

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

TABITHA BARNES, <i>et al.</i> ,)	
)	
<i>Plaintiffs,</i>)	
)	
vs.)	Case Nos.: CIV-16-19-HE
)	CIV-16-184-HE
DANIEL HOLTZCLAW, <i>et al.</i> ,)	CIV-16-349-HE
)	CIV-16-412-HE
)	
<i>Defendants.</i>)	

**DEFENDANT HOLTZCLAW’S MOTION AND BRIEF TO
RECONSIDER DENIAL OF MOTION TO COMPEL DISCOVERY; AND
TO STAY THESE PROCEEDINGS IF RECONSIDERATION IS DENIED**

Respectfully submitted,

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 RECONSIDER DENIAL OF MOTION TO COMPEL DISCOVERY; AND
 TO STAY THESE PROCEEDINGS IF RECONSIDERATION IS DENIED**

Defendant Daniel Holtzclaw, through the undersigned counsel, moves the Court reconsider its Order (Doc. 399 in CIV-16-184-HE, filed November 10, 2021) denying, in substantive part, his motion to compel discovery material from the City of Oklahoma City (Doc. 347 in CIV-16-184-HE, filed August 31, 2021); and to issue a STAY of these proceedings if reconsideration is denied so that Holtzclaw may take up a writ.

The Court’s Order denying discovery contravenes the low threshold of discoverability under Rule 26(b), is based upon invalid and speculative considerations relating to the underlying state criminal case, and would deprive

Holtzclaw of a fair opportunity to defend against the allegations leveled against him.

Holtzclaw thus moves this Court to reconsider its decision and compel the City to produce or allow access to, the uniform pants and belt, the DNA extracts and controls from the fly of the pants and from Holtzclaw, the associated DNA raw digital files, digital photographs of the pants, the DNA profiles of Det. Gregory and Nathaniel John Davis, and the written review prepared by Campbell Ruddock.

FACTUAL BACKGROUND

Holtzclaw maintains his actual innocence of the allegations against him, specifically those made by Plaintiffs Lyles and Morris, who allege that he assaulted them sexually through the unzipped fly of his buckled uniform pants. The requested discovery material is relevant to refute the allegations of oral sodomy and rape made by Lyles; and the allegation of oral sodomy made by Morris, all of which Holtzclaw was acquitted at the state criminal trial.

In denying the motion to compel, this Court appears to have made a legal error by applying a standard of evidentiary relevance rather than the much more relaxed standard of discoverability under Rule 26. *See* Doc 399 at 3-4 (requested material directly relevant to Gardner allegations, “somewhat marginal” to the claims in this case; and concluding that “the marginal relevance and relatively speculative nature of the information sought for use in resolving the claim of Plaintiff Lyles is

outweighed by the competing considerations of remoteness and the need to avoid jeopardizing the evidence for use in a potential criminal re-trial.”)

The information requested by Holtzclaw is discoverable because it relates directly to the sexual assault allegations of Lyles and Morris because it would allow him to prove that there was no evidence of visible or latent body fluid stains on the fly of the uniform pants.

The requests for the pants and high-resolution digital photographs are necessary to address the allegations of Lyles, who alleged that she was sexually assaulted through the unzipped fly of the pants *on the day that the pants were seized as evidence by the police*.

As to Morris, police obtained a buccal swab of her DNA upon the belief that her biological material might be found on the fly of the pants six weeks after the alleged crime.

As to Det. Gregory, he likely contaminated the pants, on videotape, with both his own DNA and biological material from Morris when he handled a paper form from the case file and a pen, and then inserted his bare hand into the evidence bag into which Holtzclaw placed his pants and belt.

In addition to direct evidence of sexual assault, the requested evidence is needed by Holtzclaw to prove that non-intimate DNA transfer is the best explanation

for the DNA profiles from the fly of the pants, which included not just a complete DNA profile of Plaintiff Gardner, but also an unknown male and unknown female DNA profiles that were inconclusive, ergo: those profiles may have derived from Lyles, Morris, Holtzclaw, Det. Gregory, or Nathaniel Davis (an individual pat-searched by Holtzclaw prior to the interaction with Lyles).

If any of them are DNA contributors, without any evidence of body fluid, this fact would support Holtzclaw's innocence defense that the DNA transfer was conducted in a non-intimate, non-sexual manner. This is also why analysis by Holtzclaw of the DNA raw data files to learn about the identity of the unknown male contributor(s) is important because the presence of a male DNA contributor on the pants proves that a non-sexual transfer of female DNA was possible.

Finally, the written review by Campbell Ruddock would impeach police investigators for failing to realize that the female DNA profiles from the fly and the uniform pants were explained by non-intimate DNA transfer via Holtzclaw's hands after the pat-searches and restroom breaks (whereas police believed, instead, unscientifically that the female DNA profiles meant that Holtzclaw was guilty of sexual assault rather than innocent non-intimate contact).

Reconsideration is warranted based upon the following points:

A. The Evidence Relates to Morris and Lyles, not just Gardner.

Recall that Plaintiff Ligons accused Holtzclaw of oral sodomy committed on her through the unzipped fly of his buckled uniform pants during a traffic stop on June 18, 2014. The DNA expert employed by the City, Dr. Elaine Taylor, was tasked with determining if any forensic evidence could be found on the pants.

She saw no visible evidence of this, so she swabbed the fly on four stretches of fabric by the zipper, which resulted in four extracts containing DNA. *See* Doc. 379, attachment 2 at 9-10 (opinion summary by Holtzclaw expert Dr. Michael J. Spence).

A major contributor in three of these four extracts was matched to Gardner, but this does not mean that the DNA evidence relates to Gardner only. There were also female profiles not matched to Gardner which could have come from Lyles or Morris; in addition to a male DNA profile. *See* attached Exhibit 1 at 5, 12, 16-18, and 23-28.

The reason why the materials requested by Holtzclaw are discoverable is that the DNA profile of Lyles would be expected on the pants if he had in fact sexually assaulted her; and they are discoverable as to both Lyles and Morris because the DNA evidence consists of mixtures of DNA from at least three persons, which may include Lyles or Morris.

The pants and the digital photographs are important because Taylor analyzed

the pants using only a bright light and a magnifying glass. She conducted no tests for latent body fluids that may not be visible to the naked eye, event though testing for body fluids was a crucial step because clothing stains are expected after sexual contact, and DNA without body fluids supports a non-intimate DNA transfer explanation because non-intimate female DNA can transfer from a female's face and hands via a man's hands to his underpants and even his genitals. *See* attached Exhibit 2 (Jones & Scott article) at 109; *see also* Exhibit 3 (Jones, et al.) at 94-95.

This is important to the defense of Holtzclaw to show that any DNA material on his pants, either from a Plaintiff or an unknown male, is explained best by non-intimate indirect contact transfer, *e.g.*, a pat search like the one performed here pursuant to the way Holtzclaw was taught. *See* attached Exhibit 4 (Holtzclaw deposition).

While Taylor matched correctly the unknown female complete DNA profile to Plaintiff Gardner, she failed to conduct probabilistic genotyping to investigate the likely identities of the unknown female and male contributors; rather, she excluded Holtzclaw incorrectly from DNA mixtures that were inconclusive. Because they were inconclusive, no one could be excluded.

Her scientifically invalid conclusions were, in turn, utilized by Taylor at the criminal trial to bolster the explanation that the female DNA profiles (which may

derive from Lyles or Morris) transferred in body fluids during a sexual assault, as opposed to a non-criminal transfer via Holtzclaw's hands. *See* Doc. 379, attachment 2 at 9-12 (opinion summary by Holtzclaw expert Dr. Michael J. Spence).

This requested evidence is pertinent to refute the allegations of Lyles because testing the pants and viewing the digital photographs may show that there is no evidence of body fluids on the fly of the pants. In this Court's order denying the motion to compel, this Court failed to mention and thus consider, the issue of body fluids and whether any were found.

The timeline of the allegations of Lyles shows that she alleged that she was raped vaginally by Holtzclaw through the unzipped fly of his uniform pants at approximately 1:40 a.m. for "probably like 20 or 30 minutes" on the morning of June 18, 2014. *See* attached Exhibit 5 (Lyles trial testimony) at 3626-28. If this was true, the presence of body fluids, including visible staining, would be expected.

Research by Sarah Jones *et al.*, found that when men had unprotected sexual intercourse for two minutes without ejaculation and then pulled on their underwear, "visible staining was found on the underwear." *See* Summary of Opinions by Dr. Michael Spence at 6; attached Exhibit 3 at 95. This would mean that a finding of no stains would support Holtzclaw's innocence.

Moreover, the timing is again important. The multiple sexual assault

allegations leveled against Holtzclaw culminated during his final overnight shift as a police officer on June 17, 2014, when he was later accused of assaulting Gardner, Lyles, and Ligons—all through the unzipped fly of his buckled uniform pants.

On June 17, 2014, at 7:00 p.m., Holtzclaw questioned and pat-searched Gardner, Nathaniel Davis, and a woman called Melodie Coleman before he was accused of raping Gardner at 9:30 p.m. Holtzclaw was accused of raping Lyles just four hours later, on June 18, 2014, between 1:36 a.m. and 1:47 a.m (when the police tracking software showed that his patrol car was motionless), which is an 11-minute time span during which Lyles testified that she was raped for “probably like 20 or 30 minutes,” and then also sodomized orally through the unzipped fly of the pants. *See* Exhibit 5 at 3626; *see also* attached Exhibit 6 (Det. Davis trial testimony) at 3707-09, and attached Exhibit 7 (Patrol car AVL 06.18.2014).

Holtzclaw was then accused of stopping Ligons on June 18, 2014, at 2:00 a.m. and committing oral sodomy on her. Ligons reported this assault that morning, which led Det. Gregory to obtain Holtzclaw’s uniform pants and belt that afternoon when he was questioned.

Second, the high resolution digital photographs are important not only because Holtzclaw needs them to analyze whether there was any visible stains on the pants, but also because the City has provided only PDF scans of black and white prints of

the pants, no color and with streaks left from the printer, with little to no evidentiary value.

Holtzclaw asserts that this is obviously intentional on the part of the City. The digital photographs exist because Taylor testified that they did during her deposition, and that she sent digital copies of the photos to the State prosecution team on a DVD because the files were so large. *See* Doc. 379 exhibit 1 at 157-58.

Third, the pants are required for body fluid testing because Taylor did not view the pants with an Alternate Light Source (which causes body fluids to fluoresce), neither did she conduct any body fluid tests at all to determine if latent body fluid stains (not visible to the naked eye) such as small quantities of saliva or vaginal fluids, were present on the fly of the pants. *See* attached Exhibit 8 at 4083-84 (trial testimony of Elaine Taylor).

Taylor's stated reason at trial for not testing the pants for body fluids was that when she conducted the forensic testing she thought the allegations were all oral sodomy. *Id.* 4064. She also gave a false rationale for not testing for body fluids, agreeing with the prosecutor that there are no presumptive tests "to determine...if there was fluid in the transfer if it's saliva, urine, vaginal fluids," which is false because such tests exist. *Id.* 4065.

Finally, Taylor admitted during her deposition in this case that when she tested

the fly of the pants she was not looking for a liquid such as saliva, but was instead looking specifically for touch DNA from the hands of Plaintiff Ligons that she surmised should be there from the alleged sodomy. *See* attached Exhibit 9 at 54-55, 98 (Taylor deposition).

- B. The evidence is pertinent to the Morris allegations because those allegations can be refuted by a lack of body fluid and contamination by Det. Gregory.

This Court denied Holtzclaw's efforts to obtain discovery material in the possession of the City relating to the allegation of oral sodomy by Plaintiff Morris because, "[T]he alleged conduct as to Morris was almost six weeks before the date Holtzclaw's pants were seized by investigators and any suggestion that further examination now would reveal relevant information is extraordinarily remote and borders on pure speculation." Doc. 399 at 4. This Court should reconsider this ruling for two reasons.

First, although this Court expresses skepticism about the prospects of such evidence being on the pants at this point, detectives investigating Holtzclaw had no such skepticism, and in fact believed that biological material from Morris could have transferred to the fly of the pants. This is the reason that Det. Gregory collected the buccal swab DNA from Morris for comparison analysis after "it was learned that unknown [female] profiles were found on SU Holtzclaw's outside pants zipper flap."

See attached Exhibit 21 at 1 (OCPD report).¹

Second, this Court has overlooked the fact that, disregarding the timing of the allegations made by Morris, Det. Gregory interacted with her, jointly handling paper and a pen on June 3, 2014, prior to when Det. Gregory interrogated Holtzclaw on June 18, 2014, and handled paperwork related to Morris, creating the potential that Det. Gregory contaminated the inside of the evidence bag with his not only his DNA, but also that of Morris, when he inserted his bare hand inside the bag immediately before Holtzclaw placed his pants and belt inside. *See* attached Exhibit 11 (screen shots of Det. Gregory's bare hand inside the evidence bag).

The point is that, by doing this, Det. Gregory's DNA and that of Morris is likely to have transferred from the inside of the bag to the pants and belt as they were placed inside the bag. Even lead detective Kim Davis testified during her deposition that Det. Gregory should not have stuck his hand inside the evidence bag. *See* attached Exhibit 12 at 107, 109-10 (Davis deposition).

Recall that Holtzclaw was acquitted at the state criminal trial of the allegations made by Morris. She alleged that on May 24, 2014, she was orally sodomized on

¹ In fact, police acquired buccal swabs from several women who alleged sexual assaults even earlier than Morris: Plaintiff Ellis (May 7, 2014), Plaintiff Copeland (April 25, 2014), Plaintiff Grate (April 24, 2014), and an accuser Ms. Mathis who alleged that her breasts were groped (April 14, 2014).

May 20 or May 21, by an unknown white police officer, dark-skinned, around 40-years-old driving an old black-and-white police cruiser at a city location far from where Morris interacted on May 8 with Holtzclaw, who is Japanese-American, light-skinned, 27-years-old at the time, and drove a brand-new all-black police cruiser at the time. *See* attached Exhibit 13 at 1 (OKCPD report).

On June 3, 2014, Morris signed a “Refusal to Prosecute” form in the presence of Detective Gregory. *See* attached Exhibit 14 at 1 (OKCPD report). The videotape shows that on that day, Det. Gregory interacted for more than 20 minutes with Morris, and that he touched both the “Refusal to Prosecute” form that she had signed as well as the pen that she used to sign it.

The point is that when Morris handled the form and the pen, this created DNA transfer routes by which her DNA could have transferred to Det. Gregory’s hands prior to the time that he interrogated Holtzclaw on June 18 and then inserted his bare hand into the evidence bag before placing the pants and the belt; not to mention that yet a second DNA transfer route was created when Det. Gregory questioned Holtzclaw about Morris and he carried paperwork related to her case and a pen that he gave to Holtzclaw.

- C. Plaintiff Lyles and Morris may be contributors to the inconclusive female DNA profiles obtained along with unknown male DNA from the fly of Holtzclaw’s pants.

The key aspect of the DNA evidence in this case is that it was a mixture of DNA from several persons, including at least one unknown female and at least one unknown male. The identities of these male and female contributors are unknown because the DNA data are inconclusive. This means that the data do not allow a conclusion about whether or not any particular person is a contributor because the profiles were an “indistinguishable mixture” or “not suitable for comparison purposes.” *See* attached Exhibit 8 at 4040-44, 4056, 4069-72 (Taylor trial testimony).

This means that it is possible that the unknown DNA may have been derived from Lyles, Morris, Holtzclaw, Det. Gregory, or Nathaniel Davis (who was pat-searched by Holtzclaw just hours before stopping Lyles).

Holtzclaw expert Dr. Gill *et al.*, state, “Calculating the weight of evidence towards exclusion of DNA from Mr. Holtzclaw or any of the complainants from the four DNA mixtures, for which allele drop-out was a possibility, can only be carried out by using a probabilistic statement such as a likelihood ratio (LR), which was not utilized by the OCPD forensic analyst.” *See* attached Exhibit 1 at 24.

This means that the request by Holtzclaw to access the DNA evidence is justified in order to allow his experts to perform the probabilistic genotyping that Taylor failed to perform.

- D. Taylor bolstered an unscientific argument that body fluid transferred the unknown female DNA when she excluded incorrectly Holtzclaw and Lyles from the inconclusive DNA profiles obtained from the fly of the pants.

Taylor's most damaging, unscientific error at trial was the she repeatedly excluded Holtzclaw from being a contributor to the DNA from the fly of the pants, not once, but seven times during the state criminal trial, even though the DNA were inconclusive and she thus could not have scientifically justified excluding Holtzclaw as being a contributor. *See* attached Exhibit 8 at 4056-59, 4071-73, 4084, 4087, and 4089.

This erroneous testimony is significant because Taylor and the State claimed at the criminal trial that Holtzclaw's DNA was absent, an absence which she asserted was "very difficult to try and explain," which was used to bolster her conclusion that there was a "very good possibility" that the female DNA transferred in a liquid such as vaginal fluid rather than non-intimate DNA transfer via hands.

Holtzclaw's DNA experts and others from around the world have realized the error made by Taylor and have criticized her for testifying repeatedly that she could exclude potential contributors from DNA profiles that are inconclusive. *See* attached Exhibit 1 at 23-26.

Moreover, Taylor bolstered this incorrect conclusion when she testified that

there was no evidence of male DNA in the two DNA extracts from the inside of the fly of Holtzclaw's pants when her own data show that male DNA was detected when she quantified the amount of DNA in both extracts. *See* Doc. 379, attachment 2 at 11-12 (opinion summary by Holtzclaw expert Dr. Michael J. Spence).

Taylor also failed to note that both DNA extracts have many alleles in common with Holtzclaw, which suggests that some, but not all, of his genetic regions may have been detected. *Id.*

Taylor also ignored the exculpatory significance of the unknown male DNA (containing "Y" chromosomes) that she testified was found in one of the DNA extracts from an outer surface of the fly of the pants, but was actually found in all four DNA extracts. *Id.* 9; *see also* Exhibit 8 at 4044, 4056, 4073.

Obviously, males do not make vaginal fluid, which means that the male DNA transferred *without* vaginal fluid to the fly of the pants. The unknown male DNA is thus significant because it proves that non-intimate (that is, non-vaginal fluid) routes exist to explain how female DNA, possibly derived from Lyles or Morris, transferred to the fly of the pants.

Finally, Taylor erred yet again in her trial testimony in the state criminal case when she testified that she found no DNA evidence from Lyles around the zipper area, meaning that Lyles was excluded from being a potential contributor to the DNA

extracts from the fly of the pants, which was contradicted her earlier, correct, testimony that the unknown DNA profiles were “not suitable for comparison purposes,” *i.e.*, are inconclusive. *See* Exhibit 8 at 4056, 4081-82.

Taylor’s error in excluding Lyles is significant because the exclusion hid the possibility that the DNA mixtures include a low level of DNA from Lyles on the fly of the pants, without visible evidence of body fluid, which supports a non-intimate contact explanation for the possible presence of the DNA of Lyles (e.g., transfer from the pat-search of Lyles by Holtzclaw), as opposed to an explanation preferred by the State and the Plaintiffs in this civil action that involves sexual assault.

- E. The DNA extracts, raw data, Holtzclaw’s DNA, and DNA profiles of Det. Gregory and Davis are needed to investigate how unknown male and female DNA transferred to the pants.

These materials are needed by Holtzclaw for him to conduct statistical analyses to determine the likelihood of the evidence if Lyles, Morris, Holtzclaw, Det. Gregory, or Nathaniel Davis are contributors. This means that finding a high likelihood that they are contributors, plus the absence of evidence of body fluids, would support the conclusion that the DNA evidence is the result of non-intimate indirect transfer.

The testing sought to be conducted by Holtzclaw is pertinent to the allegations of Lyles and Morris for the following reasons:

First, the four DNA extracts, associated control samples, and Holtzclaw’s DNA

are needed for Y-chromosome genetic testing to discover the minimum number of male contributors and, like paternity testing, to learn whether Holtzclaw is likely a contributor. These results would show whether DNA from a male who is not Holtzclaw is present on the fly of the pants, which would prove a non-intimate route for the *female* DNA to be there as well.

Second, the raw digital “GeneMapper” files associated with the four DNA extracts from the fly of Holtzclaw’s pants are needed for probabilistic genotyping to calculate how likely the DNA profile evidence is if Lyles, Morris, Holtzclaw, Det. Gregory, or Nathaniel Davis are contributors of the DNA profiles.

These results could help explain how female DNA may have transferred without sexual contact to the fly of the pants, as well as refute the conclusion of Taylor that female DNA was more likely to have transferred in body fluids.

Third, Holtzclaw requests Det. Gregory’s DNA profile (not his DNA) because comparing it to the DNA profiles from the pants may support the assertion that Det. Gregory contaminated the pants through non-intimate DNA indirect transfer of his own DNA (and perhaps that of Morris) when he inserted his bare hand into the evidence bag.

The objections of this Court to this request appear to have been based on misunderstandings. First, this Court stated that “no discovery request for DNA

samples via Rule 35 was made prior to filing the motion to compel at the conclusion of the discovery period,” and, second, “The City indicates, and Holtzclaw does not appear to dispute, that it does not have existing records as to the DNA of Gregory or Davis.” Doc. 399 at 5.

To clarify, Holtzclaw does not request that Det. Gregory submit to a DNA sample such as a buccal swab; rather, Holtzclaw requests that the OCPD DNA lab produce his DNA or DNA profile because he testified during his deposition that the lab had a reference sample of his DNA and it may have been used to obtain his DNA profile. *See* attached Exhibit 10 at 146-47 (deposition of Det. Gregory).

Finally, Holtzclaw requests the DNA profile of Nathaniel Davis to analyze the possibility that he contributed to the unknown male profiles as a result of the pat search conducted on him by Holtzclaw on June 17, 2014, just hours before Holtzclaw had interacted with Lyles. No physical sample of DNA from Davis is required because his DNA profile should have already been acquired by the police department under Oklahoma law after his felony conviction in 2009. *See* attached Exhibit 16 (criminal docket); *see also* 74 O.S. § 150.27A.

- F. The written review of Taylor’s trial testimony by Campbell Ruddock is pertinent to the claims of Lyles and Morris because it will help prove faulty DNA analysis caused investigation flaws.

Holtzclaw requests release of the written review prepared by OCPD lab

manager Campbell Ruddock because it contains impeachment evidence against the testimony of Taylor and detectives for concluding incorrectly that the female DNA profiles on the pants were explained best by sexual body fluid transfer rather than non-intimate DNA indirect transfer.

In this Court's Order denying Holtzclaw's motion to compel this review, the Court stated, "It is unclear from the current submissions who or what initiated Ruddock's review of Taylor or how that relates to the court review apparently triggered by the Court of Criminal Appeals' consideration of Holtzclaw's appeal." Doc. 399 at 5.

Ruddock's review came into existence between February 1, 2017, and early April, 2017, because he was asked to write a review of Taylor's trial testimony because Holtzclaw had filed his appeal brief on February 1, 2017, which included a legal claim criticizing Taylor's testimony and conclusions.

Initially, the state Attorney General agreed to turn over the review to Holtzclaw because it contained information relevant to his legal claims concerning Taylor on direct appeal. *See* attached Exhibit 16 at 2. In early April, 2017, OCPD shared the review with outside entities including the Oklahoma County District Attorney and the Oklahoma Attorney General. *See* attached Exhibit 17 at 6, 7.

The state Attorney General then notified the Oklahoma Court of Criminal

Appeals and appellate counsel for Holtzclaw that they had come into possession of information related to Taylor, some of which they agreed should be turned over to Holtzclaw. *Id.* The materials turned over involved “an internal review of former Oklahoma City Police Department Chemist Elaine Taylor’s testimony in Appellant’s trial.” *See* attached Exhibit 18 at 2, 3.

The Oklahoma Court of Criminal Appeals then ordered an *in camera* hearing by the district court to decide if Ruddock’s written review and other exhibits related to Taylor should be considered protected personnel files. *Id.* What actually happened was an *ex parte* hearing held by the district court, which held ultimately that the written report was a protected personnel file and that the appropriate entity to decide its release is the City of Oklahoma City, rather than the Oklahoma Court of Criminal Appeals. *See* Exhibit 17 at 16.

The City has thus far refused to allow release of the written review.

Holtzclaw asserts that this written review contains evidence impeaching the work and testimony of Taylor because the deposition of Campbell Ruddock reveals that this is true. *See* Doc. 379, attached Exhibit 3 (deposition of Campbell Ruddock) at 15, 25-26, 29-30, 45.

Ruddock testified in his deposition that there is an innocent explanation for the DNA on Holtzclaw’s pants, and, at the time of his verbal review of Taylor’s

testimony in the state criminal trial, prior to his written review, he thought that Taylor gave too much weight to the possibility that vaginal fluid was the cause of the female DNA, and not enough weight to the possibility that there was an innocent explanation for the presence of DNA on the fly of the pants. *Id.*

Therefore, Ruddock's written review, which he created after his verbal review of Taylor's testimony in the state criminal trial, should contain these critiques as well as others that he gave in his verbal review, according to his deposition testimony. The written review should contain even more criticisms of Taylor that Ruddock testified about in his deposition because the City refused to allow Ruddock to discuss any aspect of the written review during his deposition, going so far as to prevent him from discussing whether he agreed with another DNA expert who was critical of Taylor's testimony. *Id.* 15, 16, 21-23.

Holtzclaw also requests the written review in order to impeach the investigative flaws of the OCPD detectives who believed incorrectly that the female DNA profiles equated to the guilt of Holtzclaw. *See* attached Exhibit 12 (deposition of Davis) at 115-16, 119-20; Exhibit 10 (deposition of Gregory) at 115-16, 119-20; Exhibit 20 (deposition of Lt. Muzny) at 225-27. In fact, the depositions of Det. Davis and Lt. Muzny reveal that they were not even aware that unidentified male DNA was found on the fly of the pants. Exhibit 12 at 109-10, 261-62; Exhibit 20 at 227.

The serious flaws in the investigation conducted by the OCPD are described in the crime scene analysis and case linkage report completed by defense criminologists Dr. Turvey and Dr. Mares, who concluded that there existed substantial investigation errors and negligence of the OCPD investigation. *See* attached Exhibit 19 at 16, 18-19, 21-22, 25-26.

The primary investigative flaw was that, because detectives believed that the presence of the female DNA profile meant that Holtzclaw was guilty, detectives thus used improper investigative methods as they searched for the female who matched the DNA profile even when women were interviewed in vulnerable states, such as being in jail, thus increasing the risk that women interviewed would seek ways to cooperate or would misidentify Holtzclaw as the assailant.

A prime example of this is Morris, who was interviewed by Det. Gregory in jail, and then changed her story to match the suggestions offered to her by Det. Gregory (she changed the location of her alleged assault to match the location suggested by Det. Gregory to a place where he knew that Holtzclaw had made contact with her).

G. Chain of custody and consuming evidence.

This Court had concerns about chain of custody issues and the possible destruction of evidence. Doc. 399 at 3. Holtzclaw clarifies that there should be no

issues involving chain of custody, and no evidence will be consumed.

Viewing the pants with an Alternate Light Source will not destroy the pants or any potential body fluids; and body fluid testing would require only swabbing a small area. Counsel was in error at the hearing when he stated that fabric of the pants would need to be cut. This is incorrect. Swabbing would take place, not cutting fabric, and of course, digital photographs, digital data files, and DNA profiles are electronic records that are easily duplicated without any risk of destruction of the source material.

BRIEF IN SUPPORT

Discovery of information under Rule 26(b) is wide and deep, and information within the scope of discovery need not even be admissible in evidence to be discovered. Rule 26(b)(1). As the Notes to the Rule make clear, discovery is meant to be broad in scope, and not a corollary to relevance under the rules of evidence.

The purpose of discovery is to allow a broad search for facts, the names of witnesses, or any other matters which may aid a party in the preparation or presentation of his case. *Engl v. Aetna Life Ins. Co.*, 139 F.2d 469 (2nd Cir. 1943).

The Order of this Court denying Holtzclaw's motion to compel is too restrictive under Rule 26, and without the key DNA information and materials requested from the City, Holtzclaw will not be able to defend the allegations.

Thus, in the event this Court denies his motion for reconsideration, Holtzclaw moves for a stay of these proceedings so that he may pursue extraordinary relief in the Tenth Circuit Court of Appeals.

WHEREFORE, good cause having been shown, Defendant Holtzclaw moves for reconsideration of the denial of his motion to compel discovery from the City; and to a stay of these proceedings in the event his motion is denied so that he may seek extraordinary relief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 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

**REPORT ON SCIENTIFIC ISSUES
IN THE CASE OF OKLAHOMA V. DANIEL K. HOLTZCLAW
BY AN INTERNATIONAL PANEL OF FORENSIC EXPERTS**

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for Case No. F-2016-62
in the Oklahoma Court of Criminal Appeals

DANIEL K. HOLTZCLAW, *Appellant*,

v.

THE STATE OF OKLAHOMA, *Appellee*.

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was allegedly orally sodomized by Mr. Holtzclaw through the unzipped fly of his buckled uniform pants. (Tr. 501, 511)

A few hours later on the morning of June 18, 2014, Ms. C2 reported to police that an officer had forcibly orally sodomized her after stopping her vehicle. A Sexual Assault Nurse Exam (SANE) of Ms. C2 occurred within several hours of the alleged sexual assault. (Tr. 4038)

On the afternoon of June 18, 2014, two OCPD sex crimes detectives, one female and the other male, interrogated Mr. Holtzclaw for approximately two hours, handing him pens to fill out forms. (State's Exhibit #14) At the end of the interrogation, the male detective inserted his bare hand in an evidence bag into which Mr. Holtzclaw then placed both his dark navy blue uniform pants (Item #17) and black Velcro belt in the keepers (Item #18). (Original Record (O.R.) p. 177) Only Mr. Holtzclaw's uniform pants and Velcro belt were collected as evidence. *Id.*

Ms. C2's SANE kit, as testified by the OCPD forensic analyst, "unfortunately in this case" came back negative without any evidence of Mr. Holtzclaw's DNA in or around Ms. C2's mouth. (Tr. 4038) No fingerprints or DNA supported Ms. C2's account that she and Mr. Holtzclaw placed their hands on top of his patrol car. (Tr. 482, 508, 1095-96)

The OCPD forensic analyst observed nothing suspicious on the fly of the uniform pants by using a very bright light and a magnifying glass. (Tr. 4084) She did not test the uniform pants for body fluids or use an Alternate Light Source to identify whether latent stains were present. (Tr. 4078-79, 4084) Instead, she proceeded directly to swabbing only the outside and inside of the fly of Mr. Holtzclaw's uniform pants for DNA. (Tr. 4028-30, 4084)

The forensic analyst obtained four DNA samples, items #17Q1 and #17Q2 (in June of 2014), and then items #17Q3 and #17Q4 more than a year later (in September of 2015), by

“vigorously” rubbing wet cotton swabs up and down the full length of the fly of the uniform pants on four different stretches of fabric alongside the zipper: the outer, left-hand surface of the fly (#17Q1); an inner, right-hand fabric flap that is revealed when the zipper is unzipped (#17Q2); and two interior stretches of fabric to the left and right of the zipper (#17Q3 and #17Q4, respectively). (Tr. 4032-33, 4040, 4062); Bench Notes of OCPD forensic analyst.

The purified DNA is assumed to derive from epithelial cells, which form the skin layer on the outside of the body including inside orifices such as mouth and vagina, because the DNA purification method that was used would not extract DNA from sperm and there was no reason to believe that the DNA derived from blood or muscle. (*See* Tr. 2699, 2700-01, 4075)

The only forensic evidence linking Mr. Holtzclaw to any of the complainants in the entire trial was a DNA profile, ultimately matched to the teenager Ms. C1 (O.R. 182, 253), that was obtained from the fly of Mr. Holtzclaw’s uniform pants in the four DNA samples, which included mixtures of DNA from at least several individuals. Item #17Q1 was an indistinguishable mixture of DNA from at least 3 people and included all the alleles found in Ms. C1’s DNA profile. (O.R. 187, 190) Items #17Q2 (with at least 3 contributors), #17Q3 (with at least 2 contributors), and #17Q4 (with at least 2 contributors) each had a clear and complete major profile that matched Ms. C1, while the minor contributor profiles had the possibility of allele drop-out. All four samples contained male DNA, although the forensic analyst testified that no evidence of male DNA was found in the items #17Q3 and #17Q4 (Tr. 4072) even though the quantification results on the OCPD qPCR Report for SD14-273 (10/1/2015) revealed its presence. The OCPD forensic analyst testified that Mr. Holtzclaw was excluded from being a contributor to all four DNA samples, when in fact the data were inconclusive. *Compare* (Tr.

4073) and (O.R. 182, 253, 255).

The OCPD forensic analyst informed the female detective early on with respect to June 18, 2014, the beginning of the investigation, that item #17Q2 contained the complete DNA profile of an unknown female major contributor. (Tr. 4045-46) This discovery led to a police investigation to search for the unidentified female (Tr. 423-24) by focusing only on possible consensual or criminal sexual transfer of DNA (10/2/14 Motion Hearing Tr. 16, 62).

The detectives suspected that the forcible oral sodomy allegation by Ms. C2 could be linked to an earlier sexual assault allegation against an unknown police officer by another woman, Ms. C9. (Exhibit #14; Tr. 3204, 3208-09) Ms. C9 was high on crack cocaine when she made an allegation against an unknown officer. (Tr. 3163-64) She had a mood disorder, multiple warrants, and a criminal history including drug use, prostitution arrests, and penitentiary escapes. (Tr. 3157, 3159, 3188) Ms. C9 could not positively identify her alleged assailant in a line-up (Tr. 3172) and recalled a date (Tr. 3212), a black and white patrol car color (Tr. 3302), and initially a location (Tr. 3159, 3175) that did not match the whereabouts and black color of Mr. Holtzclaw's patrol car. Eventually, it was discovered that Mr. Holtzclaw's patrol car was going faster than 25 mph at the location where Ms. C9 alleged he dropped her off, such that even the male detective admitted that "yes," she was lying about that. (Tr. 3239, 3291-92) (Mr. Holtzclaw was acquitted of Ms. C9's allegations.)

Despite these problems with Ms. C9's accusations, police used her background while developing a victim profile to search for the mystery female whose DNA was found on the fly of Mr. Holtzclaw's uniform pants. Although Ms. C2 had no warrants or drug convictions, an OCPD lieutenant created a victim profile by assuming that Mr. Holtzclaw had targeted African

American females with criminal histories and arrest warrants. (Tr. 2385-86) The lieutenant looked back through 6 months of police records prior to June 18, 2014. (Tr. 2397) He identified hundreds of women whose criminal histories had been checked by Mr. Holtzclaw, noting those whom Mr. Holtzclaw had also run for warrants, and then the lieutenant created a list containing “specifically names of black females” (Tr. 2385) “who had a drug history, prostitution history or a significant criminal history” (Tr. 2284, 2386-87). The lieutenant gave packets of the women’s information to the two sex crimes detectives to use to contact them. (Tr. 2399)

The detectives then contacted these women, telling them that police had “received a tip” that the women were “possibly sexually assaulted by an Oklahoma City police officer” who “was a really bad guy.” (Tr. 1975, 2218, 2250, 2273, 2322-23, 2999, 3517-18) The male detective admitted he could have told multiple interviewees that police had a lot of victims, a long list of women. (Tr. 2250, 2273) Police contacted more than 40 African American women with drug and prostitution histories and warrants. (Tr. 2269) While more than 33 women said nothing had happened (Tr. 2269), police ultimately obtained sexual assault allegations from 9 of the women.

When none of these women matched the unidentified female DNA profile, detectives then started looking at “every female he ran starting before he was put on administrative leave [...] and working backwards” to find a DNA match. (Tr. 3892) This process led to a tenth complainant, Ms. C1, the last complainant identified in the case, whose DNA matched the major contributor in samples from the fly of the uniform pants. (Tr. 3933-36)

After including the three women – Ms. C2, Ms. C9, and Ms. C11 – who made sexual assault allegations without being contacted first by police, the investigation of Mr. Holtzclaw resulted in a total of 13 complainants whose allegations went to trial. Other women and one man

transferred tertiarily from the neck of one individual (a donor) to cotton cloth that had been rubbed for 5 seconds on the donor's neck, then from that first cloth to the hands of a second person (the carrier), and finally from the carrier's hands to a second piece of cotton cloth. *See Helmus et al.* at 121, 124. DNA testing of the second cloth was able to provide the complete DNA profile of the original donor in 22% of the samples. *Id.*

Research by Cale *et al.*, first published online on Sept. 1, 2015, revealed that shaking hands with a second individual and then touching a knife can transfer the second individual's DNA, but not the handler's DNA, to the touched object. Cynthia M. Cale, Madison E. Earll, Krista E. Latham & Gay L. Bush, *Could Secondary DNA Transfer Falsely Place Someone at the Scene of a Crime?* 61 J. OF FORENSIC SCIENCES 196, 196 (2016). Other studies have obtained similar results. *See, e.g.*, Alex Lowe, Caroline Murray, Jonathan Whitaker, Gillian Tully & Peter Gill, *The Propensity of Individuals to Deposit DNA and Secondary Transfer of Low Level DNA from Individuals to Inert Surfaces*, 129 FORENSIC SCIENCE INT'L. 25, 33 (2002) ("The full DNA profile of one individual was recovered from an item that they had not touched while the profile of the person having contact with that item was not observed.").

The absence of visible staining on the fly of the uniform pants (Tr. 4084) was consistent with non-intimate DNA transfer. Vaginal stains may appear whitish or creamy, yet can be faint or not visible at all, and currently there are no commercial confirmatory tests for matter secreted specifically from the vagina. *See* JANE MOIRA TAUPIN & CHESTERENE CWIKLIK, SCIENTIFIC PROTOCOLS FOR FORENSIC EXAMINATION OF CLOTHING 133 (2010). However, recent research has revealed that after just two minutes of consensual sexual intercourse without ejaculation, stains are visible on men's underwear that they donned after intercourse, causing

their genitals to come into contact with the cloth of the underwear. *See Jones et al.* at 95. Based on these research results, there would be an expectation of visible staining on the fly of Mr. Holtzclaw's uniform pants if he had, as alleged, raped Ms. C1 for "about ten minutes" (Tr. 3773) through the unzipped fly of his buckled pants confiscated less than 24 hours later.

The complex DNA mixtures were typical of indirect transfer. Although Mr. Holtzclaw's trial defense attorney did not reveal this during the trial, the defense argument is additionally supported by the observation that the samples were mixtures of DNA from several individuals, which is typical of the complex DNA mixtures frequently found due to non-intimate DNA indirect transfer. *See* Mariya Goray, Ece Eken, R.J. Mitchell & Roland A.H. van Oorschot, *Secondary DNA Transfer of Biological Substances under Varying Test Conditions*, 4 FORENSIC SCIENCE INT'L: GENETICS 62 (2010) ("a biological substance that has been transferred multiple times, if detectable, will often appear as components of complex DNA profiles" from more than one individual because DNA may be present on the vectors on which it transferred or on the substrate from which the DNA is collected).

B. We are Concerned that the DNA Evidence's Probative Value was Reduced Further by the Omission of Critical Forensic Science Steps during Evidence Collection and Testing.

The probative value of the DNA evidence, which was low because it could be explained by non-intimate DNA indirect transfer, was reduced further because the State did not follow the crucial forensic science steps of developing, investigating, and testing alternative hypotheses during evidence collection and analysis to distinguish among three hypotheses that could explain the DNA evidence: DNA transfer in body fluid; non-intimate skin cell DNA transfer, such as via Mr. Holtzclaw's hands; contamination of the fly of the uniform pants. *See* JOHN O. SAVINO &

case. Identifying a fluid can impact the trial verdict, and therefore the first step of DNA profiling should be to examine the exhibits to detect the presence of body fluids and identify them by using light sources and chemical tests. *See* INTERPOL DNA MONITORING EXPERT GROUP, INTERPOL HANDBOOK ON DNA DATA EXCHANGE AND PRACTICE 30 (2nd ed. 2009); *see also* TAUPIN & CWIKLIK at 140 (“Methods for locating and sampling biological stains are essential to the successful interpretation of DNA analysis and identification of body fluids....”).

It is agreed that Mr. Holtzclaw and Ms. C1 had non-sexual contact. This is why the mere presence of a DNA profile cannot be attributed to sexual activity without supporting evidence of body fluid identification. Finding DNA on a suspect’s clothing “has an entirely different probative value when DNA originates from the epithelium” vs. body fluids. Joanna Jakubowska, Agnieszka Maciejewska & Ryszard Pawłowski, *mRNA Profiling in Identification of Biological Fluids in Forensic Genetics*, 87 PROBLEMS OF FORENSIC SCIENCES 204, 204 (2011).

3. The State did not investigate the source of unknown female and male DNA that could support the hypothesis of non-intimate DNA indirect transfer.

Discovering unexplained and unexpected DNA from a mixture of individuals, including at least one unidentified male, on the fly of Mr. Holtzclaw’s uniform pants required consideration of who may have contributed to the DNA samples and the chain of events that led to the DNA being present so that the likelihood of alternative scenarios could be assessed, yet both the State’s investigators and Mr. Holtzclaw’s trial defense attorney did not do this. *See* SAVINO & TURVEY at 321 (explaining that the meaning of DNA evidence “cannot be interpreted unless the conditions” of contact “and evidence transfer have been reconstructed carefully using other physical evidence”); *see also* Williamson at 4 (stating that when a male profile that does not match a suspect is obtained from a non-intimate skin cell DNA sample relating to a female

complainant, then the relevance of the male DNA to the case must be considered); Roland A.H. van Oorschot, Kaye N. Ballantyne & R. John Mitchell, *Forensic Trace DNA: A Review*, 1 INVESTIGATIVE GENETICS 1, 12 (2010) (explaining that police must make greater efforts to investigate the possible chain of events leading to DNA transfer).

The State omitted investigating whether Ms. C1's male and female friends, with whom she was stopped, could have contributed alleles to the DNA samples, which would support the scenario that non-intimate DNA from all three individuals transferred to Mr. Holtzclaw's hands when he questioned them. (Tr. 3801-03); *see also* Williamson at 4 (noting DNA "elimination samples" should be obtained from individuals who may have contributed to DNA mixtures).

4. We are concerned that the State's handling of the evidence could cause contamination that may have transferred DNA from Ms. C1 and others to the fly of the uniform pants.

Lastly, the DNA from the fly of the uniform pants had little probative value because the State did not undertake crucial and accepted forensic science steps to prevent the possibility of DNA contamination by investigators during evidence collection, storage, or examination. *See* Joel D. Lieberman, Terance D. Miethe, Courtney A. Carrell & Daniel A. Krauss, *Gold Versus Platinum: Do Jurors Recognize the Superiority and Limitations of DNA Evidence Compared to Other Types of Forensic Evidence?* 14 PSYCH. PUB. POL. & L. 27, 31 (2008) (explaining that police may contaminate evidence while collecting and storing an exhibit inappropriately); *see also* Oorschot *et al.* at 11 ("Contamination is a crucial issue in the analysis and interpretation of trace DNA."). Also, staff elimination DNA samples from the detectives and other investigators do not appear to have been compared with the DNA samples from the fly of the uniform pants.

Five possible routes can be identified by which DNA may have contaminated the fly of Mr. Holtzclaw's uniform pants. The trial defense attorney mentioned none of them.

First, alleles from unidentified individuals, including at least one male, could have arisen from the female and male sex crimes detectives during their interrogation of Mr. Holtzclaw due to secondary transfer via pens that they handed to him, after which he rubbed his pants frequently, ultimately touching his Velcro belt and possibly the fly of the uniform pants while unzipping them, as revealed in the interview video. (Exhibit #14)

Second, contamination of the uniform pants and belt may have occurred due to DNA transfer after the male detective violated proper evidence collection procedure by failing to wear DNA-free gloves and instead pushing his bare hand into the evidence bag before Mr. Holtzclaw placed his pants and belt in the bag. *Id.*; *see* SAVINO & TURVEY at 366 (DNA contamination).

Third, detectives violated standard procedures for evidence collection by packaging two items, the uniform pants (Item #17) and the belt (Item #18), in the same evidence bag, creating the potential for cross-contamination of DNA from Ms. C1 as well as other individuals from the belt to the fly of the uniform pants during transportation and storage. *See* SAVINO & TURVEY at 157; *see also* INTERPOL DNA MONITORING EXPERT GROUP at 27 (“Never pack several items/objects together.”).

Fourth, DNA from Ms. C1 and other individuals that may have been present on less incriminating locations of the pants may have transferred to the fly within the evidence bag, or vice versa, since research demonstrates significant quantities of DNA often transfer from one area to another on the same exhibit or other exhibits inside a single bag. *See* Mariya Goray, Roland A.H. van Oorschot & John R. Mitchell, *DNA Transfer within Forensic Exhibit*

Packaging: Potential for DNA Loss and Relocation, 6 FORENSIC SCIENCE INT'L: GENETICS 158, 165-166 (2012).

Fifth, the photo taken by the OCPD forensic analyst of the uniform pants (State's Exhibit #392) shows that they were in contact with what appears to be a red brick surface in one corner of the photo, which raises contamination concerns because brick is not part of a lab bench. *See* Bianca Szkuta, Michelle Harvey, Kaye Ballantyne & Roland R.H. van Oorschot, *DNA Transfer by Examination Tools – a Risk for Forensic Casework?* 16 FORENSIC SCIENCE INT'L: GENETICS 246, 246 (2015) (demonstrating DNA contamination of evidence items via lab tools and gloves).

II. THE STATE MISINTERPRETED THE DNA ANALYSIS AND MADE ARGUMENTS THAT MISREPRESENTED THE DNA EVIDENCE FROM THE FLY OF MR. HOLTZCLAW'S UNIFORM PANTS.

As described in Mr. Holtzclaw's brief (p. 44), the State and its forensic analyst misrepresented the forensic evidence by arguing, incorrectly, that vaginal fluid was likely to be present and the speculative presence of undetected vaginal fluid (Tr. 4073, 4087-89) was supported by the discovery of DNA matching Ms. C1's profile, by incorrectly asserting that no male DNA was present in items #17Q3 and #17Q4 (Tr. 4072), and by incorrectly excluding Mr. Holtzclaw as a potential contributor to the four DNA samples from the fly of the uniform pants (Tr. 4059, 4072). The prosecutor also claimed facts not in evidence when he claimed in his closing statement that it was a "fact" that C1's DNA transferred in vaginal fluids. (Tr. 4307)

Mr. Holtzclaw's trial counsel neither forced the prosecution's DNA analysis errors to be revealed during cross-examination of the forensic analyst, nor objected to prosecutorial misrepresentations of the forensic evidence. Trial defense counsel did not make the forensic analyst admit that male DNA was present in all four samples from the fly of the uniform pants,

and so the implications of this DNA were never addressed. We are concerned that Mr. Holtzclaw's representation was therefore ineffective because criminal justice and DNA experts note that in order "to completely represent an individual incriminated by DNA evidence," defense counsel must "look behind the laboratory report to determine whether the lab's conclusions are well supported, and whether there is more to the story than the report tells." William C. Thompson, Simon Ford, Travis Doom, Michael Raymer & Dan E. Krane, *Evaluating Forensic DNA Evidence: Essential Elements of a Competent Defense Review*, Part 1, 27 THE CHAMPION 16, 19-21 (April 2003). Effective defense counsel must uncover, understand, and explain ambiguities in the DNA evidence, with one source of ambiguity being mixtures of DNA from several individuals because these "mixtures are difficult to interpret." *Id.*

However, the prosecutor's incorrect argument that the discovery of DNA matching Ms. C1 and the presumed absence of Mr. Holtzclaw's DNA together suggested the likely presence of vaginal fluid is a trial error that was preserved for appellate review, because the Court sustained the trial defense counsel's objection to the prosecutor's use of hypotheticals when the prosecutor asked the OCPD analyst if she had an opinion, based on her conclusion that Mr. Holtzclaw's DNA was absent, about whether it would be "more likely then if the secondary transfer was from Officer Holtzclaw's penis going into [C1's] 17-year-old vagina." (Tr. 4087)

A. The State's Forensic Analyst Incorrectly Used the Presence of DNA Matching Ms. C1's Profile to Argue that Vaginal Fluid was the Likely Source.

The State's forensic analyst made three errors while inappropriately using a DNA profile matching Ms. C1 to infer that vaginal fluid was likely to be present. (Tr. 4073)

First, the analyst's subjective claim that it was "a very good possibility" that, as the prosecutor phrased it, DNA matching Ms. C1's profile was "much more likely [...] to be

transferred if the epithelial cells are contained in a liquid such as vaginal fluid,” (Tr. 4073) was not founded objectively upon the evidence since no visible stains or deposits were observed, no body fluid tests were done, and the forensic analyst herself could not rule out the possibility of non-intimate DNA indirect transfer from the teenager’s purse via Mr. Holtzclaw’s hands to the fly of his uniform pants. (Tr. 4083); *see also* SAVINO & TURVEY at 526 (“In cases of sexual assault, the need for critical analysis mandated by objective science is especially important.”).

Second, the OCPD forensic analyst inappropriately used DNA profiles alone to compare the likelihood of DNA transfer via vaginal fluid, which she felt was “a very good possibility” (Tr. 4073), vs. indirect transfer of non-sexual skin cell DNA from the teenager, about which she replied, “I can’t disagree with that,” when asked by trial defense counsel if she agreed that non-intimate DNA indirect transfer (“secondary transfer”) could have occurred (Tr. 4083).

The forensic analyst’s preference for vaginal fluid transfer was incorrect because a DNA profile alone does not inform about “when, where, how or why” DNA transfer occurred. Gill at 13. Scientific articles establish “the possibility, but not the probability, of DNA transfer.” Meakin & Jamieson at 442; *see also* Ane Elida Fonneløp, Thore Egeland, & Peter Gill, *Secondary and Subsequent DNA Transfer During Criminal Investigation*, 17 FORENSIC SCIENCE INT’L: GENETICS 155, 155 (2015) (explaining that “research to evaluate the risks of passive transfer has not kept pace with” the development of increasing sensitivity of DNA analysis kits).

Third, the forensic analyst testified beyond the forensic science professional expertise when she said of the teenager, Ms. C1, that “a young woman of her age would be very likely to have quite a bit of lubrication” that could transfer cells. (Tr. 4065) The analyst then did not

explain the contradiction between her argument that vaginal fluid should be plentiful and her observation that nothing suspicious was visible on the fly of the uniform pants. (Tr. 4084)

B. The State Argued Incorrectly that the Exclusion of Mr. Holtzclaw as a Contributor to the DNA Mixtures Supported a Rape Scenario.

The prosecutor presented a flawed argument that vaginal fluid was likely to be present on the fly of the uniform pants, claiming that if Mr. Holtzclaw had transferred Ms. C1's non-intimate skin cell DNA via his hands to the fly of his pants, which "common sensically" he would have had to unzip and touch when urinating, then you would also expect to find Mr. Holtzclaw's DNA in those locations. (Tr. 4087-89) This flawed argument was premised on the OCPD forensic analyst's unscientific claims that items #17Q3 and #17Q4 from inside the fly of the uniform pants contained no Y chromosome and thus lacked evidence of male DNA (Tr. 4072), no DNA from Mr. Holtzclaw was found in any of the four samples, and an absence of his DNA was "very difficult to try and explain." (Tr. 4073, 4087-89); *see also* SAVINO & TURVEY at 365 ("DNA results can be incomplete or misleading, and therefore prone to misuse.")

1. The State's forensic analyst testified that she found no evidence of male DNA in samples #17Q3 and #17Q4, yet low levels of male DNA were detected.

As stated in Mr. Holtzclaw's brief (p. 44), contrary to the OCPD forensic analyst's testimony that she had found no evidence of male epithelial cell DNA in items #17Q3 and #17Q4 from the inside of the fly of the uniform pants (Tr. 4072), the DNA quantification results showed the presence of low levels of male DNA in both items, which had male DNA concentrations of 0.0102 and 0.0117 ng per microliter and a ratio of male to female DNA of 1:20 and 1:21, respectively. (DNA Quant Summary and OCPD qPCR Report for SD14-273, dated 10/1/2015)

The OCPD forensic analyst should have known there was male DNA in items #17Q3 and #17Q4 because she herself initialed the page on which the male DNA data appeared in plain view in a column labeled “Qty Male.” (OCPD qPCR Report for SD14-273, dated 10/1/2015)

2. We dispute the State’s forensic analyst testimony that Mr. Holtzclaw could be excluded from all four DNA samples from the fly of the uniform pants.

When the prosecutor asked, “So even though Officer Holtzclaw was wearing these pants, his DNA is not inside them; correct?” and the forensic analyst replied, “That is correct,” (Tr. 4072) her subjective statement showing 100% certainty that Mr. Holtzclaw was excluded as a contributor to the four DNA samples is an example of an error frequently made by expert witnesses, which is to overstate the probative value of the evidence and go “far beyond what the relevant science can justify.” PCAST Report at 29.

The exclusion of Mr. Holtzclaw as a contributor to the DNA samples from the fly of the uniform pants (Tr. 4072) was wrong for four reasons.

First, the OCPD forensic analyst never used Y-STR profiling to analyze the male (Y) chromosome DNA variations in items #17Q3 and #17Q4 to determine whether they could have derived from Mr. Holtzclaw. *See* TAUPIN & CWIKLIK at 136 (usefulness of Y-STR profiling). Therefore, excluding Mr. Holtzclaw as a contributor was an error.

Second, the allele data were inconclusive as to whether Mr. Holtzclaw could be excluded or not from the four DNA mixtures, which had numerous alleles below the stochastic threshold, meaning that one cannot assume their sister alleles from paired chromosomes were detected during testing. (O.R. 182, 187); *see also* JOHN M. BUTLER, ADVANCED TOPICS IN FORENSIC DNA TYPING: INTERPRETATION 93 (1st ed. 2015) (definition of stochastic threshold). Conclusively excluding Mr. Holtzclaw as a contributor to the four DNA samples was incorrect because, when

analyzing DNA mixtures from more than one individual where some alleles are below the stochastic threshold, one cannot know the complete DNA profile of every contributor due to the possibility of allele drop-out or drop-in caused by stochastic effects in PCR amplifications with low DNA quantities, the possibility of significant allele sharing among individuals, and the possibility of contamination by alleles from environmental background DNA. (O.R. 182, 187); *see also* BUTLER at 454 (explaining reasons for inconclusive results).

Calculating the weight of evidence towards exclusion of DNA from Mr. Holtzclaw or any of the complainants from the four DNA mixtures, for which allele drop-out was a possibility, can only be carried out by using a probabilistic statement such as a likelihood ratio (LR), which was not utilized by the OCPD forensic analyst. *See* BUTLER at 295 (explaining that “LRs involve a comparison of the probabilities of the evidence under two alternative propositions,” such as the DNA came “from the suspect” vs. “from an unknown person out in the population at large”).

For instance, items #17Q1 (from the outside of the fly) and #17Q2 (from an interior flap) were complex mixtures, defined as “mixtures with more than two contributors” that superimpose multiple individual DNA profiles for which alleles may be missing or may overlap with each other, such that examiners must ask what the probability is that an individual’s DNA profile could be present within the mixture profile, rather than use an inclusion/exclusion approach. *See* PCAST Report at 75-76.

In fact, item #17Q1 may have derived from at least 4 individuals due to the presence of 7 alleles at one locus. (O.R. 187); *see also* SCIENTIFIC WORKING GROUP ON DNA ANALYSIS METHODS, SWGDAM INTERPRETATION GUIDELINES FOR AUTOSOMAL STR TYPING BY FORENSIC DNA TESTING LABORATORIES 7 (2010) (explaining how to calculate the minimum number of

contributors). There is some debate in the forensic community about using likelihood ratios for 4 or more contributors. *See* PCAST Report at 8, 80-81 (explaining that “substantially more evidence is needed to establish foundational validity” for using likelihood ratios for mixtures with 4 or more contributors). However, some laboratories calculate likelihood ratios for such mixtures using specialist probabilistic software that can take account of stochastic effects and peak imbalance, yet the OCPD lab did not use or attempt to use appropriate software. *See id.*

The forensic analyst’s testimony excluding Mr. Holtzclaw as a potential contributor to the DNA mixtures was therefore an error because it was based on a subjective assessment rather than an objective one. *See* PCAST Report at 8 (“[S]ubjective analysis of complex DNA mixtures has not been established to be foundationally valid and is not a reliable methodology.”); *see also* Boies at 407, 414 (noting that DNA testing, analysis, and interpretation are affected by human error because forensic analysts interpret results subjectively).

Third, even on a subjective basis, Mr. Holtzclaw cannot be excluded as a contributor to items #17Q1 and #17Q2 because the majority of the alleles present in Mr. Holtzclaw’s DNA profile (including sex chromosomes) are present in both items. The number of alleles in common with Mr. Holtzclaw equals 27 out of 32 alleles in #17Q1 and 22 out of 32 alleles in #17Q2, albeit at a low level. (O.R. 187) Similarly, Mr. Holtzclaw’s DNA could be present in DNA items #17Q3 and #17Q4 at a low level as a minor contributor because these mixtures contain 19 and 21 alleles matching those of Mr. Holtzclaw, respectively, out of 32 alleles in total, with many of the matching alleles being present below the stochastic threshold while others could be shared with the major contributor matching Ms. C1’s DNA profile. (O.R. 255)

Fourth, the OCPD forensic analyst should not have excluded Mr. Holtzclaw as a potential contributor to items #17Q2, #17Q3, and #17Q4 during her testimony because this erroneous conclusion conflicted with her own OCPD forensic examination reports, in which she stated correctly that in item #17Q2 “the minor component is not suitable for comparison purposes due to insufficient data,” and in items #17Q3 and #17Q4 the minor contributors were “not suitable for comparison purposes, due to insufficient genetic material.” (O.R. 182, 253) Such statements mean that the results are inconclusive, being insufficient to clearly exclude, or not exclude, an individual’s DNA profile. *See* BUTLER at 454.

The OCPD forensic scientist’s testimony excluding Mr. Holtzclaw from being a potential contributor also contradicted the OCPD DNA Laboratory STR Interpretation Procedure Manual guidelines (Issue Date 11/17/13), which state that an “inconclusive” conclusion is to be arrived at when there is “insufficient data,” “mixtures of DNA from multiple donors,” or “stochastic effects resulting in allelic drop-out,” which were issues with the DNA samples.

3. The State’s forensic analyst displayed lack of awareness that touching an item may not deposit one’s own DNA.

When the OCPD forensic analyst claimed that an absence of Mr. Holtzclaw’s DNA was “very difficult to try and explain” (Tr. 4073), which was used to support the prosecution’s argument that Ms. C1’s DNA was unlikely to have transferred innocently via Mr. Holtzclaw’s fingers (Tr. 4087-89), the forensic analyst ignored scientific research, available before the trial, that proved people can transfer someone else’s DNA that is on their hands without transferring their own DNA to objects they touch. *See* Meakin & Jamieson at 437; *see also* Cale *et al.* at 196, 202. She also ignored research revealing that people do not always transfer their own DNA (“wearer DNA”) in detectable levels to their own clothing or to touched objects, and even

repeatedly touching an object does not necessarily deposit DNA. *See* Meakin & Jamieson at 442; *see also* Michelle Breathnach, Linda Williams, Louise McKenna & Elizabeth Moore, *Probability of Detection of DNA Deposited by Habitual Wearer and/or the Second Individual Who Touched the Garment*, 20 FORENSIC SCIENCE INT'L: GENETICS 53, 58 (2016) (demonstrating that wearer DNA was not detected in a significant number of samples from the waistband of men's underpants in a study published online on October 17, 2015); Mariya Goray & Roland A.H. van Oorschot, *The Complexities of DNA Transfer During a Social Setting*, 17 J. OF LEGAL MEDICINE 82, 90 (2015) (discovering that "in many instances even a simple primary contact did not result in detectable deposit of participant's own DNA," even with lengthy, repeated contact).

Studies of people's "shedder status" reveal that some individuals at various times do not readily deposit their own DNA, which could account for not finding all of Mr. Holtzclaw's alleles in the four samples from the fly of the uniform pants. *See* Meakin & Jamieson at 437-438; *see also* Ane Elida Fonnelløp, Merete Ramse, Thore Egeland & Peter Gill, *The Implications of Shedder Status and Background DNA on Direct and Secondary Transfer in an Attack Scenario*, 29 FORENSIC SCIENCE INT'L: GENETICS 48, 59 (2017) (concluding that an individual's shedder status significantly influences the probability of DNA direct and secondary transfer, and a low shedder may not transfer detectable DNA).

C. The State's Forensic Analyst did not Testify Clearly about the Presence and Implications of DNA from At Least One Male.

If the non-semen DNA mixtures from several unknown individuals including at least one male in the four samples from the fly of the uniform pants had been reported and discussed thoroughly by the prosecution and trial defense attorney, then these results would be expected to

have undermined the prosecution's argument that sexual assault was the most likely explanation for the discovery of DNA matching Ms. C1's profile on the outside and inside of the fly of Mr. Holtzclaw's uniform pants. The implication of finding male DNA is that it demonstrates an individual's DNA can transfer to the fly of the uniform pants without any involvement of that individual's vaginal fluid, since males do not make vaginal fluid.

Furthermore, it is expected that male DNA in item #17Q1 came from at least one male who is not Mr. Holtzclaw based on the strength of the Y chromosome allele and the fact that Mr. Holtzclaw could not definitively be included in this mixture. Yet the method by which this male DNA transferred was not investigated even though it could be the same method by which DNA matching Ms. C1's profile transferred to the fly of the uniform pants.

During the trial, the prosecutor and the State's forensic analyst never overtly disclosed the presence of at least one male contributor in the DNA samples, nor did defense counsel observe there was male DNA in the samples. (Tr. 4044, 4056, 4073) As previously explained, the State's forensic analyst claimed incorrectly that there was no evidence of male DNA in items #17Q3 and #17Q4. (Tr. 4072) She also never testified overtly that male DNA was found in item #17Q1 in close to equal proportions with the female DNA (Tr. 4042), indicating approximately a ratio of about half male DNA to half female DNA in this sample. The forensic analyst also dismissed the importance of the Y chromosome in item #17Q2, simply testifying that "the X is in black and the minor contributor is a Y, but it's in red so it really basically doesn't count," and "the statement that best suits that minor contributor is that it is not suitable for comparison purposes." (Tr. 4044, 4056)

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Conference report

Body Fluids Conference Jointly hosted by the Forensic Science Society & the Centre for Forensic Investigation, University of Teesside 18–19 April 2008 Convenors: Julie Allard and Brian Rankin

The conference was opened by Louise McKenna, Forensic Science Providers' Group (FSPG), Body Fluids Forum (BFF) Chair and Brian Rankin, President of the Forensic Science Society (FSSoc). The purpose of the conference was to share the Forum's knowledge with other forensic biologists and to learn from each other through discussion groups and poster presentations. A wide range and first-rate calibre of speakers from the UK, Ireland, New Zealand, Lausanne, Zurich and The Netherlands presented their work and findings over two days.

The BFF of the UK and Ireland was established in 2003 to join knowledge and experiences from various laboratories in order to optimise the location, recovery and identification of body fluids and best practice in the interpretation of the forensic results within the case context. The BFF then became a sub-group of the FSPG in 2006. Since its inception, members of the BFF have consolidated information and conducted much research into specific body-fluid matters.

This conference proved to be an impressive start in redressing the imbalance between the resources and attention that have been put into DNA profiling in recent years over and above the efforts put into improving the abilities of biologists to locate, extract and identify body fluids and into understanding the factors involved in their transfer and persistence.

And in the beginning.....there was AP

Gerry Davidson, FSPG BFF Secretary, Forensic Science Service (Chorley), and Jennie Lewis, FSPG BFF Member, Cellmark Forensic Services

This presentation detailed the BFF's approach to maximising the chances of finding relevant evidence in sexual offence casework and improving the value of forensic science. Gerry and Jennie addressed issues relating to the use of the acid phosphatase (AP) test, an initial screening test for the presence of semen. Given that only an estimated 20% of rape cases are reported and of those, only 20% arrive at a forensic provider for work (2001 British Crime Survey) it is clearly of paramount importance to maximise the chances of finding relevant evidence in each case.

The AP screening test detects the presence of a substance found at especially high levels in human semen, acid phosphatase. The primary obstacle with the use of this test in forensic investigation is that vaginal material itself can contain some AP activity and, although this usually gives a slightly different reaction in the test, it can on occasion be confused with what might be expected from semen in trace amounts. The AP test used by forensic laboratories is used practically as it was when it was first described by Stuart Kind 50 years ago, although there are a number of variations on the theme. Typically this

would involve dampened paper applied to the item of interest, pressure applied, resulting in the transfer of water and semen (if present) to the paper and then the application of AP.

In the research conducted by BFF members, many different parameters were investigated including how long the reaction may take, the strength of the reaction, the paper used, the quantity of water and direct application of the reagent to items. One member of the BFF conducted a literature search on cut-off times for AP reactions and found that only one paper had been published which suggested that if there had been no reaction after 2 min then the test should be regarded as negative. However, there appeared to be no mention of why this specific time was selected. This resulted in the decision that reaction times would be a wholly worthwhile variable to look into. The type of paper used was also investigated. Papers tested included Ford's Gold Medal Blotting Paper, Whatman No.1 Qualitative Filter Paper, Whatman Grades 1 and 3 Filter Papers and Banner Blotting Paper. Items tested were seeded with previously frozen semen. The tests showed that there was not a great deal of difference in the papers at 2 min and between 5 and 10 min. What was established is that the longer the AP is left to react, the greater the dilution of semen that is detectable. After several hours, faint purple reactions and purple speck reactions were obtained. At 4 h it was possible to detect a 1-in-1000 dilution on Whatman Grade 3 Filter Paper. Some of the findings from these studies have meant that many BFF laboratories no longer have a two-minute cut-off point.

Another variable considered in the experimental studies was the amount of water used to dampen the items under test and which items should be dampened: to wet the paper, to wet the exhibit or to wet both? These tests involved trying out variations on 32 different types of fabric, including a cotton facecloth, poly/cotton t-shirt, polyester fleece, carpet, suede jacket, wool sweater, double layer cotton knickers, elastane top, polyester skirt, and a corduroy skirt. In general, the reactions seemed to be quicker when the 'exhibits' and blotting papers were wet but semen was still detected when the wet/dry methods were tested. There were no definitive conclusions relating to whether fabric type is likely to affect the results.

Some recommendations included considering the specific circumstances of the case in question, assessing expectations, gathering information, consideration of the fabric type, approach to search and recovery, time since deposition, time to deposition (for vaginal drainage stains) and potential for primary and/or secondary transfer.

In another series of tests, fresh semen at a series of dilutions was seeded on pairs of knickers which were then placed in bags and put in a cupboard for a week. These were then tested for AP using the blot method, a spray method and direct aerosol application of the reagent.

and persistence of DNA and what is the current published knowledge in this area”, or “Find out what size the t-shirt is and comment on whether it could have been worn backwards”.

The duty of a forensic scientist is to the court, to address the issues on which they have been instructed, but also to advise if a particular weakness is identified. It is not to provide or suggest a defence but to inform about the limitations of the tests undertaken. Dr. Davey considers the role of a ‘defence scientist’ to be exactly the same as that of a scientist who has examined the casework first, with the single distinction being that there is often a different version of events to consider.

Acquiring complete information, including the version of events from the defendant is often very difficult, and is not always followed up. The seeking out of information is crucial to any investigation in order that meaningful conclusions can be drawn from any forensic findings. The frequency of the “no comment” interview, which seems to be the advice of most legal representatives, is unhelpful. It hinders the process of robust interpretation of results. Unfortunately, the current drivers of cost reductions and decreasing casework turnaround times in the forensic marketplace are acting against good practice. It can result in quick-fix solutions to prove a prosecution case rather than an investigation of both versions. The obvious dilemma here is that injustices work both ways. Failure to convict the guilty is equally as dreadful as failure to acquit the innocent.

In one casework example, Dr. Davey reported a sexual offence case that had two very clear alternative propositions, but where the defence alternative was not investigated. A girl alleged that she was raped on a sofa by a male friend in his house. Relevant medical samples and clothing were taken during a forensic medical examination. The defendant’s version of events was that he claimed to have had consensual vaginal intercourse with the girl and that he had had occasional sex with her over a nine-month period on the bed in his home. The bed sheets were not retrieved. Later in the case, the mattress was recovered from the man’s home and was examined by Dr. Davey’s laboratory. Twenty-one areas of body fluid staining were detected and these were submitted for DNA profiling resulting in mixtures of DNA from the defendant and the complainant. This previous sexual history became the distinguishing factor between their accounts. Dr. Davey felt that in this case the onus was on the suspect to prove his innocence.

There also appears to be a large disparity between the ways in which information contained in forensic reports is used. Prosecution reports are fully disclosed and used in the case, and contain details of unused materials. In contrast, defence reports are only sometimes disclosed and are used for cross-examination and as leverage to encourage a plea. Ultimately, the fate of the report in relation to disclosure is out of the experts’ hands.

To conclude the presentation, Dr. Davey invited opinions from the audience as to whether there is a role for a new professional body to regulate these direct and seemingly irresolvable conflicts presented by the system in which forensic scientists work.

The transfer of DNA through non-intimate, social contact

Sarah Jones, FSPG BFF Member and Kirsty Scott, SPSA Forensic Services (Aberdeen)

Can DNA end up on a penis through non-intimate social contact? It is well documented in the literature that the potential for low levels of DNA to be deposited by contact presents the uncertainty of *how* it got there. It is entirely possible for secondary, even tertiary, transfer (to underwear for example) of DNA to occur where a defendant and complainant have had legitimate contact. However, the issue remains to what extent transfer of DNA can occur in this manner. The possibility of this type of transfer creates tricky interpretational problems in, for example, allegations of rape where the evidence comprises DNA that matches to that of the complainant on the

accused’s penile swabs and/or underwear, and where the two parties were in each other’s company prior to the alleged incident.

The lack of research and literature in this area to demonstrate what might be expected to transfer through non-intimate social contact as opposed to as a result of sexual activity was the principal trigger for this research project, which started three years ago. The aim of the project is to investigate the extent to which DNA may transfer ‘innocently’ in order to provide reporting officers with some valuable information when evaluating alleged rape cases where the complainant and accused have spent time in each other’s company preceding the said event.

Experiments included a male and female volunteer who were asked to simulate non-intimate social contact and the amount of female DNA detected on the male’s underpants and penile swabs was then scrutinized. During the experiments, social contact was simulated under varied conditions and female volunteers were selected after their shedder status had been observed. A shedder and a non-shedder were selected. Prior to the social contact the male was asked to shower, dress in a brand new pair of underpants and normal clothes. Both male and female volunteers washed their hands prior to the contact, then following the contact the male simulated urination and continued to wear the underpants for another 5 min. Here are some examples of the experiments:

- 1) min of face-touching, 3 min of handholding and immediate urination.
- 2) 2 min of face-touching, 3 min of handholding then urination after fifteen minutes.
- 3) 1 min of handholding then immediate urination.

Following the experiments, the male volunteer’s penis (shaft) was swabbed using a damp then a dry swab and these were combined for analysis. The front inside, front outside, back inside and waistband of the underpants were also sampled for evidence of DNA transfer. In scenario one, as above, 33% of the underwear sampled indicated transfer of female DNA (50% exhibited 15+ alleles). 67% of the penile swabs demonstrated transfer of female DNA (1–5 alleles). On the samples taken from the inside front of the underwear there were two mixed profiles out of six samples with the male being the major component and at least two people in the minor. The female could not be eliminated from the minor. The results were the same from the outside front of the underwear samples. On four out of six of the penile swabs, the major profile came from the male with a minor matching the female.

In scenario two, as above, all the DNA profiles detected had a major male and the female volunteer was not detected on any samples from the underwear or penis. In scenario three, as detailed above, again no female DNA was detected. From the underwear, a large amount of unknown DNA was also detected, so in later experiments the underwear was UV cross-linked to remove any contamination. A repeat of the first experiment was carried out using a different male volunteer and this time there was no evidence of transfer of female DNA.

These early results showed that transfer of DNA through non-intimate social contact can occur, but only when the conditions such as the nature and length of time of contact, time delays, and shedder status, are maximised. When more realistic social scenarios were simulated, the female’s DNA was not detected on the underwear or penile swabs. There is much further work to do, but this has at least provided a good basis on which to continue work.

Discussion groups

Medical examinations – can we improve the collection of samples and the interaction between medical practitioners and scientists?

Facilitated by Dr. Debbi Rogers, Mary Newton, Anne Baird, and Gwen Teppett

Forensic sampling by Forensic Physicians is largely steered by the contents of medical kits and any associated instructions or training



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DNA transfer through nonintimate social contact



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ABSTRACT

The UK and Ireland Association of Forensic Science Providers' (AFSP) Body Fluid Forum (BFF) set out to assist in the interpretation of sexual offence cases where semen is absent on vaginal swabs but female DNA is present on penile swabs or male underwear, and the issue to be addressed is whether or not sexual intercourse occurred. This study aims to investigate the frequency and amount of female DNA transferred to the penis and underwear of males following staged nonintimate social contact with females and to compare the findings with the amount of female DNA transferred to the penis and subsequently to the underwear of a male who had engaged in unprotected sexual intercourse with a female. In this study, 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. After sexual intercourse, full profiles matching the female participant were found on the inside front of the males underwear with maximum peak heights in the range between 1898 and 3157 rfu. It was possible to demonstrate that DNA can occasionally transfer to the waistband and outside front of underwear worn by a male following staged nonintimate social contact. Data obtained in this study suggest that a matching female DNA profile below a peak height of 1000 rfu on the waistband of a male's underwear might be explained by nonintimate social contact with secondary transfer of female DNA from the male's hands.

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1. Background

Forensic science has long since had an important role in the investigation of sexual offences. The identification of semen on intimate swabs taken from the complainant, together with DNA analysis to establish the possible source, has proven invaluable in such cases. Often the scientist is also asked to evaluate the findings and give an opinion of the significance of the results in light of the prosecution and defence accounts. Where the issue to be addressed relates to whether or not sexual intercourse occurred at a particular time, then the presence of semen on intimate swabs can often provide support for an assertion that sexual intercourse did take place. However, how do we address the issue of whether sexual intercourse has occurred if no semen is found on the intimate swabs taken from the complainant? The member organisations

of the Association of Forensic Science Providers Body Fluid Forum have casework data which shows that semen is found in around 35% of submitted sexual offence cases with intimate swabs each year [2,3]. Advances in forensic science have led to increased sensitivity in DNA analysis; it is now routine practice to obtain DNA profiles from surfaces and objects which have merely been touched or handled [4]. This together with improved methods for DNA recovery from fabric surfaces [5] has given forensic practitioners greater opportunity to investigate sexual offences in the absence of semen on intimate swabs by examining penile swabs and male underpants for the presence of female DNA. Finding female DNA on such exhibits from a male suspect who denies having had any contact with the female can show a possible link between these individuals. However, it is possible for a person's DNA to be detected on surfaces when that person has not had direct contact with the item or individual. In these circumstances, their DNA may have been transferred via an intermediary surface (secondary or multiple transfers) such as someone else's hands [6,7]. Given this, in those allegations where the complainant and suspect are known to have been in

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¹ Formerly.

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 social contact.

The AFSP BFF has set out to investigate the frequency and amount of female DNA transfer to the penis and underwear of males following staged nonintimate social contact with females, and to compare the findings with the amount of female DNA transferred to the penis and underwear of a male following unprotected sexual intercourse with a female. These findings will assist in the interpretation of sexual offence cases where semen is absent on intimate swabs from the complainant and the issue to be addressed is whether or not sexual intercourse occurred.

2. Materials and methods

2.1. DNA transfer during nonintimate social contact—initial trial

Male participants took penile swabs from themselves following staged nonintimate social contact with a female and simulated urination, and the underwear the males were wearing at the time of the simulated urination was subsequently seized. DNA was recovered from the underwear, and DNA analysis of these samples together with DNA analysis of the penile swabs was carried out. The resulting DNA profiles were interpreted. This was an initial investigation to determine whether transfer and recovery could happen. As such, the conditions for this initial trial were set to maximise the chance of transfer and were not representative of the timescales encountered in casework. The underwear was not cross-linked.

The trial was carried out within eight BFF organisations. A total of ten male/female pairs completed the initial trial, and there were three repeats with each couple, giving a total of 30 data sets. The same male participant was used on two occasions with different females (9 males participated), and the same female participant was used on two occasions with different males (9 females participated). Male and female pairs were chosen on the basis of the least number of alleles shared and having had no recent intimate contact.

2.1.1. Prior to contact

The male participant showered and redressed wearing a new pair of 100% cotton briefs with no front opening and his own normal outer clothing. Both the male and the female participants then washed their hands.

2.1.2. Staged contact (primary transfer step)

The male participant touched the face of the female with his hands using a massaging motion over the cheeks and neck area for 2 min. The male and female participants then held hands continuously using a rubbing/massaging motion for 3 min. Throughout the 5 min of contact, the male and female spoke to each other. The female then left the room.

2.1.3. Immediately after contact (secondary transfer step)

The male participant simulated urination for about 30 s by undoing his trousers and removing his penis from his underwear over the

Table 1

Male participant 1 and female participant 1 (initial trial)

Tables 1–7: results of underwear samples with female DNA detected.

Sample	No. of female alleles	Peak height of female alleles (rfu)	Max female peak height (rfu)	No. of unknown alleles
Waistband	6* (9 [†])	72	289 (het)	0
		79		
		109		
		180		
		227		
		289		

* Number of alleles attributable to the female only and not accounting for shared alleles with the male.

† Number of female alleles accounting for those shared with male.

Table 2

Male participant 1 and female participant 1 (initial trial).

Sample	No. of female alleles	Peak height of female alleles (rfu)	Max female peak height (rfu)	No. of unknown alleles
Waistband	11* (19 [†])	56	766 (het)	6
		61		
		84		
		85		
		117		
		190		
		268		
		528		
		528		
		766		
		279		

* Number of alleles attributable to the female only and not accounting for shared alleles with the male.

† Number of female alleles accounting for those shared with male.

waistband of the underwear. To maximise the likelihood of transfer, both hands were used to hold the penis before returning the penis back into the underwear and redressing. The male participant washed his hands and then walked around for a period of 5 min.

2.1.4. Sample collection

Wearing gloves, the male volunteer removed his underwear and then swabbed the shaft of his penis using a wet sterile cotton swab (moistened with deionised water) followed by a dry sterile cotton swab. The penile swabs were then frozen until they were submitted for DNA testing. The male participant put his underwear into a self-seal plastic bag, and this was then stored at room temperature until the underwear was sampled.

Sampling of the underwear and the subsequent DNA analysis was carried out by different scientists from those involved in the transfer experiments. The following five separate areas of the underwear were sampled for DNA analysis in laboratory conditions using mini-taping [5], applying the tape repeatedly to the surface of the underwear to ensure each entire area was sampled:

- Front waistband (inside and outside)
- Inside front panel
- Outside front panel
- Back inside
- Back outside

2.2. DNA transfer during nonintimate social contact—6-h time delay

Male participants took penile swabs from themselves following staged nonintimate social contact with a female and simulated urination, and the underwear that the males were wearing at the time was subsequently seized. In order to mimic a more realistic casework

Table 3

Male participant 1 and female participant 1 (initial trial).

Sample	No. of female alleles	Peak height of female alleles (rfu)	Max female peak height (rfu)	No. of unknown alleles
Waistband	5* (9 [†])	92	180 (het)	1
		100		
		113		
		141		
		180		
		180		

* Number of alleles attributable to the female only and not accounting for shared alleles with the male.

† Number of female alleles accounting for those shared with male.

Table 4
Male participant 1 and female participant 2 (initial trial).

Sample	No. of female alleles	Peak height of female alleles (rfu)	Max female peak height (rfu)	No. of unknown alleles
Waistband	14* (19 [†])	402	458 (hom)	13
		345		
		442		
		381		
		374		
		286		
		458		
		321		
		395		
		239		
		230		
		169		
		161		
		128		

* Number of alleles attributable to the female only and not accounting for shared alleles with the male.

[†] Number of female alleles accounting for those shared with male.

Table 5
Male participant 1 and female participant 2 (initial trial).

Sample	No. of female alleles	Peak height of female alleles (rfu)	Max female peak height (rfu)	No. of unknown alleles
Waistband	14* (20 [†])	451	816 (hom)	0
		382		
		532		
		345		
		308		
		174		
		876		
		289		
		396		
		341		
		195		
		192		
		229		
		256		

* Number of alleles attributable to the female only and not accounting for shared alleles with the male.

[†] Number of female alleles accounting for those shared with male.

scenario, a delay of 6 h was introduced between the simulated urination (secondary transfer step) and the time that the penile swabs and underwear were collected.

Table 6
Male participant 2 and female participant 2 (6-h time delay).

Sample	No. of female alleles	Peak height of female alleles (rfu)	Max female peak height (rfu)	No. of unknown alleles
Waistband	11* (17 [†])	75	161 (het)	1
		33		
		161		
		62		
		87		
		98		
		154		
		112		
		59		
		58		
		70		

* Number of alleles attributable to the female only and not accounting for shared alleles with the male.

[†] Number of female alleles accounting for those shared with male.

Table 7
Male participant 1 and female participant 3 (initial trial).

Sample	No. of female alleles	Peak height of female alleles (rfu)	Max female peak height (rfu)	No. of unknown alleles
Front outside	1*	56	56 (het)	0

* Number of alleles attributable to the female only and not accounting for shared alleles with the male.

Table 8
Male participant 1 and female participant 1 (initial trial)
Tables 8–11: results of penile swab samples with female DNA detected.

Sample	No. of female alleles	Peak height of female alleles (rfu)	Max female peak height (rfu)	No. of unknown alleles
shaft	5* (5 [†])	53	85 (het)	0
		61		
		66		
		73		
		85		

* Number of alleles attributable to the female only and not accounting for shared alleles with the male.

[†] Number of female alleles accounting for those shared with male.

Table 9
Male participant 1 and female participant 1 (initial trial).

Sample	No. of female alleles	Peak height of female alleles (rfu)	Max female peak height (rfu)	No. of unknown alleles
shaft	1*	56	56 (het)	0

* Number of alleles attributable to the female only and not accounting for shared alleles with the male.

In this time delay trial, the shaft, coronal sulcus and glans of each male volunteer's penis was swabbed using the same wet and dry sampling method as the initial trial. In addition, the areas sampled from the underwear were from the front waistband (inside and outside) and the inside front panel. Apart from the time delay of 6 h, cross-linking the new underwear and the number of samples collected, the experimental design was exactly the same as the initial trial.

Table 10
Male participant 1 and female participant 1 (initial trial).

Sample	No. of female alleles	Peak height of female alleles (rfu)	Max female peak height (rfu)	No. of unknown alleles
shaft	1*	51	51 (het)	0

* Number of alleles attributable to the female only and not accounting for shared alleles with the male.

Table 11
Male participant 1 and female participant 2 (initial trial).

Sample	No. of female alleles	Peak height of female alleles (rfu)	Max female peak height (rfu)	No. of unknown alleles
Shaft	4*	53	166 (hom)	0
		76		
		105		
		166		

* Number of alleles attributable to the female only and not accounting for shared alleles with the male.

[†] Number of female alleles accounting for those shared with male.

Although the introduction of this time delay was aimed at making this part of the trial more realistic to casework, the specific level of contact and speed of sample collection should be noted.

A total of fourteen male/female pairs completed this trial, one set of samples per pair, giving a total of 14 data sets.

2.3. DNA transfer during and subsequent to sexual intercourse

A male participant took penile swabs from himself following unprotected sexual intercourse with a female and the underwear he wore immediately after the intercourse was collected. Samples were subsequently recovered from the underwear.

One couple completed this trial on three occasions, abstaining from sexual intercourse for 7 days before the start of the trial and with a delay of 7 days between each subsequent intercourse event. The couple shared 7/20 alleles.

It is acknowledged that the timings involved in this trial maximise the likelihood of detection of female DNA on the penile swabs and underwear.

2.3.1. Prior to contact

The male participant showered and dried himself with a clean bathroom towel. As the couple were co-habiting, new bedding was used for each intercourse event.

2.3.2. Intercourse (primary transfer step)

The couple engaged in intimate contact with the penis being inserted into the vagina for approximately 2 min. Ejaculation did not occur.

2.3.3. Immediately after intercourse (secondary transfer step)

The male participant put on a new pair of cross-linked 100% cotton briefs with no front opening and his own trousers, and then remained active for 5 min without further contact with the female.

2.3.4. Sample collection

The method of sample collection and the areas of the penis and underwear sampled were the same as in the initial trial (Section 2.1.4).

2.4. DNA analysis

Wet and dry penile swabs from each area sampled were combined for the purposes of DNA analysis.

DNA analysis was carried out by several of the participating AFSP BFF organisations using their own DNA procedures. Twenty-eight cycles SGM + DNA analysis was carried out on a 3100 Sequencer (Applied Biosystems). Each sample was run once. Genemapper software was used to analyse the DNA results. A reporting threshold of 25 rfu was used.

3. Results

Full details of matching female DNA detected in the underwear and penile swab samples for all of the trials are given in Tables 1–11.

3.1. DNA transfer during nonintimate social contact—initial trial

DNA matching the female participant was detected on underwear samples. Five occurrences of matching DNA were observed in

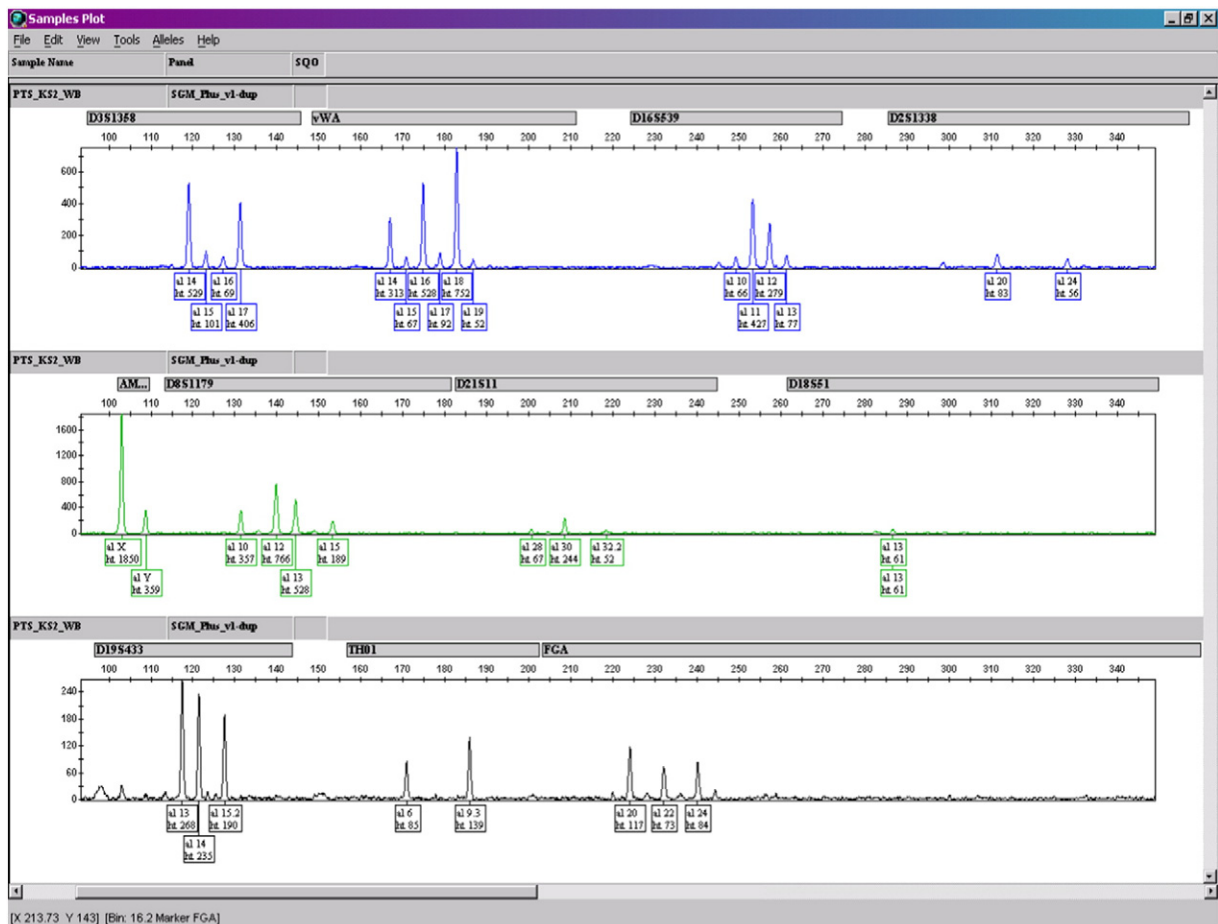


Fig. 1. Mixed DNA profile of waistband sample showing matching female DNA partial profile (peak heights as per Table 2).

waistband samples from the 30 times that this trial was carried out, and just one occurrence was observed in an outside front panel sample. No matching female DNA was detected in any samples from the inside front or back (inside and outside).

In the five waistband samples where matching female DNA was detected, the observations were as follows:

- All five samples gave partial female DNA profiles with a maximum peak height range of 180–816 rfu.
- In one sample, the DNA matching the female was found as a major contributing profile with 11 alleles attributable to the female. Fig. 1 shows the mixed DNA profile obtained from this sample.
- In two samples, the contributors were found as 1:1 mixtures (same male/female pairing in both samples) both male and female gave 14 alleles each (not accounting for shares alleles). Fig. 2 shows the mixed DNA profile obtained with one of these samples.
- In two samples, the female was the minor contributor (and gave 5 and 6 alleles, respectively, not accounting for shared alleles).

The only occurrence of matching female DNA detected on the front panel of the underwear seized was detected in one sample from the outside. This was present as a single allele (56 rfu) matching the female participant.

DNA corresponding to the DNA profile of the female participant was detected on four of the 30 penile shaft samples.

- On two of the samples, the female DNA was in the minor, contributing 4 and 5 alleles, respectively. The maximum peak heights were 85 and 166 rfu.

- On the other two samples, the matching female DNA was present only as a single allele.

No matching female DNA was detected on the other 26 penile shaft samples.

3.2. DNA transfer during nonintimate social contact—6-h time delay

From the 14 pairs of underwear, only one occurrence was observed of matching female DNA transfer. This was in a waistband sample and had a maximum peak height of 161 rfu. No matching female DNA was detected in any samples from the inside front in the 14 times that this trial was carried out.

No matching female DNA was detected on any of the penile shaft, coronal sulcus or glans samples collected in this trial.

3.3. DNA transfer during and subsequent to sexual intercourse

DNA matching the female participant was detected in all samples from the underwear collected in this trial (and visible staining was found in many areas sampled).

- All waistband samples gave a full profile matching the female participant. The maximum peak height range was 1386–3157 rfu.
- All inside front samples gave a full profile matching the female participant. The maximum peak height range was 1898–3157 rfu.

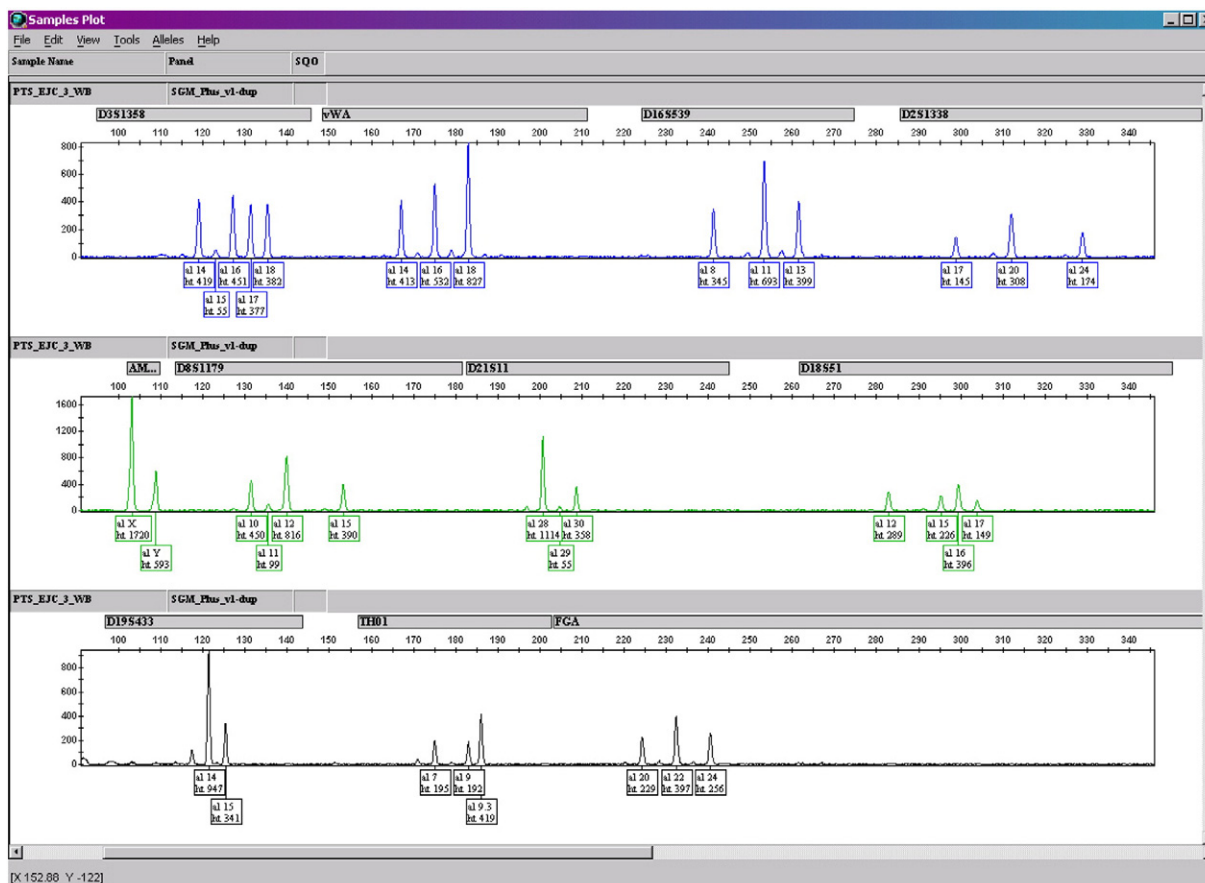


Fig. 2. Mixed DNA profile of waistband sample showing matching female DNA partial profile (peak heights as per Table 5).

- Full DNA profiles matching the female participant were also detected on all of the samples from the inside back, the outside front and the outside back.

Full DNA profiles matching the female participant were also detected on all of the penile shaft samples with a maximum peak height range of 958–5835 rfu.

4. Discussion

It has been documented that female DNA is detectable on the penis of a male following sexual intercourse after a period of 24 h has elapsed [8], and the Faculty of Forensic and Legal Medicine Guidelines [9] recommend sampling the penis within 3 days of an act of alleged sexual intercourse. In this study, no matching female DNA was detected on any of penile samples taken 6 h after the staged nonintimate social contact events. Even when swabs were taken immediately following the staged contact, female DNA was found at a relatively low level (up to a maximum peak height of 166 rfu). This contrasts with the high levels of female detected on penile samples taken after direct wet transfer during sexual intercourse (958–5835 rfu).

In this study, 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. After sexual intercourse, full profiles matching the female participant were found on the inside front of the male's underwear with maximum peak heights in the range of between 1898 and 3157 rfu. This DNA 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). The amount of DNA recovered from the inside front of the male's underwear following sexual intercourse could not be replicated by the indirect transfer of DNA from the type of nonintimate social contact described in this research.

Under the circumstances of this study, it was possible to demonstrate that DNA can occasionally transfer to the waistband and outside front of underwear worn by a male following staged nonintimate social contact. These results can assist the forensic expert when considering the examination strategy of male underwear in sexual offence cases, for example, when sampling for DNA, avoiding the waistband and other areas that depending on design of the underwear may have been touched by the suspect if the alternative proposition is social contact of the type described in this study. Alternatively, if DNA matching the female complainant is found on the waistband of a male suspect's

underwear, the data obtained in this study suggest that depending on the time delay before the underpants are seized, a matching female DNA profile below 1000 rfu might be explained by nonintimate social contact with secondary transfer of female DNA from the male's hands.

This study does not take into account all of the factors that might affect transfer and persistence of DNA, such as the type of surface and nature of contact and the time between each transfer step [10]. The forensic expert should factor such considerations into any assessment of findings.

5. Conclusion

In this study, it was not possible to replicate the high levels of female DNA transferred from sexual intercourse by nonintimate social contact. DNA matching a female's DNA profile on the inside front of the suspect's underwear with no front opening greater than 1000 rfu, and/or on penile swabs greater than 200 rfu, would be expected to provide support for an allegation of sexual intercourse, even if the male and female concerned were alleged to have had nonintimate social contact of the type described in this study. These levels are conservative as it is clear from this study that as expected the amount of female DNA from this type of social contact decreases with a time delay prior to sample collection.

Acknowledgements

Many thanks to those staff from the member AFSP BFF organisations involved in carrying out this research and donating samples.

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

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

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

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

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

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

REPORTED BY: KAREN B. JOHNSON, CSR

1 2014; correct?

2 A If that's what the record states.

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

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

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

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

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

16 A I can't remember.

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

19 RE CROSS-EXAMINATION

20 BY MR. CASEY:

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

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

1 had -- the state provided as fact.

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

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

6 Q Do you have any evidence to dispute it?

7 A Evidence to dispute it?

8 Q Yeah.

9 A I don't understand your question.

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

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

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

17 A That's what they're stating.

18 Q Do you have any reason to dispute it?

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

20 Q Okay. But --

21 A I don't understand your question.

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

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

25 Q I understand what you said earlier about

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

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

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

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

22 A I don't.

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

25 A (Shakes head).

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

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

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

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

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

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

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

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

18 Q Do you remember if you touched her skin?

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

21 Q You're for sure about hands?

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

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

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

13 THE WITNESS: Can I do this on you?

14 MR. JOHNSON: Sure.

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

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

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

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

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

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

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

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

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

9 Q Which one did you place where?

10 A I can't remember that.

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

13 A I can't remember.

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

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

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

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

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

1 A No.

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

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

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

14 A From my understanding, no.

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

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

19 Q Okay.

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

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

25 A From what they state, yes.

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IN THE DISTRICT COURT IN AND FOR OKLAHOMA COUNTY,
STATE OF OKLAHOMA

STATE OF OKLAHOMA,)
)
 Plaintiff,)
 vs.) CASE NO.: CF-2014-5869
)
 DANIEL K. HOLTZCLAW,)
)
 Defendant.)

FILED IN DISTRICT COURT
OKLAHOMA COUNTY

MAY 03 2016

TIM RHODES
COURT CLERK

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* * * * *

TRANSCRIPT OF THE JURY TRIAL

HAD ON THE 30TH DAY OF NOVEMBER, 2015,
BEFORE THE HONORABLE TIMOTHY R. HENDERSON,
DISTRICT JUDGE IN AND FOR OKLAHOMA COUNTY,
OKLAHOMA CITY, OKLAHOMA

* * * * *

VOLUME XV OF XVIII

REPORTED BY: Kristin L. Taylor, RPR

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I N D E X

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EXHIBITS

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81 - Photograph Tattoo	3681	3682	3682
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332 - AVL 3/25/14	3551	3551	3551
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1 A Uh-huh.

2 Q You got to answer -- she has to write it down. So you
3 have to --

4 A Yes.

5 Q Say yes or no. Okay. That's why I'm making you do
6 that.

7 Ma'am, did you see his penis?

8 A Yes.

9 Q Okay. Did you see it -- when did you see his penis?

10 A After the fact -- after he told me to raise up and told
11 me to suck his dick.

12 Q Okay. Did that happen before or after he had you bend
13 over?

14 A It was like back and forth so it's kind of confusing.

15 Q Okay. So not only did he actually -- to use your
16 word -- rape you, but he actually had you suck his dick too?

17 A Yes.

18 Q Okay. And I want to make sure I understand. Did he do
19 it more than one time?

20 A Yes.

21 Q Okay. So it was back and forth?

22 A Yes.

23 Q Do you remember whether or not the oral started first
24 or the vaginal intercourse started first?

25 A I think he -- he had me bend over first.

1 Q He had you bend over first?

2 A Yeah.

3 Q All right. Ma'am, I'm gonna ask another question,
4 again, I'm not trying to embarrass you. Whenever he had you
5 bend over did you feel his penis go into your vagina?

6 A Yes.

7 Q Okay. Other than his penis going into your vagina, did
8 you feel anything else back there?

9 A Yes. I felt like it might've been his gun or something
10 poking my hip.

11 Q You felt like his gun was poking your hip?

12 A Uh-huh.

13 Q Did you see how he removed his penis from his pants?

14 A Yeah, he just -- he just unzipped his fly.

15 Q Okay. So his gun and stuff stayed on?

16 A Uh-huh.

17 Q But his penis came out his fly?

18 A Yes.

19 Q All right. In regards to the sexual intercourse do you
20 have any idea how long that lasted?

21 A Probably like 20 or 30 minutes.

22 Q Seemed like 20 or 30 minutes?

23 A Yeah.

24 Q Do you know whether or not he ejaculated, Ms. Lyles?

25 A I don't think so.

1 Q Why don't you think so?

2 A Because I know -- I know the difference of that. It
3 was just, like -- it was just -- just getting excitement or
4 something out of it. He was -- I don't know.

5 Q Okay. Well, and, again, I'm not trying to be crude,
6 but you've had sex before when someone has ejaculated?

7 A Uh-huh.

8 Q It didn't feel like that?

9 A Huh-uh.

10 Q Is that what you're saying?

11 A Yes.

12 Q Okay. Did you notice if there was any fluid or
13 anything -- and, again, I'm not trying to be graphic but was
14 there any fluid on your leg or anything like that?

15 A Not that I can recall.

16 Q Okay. Now you said at some point he also made you
17 perform oral sex on him?

18 A Yes.

19 Q How were you positioned or where was your body whenever
20 you had to do the oral sex?

21 A I just, like, squatted down a little bit.

22 Q Squatted down. So you're still outside the car?

23 A Uh-huh.

24 Q And did his penis go into your mouth?

25 A Yes.

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IN THE DISTRICT COURT IN AND FOR OKLAHOMA COUNTY,
STATE OF OKLAHOMA

STATE OF OKLAHOMA,)
)
Plaintiff,)
vs.) CASE NO.: CF-2014-5869
)
DANIEL K. HOLTZCLAW,)
)
Defendant.)

FILED IN DISTRICT COURT
OKLAHOMA COUNTY

MAR 16 2016

TIM RHODES
COURT CLERK

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* * * * *

TRANSCRIPT OF THE JURY TRIAL

HAD ON THE 6TH DAY OF NOVEMBER, 2015,
BEFORE THE HONORABLE TIMOTHY R. HENDERSON,
DISTRICT JUDGE IN AND FOR OKLAHOMA COUNTY,
OKLAHOMA CITY, OKLAHOMA

* * * * *

VOLUME V OF XVIII

REPORTED BY: Kristin L. Taylor, RPR

1 profile that was on Officer Holtzclaw's pants was a match or
2 was not a match to Kerri Hunt?

3 A It was not a match.

4 Q So you've excluded the two women that you knew that he
5 had contact with was making allegations and the only person
6 that he had acknowledged that he had any type of sexual
7 contact with that evening; is that right?

8 A Correct.

9 Q Was that significant then knowing those things and
10 knowing you had this profile to you in your investigation?

11 A Yes.

12 Q So what does it -- why? Why is it significant?

13 A Because I knew we had another female out there.

14 Q That he hadn't told us about?

15 A Right.

16 MR. GIEGER: Pass the witness.

17 THE COURT: All right. Ladies and gentlemen, it's
18 about four minutes until noon so we'll go ahead and break
19 for lunch.

20 Detective, you can step down.

21 I need to admonish you, ladies and gentlemen, to
22 not discuss the case, don't try to find out anything about
23 the case. Don't try to look up anything about the case.
24 Don't let anyone talk to you about the case. If someone is
25 talking about the case, go the other direction. It's

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IN THE DISTRICT COURT IN AND FOR OKLAHOMA COUNTY,
STATE OF OKLAHOMA

STATE OF OKLAHOMA,)
)
Plaintiff,)
vs.) CASE NO.: CF-2014-5869
)
DANIEL K. HOLTZCLAW,)
)
Defendant.)

FILED IN DISTRICT COURT
OKLAHOMA COUNTY

APR 20 2016

TIM RHODES
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TRANSCRIPT OF THE JURY TRIAL

HAD ON THE 23RD DAY OF NOVEMBER, 2015,
BEFORE THE HONORABLE TIMOTHY R. HENDERSON,
DISTRICT JUDGE IN AND FOR OKLAHOMA COUNTY,
OKLAHOMA CITY, OKLAHOMA

* * * * *

VOLUME XII OF XVIII

REPORTED BY: Kristin L. Taylor, RPR

1 asked you about, it's now August. And I believe the 15th
2 was your first contact with Mr. Johnnie Grate; is that
3 right? In trying to find Rosetta.

4 A Let me look just to be sure. August 15th with Johnnie.

5 Q And Mr. Adams pointed out that it's two months after
6 your initial allegation that you know about with Jannie
7 Ligons; do you remember him asking you that?

8 A Yes.

9 Q Why are you still actively out there looking for ladies
10 who might have been sexually assaulted if it's now two
11 months removed?

12 A Because our serology lab notified us that they had
13 female DNA on the inside flap of Officer Holtzclaw's uniform
14 pants. And it didn't match Jannie Ligons and it didn't
15 match his girlfriend and so far it hadn't matched anybody
16 that we had found. So I knew there was another female
17 victim out there that we needed to find that DNA to.

18 Q Up until this point this event happened allegedly in
19 April of 2014; correct?

20 A Right.

21 Q The sexual contact event?

22 A Right.

23 Q The other -- with the exception of Jannie Ligons, the
24 other ladies that have testified happened prior to April of
25 '14, that have testified in this trial; correct?

1 A Yes.

2 Q And of those ladies were you able to obtain DNA samples
3 from each of them voluntarily?

4 A Yes.

5 Q And they still were not matching the evidence on the
6 pants?

7 A Correct.

8 Q And that would be the same for Ms. Grate as well?

9 A Correct.

10 Q So did your investigation continue?

11 A Yes.

12 MR. GIEGER: Pass the witness.

13 THE COURT: All right. Specifically in those new
14 areas, Mr. Adams.

15 MR. ADAMS: Yes, your Honor.

16 RE CROSS-EXAMINATION

17 BY MR. ADAMS:

18 Q Detective Davis, you just testified on redirect
19 examination that it was Johnnie Grate that had told you that
20 it was an officer; correct?

21 A Yes.

22 Q Okay. You would agree with me that as of August 15th
23 of 2014 it already hit the media; correct?

24 A Probably. I don't remember the date, but probably.

25 Q Well, actually what Johnnie Grate told you was -- you

1 interviewed him on August the 15th of 2014; correct?

2 A Correct.

3 Q When you talked to him.

4 And he told you that his daughter had come home
5 about a month prior and told her (sic) she'd been taken
6 someplace and had been sexually assaulted by an officer;
7 correct?

8 MR. GIEGER: Hearsay, your Honor.

9 THE COURT: Overruled, you can answer.

10 THE WITNESS: I'm going to look in my report.

11 Q (By Mr. Adams) Please.

12 A Yes.

13 Q Okay. You would agree with me that one month prior to
14 that interview would've taken us into July the 15th of 2014;
15 correct?

16 A Correct.

17 Q You would agree with me that at that point in time
18 Daniel Holtzclaw had been placed on leave for approximately
19 30 days, he was not on duty; correct?

20 A Yes.

21 Q Okay. So it -- it would've been impossible for Officer
22 Holtzclaw to sexually assault Ms. Grate during that period
23 of time as a police officer; correct?

24 A Yes, during -- after June 18th, yes.

25 Q Correct. You also talked about Officer Holtzclaw and

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IN THE DISTRICT COURT IN AND FOR OKLAHOMA COUNTY,
STATE OF OKLAHOMA

STATE OF OKLAHOMA,)
)
 Plaintiff,)
 vs.)
)
 DANIEL K. HOLTZCLAW,)
)
 Defendant.)

CASE NO.: CF-2014-5869

FILED IN DISTRICT COURT
OKLAHOMA COUNTY

MAY 03 2016

TIM RHODES
COURT CLERK

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* * * * *

TRANSCRIPT OF THE JURY TRIAL

HAD ON THE 30TH DAY OF NOVEMBER, 2015,
BEFORE THE HONORABLE TIMOTHY R. HENDERSON,
DISTRICT JUDGE IN AND FOR OKLAHOMA COUNTY,
OKLAHOMA CITY, OKLAHOMA

* * * * *

VOLUME XV OF XVIII

REPORTED BY: Kristin L. Taylor, RPR

1 Q And is it a similar map to what we saw in Ms. Ellis'
2 case as far as the location of the cul-de-sac, the
3 playground and then the data points both in that cul-de-sac
4 and then also over on Miramar?

5 A Yes.

6 Q And is it relevant in the time and the date of 6/14 in
7 the hours between 1:00 and 2:00 a.m.?

8 A Yes.

9 Q And is it an accurate copy of what the AVL department
10 gave you when you requested this information?

11 A Yes.

12 MR. GIEGER: Offer State's 351.

13 MR. ADAMS: No objection, your Honor.

14 THE COURT: State's Exhibit Number 351 will be
15 admitted.

16 Q (By Mr. Gieger) An overview shows -- here's the
17 cul-de-sac; correct?

18 A Correct.

19 Q The school we've seen on other photographs. And then
20 this is Miramar.

21 A Correct.

22 Q Come over to the school, ma'am, is it your -- what's
23 your understanding, again, of how the AVL system plots the
24 location of the vehicles if it's not on a paved road?

25 A To the center of the closest street.

1 Q All right. So on these -- on these we're approximately
2 at -- not approximately, we're at 1:35 a.m. and 45 seconds
3 at speed 6; correct?

4 A Correct.

5 Q And then we've got 1:36:03 at speed 11?

6 A Yes.

7 Q And 1:36:10 at speed 9.

8 A Yes.

9 Q And although we don't have a map with all the data
10 points in between 16th and Lottie and that location at the
11 dead-end at 18th Street, the direction of travel is
12 consistent with what you have proffered in evidence in
13 State's Number 350; is that right?

14 A Yes.

15 Q When we get over to Miramar, again, the AVL system is
16 putting it on Miramar but Ms. Lyles told you the car was
17 where?

18 A In between some buildings of the school.

19 Q And would that be consistent with your understanding of
20 the way the AVL system worked if Ms. Lyles was accurate as
21 to where the car was parked?

22 A Yes.

23 Q And on this one we have -- the last data point we have
24 over in the cul-de-sac showing in eastward travel is
25 1:36:10; correct?

1 A Correct.

2 Q And then whenever I look, the next data point that came
3 up through the AVL system shows it at 1:41:10 and that's at
4 a speed zero.

5 A Correct.

6 Q And then five minutes later we have at 1:46:10 another
7 speed zero.

8 A Correct.

9 Q And then approximately 1:14 later it shows now speed in
10 a direction of travel going northbound at least from the
11 zero hits on Miramar at 9 knots; correct?

12 A Correct.

13 Q When you received this map and this information in
14 regards to Officer Holtzclaw's vehicle's movements on
15 June 18th, at -- between the 1:00 and 2:00 a.m. time period
16 was it significant to you?

17 A Yes.

18 Q Why?

19 A Because it matched up with the story of what she told
20 me, that he took her to the school. And it had some zero
21 speeds and knowing that the AVL's not going to plot in the
22 school field, but to the closest street, it just matched her
23 story.

24 Q Ma'am, in regards to the communications with the
25 dispatcher were you also able to obtain radio traffic in



2C45
8/18/2014 1:35:45 AM
Speed 8

2C45
8/18/2014 1:36:10 AM
Speed 9

2C45
8/18/2014 1:36:03 AM
Speed 11

2C45
8/18/2014 1:41:10 AM
Speed 0

2C45
8/18/2014 1:47:24 AM
Speed 9

MIRAMAR BLVD

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IN THE DISTRICT COURT IN AND FOR OKLAHOMA COUNTY,
STATE OF OKLAHOMA

STATE OF OKLAHOMA,)
)
 Plaintiff,)
 vs.)
 DANIEL K. HOLTZCLAW,)
)
 Defendant.)

CASE NO.: CF-2014-5869

FILED IN DISTRICT COURT
OKLAHOMA COUNTY

MAY 13 2016

TIM RHODES
COURT CLERK

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* * * * *

TRANSCRIPT OF THE JURY TRIAL

HAD ON THE 2ND DAY OF DECEMBER, 2015,

BEFORE THE HONORABLE TIMOTHY R. HENDERSON,
DISTRICT JUDGE IN AND FOR OKLAHOMA COUNTY,

OKLAHOMA CITY, OKLAHOMA

* * * * *

VOLUME XVII OF XVIII

REPORTED BY: Kristin L. Taylor, RPR

1 Q All right. Now, ma'am, that same process continues
2 does it not and did you get a DNA profile in regards to the
3 pants?

4 A I did yes, sir.

5 Q All right. And when I go to that, if I look at what
6 you have -- what I have on Exhibit -- page 12 of 15, item
7 17Q1, it is the pants' left fly and item 17Q2 is the pants'
8 right fly; is that correct?

9 A That is correct, yes.

10 Q Now if you just -- again, I'm just looking at the first
11 three. See what's on the TV screen so we're all talking the
12 same thing?

13 A Yes.

14 Q Did you obtain a profile -- first of all, basic
15 question: Was there DNA evidence or biological evidence
16 obtained at these two locations?

17 A Yes, there was.

18 Q And did you obtain a profile from these two locations?

19 A I did, sir.

20 Q All right. Now there's a bunch of numbers there. So
21 tell me what that means. There's more than two; correct?

22 A That is correct.

23 Q Tell us -- tell us what significance that is to you.

24 A The first column for item number Q1 -- item number
25 17Q1, there are six alleles present. Okay. That

1 immediately tells me there -- it is a mixture of more than
2 two people.

3 Q Okay. If it was just one person there would be two
4 numbers or if the number was the same on your chart it would
5 just show one number; correct?

6 A If it's one --

7 Q If -- if it was just one person --

8 A It would just be either one or two numbers.

9 Q It would be one or two numbers.

10 A Yes, that is correct.

11 Q All right. So you know it's a mixture.

12 A That is correct, yes.

13 Q And would that be the same for both 17Q1 and 17Q2?

14 A In Q2 --

15 Q Yes.

16 A -- I was able to do a major/minor contributor. The
17 minor contributor in that mixture is in the black
18 parentheses or the red parentheses all the way across.

19 Q Okay. Now explain the difference then between what
20 they're seeing -- first of all, ma'am, is Q1 the outside or
21 is Q1 the flap?

22 A Q1 is the outside --

23 Q Is the outside.

24 A -- along the zipper.

25 Q Q2, the second row is the flap --

1 A Is the flap inside.

2 Q -- that's behind inside the zipper when the pants are
3 zipped?

4 A Yes, that is correct.

5 Q Okay. Explain the difference when you -- for what
6 you're seeing at Q1, the outside, versus the inside when you
7 have a major and minor component.

8 A On the outside of the pants there were -- the -- it was
9 too difficult to distinguish a major or a minor contributor.
10 There were several -- the peaks were very, very close in
11 height. And we have to judge each location by the size of
12 the peak that we see. So if the peaks are within, like, 100
13 of each other, at that point we do not know which two would
14 possibly go together.

15 Q Ms. Taylor, let me ask, the height of peaks whenever
16 you run your analysis, is that related to the amount of DNA
17 material there is there?

18 A Yes.

19 Q Okay. So the higher the peak the more DNA --
20 biological evidence was there; is that fair to say or is
21 that too simple?

22 A But it has to be within the working seven nanograms of
23 our system.

24 Q Okay.

25 A So the seven nanograms that we use, the peaks may be

1 all the same size at one or two locations. At that point
2 we -- we call it by our guidelines an indistinguishable
3 mixture. And we -- the way the guidelines are set that is
4 the way we make our calls.

5 Q So in the first row the peaks are such that it's
6 indistinguishable, there's a mixture; correct?

7 A That is correct, yes.

8 Q But in the second row, the sample from the inside flap,
9 the differences were such that you could make a
10 determination between major and minor contributors.

11 A Yes, that is correct.

12 Q So the major contributor has higher peaks than the
13 minor contributor?

14 A Yes, basically.

15 Q It's more of the major evidence than the minor
16 evidence?

17 A Right, but the -- the ones like I talked to you
18 previously that are in red --

19 Q Yes, ma'am.

20 A -- the only thing we can use those for is elimination.
21 We can't use them to include somebody.

22 Q Let me ask -- let me ask another question. And I think
23 I understand that. When I look at the second row, just
24 going right straight across, in the first location you have
25 two numbers in black, the second location you have two

1 numbers in black, the third location, fourth location there
2 are other numbers in black but you have them within
3 parentheses. But if I just go across the two, did you get a
4 complete profile of your major contributor on the second row
5 Q2?

6 A Yes, I did.

7 Q Okay. And is that significant to you as a DNA forensic
8 analyst? In other words, is that a complete profile?

9 A Yes, it is a complete profile.

10 Q Even though there's other stuff there, can you say
11 there is a complete genetic profile that would be unique to
12 an individual within a statistical probability?

13 A That is correct, yes.

14 Q Was it a female or a male mixture that was that major
15 component?

16 A It was a female because as you can see from the chart,
17 the X is in black and the minor contributor is a Y, but it's
18 in red so it really basically doesn't count.

19 Q And in that regard, ma'am, if I remind you on page 15
20 and I think just maybe look at the first -- at the location.
21 When you look at Jannie Ligons' buccal swab -- when we look
22 at Jannie Ligons' profile obtained from her buccal swab, at
23 the very first location on your chart, she has 13s there;
24 right?

25 A Yes, that is correct.

1 evidence. The part of the pants that we've just been
2 talking about again is that flap -- and I don't mean to be
3 obscene -- but the flap underneath the zipper.

4 A Yes.

5 Q Okay. Correct. And you've showed us that.

6 There is a minor component of that DNA material,
7 not enough to get a profile; correct?

8 A The minor component of the profile is not suitable for
9 comparison purposes.

10 Q For comparison.

11 A Yes.

12 Q But you also have I notice a Y in that red category for
13 17Q2A; correct?

14 A Yes.

15 Q Tell me again what that Y means.

16 A Essentially because it is in that what is -- what I
17 told you before was called the stochastic area. It was the
18 area that we could use for exclusion but we could not use it
19 for inclusion. And the statement that best suits that minor
20 contributor is that it is not suitable for comparison
21 purposes.

22 Q All right.

23 A Essentially I'm saying I don't have anybody that I feel
24 comfortable trying to compare to the few alleles that are
25 left in that minor component.

1 Q In regards to the defendant in this case, ma'am, did
2 you also receive buccal swabs from the defendant that were
3 at least labeled as being received from the defendant in
4 this case and did you obtain his DNA profile?

5 A Mr. Holtzclaw?

6 Q Yes, ma'am.

7 A His profile along with Ms. Ligons' profile were the
8 first two profiles that I ran.

9 Q Ma'am, if I look at that, on page 15 of 15 of your
10 report, and showing the chart, Ms. Ligons was first, but
11 Officer Holtzclaw is the second one; correct?

12 A Yes, that is correct.

13 Q Okay. If I go over to the first -- I'm gonna call it
14 yellow, the brighter yellow. Do you see where my finger is
15 pointing?

16 A Okay. Yes.

17 Q At that location his DNA profile has a 16 and an 18;
18 correct?

19 A Yes.

20 Q All right. If I go back to his pants -- first of all,
21 the part of his pants that would be not the flap but over on
22 this part where I'm touching my pants right here, do you see
23 this part?

24 A The zipper area on the front?

25 Q Yeah, where the -- I'm sorry. Where the -- where the

1 crease is. Where the seam is that you told us about.

2 A Which is Q1.

3 Q Q1.

4 A Yes.

5 Q Yes, ma'am. And I'll try to use your words. Q1 is
6 where the seam was; correct?

7 A Yes.

8 Q Okay. At that location is there an 18?

9 A No, sir, there is not.

10 Q Knowing that there is no 18 at that location can you
11 exclude him as contributing to the DNA mixture that you
12 have?

13 A Well, I excluded him from the very first location
14 because he is a 13,16 and I have a 13 at D8 but no 16.

15 Q Fair enough. And I'm sorry. I just picked one at
16 random.

17 A Right.

18 Q But you can exclude him from the first location as
19 well.

20 A Yes.

21 Q Can you also exclude him from the DNA evidence you
22 obtained on the inside -- on the flap on the inside behind
23 the closed zipper?

24 A Can we use the same location?

25 Q You can use any location you can show that you can

1 exclude him. Tell me which one you're on.

2 A Okay. Now the minor, there is a 13 present.

3 Q Yes.

4 A But there is no 16.

5 Q And is that at the first location?

6 A Yes.

7 Q All right. So knowing that, whatever the mixture is
8 from the seam on the outside of the pants or the flap on the
9 inside of the pants, it's not Officer Holtzclaw's DNA.

10 A That's my conclusion, sir.

11 Q All right. Ma'am, in this case did you and I have an
12 opportunity on the day that we met to talk about Culbertson
13 and when I asked you to do some additional testing at
14 Culbertson; do you remember that?

15 A Yes, sir, I do.

16 Q Ma'am, at that point had you received the additional
17 DNA evidence, for example, the DNA samples from Adaira
18 Gardner as well as some of the other victims that were
19 identified but not known back in June when you began your
20 analysis?

21 A That is correct, sir, yes.

22 Q And during our meeting, ma'am, did I ask you to swab
23 some additional areas on Officer Holtzclaw's uniform pants?

24 A That is correct, you did.

25 Q Up until that time, ma'am, had his pants been kept in

1 an appropriate manner in the storage facility so that if
2 there was DNA evidence on it, it would be preserved?

3 A When, I completed my original analysis on these pants I
4 placed them back into the original brown paper sack I
5 received them in. I tape sealed them shut. I initialed it
6 and I then returned them back to the Oklahoma City Police
7 Department evidence storage facility. And they remained
8 there until your request.

9 Q And when you got them again had they been opened again
10 since you had closed it up before?

11 A There was no evidence that the brown paper sack had
12 been tampered with.

13 Q And would that be consistent with policies and
14 procedures for certified DNA laboratories?

15 A Yes, sir, it is.

16 Q Hand you State's Exhibit 393 -- excuse me, 392 and 393
17 and ask if you recognize what is depicted in those
18 photographs, ma'am.

19 A Yes, I photographed the interior of the uniform pants.

20 Q Basically the pants are now turned inside out?

21 A Yes.

22 Q And why did you take those photographs?

23 A Just to show the two areas that you had requested I
24 swab.

25 Q And did you swab additional areas? And are those

1 photographs appropriately reflecting the way the pants
2 appeared on that day and the locations that you swabbed?

3 A They are. They're just a little washed out.

4 Q Again, the color's not probably true. In fact when you
5 look at those even the way it was printed the color doesn't
6 show exactly the true color; correct?

7 A No, because they are navy blue.

8 Q But as far as -- as far as the pants go and the
9 location of what these pictures are, it shows where you
10 swabbed; correct?

11 A Yes.

12 Q And they're accurate in that regard?

13 A That is correct.

14 MR. GIEGER: I'd offer 392 and 393, your Honor.

15 MR. ADAMS: No objection, your Honor.

16 THE COURT: State's Exhibit 392 and 393 will be
17 admitted.

18 Q (By Mr. Gieger) There's 392, ma'am, and 393. Does one
19 show the location of where you swabbed better than the other
20 or does it matter?

21 A Actually, the first -- the second one is better.

22 Q The second one shows it better?

23 A Yes.

24 Q Okay. And to orient it I'm gonna back it up just a
25 little bit.

1 you at this point read the reports or done anything to know
2 what the allegations involving Adaira Gardner were or
3 anything to that effect?

4 A No, sir, to be honest with you I -- I thought that the
5 allegations and -- were all -- were all oral sodomy.

6 Q Okay. When we met -- and, again, that is in part by
7 design, is it not?

8 A Yes.

9 Q And you testified about that a couple weeks ago.

10 A That's correct, yes.

11 Q Whenever I met with you again -- is there anything
12 inappropriate with me meeting with you before trial and
13 talking about what I anticipate the evidence to be?

14 A No, not at all.

15 Q There's nothing improper about that?

16 A No.

17 Q Ma'am, when I told you that Adaira Gardner had made
18 allegations that there actually was penile/vaginal
19 penetration was it significant to you from an analyst, from
20 a scientist or an expert in DNA standpoint?

21 A Yes, but my biggest problem is I have no presumptive
22 test that I can do to determine if there was a vaginal fluid
23 present.

24 Q And I'm gonna talk to you about that in a minute a
25 little bit more. But is it similar -- since you brought it

1 up, is it similar to what you've talked about before is that
2 you can see epithelial cells but there's no specific
3 presumptive test to determine if it's -- if there was fluid
4 in the transfer if it's saliva, urine, vaginal fluid, those
5 types of things?

6 A That's correct, yes.

7 Q Semen's different.

8 A Semen is different, yes.

9 Q But when I explained to you that a 17-year-old was
10 involved in an alleged rape --

11 A Yes.

12 Q -- penis/vaginal rape --

13 A Yes.

14 Q -- did you believe there was merit in swabbing those
15 areas?

16 A I did.

17 Q Why?

18 A A young woman of her age would be very likely to have
19 quite a bit of lubrication. And that lubrication could
20 transfer cells if in fact that is what occurred.

21 Q Ma'am, have you worked previous rapes before?

22 A I have.

23 Q And have you had training in regards to rape victims
24 and the human body's response to sexual intercourse?

25 A Yes, sir.

1 Q Does the fact that the allegations were it was
2 nonconsensual affect that opinion?

3 A No.

4 Q And can you explain why?

5 A The body -- the human body reacts to arousal in
6 different ways, whether it be consensual or whether it be a
7 rape. And, you know, as an older woman I think there would
8 probably be damage in a rape case as opposed to somebody
9 that was quite a bit younger than myself.

10 Q And is that a matter of biology and just the way
11 hormones are produced --

12 A Yes.

13 Q -- and the way different aged people react to different
14 things?

15 A That is correct. But I still can only call this
16 biological material.

17 Q I understand that.

18 Are we still talking epithelial cells?

19 A Yes.

20 Q All right. When you ran your -- strike that question.
21 Let me ask you another one.

22 A Okay.

23 Q When you testified a couple weeks ago we were talking
24 about DNA or biological material that you got from the top
25 of a black chair; do you remember that?

1 swabs, as well as Adaira Gardner's DNA profile that you
2 obtained from her buccal swabs?

3 A Yes, sir, I did.

4 Q And did you include those on this chart just for ease
5 of comparison where we don't have to flip pages back and
6 forth?

7 A That is correct, yes, sir.

8 Q Ma'am, whenever I look at 17Q3, were you able to -- it
9 appears it's a mixture, is it?

10 A Yes, it is.

11 Q It appears that you were able to obtain a major
12 component and obtain a DNA profile; is that right?

13 A Absolutely, yes.

14 Q And was that DNA profile -- if I just look at the part
15 that's on the screen right now it appears to match
16 everything where Adaira Gardner is; is that correct?

17 A That's correct.

18 Q And was it a match at all 16 locations?

19 A It was, sir.

20 Q And can -- did you run a statistical analysis to see
21 the probability of selecting someone with Adaira Gardner's
22 DNA profile from the biological evidence we obtained from
23 the inside of Officer Holtzclaw's zipper?

24 A I did, sir.

25 Q And what were those numbers?

1 A This was using the same -- the FBI database but these
2 were the expanded database numbers that we are now using.
3 In African -- assuming a single donor, the possibility of
4 selecting an unrelated individual at random from the
5 population having this genetic profile is approximately 1 in
6 36.6 times 10 to the -- to the 20th in African-Americans,
7 19.290 times 10 to the 18th in Caucasians. And 1.5 -- 5.165
8 times 10 to the 21 in Southwest Hispanics.

9 Q In that regard, ma'am, are those similarly large
10 numbers that exceed the -- what science tells us the number
11 of people who have ever lived on the planet are?

12 A Yes, sir.

13 Q Did you obtain the same result essentially as far as a
14 major component for the swab that you took at Q4?

15 A Yes, in fact the statistics on that -- those two items
16 were combined and they are going to be exactly the same.

17 Q Adaira Gardner -- the profile that Adaira Gardner has,
18 a human being matches at those two locations as well;
19 correct?

20 A Yes, sir, that is correct.

21 Q Ma'am, in regards to the minor numbers, if I look at
22 that third location right here, see where my finger is? I'm
23 sorry, that's third. See that?

24 A The 11?

25 Q Yes, ma'am. There's an 11 there.

1 A Correct.

2 Q Which is a minor below your cutoff for comparison;
3 correct?

4 A Yes.

5 Q But nevertheless, there was some type of DNA material
6 there that had an 11; right?

7 A That's correct.

8 Q Okay. If I look at Officer Holtzclaw, does he have an
9 11 in his DNA profile at that location?

10 A No.

11 Q So can you exclude him as a contributor to the 17Q4
12 mixture?

13 A Yes.

14 Q Similarly, ma'am, is there a location where Officer
15 Holtzclaw can be excluded and it appears that it's gonna be
16 the second yellow one, the TH, is that a 1?

17 A You mean included?

18 Q Yes, ma'am. Officer Holtzclaw has a 9.3 there; is that
19 correct?

20 A He has a 6,9.3. And that is there. But one location
21 does not make a match.

22 Q Okay. So is there a way to exclude him from the
23 mixture at the top?

24 A The mixture? The minor component --

25 Q Yes.

1 A -- in both these -- these profiles is not suitable for
2 comparison purposes. Even if you should see, you know, some
3 numbers that are similar I -- I can't -- I can't do a
4 statistical analysis on that. And it just is not suitable
5 for comparison.

6 Q Well, and let me just -- let me go -- do you see where
7 my finger is on this one right there?

8 A The 12,14?

9 Q It's a 12. But for the probability there's no 12 at
10 either one of the swabs here; correct?

11 A Correct.

12 Q All right. So that's not him.

13 A No.

14 Q All right. Additionally, ma'am, at both of the
15 locations where you obtained the mixtures, I notice that
16 both at 17Q3 and 17Q4 you only have an X there, you don't
17 have an XY.

18 A So those profiles originated from a female.

19 Q Did you find evidence of male DNA at either one of
20 those locations, epithelial cells?

21 A There's no Y so the answer is no.

22 Q There's none there. So even though Officer Holtzclaw
23 was wearing these pants, his DNA is not inside them;
24 correct?

25 A That is correct.

1 Q And that would also -- even though there was a minor Y
2 on the outside right here, you excluded him as being a
3 contributor of that; correct?

4 A Yes, I did.

5 Q Does that surprise you as a DNA forensic analyst that
6 the person actually wearing the clothes, their own DNA is
7 not on them?

8 A It does, but contact DNA is very tricky sometimes. And
9 sometimes the individual that is the wearer of the item of
10 clothing, they give it to someone else to wear. And either
11 one of those people could potentially be the major person in
12 that profile.

13 Q And to be clear you don't have any evidence that
14 Officer Hol- -- somebody else was wearing Officer
15 Holtzclaw's pants?

16 A I do not.

17 Q All we know is he was wearing these pants and his DNA
18 is not on his pants.

19 A Yes, which is very difficult to try and explain.

20 Q Does that fact and this evidence also contribute to
21 your opinion about when discussing contact DNA it is much
22 more likely for it to be transferred if the epithelial cells
23 are contained in a liquid such as vaginal fluid?

24 A That's a very good possibility.

25 Q Especially when it's cloth and absorbent.

1 A No, I can't.

2 Q But you would agree with me that over a period of time
3 that DNA can disintegrate or get worse in the quality of it?

4 A It degrades over time.

5 Q Degrades.

6 A Yes, but washing also will destroy it.

7 Q Now is it also your understanding that -- it's my
8 understanding that -- is it true that you received these
9 pants when? Do you remember the exact date?

10 A I believe, if I'm not mistaken, I collected the pants
11 from the property room on June the 19th from our property
12 clerk who was our evidence officer at the time, Susan
13 Gentry.

14 Q And you would agree with me that if the evidence was
15 that they were taken from Officer Holtzclaw on the 18th,
16 that would've been the very next day?

17 A Oh, I'm sorry. Yes, that is -- that is correct.

18 Q You weren't present when he had to take off his pants
19 and all that, but you --

20 A No.

21 Q Through the proper chain of custody the pants were in
22 your lab.

23 A Well, they were submitted to the property room.

24 Q And you requested them.

25 A And I requested them. And there should be -- and you

1 should have a copy of all the transfer --

2 Q I'm not even questioning any of that.

3 A Okay.

4 Q In fact I've stipulated that all that stuff was done
5 properly.

6 A Okay.

7 Q But they end up in your possession where you physically
8 have the pants.

9 A Yes, on the 19th.

10 Q On the 19th?

11 A Yes, sir.

12 Q Now in the scenario of events at that point in time all
13 you were aware of is -- my understanding is that this
14 alleged sexual encounter with Ms. Ligons, the oral thing.

15 A That is correct, yes.

16 Q Now as this investigation continued you became aware
17 that actually there was a lady by the name of Ms. Lyles that
18 was -- that allegedly happened immediately before
19 Ms. Ligons.

20 A Sir, I'm going to be really honest with you --

21 Q Yes, ma'am.

22 A I do not know the order of contact or anything. I just
23 can give you the dates that I received the buccal swabs from
24 the various individuals.

25 Q Okay. You would agree with me that you did not find

1 any DNA evidence on Officer Holtzclaw's zipper area to
2 Ms. Ligons; correct?

3 A That is correct, yes.

4 Q You would also agree with me that Ms. Lyles, you found
5 no DNA evidence around the zipper area of the pants we've
6 been talking about of Ms. Lyles.

7 A Is it K. Lyles? Is that --

8 Q Yes, ma'am. Kala Lyles.

9 A That is correct, yes.

10 Q Does it make any difference to you that Ms. Lyles was
11 claiming that there was vaginal intercourse in her encounter
12 with Officer Holtzclaw prior to Ms. Gardner?

13 A Sir, whatever I find at this point is a biological
14 material and I'm just trying to determine who it could or
15 could not be matched to.

16 Q Okay. And so -- and there's not a way to quantify
17 the -- the -- and I think we might've already covered this,
18 but if we haven't I want to be clear. There's not a way to
19 quantify how long this material has been there or how much
20 of it there is; correct?

21 A I quantitate it after it's extracted so I don't
22 overload our system. And I can tell you a quantity, but as
23 far as when it may or may not have been deposited, I -- I
24 can't tell you that.

25 Q Okay. But you certainly agree with me that it could've

1 been a secondary transfer?

2 A From Ms. --

3 Q The one that you did find.

4 A Gardner?

5 Q Yes, ma'am.

6 A I can't disagree with that.

7 Q Okay.

8 A Again, like I said, I have to say it is a biological
9 material.

10 Q But there is a way that we could go back and even
11 confirm more fairly that it would be a secondary transfer
12 such as if you had tested the pockets. Did you ever test
13 the pockets of Officer Holtzclaw's pants?

14 A The pockets?

15 Q Yes, ma'am, the inside of his pockets.

16 A No, sir, I did not.

17 Q Did you test any other area on Officer Holtzclaw's
18 pants other than what you've testified here in court which
19 basically is the outside and the inside of the zipper area?

20 A That is correct.

21 Q Okay. There was no other area on the pants?

22 A No, sir.

23 Q You would also agree with me that one of the forensic
24 tools that a lot of DNA analysts use is forensic lighting to
25 determine whether or not there's any biological material on

1 a piece of clothing for instance.

2 A I used -- I used -- I did not use an alternate light
3 source. But I do have a very bright light in my work area
4 that I examined the pants with that has a magnifying glass.

5 Q And you found nothing on there suspicious in your
6 opinion?

7 A I did not.

8 Q Okay.

9 Q So when Mr. Gieger says you found -- you did not find
10 DNA of Officer Holtzclaw on the pants which we know are his,
11 but really the truth is you did not find DNA on the zipper
12 area on the outside or the inside that you've testified
13 about testing; correct?

14 A That is correct, sir.

15 Q You did not test, for instance, the inside of the pant
16 leg.

17 A No.

18 Q Okay. Or the waist area.

19 A No.

20 Q Simply what you've testified to.

21 A I testified -- I -- I only tested the inside and the
22 outside of the zipper front area of Mr. Holtzclaw's pants.

23 MR. ADAMS: May I have just one moment, your
24 Honor?

25 THE COURT: Yes.

1 the inside of his pants? Because typically, and I don't
2 have to demonstrate, do people normally walk around with
3 their hands inside their pants touching things?

4 A Not that I'm aware of.

5 Q Ma'am, again, common sensically the jury's heard some
6 testimony that officers sometimes -- generally don't undo
7 their gun belt whenever they use the restroom when they're
8 on duty. They just unzip their flies. So they would be
9 touching their pants; correct?

10 A I would assume so.

11 Q And unzipping.

12 A Yes.

13 Q Common sense. But even with that motion did you find
14 Officer Holtzclaw's own DNA on his pants where he might
15 touch his pants to unzip them with his belt on? Did you
16 find his trans- -- the transfer from his hand to his pants;
17 did you get that?

18 A No, I did not.

19 Q Do you have an opinion and would it be more likely then
20 if the secondary transfer was from Officer Holtzclaw's penis
21 going into Adaira Gardner's 17-year-old vagina and then --

22 MR. ADAMS: Your Honor, object to the form of the
23 question.

24 THE COURT: Come up.

25 (The following was had at the bench by

1 Court and counsel out of the hearing of
2 the jury.)

3 THE COURT: State your objection.

4 MR. ADAMS: First of all, it's leading. But,
5 secondly, he's talking about a 17-year-old vagina and -- and
6 I object to it. He's just trying to draw sympathy from the
7 jury and I object to it.

8 THE COURT: I'm going to sustain the form of the
9 question, the way you started the question, and then gave
10 your question.

11 MR. GIEGER: I said hypothetically if this was the
12 facts. I thought that's what I said, your Honor.

13 THE COURT: No, you said something along the
14 lines, would it be more likely. I think you said would it
15 in fact be more likely in your opinion if --

16 MR. GIEGER: Okay. All right. I'll rephrase.

17 MR. ADAMS: And, your Honor, also I want to state
18 for the record in her report I don't have any of these
19 hypotheticals listed out or that she's gonna testify to
20 them. And so all I did was bring up secondary transfers.
21 He said it could've been -- now he's giving her
22 hypotheticals which I've never been notified of so I object
23 for those reasons also.

24 THE COURT: All right.

25 (The following continued within the

1 hearing of the jury.)

2 Q (By Mr. Gieger) Ms. Taylor, hypothetically could a
3 secondary transfer occur if Officer Holtzclaw's penis went
4 into the 17-year-old vagina of Adaira Gardner and then he
5 removed it and put it back in his pants through -- without
6 undoing his gun belt but just through his zipper?

7 A It's possible, yes.

8 Q And is that consistent with the location of the DNA
9 evidence that you found it matches Adaira Gardner on his
10 pants?

11 A It is consistent with the biological material I found.
12 Consistent with Ms. Gardner.

13 Q Again, counsel asked if you would expect to find Adaira
14 Gardner's DNA in her purse; do you remember that question?

15 A Yes, sir.

16 Q In this case we didn't find Officer Holtzclaw's DNA on
17 his pants where you would expect someone to touch their
18 pants whenever they're unzipping them; correct?

19 MR. ADAMS: Object to the form, your Honor.

20 THE COURT: Sustained.

21 Q (By Mr. Gieger) Counsel asked about the amylase or the
22 test to determine whether or not you could tell if there was
23 saliva found on Officer Holtzclaw's pants; do you remember
24 that?

25 A Yes, I do.

1 analysis. And it's biological materials in DNA analysis.
2 And I just -- at the time I felt that an amylase test would
3 not have aided anybody in the investigation of this
4 particular case.

5 Q You were trying to see if there was DNA evidence
6 potentially initially from Jannie Ligons --

7 A Yes.

8 Q -- on that area of his uniform.

9 A That is correct, yes.

10 Q You found DNA evidence that was female evidence.

11 A Correct.

12 Q But at that time we didn't know who it belonged to.

13 A That is absolutely correct.

14 MR. ADAMS: Just object to the form, your Honor.

15 THE COURT: Sustained.

16 MR. GIEGER: It was leading, I'm sorry.

17 Q (By Mr. Gieger) Ma'am, in addition to the comparisons
18 of all the alleged victims --

19 A Yes.

20 Q -- and getting their profiles --

21 A Yes.

22 Q -- you told counsel that you also had inquired of the
23 defendant -- excuse me -- of the detectives that you wanted
24 to find out is there any potential family members who
25 could've had contact with his pants; correct?

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

3

4 JANNIE LIGONS, SHANDAYREON HILL,)
TABATHA BARNES, TERRI MORRIS,)
5 SYRITA BOWEN, CARLA JOHNSON,)
KALA LYLES,)

6 Plaintiffs,)

7 vs.) No.
CIV-16-184-HE

8 CITY OF OKLAHOMA CITY, a municipal)
9 corporation, DANIEL HOLTZCLAW,)
BILL CITT, BRIAN BENNETT, ROCKY)
10 GREGORY, JOHN AND JANE DOES, all)
in their individual capacity,)

11 Defendants.)

12

13

14 VIDEOTAPED DEPOSITION OF ELAINE MARIE TAYLOR
15 TAKEN ON BEHALF OF THE DEFENDANTS
16 IN OKLAHOMA CITY, OKLAHOMA
17 ON JANUARY 15, 2019

18

19 REPORTED BY: KAREN B. JOHNSON, CSR

20

21

22

23

24

25



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

4 A Let me get her file out.

5 Q Sure.

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

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

11 A Yes. That is --

12 Q Do you see that?

13 A That's correct.

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

16 A On all -- all three samples.

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

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

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

25 A Not on the front of his pants. Like I

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

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

14 A Because amylase is found in more than just
15 saliva.

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

18 A Yes.

19 Q And who was that?

20 A Detective Davis, but our lab --

21 Q She asked you to --

22 A Excuse me.

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

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

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

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

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

25 A Yes, that is correct.

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

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

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

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

15 Q And were those nanograms or what were
16 those?

17 A I believe that's the quantity, point.

18 Q Yeah. .219 nanograms, .260 nanograms?

19 A Yes.

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

23 A Yes. And it was quanted at .0102 and
24 .0117. And the male to female ratio was 1 to 20
25 for -- for Q3 and 1 to 21 for Q4.

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

3

4 JANNIE LIGONS, SHANDAYREON HILL,)
TABATHA BARNES, TERRI MORRIS,)
5 SYRITA BOWEN, CARLA JOHNSON,)
KALA LYLES,)

6

Plaintiffs,)

7

vs.)

No. CIV-16-184-HE)

8

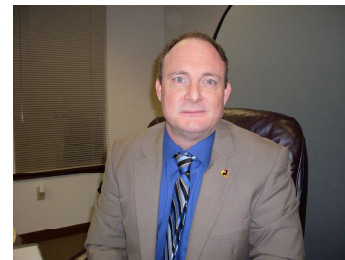
CITY OF OKLAHOMA CITY, a municipal)
9 corporation, DANIEL HOLTZCLAW,)
BILL CITTY, BRIAN BENNETT, ROCKY)
10 GREGORY, JOHN AND JANE DOES, all)
in their individual capacity,)

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Defendants.)

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VIDEOTAPED DEPOSITION OF ROCKY GREGORY

15

TAKEN ON BEHALF OF THE DEFENDANTS

16

IN OKLAHOMA CITY, OKLAHOMA

17

ON JANUARY 17, 2019

18

19

REPORTED BY: KAREN B. JOHNSON, CSR

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1 the simplest, I believe, idea of touch DNA. Take
2 Holtzclaw, he touches Gardner with his hand on her
3 face, and then he puts his hand on his pants
4 subsequent to that touching of Gardner, you
5 understand the science to be that Gardner's DNA
6 could transfer to his pants through that, that way;
7 correct?

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

10 THE WITNESS: As far as all of that and my
11 experience, I would say no.

12 Q (By Mr. Johnson) Okay.

13 A It's such a needle in a haystack on that.
14 Now, if you would say like on the original one, he
15 has sex with Gardner and it's -- it's there on his
16 pants, yes, that's a direct contact. But, no, I
17 don't -- I'm not believing as far as like touching
18 the shoulder or anything on Gardner that it was like
19 a transfer on that. I'm no expert on that, but I
20 just know my luck with DNA, out of all the hundreds
21 of cases I've dealt with, I have not seen that, but
22 I'm not an expert.

23 Q Okay. So you don't believe that DNA could
24 be transferred from Gardner to Holtzclaw's pants
25 unless Holtzclaw did something sexually improper

1 with her; correct?

2 A No, not necessarily. I mean, if he sat
3 there and was -- not necessarily just directly with
4 sexual assault. I understand on this one, it is
5 from a sexual assault, but I mean, I don't have the
6 expertise to sit there and say, yes, it is or, no,
7 it isn't, I just -- I don't know.

8 Q Okay. So you would agree then that
9 Gardner's DNA could get on Holtzclaw's pants through
10 appropriate police to victim/suspect contact?

11 MR. SMITH: Object, object to the form.

12 THE WITNESS: No. You're going to have to
13 rephrase that.

14 Q (By Mr. Johnson) Okay. I'm just -- I
15 guess let's try it this way, you've investigated
16 cases that involved touch DNA; correct?

17 A It's -- it's -- it's so rare for the touch
18 DNA, what I've dealt with. Touch DNA does exist if
19 that's what you're asking.

20 Q Okay. And you understand that; correct?

21 A I do understand that. But you're asking
22 me what I think in this scenario, and this scenario,
23 I'm not going to --

24 Q I'm asking you not what -- I'm asking you
25 about possibilities, not necessarily your opinion, I

1 know your opinion is that Holtzclaw violated
2 Gardner, I understand that. What I'm asking you,
3 though, is, is it possible, pursuant to the science
4 of touch DNA as far as you know it, not as a
5 forensic chemist, but as a investigator, is it
6 possible that if Holtzclaw touched Gardner for
7 legitimate reasons and then touched his pants, that
8 her DNA could get on his pants?

9 A I don't believe that that's the case here.
10 I just -- I don't.

11 Q I know you don't. What I'm saying,
12 though, is now, and the record is very clear, that's
13 not what you believe happened, I understand, but
14 what I'm asking you now is what's possible. Is it
15 possible that if Holtzclaw touched Gardner for
16 completely legitimate reasons during that stop, then
17 he could transfer her DNA to his pants?

18 MR. SOLOMON-SIMMONS: Object to form.

19 THE WITNESS: Rephrase this.

20 MR. JOHNSON: I can't -- I don't think I
21 can make it any better than that, if the court
22 reporter could read it back.

23 COURT REPORTER: "What I'm saying, though,
24 is now, and the record is very clear, that's not
25 what you believe happened, I understand, but what

1 after touching her legitimately?

2 MR. SOLOMON-SIMMONS: Object to form.

3 MR. SMITH: Object to form.

4 THE WITNESS: You're going to have to
5 rephrase it.

6 Q (By Mr. Johnson) I can't rephrase it.
7 The question is, is it possible if Holtzclaw touched
8 Gardner for completely legitimate reasons and then
9 he touched his pants, could his DN -- her DNA get on
10 his pants?

11 MR. SOLOMON-SIMMONS: Same objection.

12 THE WITNESS: I don't know enough about
13 DNA and transfer to even say one way or the other.

14 Q (By Mr. Johnson) Okay. So it's fair to
15 say that you never considered the possibility that
16 Gardner's DNA got on Holtzclaw's pants for
17 legitimate reasons; correct?

18 A From what I understand on this, it wasn't
19 the way that you're saying it happened. From what I
20 understand on, it came from when he had sex with
21 Gardner, that's how he got that DNA on there. I --
22 I can't say one way or the other, that's what I was
23 told, Gardner wasn't my case, but that's what I was
24 told was the outcome.

25 Q Okay. So you never considered the

1 possibility that Gardner's DNA was on Holtzclaw's
2 pants for legitimate reasons?

3 MR. SMITH: Object to the form.

4 THE WITNESS: In dealing with all the --

5 Q (By Mr. Johnson) I'm just asking if you
6 considered that?

7 A I've never had that really come across, I
8 mean, we just -- transfer is like a needle in a
9 haystack as far as that. Now, direct touch, now,
10 that's something else. But, no, no, we just got to
11 go off what we knew and what we were told by the lab
12 and everything, so.

13 Q What did the lab tell you?

14 A Well, they -- they told Kim, and then Kim
15 told me as far as like what the findings were, that
16 it was DNA from Gardner is on his pants, that was
17 the unknown profile that we were looking for.

18 Q I just want to ask you a question about
19 when you talked to Morris at the jail, you mentioned
20 that she said "Detective Gregory" when you met, you
21 recall that testimony?

22 A I do.

23 Q And isn't it true, though, that subsequent
24 to that in the written transcript, she called you
25 Mr. Williams?

1 aware to the extent or whatever of what she took?

2 A No.

3 Q Okay. Is it your understanding all of the
4 victims you believe Holtzclaw violated were women?

5 A Do I believe they were all women? Is that
6 correct?

7 Q Yeah.

8 A Yes.

9 Q Yeah. Do you have any reason to believe
10 he assaulted any men?

11 A No.

12 Q Is it your understanding -- let's take the
13 pants of his uniform pants, and you know his fly was
14 forensically tested for DNA, do you recall that?

15 A Yes.

16 Q Is it your understanding, as you sit here
17 today, that there was unidentified male DNA on his
18 fly?

19 A Yes.

20 Q Okay. And what led you to believe that?

21 A I thought I was told that there was some
22 mixture or something.

23 Q When were you told that?

24 A I think that was fairly -- I think --
25 actually, I don't remember, it was past the middle

1 of the investigation or -- I don't remember when,
2 honestly.

3 Q It was certain -- it was certainly before
4 the trial; correct?

5 A It surely was.

6 Q Okay. And who told you that?

7 A I don't remember, it could have been Kim,
8 I don't remember.

9 Q Could it have been Ms. Taylor?

10 A I don't think so, because on dealing with
11 the DNA on that, that was more Kim on that one. And
12 I know Elaine would have gotten with Kim.

13 Q Have you talked to Elaine -- when is the
14 last time you talked to Elaine Taylor?

15 A Last time I talked to her, oh, it's been a
16 couple weeks ago.

17 Q Do you know if she's been deposed in this
18 case?

19 A Yes.

20 Q And you know it was two days ago?

21 A Yes.

22 Q How did you learn that?

23 A Well, I learned that actually through
24 Rick.

25 Q All right. I don't want to go into any

1 communications with your attorney, but have you
2 spoken with Ms. Taylor personally since her
3 deposition?

4 A No.

5 Q Other than what you talked to your
6 attorney about, have you learned about what
7 Ms. Taylor said during her deposition?

8 A Other than what my attorney has said? No.

9 Q Yeah. I don't want to know anything about
10 that, okay. What else do you know about the male
11 DNA that was found on Mr. Holtzclaw's fly, and by
12 that I mean, do you know who it was believed it
13 belonged to?

14 A I just knew it was supposed to be some --
15 some mixture, I -- I don't know, that's all I --
16 that's all I really recall about it.

17 Q Okay. Were you involved in any
18 discussions about whether or not that would create a
19 hurdle to the prosecution of Mr. Holtzclaw if there
20 was male DNA on his fly?

21 A No, I don't remember.

22 Q Were you ever told that it could be
23 Holtzclaw's own DNA?

24 A I really -- I really don't remember much
25 about the -- that part of the DNA deal, I just

1 remember the Gardner deal, I don't remember.

2 Q Okay.

3 A I really don't.

4 Q Do you recall if Holtzclaw's own DNA was
5 found on his fly or anywhere on his pants?

6 A Actually, I -- I don't remember.

7 Q Okay. Would you agree with me that the
8 fact that there was male DNA on Holtzclaw's pants,
9 does that suggest to you that it could have been
10 your DNA?

11 A Well, no, I mean, she had it tested, I
12 mean, they have my DNA, so I don't think it's my
13 DNA. So they would have had it, they would have --

14 Q The lab does have you?

15 A Yes.

16 Q Does the lab have your DNA?

17 A Yes.

18 Q Okay. Is that just pursuant to policy for
19 elimination purposes?

20 A No, I think way early on, it was just some
21 DNA tests, needed some like, oh, like reference
22 samples, they were doing procedures, volunteers,
23 sometimes they do that with the new recruits, things
24 like that, so.

25 Q So they took your DNA back in 2000 when

1 you began?

2 A At some point, at some point.

3 Q Okay. If they -- do you believe that they
4 made -- strike that.

5 Do you believe that they ran tests on the
6 male DNA found on Holtzclaw's fly to eliminate you
7 as a possible contributor to the mixture?

8 A Eliminate me? Well, I -- I would have
9 been told by now if I was on there, I would have
10 thought, so I don't know, I don't know what all the
11 tests involved on that was.

12 Q Okay. Do you recall, have you ever heard
13 of that male DNA being tested against anyone in the
14 Holtzclaw case?

15 A I mean, I don't -- I don't know, I don't
16 know what Kim did, because that was -- I don't
17 remember, because that was such in reference to
18 Gardner, Kim handled that part.

19 Q Okay. You would agree with me, and I'm
20 not trying to be stupid or silly, but you would
21 agree with me that if your DNA was that male DNA on
22 Holtzclaw's pants, it was transferred through
23 non-intimate contact?

24 A Yes. That's correct.

25 Q Okay. Thank you. Do you -- do you have

1 pretrial conference like for prelim, and Shane had
2 went with me to try to locate a couple of them, they
3 were having a hard time finding. That's the only
4 thing I really remember Shane doing is just kind of
5 going with me to help find some of the women.

6 Q Just on that occasion?

7 A Yeah.

8 Q Is that like on one day, just on one
9 single occasion?

10 A There was probably three or four days, but
11 not a lot. Not -- he didn't have anything to do
12 with the investigation.

13 Q Okay. I'm going to cruise through some
14 DNA questions because I think I know the answers, I
15 don't want to put you into a situation where I'm
16 asking things you don't feel comfortable answering.
17 Let me see, did you ever review the physical DNA
18 reports in this case personally?

19 A I don't believe so.

20 Q Do you -- do you recall whether or not
21 you -- well, strike that.

22 Do you have an opinion one way or the
23 other about what the DNA results in this case
24 mean -- case meant?

25 A Well, I -- I knew that Gardner's DNA was

1 on Holtzclaw's pants, and past that, and then later
2 on hearing about the -- the mixture with the male
3 profile.

4 Q Did you ever review any reports that
5 showed the male profile on the pants?

6 A No, I don't remember that.

7 Q Okay. Have you been trained in the
8 collection and packaging of forensic evidence?

9 A Trained, very little. We have CSI do all
10 our stuff. They're the ones we use to package.

11 Q Okay. So you've never received a
12 certificate or any specialized treatment -- any
13 specialized training in the collection and packaging
14 of evidence?

15 A No certificate, no.

16 Q Okay. Are you judged -- strike that.

17 Are there records kept as to your
18 clearance rate with regard to closing cases, any
19 statistics, let's take when you were in SVU?

20 A No, not like -- I'm not aware of like the
21 FBI statistics like they are for homicide, I'm sure
22 there's something, I don't remember the supervisors
23 talking about it. We didn't have a -- just a known
24 clearance rate on what it is, no.

25 Q Are you judged on how many cases are

**OCPD Detective Rocky Gregory
inserting his bare hand into the evidence bag
before Mr. Holtzclaw placed his pants and belt in the bag**

(Screenshots from OCPD Interrogation Video, June 18, 2014)



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.

Standard Supplement Report

Reported Date: 05/24/14 Time: 03:05 Case: 14-041539 (001) Page: 1
Code: 21-886 SS Crime: CRIME A/NATUR Class:
Occurrence Date: 05/24/14- Day: SATURDAY - Time: 03:05-
Status: AS ASSIGNED Closing Officer:
Location: DOWNTOWN OKLAHOMA CITY, OK RD: 2505

NARRATIVE
BODY OF REPORT:

ON 5-24-14 AT APPROXIMATELY 0300 HOURS, I RESPONDED TO NE 23 AND KELLEY AVE IN REFERENCE TO A DOMESTIC CALL.

UPON MY ARRIVAL, I MADE CONTACT WITH VI MORRIS AND IP SHELTON. IP SHELTON STATED THAT VI CALLED HIM UPSET AND ASKED HIM TO PICK HER UP. VI WAS ACTING VERY HYPER AND WAS UNABLE TO STAND STILL. SHE WAS CRYING AND STATED THAT SHE HAD BEEN RAPED.

DUE TO VI'S BEHAVIOR, I ASKED HER IF SHE WAS ON ANY DRUGS. SHE STATED THAT SHE HAD SMOKED CRACK A FEW HOURS PRIOR. I ASKED HER WHO HAD RAPED HER AND SHE STATED THAT IT WAS A POLICE OFFICER. VI STATED THAT IT HAPPENED ON EITHER 5-20-14 OR 5-21-14 BUT SHE COULDN'T REMEMBER FOR SURE. SHE STATED THAT SHE WAS WALKING TO THE CITY RESCUE MISSION FROM A DRUG REHAB FACILITY THAT SHE GOES TO WHEN AN OFFICER STOPPED HER AND PUT HER IN THE BACK SEAT OF HIS PATROL CAR ABOUT TWO BLOCKS FROM THE CITY RESCUE MISSION. SHE COULD NOT REMEMBER THE EXACT LOCATION OF WHERE THE OFFICER PICKED HER UP.

SHE STATED THAT HE RAN HER FOR WARRANTS AND THEN HAD HER GET OUT OF THE CAR AND FACE THE CAR. SHE SAID THE OFFICER THEN TOLD HER TO UN-ZIP HER PANTS. SHE STATED THAT SHE ASKED THE OFFICER WHY AND HE STATED THAT HE COULD TAKE HER TO TRAIL BUT WOULD LET HER GO IF SHE "SUCKED HIS DICK." I ASKED HER IF HE EVER TOUCHED HER VAGINA OR HAD VAGINAL SEX AND SHE SAID NO. SHE STATED THAT HE UNZIPPED HIS PANTS AND PULLED HIS ERECT PENIS OUT AND SHE PUT IT IN HER MOUTH FOR A SHORT TIME AND THEN ASKED HIM AGAIN WHY HE WAS DOING THIS. SHE STATED HE REMOVED HIS PENIS FROM HER MOUTH AND PUT IT BACK IN HIS PANTS. SHE STATED THAT HE NEVER EJACULATED. SHE SAID THAT HE THEN ZIPPED HIS PANTS BACK AND TOLD HER HE WOULD GIVE HER A RIDE TO THE CITY RESCUE MISSION. SHE STATED THAT SHE GOT BACK IN THE CAR AND HE DROVE HER AROUND FOR A FEW MINUTES AND THEN LET HER OUT IN AN ALLEY IN DOWNTOWN OKLAHOMA CITY. SHE WAS UNABLE TO REMEMBER THE EXACT LOCATION OF WHERE SHE WAS DROPPED OFF.

I ASKED HER WHAT THE OFFICER WAS WEARING AND SHE STATED THAT "HE WAS WEARING THE UNIFORM YOU ARE WEARING." I ASKED HER WHAT COLOR HIS SHIRT WAS AND SHE SAID THAT IT WAS GRAY. SHE STATED HE HAD A BADGE LIKE THE OKLAHOMA CITY BADGE. SHE SAID SHE COULDN'T REMEMBER IF HE WAS WEARING A GUN BELT OR NOT. SHE STATED THAT THE SUSPECT WAS A DARK SKINNED WHITE MALE WITH BLACK HAIR AND APPEARED TO BE ABOUT 40 YEARS OLD. SHE SAID HE HAD A MUSCULAR BUILD AND WAS CLEAN SHAVEN. WHEN ASKED IF SHE COULD REMEMBER A POLICE RADIO GOING OFF WHEN SHE WAS IN THE CAR SHE STATED THAT SHE COULD NOT REMEMBER. SHE STATED THAT HE WAS IN A BLACK AND WHITE POLICE CAR WITH A CAGE IN THE BACK SEAT. I ASKED HER WHY SHE WAITED SEVERAL DAYS TO REPORT THE INCIDENT AND SHE SAID IT WAS BECAUSE SHE WAS SCARED.

LT HOLLAND 1246 RESPONDED TO THE SCENE AND NOTIFIED SEX CRIMES DETECTIVES.

Standard Trailer - First Page

Reporting Officer: THOMAS, JONAT Number: 001907 Date: 05/24/14 Time:
Typed by: PDNS5592V Number: NS5592 Date: 05/27/14 Time: 21:23
Approving Officer: PDNS5592V Number: NS5592 Date: 05/27/14 Time: 21:33

=====
S t a n d a r d C o n t i n u a t i o n P a g e
=====

Reported Date: 05/24/14 Time: 03:05 Case: 14-041539 (001) Page: 2
 de: 21-886 SS Crime: CRIME A/NATUR Class:

END OF REPORT.

=====
S t a n d a r d T r a i l e r - C o n t i n u a t i o n
=====

Reporting Officer: THOMAS, JONAT Number: 001907 Date: 05/24/14 Time:
 Typed by: PDNS5592V Number: NS5592 Date: 05/27/14 Time: 21:23
Approving Officer: PDNS5592V Number: NS5592 Date: 05/27/14 Time: 21:33

Standard Supplement Report

Reported Date: 05/24/14 Time: 03:05 Case: 14-041539 (009) Page: 1
Code: 21-886 SS Crime: CRIME A/NATUR Class:
Occurrence Date: 05/24/14- Day: SATURDAY - Time: 03:05-
Status: AS ASSIGNED Closing Officer:
Location: DOWNTOWN OKLAHOMA CITY, OK RD: 2505

INVOLVED PERSONS
VICTIM: MORRIS TERRI LYNN DOB: 08/03/1970 Race: B Sex: F
812 E. HILL ST., OK
Apt: State: OK Zip: 73111 Phone: 405 505-4960 Adu/Juv: A
POB: OKC, OK Hair: BLK Eye: BRO Hgt: 503 Wgt: 126 Bld: SML
Business Name: Phone:

NARRATIVE

First Detective Contact with Terri Lynn Morris - Victim

On 06/03/14 at 1900 hours, I was contacted by an informant 'Cal' who had been assisting in locating VI Morris. (It should be noted that all attempts by Detectives through canvass, phone calls, relative searches, etc.. did not reveal where Terri was located. Criminal Intel., Vice Unit, and the Gang Unit all also had been attempting to locate Terri with no luck.) Cal advised he had just found her at NE 26th and Urban League Ct. He had already contacted patrol and they had her in custody. I verified officers did come into contact with Terri Morris at this location.

I met with Officer Kyle Maly # 1752 at this location. He had detained Terri Morris. Ofc. Maly stated that Terri had been hitting her head on the cage and wanted to leave. Terri had only been detained for just a few minutes. I introduced myself to Terri and advised what I wanted to speak with her about. Terri immediately advised she did not want to go through with the investigation in regards to her sexual assault report on the unknown officer.

I advised Terri I was on her side and I wanted her to speak with me so I could assist her. I advised Terri that I work with female victims of sexual assault and I was there for her. I advised her I wanted to investigate this matter and if an officer assaulted her I wanted him to be found. I tried to assure her I was there for her and wanted to just speak with her briefly even just to gain some knowledge into what happened.

Terri was crying and kept saying she wanted to let it go. She advised she did not want to pursue this matter any further and would not cooperate in the investigation on the officer. Terri had advised she was scared of the officer even when I first came into contact with her.

After seeing Terri's reluctance I advised her that if she didn't want to pursue the matter she could fill out a Refusal to Prosecute form. Terri advised that she would sign that. I advised Terri I had one downtown at my office and not with me. I asked her if we could take her downtown and I could speak with her a little more. I also assured her that if she still wanted to sign the form she would be given the form to sign. I advised Terri we could also take her

Standard Trailer - First Page

Reporting Officer: GREGORY, ROCK Number: 001332 Date: 06/18/14 Time: 08:58
Typed by: PDRG1332V Number: RG1332 Date: 06/18/14 Time: 08:58
Approving Officer: MUZNY, TIMOTH Number: 000909 Date: 07/24/14 Time: 13:25

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S t a n d a r d C o n t i n u a t i o n P a g e

=====

Reported Date: 05/24/14 Time: 03:05 Case: 14-041539 (009) Page: 2
 Code: 21-886 SS Crime: CRIME A/NATUR Class:

back to wherever she wanted to go afterwards. Terri agreed to be transported to Police Headquarters at that time by Ofc. Maly. I followed in my police car as well.

Terri was taken to the OCPD Sex Crimes office to the interview room. I contacted Lt. T. Muzny and informed him of the situation. The following was DVD recorded:

Terri advised me right after she seen me she just wanted to get the investigation over. I got the form for her as per her request. I then began to ask Terri some initial questions.

Terri advised that she has been diagnosed as being a paranoid schizophrenic with depressive features. Terri also has been diagnosed as having PTSD. She does take medication for this but isn't on any at this time. She does not take them for financial reasons.

I tried to ease Terri into some questions over what happened during the incident in question. Terri said she had been in Woodward Oklahoma's Mental Health unit. She returned to OKC and had gone to a Rehab center in OKC. Terri would not specify which one exactly. As soon as I began to ask the next question she became aggravated and said she did not want to answer any more questions.

Terri advised she came to sign the refusal but not talk about the incident. I tried to relay to Terri how the police department was on her side. I advised Terri that the department does not want officers doing these criminal acts. I advised her we have investigated officers in the past and they have had to face their crimes. I tried to get Terri to understand we didn't want to just let this issue go. Terri would just state she just didn't want to go through with charges or the investigation.

I would speak about other things for a minute and come back to any new information. Terri could not say if she was two blocks from the City Rescue Mission when the incident happened. It was possible she was two blocks away. She would not state which way and again she became agitated. She said she was dropped off by some red brick buildings but had no idea where. I tried to get her to tell me what she seen but she would not cooperate.

I tried to get Terri to give even just a little more information on what happened and even the officer. I begged her to cooperate for reasons concerning her and the health of the public. I tried to get Terri to look at a photo lineup of possible candidates. These photos were to be used as an investigative tool. (These photos will be held in case file.)

Terri began to get very upset demanding not to see the photos. Terri advised she had no desire or want to see the photos and wanted to let the investigation go. I tried to get Terri to think of any other possible victims that could be prevented. Terri told me not to put that on her and she has to do what's best for her and that is not to speak about this matter. Terri said she was trying to move to California with family. Terri would not give me any new contact

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S t a n d a r d T r a i l e r - C o n t i n u a t i o n

=====

Reporting Officer: GREGORY, ROCK Number: 001332 Date: 06/18/14 Time: 08:58
 Typed by: PDRG1332V Number: RG1332 Date: 06/18/14 Time: 08:58
 Approving Officer: MUZNY, TIMOTH Number: 000909 Date: 07/24/14 Time: 13:25

28

=====
S t a n d a r d C o n t i n u a t i o n P a g e
=====

Reported Date: 05/24/14 Time: 03:05 Case: 14-041539 (009) Page: 3
de: 21-886 SS Crime: CRIME A/NATUR Class:

information outside of her grandmother's phone and information which was already documented.

I offered Terri even the opportunity to speak with a female detective. Terri advised if she spoke of this matter she would speak about it with me. Terri was appreciative of my concern. I told Terri she could contact the police department or me any time. Information was given to her for contact.

Terri then filled out the refusal to prosecute. Terri advised in her reason for decline, "Too scared just want to let it go moving in out of town at the end of month". Signed Terri L Morris.

Terri then was transported by Ofc. Maly back to her area of request.

End of First Contact.

For any discrepancies see archived DVD recording of interview.

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S t a n d a r d T r a i l e r - C o n t i n u a t i o n
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Reporting Officer: GREGORY, ROCK Number: 001332 Date: 06/18/14 Time: 08:58
Typed by: PDRG1332V Number: RG1332 Date: 06/18/14 Time: 08:58
Approving Officer: MUZNY, TIMOTH Number: 000909 Date: 07/24/14 Time: 13:25

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IN THE DISTRICT COURT IN AND FOR OKLAHOMA COUNTY, OKLAHOMA

<p>STATE OF OKLAHOMA, Plaintiff,</p> <p>v.</p> <p>NATHANIEL JOHN DAVIS, Defendant., CA01-4097</p>	<p>No. CF-2009-2220 (Criminal Felony)</p> <p>Filed: 04/08/2009 Closed: 08/14/2009</p> <p>Judge: Mai, Natalie</p>
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CASE MAY BE ELIGIBLE FOR ONLINE PAYMENTS

PARTIES

DAVIS, NATHANIEL JOHN, Defendant
Oklahoma City Police Department, ARRESTING AGENCY
STATE OF OKLAHOMA, Plaintiff

ATTORNEYS

None

EVENTS

Event	Party	Docket	Reporter
Thursday, May 14, 2009 at 9:00 AM PRELIMINARY HEARING CONFERENCE	DAVIS, NATHANIEL JOHN	Larry A. Jones	
Wednesday, June 10, 2009 at 9:00 AM PRELIMINARY HEARING	DAVIS, NATHANIEL JOHN	Larry A. Jones	
Wednesday, July 15, 2009 at 9:00 AM PRELIMINARY HEARING	DAVIS, NATHANIEL JOHN	Larry A. Jones	
Friday, August 14, 2009 at 9:00 AM PRETRIAL CONFERENCE	DAVIS, NATHANIEL JOHN	Jerry D. Bass	
Tuesday, November 10, 2009 at 0:00 AM COST ADMINISTRATION REVIEW 11-10-09. JWB	DAVIS, NATHANIEL JOHN		
Sunday, February 28, 2010 at 9:00 AM HEARING ON APPLICATION TO REVOKE	DAVIS, NATHANIEL JOHN	Jerry D. Bass	

Event	Case 5:16-cv-00184-HE Document 408-15 Filed 12/27/21 Page 2 of 11	Party	Docket	Reporter
Monday, March 15, 2010 at 9:00 AM HEARING ON APPLICATION TO REVOKE		DAVIS, NATHANIEL JOHN	Jerry D. Bass	
Monday, May 10, 2010 at 9:00 AM HEARING ON APPLICATION TO REVOKE		DAVIS, NATHANIEL JOHN	Jerry D. Bass	
Friday, May 28, 2010 at 9:00 AM HEARING ON APPLICATION TO REVOKE		DAVIS, NATHANIEL JOHN	Jerry D. Bass	
Monday, November 22, 2010 at 9:00 AM HEARING ON APPLICATION TO REVOKE		DAVIS, NATHANIEL JOHN	Jerry D. Bass	
Friday, January 7, 2011 at 9:00 AM HEARING ON APPLICATION TO REVOKE		DAVIS, NATHANIEL JOHN	Jerry D. Bass	
Friday, February 25, 2011 at 9:30 AM CALL DOCKET- TRIAL		DAVIS, NATHANIEL JOHN	Jerry D. Bass	
Monday, March 14, 2011 at 9:00 AM HEARING ON APPLICATION TO REVOKE		DAVIS, NATHANIEL JOHN	Jerry D. Bass	
Thursday, March 27, 2014 at 0:00 AM COST ADMINISTRATION REVIEW 03-27-14		DAVIS, NATHANIEL JOHN	Cost Admin. Judge (General)	
Tuesday, December 19, 2017 at 1:30 PM RULE 8 HEARING		DAVIS, NATHANIEL JOHN	Donald L Easter	





COUNTS

Parties appear only under the counts with which they were charged. For complete sentence information, see the court minute on the docket.

Count # 1. Count as Filed: OROB, ROBBERY IN THE FIRST DEGREE, in violation of 21 O.S. 792-800
Date of Offense: 12/12/2008

Party Name	Disposition Information
DAVIS, NATHANIEL JOHN	Disposed: CONVICTION, 08/14/2009. Guilty Plea Count as Disposed: ROBBERY I (AMENDED TO: AGGRAVATED ASSAULT AND BATTERY)(OPER) Violation of 21 O.S. 641-850

DOCKET

Date	Code	Description	Party	Count	Amount
04-08-2009	[TEXT]	CRIMINAL FELONY INITIAL FILING.	DAVIS, NATHANIEL JOHN 	#1	
04-08-2009	[ WAI\$]	WARRANT OF ARREST ISSUED, JUDGE: RUSSELL HALL - BOND AMOUNT: \$40,000.00 COMMENT: 20090010005 PG 2	DAVIS, NATHANIEL JOHN 		\$ 50.00
04-08-2009	[OCISR]	OKLAHOMA COURT INFORMATION SYSTEM REVOLVING FUND	DAVIS, NATHANIEL JOHN 		\$ 25.00

04-08-2009 [INFORMATION] DAVIS, NATHANIEL JOHN #1

DEFENDANT NATHANIEL JOHN DAVIS WAS CHARGED WITH COUNT #1, ROBBERY IN THE FIRST DEGREE IN VIOLATION OF 21 O.S. 792-800

Document Available at Court Clerk's Office

04-08-2009 [TEXT]

OCIS HAS AUTOMATICALLY ASSIGNED JUDGE BASS LESURE, TAMMY TO THIS CASE.

04-09-2009 [RETWA]

DAVIS, NATHANIEL JOHN

WARRANT RETURNED 4/9/2009, WARRANT ISSUED ON 4/8/2009

COMMENT: 20090010005 PG 2 CLEARED 4-8-09

Document Available at Court Clerk's Office

04-09-2009 [ORE]

DAVIS, NATHANIEL JOHN

ORDER OF RE-ASSIGNMENT OF DISTRICT JUDGE/JUDGE HALL

Document Available at Court Clerk's Office

04-10-2009 [CTARR]

DAVIS, NATHANIEL JOHN

JUDGE HALL: DEFENDANT NOT PRESENT, IN CUSTODY, PUBLIC DEFENDER TENATIVELY APPOINTED. STATE NOT PRESENT. ARRAIGNMENT HELD. DEFT WAIVES READING OF THE INFORMATION AND ENTERS A PLEA OF NOT GUILTY. THIS MATTER SET FOR PRELIM HEARING CONFERENCE ON 5-14-09 9AM BEFORE JUDGE L. JONES. BOND IS SET AT \$40,000

05-14-2009 [CTFREE]

DAVIS, NATHANIEL JOHN

JUDGE L. JONES: COMES ON FOR PHC. DEFT APPEARS IN PERSON, OUT OF CUSTODY WITH COUNSEL BENEDICT. STATE PRESENT BY ADA GARRISON. PLH SET FOR 6-10-09 AT 9AM BEFORE JUDGE L. JONES.

05-14-2009 [O]

DAVIS, NATHANIEL JOHN

COURT MINUTE ORDER/JUDGE JONES

Document Available at Court Clerk's Office

05-21-2009 [RTSBN]

DAVIS, NATHANIEL JOHN

RETURN SUBPOENA (NO CHARGE)X2

06-10-2009 [CTFREE]

DAVIS, NATHANIEL JOHN

JUDGE L. JONES: COMES ON FOR PHC. DEFT NOT PRESENT, IN CUSTODY. COUNSEL BENEDICT APPEARS. STATE PRESENT BY ADA GARRISON. PLH SET FOR 7-15-09 AT 9AM BEFORE JUDGE L. JONES. BOND REDUCED TO \$10,000. COMMITMENT ISSUED.

06-10-2009 [ISCM]

DAVIS, NATHANIEL JOHN

ISSUE COMMITMENT

06-10-2009 [O]

DAVIS, NATHANIEL JOHN

COURT MINUTE ORDER /JUDGE JONES
















Document Available at Court Clerk's Office

06-15-2009 [TCSR]

DAVIS, NATHANIEL JOHN

TEMPORARY COMMITMENT W/SHERIFF'S RETURN

Document Available at Court Clerk's Office

07-15-2009 [CTPRLDCA]	DAVIS, NATHANIEL JOHN 		
JUDGE L. JONES: COMES ON FOR PLH. DEFT APPEARS IN PERSON, IN CUSTODY WITH COUNSEL J. BENEDICT. STATE PRESENT BY ADA P. GARRISON. COURT REPORTER DENNIS SWINEHEART PRESENT. PRELIMINARY HEARING HELD. STATE PRESENTS CASE IN CHIEF. DEFENDANT'S DEMURRER IS OVERRULED. DEFT. IS HEREBY BOUND OVER TO DISTRICT COURT FOR PRETRIAL CONFERENCE ON 8-14-09 AT 9AM BEFORE JUDGE BASS. BOND TO REMAIN IN FULL FORCE AND EFFECT.			
07-15-2009 [WAIPH]	DAVIS, NATHANIEL JOHN 		
WAIVER OF PRELIMINARY HEARING AND BIND- OVER ORDER/JUDGE L. JONES Document Available at Court Clerk's Office			
07-16-2009 [RTSBN]	DAVIS, NATHANIEL JOHN 		
RETURN SUBPOENA (NO CHARGE)			
08-14-2009 [REL]	DAVIS, NATHANIEL JOHN 		
RELEASE ISSUED / JUDGE BASS			
08-14-2009 [CONVICTED]	DAVIS, NATHANIEL JOHN 	#1	
JUDGE BASS: DEFT APPEARS WITH ATTY JACOB BENEDICT ITH PAT GARRISON FOR THE STATE. DEFT PLEADS GUILTY AND IS SENTENCED; CT 1- (7) YRS SUSPENDED; ISSUED MOTION AND ORDER WAIVING STATUTORY PROHIBITION OF IMPOSING SUSPENDED SENTENCE; ATTEND BAM AT STAT; RESTITUTION \$2,547 AS PER SCHEDULE; \$50 FINE, \$50 VCA, \$175 ATTY FEE AND COURT COSTS DUE INSTANTER; PAY COST OF INCARCERATION PURSUANT TITLE 22 SECTION 979 A.			
08-14-2009 [COSTF]	DAVIS, NATHANIEL JOHN 	#1	\$ 98.00
COURT COSTS ON FELONY			
08-14-2009 [OCISR]	DAVIS, NATHANIEL JOHN 	#1	\$ 25.00
OKLAHOMA COURT INFORMATION SYSTEM REVOLVING FUND			
08-14-2009 [DACPAF]	DAVIS, NATHANIEL JOHN 	#1	\$ 25.00
DA COUNCIL PROSECUTION ASSESSMENT FOR FELONY			
08-14-2009 [MELRF]	DAVIS, NATHANIEL JOHN 	#1	\$ 10.00
MEDICAL EXPENSE LIABILITY REVOLVING FUND			
08-14-2009 [SSFCHS]	DAVIS, NATHANIEL JOHN 	#1	\$ 10.00
SHERIFF'S SERVICE FEE FOR COURT HOUSE SECURITY			
08-14-2009 [CLEET]	DAVIS, NATHANIEL JOHN 	#1	\$ 9.00
CLEET PENALTY ASSESSMENT			
08-14-2009 [PFE7]	DAVIS, NATHANIEL JOHN 	#1	\$ 6.00
LAW LIBRARY FEE			
08-14-2009 [FOREN]	DAVIS, NATHANIEL JOHN 	#1	\$ 5.00
FORENSIC SCIENCE IMPROVEMENT ASSESSMENT			
08-14-2009 [AFIS]	DAVIS, NATHANIEL JOHN 	#1	\$ 5.00
AFIS FEE			
08-14-2009 [SSF]	DAVIS, NATHANIEL JOHN 	#1	\$ 5.00
SHERIFF'S SERVICE FEE ON ARRESTS			

08-14-2009 [AGVSU]	DAVIS, NATHANIEL JOHN 	#1	\$ 3.00
ATTORNEY GENERAL VICTIM SERVICES UNIT			
08-14-2009 [CHAB]	DAVIS, NATHANIEL JOHN 	#1	\$ 3.00
C.H.A.B. STATUTORY FEE			
08-14-2009 [FINE]	DAVIS, NATHANIEL JOHN 	#1	\$ 50.00
FINES PAYABLE TO COUNTY			
08-14-2009 [VCA]	DAVIS, NATHANIEL JOHN 	#1	\$ 50.00
VICTIMS COMPENSATION ASSESSMENT (AC12)			
08-14-2009 [ATTO]	DAVIS, NATHANIEL JOHN 	#1	\$ 175.00
ATTORNEY FEE - TULSA AND OKLAHOMA COUNTY PUBLIC DEFENDER			
08-14-2009 [CCADMIN]	DAVIS, NATHANIEL JOHN 	#1	\$ 24.50
COURT CLERK ADMINISTRATIVE FEE ON COLLECTIONS			
08-14-2009 [MO]	DAVIS, NATHANIEL JOHN 		
STATE'S MOTION FOR WAIVER OF STATUTORY PROHIBITION OF IMPOSING SUSPENDED SENTENCE PURSUANT TO TITLE 22 SECTION 991(A)(C)/JUDGE BASS Document Available at Court Clerk's Office			
08-14-2009 [O]	DAVIS, NATHANIEL JOHN 		
ORDER/STAT COURT SERVICES/JUDGE BASS Document Available at Court Clerk's Office			
08-14-2009 [PGSF]	DAVIS, NATHANIEL JOHN 		
PLEA OF GUILTY - SUMMARY OF FACTS/JUDGE BASS Document Available at Court Clerk's Office			
08-14-2009 [PGPB]	DAVIS, NATHANIEL JOHN 		
PLEA OF GUILTY PART B: SENTENCE ON PLEA/JUDGE BASS Document Available at Court Clerk's Office			
08-18-2009 [J&S]	DAVIS, NATHANIEL JOHN 		
JUDGMENT AND SENTENCE/ISSUED/SUSPENDED IN PART/JUDGE BASS Document Available at Court Clerk's Office			
08-20-2009 [ORSR]	DAVIS, NATHANIEL JOHN 		
ORDER OF RELEASE W/SHERIFF'S RETURN Document Available at Court Clerk's Office			
09-10-2009 [REV]	DAVIS, NATHANIEL JOHN 		
CA REVIEW 11-10-09. JWB			
02-22-2010 [AREV]	DAVIS, NATHANIEL JOHN 		
APPLICATION/MOTION TO REVOKE SUSPENDED SENTENCE Document Available at Court Clerk's Office			
02-23-2010 [ BWIAR]	DAVIS, NATHANIEL JOHN 		\$ 50.00
BENCH WARRANT ISSUED ON APPLICATION TO REVOKE, JUDGE: RUSSELL HALL - BOND AMOUNT: \$2,000.00			
COUNT 1 - ROBBERY IN THE FIRST DEGREE COMMENT: 2010005328			

02-23-2010 [OCISR]

DAVIS, NATHANIEL JOHN 

\$ 25.00

OKLAHOMA COURT INFORMATION SYSTEM REVOLVING FUND

03-05-2010 [RETBW]

DAVIS, NATHANIEL JOHN 

WARRANT RETURNED 3/5/2010, WARRANT ISSUED ON 2/23/2010
COMMENT: 2010005328 CLEARED 3-5-2010
Document Available at Court Clerk's Office

03-08-2010 [CTARR]

DAVIS, NATHANIEL JOHN 

JUDGE HALL: DEFT APPEARS WITHOUT ATTY AND IS ARRAIGNED ON VIOLATION OF
SUSPENDED SENTENCE. DEFT PLEADS NOT GUILTY. REVOCATION SET 3-15-10 AT 9AM
BEFORE JUDGE BASS

03-15-2010 [CTFREE]

DAVIS, NATHANIEL JOHN 

JUDGE BASS: DEFT APPEARS IN PERSON WITH COUNSEL. STATE BY ADA J. HARTNELL. REVO
CONT TO 5-10-10 AT 9:00AM BEFORE JUDGE BASS.

03-15-2010 [MOCON]

DAVIS, NATHANIEL JOHN 

DEFT MOTION FOR CONT ON THE STATE'S APPLICATION TO ACCELERATE SENTENCING DATE
AND/OR REVO OF SUSPENDED SENTENCE & WAIVER OF RIGHT TO SPEEDY HRG/JUDGE BASS
Document Available at Court Clerk's Office

05-10-2010 [CTFREE]

DAVIS, NATHANIEL JOHN 

JUDGE BASS: DEFT APPEARS WITH ATTY T. COWIN WITH J. HARTNELL FOR THE STATE.
REVOCATION CONT 5-28-10 AT 9AM.

05-11-2010 [TO]

DAVIS, NATHANIEL JOHN 

TRANSFER ORDER/ JUDGE BASS (TO JUDGE LARRY JONES FOR PLEA)

05-11-2010 [TO]

DAVIS, NATHANIEL JOHN 

CRIMINAL DOCKET TRANSFER ORDER/ JUDGE BASS
Document Available at Court Clerk's Office

06-03-2010 [MOD&O]

DAVIS, NATHANIEL JOHN 

MOTION TO DISMISS AND TO RECALL WARRANT-APPLICATION TO REVOKE SUSPENDED
SENTENCE-PER PLEA AGREEMENT/ORDER TO DISMISS AND TO RECALL WARRANT/JUDGE
BASS
Document Available at Court Clerk's Office

06-09-2010 [ORSR]

DAVIS, NATHANIEL JOHN 

ORDER OF RELEASE W/SHERIFF'S RETURN
Document Available at Court Clerk's Office

10-06-2010 [CTRS]

CLAIM FOR INTERCEPT OF TAX REFUND

11-01-2010 [AREV]

DAVIS, NATHANIEL JOHN 

APPLICATION/MOTION TO REVOKE SUSPENDED SENTENCE
Document Available at Court Clerk's Office

11-04-2010 [ BWIAR]DAVIS, NATHANIEL JOHN 

\$ 50.00

BENCH WARRANT ISSUED ON APPLICATION TO REVOKE, JUDGE: RUSSELL HALL - BOND AMOUNT: \$2,000.00

COUNT 1 - ROBBERY IN THE FIRST DEGREE
COMMENT: 2010028774

11-04-2010 [ OCISR]DAVIS, NATHANIEL JOHN 

\$ 25.00

OKLAHOMA COURT INFORMATION SYSTEM REVOLVING FUND

11-05-2010 [ RETBW]DAVIS, NATHANIEL JOHN 

WARRANT RETURNED 11/5/2010, WARRANT ISSUED ON 11/4/2010
COMMENT: 2010028774 CLEARED 11-4-2010
Document Available at Court Clerk's Office

11-08-2010 [ CTARR]DAVIS, NATHANIEL JOHN 

<...JUDGE NAJUDGE HALL: DEFT APPEARS WITHOUT ATTY AND IS ARRAIGNED ON VIOLATION OF SUSPENDED SENTENCE. DEFT PLEADS NOT GUILTY. REVOCATION SET 11-22-10 AT 9AM BEFORE JUDGE BASS. BOND SET \$2,000.

11-22-2010 [ CTFREE]DAVIS, NATHANIEL JOHN 

JUDGE BASS: DEFT APPEARS WITH ATTY D. BEDFORD WITH C. JENNINGS FOR THE STATE. DEFT WAIVES 20 DAY HEARING. REVO 1-7-11 9AM

11-22-2010 [ MOCON]DAVIS, NATHANIEL JOHN 

DEFT'S MOTION FOR CONT ON THE STATE'S APPLICATION TO ACCELERATE SENTENCING DATE AND/OR REVO OF SUSPENDED SENTENCE & WAIVER OF RIGHT TO SPEEDY HRG/JUDGE BASS
Document Available at Court Clerk's Office

11-29-2010 [ AREV]DAVIS, NATHANIEL JOHN 

FILED AMENDED APPLICATION TO REVOKE SUSPENDED SENTENCE
Document Available at Court Clerk's Office

01-07-2011 [ CTFREE]DAVIS, NATHANIEL JOHN 

JUDGE BASS; DEFT APPEARS WITH ATTY D. BEDFORD WITH WILLIAM SMITH FOR TRAVIS SMITH AND STATE. CALL DKT 2-25-11 AT 9:30AM AND TRIAL 2-28-11 AT 9AM.

03-02-2011 [ CTFREE]DAVIS, NATHANIEL JOHN 

JUDGE BASS; DEFT APPEARS WITH ATTY DAVID BEDFORD WITH NIKKI KIRKPATRICK FOR THE STATE. REVO CONT 3-14-11 AT 9AM

03-14-2011 [ CTSEN]DAVIS, NATHANIEL JOHN 

JUDGE BASS: THE DEFT APPEARS IN CUSTODY WITH ATTY D. BEDFORD. THE STATE APPEARS BY ADA N. KIRKPATRICK. CR: APRIL BLOYE. COMES ON FOR HEARING ON THE STATE'S APPLICATION TO REVOKE; AFTER ARGUMENTS FROM ALL PARTIES THE COURT REVOKES THE DEFT'S SENTENCE IN FULL. ALL COURT COSTS DUE INSTANTER. THE COURT FINDS THE DEFT IN DIRECT CONTEMPT OF COURT & IS SENTENCED TO AN ADDITIONAL 6 MONTHS IN COUNTY JAIL. T.C.'S ARE ISSUED.

03-14-2011 [ ISCM]DAVIS, NATHANIEL JOHN 

ISSUE COMMITMENT/JUDGE BASS

03-14-2011 [ ISCM]DAVIS, NATHANIEL JOHN 

ISSUE COMMITMENT/JUDGE BASS

03-14-2011 [PGSF]	DAVIS, NATHANIEL JOHN 	
PLEA OF GUILTY - SUMMARY OF FACTS/ JUDGE J BASS Document Available at Court Clerk's Office		
03-14-2011 [ORSS]	DAVIS, NATHANIEL JOHN 	
ORDER REVOKING SUSPENDED SENTENCE/ISSUED/JUDGE BASS Document Available at Court Clerk's Office		
03-24-2011 [NOREQ]	DAVIS, NATHANIEL JOHN 	
NOTICE OF INTENT TO APPEAL; ORDER DETERMINING INDIGENCY, APPELLATE COUNSEL, PREPARATION OF APPEAL RECORD, GRANTING TRIAL COUNSEL'S MOTION TO WITHDRAW; COURT REPORTER ACKNOWLEDGMENT; NOTIFICATION OF APPELLATE COUNSEL IF APPOINTED / PD'S OFFICE Document Available at Court Clerk's Office		
03-28-2011 [CAP]	DAVIS, NATHANIEL JOHN 	
CERTIFICATE OF APPEAL - #RE-11-203 Document Available at Court Clerk's Office		
03-29-2011 [LT]	DAVIS, NATHANIEL JOHN 	
FILED LETTER FROM DEFT/COPY SENT TO JUDGE BASS/PUBLIC DEFENDER'S OFFICE		
04-01-2011 [RETOR]	DAVIS, NATHANIEL JOHN 	\$ 50.00
RETURN ORDER REVOKING SUSPENDED SENTENCE		
04-01-2011 [OCISR]	DAVIS, NATHANIEL JOHN 	\$ 25.00
OKLAHOMA COURT INFORMATION SYSTEM REVOLVING FUND		
04-05-2011 [LT]	DAVIS, NATHANIEL JOHN 	
LETTER FORWARDING DEFT'S LETTER TO R. RAVITZ / JUDGE BASS Document Available at Court Clerk's Office		
05-19-2011 [LT]	DAVIS, NATHANIEL JOHN 	
APPEAL LETTER FROM COURT CLERK'S OFFICE		
05-20-2011 [TCSR]	DAVIS, NATHANIEL JOHN 	
TEMPORARY COMMITMENT W/SHERIFF'S RETURN Document Available at Court Clerk's Office		
05-20-2011 [TCSR]	DAVIS, NATHANIEL JOHN 	
TEMPORARY COMMITMENT W/SHERIFF'S RETURN Document Available at Court Clerk's Office		
06-14-2011 [NO]	DAVIS, NATHANIEL JOHN 	
NOTICE OF FILING		
06-14-2011 [T&2]	DAVIS, NATHANIEL JOHN 	
ORIGINAL TRANSCRIPT & 2 COPIES OF PROCEEDINGS HAD ON 3-14-2011 / JUDGE BASS / COURT REPORTER APRIL BLOYE		
06-14-2011 [CT]	DAVIS, NATHANIEL JOHN 	
FILED BOUND RECORD FILED COURT CLERK'S CERTIFICATE (RE-11-203)		

DAVIS, NATHANIEL JOHN 

FILED NOTICE OF COMPLETION
 SENT COPIES TO CCA, AG, DA AND PD'S OFFICE
 (RE-11-203)
 Document Available at Court Clerk's Office

06-17-2011 [REQ]

DAVIS, NATHANIEL JOHN 

REQUEST TO TRANSMIT (RE-11-203)
 Document Available at Court Clerk's Office

07-06-2011 [RECP]

DAVIS, NATHANIEL JOHN 

RECEIPT FOR APPEAL RECORD / BOUND RECORD AND TRANSCRIPTS FROM PD'S OFFICE (RE-11-203)
 Document Available at Court Clerk's Office

09-15-2011 [RETOR]

DAVIS, NATHANIEL JOHN 

\$ 50.00

RETURN ORDER REVOKING SUSPENDED SENTENCE

09-15-2011 [OCISR]

DAVIS, NATHANIEL JOHN 

\$ 25.00

OKLAHOMA COURT INFORMATION SYSTEM REVOLVING FUND

09-15-2011 [RECP]

DAVIS, NATHANIEL JOHN 

OKLAHOMA DEPARTMENT OF CORRECTIONS RECEIPT FOR PRISONER/DOCUMENTS/DETAINDER

10-12-2011 [CTRS]

DAVIS, NATHANIEL JOHN 

CLAIM FOR INTERCEPT OF TAX REFUND

10-19-2011 [NO]

DAVIS, NATHANIEL JOHN 

NOTICE OF GOOD BEHAVIOR CREDIT AND/OR CREDIT FOR LABOR

06-11-2012 [MAN]

DAVIS, NATHANIEL JOHN 

FILED AND SENT RECEIPT FOR MANDATE TO CCA
 FILED COPY OF RECEIPT SENT TO CCA
 FILED AND RECORDED MANDATE - AFFIRMED
 FILED AND SENT RETURN OF COURT CLERK TO CCA
 FILED COPY OF RETURN SENT TO CCA
 Document Available at Court Clerk's Office

06-26-2012 [RECP]

DAVIS, NATHANIEL JOHN 

RECEIPT FOR 1 BOUND RECORD AND 1 TRANSCRIPTS RETURN FROM CCA (RE-11-203)
 Document Available at Court Clerk's Office

10-18-2012 [CTRS]

DAVIS, NATHANIEL JOHN 

CLAIM FOR INTERCEPT OF TAX REFUND

10-07-2013 [CTRS]

DAVIS, NATHANIEL JOHN 

CLAIM FOR INTERCEPT OF TAX REFUND

12-27-2013 [NO]

DAVIS, NATHANIEL JOHN 

NOTICE OF REL FR DOC

09-25-2014 [ACCOUNT]DAVIS, NATHANIEL JOHN 

RECEIPT # 2014-3451863 ON 09/25/2014. DOC CHECKS QURTER 4 2013 & QUARTER 1 2014
PAGE 94 OF 216

PAYOR: TOTAL AMOUNT PAID: \$0.00.

LINE ITEMS:

CF-2000-5463: \$3.24 ON TRANSFER TO AC01 CLERK FEES FOR COSLOW, RONNIE LEE.
CF-2001-5825: \$8.64 ON TRANSFER TO AC01 CLERK FEES FOR JOHNSON, NICHOLAS MARK.
CF-2005-4085: \$2.16 ON TRANSFER TO AC01 CLERK FEES FOR RIVERS, WILLIAM LAFAYETTE.
CF-2007-2166: \$1.44 ON TRANSFER TO AC01 CLERK FEES FOR WILLIAMSON, CHRISTOPHER
MICHAEL.
CF-2009-2220: \$1.44 ON TRANSFER TO AC01 CLERK FEES FOR DAVIS, NATHANIEL JOHN.
CF-2009-3325: \$8.64 ON TRANSFER TO AC01 CLERK FEES FOR MILES, CARLOS ROMON.
CF-2010-6264: \$8.64 ON TRANSFER TO AC01 CLERK FEES FOR RENTERIA, JOSE LOUIS.
CF-2011-3699: \$33.98 ON TRANSFER TO AC01 CLERK FEES FOR MOORE, MARIO DESHAWN.
CF-2012-580: \$83.17 ON TRANSFER TO AC01 CLERK FEES FOR ALLEN, KEVIN LEON.
MR-2014-15: \$-151.35 ON TRANSFER FROM AC99 HOLDING.

10-14-2014 [CTRS]DAVIS, NATHANIEL JOHN 

CLAIM FOR INTERCEPT OF TAX REFUND

12-31-2014 [TEXT]

ADMINISTRATIVELY REASSIGNED BY AOC MIS PER HELP DESK CONTACT HD38472

05-07-2015 [ BWIFAP]DAVIS, NATHANIEL JOHN 

\$ 50.00

BENCH WARRANT ISSUED FAILED TO APPEAR AND PAY, JUDGE: DONALD EASTER - BOND
AMOUNT: \$1,244.18

COUNT 1 - ROBBERY IN THE FIRST DEGREE

COMMENT: ATTENTION BOOKING DEPARTMENT: DEFENDANT MAY BE RELEASED UPON A
CASH PAYMENT IN FULL OR SET FOR THE COST DOCKET.

05-07-2015 [CBWF1]DAVIS, NATHANIEL JOHN 

\$ 5.00

CLERK'S BENCH WARRANT FEE {TITLE 22 O.S.966A}

05-07-2015 [OCISR]DAVIS, NATHANIEL JOHN 

\$ 25.00

OKLAHOMA COURT INFORMATION SYSTEM REVOLVING FUND

05-11-2015 [SFC]DAVIS, NATHANIEL JOHN 

\$ 287.12

CASE SENT FOR COLLECTION. BATCH ID: 20150511-3968 - COLLECTION ID: 79052

05-11-2015 [SFCSF]DAVIS, NATHANIEL JOHN 

\$ -5.00

REDUCTION IN BENCH WARRANT FEE TO SHERIFF (10%)

05-11-2015 [SFCCC]DAVIS, NATHANIEL JOHN 

\$ 5.00

ADDITION OF 10% FOR WARRANT COLLECTION


10-06-2015 [CTRS]DAVIS, NATHANIEL JOHN 

CLAIM FOR INTERCEPT OF TAX REFUND

12-08-2015 [O]DAVIS, NATHANIEL JOHN 

COST DOCKET ORDER

Pursuant to 12 O.S. § 39, Document Available at Court Clerk's Office

12-10-2015 [ RETBW]DAVIS, NATHANIEL JOHN 

WARRANT RETURNED 12/10/2015, WARRANT ISSUED ON 5/7/2015

COMMENT: ATTENTION BOOKING DEPARTMENT: DEFENDANT MAY BE RELEASED UPON A CASH PAYMENT IN FULL OR SET FOR THE COST DOCKET. CLEARED 12-08-2015

Document Available at Court Clerk's Office

12-16-2015 [**ORSR**]DAVIS, NATHANIEL JOHN 

ORDER OF RELEASE W/SHERIFF'S RETURN--COST WARRANT ONLY

Document Available at Court Clerk's Office

10-21-2016 [**CTRS**]DAVIS, NATHANIEL JOHN CLAIM FOR INTERCEPT OF TAX REFUND

10-04-2017 [**CTRS**]DAVIS, NATHANIEL JOHN CLAIM FOR INTERCEPT OF TAX REFUND

09-27-2018 [**CTRS**]DAVIS, NATHANIEL JOHN CLAIM FOR INTERCEPT OF TAX REFUND

10-03-2018 [**RECP**]DAVIS, NATHANIEL JOHN 

RECEIPT FOR APPEAL RECORD RETURNED BY PD'S OFFICE

Document Available at Court Clerk's Office

01-11-2019 [**TEXT**]ADMINISTRATIVELY REASSIGNED BY AOC MIS PER HELP DESK CONTACT 80073

10-03-2019 [**CTRS**]DAVIS, NATHANIEL JOHN CLAIM FOR INTERCEPT OF TAX REFUND

09-29-2020 [**CTRS**]DAVIS, NATHANIEL JOHN CLAIM FOR INTERCEPT OF TAX REFUND

10-12-2021 [**CTRS**]DAVIS, NATHANIEL JOHN 

CLAIM FOR INTERCEPT OF TAX REFUND

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

DANIEL K. HOLTZCLAW,)	
)	
Appellant,)	
)	
v.)	Case No. F-2016-62
)	
THE STATE OF OKLAHOMA,)	
)	
Appellee.)	

APPELLANT'S OBJECTION TO JUDGE HENDERSON'S
EX PARTE FINDINGS OF FACT AND CONCLUSIONS OF LAW

Appellant, Daniel K. Holtzclaw, by and through his undersigned appellate counsel, and pursuant to this Court's Clarification Order of July 20, 2017, objects to Judge Henderson's findings of fact and conclusions of law filed in this Court as an Order on August 7, 2017, and an Amended Order on August 8, 2017.¹ (For clarity and ease of citation, these orders will hereinafter be referred to as "Findings of Fact and Conclusions of Law.") Appellant respectfully requests that all of the exhibits filed by the State of Oklahoma with this Court on May 4, 2017, be unsealed and provided to Appellant's counsel. Appellant further renews his objection to the unnecessary secrecy shrouding these proceedings, filed under seal in this Court on August 2, 2017, and requests that all motions and orders, as well as the transcript of the proceedings of the *ex parte* hearing held on June 26 and 27, 2017, be unsealed and made available to public view, with copies of the State's original motion and the transcripts provided to Appellant's counsel.

A. INTRODUCTION

It is worth remembering at the outset that the current controversy began with the State coming forward with information to which counsel for the State, Matt Haire, conceded Appellant was entitled, at least in part, but which Mr. Haire felt he could not lawfully provide to Appellant's counsel without a court order.

¹ The Amended Order simply makes a minor clerical correction to the original order.

Though Appellant's counsel has still not seen the actual motion Matt Haire filed on May 4, 2017, this Court's Order Remanding Cause to District Court of Oklahoma County for *In Camera* Hearing, Granting State's Motion for Interim Protective Order and Holding Appeal in Abeyance Pending Outcome of the *In Camera* Hearing (hereinafter "Order Remanding Cause"), filed on May 30, 2017, specifically states on page four of the order, "The State agrees that some of the information it has received should be turned over to Holtzclaw's counsel, but states that not all of the information from the personnel investigation is germane to Holtzclaw's appeal." This is consistent with the telephone conversation Appellant's counsel had with Matt Haire shortly before he filed his motion on May 4.

Since that time, however, the State of Oklahoma has managed to obtain a legal ruling from Judge Henderson that all of the information is protected personnel information and that Appellant's counsel is not entitled to have access to any of the information, not even so much as the State had previously admitted should be turned over to Appellant's counsel. This finding came after an *ex parte* hearing to which not only was Appellant's counsel not invited or allowed to attend, but which counsel had no prior knowledge of. Nor was Appellant's counsel given any opportunity to provide the district court with any pertinent legal authority. Appellant vehemently objects to the illegal, *ex parte* manner in which the proceedings unfolded,² objects to the unnecessary shroud of secrecy in this matter,

² At the conclusion of the *ex parte* hearing, Oklahoma County Assistant District Attorney Gayland Gieger described this Court's remand order as requiring the district court to "conduct this hearing under seal, *ex parte*." (*Ex Parte* Hrg. Tr. 338) This is a fundamental misreading of this Court's May 30 order remanding the case to the district court for an *in camera* hearing. The words "*ex parte*" do not appear anywhere in that order. To be sure, the remand order anticipated Judge Henderson reviewing the records outside of the presence of counsel. See Order Remanding Cause at 3. But the Court ordered more than just an *in chambers* review. The Court ordered an *in camera* hearing - *i.e.*, a hearing held with all spectators excluded, see BLACK'S LAW DICTIONARY 763 (7th ed. 1999) - and ordered transcripts of that hearing provided to counsel for both parties. Clearly the Court expected both parties to be able to participate in the remanded hearing. Even if confidentiality concerns required taking *some* of the testimony outside of the presence of Appellant's counsel, there is no reason that the *whole hearing* should have been held without counsel's

and to the factually and legally inaccurate findings and conclusions filed by Judge Henderson on August 7 and 8, 2017.

B. STANDARD OF REVIEW

Appellant asserts that Judge Henderson's Findings of Fact and Conclusions of Law are entitled to **no deference**. Judge Henderson's findings of fact are not well-supported by the record, and his conclusions of law are based on an inappropriate legal standard. Had Appellant's attorneys been permitted to participate in the proceedings, even if *some* of the testimony required counsel's brief and intermittent exclusion, these errors could have been avoided. But for reasons that defy comprehension, Appellant's attorneys were not permitted to know about or participate in the proceedings. Counsel were not given any opportunity to cross-examine any of the witnesses or otherwise offer contrary legal arguments on either the question whether these documents are protected in the first instance, or assuming they are protected, whether they must nevertheless be disclosed to Appellant's counsel. The only point of view Judge Henderson considered was that of the prosecution. To give his findings of fact and conclusions of law any amount of deference would be to adopt and perpetuate his violation of Appellant's due process rights.

C. ALL OF THE DOCUMENTS SUBMITTED TO THIS COURT BY THE STATE SHOULD BE DISCLOSED TO APPELLANT'S COUNSEL

The claim that the material at issue is protected from disclosure cites to Title 51, Section 24A.7. This provision, it should be noted, is not part of a "Right to Keep Things Secret from the Public Act." Rather, it is part of the "Oklahoma Open Records Act," the stated purpose of which is to protect the "inherent right"

presence or awareness. There is no reason why counsel could not have been present to cross-examine the witnesses on matters that were clearly not confidential, and no reason why counsel could not at least have been afforded the opportunity to provide the district court with relevant legal authority and argument.

of the people of Oklahoma to “be fully informed about their government” and therefore to “ensure and facilitate the public’s right of access to and review of government records so they may efficiently and intelligently exercise their inherent political power.” OKLA.STAT. tit. 51, § 24A.2 (2011). The privacy interest of individuals are expressly made subservient to the public’s right to know. Section 24A.7 represents an exception to the requirement of disclosure and should be narrowly construed in light of the overall purpose of the act.

Appellant submits that the record of the proceedings below clearly demonstrates that the material at issue is not protected from disclosure by law. Even if any of portions of the documents submitted to this Court by the State may properly be found to be part of Ms. Taylor’s “personnel file,” and therefore subject to discretionary disclosure, the interests of justice and due process of law favor disclosure under the facts and circumstances of this case. Accordingly, all the materials at issue should be disclosed to defense counsel and/or made public.

1. The documents at issue are not protected from disclosure by law.

Title 51, Section 24A.7(A) states that a “public body *may* keep personnel records confidential.” (Emphasis added.) It is important to note at the outset that this provision *does not mandate* confidentiality of personnel records. The use of the word *may* in a statute usually connotes a procedure that is permissive or discretionary, rather than mandatory. *See Mott v. Carlson*, 1990 OK 10, ¶ 6 & n.4, 786 P.2d 1247, 1249 & n.4; *Falconhead Prop. Owners Ass’n v. Fredrickson*, 2002 OK CIV APP 67, ¶ 5, 50 P.3d 224, 226. The only personnel information that is mandated to be kept secret is home addresses, telephone numbers, and social security numbers of past or current employees. § 24A.7(D).

The statute does not define the term *personnel records*. However, the two subsections which follow provide an aid to interpretation of what types of information may be kept confidential. Subsection A(1) refers to records “[w]hich

relate to internal personnel investigations including examination and selection material for employment, hiring, appointment, promotion, demotion, discipline, or resignation.” While this list is non-exhaustive, the types of records described involve anticipated future or continued employment. It is undisputed that Elaine Taylor retired on February 2, 2017. [REDACTED]

[REDACTED]

[REDACTED] Subsection A(2), on the other hand, allows records to be kept confidential “[w]here disclosure would constitute a clearly unwarranted invasion of personal privacy.” Appellant has seen nothing to indicate the information at issue constitutes any kind of invasion of privacy. Her work in this case is clearly a matter of public concern.³

[REDACTED]

³ Ironically, the same entities who seem so reticent now [REDACTED] compunction against making every alleged violation of department policy, no matter how minor (including turning his computer off before arriving home, failing to fill out and return Field Interview Cards, and giving subjects rides in his patrol car), a substantial part of the State’s case in chief against Appellant.

[Page 6 redacted in its entirety]

[REDACTED]

Judge Henderson relied in part for his conclusion on the case of *Ross v. City of Owasso*, 2017 OK CIV App 4, 389 P.3d 396, which he cited for the proposition, inapposite to the facts and circumstances of this case, that a personnel investigation does not become a matter of public disclosure merely because it involves allegations of criminal misconduct. Had Appellant's attorneys been permitted to participate in the proceedings, they could have directed Judge Henderson's attention to the very next sentence, which indicates that a public body's decision to keep personnel records is subject to review for an abuse of discretion. *Id.* at ¶ 10, 389 P.3d at 399.

The material at issue in *Ross* was generated while the subject was still an employee of the City of Owasso, and the court easily concluded that it constituted a personnel record. That did not end the inquiry, however. Noting that such records are not "*inherently confidential*," the court explained that Section 24A.7 "grants a public body *discretion* to keep such records confidential." *Id.* at ¶ 11, 389 P.3d at 400. In the end, the court found that it could not decide whether the Owasso City Council had abused its discretion in the matter, because the City Council had never actually made a decision whether the report should be declared confidential or publicly released. *Id.* at ¶ 18, 389 P.3d at 401. Accordingly, the court

remanded the case to allow the City Council “to properly respond to Ross’s ORA request, at which point any decision to withhold or release the Report will be ripe for examination by the courts.” *Id.*

[REDACTED]

There is no provision of the Open Records Act that permits public bodies to make selective disclosures, deciding that some members of the public may see official documents while other members of the public may not. Accordingly, even if the materials at issue are deemed “personnel records,” within the meaning of Section 24A.7, the police department’s decision not to keep these documents confidential means that they must be made publicly available and therefore should be disclosed to Appellant’s counsel.

2. **Even if the documents are determined to be confidential, *Brady* and *Giglio* nevertheless require their disclosure to Appellant's counsel.**

In the event this Court nevertheless upholds Judge Henderson's erroneous decision that the documents at issue are protected from disclosure by Section 24A.7, Appellant submits that disclosure is nevertheless required pursuant to *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed. 2d 215 (1963), and *Giglio v. United States*, 405 U.S. 150, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972). Under *Brady*, the prosecution is required to disclose "evidence that is favorable to the accused ... where the evidence is material either to guilt or to punishment." 373 U.S. at 87, 83 S.Ct. at 1196-97. In *Giglio*, that principle was extended to require disclosure of potential cross-examination information. 405 U.S. at 154-55, 92 S.Ct. at 766. Under these standards, Judge Henderson should have ordered disclosure. Even if the information contained within the documents is not considered "exculpatory," the information is certainly favorable to the defense, within the meaning of *Brady* and *Giglio*, because the information could provide useful cross-examination material.


[REDACTED]




[REDACTED] Again, this is an issue that could have been litigated more fully below had Appellant's counsel been permitted to participate

in the proceedings.

The standard of materiality requiring a showing that the outcome of the proceedings would have been different comes from the standards governing motions for new trial based on newly discovered evidence, because that is the context in which *Brady/Giglio* claims are usually raised – *i.e.*, favorable evidence is discovered by the defense after trial and presented to an appellate court in support of a request that the defendant’s conviction(s) be reversed and remanded for a new trial. It has long been settled that even a violation of the United States Constitution does not automatically result in reversal of a conviction. The reasonable likelihood standard is simply part of the reviewing court’s duty to assess whether any error is harmless. *See, e.g., Giglio*, 405 U.S. at 154, 92 S.Ct. at 766.

Appellant submits that this standard is not appropriate at the disclosure/discovery phase. Usually, when a court is determining whether to order disclosure of protected evidence, the trial has not yet occurred, so it would be virtually impossible for the court to assess whether there is a reasonable likelihood that the evidence would change the outcome. *See, e.g., United States v. Rudolph*, 224 F.R.D. 503, 514 (N.D. Ala. 2004); *United States v. Jordan*, 316 F.3d 1215, 1251 n.79 (11th Cir. 2003). As at least one court has observed, “Because the definitions of materiality as applied to appellate review are not appropriate in the pretrial discovery context, the Court relies on the plain meaning of ‘evidence favorable to an accused’ as discussed in *Brady*.” *United States v. Sudikoff*, 36 F. Supp. 2d 1196, 1199 (C.D. Cal. 1999).

This is not to say that there will never come a time when it must be determined that there is a reasonable likelihood of a different outcome. 

[REDACTED] This Court's original May 30, 2017, remand order made provision to allow Appellant to supplement his application in light of any disclosures as a result of the *in camera* hearing. This Court will ultimately have the opportunity to consider the impact, if any, of this material, considered not just in isolation but also in combination with the other evidence already submitted to this Court, as well as in conjunction with other errors identified in Appellant's brief in chief. More importantly, this Court will be able to make this determination after *both parties* have had a full and fair opportunity to litigate the issues as an adversarial matter, consistent with the longstanding traditions of American jurisprudence.

D. Conclusion

In summary, the documents at issue here cannot be considered confidential personnel records, [REDACTED]

[REDACTED]

[REDACTED]. Finally, regardless of how the Court chooses to characterize the documents under the provisions of the Oklahoma Open Records Act, their production to the defense is required by the United States Constitution. *See Brady*, 373 U.S. at 87, 83 S.Ct. at 1196-97; *Giglio*, 405 U.S. at 154-55, 92 S.Ct. at 766.

On August 2, 2017, Appellant filed in this Court, under seal, a Motion to Unseal the Proceedings. In an order dated August 24, 2017, this Court determined that motion was premature because Judge Henderson's sealed order, filed on August 7, 2017, had not been reviewed by the parties or this Court. Counsel for Appellant has now reviewed Judge Henderson's order, as well as the transcripts of the two-day hearing held without their knowledge, presence, or participation. In addition to the objection herein to Judge Henderson's erroneous findings of fact and conclusions of law, Appellant specifically renews his motion for this Court to unseal the proceedings. As the foregoing argument and authority clearly demonstrate, the materials at issue are not protected from disclosure by law and should be immediately made available for public viewing.

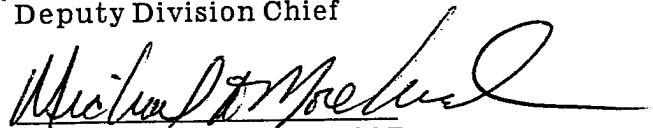
Based on the foregoing, Appellant respectfully requests that this Court order all documents previously filed under seal – including the State's original motion to file material under seal, filed in this Court on May 4, 2017; all material filed under seal, to wit: Exhibits A through E; the transcripts of the two-day *ex parte* hearing held in the district court on June 26 and 27, 2017; and any and all other motions and orders pertaining to this issue – be unsealed and made available to public view. Appellant further requests that a copy of the transcripts of the *ex parte* hearing be transmitted to Appellant's counsel.

Respectfully submitted,
DANIEL K. HOLTZCLAW

By:



JAMES H. LOCKARD
Oklahoma Bar No. 18099
Deputy Division Chief



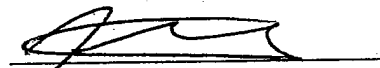
MICHAEL D. MOREHEAD
Oklahoma Bar No. 18114
Appellate Defense Counsel

Homicide Direct Appeals Division
Oklahoma Indigent Defense System
P.O. Box 926
Norman, Oklahoma 73070-0926
(405) 801-2666

ATTORNEY FOR APPELLANT

CERTIFICATE OF SERVICE

I certify that on the date of filing of the above and foregoing instrument, a true and correct copy of the same was delivered to the Clerk of this Court with instructions to deliver said copy to the Office of the Attorney General of the State of Oklahoma.



JAMES H. LOCKARD

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

DANIEL K. HOLTZCLAW,)	
)	
APPELLANT,)	
v.)	Case No. F-2016-62
)	
THE STATE OF OKLAHOMA,)	<u>FILED UNDER SEAL</u>
)	
APPELLEE.)	

RESPONSE TO DEFENDANT’S MOTION TO UNSEAL THE PROCEEDINGS

Comes now the State of Oklahoma, by and through Attorney General Mike Hunter, and as directed by this Court on December 20, 2017, responds to the defendant’s *Motion to Unseal the Proceedings* (hereafter “Motion”), filed on August 2, 2017. Moreover, on August 29, 2017, the defendant filed an *Objection to Judge Henderson’s Ex Parte Findings of Fact and Conclusions of Law* (hereafter “Objection”). This Objection made arguments germane to providing an adequate response to this Court’s *Order Directing a Response* to the defendant’s August 2, 2017, motion.¹ Because the State interprets this Court’s Order to cover all unsealed documents filed at the time of the defendant’s original Motion as well as all documents since filed in this Court, the State will also refer to the defendant’s Objection where necessary to comply with this Court’s directive. However, it is to that extent – and that extent only – that the defendant’s Objection will be

¹ In his Objection, the defendant “renew[ed] his motion for this Court to unseal the proceedings” because he had not yet had an opportunity to review the transcripts of the remanded hearing or the District Court’s findings of fact and conclusions of law (Objection, p. 12).

As the defendant has been granted access to all the sealed documents filed in this Court *sans* the State's Original Motion supporting its request for a judicial finding (and something the State agrees he should now be able to view at the Court), the only question raised by the defendant's Motion is whether the material considered by the District Court and the Orders/pleadings concerning it should remain sealed from the public. Hence, the remainder of this response addresses only that question.

DISCUSSION

It is important to recall how the documents, pleadings, transcripts, and related orders now at issue became sealed and why. As detailed in the State's first filing on the matter, in early April 2017, the State came into possession of information generated after the defendant's trial that pertained to a single prosecution witness: OCPD chemist Elaine Taylor. After alerting the defendant's counsel to as much about the material that could legally be disclosed, and especially because it might be relevant to a specific claim already raised in the defendant's pending application for evidentiary hearing concerning the performance of his trial counsel, the undersigned gathered as much information about it as possible and provided it to this Court under seal. Because there is no procedure, as there is at the trial level, for *in camera* inspection of sensitive materials protected from disclosure by law before they are disclosed, the State requested a neutral judicial forum where the appropriate legal status could be

made. And until that determination was concluded, the State also asked for an interim protective order.⁵ This Court responded to the State's request for *in camera* inspection by remanding the case to the District Court for an *in camera* hearing, and that hearing was held.

As ordered by this Court, the District Court heard testimony about how, when, and why the materials submitted by the State on May 4, 2017, were generated, the District Court entered Findings of Fact and Conclusions of Law commensurate with this Court's remand Order.⁶ The District Court concluded,

⁵ The defendant's situation was made even more unusual by the fact that the District Attorney and Office of the Attorney General came into possession of the information – and thus knew its contents – before any *in camera* inspection could be made, as opposed to the typical situation prior to a trial where a party desires a category of materials, *e.g.*, personnel records of a witness, and those records (without either party knowing their contents) are ordered by a *third party* (*e.g.*, an employer) to be turned over to the trial judge for *in camera* review to determine the extent of relevance, materiality, and dissemination.

⁶ This Court's original remand Order was issued on May 30, 2017. On July 20, 2017, in a *Clarification Order* now unsealed and open to public view, the Court altered in some respects the Findings of Fact and Conclusions of Law required of the District Court on remand and the procedure by which the record would be transmitted and reviewed by the parties. Pursuant to the *Clarification Order*, the District Court was tasked with determining:

1. Whether the document is discoverable by Holtzclaw's appellate counsel;
2. Whether the document contains impeachment or exculpatory material;
3. If discoverable, which portion of each document is subject to discovery; and
4. The portion of each discoverable document which is subject to the confidentiality statute governing

numbers of past or current employees” (Objection, p. 4) (citing 51 O.S.Supp.2014, § 24A.7(D)). To this extent, the defendant is technically correct. But the defendant seems to forget that there are two sides to discretionary release, *i.e.*, “may,” of confidential personnel records falling within 51 O.S.Supp.2014, § 24A.7(A): such information may *not* be released under certain circumstances. Merely because it may be permissible to release certain information does not mean it is required by the public body holding the discretion to do so. Therefore, the defendant’s apparent contention that this finding mandates their current public release is not compelling.

More importantly, however, is that the District Court has made a determination in this case, supported by the record, that the materials are confidential personnel records, and the appropriate body to make the discretionary determination whether they are released to the public is the “public body” that generated them; here, the City of Oklahoma City (hereafter “City”). See 51 O.S.Supp.2014, § 24A.7(A). The defendant wholly fails to show why the City should be forced to release confidential personnel information – information to which he has access – to the public when the Legislature has clearly given the City the option of deciding when and how much of such material may be kept confidential [REDACTED]

[REDACTED] When examining a statute, this Court “considers the

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

DANIEL K. HOLTZCLAW,)	
)	
Appellant,)	
)	
v.)	Case No. F-2016-62
)	
THE STATE OF OKLAHOMA,)	
)	
Appellee.)	

MOTION TO UNSEAL THE PROCEEDINGS

Appellant, Daniel K. Holtzclaw, by and through his undersigned appellate counsel, respectfully requests that this Court lift the veil of secrecy that has come to shroud the proceedings in this appeal. In support of this request, Appellant states:

1. Appellant was convicted in Oklahoma County District Court on 18 of 36 criminal charges, for which he was sentenced to a combined 263 years in prison. He timely perfected his appeal to this Court and filed his Brief of Appellant, along with an Application for Evidentiary Hearing on Sixth Amendment Claims, in this Court on February 1, 2017.

2. On May 4, 2017, two days after having filed its second request for an extension of time, the State filed a Motion to File Motion and Accompanying Material under Seal on the Grounds That Such Material and the Motion Discussing It Contains Confidential Information Protected from Public Disclosure by Oklahoma Law. Appellant never received a copy, but a scanned copy of this one-paragraph motion, citing only rule 2.7(D), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2011), is available on the web-based docket of this case. A presumably more detailed motion was simultaneously filed under seal.¹

¹ In two phone calls – one with Jamie Pybas, undersigned counsel’s supervisor, and one with undersigned counsel – Assistant Attorney General Matt Haire did inform counsel of the general nature of this material, but he was unable to provide any substantial details of the nature of information at issue other than that it pertained to Elaine Taylor.

3. Neither Appellant nor his counsel has seen this sealed motion, and the only clues to its contents come from this Court's Order Remanding Cause to District Court of Oklahoma County for *In Camera* Hearing, Granting State's Motion for Interim Protective Order and Holding Appeal in Abeyance Pending Outcome of the *In Camera* Hearing (hereinafter, "Order Remanding Cause"), filed on May 30, 2017, which indicates the allegedly protected material involves an internal review of former Oklahoma City Police Department Chemist Elaine Taylor's testimony in Appellant's trial.

4. The Order Remanding Cause remanded this matter to the Oklahoma County District Court, the Honorable Timothy R. Henderson, District Judge, for an "*in camera* hearing to determine whether legally protected information is discoverable by Holtzclaw on appeal. The district court was ordered to address three issues: (1) whether the information submitted by the State is discoverable by Appellant's counsel and whether the information contains impeachment or exculpatory material; (2) which portions of the material, if any, are subject to discovery; and (3) whether portions of discoverable material are subject to the confidentiality statute governing personnel records.

5. On June 26 and 27, 2017, a hearing was held in the district court. Undersigned counsel had no prior notice of this hearing and was not invited or allowed to attend.

6. On July 17, 2017, Judge Henderson filed two orders in the district court. Undersigned counsel has not seen or been provided copies of these orders, and counsel has no idea what are in these orders or what is ordered by them.

7. On July 18, 2017, the State filed under seal an Emergency Motion Requesting Guidance Regarding Transmittal of Record of Remanded Evidentiary Hearing. Even though this motion was filed under seal, undersigned counsel received a copy of it. In the motion, Mr. Haire describes the secret hearing that

occurred in June as involving the testimony of three witnesses. He acknowledges that neither Appellant nor his counsel were present for this hearing and that the proceedings were closed to the public. Mr. Haire further avers that the trial court “interpreted this Court’s Order as permitting neither the presence of the defendant nor his counsel during the *in camera* proceedings.” Noting that providing Appellant’s counsel with a transcript of this secret hearing, as was originally ordered in this Court’s Order Remanding Cause, would reveal information to which Appellant may not be entitled, Mr. Haire requested guidance on how to proceed, helpfully suggesting that perhaps the transcripts should be redacted prior to transmittal to the parties.

8. On July 20, 2017, this Court entered a Clarification Order. This order was also filed under seal, but a copy was provided to undersigned counsel. In this Clarification Order, the Court modified the procedure set out previously in its Order Remanding Cause, in pertinent part, by holding that the transcripts, exhibits, and findings of the district court will be held at the Oklahoma Court of Criminal Appeals, and that counsel for the State and for the defense may arrange with the Marshal of the Court, Tina Percival, a time for viewing them *in camera*.

Argument and Authority

Given the nature of how this issue arose, with counsel for the State bringing the issue up on his own initiative, undersigned counsel was content to await patiently the outcome of the trial court’s review of the documents, confident that he would receive the information to which Appellant is entitled without undue delay. Recent developments and revelations in the local news media have undermined counsel’s confidence in that regard, however.

Contrary to the trial court’s interpretation, nothing in this Court’s Order Remanding Cause dictated that undersigned counsel be excluded from the *in camera* hearing and, indeed, not even informed of the dates and times of the

hearing ahead of time.² “*In camera*” does not mean “*ex parte*.” See, e.g., BLACK’S LAW DICTIONARY 597, 763 (7th ed. 1999). Indeed, the fact that the Court contemplated transcripts of the hearing being made and provided to both parties strongly indicates that Appellant’s counsel should have been present. Even if some of the testimony at the hearing would necessarily entail privileged information, that is no basis for barring Appellate Defense Counsel entirely from attending, participating, or even knowing about the hearing.

Two developments that appear to have come out of this secret hearing give Appellant pause. First, and most obvious, is the fact that the district court will make findings of fact and conclusions of law, not only on the question of whether some of this information is discoverable on appeal, but whether the information is even protected in the first place, without Appellant’s being able to have any input whatsoever into whether this so-called “personnel review” of Ms. Taylor’s work really is protected by law. Once the proceedings at the district court have concluded, and the case returned to this Court, Appellant may no longer have an effective mechanism for litigating the issue and protecting his rights before a final, binding order is entered. The second development is that, while counsel for the State seemed previously to be conceding that Appellant is entitled to disclosure of at least some of this information,³ the State’s emergency motion for clarification

² Based on the limited information available to him at the time, undersigned counsel had little idea what would be entailed in this *in camera* hearing aside from the trial court reviewing the documents submitted by the State to determine how much of those documents should be disclosed. Counsel had no way of knowing that actual testimony would be required. With the deadline for holding the hearing approaching, and undersigned counsel having heard no word from the State or the district court, counsel contacted Mr. Haire on June 26, 2017, by e-mail, inquiring if Mr. Haire had heard from the trial court on this issue. Counsel received no response. Counsel had been monitoring the district court’s online docket for the setting of a hearing, but nothing showed up until June 28, when docket entries indicating a hearing had been held on June 26 and 27 suddenly appeared.

³ See Order Remanding Cause at 4 (“The State agrees that some of the information it has received should be turned over to Holtzclaw’s counsel, but states that not all of the information from the personnel investigation is germane to Holtzclaw’s appeal.”).

twice indicates at least the possibility that the trial court will decide that all of the information is protected by law and that none of it is discoverable on appeal.

Both the State and this Court have noted the unusual nature of this issue, in that this normally comes up before trial, not on appeal. Fundamentally, however, there is no reason the procedure should be particularly different on appeal – the confidential or other legally privileged information is submitted to the court for *in camera* inspection to determine whether the information contains anything of impeachment or exculpatory value. See Order Remanding Cause at 3 (citing *Frederick v. State*, 2001 OK CR 34, ¶¶ 87-90, 37 P.3d 908, 933-34). What is truly unusual about the issue in this case, however, is not that the issue has arisen on appeal, or even that it was at the behest of the State, not the defense, but that the secrecy that is arguably necessary to protect the privileged information from disclosure has been expanded to cover the whole process. In the ordinary course of legal proceedings, the request for access to protected information, and what defense counsel expects to find in that protected information, is open and public, not under seal. The request for the information is not sealed. The State's argument, if any, that the information is legally protected, and the basis therefor, is not sealed. The fact that the court will be reviewing the information is not under seal, and hearings about whether the information is protected and/or discoverable are not kept secret from either the public or the defense. And once it is determined that the confidential information must be provided to the defense, it is allowed to be offered openly and publicly into evidence at trial.

This secrecy has had unfortunate and unforeseen consequences. Between this Court's protective order and the fact that undersigned counsel is almost completely in the dark as to the nature and contents of the allegedly protected information at issue, counsel has been unable to adequately and accurately explain to his client what is going on in his case. Meanwhile, the local news media have

been in a feeding frenzy over any scrap of information pertaining to the case.

As early as June 28, 2017, the day after the two-day *ex parte* hearing concluded, Fox 25 News in Oklahoma City was reporting on “secret court hearings held in Holtzclaw case” and complaining that the no one would even say who was present at the hearing, let alone what it was about.⁴ In a later article that same day, Fox 25 News reported that currently Presiding Judge Gary Lumpkin had “refused to answer questions about the need for secrecy in the case or what Oklahoma law required keeping details about a public case confidential.”⁵ By June 30, 2017, Fox 25 News was broadcasting to its television audience surveillance video showing Assistant Attorney General Matt Haire, Oklahoma County Assistant District Attorney Gayland Gieger, Oklahoma City Deputy Police Chief Johnny Kuhlman, Oklahoma City Attorney Richard Smith, and Oklahoma City Police Department DNA Lab Supervisor Campbell Ruddock entering and exiting Judge Henderson’s chambers before and after the secret hearings.⁶ This report also revealed that the issue at the hearing pertained to DNA evidence admitted at Appellant’s trial.⁷

Since that time, numerous other news sources – locally, throughout Oklahoma, and even nationwide – have published similar reports, including

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<<http://okcfox.com/news/fox-25-investigates/secret-court-hearings-held-in-case-of-convicted-cop>> (last visited Aug. 1, 2017).

5

<<http://okcfox.com/news/fox-25-investigates/new-details-in-Holtzclaw-case-but-state-says-you-have-no-right-to-know>> (last visited Aug. 1, 2017).

6

<<http://okcfox.com/news/fox-25-investigates/videos-reveal-who-took-part-in-secret-court-proceedings>> (last visited Aug. 1, 2017).

⁷ *Ibid.*

Oklahoma City Channels KFOR,⁸ KOCO,⁹ and KWTW,¹⁰ as well as Lawton Channel KSWO¹¹ and national public opinion and news conglomeration website Rasmussen Reports.¹² In short, an impression of a cover-up, harkening back to the dark days of the Joyce Gilchrist scandal, is developing among the public, and undersigned counsel cannot even alleviate the growing concerns of his client and client's family, because this Court's orders prevent counsel from even discussing the nature of the issue, let alone the contents of documents counsel has never seen.

This growing hysteria could have been prevented if only it had been made publicly known at least this: that due to questions raised about Ms. Elaine Taylor's testimony by Appellant in his appeal briefs, a review of Ms. Taylor's work in this case was conducted; that the results of this review may be protected against public disclosure by State law governing confidentiality of personnel records, OKLA. STAT. tit. 51, § 24A.7(A) (Supp. 2014); that despite the protection afforded this information, some or all of the information may be required to be produced to the defense pursuant to the United States Constitution; and that a hearing is being held to determine if the information is, in fact, privileged and, if so, whether some or all of that information must nevertheless be disclosed to the defense. Assuming,

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<<http://kfor.com/2017/06/29/oklahoma-judge-conducts-closed-hearing-in-officers-appeal/>> (last visited Aug. 1, 2017).

9

<<http://www.koco.com/article/oklahoma-judge-conducts-closed-hearing-in-daniel-holtzclaws-appeal/10241805>> (last visited Aug. 1, 2017).

1

<<http://www.news9.com/story/36006200/emails-raise-questions-about-witness-in-Holtzclaw-case>> (last visited Aug. 1, 2017).

11

<<http://www.kswow.com/story/36012674/validity-of-forensic-samples-under-fire-in-holtzclaws-closed-court-hearing>> (last visited Aug. 1, 2017).

12

<http://www.rasmussenreports.com/public_content/political_commentary/commentary_by_michelle_malkin/the_crisis_in_america_s_crime_labs> (last visited Aug. 1, 2017).

arguendo, that the results of this so-called “personnel review” are protected from disclosure, the statute would have been satisfied by protecting the contents of that file from disclosure. There is no reason why the rest of the information detailed above must also have been kept secret, either from Appellant, his counsel, or the general public. But because of the request for and granting of complete secrecy over this whole issue, counsel could not tell anyone any of it.

Meanwhile, some recent revelations have caused undersigned counsel grave concern. On July 28, 2017, Fox 25 News reported that the secret hearing held on June 26 and 27 pertained to “the DNA evidence some jurors have said guaranteed the convictions.” Fox 25 News also reported that it had received more than 4000 pages of documents from the City of Oklahoma City, pursuant to an open records request.¹³ Included within these documents were e-mails exchanged between DNA Lab Supervisor Campbell Ruddock and Elaine Taylor.¹⁴ Also included was an e-mail from District Attorney David Prater to all his prosecutors: “Please notify me immediately if you have a pending case wherein Elaine Taylor, OCPD DNA Lab employee, is endorsed as a witness.”¹⁵ This Fox 25 News report indicates that “[t]he emails reveal several criminal cases have been marked for retesting since the identification of concerns with Taylor in the Holtzclaw case.”¹⁶ The report also indicates that in an e-mail exchange with an Iowa scientist named Erica Fuchs, Mr. Ruddock “explain[ed] that Touch DNA, or DNA involving very small samples is not as useful in solving crimes as was portrayed in the Holtzclaw case” and that “[h]is

¹³

<<http://okcfox.com/news/local/emails-show-dna-lab-concerns-related-to-Holtzclaw-case>> (embedded video) (last visited Aug. 1, 2017).

¹⁴ *Ibid.* (text article).

¹⁵ *Ibid.*

¹⁶ *Ibid.*

exchange casts doubt on many assertions made during the expert testimony during the trial.”¹⁷ Most alarmingly, the report indicates that “[t]he city also said it deleted all of Taylor’s emails after her resignation.”¹⁸

Adding to the concerns that a binding ruling detrimental to Appellant’s constitutional rights will be entered without Appellant’s ability to even be heard, it now appears that pertinent evidence related and relevant to the issue may have been, or be in the process of being, destroyed for all time.¹⁹ The unnecessary secrecy surrounding this issue is thus doing real and imminent damage to Appellant’s constitutional rights, and there is no reason for this secrecy to continue. The cat is out of the bag, so to speak, as the local news media has repeatedly reported in detail much about the nature and contents of the information at issue. What is missing from the reports is context.

The State has a duty to provide defendants in a criminal case exculpatory evidence. *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963); *Giglio v. United States*, 405 U.S. 150, 92 S.Ct. 763, 766, 31 L.Ed.2d 104 (1972). This duty also extends to impeachment evidence. *United States v. Bagley*, 473 U.S. 667, 677, 105 S.Ct. 3375, 3381, 87 L.Ed.2d 481 (1985); *Browning v. Trammell*, 717 F.3d 1092, 1105-06 (10th Cir. 2013); *United States v. Abello-Silva*, 948 F.2d 1168, 1179 (10th Cir. 1991), *Anderson v. State*, 2006 OK CR 6, ¶ 28, 130 P.3d 273, 283. Such information must be disclosed even if it is otherwise protected by law.²⁰ *Browning*, 717 F.3d at 1095. This duty to disclose does not end once the trial is over, but

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ Accordingly, Appellant is simultaneously filing a Motion for Order to Preserve Documents and Evidence.

²⁰ In such cases, a court is to review the information in camera to determine whether it meets the Brady standard. See *Pennsylvania v. Ritchie*, 480 U.S. 39, 57-58, 107 S. Ct. 989, 1001-02, 94 L. Ed. 2d 40 (1987).

instead “continues throughout the judicial process.” *Douglas v. Workman*, 560 F.3d 1156, 1173 (10th Cir. 2009); *Smith v. Roberts*, 115 F.3d 818, 820 (10th Cir. 1997) (applying *Brady* to a claim that the prosecutor failed to disclose evidence received after trial but while the case was on direct appeal). Accordingly, Appellant is entitled to access to any impeachment or exculpatory evidence contained in Ms. Taylor’s personnel file, whether it has only recently come to light or was not previously disclosed prior to trial.

By this Court’s own rules, materials will be removed from the public record only “in those instances where such withholding is necessary in the interest of justice and required by law.” Rule 2.7(E), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (eff. November 1, 2016) (citing *Nichols v. Jackson*, 2001 OK CR 35, ¶ 10, 38 P.3d 228, 231; OKLA.STAT. tit. 51, § 24A.29 (Supp. 2012). Further, such materials will not be sealed “when a reasonable redaction will adequately resolve the issue.” *Id.* “[T]here is a strong presumption in Oklahoma in favor of public access to judicial proceedings and court records.” *Ober v. State ex rel. Dep’t of Pub. Safety*, 2016 OK CIV APP 2, ¶ 9, 364 P.3d 659, 661-62.

Because nothing that has been filed or occurred in this case required being completely sealed from view of either the public or Appellant, the motions and orders previously filed in this case should be ordered unsealed, except perhaps for the allegedly confidential material submitted to the Court along with the initial motions.²¹ Furthermore, undersigned counsel should be provided access to the transcripts of the *ex parte* hearing before the trial court enters his findings of fact

²¹ To the extent that the motion submitting those documents to this Court make explicit reference to factual material that is arguably protected by law from disclosure, those references can and should be redacted.

and conclusions of law.²² Counsel should further be afforded an opportunity to cross-examine these witnesses and/or to offer argument to the trial court on the issues of whether this supposed “personnel review” is even protected from disclosure in the first instance, and if so, the extent to which any impeachment or exculpatory evidence appearing anywhere in Ms. Taylor’s personnel file, before or since Appellant’s trial, should nevertheless be disclosed.²³ Only after both parties have had a full and fair opportunity to be heard should the trial court enter its findings of fact and conclusions of law.

Again, until recently, undersigned counsel had no reason to believe other than that he would be timely provided with the information to which Mr. Holtzclaw is constitutionally entitled. Even after learning of his exclusion from the *in camera* hearing, counsel still believed, albeit now with some apprehension, that he would soon be given access to the apparently exculpatory or otherwise impeachment material recently produced. However, the developments and revelations discussed in this motion have made it so that counsel can no longer sit idly by while his client’s constitutional rights are possibly being endangered by the unnecessary veil of secrecy that has shrouded this case since early May.

Based on the foregoing, Appellant respectfully requests that this Court (1)

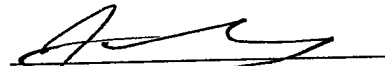
²² Again, to the extent that specific reference to facts contained within the allegedly protected documents was made during this testimony, those narrowly specific parts may be redacted, but it is highly unlikely that the entire testimony of the witnesses, occurring over the course of two days, is such that none of it can or should be made available to defense counsel.

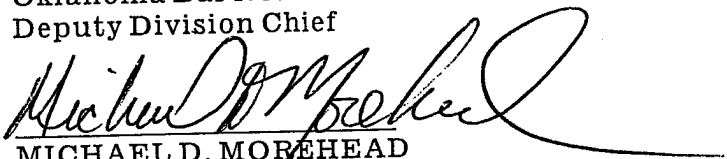
²³ It is worth noting here that the confidentiality statute at issue indicates that “[a] public body *may* keep personnel records confidential.” OKLA. STAT. tit. 51, § 24A.7(A) (Supp. 2014) (emphasis added). The use of the word *may* in a statute usually connotes a procedure that is permissive or discretionary, rather than mandatory. See *Mott v. Carlson*, 1990 OK 10, ¶ 6 & n.4, 786 P.2d 1247, 1249 & n.4; *Falconhead Prop. Owners Ass'n v. Fredrickson*, 2002 OK CIV APP 67, ¶ 5, 50 P.3d 224, 226. The only personnel information that is mandated to be kept secret is home addresses, telephone numbers, and social security numbers of past or current employees. § 24A.7(D). Accordingly, the City of Oklahoma City, or the Oklahoma City Police Department, should perhaps be given the opportunity to waive any alleged confidentiality of the documents recently produced.

order that all documents filed under seal in this case be unsealed, except to the extent that redaction or exclusion may be required; (2) order that complete or minimally redacted transcripts of the *ex parte* hearing held on June 26 and 27 be provided to undersigned counsel forthwith; (3) order that copies of the orders filed in the district court on July 17, 2017, be provided to undersigned counsel; and (4) order the district court to reserve entering its findings of fact and conclusions of law until such time as undersigned counsel has been afforded an opportunity to cross-examine the witnesses who testified at the hearing and/or to make argument as to whether the information at issue is even protected in the first instance and, if so, whether such information must nevertheless be disclosed to defense counsel.

Respectfully submitted,
DANIEL K. HOLTZCLAW

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ATTORNEY FOR APPELLANT

CERTIFICATE OF SERVICE

I certify that on the date of filing of the above and foregoing instrument, a true and correct copy of the same was delivered to the Clerk of this Court with instructions to deliver said copy to the Office of the Attorney General of the State of Oklahoma.

JAMES H. LOCKARD

Forensic Report CRIME SCENE ANALYSIS & CASE LINKAGE



Date of Report

July 1, 2020

Forensic Examiners

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Client

Daniel K. Holtzclaw

Related Civil Actions

Sherry Ellis, Carla Raines, & Regina Copeland v. Daniel Holtzclaw, The City of Oklahoma City, et al., Case No. CIV-16-0019-HE; and

Jannie Ligons, Shandayreon Hill, Tabatha Barnes, Terri Morris, Syrita Bowen, Carla Johnson, and Kala Lyes, v. Daniel Holtzclaw, The City of Oklahoma City, et al., Case No. CIV-16-184-HE; and

Adaira Gardner v. Daniel Holtzclaw, The City of Oklahoma City, et al., Case No. CIV-16-349-L

BACKGROUND

This examination and report comes subsequent to a criminal trial in which then Officer Daniel Holtzclaw, of the Oklahoma City Police Department, was accused of sexual assault and other related charges (36 charges in total). He was charged with these offenses which were reported to have occurred during, or related to, traffic stops made while on duty and under color of authority. He was arrested on August 21, 2014.

At his criminal trial, the prosecution ultimately provided evidence against Daniel Holtzclaw from 13 separate accusers. In December of 2015, he was found guilty of 18 charges related to 8 of those accusers. He was acquitted of the remainder¹.

Many of Holtzclaw's accusers have filed civil actions against him, as well as against The City of Oklahoma City and other related parties. These lawsuits argue that Daniel Holtzclaw's convictions stem from a pattern, practice, and/or custom of illegally detaining African-American women. It is further argued this was done for the purposes of sexual assault and coercion, through the abuse of his position as a police officer. Specifically, that he targeted his victims because they were vulnerable, owing to their criminal histories, outstanding warrants, drug abuse, and / or prostitution. This is alleged "pattern" is described in *Holtzclaw v. Oklahoma* (2019):

Taken together, the women's stories form a pattern wherein Appellant would conduct a traffic stop, or stop the victims while they were walking. While discussing the reason for the stop, he would ask whether the women had any drugs or "anything on them". He would then demand that they show him their breasts or vaginas, often asking how he could be sure the women weren't hiding something in their bra or pants or otherwise referring to the demand as a search. With several victims he touched their breasts or vaginas; he also demanded fellatio from some victims. In addition, he was convicted of five counts of first or second degree rape, and acquitted of three other rape claims. Appellant's threats included taking each of his victims to jail or detox, arresting her, charging her with a crime or promising that if she did as he demanded, he could make warrants or criminal charges go away, or otherwise help her situation. Most of the victims had previous recent contacts with law enforcement; some had outstanding warrants, some had drug paraphernalia on them, some were under the influence of drugs or alcohol when stopped. Sometimes he offered the victims a ride. Most of the crimes occurred late at night or in the early morning hours. The women ranged in age from seventeen to in their fifties.

The "identification" of this "pattern" appears to originate from an investigative theory, which then became a legal argument, about presumed behavioral pattern evidence. This type of pattern evidence is the province of forensic expert examination and

¹ Originally, 21 individuals claimed that they had been sexually assaulted by Daniel Holtzclaw. Some eventually admitted they had lied, including one man. Others made allegations that were not possible, because Holtzclaw had already been placed on administrative leave. One of the eight women never reported to police investigators, only to the media. Only one of these individuals, Shaneice Barksdale, was actually tried and convicted of making a false report. Additionally, at trial, Daniel Holtzclaw was acquitted of all charges relating to 5 of the Plaintiffs: Shandayreon Hill, Carla Raines, Florene Mathis, Terri Morris, and Kala Lyes.

testimony. Specifically, it requires the identification of a discrete pattern of *modus operandi* behavior; signature behavior; and motive.

This type of forensic examination can be used at trial, in relation to common scheme or plan theories, in order to joinder cases or admit prior acts. It must therefore be based on scientific facts and evidence, not investigative or legal theory². No such expert forensic examination has been offered or conducted in this case.

PURPOSE

In cases of alleged sexual assault, the required forensic investigation consists of at least the following essential pillars: *the complainant's statement; the complainant's sexual assault exam; the suspect's statement; the suspect's sexual assault examination; the crime scene evidence; and the results of evidence testing* (Savino and Turvey, 2013). These pillars provide the foundation for any number of related crime scene investigation and analysis efforts. Therefore, they must be conducted in a manner that comports with accepted scientific protocols, the violation of which renders them scientifically unreliable.

Crime Scene Analysis requires consideration of the complete forensic investigation as described in these pillars, to include forensic victimology and the subsequent examination of available physical and behavioral evidence (e.g, crime reconstruction and *modus operandi*). As with any forensic examination, crime scene analysis requires an evaluation of the nature and quality of the underlying forensic investigation, in order to reliably establish *evidence integrity*³. Its goal is to reveal what happened, how it happened, where it happened, to whom, and ultimately why - from the perspective of the physical and behavioral evidence.

Case linkage analysis refers to the process of determining whether or not there are discrete connections, or behavioral commonalities, between two or more previously unrelated cases through Crime Scene Analysis (examination of victimology, *modus operandi*, signature, and related behavioral patterns; see Atchereley, 1913; Groth, 1979; Gross, 1924; Savino and Turvey, 2013; Turvey, 2011; Weston and Wells, 1974). It is most often employed to serve one of two purposes: (1) to assist law enforcement with

² As understood by the professional community, and held in *New Jersey v. Bruce Sterling* (2011), linkage analysis for the purposes of joining offenses at trial is a form of forensic behavioral pattern analysis. Consequently, attorneys and other non-experts should not argue that cases are linked for courtroom purposes without the benefit of underlying expert analysis and testimony. This would be like having a lawyer provide an opinion about DNA or fingerprint evidence based on their own inexpert examination, without the underlying crime lab examination, report, and testimony.

³ *Evidence integrity* refers to the reliability and probity of the evidence that has been collected. It is demonstrated by adherence to basic protocols associated with establishing a reliable chain of custody, the protection of physical evidence while it is in custody, and its competent testing and interpretation by qualified forensic personnel. It also refers to any failure to collect, protect, and/ or test essential items of evidence. In a scientific examination, evidence integrity may not be assumed — rather it must be established. See Bay (2008) and Gardenier (2011).

the application of its resources by helping to direct investigative efforts; and (2) to assist the court in determining whether or not there is sufficient behavioral evidence to suggest a common scheme or plan in order to help address forensic issues, such as whether similar crimes should be tried together, or whether other crimes, and uncharged offenses, may be brought in as evidence (Hazelwood and Warren, 2003; Turvey, 2011).

Modus Operandi (MO) is a Latin term that means method of operating. It refers to the manner in which a crime has been committed. A criminal's modus operandi is comprised of choices and behaviors that are intended to assist in the completion of a crime (Turvey, 2011). Black's Law Dictionary (Black, 1990, p. 1004) translates the phrase modus operandi as "method of operation or doing things," and states that it is "used by police and criminal investigators to describe the particular method of a criminal's activity." As explained in Gross (1924), some repeat offenders (such as sex offenders and thieves) may develop a characteristic style, or MO, which they rarely depart from. Atchereley (1913) refers to this as an offender's "trademark". However the development of trademark MO is by no means assured. Weston and Wells (1974; p. 110) state more accurately that not all criminals have a particular MO, but some can develop and maintain similar enough methods to justify linking cases investigatively. MO is adaptive, changing sharply based on the flexible state of the offender (e.g. mood, substance abuse, mental illness), the victim (e.g. mood, substance abuse, fear response), and the crime scene (e.g. day/night, weather, witnesses). Therefore, while investigatively helpful, is not considered a sufficiently reliable mechanism for linking or unlinking cases in a forensic context.

An offender's *signature* is a pattern evidenced by an accumulation of signature behaviors. *Signature behaviors* are individual acts committed by an offender that are not necessary to commit the crime but that suggest the psychological or emotional needs of that offender (Turvey, 2011). While every offender engages in signature behaviors, not all signature behaviors will add up to a unique offender signature. That is to say, it is the case that different offenders can evidence the same set of signature behaviors. Unlike MO, signature can be more stable over the lifetime of an offender, as it is reflective of more enduring psychological motives and themes. This is particularly the case in sexual offenses, where the offender may have a specific pattern of behaviors and associated feelings, or even a specific fantasy, that they are trying to live out through the offense (Money, 1988). In such instances, this can make signature a more reliable case linkage tool.

The sole purpose of this report is to provide *Crime Scene Analysis* and *Linkage Analysis* results related to the complaints made against Daniel Holtzclaw brought forth by the Plaintiffs. This requires an examination of offense modus operandi behavior, signature behavior, and motive. It is not the purpose of this report to address legal standards of evidence or sufficiency, only the thresholds and requirements of scientific evidence examination. Again, no such expert forensic examination has been offered or conducted in this case as of this writing.

MATERIALS EXAMINED

The examiners agreed to conduct this specific set of examinations in May of 2020. Subsequently, the examiners began to receive discovery material relating to this case at their office. Upon request, the examiners were provided with, and relied upon, at least the following discovery materials:

1. Available Oklahoma City Police Department Crime Reports
2. Available Oklahoma City Police Department scene photos
3. Available SANE Reports
4. Available OSBI Police Laboratory Reports
5. Available interviews of the accusers / plaintiffs - video and audio
6. The Oklahoma City Police Department interview of then Officer Daniel Holtzclaw
7. The complete Preliminary Hearing Transcript - *Oklahoma v. Daniel Holtzclaw*, CASE NO.: CF-2014-5869
8. The complete Trial Transcript, with exhibits - *Oklahoma v. Daniel Holtzclaw*, CASE NO.: CF-2014-5869
9. Available appellate filings and rulings
10. Available Depositions of the plaintiffs
11. Gill, P., Goodman-Delahunty, J., Ryan, S., Schanfield, M., Schiro, G., and Turvey, B. (2017) *BRIEF OF FORENSIC SCIENTISTS AND ACADEMICS AS AMICI CURIAE IN SUPPORT OF APPELLANT DANIEL K. HOLTZCLAW*, June 16.

I. IN-CUSTODY SEXUAL ASSAULT

In-custody sexual assault by law enforcement is a very real problem in the United States. Police officers and other law enforcement employees are afforded tremendous trust, authority, and discretion. When employed within a culture of impunity, some abuse that authority to commit violent crimes - including sexual assault.

The examiners have extensive experience working cases that involve this kind of exploitative sexual behavior by law enforcement, in both the United States and Latin America. This includes cases involving sexual assault and misconduct by law enforcement employees within their agencies; against intimate partners; against those in their care and custody; and involving multiple offenses that are part of a pattern. Additionally, and in preparation for this examination, the authors examined the national public database of such offenses compiled by *The Buffalo News*. This database

provides details from at least 700 cases of sexual assault and exploitation by law enforcement across the United States, up to 2016⁴.

The examiners have observed that these cases are characterized by law enforcement employees who identify the weaknesses in their agency protocols, and then exploit them against those who are either subordinate or otherwise vulnerable. They do so in a manner that is consistent across offense when multiple cases are involved. That is to say they engage in the same or similar sexual acts to satisfy their predatory needs, while also keeping their activity hidden. They select victims who they believe either cannot or will not report them for fear of consequence. They select locations where they believe their actions cannot be observed or documented. And their offenses tend to be similar over time in order to avoid detection, dictated by the security measures and accountability protocols put in place within their respective agencies. Typically, their actions and intentions are eventually established by attempts to hide, alter, fabricate or destroy evidence that might implicate them (e.g., logs, photos, records, text messages, and reports). However, they are also known to collect trophies, most commonly in the form of photos and videos - either directly from the cell phones of detainees and / or arrestees, or via photos and videos taken on their personal cell phones.

Ultimately, for those who perpetrate in-custody sexual assault, the primary theme is control. They seek to control their victims by controlling the environment; their physical movements; the evidence that is left behind; and any potential records of events. And they are revealed by their attempts to tamper with evidence, records, and reports that seek to conceal what they have done.

These kinds of abuses can occur because law enforcement in the United States have nearly unparalleled authority to forcibly detain and arrest citizens suspected of criminal activity. And to exert force when exercising their duties, up to and including the use of lethal measures. Amongst vulnerable populations, this creates a natural fear of law enforcement. It can also result in anxiety about arrest, detention, and physical harm. This both creates and feeds a culture of compliance to law enforcement instructions, even in extreme cases where those instructions are blatantly illegal.

II. VULNERABLE POPULATIONS AND LAW ENFORCEMENT

⁴ “The Buffalo News collected more than 700 credible cases of sexual misconduct from law enforcement personnel over a 10-year period. Local media reports, court documents and press releases were used to identify cases or allegations in which sexual misconduct was linked to police work or the use of police resources. Cases include only those in which some action lends credibility to the accusation. In most cases, that includes termination, indictment, conviction, the officer’s statements, resignation while an investigation was under way or internal affairs conclusions regarding departmental charges. This data does not include misconduct cases that occurred inside jails or prisons.” - “Abusing the Law”, *The Buffalo News*; url: <https://s3.amazonaws.com/bncore/projects/abusing-the-law/data.html>.

In general, populations that are vulnerable to law enforcement include subordinates, women, minorities, immigrants, those living in poverty, those living in high crime areas, those with criminal records and charges / warrants hanging over their head, those engaging in illegal activity to make a living (e.g., drug dealing or prostitution), those with substance abuse problems, and those with mental health issues. Each of these groups is vulnerable to pressure, coercion, and even exploitation by law enforcement. This is owing to a variety of intersectional factors, not the least of which are legal consequences and the potential loss of income from detention and incarceration. Even the threat of such consequences is enough to create a context of tremendous pressure. Additionally, when someone belongs to more than one of these groups their vulnerability is compounded.

As will be discussed later in this report, the factors which make detainees and / or arrestees vulnerable to pressure and coercion can have a variety consequences. One is that they are more vulnerable to sexual exploitation, coercion, and assault. The other is that they are more easily induced into making false statements and reports.

The reality of false reporting is well established in this case. Law enforcement originally procured allegations of sexual assault against Daniel Holtzclaw from 21 separate individuals, including one man. Some eventually admitted they had lied, including the man. Others made allegations that were not possible, because Holtzclaw had already been placed on administrative leave. One of the eight women never reported to police investigators, only to the media. And Shaneice Barksdale, was actually tried and convicted of making a false report. Only the allegations of the 13 remaining accusers were taken to trial. In other words, the rate of false reporting in this case at the outset was as high as 1/3. This should have been the first red flag to investigators that their investigative and interview tactics were prone to creating false allegations. These tactics, and their consequences with respect to scientific reliability, will be discussed later in this report.

III. INVESTIGATIVE & FORENSIC PILLARS:

Assessing Scientific Reliability

As mentioned previously, in cases of alleged sexual assault, the required forensic investigation consists of at least the following essential pillars: *the complainant's statement; the complainant's sexual assault exam; the suspect's statement; the suspect's sexual assault examination; the crime scene evidence; and the results of evidence testing* (Savino and Turvey, 2013). These pillars provide the foundation for any number of related crime scene investigation and analysis efforts. Therefore, they must be conducted in a manner that comports with accepted scientific protocols, the violation of which renders them scientifically unreliable.

These will be evaluated in turn, in relation to the 13 plaintiffs whose accusations were taken to trial:

A. The Complainants Statements

With the exception of Terri Morris⁵, Jannie Ligons, and Shardayreon Hill, who reported their complaints directly to law enforcement — a list of potential complainants was carefully curated by law enforcement investigators to include primarily black females. To be clear, the majority of Daniel Holtzclaw’s accusers did not come forward on their own. Rather, they were contacted by law enforcement investigators because they fit a particular victim profile and had been stopped by Daniel Holtzclaw in the performance of his duties. 34 of those women reported that they had not been sexually assaulted by him.

In what can only be described as a violation of competent investigative practice, investigators did not record any of the 40+ interviews with those women who reported that Officer Holtzclaw did not assault them. Specifically, Det. Kim Davis testified that this was an order “directed by command”. It is hard to imagine anyone giving such a biased order. It is just as hard to imagine a competent investigator being willing to follow it, as recording all contact with potential complainants is best practice — unless you are deliberately seeking to suppress evidence.

Regardless, the final list of curated complainants ultimately included Tabitha Barnes, Carla Raines, Florene Mathis, Rosetta Grate, Regina Copeland, Sherry Ellis, Syrita Bowen, Carla Johnson, Adaira Gardner, and Kala Lyles.

1. Interview Contexts

Investigative interviews have several goals necessary to the successful completion of the overall investigation. First, they are intended to elicit detailed information about the crime that can be corroborated. This is accomplished by statements which can either be verified by the available physical evidence, or statements which lead to the discovery of corroborating physical evidence. Second, they are intended to help evaluate and even establish measures necessary for assisting and protecting potential victims. In the context created by the investigators in the Daniel Holtzclaw case, these goals were consistently not understood or met. In fact, the context of these interviews in many cases may be described as a coercive negotiation. This is based on the documentation of the following coercive practices, observed in the bulk of the complainant interviews conducted by law enforcement:

- a. Investigators in this case routinely started interviews by giving the *false impression that they already had evidence, or a report*, that the interviewee was a victim of sexual violence by a police officer. In general, this practice can create confusion, as

⁵ It is helpful to note that the initial complaint made by Terri Morris was not precisely against Daniel Holtzclaw, but rather an unknown officer. The one photo lineup used in the investigation was given to Ms. Morris. She thought it could be Officer Dutton or Officer Holtzclaw. Her report was uncertain. This photo lineup did not include a picture of Officer Jeff Sellers. He had previously fired from OCPD for having sex with people while on the job. Officer Sellers had actually stopped Ms. Morris during April 2014.

well as the possibility of statement contamination. Vulnerable populations are generally unwilling to contradict an authority figure, an often simply agree to avoid conflict. This can result in a false report. Especially when investigators are insistent, as they were during the majority of the recorded interviews⁶.

- b. Contamination can further occur when interviewers *suggest the specific identity of the sexual aggressor*. The result can be an allegation about an actual episode of sexual violence against an innocent suspect. Again, this is especially true when investigators are insistent about the identity of their preferred suspect, as they were during the majority of these interviews⁷.
- c. Contamination can further occur when interviewers make comments giving the impression that there is a *proven threat with other evidence*; that if interviewees do not make the proper statements or allegations, there will be *no justice*; and that the result of the interviewee's failure will be *more victims*. This places tremendous pressure on the interviewee to comply, to help put away a bad guy. Doing this can also leads the interviewee to an unspoken inference or agreement — that stopping this alleged threat requires cooperation, and that even false testimony is acceptable for the greater good. This coercive practice occurred during the majority of the recorded interviews.
- d. Among the most coercive interview tactics is mentioning an interviewee's criminal activity, records, and pending charges. This gives the impression that investigators can help the interviewee avoid punishment, improve their legal situation, or simply create an alliance with someone in authority that can help them out in the future. This creates an incentive to cooperate with the investigation, to obtain implied benefits. This coercive tactic was used during the majority of these interviews.
- e. Consider **Terri Morris**: She was taken into custody and placed in the back of a patrol car on 6/3/14, after the CI reported her location and she: "had been hitting her head on the cage and wanted to leave"; "was crying and kept saying she wanted to be let go" and "advised she did not want to pursue this matter any further and would not cooperate in the investigation of the police officer." She repeatedly told Det. Gregory that she did not want to talk to him, and that he knew she was on a "crack high". However, Det. Gregory insisted on bringing her downtown to police headquarters to sign a refusal form. Gregory informed his supervisor Lt. Timothy Muzny and brought Terri Morris to the OCPD interview room, where he pressed her to repeat her story. She repeated the same desire to leave the interview and end her

⁶ It is important to note that not all of the interviews with complainants were actually recorded. This is a violation of basic investigative practice, as all such interviews must be recorded in order to preserve essential evidence and protect the complainant's rights.

⁷ For example, Tabitha Barnes testified in her deposition that the first time she met Det. Rocky Gregory, he "told me why he was there, investigating sexual assault, Daniel Holtzclaw. But at the time when he said the name, I didn't know what he was talking about, because I never knew his name." (pp. 81-82).

involvement throughout: “somebody else can do it”; “don’t want to”; “I just wanna leave”; “I just wanna, I just wanna be out...”; “I just wanna drop, I just wanna leave home.”; “I don’t want to. Please. Please, I just want to leave it alone. I just wanna go, I just wanna by my own. Please. Please, don’t. I don’t wanna see him. I want nothing. Oh my god. No.”; “But I don’t want to, please don’t. I don’t want to be a part of that thing no more. No, no. Sorry I’m just (home?) I just came, please.”; “Don’t do this to me. Please.”; “But I just don’t wanna be a part of this no more. [inaudible] I just wanna leave it alone.”; “I don’t know...ask another person...”

Det. Gregory also acknowledged under oath that he tried to force Terri Morris to look at a photo line-up: “I attempted, but she didn’t want to look at it.”

On 6/24/14, after the CI again tipped off police to Terri Morris’s location, Det. Gregory brought Det. Danny Higginbottom with him to conduct a photo line-up in the back of a patrol car at NE 21st and Kelley. Before conducting the line-up, Det. Gregory pressured Morris to answer questions about her allegations even though Terri Morris had signed a refusal to prosecute form three weeks earlier and had repeatedly told Det. Gregory that she didn’t wish to pursue the matter. He threatened to take her “downtown” after she appeared to utter unintelligible objections. After he falsely assured her that he was “not going to make her do anything you don’t want to,” she complained: “Alright, it’s like I done told the story like a thousand times.” Det. Gregory responds: “I’m trying to catch it here, okay, so I don’t have to keep bothering you.” Subsequent to her non-committal answers, and her failure to make a positive identification using the the line-up, she walked away from Det. Gregory, muttering: “Yeah, this is bullshit.”

Terri Morris did not implicate Daniel Holtzclaw until after she was put in jail on misdemeanor charges at the beginning of July, 2014. She stated during her jailhouse interview with Det. Gregory and Lt. Muzny: “well they got me in here on trespassing”. During that interview, her story changed to line up with Daniel Holtzclaw. Det. Gregory repeatedly mentioned drug rehab to keep her compliant when she seemed to stray from that narrative. These circumstances provide extreme contextual vulnerability and indicate a clear pattern of coercion by law enforcement.

- f. Consider **Shardayreon Hill**: She had seven outstanding warrants at the time she testified at trial. These circumstances provide extreme contextual vulnerability with law enforcement.
- g. Consider **Florene Mathis**: when she was interviewed, she was actually an inmate at the Oklahoma County jail. She also had ten outstanding felony arrest warrants, including a 2014 felony case involving assault and battery with a dangerous weapon. These circumstances provide extreme contextual vulnerability with law enforcement.

- h. Consider **Sherry Ellis**: at the end of her interview she asked Det. Davis for help with unpaid Oklahoma County fines. She was concerned that a warrant would be issued for her arrest. Det. Davis agreed to make a call on her behalf. There is no reason for this call other than to ensure a reciprocal relationship and guarantee testimony.
- i. Consider **Adaira Gardner**: On July 31, 2015, as she was preparing to testify against Daniel Holtzclaw, prosecutor Gayland Gieger wrote to defense attorney Scott Adams that “charges were declined against Ms. Gardner” in a pending “assault case as it could not be determined who was the initial aggressor based upon the statements of all the parties involved and evidence available.” Adaira Gardner was initially accused of wielding a machete against a victim and charged with assault with a deadly weapon. The timing of these circumstances is dubious at best.
- j. In an extreme example of coercion, Tabitha Barnes actually refused to testify at trial and tried to leave the courthouse. She was high on marijuana and PCP at the time. So Oklahoma City PD detained her for disorderly conduct and public intoxication.

2. Health Concerns Ignored

Investigators focused their efforts on getting interviewees to make statements that would implicate Daniel Holtzclaw as a rapist. However, this focus came at the cost of complainant emotional and physical health. On one occasion, a complainant — Terri Morris — made a request to terminate her interview. The detective did not immediately cease and continued to apply pressure. He also continued to track her down, and harass her, and question her, until she was willing to implicate Daniel Holtzclaw. In other instance, complainants made it clear that they did not want to talk about their experience with sexual violence. These are indicators of emotional distress. When these indicators appeared, investigators pressed forward, and in some cases they even employed *emotional blackmail*⁸. This instead of terminating the interviews in order to attend to the emotional and psychological welfare of those who were suffering right in front of them — in some cases as a result of their coercive tactics.

Additionally, every victim should have been submitted for a medical evaluation and a sexual assault examination. This did not occur. The need for this should be immediately apparent, given that sexual assault impacts victims to a variety of different physical and mental traumas. This requirement will be discussed in the next section.

3. Pertinent Details Ignored

As previously mentioned, investigative interviews are intended to elicit detailed information about the crime that can be corroborated. This is accomplished by statements which can either be verified by the available physical evidence, or statements which lead to the discovery of corroborating physical evidence. The following is a list of details routinely elicited to establish the basics regarding a sexual assault — largely ignored by investigators in this case.

⁸ This refers to the tactic of controlling or manipulating people with fear, obligation and guilt.

- a. Many of the complainants could not establish the precise locations of their attacks. Some could not recall the time or even the day accurately.
- b. Almost none of the complainants reporting oral sex were asked to describe their attacker's genitalia in terms of circumcision or other physical characteristics for comparison purposes.
- c. Only two of the complainants reporting penetration (Terri Morris and Adaira Gardner) were directly asked whether their attacker used a condom.
- d. Most of the complainants were not asked about potential transfer evidence sites with respect to potential biological material on surfaces or clothing.

3. Inconsistencies in the Statements

Trained investigators establish a clear chain of events in sexual assault cases. They do this by slowly taking the complainant through their attack — step-by-step, and frame-by-frame. This allows them to identify any errors or inconsistencies in the allegations that might require further investigation, contradict other witnesses, indicate memory problems, or contradict the established evidence. The statements made by the complainants in this case were full of contradictions that law enforcement either did not identify, or did not bother to investigate. There are too many to enumerate here, so only the most pertinent examples are provided.

This section will be referred to as a consolidated red flag near the end of this report.

- a. Most of the complainants provided a description of their attacker which did not accurately describe Daniel Holtzclaw. Complainants routinely provided the wrong age, build, height, hair color, skin color and / or race. When this occurred, they were told not to worry and that they would be believed despite these glaring inconsistencies.
- b. At the end of her interview with Det. Gregory, Shardayreon Hill asked whether it mattered if Officer Holtzclaw had actually raped anyone, and asked whether he would still be held responsible. This statement and question are not consistent with the belief that Holtzclaw had actually committed sexual assault.
- c. There were multiple doctors and nurses in the area where Shardayreon Hill was located in the Hospital. None of them saw anything inappropriate despite her accusations of oral sex, digital penetration, and fondling.
- d. Tabitha Barnes gave inconsistent statements about what she was wearing and where she was at during the reported attack. She also testified that one of the allegations in her civil lawsuit was false — that Holtzclaw had not broken into her home and sexually assaulted her there.

- e. Tabitha Barnes testified repeatedly in her deposition that Daniel Holtzclaw never touched her: “He didn’t touch me. He didn’t touch me. He did not touch me. He didn’t touch me”. She also testified in her deposition that she was 100% truthful about everything that had been stated. However, this completely contradicts her trial testimony, namely that Daniel Holtzclaw had touched her breasts.
- f. Carla Raines denied being sexually assaulted with investigators multiple times, then later changed her story, then got the date of the reported attack wrong. She later had to admit she corrected the date based on information from the prosecutors.
- g. Sherry Ellis not only described a black attacker in her initial report, she could not identify Daniel Holtzclaw in court. She also could not remember how the reported attack occurred, and changed her story multiple times. She also changed her story about who she slept with, consensually, on the day of the reported attack.
- h. Terri Morris got the date, time, and location of her encounter with Daniel Holtzclaw wrong, as well as the color of Holtzclaw’s patrol vehicle — and then changed it to fit information provided to her by law enforcement. She also changed the details of her assault and her initial description of her reported attacker to fit Holtzclaw⁹.
- i. Syrita Bowen gave inconsistent statements about whether or not her reported attacker ejaculated.
- j. Carla Johnson gave inconsistent statements about what she was wearing and how she was specifically assaulted.
- k. Kala Lyles gave inconsistent statements about most of the pertinent aspects of her reported attack, included the nature of the sexual assault, the duration, where it happened, what was said by her attacker, how it happened, and in what sequence.

Given the aforementioned contextual problems, pertinent omissions, and major inconsistencies that exist in these statements, this pillar cannot serve as the basis for reliable investigative or scientific conclusions.

⁹ It is contextually useful to note that Det. Kim Davis’ gave a deposition on 1/29/19 in which she testified that Terri Morris a “big fat liar.” Specifically, Det. Davis testified that Terri Morris “lied about when it happened — and I don’t even know the order of these, and then she lied about where it happened. And then she half told the truth and then Rocky had to go back and find all of these. I don’t know where all of that — so I can’t even think you can ask that. Because I don’t — it all would have fallen in place. I would have known it was falling in place. Because when this first started, she was just a big fat liar.”

And further, Det. Davis testified that “I just know that Rocky when he met with her several times and then later she finally said that she lied and she admitted to him for lying. Because she didn’t want her boyfriend to know that she was smoking crack again.”

B. The Complainants' Sexual Assault Examinations

A sexual assault examination must be conducted in every reported case of sexual assault, no matter the timeframe. It's not just about collecting biological evidence, clothing, and transfer evidence related to a recent sexual assault. Although that is paramount. It also establishes the complainant history; current state of overall health and related healing injuries or their absence (to include potential venereal diseases that might be transferred to a reported attacker); potential related pregnancy; issues with addiction or mental health concerns; and physical characteristics or limitations.

Specifically, collecting history from a complainant, as well as related information from collateral sources (e.g., friends, family members, other witnesses), is necessary to ensure that the most complete and accurate information is relied upon during any subsequent forensic examinations (NIJ, 2004; pp.83–84). In other words, a complete medical and sexual history is required to provide the basis for any decisions and interpretations made during a sexual assault examination or assessment. Taking a history is mandatory, not optional.

Ultimately, the purpose of taking a history is to inform collection efforts and any interpretations of findings. As stated in NIJ (2004, p. 8), forensic examiners must “avoid basing decisions about whether to collect evidence on a patient’s characteristics or circumstances (e.g., the patient has used illegal drugs).” Too often, there is a failure to document such evidence, including areas of non-injury (negative documentation) and history. This can occur because the examiner is either uncomfortable with, or preferential towards, their patient’s complaint. In cases of extreme bias, there may even be attempts to suppress or conceal such evidence. This is professionally negligent.

Each complainant must undergo the same level of examination and documentation—there can be no exceptions. In particular, the forensic examiner must comprehend and acknowledge the importance of history to the integrity of their examinations, interpretations, and subsequent court testimony (see Jamerson and Turvey, 2013). This information is essential to understanding potential evidence of prior surgery and trauma, and any alternative evidentiary interpretations. It is also essential to establish the synergistic effects of prescription medications when combined with alcohol. And finally, concealment or curation of this evidence, which is required for competent medical treatment, prevents awareness of prior incidents and conditions which might have a bearing the complainant’s physical and cognitive abilities.

Only some of the Plaintiffs in the Holtzclaw case were referred for Sexual Assault Exams. Most were not. Of the three that were apparently referred, no adequate history was reported, and the findings were negative for evidence of sexual assault.

1. Shardayreon Hill: No SANE Exam provided
2. Tabitha Barnes: No SANE Exam provided
3. Carla Raines: No SANE Exam provided
4. Florene Mathis: No SANE Exam provided

5. Rosetta Grate: Referred for SANE Exam
6. Regina Copeland: No SANE Exam provided
7. Sherry Ellis: Referred for SANE Exam
8. Terri Morris: No SANE Exam provided
9. Syrita Bowen: No SANE Exam provided
10. Carla Johnson: No SANE Exam provided
11. Adaira Gardner: No SANE Exam provided
12. Kala Lyles: No SANE Exam provided
13. Jannie Ligons: Referred for SANE Exam

This represents professional abandonment of the majority of reporting plaintiffs by law enforcement with respect to documenting and collecting vital contextual and historical evidence related to a sexual assault examination — and with respect to assessing their physical and mental health needs. Therefore, this pillar cannot serve as the basis for reliable investigative or scientific conclusions.

C. The Scene Evidence

The physical evidence available at the scenes, to include available digital evidence, was either ignored or left uncollected. In other words, the vast majority of the reported crime scenes were abandoned by law enforcement investigators. Even though some time had passed since the reported attacks, law enforcement are still admonished to:

1. Take the complainant to the scene of the attack, to establish and document its precise location;
2. Establish and document spatial relationships with photos, video, and measurements;
3. Establish and document the feasibility of reported events in the reported environment;
4. Identify potential witnesses; what could have been observed and who could have observed it;
5. Identify potential passive documentation such as security cameras with a line of site;
6. Collect cell phones from complaining witnesses to establish and collect GPS information, photos, phone calls, and text messages around the time of the reported attack.

To be clear, no formal crime scene processing efforts took place. And limited related documentation exists. Therefore, this pillar cannot serve as the basis for reliable investigative or scientific conclusions.

D. The Suspect's Sexual Assault Exam

Daniel Holtzclaw did not undergo a proper sexual assault examination. Subsequently, no formal history was taken. Though he was eventually tested for a panel of STIs, and this came back negative.

Instead, his clothing was collected in the interview room at the police station. The video shows that Det. Gregory inserted his ungloved hand into the open evidence bag. This occurs before Daniel Holtzclaw places his uniform pants and belt into the same evidence bag. Everything is improperly collected into a single bag, no gloves are used during the collection process. This appears to have been theatrical as opposed to evidence driven.

Such a collection procedure violates every guiding protocol of forensic science. The improper, and ultimately negligent, collection procedure observed in the video renders any subsequent examination of related DNA evidence almost irrelevant. This is because the collection area (not clean environment) and personnel (wearing street clothes and no gloves) are contributing untold DNA samples into the bag that Daniel Holtzclaw's clothing items have been collected into.

As a result of this extensive breach in forensic protocols, this pillar cannot serve as the basis for reliable investigative or scientific conclusions.

E. The Suspect's Statement

Daniel Holtzclaw made a recorded statement to law enforcement, and a DNA sample was collected for testing and comparison. However, the collapse of the other pillars in this case present a significant difficulty. There is no reliable evidence available to compare his statement with, in order to refute or deny it.

IV. DISCRIMINATORY INVESTIGATIVE PRACTICE

Discriminatory investigative practice in this case refers to disregard or abandonment of the evidence by investigators (e.g., cherry-picking what is documented, collected, tested, and / or presented in court) in order to curate a particular case theory or implicate a particular suspect. This extends to the curation of evidence that is presented in court, and whether the presentation is scientifically accurate or misleading. In this case, it is evident in the following:

1. Lt. Timothy Muzny explained the following in a supplemental report: "I contacted Unit 800 and had the Supervisor, Janet Mansfield, look up all the females that 2C45 [Officer Holtzclaw] ran through them from April 2014 to June 18, 2014. She gave me a list and I began checking the names through our Varuna system to see if any of the persons checked had a criminal history. I was specifically looking for women who had either a drug history and or a history of prostitution. I then made a list of women who I felt we needed to make contact with to see if they were a victim of a sexual assault. After detectives went and interviewed a person on the list who stated she was sexually assaulted we then went back and expanded our search and went back to January 2014. I then took those added names and checked them with our Varuna system to see if they had a drug and or prostitution history. The persons who fit this profile were added to a list to make contact with to see if they were a victim of

a sexual assault” (Standard Supplement Report on Carla Johnson by Timothy Muzny, August 22, 2014.)

2. It is unclear why Lt. Muzny narrowed the search to only those women with a history of drugs or prostitution. This description does not fit the description of the first credible accuser, Jannie Ligons, at all. The only thing that the specific parameters of this search ensures is a list of vulnerable minorities, with a grudge against law enforcement, who can be easily coerced or bargained with for considerations in exchange for statements and testimony.
3. The selective cultivation of a specific victim profile in order to suggest that there is a pattern in victim selection by Daniel Holtzclaw. In fact, this “pattern” was deliberately curated by law enforcement. In this case, law enforcement investigators selectively parsed their databases for black females engaged in suspected prostitution and / or drug use who had been pulled over by Daniel Holtzclaw¹⁰. Then they engaged in coercive tactics to elicit inculpatory statements against him, 1/3 of which resulted in acquittals, and all of which had serious contradictions.
4. Ultimately, law enforcement presented a heavily curated population of accusers in court, indicating that they represented a pattern and a preference. They do not, as will be discussed in the linkage analysis section of this report.
5. While there are some similarities with respect to accuser vulnerability and skin color, which again were cultivated by law enforcement, they are superficial. These superficial similarities were presented in court alongside sexual behavior that was regarded as largely equivalent across all cases. This misrepresents the behavioral evidence dramatically, as will be discussed in the linkage analysis section of this report.
6. True forensic linkage analysis requires an assessment of not just similarities, but dissimilarities. The range of behavioral dissimilarity in this series of accusations is significant. Presenting these cases, with this many behavioral dissimilarities acknowledged and unevaluated, evidences a misunderstanding of the basic concepts required for reliable linkage analysis (e.g., modus operandi and offense signature).
7. Law enforcement ignored the investigative requirement to recognize and consider alternate suspects on multiple occasions, especially when confronted with failed identifications of their primary suspect. Consider the following related facts and circumstances:

Investigators presented a photo lineup only to **Terri Morris**. During that photo lineup, she did not positively identify Officer Holtzclaw, and felt the suspect might be

¹⁰ This is actually part of his job as a patrol officer.

Officer Dutton or Officer Holtzclaw, but OCPD never investigated Officer Dutton. Additionally, excluded from the photo lineup was a person of interest, Officer Jeff Sellers, mentioned previously.

The District Attorney's office told detectives to stop the use of photo lineups, beginning with **Jannie Ligons**. This after female DNA was found on the fly of Daniel Holtzclaw's pants. It is unclear why the DA's office would interfere with the police investigation by giving instructions in violation of standard practice for ensuring reliable eyewitness identifications. It is further unclear why a competent detective would follow such an intrusive and negligent directive.

Police reports show that Kala Lyles mistook Daniel Holtzclaw for Officer Allan Cruz. He had who had stopped her and issued three citations in March 2013, prior to the three times Daniel ran her name on 4-09-2014, 5-16-2014, and 6-18-2014. This demonstrates a clear confusion regarding their initial identifications. Officer Cruz was not investigated as a suspect.

OSBI records of accusers show that Officer R. Jones (2C34, Commission #001796) filled out field interview cards for three separate accusers: Kala Lyles, Florene Mathis, and Terri Morris¹¹. The interview of **Florene Mathis** by Det. Davis demonstrates that she had confused Officer Jones for Daniel Holtzclaw. Officer Jones was not investigated as a suspect.

Sherry Ellis described her attacker as a black male, with skin darker than her own, and indicated he was several inches shorter than her own height of 5'11". Alex Edwards, an African-American police officer, matched that description. He also worked just East of Officer Holtzclaw. Sherry Ellis was also not shown a photo lineup to confirm her identification. Additionally, Officer Edwards was not investigated as a suspect.

Carla Raines initially stated in her interview with Det. Gregory that the only police officer had been inappropriate with her in the past. She described him as a black police officer who exposed himself to her. Investigators did not pursue the suspect described in her initial complaint, or consider the possibility that she was telling the truth about this in her initial report.

V. DISCRIMINATORY FORENSIC PRACTICE

Discriminatory forensic practice refers to disregard or abandonment of the physical evidence (e.g., cherry-picking what is documented, collected, tested, and / or presented in court) in order to curate a particular case theory or implicate a particular suspect. This extends to the curation of evidence that is presented in court, and whether the

¹¹ Daniel Holtzclaw was acquitted of all charges relating to these three accusers.

presentation is scientifically accurate or misleading. In this case, it is evident in the following:

1. As mentioned in the section on Investigative and Forensic Pillars, there was a significant amount of evidence that was neither collected nor tested in relation to the reported crime scenes. This led to large blocks of physical and contextual evidence that could not be considered in court.
2. As mentioned in the section on Investigative and Forensic Pillars, there was a significant amount of evidence that was neither collected nor tested in relation to the Sexual Assault Examinations. This includes the fact that only three of thirteen reporting accusers received such an exam. This also led to large blocks of physical and contextual evidence that could not be considered in court.
3. As explained thoroughly in Gill, P., Goodman-Delahunty, J., Ryan, S., Schanfield, M., Schiro, G., and Turvey, B. (2017), the DNA evidence that was collected from Daniel Holtzclaw's uniform pants was consistent with non-intimate transfer. Yet, it was presented as being definitively associated with vaginal fluid. There is no evidence to confirm this theory.
4. DNA expert Dr. Michael Spence has submitted an Affidavit as part of Daniel Holtzclaw's appeal. He provides detailed findings explaining that the DNA evidence found on the fly of Officer Holtzclaw's uniform pants can be explained by non-intimate DNA indirect transfer. He further explains that this does not support a conclusion that sexual contact had occurred. Dr. Spence also examined and described many DNA evidence related errors that were made by OCPD's forensic analyst, Elaine Taylor.
5. A review of the criminal trial transcripts and exhibits, as well as the federal civil rights lawsuit depositions, demonstrates that misrepresentations and misunderstanding of the forensic evidence went beyond OCPD forensic analyst Elaine Taylor — to include the detectives who investigated Daniel Holtzclaw, his prosecutor, and the Oklahoma Attorney General who sought to retain the conviction.
6. As explained thoroughly in Gill, P., Goodman-Delahunty, J., Ryan, S., Schanfield, M., Schiro, G., and Turvey, B. (2017), investigators only collected Holtzclaw's uniform pants and belt. They did not collect his underwear and the penile swabs that could have provided more contextual evidence.
7. As explained thoroughly in Gill, P., Goodman-Delahunty, J., Ryan, S., Schanfield, M., Schiro, G., and Turvey, B. (2017), the State's forensic analyst did not conduct tests for body fluids, nor did she examine Holtzclaw's uniform pants with an Alternate Light Source.

8. As explained thoroughly in Gill, P., Goodman-Delahunty, J., Ryan, S., Schanfield, M., Schiro, G., and Turvey, B. (2017), the State's forensic analyst did not investigate the source of the male-female DNA mixture that she found on Holtzclaw's uniform pants. Consequently the conditions of transfer remain a mystery, and any related theories remain unverifiable.

VI. INVESTIGATIVE RED FLAGS

For more than 20 years, the literature relating to sexual assault investigation has identified a number of investigative red flags for false reporting. As explained in Savino, Turvey, and Coronado (2017; pp.215-216; and pp.312-318): "It is important to remember that these red flags are not conclusive evidence that a false report of sexual assault has been made. They should be used as a guide. Their existence suggests that further investigation is needed. Until any red flags have been explained, no conclusion about the merits of the complaint may be formed either way." The following investigative red flags are evident in this case, requiring investigative attention and resolution:

1. The initiation of the report, or pressure to report, came from someone other than the complainant themselves. The majority of the accusations in this case were procured by law enforcement. In most of the subsequent interviews, law enforcement engaged in coercive tactics in order to get accusers to go on the record - some needed to change their stories completely to do so, and others did so with reluctance.
2. Because of the nature of the case (involving a law enforcement officer), and the nature of the accuser population (those vulnerable to law enforcement with admitted bad feelings towards them), combined with the coercive tactics being used -- the rate of false reporting in this case at the outset was as high as 1/3. This should be an indicator to investigators to change their approach and make it more inclusive of objective physical evidence.
3. An inconsistent description of the attacker: As mentioned previously, a majority of the complainants provided a description of their attacker which did not accurately describe Daniel Holtzclaw. Complainants routinely provided the wrong and even inconsistent age, build, height, hair color, skin color and / or race.
4. Drug/Alcohol use and abuse: Drug and alcohol use and abuse can cause mental infirmity. This is true whether or not a prescription medication is involved; and whether or not the use is excessive. Drug use affects perception, memory, and overall cognitive reliability. This is why it is important to establish exactly what drugs someone is taking along with the dosage, and how much alcohol they have consumed. In this case, 8 of the complainants were known either drug addicts, alcoholics, or prescribed psychotropics. In 2 of these cases, it was all three.

5. **Mental Illness:** Three of the accusers were taking psychotropics, and specifically anti-psychotic medication, related to mental health diagnoses.
6. **History of False Statements to Law Enforcement:** Many of the complainants in this case have a history of making false statements to law enforcement regarding their criminal history, drug use, identifying information (e.g., name, social security number), and making false 911 calls.
7. **Criminal History:** Many of the complainants in this case have extensive criminal histories, including arrests and convictions for prostitution, drug use and dealing, theft, assault, domestic violence, and forgery. Many were also convicted felons, with multiple felony convictions.
8. **Inconsistencies in retelling:** Those who make false allegations, and file false reports, might tell a different story each time they are asked. This is why it is important to get multiple versions on the record. This is especially true when drugs or alcohol are involved. In this case, the most serious inconsistencies were detailed in a prior section.

Each of these red flags indicates an area that requires further investigative attention by law enforcement, in order to explain or understand. Such investigative efforts necessarily lead to the corroboration and verification of reliable statements. Or doubt regarding the reliability of statements that remain uncorroborated. These red flags were either unidentified, ignored or dismissed by law enforcement investigators. There is no evidence that they were resolved or addressed during the investigation.

VII. LINKAGE ANALYSIS

Case linkage analysis refers to the process of determining whether or not there are discrete connections, or behavioral commonalities, between two or more previously unrelated cases through Crime Scene Analysis (the examination of victimology, modus operandi, signature, and related behavioral patterns).

While there may be general or thematic similarities between some cases, it is the nature of the dissimilarities that are of greater weight and importance to rendering final linkage analysis conclusions. Linkage analysis efforts that fail to account for dissimilarity, focusing on similarities, should be considered inadequate at best, if not biased.

For this section, reference the table attached to this report, titled: HOLTZCLAW / PATTERN OF ACCUSATIONS.

A. Qualitative Analysis

In this section we will evaluate that quality of the evidence to determine whether it is of sufficient integrity to establish crime related behavior, and conduct a forensically reliable linkage analysis.

The threshold for courtroom testimony from a scientific expert is typically expressed as “to a reasonable degree of scientific certainty”. This means that scientific methodology has been applied, the literature has been referenced, and interpretations of the evidence are within the bounds of the accepted research and practice. Given the requirements of scientific inquiry, this easily meets or exceeds a reasonable doubt standard. It is therefore worth noting that the jurors in The Holtzclaw case unfounded the complaints from 5 of the 13 accusers in this case - as they apparently found reason to doubt. This is expressed in the list provided below:

1. Shardayreon Hill: **Unfounded**
2. Tabitha Barnes: Conviction
3. Carla Raines: **Unfounded**
4. Florene Mathis: **Unfounded**
5. Rosetta Grate: Conviction
6. Regina Copeland: Conviction
7. Sherry Ellis: Conviction
8. Terri Morris: **Unfounded**
9. Syrita Bowen: Conviction
10. Carla Johnson: Conviction
11. Adaira Gardner: Conviction
12. Kala Lyles: **Unfounded**
13. Jannie Ligons: Conviction

While not a consideration in this analysis, the jury’s decision bears mentioning because an argument could be made that these unfounded cases should be excluded at the outset. However, given the utter failure of the investigative and forensic pillars in this case, that will not be necessary and this list is simply provided for context.

Scientific reliability has a clear chain of custody requirement to establish the providence and integrity of data, which includes physical and then related behavioral evidence. In other words, evidence must be well documented and adequately corroborated in order to serve as the basis for scientific conclusions. This is accomplished by attendance to protocols related to the investigative and forensic pillars. However, few if any of the efforts by investigators led to gathering information from accusers that could be verified. This same negligence exists in every other aspect of this investigation, to the point where the pillars have utterly collapsed. This means that the investigative and forensic efforts in this case are not of sufficient quality to use as the basis for scientific or forensic conclusions.

However, the examiners will entertain such a limited examination based solely on the inconsistent and unreliable statements of the accusers, and the absence of specific behavioral evidence, because the results are revealing.

B. Modus Operandi Analysis

Modus operandi analysis requires the use of confirmed and corroborated offense related behavior. There is no such behavior in this case. There exist only an inconsistent series of curated allegations, internally inconsistent with un-investigated reflags, no supporting physical evidence, acquired from a vulnerable population in a context of coercion.

As described in prior sections of this report, the described modus operandi behavior in this case relates almost exclusively to a proposed victim selection pattern (black females who are also prostitutes and / or drug addicts), and the use of a law enforcement patrol vehicle while under color of authority. This modus operandi was curated by law enforcement investigators based on their search criteria, and the parameters of Daniel Holtzclaw's patrol duties. Of greater concern, it does not address all of the elements of a modus operandi.

For example, there is no evidence of precautionary acts. In other words, there is no evidence that Daniel Holtzclaw tampered with evidence, records, and reports in order to conceal his activities. Given that he is a law enforcement officer with full knowledge of the capabilities of his department and its respective investigators, one would expect to find the covering of tracks. There is no evidence of any such effort.

Additionally, the modus operandi suggested by law enforcement would tend to suggest that Daniel Holtzclaw had unprotected penile-vaginal sex with six different women, five of whom were known prostitutes or drug addicts. Again, given that he is a law enforcement officer, with full knowledge of the range of sexually transmitted infections that he could encounter within such a vulnerable population, this seems a high and unnecessary risk. Made even more-so by the fact that that he was in a committed relationship, and any sexually transmitted infection that he acquired outside of that relationship would raise immediate suspicion and unwanted attention¹².

C. Signature Analysis

As described in prior sections of this report, *Signature behaviors* are individual acts committed by an offender that are not necessary to commit the crime, but that suggest the psychological or emotional needs of that offender (Turvey, 2011).

Victim Selection: Most of the accusers are between 29-57. This is not the same age range, and some appear dramatically because of conditions associated with their vulnerable status. So even within the cohort there is a range of difference in the way that accusers appear. Accusers Shardayreon Hill (22 YO BF) and Adaira Gardner (19 YO BF) fall even further outside that contrived group, appearing much younger than any of the other accusers. These age differences, and clear differences in appearance, would represent significant dissimilarity in victim selection.

¹² Daniel Holtzclaw was tested for STIs after the allegations were made, and then again when he was in prison. He tested negative for STIs on both occasions: 8-12-2014 and 2-4-2016.

Trophies: A signature behavior that would be expected in a series of crimes such as this includes the taking of trophies, such as photos or videos of the victims. No such trophies were found. And there is no evidence that such evidence existed and was destroyed or deleted.

Compulsions: A signature behavior that would be expected in a series of crimes that involves a controlling law enforcement officer intent or stalking and harassing his victims would evidence of extensive victim surveillance across multiple victims. Not just one. These are compulsive behaviors that are by their nature both obsessive and uncontrollable. There is no such evidence of ongoing stalking or harassment in this case - of any of the victims.

Anger / Punishment: A signature behavior that would be expected in a series of crimes that involves a controlling law enforcement officer intent or stalking and harassing his victims would be a sexual assault characterized by the need for punishment and/or rage. There is no such anger or aggression evident in the sexual assault related behavior described by the accusers in this case (e.g. brutal levels of force and extensive victim injury). The behavior described is more power-assertive with respect to its behavioral motivation.

Preferred Sex Acts: The signature behavior pattern related to the sexual assaults indicates no progression or development over time. Rather, it evidences three different types of sexual preference, confidence, and risk, occurring across different timeframes. The is evidenced by the following preferential groups:

1. *Zero sexual penetration:* This group includes Tabitha Barnes, Carla Raines, Florence Mathis, and Carla Johnson (note: Raines and Mathis were unfounded). These are low risk offenses requiring limited time to accomplish with easy deniability should the offender be encountered and/or observed by any witnesses.
2. *Oral penetration:* This group includes Terri Morris and Jannie Ligons (note: The Morris allegations resulted in an acquittal). This is also a low risk offense group, requiring only a short amount of time to accomplish, with possible deniability should the offender be encountered and/or observed by any witnesses. It is also easy to rapidly conceal.
3. *Vaginal penetration:* This group includes Regina Copeland and Adair Gardner. This is a high risk offense group, requiring some amount of time to accomplish, with limited deniability should the offender be encountered and/or observed by any witnesses. It is also not easy to rapidly conceal. It would indicate a confident offender with control of their environment and victim, and little concern about time or witnesses.

4. *Oral and Vaginal penetration*: This group includes Shardayreon Hill, Rosetta Grate, Sherry Ellis, Syrita Bowen, and Kala Lyles (note: The Hill and Lyles allegations resulted in an acquittal). This is the highest risk offense group, requiring a great deal of time to accomplish, with limited deniability should the offender be encountered and/or observed by any witnesses. It is also difficult to rapidly conceal. It would indicate a confident offender with almost total control of their environment and victim, and no concern about time or witnesses.

At minimum, this clustering of signature behaviors tends to suggest the possibility of two different offenders — one that has little time, limited confidence, limited control, and seeks deniability; and another that is precisely the opposite.

Additionally, the reported progression of offenses over time indicates the following arc with respect to sexual behavior:

1. Oral & Vaginal penetration w/ Penis; Forcible Touching / bare breasts (Hill)
2. Procured Exposure / bare breasts (Barnes)
3. Forcible Touching / bare breasts; Procured Exposure / genitals (Barnes)
4. Procured Exposure (Raines)
5. Forcible touching / bare breasts (Mathis)
6. Oral & Vaginal penetration w/ Penis (Grate)
7. Vaginal penetration w/ penis (Copeland)
8. Oral & Vaginal penetration w/ penis; Forcible Touching / bare breasts (Ellis)
9. Oral penetration w/ penis; Forcible Touching / bare breasts, genitals (Morris)
10. Vaginal penetration w/ Penis (Copeland)
11. Forcible touching / bare breasts, vagina (Johnson)
12. Vaginal penetration w/ penis, finger;
Forcible Touching / bare breasts, vagina (Gardner)
13. Oral & Vaginal penetration w/ penis; Forcible Touching / bare breasts (Lyles)
14. Oral penetration w/ penis; Procured Exposure / bare breasts (Ligons)

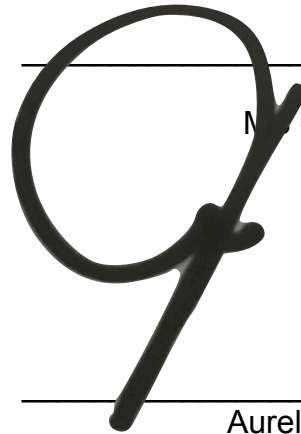
This reported arc, which requires a progress of modus operandi and signature behavior, does not demonstrate an evolution from the least confident and skillful group of related behaviors to the most confident and skillful, as would be expected in an offender unaffected by emotional distress, addiction, or mental illness. Instead, this arc of offense related behavior does not evolve at all. It begins with the most confident, complex and risky group of related behaviors, and then goes back forth between preferential groupings without suggesting a specific pattern or progression.

Given the totality of findings in this section, presenting this series of allegations as being representative of a distinct pattern of consistent behavior is misguided at best. In other words, there is no investigative or forensic support for such a conclusion. The behavioral evidence cannot be used to suggest such a linkage in this case.

VIII. CONCLUSION

The facts and circumstances evident in this case demonstrate an absence of reliable physical evidence upon which to form reliable investigative and forensic conclusions. Under these circumstances, and in the absence of reliable evidence, it is not possible to accurately reconstruct events on the evenings of the alleged assaults, let alone offer a reliable modus operandi, signature, or case linkage analysis — given the collapse of the investigative and forensic pillars required to support such findings.

Should new evidence become available, this examiner would necessarily reconsider any of the related findings in this report.



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HOLTZCLAW / PATTERN OF ACCUSATIONS

PLAINTIFF	RACE / AGE	PROSTITUTION / DRUG ADDICTION	ACQUITTAL / CONVICTION	DATE OF INCIDENT	RELATED TO TRAFFIC STOP	LOCATION OF INCIDENT	DIRECT THREATS OF DETOX OR JAIL	DRUG USE / INTOXICATION Incident	ORAL PENETRATION	VAGINAL PENETRATION	ANAL PENETRATION	FORCIBLE TOUCHING	PROCURED EXPOSURE	PROCURED TOUCHING	DISPOSITION
Shardayreon Hill	22 / BF	DRUG ADDICTION	Acquitted / Unfounded	Dec. 20, 2013; Jan. 9, 2014	Yes - Hill & friend pulled over in vehicle with friend Pos. drugs / PCP.	SW Medical Ctr.	No - she was at the hospital, and was eventually sentenced to jail for her crimes.	Yes - Ingested PCP to hide it; Taken to Hospital	Yes - Penis	Yes - Digital	No	Hand to bare Breast while cuffed to hospital bed	No	Hand to Pants / Crotch	Holtzclaw- 6 counts / not guilty Hill- plead guilty to possion w/ intent
Tabitha Barnes	41 / BF	DRUG ADDICTION; MENTAL ILLNESS; PSYHOTROPIC MEDICATION; PAINKILLERS	Convicted	Feb. 27, 2014	Yes - in front of her house w/ friend	Driveway / Patrol Car	NO	NO	NO	NO	NO	Lifted victims naked breasts as part of search for drugs.	Yes - She lifted her shirt and exposed her breasts without prompting.	NO	Holtzclaw - 1 count / guilty; 1 count / not guilty Barnes - tried to leave courthouse but was arrested
				Mar. 25, 2014	No - Outside of her home Man passed out on her yard	Home / Front Porch	NO	NO	NO	NO	NO	Touched bare breasts	Yes - Instructed her to show her breasts and genitals.	NO	"
				Mar. 26, 2014	No - knocked on her door, she did not let him in	Home / Front Porch	Yes	NO	NO	NO	NO	NO	No	NO	"
Carla Raines	44 / BF	SUSPECTED PROSTITUTION	Acquitted / Unfounded	Mar. 14, 2014	Yes- stopped while walking alone	Patrol Car / 16th St.	NO	NO	NO	NO	NO	NO	She lifted her shirt and exposed her breasts without prompting.	NO	Holtzclaw- 1 count / not guilty
Florene Mathis (not a plaintiff)	53 / BF	DRUG ADDICTION; ALCOHOLISM	Acquitted / Unfounded	April 14, 2014	Yes - stopped her while walking alone	Sidewalk / NE Jordan St.	NO	Yes - smoking crack cocaine and intoxicated; admitted alcoholic	NO	NO	NO	Yes - Hand to Breast outside of clothing while uncuffing	NO	NO	Holtzclaw- 1 count / not guilty
Rosetta Grate	37 / BF	PROSTITUTION; DRUG ADDICTION	Convicted	April 24, 2014	Yes - stopped her for prostitution and drug use; drive her home	Home/ 633 Culbertson	Yes	Yes - smoking crack cocaine	Yes - Penis	Yes - Penis	NO	NO	NO	NO	Holtzclaw - 1 count / guilty; 1 count / not guilty Grate - In jail
Regina Copeland	54 / BF	DRUG ADDICTION; ALCOHOLISM	Convicted	April 25, 2014	Yes - pulled her over then had her drive to a second location.	Patrol Car / 2425 NE 24th St.	??	Yes - crack cocaine; admitted alcoholic, drinking	NO	Yes - Penis	NO	NO	NO	NO	Holtzclaw - 1 count / guilty; Copeland - In jail
Sherry Ellis	39 / BF	PROSTITUTION	Convicted	May 7, 2015	Yes - stopped her while walking alone	Patrol Car / Highland St. & then NE 18 & Mirimar (Creston Hills Elementary)	Yes	Yes - Antidepressant and anti- psychotic	Yes - Penis	Yes - Penis	NO	Yes - Hand to Breast outside of clothing	NO	NO	Holtzclaw - 4 counts / guilty; Ellis - In jail
Terri Morris	43 / BF	PROSTITUTION	Acquitted / Unfounded	May 8, 2014	Yes - stopped her while walking alone	Patrol Car / Inconsistent	Yes	Yes - crack cocaine; admits drugs addiction	Yes - Penis	NO	NO	NO	Yes - Breasts and genitals	NO	Holtzclaw- 3 counts / not guilty
Syrta Bowen	48 / BF	DRUG ADDICTION	Convicted	May 21, 2014	Yes - stopped her while walking alone	Patrol Car / 13th & Highland	Yes	Yes - Alcohol	Yes - Penis	Yes - Penis	NO	NO	NO	NO	Holtzclaw - 2 counts / guilty

PLAINTIFF	RACE / AGE	PROSTITUTION / DRUG ADDICTION	ACQUITTAL / CONVICTION	DATE OF INCIDENT	RELATED TO TRAFFIC STOP	LOCATION OF INCIDENT	DIRECT THREATS OF DETOX OR JAIL	DRUG USE / INTOXICATION Incident	ORAL PENETRATION	VAGINAL PENETRATION	ANAL PENETRATION	FORCIBLE TOUCHING	PROCURED EXPOSURE	PROCURED TOUCHING	DISPOSITION
Carla Johnson	51 / BF	DRUG ADDICTION	Convicted	May 26, 2014	Yes - stopped her while walking alone	Patrol Car / 16th & Highland	NO	Yes - crack cocaine	NO	NO	NO	Touched bare breasts; touched vagina and clitoris under panties	NO	NO	Holtzclaw - 2 counts / guilty
Adaira Gardner	17 / BF	DRUG ADDICTION; MENTAL ILLNESS; PSYHOTROPIC MEDICATION; SUSPECTED PROSTITUTION	Convicted	June 17, 2014	Yes - stopped her while walking with friends	Patrol Car / 16th & Highland	Yes	Yes - Antidepressant and anti-psychotic	NO	Yes - Digital & Penis	NO	Touched bare breasts	NO	NO	Holtzclaw - 3 counts / guilty
Kala Lyles	29 / BF	SUSPECTED PROSTITUTION	Acquitted / Unfounded	June 18, 2014	Yes - stopped her while walking alone after argument with boyfriend	Patrol Car / Creston Hills Elementary	Yes	UNK	Yes - Penis	Yes - Penis	NO	Yes - Touched bare breasts	Yes - Breasts	NO	Holtzclaw- 4 counts / not guilty Lyles - On probation
Jannie Ligons	57 / BF	N/A	Convicted	June 18, 2014	Yes - pulled her over for swerving	Patrol Car / NE 50th & Lincoln	Yes	Yes - Marijuana	Yes - Penis	NO	NO	NO	Yes - Breasts	NO	Holtzclaw- 2 counts / guilty

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-

) 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 DEPOSITION OF

TIMOTHY ALAN MUZNY

TAKEN ON BEHALF OF THE PLAINTIFFS

IN OKLAHOMA CITY, OKLAHOMA

ON MARCH 26, 2019

REPORTED BY: TRENA K. BLOYE, CSR

1 Q But you'd agree with me that he never made any
2 statements admitting to any improper contact with her?

3 A Yeah. No, he didn't admit to any kind of
4 sexual assault at all.

5 Q Okay. By the way, do you believe the
6 allegations made by Ligons were true?

7 A Yes.

8 Q Okay. Does the name Adaira Gardner, do you
9 recall that name?

10 A Yes.

11 Q And is it your understanding that her DNA was
12 found on Daniel Holtzclaw's uniform pants?

13 A Yes.

14 Q Would you agree with me that that DNA could
15 have gotten there through non-instant contact?

16 A No.

17 Q Have you heard of touch DNA?

18 A Yes. And I understand how it works. That's
19 not possible that on that.

20 Q Could you tell me what leads you to say that?

21 A There are people that are shedders and people
22 that are not. I can shake somebody's hand and my DNA
23 may or may not be on them, and vice versa. Nobody is
24 ever going to convince me that Adaira's Gardner --
25 Adaira Gardner's DNA was on the inside of his pants from

1 just casual contact.

2 Q Okay. Would a -- you say no one will ever
3 convince you. What about an expert -- an expert in
4 forensic DNA transfer?

5 A No. You can get an expert that will tell you
6 whatever you want.

7 Q All right. The -- strike that.

8 Are you aware as to whether Daniel Holtzclaw's
9 own DNA was found on his pants?

10 A I have no idea.

11 Q Okay. Would you expect to find his own DNA on
12 his uniform pants?

13 MR. SMITH: Object to form. You can
14 answer it.

15 A I don't know if you'd find it on the -- on the
16 inside of his uniform pants by that flap or not. It's
17 probably going to have to do with whether or not you're
18 wearing any kind of undergarments or not. But I don't
19 know.

20 Q (By Mr. Johnson) Okay. Do you have any
21 statement as to whether or not Gardner was a shedder or
22 not?

23 A I have no idea.

24 Q Okay. How about an opinion of whether or not
25 Holtzclaw was a shedder or not?

1 A I do not know.

2 Q Okay. Did you have any other -- other than
3 Morris, did you have any personal contact with any of
4 the accusers?

5 A Not that I know of.

6 Q Okay. Are you aware that there was also
7 unidentified male DNA on Holtzclaw's fly?

8 A No.

9 Q Have you ever heard that?

10 A No, I've never heard that it was an
11 unidentified male.

12 Q Okay. If you heard there was unidentified male
13 DNA on his fly would that cause you to at least consider
14 the possibility that Holtzclaw did not do the assault on
15 Ligons?

16 A That he did not do the assault on Ligons? No.

17 Q Okay. Do you have any -- do you have any idea
18 why there would be unknown male DNA on Holtzclaw's fly?

19 A No.

20 Q Do you have any understanding as to whether or
21 not any of the police officers or detectives you
22 supervised at the time of the Holtzclaw investigation
23 violated any policies or protocols of your department?

24 MR. SMITH: Object to form. You can
25 answer it.

Standard Supplement Report

Reported Date: 05/24/14 Time: 03:05 Case: 14-041539 (018) Page: 1
Code: 21-886 SS Crime: CRIME A/NATUR Class:
currence Date: 05/24/14- Day: SATURDAY - Time: 03:05-
Status: AS ASSIGNED Closing Officer: 001496 HIGGINBOTTOM,
Location: DOWNTOWN OKLAHOMA CITY, OK RD: 2505

NARRATIVE

Third Detective Contact with Terri Morris - Victim
Det. Gregory

It was learned that unknown profiles were found on SU Holtzclaw's outside pants zipper flap. The profiles were of female DNA it appeared. The DNA did not match that of SU Holtzclaws girlfriend or that of VI Ligans. Terri was not Buccal Swabs due to her uncooperation in the past and the amount of time from her assault until the time of Detective contact (see supplementals). It was determined for comparison analysis of this new found DNA Terri would need to be compared if she would submit to Buccal swabs.

I checked EJUS and I found that Terri had been placed on arrest for misdemeanor warrants. Terri had been in the Oklahoma County jail for just under a week.

On 07/10/14 at 1315 hours, Lt. Muzny and I went to see if Terri would submit to a Buccal Swab. As soon as I seen Terri she advised she was happy to see me. Terri advised, "Detective Gregory, there is something I've wanted to tell you!" This was immediately said when she seen me. Terri was then taken to an interview room at the county jail.

Terri immediately told me once in the room that she gave me the wrong location to where her assault happened. Terri advised she gave me the wrong location simply because she didn't want her boyfriend Sheldon to know she 'fell off the gon' and was back on drugs. Terri advised the incident took place at Liberty Station. Terri said she feels safe in the County Jail knowing the officer can't get to her and wanted to speak with me. Terri advised she does want to proceed with going to court against the officer.

Because Terri now wanted to cover the incident with new information a new interview needed to be conducted. It was at this time I began the recorder. Terri clearly stated the above listed information again. Terri advised several times that the assault itself happened as she stated and the description of the officer was the same. Terri however was apologetic in telling me that she gave the wrong location information solely because she didn't want her boyfriend to know she was back on drugs. I advised Terri I asked why she didn't say anything when I specifically asked her if she remembered being stopped by him at Liberty Station. She again said she didn't want her boyfriend to know. Terri acknowledged if he knew she was at this apartment complex he would know she was using drugs.

Terri made it clear she didn't trust the police and really didn't after this incident. Terri said she kind of trusted me however but that was it.

When Terri first disclosed the assault to officers her boyfriend was there. I asked her why she didn't tell me later. Terri would only say it was because she didn't want him to know and now she feels safe from the officer in the county jail. Terri advised her goal is to seek rehabilitation. Terri advised

Standard Trailer - First Page

Reporting Officer: GREGORY, ROCK Number: 001332 Date: 07/24/14 Time: 14:25
Typed by: MUZNYTA Number: 909 Date: 07/24/14 Time: 14:32
Approving Officer: MUZNY, TIMOTH Number: 000909 Date: 07/24/14 Time: 14:32

(37)

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 S t a n d a r d C o n t i n u a t i o n P a g e
 =====

Reported Date: 05/24/14 Time: 03:05 Case: 14-041539 (018) Page: 2
 Code: 21-886 SS Crime: CRIME A/NATUR Class:

she wants to get clean. Terri said she doesn't want to leave jail until she gets drug rehab and not 'return to the east side'. I advised Terri whether she testifies or not on this case I will check into rehab for her. I made it clear to Terri I had nothing to do with that decision however. Terri understood.

Terri advised she did however want to go to court. Especially if the second victim is going forward she wanted to do her part to tell her story as well.

Terri still was thinking it was 6 to 8 days before she told her boyfriend but she really didn't know for sure. Terri still thought maybe around 05/20/14 or 05/21/14 but she had no idea of when it could be for sure.

Terri said she was at Liberty Station. The officer whom she said was exactly as she described on her previous interview with me (See 2nd Contact supplemental) was talking with some people at this location. He seen her on a porch. Terri left and it was like he left when she did. Terri went through the main gates on the NE corner from what was understood. Terri noted the time to be past sunset and it was 9 pm she stated.

Terri went South bound and he stopped her right there on Lindsay by the Liberty Station Apartments. The officer called her T.T. and this made her mad since she didn't know him. Terri advised she doesn't trust the police. He took her purse and had her sit down. It was around this time he found a crack pipe. The officer in the older black and white car went southbound to NE 24th. HE went around the corner and parked. Terri was trying to get him to step the pipe out as other officers do.

The officer kept talking about taking her to jail. Terri said he checked her for warrants or at least he acted like he did. The officer just sat up in the front seat looking and twirling her crack pipe with his fingers.

The officer got out and went to the driver's side passenger door where she was sitting. The officer spoke about either taking her jail. He opened the door and asked her if she had a bra on. Terri said it was obvious she didn't have a bra on. Terri told him no but he had her lift her shirt. Terri said she did expose her breasts doing this but pulled her shirt back down.

The officer then asked if she had panties on and she said no. He told her to unzip her pants. He had been telling her to cooperate basically to let her go or to jail. Terri unzipped her pants. He took his fingers and moved the flap of her pants. I asked Terri if he could see her vagina and she stated he could see her vagina by doing this.

The officer then asked her to 'give him head' for about two minutes. Again the jail was stressed. Terri said she turned and he had his penis already outside his pants. Terri said she just turned her head and he had his penis put in her mouth. She performed oral sex on him for about two minutes before he stopped. Terri said at no time did she get out of the car. Terri also denied that she had her hands on the top of the car. Terri was always in the back seat for the entire assault.

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 S t a n d a r d T r a i l e r - C o n t i n u a t i o n
 =====

Reporting Officer: GREGORY, ROCK Number: 001332 Date: 07/24/14 Time: 14:25
 Typed by: MUZNYTA Number: 909 Date: 07/24/14 Time: 14:32
 Approving Officer: MUZNY, TIMOTH Number: 000909 Date: 07/24/14 Time: 14:32

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Standard Continuation Page

Reported Date: 05/24/14 Time: 03:05 Case: 14-041539 (018) Page: 3
Code: 21-886 SS Crime: CRIME A/NATUR Class:

The officer then just closed the door and said he would take her on. Terri said she would just walk and he said he 'wanted to make sure she was safe'. Terri wanted to go right to her uncle's house on Urban League St. which was close by. Terri said she wanted to tell him she wouldn't tell anybody but she said she knew better than say that so she didn't.

Terri then began to give directions as to where he went. He turned on the next street going the wrong way. She spoke about going to a field up by Hill Street. I asked about her grandma's house by there but she was adamant that he didn't know that. Terri then said he didn't stop long because she began to get excited about the field in fear. He then turned and eventually went back to let her out by Urban League to go to her uncles house.

Terri also signed the waiver for body search so I could compare her buccals with any available evidence. I took from her person four buccals which were packaged accordingly. These buccals were submitted to Serology thereafter.

Terri made it evidence she wanted to go to court. She wanted to press charges on the officer. Terri said since she has been clear headed she wants to proceed in going all the way with the investigation and criminal charges on the officer.

Terry advised she could show us where she went. Terry was then checked out of the Oklahoma County Jail for a short period of time by Lt. Muzny and me. For the exact location see Det. Gregory supplemental on crime scene location.

The above interview was a brief overview. For exact information and for any discrepancies see audio recording or transcript of interview.

Standard Trailer - Continuation

Reporting Officer: GREGORY, ROCK Number: 001332 Date: 07/24/14 Time: 14:25
Typed by: MUZNYTA Number: 909 Date: 07/24/14 Time: 14:32
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