

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-)

No. CIV-16-184-HE

CITY OF OKLAHOMA CITY, a)
Municipal corporation,)
DANIEL HOLTZCLAW, BILL CITY,)
BRIAN BENNETT, ROCKY GREGORY,)
JOHN AND JANE DOES, all in)
their individual capacity,)

Defendants.)

VIDEOTAPED DEPOSITION OF KIM DAVIS

TAKEN ON BEHALF OF THE DEFENDANTS

IN OKLAHOMA CITY, OKLAHOMA

ON JANUARY 29, 2019

REPORTED BY: KASEY D. EGELSTON, CSR

1 interview rooms at the sex crimes office and that's
2 Detective Gregory and Officer Holtzclaw.

3 Q (By Mr. Johnson) And is Detective Gregory
4 in the tie, does he have his hand in the evidence
5 bag?

6 A Yes. His hand is in a brown paper sack.

7 Q And would you agree with me that's a
8 violation of protocol?

9 MR. SMITH: Mr. Johnson, the court
10 reporter didn't give us a copy of the exhibit.
11 She's looking for it now.

12 Would you ask your question again,
13 please, sir?

14 Q (By Mr. Johnson) Sure. You agree that
15 Detective Gregory is violating protocol there with
16 his hand inside of the evidence bag?

17 A What do you mean "violating protocol"?

18 Q Is there any protocol that you're aware of
19 that governs the OCPD's handling of evidence under
20 these circumstances?

21 A There are evidence handling protocols, yes.
22 Do I know exactly what they are? No. If you're
23 asking or getting to the point of, like, should he'd
24 have gloves on? Yeah, he probably should have. But
25 did it violate protocol? I can't answer that.

1 Gregory's conduct has the potential for
2 contaminating the results of subsequent forensic
3 testing on those pants?

4 MR. SMITH: Object to form.

5 THE WITNESS: I'm -- I'm not going to
6 say contaminated. I don't think that's a good word.
7 I think if -- I think he should have wore gloves. I
8 think if there was a question about evidence, they
9 could have taken a sample from him and compared it.

10 Q (By Mr. Johnson) Do you know if the lab
11 had his DNA?

12 A I have no idea.

13 Q If the lab had his DNA, would you expect
14 them to use that DNA to test whether or not his DNA
15 was left on the pants?

16 MR. SMITH: Objection to form.

17 THE WITNESS: I don't know if the lab
18 would have done that. I don't know. I can't
19 answer.

20 Q (By Mr. Johnson) Okay.

21 A I don't know what that policy would be.

22 Q Okay. Are you aware that male DNA was
23 found on Holtzclaw's pants that did not belong to
24 Holtzclaw?

25 MR. SMITH: Object to the form.

1 THE WITNESS: I don't know that I'm
2 aware of that, no.

3 Q (By Mr. Johnson) Were you ever advised
4 prior to the trial of Daniel Holtzclaw that forensic
5 testing upon his pants revealed the presence of male
6 DNA that did not belong to Holtzclaw?

7 MR. SMITH: Object to the form.

8 THE WITNESS: I remember being told
9 that Holtzclaw's DNA wasn't on his pants -- on his
10 own pants, but I don't remember.

11 Q (By Mr. Johnson) Okay. I just want to ask
12 you, again, were you aware prior to the trial of
13 Daniel Holtzclaw, that male DNA was discovered
14 through testing on those pants and it was further
15 concluded that that male DNA did not belong to
16 Daniel Holtzclaw? Did you know that prior to Daniel
17 Holtzclaw's trial?

18 MR. SMITH: Object to the form.

19 THE WITNESS: I could have, but I don't
20 remember. Because that -- I don't remember. I can
21 remember that we had female DNA on his pants and I
22 can remember that his own DNA wasn't on his pants.
23 I don't remember the other. I'm not saying I wasn't
24 told that. I'm just saying I don't remember.

25 Q (By Mr. Johnson) And I know you're not an

1 A Major Denise Wenzel.

2 Q Do you know where she is these days?

3 A I think she's Hefner.

4 Q She's what?

5 A Hefner Station. Hefner Briefing Station.

6 Q Okay. And then you went and talked to
7 Holtzclaw prior to the interrogation?

8 A Well, we went to the Springlake Station to
9 get him and take him downtown --

10 Q Okay.

11 A -- to talk to him, yeah.

12 Q And he admitted that he made that stop?

13 A Well, he volunteered it. I told him --

14 Q Okay.

15 A -- that there was a lady making allegations
16 against a police officer and he said, I made a
17 traffic stop at 50th and Lincoln after hours and I
18 didn't call it in.

19 Q Was that a common thing for stops to be
20 made by OCPD officers, that they would make a stop
21 and not call it in?

22 A I can't tell you if it's common or not.
23 It's not very smart.

24 Q Okay. Do you believe that Adaira Gardner's
25 DNA was found on Holtzclaw's pants?

1 A Do I believe it?

2 Q Yeah.

3 A Yeah. The lab said it was.

4 Q Who told you that?

5 A The lab report and Elaine.

6 Q And that only came about after the initial
7 testing for DNA in the case; correct?

8 A I don't understand the question.

9 Q Did -- is it correct that there was some
10 initial DNA testing, but then Gieger came back and
11 asked for subsequent testing on the pants? Do you
12 have any recollection of that sequence of events?

13 A I'm a little bit confused. And maybe this
14 will -- I knew that we knew that female DNA was
15 found on his pants, but -- and we knew it wasn't
16 Jannie's. So we started looking for other victims.
17 And as we would do the other victims, it wasn't
18 theirs and it wasn't theirs and it wasn't theirs.
19 So we kept looking. And then it came back -- then
20 we found Adaira and it came back to be hers. So
21 that was further in the investigation.

22 Q Okay.

23 A So what -- I don't know what you're asking
24 about -- what Gayland requested.

25 Q Okay. Do you have any knowledge that

1 Gayland requested any DNA testing in this case?

2 A He talks to the chemists a lot too during
3 the investigation, but I know one time we all met
4 going over the -- the lab findings, and I don't
5 remember if he requested anything or not.

6 Q Can you tell me what you recall about that
7 meeting? Who was present and when it was to go over
8 the lab findings?

9 A I know it was me, Elaine, Gayland and I
10 think Valari.

11 Q Okay. Roughly when?

12 A Oh, God. I have no idea.

13 Q If Ligons --

14 A I mean, it would have been after they found
15 Adaira's -- after we knew it was Adaira's DNA.

16 Q Okay. What was discussed at that time?

17 A Where the DNA was found on the pants.
18 That's all I really remember.

19 Q Was it discussed if any future testing
20 should take place or what it meant?

21 A Well, I know there was some science
22 discussed, you know, with Gayland and Elaine, but
23 like science of alleles and science over my head.

24 Q Okay.

25 A I don't know.

1 Q Is it fair to say that -- or strike that.

2 Do you recall any discussion about how
3 Adaira's DNA could have gotten on Holtzclaw's pants
4 through non-intimate contact?

5 A We didn't discuss that.

6 Q Was it ever considered at that meeting that
7 Adaira's DNA could have gotten on Holtzclaw's pants
8 just through a normal, proper police/citizen
9 encounter?

10 MR. SMITH: Object to the form.

11 THE WITNESS: We didn't discuss that.

12 Q (By Mr. Johnson) Was that possibility
13 considered?

14 A By who?

15 Q Any of the people at that meeting as they
16 expressed orally?

17 A I don't know what they considered. I
18 didn't consider it. I don't know what Gayland,
19 Elaine and Valari considered.

20 Q Okay. Knowing what you know about -- let's
21 just assume now that Adaira Gardner's DNA is on
22 Holtzclaw's pants, would you agree with me that
23 there could be an innocent explanation for that?

24 MR. SMITH: Object to the form.

25 MR. SOLOMON-SIMMONS: Same objection.

1 THE WITNESS: Where her DNA was found,
2 I would not consider that to be -- or I would not
3 consider there be an innocent reason for that.

4 Q (By Mr. Johnson) Okay. Let me ask you
5 this: Would you agree with me that Holtzclaw could
6 have touched Adaira Gardner properly pursuant to
7 normal police/citizen encounter protocol and then
8 subsequently touched his own fly and left her DNA on
9 his fly in that fashion? Do you agree that is
10 possible or do you believe that is impossible?

11 MR. SOLOMON-SIMMONS: Object to form.

12 MR. SMITH: Same objection.

13 THE WITNESS: That science is over my
14 head. I'm not going to say yea or nay on that.

15 Q (By Mr. Johnson) So can you answer whether
16 that is possible or impossible?

17 MR. SOLOMON-SIMMONS: Object to the
18 form.

19 MR. SMITH: She already did. The same
20 objection.

21 THE WITNESS: I can say I have never
22 had a touch DNA case. I have never solved a case --
23 because you're talking about touch DNA. I have
24 never had a case solved by touch DNA. So from my
25 experience, all my cases have been -- if there's DNA

1 involved, have involved bodily fluids, so.

2 Q (By Mr. Johnson) Okay.

3 A So from my experience, I haven't seen it
4 happen.

5 Q All right. I appreciate that. Can I ask
6 you, though, whether or not you believe touch DNA --
7 because it seems like you do understand -- and
8 you're exactly right, that's what I'm talking about.
9 Do you believe in the science of touch DNA? And
10 when I say "the science of DNA," what I'm referring
11 to is an individual can leave their DNA on another
12 individual simply by touching them.

13 MR. SMITH: Object to the form.

14 THE WITNESS: I believe that that can
15 happen under certain circumstances. And I think as
16 our science develops, those circumstances will
17 widen.

18 Q (By Mr. Johnson) Okay. What about the
19 circumstances between Ligons (sic) and Holtzclaw,
20 can you tell me pursuant to the science of touch
21 DNA, whether it is possible or impossible that
22 Holtzclaw touched her properly, subsequently touched
23 his fly and left her DNA there?

24 MR. SOLOMON-SIMMONS: Object to form.

25 THE WITNESS: Okay. You just said

1 Ligons. Are you talking about Adaiara or --

2 Q (By Mr. Johnson) I'm sorry. I'm talking
3 about Adaira. Let me say it again. Pursuant to the
4 science of DNA, which you testified you know
5 something about, can you tell me whether it was
6 possible or impossible that Holtzclaw touched Adaira
7 Gardner properly and subsequently touched his fly
8 and as a result left her DNA on his fly?

9 MR. SMITH: Object to the form.

10 MR. SOLOMON-SIMMONS: Same objection.

11 THE WITNESS: I'm going to say I don't
12 think that happened.

13 Q (By Mr. Johnson) I understand that. But
14 I'm asking you whether it's possible or impossible?

15 A I don't know. Because I'm not that good --
16 I don't know the science part and I don't know the
17 circumstances. Let's say -- I mean, I'm going to
18 give you a total not Holtzclaw case. If I just got
19 done playing ball and I'm sweating like a pig and I
20 come up and give him a hug, is it likely that my DNA
21 is going to be on him somewhere? Yeah, because it
22 came off of my sweat. But if it's raining outside
23 and I give him a hug, it might not be there because
24 it got washed off of me. It all depends on
25 circumstance. I don't want to try to get into the

1 science because I'm talking over my head. I'm not
2 going to testify to something that I don't -- that I
3 don't know.

4 Q Okay. You investigated the Adaira Gardner
5 case; correct?

6 A Yes.

7 Q Okay. So let me put it this way -- I think
8 maybe I know your answer, but let me see if I can
9 put it this way and we can put this to bed. Knowing
10 what you know from your investigation into the
11 Adaira Gardner case, do you believe it's possible or
12 impossible for Holtzclaw to have touched Gardner
13 properly and then subsequently touched his fly and
14 left her DNA there through that sequence of events?
15 Do you believe that's possible, impossible or you
16 can't say?

17 A I can't say.

18 Q Did you ever consider the possibility that
19 Holtzclaw's fly showed Gardner's DNA as a result of
20 innocent contact between them? Did you consider
21 that possibility prior to the trial of Daniel
22 Holtzclaw?

23 MR. SMITH: Object to the form.

24 THE WITNESS: No.

25 Q (By Mr. Johnson) Okay. I want to ask you

1 to assume. If he did say something to that effect,
2 indeed that he did say that because of Adaira
3 Gardner's 17 -- age 17 status, the DNA was most
4 likely to have come from vaginal secretions, would
5 you agree with me that there is no scientific basis
6 for that statement?

7 MR. SMITH: Object to the form.

8 THE WITNESS: I don't know. I don't
9 know how to answer that. I know -- I mean, I can
10 tell you, do I think it was vaginal secretions?
11 Yes. Do I think -- do I know that there's not
12 science for that? Yes. So I don't --

13 Q (By Mr. Johnson) Okay.

14 A I don't know what you're -- I mean, I think
15 it was vaginal secretions, but I know that there's
16 no science that can say that it was vaginal
17 secretions.

18 Q Okay. So would you say you're just kind of
19 going on your gut feeling?

20 MR. SMITH: Object to the form.

21 THE WITNESS: Yeah. My opinion is
22 based on my experience through my cases with body
23 fluids.

24 Q (By Mr. Johnson) Okay. When you say
25 "office talk," what do you mean by that? Can you

1 tell me what kind of office talk you've had with
2 regard to this topic I'm talking about?

3 A Well, I mean, just in the office.
4 Detectives, you know, talking back and forth at each
5 other and talking about his penis going in her
6 vagina and it was probably wet, so when his penis
7 went back in his pants, it got on his pants and she
8 was wet enough that it drowned out his DNA and
9 that's why his DNA is not on his pants. I mean,
10 just office talk that gets kind of raunchy.

11 Q Okay. Can you tell me who was involved in
12 that office talk?

13 A I couldn't tell. I have no idea. I mean,
14 it could have been everybody. It could have been
15 who was listening. It could have been at lunch when
16 whoever was sitting at their desk. It's just nasty
17 office talk.

18 Q Okay. And lastly, would you say when
19 you're -- not just in the Holtzclaw case, but
20 basically when you're investigating a sex crime in
21 your career, you kind of relied on your own gut
22 instinct?

23 A In all of my cases, yeah.

24 MR. JOHNSON: I have nothing further.
25 Thank you.