gardner somehow constitutes ***proof of a sexual assault***. Refer to the Excel spreadsheet that has been provided **(Exhibit 11)**. Note that this table lists the ng amounts of female DNA recovered from forty-three case items, from over 20 different actual cases that I have reviewed over the past 3-4 years. Some samples are marked on the table as **"vaginal swabs"**, which would certainly contain vaginal secretions.

Other listed samples may have been designated as swabs from intimate female regions such as external genital, mons pubis, labia majora, or labia minora. All of these samples have been categorized as **"labial swabs"**. When Sexual Assault Nurse Examiners (SANE) nurses collect intimate swabs from females, the intention is to maximize recovery of any male DNA. The SANE nurse—logically—must use care to minimize the recovery of female-derived vaginal secretions or surface skin cells. Some samples listed on the spreadsheet were collected as cuttings/swabs from the inner crotch areas of female undergarments. While vaginal secretions are known to routinely accumulate on genital areas of intimate clothing items, it is not uncommon to observe that the garments appear to be freshly laundered. A clean item may have been worn for only a short time frame. As case items vary, female DNA quantities vary, and the presence of vaginal secretions, on labial and clothing samples can vary dramatically. An assessment of the female DNA quantities recovered from all 43 evidence samples reveals a median value of **728 ng**. The same collection of results reveals a mean value of **1581 ng**. Those dedicated to the defense of Officer Daniel Holtzclaw wish to encourage the OCPD Crime Laboratory to conduct similar, random surveys of female DNA yield results. Such surveys should be from a comprehensive list of forensic DNA extraction yields comprised of female intimate area swabs, and garments coming into contact with the external genital area. Ideally, a survey should be a ***blind study*** of female DNA yield results, originating from numerous cases, and numerous labs. Due to the remarkably DNA-rich nature of vaginal secretions, parallel **median** and **mean** values will be reproduced from such studies.

19. Note that, during the Holtzclaw investigation, a swab sample was collected from the passenger side, rear, interior door handle from Officer Holtzclaw's police cruiser. This was **Item 6A**—which provided Ms. Elaine Taylor with a total DNA yield of **43 ng**. Keep in mind that this amount of DNA originated from a surface that—logically—is expected to contain 'handling DNA'—and ***no*** body fluids. Also consider that the female DNA on the four areas of the fly area of the uniform pants, ranged from ***10 ng to 23 ng***. These amounts, taken together with the median/mean results on **Exhibit 11**, confirms that it is perjury—to assert that vaginal secretions are **"very possible"**.

IV. 2nd of 3 instances of scientific perjury—relevant to the trial of Daniel Holtzclaw

20. **Perjury—asserting the absence of male DNA on *any one* of the fly areas:** Once the total DNA/male DNA quantifications have been conducted on **Item 17Q1**, as described in **Section 17**, the defense will subject the DNA samples to male-based YSTR genetic typing. This initiative will affirm that an unidentified male is the major contributor in the **Item 17Q1** DNA mixture—by comparison to Ms. Adaira Gardner's DNA. The analysis will also establish the presence of male DNA from **Item 17Q3** and **Item 17Q4**. This will open the door for DNA comparisons with Mr. Nathaniel John Davis, as well as with Detective Rocky Gregory. Additionally, YSTR typing can confirm any instances where more than one source of male DNA is present.

Unfortunately, YSTR typing results—by themselves—are not able to reconstruct the precise mechanism by which numerous nanograms of DNA from unidentified males have been incidentally transferred onto any of the fly areas of Officer Holtzclaw's uniform pants.

21. Similar to **Item 17Q1**, **Item 17Q2** was assessed for DNA yield, using a system that estimated only the ***total*** quantity of DNA (no male DNA estimate). It may not be necessary for the defense to re-quantify the DNA from **Item 17Q2**. Ms. Taylor's total DNA estimate was **23.2 ng**. Clearly, male DNA was present—as the egram revealed an unmistakable Y-chromosome signal at the Amelogenin locus. However, the majority of the sample originated from female DNA contributions (including Ms. Gardner). Keeping this in mind, it was profoundly irresponsible to testify that Daniel Holtzclaw is **"excluded"** as a contributor to **Item 17Q2**. This testimony from the OCPD analyst contradicted her official report—released on November 12, 2014, that the minor results from **Item 17Q2** were inconclusive. Interestingly, Ms. Taylor's testimony excluding Officer Holtzclaw as a contributor within all four areas of the fly on his uniform pants actually contradicted an earlier portion of her trial testimony—when the prosecution asked her to elaborate on the **Item 17Q2** Y-chromosome signal at the Amelogenin locus (Page 4056, lines 19-21). Ms. Taylor: **"…the statement that best suits that minor contributor [at 17Q2] is that it is not suitable for comparison purposes."** During her more recent deposition, Ms. Taylor further admitted to these contradictions, acknowledging the following: **"If there's insufficient genetic data, you do not exclude them because there's not enough data."**

22. Regarding **Item 17Q3** and **Item 17Q4**, Ms. Taylor's perjury continued, as she testified that male DNA was absent from both of these areas of the fly on the uniform pants. The trial transcript (at Page 4072, lines 19-25) shows that Ms. Taylor was asked by the prosecution: **"Did you find evidence of male DNA at either one of those locations…?"** Ms. Taylor: **"There's no Y so the answer is no."** The prosecution: **"There's none there. So even though Officer Holtzclaw was wearing these pants, his DNA is not inside them; correct?"** Ms. Taylor: **"That is correct."** This testimony was fraudulent and prejudicial. Refer to the collection of case file materials designated as **Exhibit 12**. First, refer to **Page 2** of the **Item 17Q3** egram, date/time stamped as: **"Fri Oct 02, 2015, 12:09PM, CDT"**. Then, refer to **Page 2** of the **Item 17Q4** egram, date/time stamped as: **"Fri Oct 02, 2015, 12:10PM, CDT"**. While both sets of these DNA typing results show extremely high X chromosome peaks at the Amelogenin locus, note the enormously expansive scale for each egram—shown at the far left extreme of the Amelogenin data panel. Within both egrams, the scale for the Amelogenin locus ranges from 0 to about 6000 or 7000 Relative Fluorescence Units (RFUs). In the event that a low level peak at the Amelogenin Y position was discernable, this broad scale would make it quite challenging to visualize such a signal on the graph.

23. Within **Exhibit 12**, refer to the data sheet entitled: **"qPCR Report For SD14-273"**. This document reveals the fact that ***0.0102 nanograms/microliter male DNA*** was indeed recovered from **Item 17Q3**. Within this same data sheet, there is no doubt that ***0.0117 nanograms/microliter male DNA*** was indeed recovered from **Item 17Q4**. Once again, Ms. Taylor committed perjury in the presence of Officer Holtzclaw's jury, by creating a smokescreen that concealed the actual finding of ***male DNA***, and testifying in contradiction to this unequivocal fact.

V. 3rd of 3 instances of scientific perjury—relevant to the trial of Daniel Holtzclaw

24. **Perjury—testimony that Holtzclaw's DNA is absent from all areas of the fly:** One might intuitively question why it will be illuminating to establish that DNA from Daniel Holtzclaw is most likely present on the **Item 17Q4** area of his own uniform pants. First, it is clear that the prosecution collaborated with Ms. Taylor to provide the Holtzclaw trial jury with the misguided assertion that the incidental transfer of Daniel's DNA to the fly on his own pants simply did not happen. Next, the jury was subjected to a twisted, counterintuitive proclamation that—since one incidental DNA transfer event did not happen with Daniel—it would be preposterous for anyone to assume that Ms. Gardner's DNA may have been deposited through a similar, nonintimate event. By invalidating any instances of incidental DNA transfer—in the eyes of the prosecution—jurors could assume that Ms. Gardner's DNA must have been transferred through vaginal secretions, as a consequence of a sexual assault. Recall that—in an interview on December 13, 2016, the prosecutor opined: **"…Daniel Holtzclaw's own DNA was not found on the inside of his uniform pants. I think that speaks probably louder than anything I could argue as to the ability of someone's skin cells from their hands to get transferred to a piece of fabric."** As emphasized in **Section 22**, Ms. Taylor testified for the prosecution, regarding the fictional assertion that Daniel Holtzclaw is excluded as a contributor to all areas of the fly on his own uniform pants. While such an assertion is faulty, note that—within **Exhibit 12**—the **Item 17Q4** DNA mixture reported by Ms. Taylor showed a male contribution, and ten alleles could not have originated from Ms. Adaira Gardner. Considering that ***nine*** of these ten allelic signals were consistent with the DNA from Daniel Holtzclaw, the defense will arrange for further analysis of the raw STR data generated from the analysis of **Item 17Q4**.

25. During the latter part of 2015, the DNA mixture analysis conducted by Ms. Taylor and the OCPD Crime Laboratory, centering on **Items 17Q1, 17Q2, 17Q3,** and **17Q4**, seemed reasonably appropriate for that time frame. However, the strategies utilized—throughout the U.S.—for deconvolution of DNA mixtures has rapidly been implicated as defective and obsolete. For verification of this fact, refer to published information on the MIX05 and MIX13 studies conducted by the National Institute of Standards and Technology (NIST). These studies were spearheaded by Dr. John Butler. Specifically, refer to the 2018 peer-reviewed publication: John M. Butler, Margaret C. Kline, and Michael D. Coble, entitled: ***"NIST Interlaboratory studies involving DNA mixtures (MIX05 and MIX13): Variation observed and lessons learned"***,

Forensic Science International: Genetics, *81-94* (**Exhibit 13**). During the very month that Officer Daniel Holtzclaw was subjected to his trial—and convicted—the Federal Bureau of Investigation (FBI) Crime Laboratory actually abandoned what is referred to as their **'binary threshold'** strategy for evaluating DNA mixtures. This is the very same 2015 methodology that was used by the OCPD, to assess the DNA mixtures discovered on the fly of the uniform pants. Most important, this obsolete method was used to improperly interpret the DNA mixture found on **Item 17Q4**.

26. In order to replace the dreadful inadequacies and misinterpretations, stemming from the faulty **'binary'** method of DNA mixture analysis, the FBI, NIST, and SWGDAM have embraced improved technology, referred to as probabilistic genotyping (PG) software. The objective of PG DNA mixture analysis is to begin with the diverse assortment of allelic signals, emerging from the DNA typing process. What follows is a computer-driven process of separating out the likely individual genetic types within those mixtures. One of the developers of a leading PG analysis software (**TrueAllele®**) is Cybergenetics—based out of Pittsburgh, PA. Dr. Mark W. Perlin is the Chief Scientific and Executive Officer at this company.

27. In December, 2015, the FBI Crime Lab abandoned the binary methodology. Our nation's crime lab now utilizes **STRmix™**, a PG analytical software—that was developed in competition with **TrueAllele®**. **STRmix™** was developed at the New Zealand Institute of Environmental Science and Research (ESR). Creation of this PG software is credited to Dr. John Buckleton and Dr. Jo-Anne Bright, forensic scientists who collaborated with Duncan Taylor, from Forensic Science South Australia (FSSA). The **STRmix™** website assures us as follows: **"STRmix™ is expert forensic software that can resolve previously unresolvable mixed DNA profiles. Developed by global leaders in the field, it uses a fully continuous approach for DNA profile interpretation, resolving complex DNA mixtures worldwide."**

28. Exploration of the website: **https://www.strmix.com/** shows us that **STRmix™** can be used to resolve relatively simple DNA mixtures, as well as complex mixtures, prior to factoring in the data from any known reference samples. Using well-established statistical methods, the software builds millions of conceptual DNA profiles. It grades these profiles against the evidence sample, finding the combinations that logically justify the observations. Only after this has been accomplished, a range of Likelihood Ratio (LR) options are used for subsequent comparisons to known reference profiles. Specifically, **STRmix™** uses a Markov Chain Monte Carlo (MCMC) engine to model peak heights of potential allelic data. The software also models various types of apparent stutter peak data, and factors in the possibility of allelic drop out events. All of these functions are performed rapidly by **STRmix™**. The MCMC statistical approach provides a mechanism of sampling from any complicated distribution of data. Complicated distributions—such as the myriad of peak heights generated within a DNA mixture e-gram landscape—can be enormously challenging for probability calculations.

Due to the fact that the performance of **STRmix™** is being supported by comprehensive validation studies—with these underlying mathematics readily accessible to forensic DNA experts—the effectiveness of the software can be adequately summarized for jurors. In recent years, PG analysis systems like **STRmix™** and **TrueAllele®** have become universally accepted in the U.S. criminal justice system, and worldwide. Use of this technology to further scrutinize the raw data from **Item 17Q4—**and perhaps other samples from the fly of the uniform pants—will transcend the substandard analysis performed by the OCPD Crime Lab in 2015.

29. The defense team will utilize ***both*** **TrueAllele®** and **STRmix™** for deconvolution of the **Item 17Q4** DNA mixture. Once that has been accomplished, the reporting scientists will factor in the assumption that a portion of the DNA has been contributed by Ms. Adaira Gardner. Each PG software system will then assign a likelihood ratio (LR) calculation that will illuminate a comparison between the prosecution's hypothesis—that the **Item 17Q4** results are a consequence of a random, unidentified individual, versus the Holtzclaw defense hypothesis—that the officer's DNA is obviously present on the fly of his own uniform pants. The weight of these LR calculations will illuminate the degree to which Ms. Elaine Taylor misinterpreted the DNA mixture results from **Item 17Q4**—using the shoddy 2015 methodology. The LR calculations will also expose the degree to which Ms. Taylor and the prosecution collaborated on intentionally misinforming the jurors who were sitting in judgement of Officer Daniel Holtzclaw, during his December 2015 trial.

30. **In Summary:** During the investigation of Officer Daniel Holtzclaw, during his trial, and during the lengthy aftermath of his trial (over 4½ years), many statements have been publicized, regarding the issue that is central to all of the pertinent proceedings. That issue is the perceived plausibility of DNA transfer onto fabric, as a consequence of a sexual assault, versus the perceived plausibility of ordinary, nonintimate transfers of DNA. A portion of the assertions—embracing the former, and disregarding the latter—have been voiced by the prosecution responsible for the December, 2015 trial process. Detectives and supervisors associated with the case have voiced their belief that DNA results from the OCPD Crime Lab confirmed that sexual contact had indeed occurred. Similarly, these individuals have stated their conclusion that it is not possible for casual, nonintimate contact to cause such a transfer event. One detective stated unequivocally, **"I have not worked one sexual assault case, and had transfer DNA."** Another detective opined as follows: **"Transfer DNA is just almost but impossible right now, with what we have."** Most profound, the Oklahoma Court of Criminal Appeals (OCCA) issued an opinion that included the following: **"Taylor testified that, because Appellant was not a contributor to the DNA sample, there was a good possibility that the cells had been in a liquid such as vaginal fluid and transferred to the Appellant's pants."** (Opinion at 36).

During the trial of Officer Daniel Holtzclaw, defense counsel did not question the fact that the sworn testimony from Ms. Taylor contradicted her own case records. The OCPD analyst testified that no male DNA was found on either **Item 17Q3** or **Item 17Q4**. Her records revealed otherwise. The OCPD analyst testified that Officer Holtzclaw was excluded, and could not have contributed DNA to any of the surfaces on the fly of his own uniform pants. This contradicted her ***"inconclusive"*** assessment—regarding **Item 17Q2**—documented in her November 12, 2014 report. These vital contradictions served as a precursor for an illogical and disingenuous assessment of the DNA mixture results—during the prosecution's closing arguments. The closing argument emphasized doubts that Officer Holtzclaw could have inadvertently facilitated a nonintimate secondary transfer of Ms. Gardner's DNA onto the fly of his uniform pants. The rationale for these doubts was the ***imaginary*** absence of male DNA on the fly surfaces, in addition to the reversal from ***inconclusive***, to the inaccurate courtroom assertion that Officer Holtzclaw must suddenly be ***excluded***. The OCPD analyst and the prosecution collaborated in emphasizing that the source of Ms. Gardner's DNA was most likely from the transfer of vaginal secretions during an alleged penile/vaginal sexual assault. These summarized instances of speculation not only contradicted the scientific results, they defied the logic that wearers typically leave DNA on their own frequently used garments. Defense counsel failed to cross-examine Ms. Taylor—regarding the remarkably modest quantities of DNA recovered from **Items 17Q1, 17Q2, 17Q3,** and **17Q4**. This was despite the fact that Ms. Taylor testified to the jury, as follows: **"I quantitate it after it's extracted so I don't overload our system. And I can tell you a quantity."** In the event that a qualified DNA expert had been assertively utilized to assist with the scientific defense of Officer Holtzclaw, the jury would have heard a balance of viewpoints. For example, the jury would have understood that—based upon the scientific literature—the quantities of DNA observed within the samples from the fly of the pants were quite consistent with the expected transfer of epithelial cells during incidental, nonintimate handling events.

It is profoundly irresponsible for any scientist to testify that the transfer of vaginal secretions from an alleged victim, to the fly on a pair of pants, is somehow more probable than other mechanisms of DNA transfer. This is especially true when that same scientist offers this speculation—without the benefit of any scientific hint that such secretions might actually be present, and no DNA quantitative data are available to support such deceptive forms of speculation.

Michael J. Spence, Ph.D.

THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

JANNIE LIGONS, SHANDAYREON HILL, TABATHA BARNES, TERRI MORRIS, SYRITA BOWEN, CARLA JOHNSON, KALA LYLES,	)	
Plaintiffs,	)	
-vs-	)	CASE NO. CIV-16-184-HE
CITY OF OKLAHOMA CITY, a municipal corporation, DANIEL HOLTZCLAW, BILL CITTY, BRIAN BENNETT, ROCKY GREGORY, JOHN AND JANE DOES, all in their individual capacity,	)	
Defendants.	)	

VIDEOTAPED VIDEOCONFERENCE DEPOSITION OF

CAMPBELL ANDREW RUDDOCK

TAKEN ON BEHALF OF THE DEFENDANTS

IN OKLAHOMA CITY, OKLAHOMA

ON MARCH 21, 2019

REPORTED BY: TRENA K. BLOYE, CSR

Q And you would agree with me that there can be biological fluids present on items of evidence and it does not mean that a crime has occurred; correct?

A Yeah. I would agree with that, yeah.

Q Okay. How many reviews -- well, let me -- on your background, let me just go back a little bit.

Have you, yourself, published articles in journals?

A I haven't published any articles. I did author two chapters in a textbook.

Q And is -- what's that? Is it called "The Guide to Forensic DNA Profiling"?

A Yes, I believe so. I wrote a chapter on PCR and another chapter on DNA extraction.

Q Okay. Do you have -- do you know the year that you published those articles?

A Maybe -- I'm not sure, to be honest. I think maybe 2015 or '16.

Q You're familiar with the analyst, Elaine Taylor; correct?

A Yes.

Q And for how many years -- so you were her supervisor while you were at the DNA lab as the DNA manager?

A Yeah. So when I first started at the lab she

was -- she was a senior scientist. I started at a junior level. But eventually I progressed to forensic scientist 2 and promoted to DNA manager, so ultimately I ended up as her supervisor.

Q Do you know about what year you became her supervisor?

A 2011.

Q How many reviews of Elaine Taylor's expert witness testimony have you conducted?

A I'm not really sure. I'd probably estimate it around ten or a dozen.

Q And over what period of time did you conduct those reviews?

A That would be between 2011 and up until her retirement.

Q When is the last review that you conducted of Elaine Taylor's expert witness testimony?

A I believe the last one I did a review on was this one in question. I was -- yeah, I think that was the last one.

Q So you conducted a review of her testimony on the Daniel Holtzclaw case?

A So from -- when I say review, we have two options available to us when we review. We can either go in person and witness the testimony, and that counts

as a review for us; or we can request a transcript, review the transcript, and that also counts as a review.

Q And with the Elaine Taylor expert witness testimony on Holtzclaw, did you do one or the other or both of those?

A I was present for one of her days of testimony. She testified two days and I was present for one of them.

Q And after you heard her testimony did you write up a written review of her testimony?

A No. I believe we just talked about it. That's fairly -- so when I do those in-person reviews, normally what I do is I'll come back, I'll talk to the analyst, we will discuss the testimony. And that's how the review was handled at that time.

Q And what was your assessment of her expert witness testimony in the Holtzclaw case?

MR. SMITH: At which time?

MS. ZELLNER: Either time, any and all.

MR. SMITH: Okay. Well, I --

MS. ZELLNER: Her trial testimony.

MR. SMITH: Understood. But as I have told you previously, we are not getting into his review afterwards. That's a personnel --

MS. ZELLNER: All right. Right. Yeah,

we won't get into the personnel part of it. I'm just talking about the review on the scientific testimony given.

MR. SMITH: Well, I understand. But that was part of his personnel investigation. He did it -- he was there once when she testified and he reviewed her transcript. Do you want to differentiate which one you're asking or what do you want? Because we're not going to talk about --

MS. ZELLNER: Well, I want him to --

MR. SMITH: Go ahead.

MS. ZELLNER: We're not going to talk about -- we're not going to talk about. Can you -- let me ask him.

Q (By Ms. Zellner) Can you separate your review from the personnel assessment review from just her basic testimony at the trial about the scientific conclusions that she told the jury? Can you separate the two?

A I mean, I can recall some of the things we discussed when we came back.

Q Can you tell me some of those?

A So there was a couple of points in the testimony I felt could have been explained clearer. One of those was I was quite concerned about the statistics. That's normally one of the more complicated things any

explanation.

Q Okay. Did you talk to her -- so that was, you know, your input to her about the statistical information she gave the jury. Did you feel that she understood stochastic levels, thresholds --

A I was --

Q -- from that testimony?

A I was concerned that it was something we should probably clear up. I felt like it was -- it came across as confused.

Q Okay.

A Just really in terms of how are you explaining what stochastic threshold is and why do we have one in place.

Q Did you take some remedial measures to get her to better educate herself about stochastic levels? How did you deal with that problem specifically?

A I believe we talked about it moving forward on casework. I'm not sure -- I just can't recall if we discussed any papers. I know we talked about it at length with subsequent casework. You know, any time we get profiles it's a good learning tool to kind of help explain some of those concepts. So that was an ongoing thing we'd talk about during case review.

Q Do you feel like she understood allelic

dropouts?

A I definitely feel like she didn't explain allelic dropout well, or maybe we needed to work on some of the nuances of stochastics and allelic dropout.

Q But when you sat there in the courtroom and you listened to her testimony, which was, you know, making certain conclusions about the evidence, you concurred with the conclusions she had drawn even though her testimony about the stochastic level and the allelic dropouts was unclear, you agreed with the conclusions?

A As far as I can recall from that first time I was present in the courtroom, as I stated, my focus was mostly on how she was presenting the statistical things. Um, I think it felt like some of it was a little confusing. She maybe got to the point of explaining what stochastic was, but it wasn't not clear how she got there to me from what I can recall.

Q Do you think the jury would have been confused hearing it?

A It's possible. I certainly felt --

Q And when a jury -- when a jury is confused about scientific data you would agree with me there is always the possibility that they are going to reach the wrong conclusion, correct, in their verdict?

MR. SMITH: Object to form.

Q (By Ms. Zellner) Over the objection you can answer.

A I mean, I guess it's hard for me to put myself in a juror's position. I mean, logically, if it sounds confusing, yes, there is a possibility, you know, other people are going to find it confusing, too. As a -- I think it's a big concept to grasp in a short period of time of time if you don't know anything about molecular biology, certainly.

Q Do you know who Peter Gill is?

A Yes.

Q What do you -- what do you know about Peter Gill?

A He is a highly regarded member of the community. He's published a lot of work. I certainly remember reading a lot of his papers in my seminal days. And I -- actually, I believe he was employed at the FSS at the same time I was.

Q So you would agree with me, I mean, he's a renowned DNA scientist?

A Absolutely, yes.

Q And have you reviewed his work on the Daniel Holtzclaw case?

A Could you clarify "his work"? I'm not sure what you --

Q Have you reviewed -- he filed an Amicus brief. Have you reviewed that?

A I'm not sure if that falls under --

MR. SMITH: Okay. It sounds like I need to talk to him. Do you mind if we take a break?

MS. ZELLNER: Sure.

VIDEO OPERATOR: Off the record.

MS. ZELLNER: No, not at all. Go ahead.

MR. SMITH: Thank you.

(A break was had.)

VIDEO OPERATOR: Okay. This begins part 2 and we are back on the record.

MR. SMITH: Can you read the question, please.

THE REPORTER: Question, "Have you reviewed -- he filed an Amicus brief. Have you reviewed that?"

MR. SMITH: Ms. Zellner, he reviewed the brief as part of the review that he was asked to do of Ms. Elaine Taylor's testimony and I'm going to object and instruct him not to answer.

MS. ZELLNER: All right. Well, let me just -- I want to ask a followup question to that.

Q (By Ms. Zellner) So Peter Gill and five other scientists have reviewed the DNA documents and testimony

of Ms. Taylor in Daniel Holtzclaw's trial and published their conclusions in a report on "Scientific Issues in the Case of Oklahoma Verse Daniel Holtzclaw By an International Panel of Forensic Experts." That was released on July 25th, 2017.

My question to you is have you -- I'm not asking you to tell me your assessment of the this report, but have you, in fact, at some point reviewed that report on the scientific issues in the Daniel Holtzclaw case?

A Is this report the same as the Amicus brief? Is that the same document you're talking about?

Q Yes, yeah.

A Yes, I believe I have looked at that document. I have looked at the Amicus brief. I just can't remember who authored it. But I --

Q Peter Gill authored it.

A Okay.

Q So when you reviewed that did you have any criticisms of the work that Peter Gill had done?

MR. SMITH: Okay. I'm going to tell him not to answer that, because his criticisms was of Elaine's testimony, and Elaine Taylor, that's part of a personnel investigation. As I told you the court of -- the District Court of Oklahoma County has reviewed that

there anything else in her testimony that you found subpar or deficient or that you wanted to correct?

MR. SMITH: Again, are you talking about right after the testimony or are you talking about based on his review?

MS. ZELLNER: Absolutely.

MR. SMITH: Okay.

MS. ZELLNER: Yeah, I'm talking about right after the testimony.

THE WITNESS: I believe we also discussed trace DNA and just, really, the complexities of trace DNA.

Q (By Ms. Zellner) Tell me about the complexities of trace DNA.

A Well, I'm sure you're aware, one of the biggest problems with trace DNA is you can recover DNA from an item, but it's difficult to tell, you know, how did it get there, how long has it been there for, what did it actually come from. We're very limited in what we can actually say about some forms of DNA. Like we can say we got DNA from this individual, but how it was transferred there or what it actually came from is a difficult topic for us to say with much certainty.

Q And what was it specifically that caused you to have this discussion with Elaine Taylor about trace DNA

after her testimony in the Holtzclaw trial?

MR. SMITH: Object to form. And I'm not instructing him not to answer. It's just object to form. You can answer.

Q (By Ms. Zellner) Over the objection.

A If I recall correctly my personal belief on the contact DNA is it's very important to kind of explain both sides of the -- you know, if we don't know how it got there it's equally as possible to say this could be how it's deposited, this could not be how it's deposited. We just don't know scientifically.

So I think we talked about the kind of nuances of when you're explaining that information to make sure it's kind of weighted clearly. You know, how something got there as opposed to how it didn't get there is kind of weighted equally. We just don't have data for that.

Q And what was it that Elaine Taylor said that caused you to talk to her about explaining both sides of how trace or transfer DNA might end up on an item of evidence?

A Actually, I can't recall other than I believe it was because I felt like there was some confusion as to how it was presented.

Q What was your understanding of any DNA evidence that was presented at Holtzclaw's trial that was

contact DNA in general. So I --

Q And did you find -- since Taylor had the article before she testified, was her testimony consistent with the findings in the article?

A I think the best way for me to describe that would be I felt like it was a little confused.

Q So explain to me -- let's talk about transfer DNA or contact DNA. Does finding someone's DNA profile on, say, an officer's pants when the officer has stopped the person in a traffic stop or whatever, does that indicate there has been a crime committed?

A No. I mean, all that means is we recovered this person's DNA from this item. And that's pretty much what we're limited to say. Unless, of course, you know, if it's blood and we can identify blood then we can say the DNA profile, blood.

But just in general if we get a swab from -- that's perceived to be a contact swab all we can say is we recovered DNA from this item.

Q And would you -- I mean, would you agree with me there could be a totally innocent explanation for the DNA in the Holtzclaw case being on Daniel Holtzclaw 's pants?

MR. SMITH: Object to the form. You can answer it if you understand it.

MS. ZELLNER: Over the --

A Yeah. I mean, I would certainly say that when you're talking about a trace profile, there are multiple explanations of how that could get there. We have no scientific data to support any one of them. So, yeah, certainly any explanation you can give, you have to entertain it's possible.

Q At the time that the testing was done on Holtzclaw's pants was there any test done in the Oklahoma City crime lab for vaginal fluid?

A No, we have never tested for vaginal fluids.

Q And are you aware of any tests that were done prior to the Holtzclaw trial for vaginal fluid in other labs? I'm talking about the Dane stain test, lugols. Were you aware of those tests?

A So I'm aware of them as tests, but it's my understanding they are non-specific for vaginal fluid. There's publications that exist that show -- although they've been used to test for vaginal fluid, they can't say that vaginal fluid is the only cellular material that tests positive under those tests. So in that regard it's more of a presumptive test as opposed to conclusive.

Q So what you're saying is at the time of Holtzclaw's trial there was no definitive test for

But I think that product is no longer being made. We actually tried to buy that on a grant last year and I was told it wasn't available.

Q Are you aware of non-destructive vaginal fluid testing that's being done now in the United States?

A No.

Q Okay. And if that testing were peer reviewed and found to be reliable you would certainly agree with me that that testing ought to be attempted on the remaining evidence, DNA evidence on the Holtzclaw case; correct?

MR. SMITH: Object to the form. You can answer it if you understand it.

A I mean, certainly if there is a peer-reviewed agreed-upon test, and there is a desire to have that item tested with that technology -- I mean, we can't do it in our lab -- but, certainly, I think it should be made available for that testing.

Q (By Ms. Zellner) So going back to Elaine Taylor's testimony at the trial, she testified about the lubrication abilities of a 17-year-old. Do you remember that testimony?

A Vaguely.

Q Right. Do you think that a scientist testifying about the biological capability of a

17-year-old to produce lubrication is within the realm of that scientist's expertise?

A No. No, I don't. As a DNA analyst we're really encapsulated within DNA, our ability to get a profile from DNA. I would kind of look on that as more anecdotal or medical related as opposed to a DNA analyst.

Q And if that's anecdotal or medical would that be beyond the purview of what a scientist should be testifying about?

A It's definitely not something I would include in the testimony.

Q And so when you heard that testimony did you also discuss that with Elaine Taylor, that she was outside of her purview as a scientist, as a DNA scientist?

A Honestly, I can't recall.

Q So you don't recall, as you sit here today, that you actually had a discussion with her about that specific testimony on vaginal lubrication?

A No. I know we discussed, like I said earlier, the kind of given weight to biological fluids, you know, how they got there. You have to be careful in stating that we can't really -- we don't really have the capabilities to say this is how this fluid or this DNA

hypothetical possibilities that you have to entertain with equal weight. Hopefully that's clear.

Q So you would agree to me -- you would agree with me as a scientist that the possibility of vaginal fluid should not have been presented to the Holtzclaw jury since there was no basis for it?

MR. GLASS: Object to the form.

MS. ZELLNER: Over form objection.

A I would say that it should -- if you chose to say vaginal fluids was a possible method that DNA getting there, you should also be clear that it's not the only possibility and that you can't substantiate vaginal fluids was a source of it.

Q (By Ms. Zellner) Right. So I think -- well, I won't go back because you have already answered it.

Now, Elaine Taylor had -- have you read her deposition?

A No.

Q Okay. Has her deposition been discussed with you?

MR. SMITH: Object to the -- well, if it's between you and me, don't answer -- or tell her it's between you and me if we've done that. Otherwise, you can answer it.

A Yeah. Only between myself and Rick.

some time since I read it, so I just kind of wanted to refamiliarize myself with what was in the paper.

Q How did you think that that article related to your deposition?

A So that article, to me, the value I see in this article is it was a summary of all the true scientific literature that had definitive data on contact DNA. So it kind of -- I felt that like that paper helped give analysts some goalposts on here is what we can actually say about contact DNA with scientific report. If you don't see it in this paper it should probably give an indication there haven't been sufficient studies done to support going out on a limb to make that assumption.

Q Okay. Would you agree with me one of the ways that transfer of contact DNA can end up on an item of evidence is by the collection process of law enforcement? Would you agree with that?

A I mean, that kind of depends on, you know, what kind of measures you're taking when you collect evidence.

Q And so when -- in this case when Daniel Holtzclaw's pants are handled, just assume if they were handled by Detective Gregory without gloves on, could transfer DNA from Detective Gregory's hands could have ended up on Daniel Holtzclaw's pants?

MR. SMITH: Object to the form. You can answer it.

A Certainly, if you're not wearing gloves, yes, it's a possibility you can transfer DNA to that item.

Q (By Ms. Zellner) Who trains -- or who trained back in the time of the Holtzclaw investigation, who was training the police officers about evidence collection? Did your lab do that or did they have outside sources?

A You know, I'm not fully sure. I know that at the training academy those kind of things, evidence collection, crime scene, those were covered. But did we specifically go out and train in that during that time period? I can't recall. I don't think so.

Q In the Meakin and Jamieson article they talk about evidence transferring once it's been, you know, taken in by law enforcement, that you can actually have evidence transfers if you don't package things correctly. Would you agree with that?

A Yeah, yeah. I mean, it's important to have things packaged correctly, wear the right protective components, especially when you're looking for very low levels of DNA. It's very problematic.

Q When you reviewed the Holtzclaw reports, the lab reports, was it your conclusion or did you conclude there was male DNA present on the pants?

A I -- I can't -- without having the report in front of me I can't specifically -- what I do recall is everything that was in the printed reports that were issued, I agree with the final conclusions in those printed reports.

Q So if the printed reports reflected that there was the presence of male DNA, you're not challenging those reports?

A No. If we published the report, that's what we stand by as a laboratory as our conclusions. So -- I'm trying to think if it's said -- yeah, without having the report in the front of me I couldn't really -- I would need that to help answer some of the questions.

Q Do you remember at trial if Elaine Taylor told the jury there was no male DNA present on the Holtzclaw pants?

A I don't recall that, no.

Q If she had, in fact, told the jury that, would that have been of concern to you if the report showed there was male DNA present?

A Well, if the report showed there was male DNA present, you're really talking about two options at this point. Either you're talking about as a second contributor there you could have attempted a comparison on or you're talking about there the wasn't enough DNA

there and it's inclusive. But if there was male DNA it would have to be reflected in one of those two statements.

Q But I think what you're saying is regardless of the testimony, that you would stand by the reports, the findings in the reports?

A Yes, yes.

Q And you found those to be accurate?

A Yes, yes. I reviewed the reports and am in agreement with what was finally reported out.

Q And you would expect the analyst testifying at trial to be correctly telling the jury the findings in the reports; correct?

MR. GLASS: Object to the form. You can answer if you understand it.

A Yes, absolutely. I mean, ultimately that's what we're testifying to. Those are our conclusions.

MS. ZELLNER: Okay. So, Rick, can we take about a 15-minute break? I'm not going to do a whole lot more. As I said, I didn't intend for this to take all day or even most of the day. Can we do that?

MR. SMITH: Certainly with that premise that you're almost done, yes, we can take a 15-minute break.

MS. ZELLNER: If you can just get me to

good source.

Q Okay. Let me just check any other -- what was your understanding of why Elaine Taylor retired at the point that she did?

A Oh, she just told me that she'd put her time in, her husband was retiring, and they always said they would retire at the same time.

Q And do you have any knowledge about emails of Elaine Taylor that were retained or did you participate in the decision to retain emails?

A No, I have no involvement in anything like that.

Q All right. And I think I had asked you earlier, on the other cases that Elaine Taylor -- she had told us there were six other contamination cases that she had over the years. Did you participate in any review of those -- those cases?

A I guess the easiest way to answer that is any case that had a contamination incident in the lab, yes, I had to review it to make sure it had been remediated, that we had done any kind of post-contamination, either remedial training or just things we can do in the lab to ensure there is no more contamination incidents.

So we will write a contamination report, document what happened, what we're doing moving on in

the future. And that's pretty routine for anybody in the lab that has a contamination incident.

Q When you do the reviews of the analysts, they're performance, are those done on an annual basis?

A So a performance review, yes, on an annual basis everybody gets one of those.

Q Okay. And do the reviews of the analysts get shared with ASCLD?

A No. No, those are personnel.

Q Okay. Does any of the analysts' work get shared with ASCLD?

A So I'm not sure what you know about ANAB, that they -- so we're required to be audited by them every four years. We actually have -- it's every two years we get an external audit. Part of that audit is whoever comes in to do the audit will -- they will look at five files, case files from every analyst in the lab. So case files are constantly reviewed for all analysts as part of the audit cycle.

Q And then does ASCLD, are they actually given the analyst's name or are they given a code for the analyst? Do they have the analyst name?

A Yeah, they should. They have the analyst name. So, yeah, I mean, they are informed of all the personnel prior to them coming in and doing the audit.

Q And then if they detect a problem with an analyst when they're reviewing then do they communicate back to the lab about the analyst saying, We're seeing a high level of contamination cases or something like that?

A Yeah, so ASCLD and the ANAB have a list of standards they go through looking at a wide variety of things in the lab. Anything they find to be out of compliance they will give the lab a report on what they call findings. So they have found the following things to be out of compliance. The lab is then given an opportunity to fix those and provide documentation to satisfy them, at which point will be okay with your accreditation as current.

Q And do those findings, would they specify a particular analyst? Have you seen that in the findings?

A I've never seen that in any of the audits we've had. They tend to be more general. Does the lab handle evidence appropriately? Does the lab have protocols for testing or appropriate -- those are -- those are some of the things they come in and they look at.

Q Okay. And this is my last question. So I'm not going to go into the substance of it. But you testified in some type of closed hearing on issues related to the Holtzclaw case.

A Yeah. Unfortunately, I'm not allowed to really discuss any of that. But, yes.

Q Right. But I'm just confirming that you did that and that the issues pertained to the Holtzclaw case; correct?

A Yes, that's correct.

Q Okay. And the issues pertain to Elaine Taylor's performance in the Holtzclaw case?

MR. SMITH: Um --

MS. ZELLNER: I'm not going into the substance. Last question, Rick.

MR. SMITH: I know. And it's hard. It's hard.

Go ahead and answer that one.

A I guess it's kind of hard to because he told me I'm not allowed to discuss anything related to that hearing, so I'm not sure if I'm allowed to really convey what the substance of it was.

Q (By Ms. Zellner) Well, I don't want the substance. Just a yes or no. You said yes, Holtzclaw case, and I'm just saying that involved Elaine Taylor's testimony and performance in the case? I'm just looking for a yes.

MR. SMITH: You can answer that.

A Yes.

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

JANNIE LIGONS, *et al.*,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	Case Nos.: CIV-16-19-HE
	)	CIV-16-184-HE
CITY OF OKLAHOMA CITY,	)	CIV-16-349-HE
a municipal corporation, *et al.*,	)	CIV-16-412-HE
	)	
Defendants.	)	

DEFENDANT HOLTZCLAW'S MOTION TO COMPEL

Defendant Daniel Holtzclaw, through the undersigned counsel, and pursuant to Rule 37(a)(1), moves this Court for an Order compelling his co-Defendant City of Oklahoma as well as the Plaintiffs to produce discovery.

Counsel came into this litigation late in the process. The record in this case consists of the voluminous pleadings in the four civil cases filed in this Court, the thousands of pages of depositions, the thousands of pages of trial transcripts and pleadings from the state criminal trial, and a thousands-of-pages data dump produced to Holtzclaw by the City in electronic form, including over 8,000 e-mails, which we are reviewing now.

Counsel has also had three eye-surgery procedures since early July, 2021, for

a detached retina, the latest of which was the most severe on August 13, 2021, which has hampered his ability to move the discovery process along, but most of it has been processed and analyzed.

Despite this difficulty and the state of the record, there is a modest amount of discovery material still at issue, almost all of which is in the physical custody of the City or involve records of the Plaintiffs that are easily accessible and do not involve any material intrusion upon parties unrelated to this litigation.

Rule 37 Conference: Counsel had previously sent Requests for Production to the City which resulted in the City producing a voluminous amount of documents on a flash drive and a CD. However, the five items below were not produced and still remain a bone of contention. Counsel had a telephone conference with counsel for the City on Friday, August 27, 2021, at which the parties were not able to agree on the discovery items below and the City objects to producing them at this point.

Similarly, counsel had a phone conference on Friday, August 27, 2021, with attorney Mark Hammons regarding the requests to Plaintiffs Ellis and Raines. The parties were not able to reach an agreement on those requested items.

Counsel has attempted to contact counsel for the remaining Plaintiffs, but has been unable to do so at this point, but must file this renewed motion in light of the discovery deadline.

THE CITY

Holtzclaw tendered Requests for Production to the City and the City responded with alternative objections, but a willingness to produce the requested evidence "if still available." Since the discovery cut-off is tomorrow, and the City has indicated that it will object to producing the items below, Holtzclaw seeks an order from the Court to compel production, specifically:

1. The DNA Evidence, Pants and Belt: The primary physical evidence at the criminal trial was the DNA evidence extracted from the pants and belt of Holtzclaw's uniform. Holtzclaw seeks access to the pants, belt and DNA extracts in order to review the results of the State DNA tests and to perform such tests by his own experts.

   Holtzclaw requested the pants and DNA extracts in his Requests for Production to the City as Requests Number 3, 4, 5, 6, 7, 8, 9, 10, 11, 24 (the pants), and 25 (the belt). In the requests for DNA extracts, the City asserted boilerplate objections, but responded, "Subject to the foregoing objection, the City will produce, if still available." As to the pants and belt, the City responded with boilerplate objections, but stated, "Subject to the foregoing objection, the City will produce, if available, with a court order."

Holtzclaw requests an Order from the Court directing the City to state whether these items are "still available" and if so, to make them available to Holtzclaw's experts; and also a court Order for production of the pants and his uniform belt so that Holtzclaw's experts may examine/test them.

2. Det. Rocky Gregory's DNA: Holtzclaw requested the DNA profile of Det. Rocky Gregory as Request Number 21. The City responded by objection and refused to produce the requested profile "without a Court Order." Holtzclaw now seeks a court order for the profile.

Holtzclaw requests the profile of Det. Gregory to examine the possibility that he caused DNA contamination on the fly of Holtzclaw's pants through non-intimate DNA indirect transfer.

The DNA evidence showed the presence of "unknown male" DNA. Det. Gregory reached into the evidence bag containing the pants with his bare hand prior to the pants and belt being placed inside the bag on June 18, 2014. Det. Gregory also handled a pen and gave it to Holtzclaw, who wrote with the pen and then wiped his pant leg several times before unzipping the fly of his pants and removing them for evidence collection.

3. Nathaniel John Davis DNA profile: Holtzclaw requested this DNA profile as Request Number 22. The City lodged boilerplate objections, but stated, "Subject to the foregoing objection, the City will produce, if available, with a court order." Holtzclaw seeks such a court order.

4. Campbell Ruddock's Review: In Request Number 23, Holtzclaw requested OCPD Lab manager Campbell Ruddock's review of analyst Elaine Taylor's trial testimony in the criminal case. The City responded with general objections, but stated, "Subject to these objections, non-privileged and non-work product documents will be produced upon court Order." Holtzclaw requests such a Court Order.

5. Rosetta Grate: Per the attached police report, Holtzclaw requests all records related to her prior allegations of being sexually assaulted and the outcomes of those complaints, related to:

   1) OCPD Case Number 11-092590 (11/19/11)

   2) OCPD Case Number 10-030883 (04/17/10)

   3) OCPD Case Number 08-058158 (07/08/08)

   4) OCPD Case Number 07-091260 (10/19/07)

   5) OCPD Case Number 05-049197 (05/26/05)

   6) OCPD Case Number 95-082640 (unknown).

THE PLAINTIFFS

Holtzclaw seeks Medical/Mental Health Records from the Plaintiffs as set forth below because these records likely contain important impeachment information and other information material and relevant to Holtzclaw's theory of defense. Holtzclaw has tested negative for HIV, syphilis, chlamydia, gonorrhea, Hepatitis B, and Hepatitis C. Without divulging any private information about the Plaintiffs, Holtzclaw asserts that he has a good faith basis to believe this information would be material and relevant to his defense.

In particular, it is alleged that he raped Kala Lyles for approximately 25 minutes without a condom, just before he stopped Jannie Ligons. Adaira Gardner also alleged that she was raped by Holtzclaw without a condom for approximately 10 minutes.

Holtzclaw has been unable to acquire such records, in full, without either a court order or a release from the Plaintiffs.

1. Adaira Jazmanne Gardner: Holtzclaw has learned that on October 28, 2020, Gardner was charged by felony Information in Rogers County, State of Oklahoma, with being a prisoner and placing body fluid on a jailer by spitting in his face knowing that she has Hepatitis A and C. *See* attached Exhibit.

Holtzclaw requests information about her medical and mental health issues, specifically from: Shadow Mountain Behavioral Health System, Tulsa, OK (2009-present); Green County Behavioral Health Services, Inc., Muskogee, OK (2009-present); Grand Lake Mental Health Center, Pryor, OK (2009-present) (an article described a June, 2020, incident in which Gardner was "tearing apart the house with a hammer and cutting her own hair and gluing it to her face"); Grand Lake Mental Health Center, Miami, OK (2009-present); Hope Community Services, OKC, OK (2009-present); and Oklahoma Youth Center/Children's Recovery Center of Oklahoma, Norman, OK (2009-present). Although she has provided some records in this lawsuit, her responses to requests from other counsel indicates that there are more.

2. Sherry Louise Michelle Ellis Smith: Holtzclaw requests records from: Red Rock Behavioral Health Services, OKC, OK (2009-present); Hope Community Services, OKC, OK (2009-present).

3. Jannie Pearl Ligons: Holtzclaw requests records from: YWCA, 2460 NW 39th St., OKC , OK (2009-present); Integris Southwest Medical, OKC, OK (2009-present). During her trial testimony, she testified to specific medical conditions she alleged were caused by the alleged

incident with Holtzclaw.

4. Tabitha Jean Barnes: Holtzclaw requests any records from Dr. Haisam Al-Khouri, OKC, OK (2009-present); SSM Health St. Anthony Hospital, OKC, OK (2009-present). These requests are based upon answers to questions given by Ms. Barnes during her deposition in this case.

5. Syrita Leslie Bowen: SSM Health St. Anthony Hospital, OKC, OK, (2009-present); Red Rock Behavioral Health Services, OKC, OK, (2009-present). Although Ms. Bowen is no longer a party to the this lawsuit, Holtzclaw requests court authorization to these records because she has accused Holtzclaw and her mental health condition was discussed in open court during the criminal trial.

6. Regina Ann Copeland: Holtzclaw requests medical/mental health records relating to Ms. Copeland, and specifically any records relating any issues she may have had with severe alcoholism at or prior to the events that she has alleged concerning Holtzclaw.

7. Carla Esther Johnson: Holtzclaw requests records pertaining to Ms. Johnson from: Norman Regional Hospital (1980-present); Eddie Warrior Correctional Center, Taft, OK (all); Mabel Bassett Correctional Center,

McLoud, OK (all); SSM Health St. Anthony Hospital, OKC, OK (all); and Red Rock Behavioral Health Services, OKC, OK (all).

8. Rosetta Ranee Grate: Holtzclaw requests records relating to Ms. Grate from: The Oklahoma Crisis Center, OKC, OK (all); and medical records from Tara Gamshagar, NorthCare, OKC, OK (all).

Ms. Grate has given conflicting statements about her medical/mental health history that Holtzclaw can document in a closed setting.

9. Terri Lynn Morris: Holtzclaw requests mental health/medical records relating to Ms. Morris from: Oklahoma Mental Hospital, Woodward, OK (2013); Grand Lake Mental Health Center, Vinita, OK (1997); and St. Anthony's Hospital, OKC, OK, (1991 and 1986). This is based upon inconsistent responses made by Ms. Morris concerning her mental health history.

10. Shardayreon Reqwantae Hill: Holtzclaw requests mental health/medical records relating to Ms. Hill from: Integris Southwest Medical Center, OKC, OK (2012-present); and SSM Health St. Anthony Hospital, OKC, OK (2007-present).

11. Carla O. Raines: Holtzclaw requests medical/mental health records

relating to Ms. Raines. Holtzclaw does not at this time have any information about her medical/mental health history.

These requests for mental health/medical records of the Plaintiffs are proper and would lead to discoverable and relevant information in this lawsuit. Holtzclaw asserts that he can show the Court in more detail, in a closed setting, if required, but that he has not included some of the reasons in this pleading to protect the privacy of the Plaintiffs and because some of it is work-product and trial strategy.

WHEREFORE, good cause having been shown, Defendant Holtzclaw moves for an Order compelling the above described discovery material from the named parties of this lawsuit.

Respectfully submitted,

s/ James L. Hankins
James L. Hankins, OBA# 15506
MON ABRI BUSINESS CENTER
2524 N. Broadway
Edmond, OK 73034
Phone: 405.753.4150
Facsimile: 405.445.4956
E-mail: jameshankins@ocdw.com

Counsel for Daniel Holtzclaw

CERTIFICATE OF SERVICE

I hereby certify that on August 31, 2021, I filed the foregoing document with the Clerk of this Court and that, based upon the records on file in this case, the Clerk of Court will transmit Notice of Electronic Filing to those registered participants of the Electronic Filing System.

s/ James L. Hankins

IN THE DISTRICT COURT OF THE TWELFTH JUDICIAL DISTRICT OF THE STATE OF OKLAHOMA SITTING IN AND FOR ROGERS COUNTY

THE STATE OF OKLAHOMA,

Plaintiff,

vs.

ADAIRA JAZMANNE GARDNER
ADDR: 809 Castle Row
Oklahoma City, OK 73106
DL: ****1694
SSN: *-**-6810**
DOB: January, 1997

Defendant(s).

Case No. CF-2020-651

FILED IN THE DISTRICT COURT
ROGERS COUNTY OKLAHOMA

OCT 28 2020

CATHI EDWARDS, COURT CLERK

DEPUTY

INFORMATION

FOR:

COUNT 1: PRISONER PLACING BODY FLUID ON GOVERNMENT EMPLOYEE ~ 21 O.S. § 650.9, a FELONY

STATE OF OKLAHOMA, COUNTY OF ROGERS:

I, Matthew J. Ballard, the undersigned District Attorney of said County, in the name and by the authority of the State of Oklahoma, give information that in said County of Rogers and in the State of Oklahoma, **ADAIRA JAZMANNE GARDNER** did then and there unlawfully, willfully, knowingly and wrongfully commit the crime(s) of:

COUNT 1: PRISONER PLACING BODY FLUID ON GOVERNMENT EMPLOYEE ~ a FELONY, on or about the 16th day of October, 2020, by spitting into the face of DO Daniel Johnson Jr without justifiable or excusable cause, while said officer was performing his duties as an employee of the Rogers County Jail.

MATTHEW J. BALLARD
DISTRICT ATTORNEY

By: _____
Sue Nigh
Assistant District Attorney

WITNESSES ENDORSED FOR THE STATE OF OKLAHOMA

Justin Book, Rogers County Sheriff, 114 S Missouri Ave., Claremore, OK 74017
Daniel Johnson Jr, Rogers County Jail,
Representative Property Custodian, Rogers County Sheriff, 114 S Missouri Ave., Claremore, OK 74017

CF-2020-651

State of Oklahoma, County of Rogers

Probable Cause Affidavit

☒ DISTRICT COURT ☐ MUNICIPAL, CITY OF CLAREMORE

LOCATION OF OCCURENCE
201 S CHEROKEE AVE; ROGERS COUNTY JAIL

OCCURRED
21:50:00 10/16/20

LOCATION OF ARREST
201 S CHEROKEE AVE; ROGERS COUNTY JAIL

ARRESTED
22:01:22 10/16/20

ARRESTEE NAME (LAST, FIRST MIDDLE)
GARDNER, ADAIRA JAZMANNE

RACE	SEX	HGT	WGT	HAIR	EYES	SKIN
W	F	5'07"	163	BRO	BRO	N

STREET ADDRESS, CITY, STATE
809 CASTLE ROW, OKLAHOMA CITY, OK

ZIP 73106 DOB 01/09/97 SOC

EMPLOYER/SCHOOL

HOME PHONE

OLN/STATE
K999121694/OK

EMPLOYER ADDRESS

OSBI#

FBI#

ADDR

PHONE

NEXT OF KIN

RELATIONSHIP

SCARS, MARKS, AND TATTOOS

CITY OF BIRTH

FILED IN THE DISTRICT COURT
ROGERS COUNTY OKLAHOMA
OCT 28 2020
CATHI EDWARDS, COURT CLERK
DEPUTY

TOWED VEHICLE

TAG# TAG STATE TOWED BY

VEH YR VEH MAKE VEH MODEL VEH STYLE COLOR

ARRESTING OFFICER	BADGE#	AGENCY	BACKING OFFICER	BADGE#	AGENCY
BOOK, JUSTIN	P23	RCSO			

STA MUN	FEL MISD	CRIME DESCRIPTION	TITLE	SECT	WARRANT#	BOND	COUNTS
STA	F	PLACE BODY FLUID ON GOVT EMPLOYEE	21	650.9		2K	1
STA	F	Spreading Infectious Diseases	21	1192		2K	1

(PC STATEMENT)

On October 16, 2020, I was radio assigned to take an assault on an detention officer report at 201 S Cherokee Ave, at the Rogers County Jail, in the Claremore area of Rogers County. Upon arrival I met with a detention officer who stated they were in full uniform and carrying out their official duties as a corrections officer when Adaira Gardner spit directly in their face therefore placing bodily fluids on them. It was later discovered Gardner knew she had infectious diseases (Hepatitis A and C) when she willingly spit in the face of a detention officer. Adaira Gardner was then charged with placing bodily fluids on a government official while in detention and recklessly spreading infectious diseases (O.S. §, 21-1192).

COMES NOW THE UNDERSIGNED AFFIANT, OF LAWFUL AGE AND BEING DULY SWORN, UPON OATH, ALLEGES AND STATES THAT THE ABOVE FACTS UPON WHICH THE PROBABLE CAUSE WERE BASED FOR SUCH ARREST ARE TRUE AND CORRECT AND WERE BASIS FOR SUCH ARREST ARE TRUE AND CORRECT AND PRAYS THIS HONORABLE COURT TO FIND PROBABLE CAUSE TO DETAIN THE ARRESTEE PENDING FURTHER PROCEEDINGS.

FURTHER YOUR AFFIANT SAYETH NOT, Justin Beck (officer's signature) THIS 17 DAY OF October, 20 20

SUBSCRIBED AND SWORN TO BEFORE ME THIS 17 DAY OF October, 20 20

WILLIAM EMERY NOTARY PUBLIC Comm. #19002960 STATE OF OKLAHOMA

NOTARY PUBLIC — MY COMMISSION EXPIRES 3-21-23 — NOTARY NUMBER

A PROBABLE CAUSE DETERMINATION IS NOT NECESSARY, THE ARRESTEE BONDED OUT OF JAIL ON THE _____ DAY OF _____, 20___, AT _____ AM/PM. _____ (NAME OF JAILER)

PROBABLE CAUSE DETERMINATION

I, Steve Pazzo, JUDGE OF THE DISTRICT COURT/MUNICIPAL COURT, REVIEWED THIS PROBABLE CAUSE AFFIDAVIT ON THE 17 DAY of October, 2020, AT 11:09 AM/PM. I MAKE THE FOLLOWING FINDINGS AND ORDER PURSUANT TO GERSTEIN V. PUGH, 420 U.S. 103(1975) AND COUNTRY OF RIVERSIDE V. McLAUGHLIN, NO.89-1817 (U.S. MAY 13, 1991)(LEXIS 2528):

X THE AFFIDAVIT CONTAINS SUFFICIENT FACTS SHOWING PROBABLE CAUSE TO DETAIN THE ARRESTEE TO AWAIT FURTHER PROCEEDINGS.

X THE COURT SETS AND APPEARANCE BOND IN THE AMOUNT OF $ 4,000.

_____ THE COURT DENIES BOND AT THIS TIME.

_____ NO APPEARANCE BOND SET - 48hr. Hold/Release on _____ of _____, 20___, AT _____ AM/PM

Steve Pazzo via email — Judge of the District Court/ Judge of the Municipal Court

10-28-2020 1:30 pm — Municipal / District Court Date