

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO: 98-5739 CF10A
JUDGE: ALFRED HOROWITZ

STATE OF FLORIDA,]
]
 Plaintiff,]
]
 vs.]
]
 ERNESTO BEHRENS,]
]
 Defendant.]
 -----]

BROWARD COUNTY COURTHOUSE
ROOM 519
201 SOUTHEAST 6TH STREET
FORT LAUDERDALE, FLORIDA
SEPTEMBER 12, 2000

APPEARANCES: MICHAEL J. SATZ, STATE ATTORNEY
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Assistant State Attorney
Appearing on behalf of the Plaintiff

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PROCEEDINGS AT TRIAL
VOLUME V

COPY

I N D E X

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<u>WITNESS</u>	<u>D</u>	<u>C</u>	<u>RD</u>	<u>RC</u>
██████████ ██████████		577	634	
Jean Swaby	656	674	682	684
Sgt. Archie Moore	685	696	705	
Sharon Hinz	710			

EXHIBITS ENTERED

State's Exhibit No. 16	665
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1 Q. And is that the window the person came
2 through?

3 A. Yes, it is.

4 Q. Would you agree that the chairs
5 underneath the window are about a foot underneath
6 the window?

7 A. No.

8 Q. No. How far would you say they are?

9 A. I would say it's under a foot.

10 Q. Under a foot?

11 A. Less than a foot.

12 Q. But you've never measured that window
13 yourself, have you?

14 A. No. But I still have the chairs.

15 Q. Is it possible that the window is four
16 foot?

17 A. I'm only five, three.

18 Q. You're only five foot three?

19 A. That would put that window --

20 Q. Then would you agree, if you're saying
21 the window is three foot and the chair is about
22 about two --

23 A. I didn't -- I said it was less than a
24 foot.

25 Q. Okay.

1 A. Those chairs are about two and a half
2 feet. I still have them. They come up to my
3 hips.

4 Q. Your chairs are about two and a half
5 feet?

6 A. The backs come up to about my hips, waist
7 level.

8 Q. Okay. And you would agree that the backs
9 don't even go up to the -- don't even reach the
10 cill of the window?

11 A. No. I'd say it's probably about six
12 inches.

13 Q. I know I asked you this. You never
14 unlocked that window; correct?

15 A. No.

16 Q. Do you know whether your mother had ever
17 unlocked that window?

18 A. I do know that my mother had opened the
19 windows in the apartment when I was not home.

20 Q. When would that be in relation to May
21 12th, 1995?

22 A. That would have been at any time that she
23 had been in the apartment.

24 Q. Okay. And we know that it was for at
25 least a month --

1 A. Right.

2 Q. -- that she wasn't there?

3 You had nobody in your apartment or
4 living with you at that time; correct?

5 A. No, I did not.

6 Q. After this incident was over, you said
7 you heard a person grab his clothes and --

8 A. Yes.

9 Q. -- run down the stairs?

10 A. Actually, it seemed that they skipped a
11 few, that they didn't hit every single stair.

12 Q. So they were moving at a pretty good
13 speed moving down those stairs?

14 A. Well, it's not a big stairwell. I could
15 get downstairs skipping.

16 Q. Then you hear the crash of the chair
17 against the window?

18 A. Yes. The chair definitely hit the
19 window.

20 Q. And based on your knowledge, before you
21 went to bed and when you saw the chair when you
22 woke up, would you agree that that's the chair
23 that slammed into the wall?

24 A. There was a chair. I do not really
25 remember. But there was a chair in the far corner

1 in one corner where the window was and there was a
2 chair where the other corner of the window was.

3 Q. Okay.

4 A. And there were chairs around the table.
5 And when I woke up and went down there, there was
6 definitely a chair right underneath that window.

7 Q. Which was not definitely there when you
8 went to bed; correct?

9 A. Yes.

10 Q. Do you have any suspicion at all that the
11 person came in or left your house any other way
12 besides that particular window?

13 A. No. Because of where the dirt tracks
14 were in the apartment. He came through the
15 window, left the window. The tracks went through
16 my mother's bedroom. Scoped out the downstairs
17 first. Go upstairs. They go partially down the
18 hallway to the opposite bedroom and then they go
19 into my bedroom.

20 Q. And the tracks you're talking about
21 obviously are the mud tracks from the boots or
22 whatever the person was wearing?

23 A. Yes.

24 Q. Was it raining out that night?

25 A. Not when I arrived home.

1 Q. Okay. So you don't know why the ground
2 would be wet?

3 A. It's always wet in the back, from my
4 recollection, because there are sprinkler heads
5 that run every day back there.

6 Q. Were the blinds to the window open before
7 you went to bed?

8 A. They may have been.

9 Q. Okay. I'm showing you again Defense
10 Exhibit D for identification.

11 The window we're talking about, is that
12 the window?

13 A. That is the window.

14 Q. Do you see how the blinds are raised on
15 that window?

16 A. Yes, I do.

17 Q. Is that the way the blinds were raised
18 that night when you went to bed?

19 A. I cannot recall for sure anymore.

20 Q. Well, Ms. [REDACTED] if you're living in this
21 house for a month, is there any reason why you
22 would have the blinds wide open like that on the
23 window, the blinds on a first storey window?

24 A. I was not in the habit of having --
25 knowing that I had to keep my blinds closed all

1 the time. Yes. I would have blinds open at night
2 on the first floor.

3 Q. Well, Ms. [REDACTED] would you agree that this
4 is more than open blinds? In fact, the blinds are
5 open all the way up. Would you agree with that?

6 A. Yes.

7 Q. A girl living by herself shouldn't have a
8 window in the first storey with the blinds open
9 all the time?

10 MR. SEGAL: Object. Asked and answered.

11 THE COURT: I'm going to sustain the
12 question as the question is raised. You can
13 restate the question as to what perhaps she would
14 do as a general rule. She can't answer that.

15 BY MR. TERRELL:

16 Q. Why would you have your blinds open on a
17 first storey window open all the time?

18 A. I don't know at this point. I know I
19 wouldn't live that way anymore.

20 Q. And even though the blinds may have been
21 open by you and pulled all the way to the top, you
22 never would have opened that window?

23 A. No, I haven't.

24 Q. Does the sunlight come through that
25 window?

1 A. In the mornings, it does.

2 Q. The lighting in your house, when you went
3 to bed that night, was it dark in your house?

4 A. No.

5 Q. What light did you have on?

6 A. My parent's bedroom light was on.

7 Q. You left it on when you went to sleep?

8 A. Yes, I did.

9 Q. Okay.

10 A. There was also a livingroom light on.

11 Q. Which is downstairs?

12 A. Yes.

13 Q. Okay.

14 A. And I believe that's all the lights that
15 I did leave on. It was a loft apartment so there
16 would be some light that would illuminate upstairs
17 for you to see.

18 Q. To the best of your knowledge, no lights
19 were left on upstairs; right?

20 A. No.

21 Q. You don't have a night light in your
22 bedroom?

23 A. No, I don't.

24 Q. So, in fact, it was dark in your bedroom;
25 correct?

1 A. Yes.

2 Q. You have a window in your room?

3 A. Yes, I do.

4 Q. Those blinds were shut; correct?

5 A. Uh-huh.

6 Q. So no light can come in from the blinds?

7 A. No. There are street lights out on the

8 lot below so I'm not going to have those open.

9 Q. When you got into bed, you were naked --

10 A. Yes.

11 Q. -- correct?

12 You fell asleep and the next thing you

13 know, a light wakes you up?

14 A. Yes.

15 Q. And, in fact, you look up and you see a

16 flashlight; correct?

17 A. Yes, I did.

18 Q. And your first instinct at that point is

19 to turn around and go back to sleep?

20 A. Yes, it was.

21 Q. So after you see a flashlight, you think

22 to yourself: Something's not right about that

23 scene?

24 A. Yes.

25 Q. So what you do is turn around and talk to

1 the person?

2 A. I turn back around to figure out what was
3 in my doorway.

4 Q. Okay. And, in fact, isn't the first
5 thing you said was hello to the person in your
6 doorway?

7 A. Yes, I think it was.

8 Q. And the person responded hello?

9 A. No. The person did not respond hello.

10 Q. The person responded what?

11 A. The person wanted to know where my friend
12 was.

13 Q. Okay. And what was your response to him?

14 A. My response was that there was no one
15 else here.

16 Q. Your first response wasn't to scream?

17 A. No, it was not.

18 Q. Your first response wasn't to get out of
19 my house?

20 A. No, it was not.

21 Q. Okay. And you figured there is no reason
22 to scream because the neighbors weren't home;
23 correct?

24 A. No. That's not correct.

25 Q. That's not correct?

1 A. My first reason not to scream was to try
2 to keep the situation somewhat under control. I
3 didn't know who this person was. I didn't know
4 what they wanted, didn't know how bad it was going
5 to get. I was trying to maintain some control.

6 Q. Okay. Do you ever remember answering
7 that question differently as to why you didn't
8 scream at that point?

9 A. Yes. I've looked over the various
10 depositions over the past five years, including
11 from the hearing last week and, I ended up
12 throwing them out because I found discrepancies
13 from what I said from questions that you asked me
14 and Dennis Segal asked me and I don't find them
15 reliable to go on. What I'm saying today is --

16 Q. But it's your testimony in these
17 depositions. Would you agree with that?

18 A. No, I wouldn't. At the hearing, I never
19 said fake Hispanic. No. I said slight.

20 Q. May I approach the witness?

21 A. Yes.

22 Q. This is your deposition taken on May 5th,
23 page 16, line six, seven, eight, nine and the
24 question right before that.

25 A. Do you want me to read it outloud?

1 Q. Just refresh your recollection.

2 Did you have a chance to read that?

3 A. Uh-huh.

4 Q. And in this deposition, the question was
5 asked to you: Your first impression wasn't to
6 scream. That question was asked to you; right?

7 A. Yes.

8 Q. And you gave a reason as to why you
9 didn't scream; right?

10 A. Yes, I did.

11 Q. Your answer: Actually, no, because there
12 was nobody living next door -- next to me at that
13 point in time and I was pretty groggy and trying
14 to figure out and process everything that was
15 going on right then and there.

16 MR. SEGAL: I think Mr. Terrell should
17 read it precisely as it is. He added a word. If
18 he could go back over it?

19 THE COURT: Read it slowly.

20 BY MR. TERRELL:

21 Q. Your answer: Actually, no, because there
22 was nobody living next door -- next to me at that
23 point in time and I was pretty groggy and trying
24 to figure out -- process everything that was going
25 on right then and there.

1 MR. SEGAL: Okay. Yes.

2 THE WITNESS: So I would say that we were
3 both right.

4 BY MR. TERRELL:

5 Q. Okay. So you were right -- you told the
6 truth at that time, did you not?

7 A. Yeah.

8 Q. The guy that came in your house asked you
9 where your friend was; correct?

10 A. Yes.

11 Q. And at that point, you're thinking about
12 he's talking about Rick Vance; correct?

13 A. Yes, I was.

14 Q. And you're laying on your side at this
15 point; correct?

16 A. Yes, I was.

17 Q. And the person's in the hallway with the
18 flashlight?

19 A. Yes.

20 Q. Okay. And you continued this
21 conversation with this gentleman by telling him
22 that this wasn't Rick Vance's home and by telling
23 him there was nobody home; correct?

24 A. Yes.

25 Q. Rick Vance is your boyfriend; correct?

1 A. Rick Vance was my boyfriend.

2 Q. Okay. And had been your boyfriend for
3 about four years; correct?

4 A. Yes, he was.

5 Q. And you two moved down here from New
6 York?

7 A. Yes, he did.

8 Q. In fact, he lived in that apartment with
9 you?

10 A. Up until January.

11 Q. Okay. And he slept in that bed with you;
12 correct?

13 A. Yes, he did.

14 Q. Living with Rick Vance for four years,
15 you got to know him pretty well, did you not?

16 A. Yes.

17 Q. Physically, you got to know his body
18 pretty good?

19 A. Yes, I did.

20 Q. Rick Vance is five foot seven inches
21 tall, is he not?

22 A. Five, eight.

23 Q. Do you know that for sure?

24 A. No.

25 Q. So it's possible Rick Vance is five foot

1 seven?

2 A. It is possible.

3 Q. Kind of short for a man. Would you
4 agree?

5 A. It's average.

6 Q. Five, seven is average for a man, in your
7 opinion?

8 A. (No verbal response)

9 Q. Using Rick Vance as five, seven, you
10 estimate the perpetrator who came through your
11 house -- your room, I'm sorry, to be five, seven,
12 did you not?

13 MR. SEGAL: She never testified that she
14 used Rick Vance as a guide. That's not her
15 testimony.

16 THE COURT: She can respond to the
17 question.

18 MR. SEGAL: Assuming facts not in
19 evidence is my objection.

20 THE COURT: Restate your question.

21 BY MR. TERRELL:

22 Q. Using Rick Vance as a guide, you say that
23 the gentleman that came through your room is about
24 five foot seven; correct?

25 A. I was not using Rick Vance as a guide. I

1 used my doorframe as a guide and I would say that
2 the silhouette in my doorframe was bigger than
3 Rick Vance.

4 Q. Okay. And your estimate was that he was
5 five foot seven, the person that came into your
6 room?

7 A. I said in my original statement to the
8 police --

9 Q. Yes.

10 A. -- he was five, seven to five, nine.

11 Q. You said five, seven to five, nine to the
12 police?

13 A. Yes.

14 Q. Okay. And you've testified to that here
15 today; correct? Five, seven to five, nine; right?

16 A. (No verbal response)

17 Q. Again, have you had a chance to review
18 the police statement that you made that night?

19 A. I had a chance to review one police
20 statement.

21 Q. Okay.

22 A. My understanding is, there is actually
23 more than one.

24 Q. Okay. And when you reviewed that police
25 statement, did you see anywhere in that police

1 statement where you said the guy was five, foot
2 seven to five foot nine?

3 A. No. But I'm testifying to what I
4 actually recall and not what is necessarily in
5 those statements because they're not 100 percent.

6 Q. Would you agree that night you talked to
7 the police 45 minutes after the incident, you said
8 five foot seven?

9 A. To five, nine.

10 Q. I'm going to show you the statement and
11 I'm going to ask you to point where in the
12 statement you said five foot seven.

13 A. Again, it's a transcript; right? It's
14 not the tape recording. It's probably in the tape
15 recording. The transcripts are not 100 percent.

16 Q. It's your opinion anyway that they left
17 that out of the transcript?

18 A. It's my opinion all the transcripts are
19 somewhat different from what was actually said,
20 including the one from two weeks ago.

21 Q. Okay. Do you remember coming into the
22 courthouse and giving a sworn deposition on May
23 5th of this year?

24 A. Yes, I do.

25 Q. Okay. Do you remember being asked a

1 question, how tall the perpetrator was that came
2 through your door?

3 A. Yes. I said five, seven.

4 Q. You didn't say five foot seven to five
5 foot nine, did you?

6 MR. SEGAL: I'll object to any discussion
7 of what she said without referring to specifically
8 what she actually did say.

9 THE COURT: Well --

10 MR. TERRELL: What's the objection,
11 judge?

12 THE COURT: If you're going to use this
13 May 5th depo to impeach her, then show her the
14 question and answer that you feel there was an
15 inconsistent statement there.

16 MR. TERRELL: I'm not impeaching her.

17 MR. SEGAL: Refer to page 14, lines three
18 through seven.

19 THE COURT: Are you using that depo for
20 impeachment purposes?

21 MR. TERRELL: She said five foot seven,
22 if that's what it says.

23 THE COURT: Okay. Next question.

24 MR. TERRELL: Thank you.

25 BY MR. TERRELL:

1 Q. So basically, in any of the sworn
2 statements you gave up until now, you never said
3 five seven to five, nine; correct?

4 A. No. I said five, seven initially from
5 that night and then I continually said five,
6 seven.

7 Q. When was the last time you spoke to the
8 attorney, last week?

9 A. Last week.

10 Q. You didn't talk to him last night?

11 A. No.

12 Q. Ms. [REDACTED] your testimony is, the last
13 time you spoke to Mr. Segal is last week?

14 A. He spoke to me last night, came out and
15 told me I had to testify today.

16 Q. So you spoke to him last night about
17 this?

18 A. I did not -- about what?

19 Q. About --

20 A. About the trial.

21 Q. Yes.

22 A. The only thing Dennis Segal said to me,
23 he told me I was going to have to appear again
24 today.

25 Q. Okay.

1 A. That I was not going to get to testify
2 yesterday.

3 Q. But after five years, your testimony is
4 he was five, seven to five, nine; correct?

5 A. I spent the last five days pretty much by
6 myself without my depositions and wrote out three
7 times to my best recollection what do I really
8 remember happening and what do I really remember
9 not happening.

10 Q. Okay. And Rick Vance is 38 years old;
11 right?

12 A. Yes, he is.

13 Q. He was 38 years old at that time;
14 correct?

15 A. Thirty-eight years old at that time?

16 Q. Yes.

17 A. No. Not if he's 38 years old today.

18 Q. Is he 38 years old today?

19 A. Yes.

20 Q. Who is Bobby Keis?

21 A. Bobby Keys.

22 Q. Keys. Sorry.

23 A. He was a man that I was dating at the
24 time this situation occurred.

25 Q. Okay. The person that came to your room

1 and the conversations you had with him, you were
2 able to detect a faint accent?

3 A. I believe you corrected me as faint
4 Hispanic.

5 Q. Possibly a young voice; correct? Well, I
6 should say the voice sounded young to you;
7 correct?

8 A. No. I said that the voice was similar to
9 my own as far as tone, degree of scratchiness and
10 I never said young 20s. I said 20s.

11 Q. Okay. I'm going to show you the
12 statement that you gave to the police that
13 particular night and ask you to review this
14 question and answer, page four if you would.
15 There's no lines at the end of the page.

16 A. Yes.

17 Q. The detective asked you: He had a young
18 voice; right?

19 MR. SEGAL: Objection. Quote precisely.
20 Not characterize the question.

21 THE COURT: If you're going to use that
22 prior statement for impeachment, then just recite
23 the question and answer that's written there.

24 MR. TERRELL: The detective asked you,
25 okay, and you said: From his voice, you could

1 tell that he was kind of young; correct?

2 A. Would you -- would you read the whole
3 thing?

4 Q. Okay. And you said: From his voice, you
5 could tell he was kind of young?

6 A. Can you read the line after that.

7 Q. Your answer?

8 A. Yes.

9 Q. Yes.

10 A. All of it.

11 Q. Well, Ms. [REDACTED] if I'm missing something,
12 please --

13 A. Can I read it?

14 MR. SEGAL: The next question and answer,
15 if he could do that, do its entirety.

16 THE WITNESS: I want to be able to
17 explain.

18 THE COURT: You can read it over to
19 yourself. Once you read it over yourself, just
20 let Mr. Terrell know.

21 THE WITNESS: Okay.

22 BY MR. TERRELL:

23 Q. The person comes into your room. He's
24 got a flashlight in one hand; correct?

25 A. Yes.

1 Q. Okay. He tells you to lay on your back,
2 lay flat on your back?

3 A. At a point; yes.

4 Q. And you comply; correct?

5 A. Yes.

6 Q. He tells you he wants you to feel
7 something; correct?

8 A. Yes.

9 Q. And he lays something on your stomach
10 that you believe to be a knife; correct?

11 A. Yes.

12 Q. You never saw this object, did you?

13 A. No, I did not.

14 Q. When he's laying the knife or the object
15 that you feel to be a knife on your stomach,
16 where's his flashlight?

17 A. At that point, I believe it went to my
18 nightstand. I'm not really sure. I already had
19 the pillow over my head. I had the pillow over my
20 head before he climbed up onto the bed so I cannot
21 say for sure what exactly he did.

22 Q. But your heard something laid down on the
23 nightstand right next to you -- something laid
24 right on the nightstand right next to you;
25 correct?

1 A. I cannot say that 100 percent.

2 Q. Now, the nightstand is actually
3 directly -- if you're laying flat on your bed, is
4 directly to your left side; correct?

5 A. Yes.

6 Q. The other nightstand is on the other side
7 on the right-hand side of the bed; correct?

8 A. Yes.

9 Q. You don't ever remember that person going
10 to the right side?

11 A. No.

12 Q. At all times, he stayed on the left side
13 of your bed?

14 A. As far as I know.

15 Q. To the best of your knowledge; correct?

16 A. (No verbal response)

17 Q. Now, he takes your hand and he places it
18 on his penis; correct?

19 A. Yes.

20 Q. Let me -- and for awhile, you have to
21 masturbate him; correct?

22 A. That is correct.

23 Q. And soon thereafter, the person gets on
24 top of you; correct?

25 A. No. The person was already on top of me.

1 Q. He sits on top of your chest with his
2 knees under your armpits; correct?

3 A. At a point; yes.

4 Q. So actually, the weight of his body is on
5 you; right?

6 A. There is weight on my body. It depends
7 on what -- you know, what situation you're talking
8 about because there were various situations.

9 Q. Okay. Well, after you masterbate him,
10 there comes a time when you have to give him oral
11 sex or fellatio; correct?

12 A. Yes.

13 Q. Now, at this point, he's straddling you?
14 He's actually sitting on your chest with his knees
15 under your armpits; correct?

16 A. Yes.

17 Q. You're flat on your back; right?

18 A. Yes.

19 Q. Your head's against the wall?

20 A. No. It was not against the wall.

21 Q. It wasn't against the wall?

22 A. It was not that far up. It was near the
23 wall.

24 Q. There's not a headboard on that bed?

25 A. Yes, there was a headboard.

1 Q. And your head was not touching the
2 headboard?

3 A. I don't recall.

4 Q. Okay. At this time, he wants you to
5 perform oral sex; correct?

6 A. Yes.

7 Q. And while you're performing oral sex, you
8 feel the man get hard? You feel his penis get
9 erect?

10 A. It was already erect.

11 Q. It was already erect?

12 A. He was -- he'd become -- he started to
13 become aroused during the masturbation.

14 Q. Okay. And at this point, how long did
15 the fellatio last?

16 A. A minute or so.

17 Q. And to the best of your knowledge, he did
18 not ejaculate in any way in your mouth; correct?

19 A. No.

20 Q. But you can tell by now by feeling him
21 and fellatio, that the man was circumcized;
22 correct?

23 A. I do believe the man to be circumcized.

24 Q. Bobby Keis and Rick Vance, are they
25 circumcized?

1 A. They are circumcized. My fiance is not
2 circumcized and there are --

3 MR. SEGAL: Objection, your honor.

4 MR. TERRELL: I didn't ask anything about
5 the fiance at this time.

6 THE COURT: It would be helpful,
7 Ms. [REDACTED] if you try to respond to the question.
8 You may complete your answer but just try to
9 respond to the question.

10 Restate your next question.

11 BY MR. TERRELL:

12 Q. During the time of the oral sex, did you
13 remember him saying --

14 A. Not specifically; no.

15 Q. And there came a time when he finally
16 takes his penis out of your mouth and asks you to
17 roll over now on your stomach; correct?

18 A. That's correct.

19 Q. And that's when he's fondling your
20 buttocks and legs?

21 A. Correct.

22 Q. He's rubbing all over your body at this
23 time; correct?

24 A. Yes.

25 Q. He wasn't wearing gloves, was he?

1 A. No.

2 Q. You feel at one time he was going to take
3 you anally; is that correct?

4 A. That's correct.

5 Q. But that never happened?

6 A. No, it did not happen.

7 Q. Now, during the time that he's rubbing
8 your buttocks and your back and rubbing on you,
9 you don't feel a knife, do you?

10 A. No, I do not.

11 Q. You don't feel a flashlight, do you?

12 A. No, I do not.

13 Q. Do you know -- do you see any light in
14 the room at all?

15 A. No.

16 Q. Are you prevented from seeing light at
17 this point?

18 A. Yes, I am.

19 Q. In fact, you don't feel the knife and/or
20 flashlight for the rest of the night?

21 A. No.

22 Q. I should say the incident; right?

23 A. Right.

24 Q. He then asks you to roll back over on
25 your back; correct?

1 A. Yes. I was asked to roll back over on my
2 back.

3 Q. Okay. At this point, you're on the left
4 side of your bed; correct?

5 A. I have pretty much been on the left side
6 of my bed as we're laying in it the whole time.

7 Q. And just so we're clear. The left side
8 of the bed -- let's do it this way. I'm showing
9 you what's been marked Defense 5.

10 Do you recognize that picture?

11 A. Yes, I do.

12 Q. Okay. And does that accurately depict
13 the scene, your bed?

14 A. Yes.

15 Q. And would you agree that that's the sides
16 of the bed that you were laying on? That's the
17 left side of your bed?

18 A. Yes. I would agree, as you're in it. If
19 you were looking at it, it would be the right
20 side.

21 Q. The left side of the bed is the side with
22 all the books that are on the floor; correct?

23 A. Yes.

24 Q. Actually, here's a better one. Exhibit
25 2, Defense Exhibit 2, this would be the left side

1 of the bed; correct?

2 A. Yes.

3 Q. Which is right next to the nightstand;
4 correct?

5 A. One of them; yes.

6 Q. Okay. And let's just make that clear for
7 the record.

8 We're talking about the nightstand with
9 the lamp on it and the telephone; correct?

10 A. Yes.

11 Q. During this whole incident, you're on the
12 left side of the bed; right?

13 A. Yes.

14 Q. At this point, he gets off your body;
15 correct?

16 A. At what point:

17 Q. At the point now you're laying -- rolling
18 and you're on the left side of -- after he's
19 fondled your buttocks and lower back area?

20 A. He's where when I'm on my back?

21 Q. Is he still on you at this time?

22 A. He shifted his body so I could flip over
23 so he was pretty much partially on me.

24 Q. Okay. So it was almost like, at this
25 point, he had one foot on the floor and maybe just

1 a little bit of his leg or body on you; correct?

2 A. I can't say absolutely what he was doing
3 with his body.

4 Q. Would anything refresh your recollection?

5 A. I believe he might have put a foot on the
6 floor, I mean.

7 Q. But there was still at least a part of
8 that person's body on you; correct?

9 A. Yes, I believe so.

10 Q. At this time, you hear him masterbating?

11 A. As I'm rolling over?

12 Q. No. As you're already laying over on
13 your back, left side of the bed, the person is at
14 the very edge of the bed possibly one leg off the
15 bed.

16 Do you hear him masterbate at this time?

17 A. Yes.

18 Q. And it's actually at this time that he
19 asks you to fondle yourself; correct?

20 A. Yes. He still had me fondling myself.

21 Q. You were doing that before this
22 particular incident?

23 A. It started just before he told me to roll
24 over.

25 Q. A short period of time goes by and you

1 feel the person ejaculate on your thigh; correct?

2 A. Yes.

3 Q. In fact, it was your left thigh, was it
4 not?

5 A. Yes, I believe so.

6 Q. If it's on your left thigh and on the
7 left side of the bed, then you're on the edge of
8 the bed; correct?

9 A. I don't believe I was right up on the
10 edge of the bed. I was left of center.

11 Q. After he ejaculates, you said he picked
12 something up, the clothes that you just took off
13 that night and wipes your leg; correct?

14 A. Yes. He picked something up off the
15 floor to wipe my leg.

16 Q. And I believe you told the state that the
17 person just left it right on you, the article of
18 clothing?

19 A. Yes.

20 Q. That article of clothing is your slip
21 dress; correct?

22 A. I did say it was a slip dress lately
23 and --

24 Q. Excuse me?

25 MR. SEGAL: Your honor, could she finish

1 her question -- finish her answer?

2 MR. TERRELL: I didn't hear what she said.

3 THE COURT: Go ahead, ma'am. You can
4 finish your answer.

5 THE WITNESS: Okay. I believe that I was
6 incorrect when I said slip dress to you and I
7 believe that the reason why I said it was because
8 you kept shoving the picture of it in my face
9 during the deposition and I kind of latched onto
10 it.

11 BY MR. TERRELL:

12 Q. Is that so?

13 A. Yes.

14 Q. So then I'm the one that came up with the
15 idea that this was a slip dress, according to you?

16 A. Yes.

17 Q. And the first times you said a slip dress
18 was at a deposition five months ago?

19 A. I believe so.

20 Q. Why are you looking at the state
21 attorney?

22 THE COURT: Excuse me, Ms. [REDACTED] First
23 of all, let him have the opportunity to finish his
24 question before you start to answer the question.

25 MR. SEGAL: And ask him to act

1 professionally and not act in the way that he's
2 been acting, your honor.

3 BY MR. TERRELL:

4 Q. Ms. [REDACTED] your testimony is, the first
5 time that you mentioned to anybody that a slip
6 dress was used to clean you up was in a deposition
7 five months ago?

8 A. Yes. My original statement to the police
9 was that it was the shirt. And I do believe I'm
10 right about that.

11 Q. What's --

12 THE COURT: Do you want to take a break?

13 THE WITNESS: I just need a minute.

14 THE COURT: Do you want to take a short
15 break?

16 THE WITNESS: Yeah.

17 THE COURT: All right. Ladies and
18 gentlemen. We're going to take a very short
19 break.

20 Don't leave any personal items in the
21 courtroom. Take your personal items with you.
22 Don't discuss this case among yourselves and don't
23 discuss it with anyone else. Certainly don't form
24 and fixed opinions about the merits of this case.

25 Please be outside these doors no later

1 than 11:30. Thank you very much.

2 [WHEREUPON, the jury panel left the
3 courtroom]

4 THE COURT: Okay. The record will show
5 the jury's left the courtroom. Mr. Behrens, all
6 counsel are present.

7 Ms. [REDACTED] during this break, I mean, take
8 a moment to compose yourself but I would ask
9 that you don't discuss your testimony with
10 anybody. And while you're out there, make sure
11 you don't go anywhere near the jury.

12 [WHEREUPON, a short recess was taken]

13 THE COURT: Let the record reflect
14 Mr. Behrens, Mr. Segal, Ms. Shelowitz, Mr. Terrell
15 are all present.

16 Ms. [REDACTED] welcome back.

17 THE CLERK: Did you need more water?

18 THE WITNESS: No. I'm okay.

19 THE COURT: Okay. Have a seat, Ms.

20 Are they out there, Henry? All right.

21 Bring the jury in, please.

22 Folks seated in the rear, you need to
23 stand when the jurors come in. Thank you.

24 THE SHERIFF: We're missing one, judge.

25 THE COURT: I thought you said they were

1 all there.

2 THE SHERIFF: They're all there.

3 THE COURT: Okay. Bring in the jury,
4 please.

5 [WHEREUPON, the jury panel entered the
6 courtroom]

7 THE COURT: Welcome back, ladies and
8 gentlemen, and please have a seat.

9 Mr. Terrell, you may continue.

10 BY MR. TERRELL:

11 Q. Ms. [REDACTED] right before we took that
12 little break, you mentioned that the first time
13 you said anything about using the slip dress is
14 when I shoved it in your face during deposition?

15 A. Correct.

16 Q. The state attorney was in that
17 deposition, was he not?

18 A. Yes, he was.

19 Q. At any time, did you make any kind of
20 objection to anything I was doing during that
21 deposition that you know of?

22 A. No, I did not.

23 Q. At any time during that deposition, was
24 my behavior anything but professional?

25 A. No, it was always professional.

1 Q. Now, the statement you made was that that
2 is -- was the first time you used the term slip
3 dress as the item being used; is that correct?

4 A. That's correct.

5 Q. You remember giving a statement to the
6 detectives in your apartment that night about an
7 hour after the incident; correct?

8 A. Yes.

9 Q. And let's refresh the jury's memory.
10 This is five years ago; correct?

11 A. Yes, it is.

12 Q. I'm referring to page 99. I'm going to
13 ask you to read to yourself right at the middle of
14 the page the next few lines.

15 A. Okay.

16 Q. Now, in this -- that statement, you swore
17 to tell the truth; correct?

18 A. Yes, I did.

19 Q. You were placed under oath and swore to
20 tell the truth?

21 A. Yes.

22 Q. Is it not true -- do you remember giving
23 any statements during that deposition -- I'm
24 sorry -- during that statement to the detectives
25 about a slip dress being used to clean up semen?

1 A. Apparently, I did.

2 Q. In fact, wasn't your statement that the
3 slip dress was used to wipe the semen up?

4 A. Yes, it was.

5 Q. You didn't know me at that time, did you,
6 five years ago?

7 A. No.

8 Q. In fact, right after this incident, you
9 went to the SATC, Sexual Assault Treatment Center?

10 A. Yes, I did.

11 Q. And isn't it true you told -- do you know
12 who Jean Swaby is, by the way?

13 A. No.

14 Q. You were evaluated by a female there;
15 correct?

16 A. Yes.

17 Q. And isn't it true that at the SATC
18 center, that you told Jean Swaby that the slip
19 dress was used to wipe up your leg?

20 A. I don't recall.

21 Q. You don't recall saying that. Okay. You
22 walked the detectives through in your house, did
23 you not --

24 A. Yes, I did.

25 Q. -- the night of the incident?

1 And you pointed things out like the bed?

2 A. Yes.

3 Q. The window?

4 A. Yes.

5 Q. And, in fact, you pointed out a slip
6 dress, did you not?

7 A. Yes, I did.

8 Q. Now, again, you didn't know me at that
9 time, did you?

10 A. No.

11 Q. I had never spoke to you about a slip
12 dress, had I?

13 A. No.

14 Q. I'm going to show you what's State's
15 Exhibit 6.

16 THE CLERK: Seven. It might be in that
17 box there.

18 BY MR. TERRELL:

19 Q. Okay. I'm going to show you what's
20 State's Exhibit 7 for -- do you recognize this?

21 A. Yes, I do.

22 Q. This is your slip dress, is it not?

23 A. Yes, it is.

24 Q. And you pointed this out to Detective
25 Henley, did you not, the crime scene technician?

1 A. I am not a hundred percent anymore about
2 that. I believe that I did. The deposition said
3 that I did.

4 Q. Well, your statement that night said you
5 did, did it not?

6 A. That's what I mean by deposition.

7 Q. So is it still your testimony that the
8 first time anything was said about a slip dress
9 being used to wipe up semen was when I pushed it
10 in your face during deposition? Is that still
11 your testimony?

12 A. It's my testimony because I have not been
13 clear on what had transpired from the time the
14 police came to my apartment.

15 Q. Well, your statements haven't changed all
16 the way through until today, have they?

17 A. Because I'm trying to be a hundred
18 percent sure. And yes, I'm questioning myself
19 more and more.

20 Q. Okay, okay. Well, let me ask you this.
21 Did you point any other clothing out for
22 the detective to collect?

23 A. I don't remember.

24 Q. Have you ever -- in the five years ever
25 heard that any other clothing was used to clean up

1 semen?

2 A. No. But I didn't hear anything about
3 that until May of this year.

4 Q. You didn't hear anything about what until
5 May of this year?

6 A. About evidence collecting or any -- or
7 anything of that nature.

8 Q. Okay. After this person cleans up your
9 leg, you hear him grab his clothes?

10 A. Yes.

11 Q. Take off out of your room; correct?

12 A. Yes.

13 Q. Does he take time to put on his boots?

14 A. I don't know.

15 Q. In fact, you don't think there was time
16 to put on any shoes; correct?

17 A. It would depend on whether they were
18 laced or unlaced.

19 Q. Isn't it true that he was wearing the
20 boots during the whole time?

21 A.. I don't know. There wasn't dirt on the
22 bed so I would say no.

23 Q. Okay. So he grabs whatever clothing at
24 the edge of your bed and takes off down the
25 stairs?

1 A. Yes.

2 Q. You hear him miss stairs?

3 A. Yes.

4 Q. You hear him crash into the wall or at
5 least the chair hit the wall?

6 A. Yes. The chair hit the wall.

7 Q. And then it gets quiet?

8 A. Yes.

9 Q. And you're counting; correct?

10 A. Yes.

11 Q. You soon go downstairs after he's left;
12 correct?

13 A. Yes.

14 Q. And at that time, you see that that's the
15 window where they came in?

16 A. Also where they went out.

17 Q. Because it was wide open; right?

18 A. No. Because that's where tracks went, to
19 the window.

20 Q. But the window was open, was it not?

21 A. Yes.

22 Q. Your first thought at that time is: Let
23 me go upstairs and take a shower? Might as well
24 get ready for work at this point; correct?

25 A. My first thought was: I want to go up

1 and take a shower; yes. And if I just go to work,
2 I can just put all this behind me.

3 Q. So you start to go upstairs and you
4 think: Well, no. No. Let me go downstairs and
5 call the police?

6 A. Yes.

7 Q. You had put on a robe; right?

8 A. Yes, I did. I got that robe from my
9 closet.

10 Q. You didn't put on any underwear at the
11 time?

12 A. No.

13 Q. You didn't put on any pants, shirt or
14 shorts, did you?

15 A. No.

16 Q. So you just had a robe over you?

17 A. Yes, I did.

18 Q. You go down to your mother's room?

19 A. Yes.

20 Q. And you call 911; correct?

21 A. Yes.

22 Q. While you're talking to 911, you don't
23 move from that room, do you?

24 A. No.

25 Q. In fact, you don't move from that room

1 until the police arrive; correct?

2 A. That is correct.

3 Q. And to the best of your knowledge, nobody
4 else was in that house during the time you were on
5 the phone with 911; correct?

6 A. Correct.

7 Q. You didn't by any chance move anything in
8 your apartment before the police got there?

9 A. No.

10 Q. You didn't move the slip dress?

11 A. I don't believe so.

12 Q. You didn't move any of the clothes next
13 to your bed?

14 A. No.

15 Q. In fact, besides the phone, you didn't
16 touch anything before the police got there, did
17 you?

18 A. No.

19 Q. When the police arrived, you're still in
20 your mom's room; correct?

21 A. Yes.

22 Q. Originally, two officers come to the
23 scene; right?

24 A. Yes.

25 Q. Okay. You basically dismiss those

1 officers right off the bat, don't you?

2 A. No, not right off the bat.

3 Q. No. Okay. Did the officers seem to be
4 taking things lightly?

5 A. Yes. I thought that they were.

6 Q. And, in fact, I think you mentioned one
7 of them ripped their pants?

8 A. Yes. They sat in the chair and ripped
9 their pants.

10 Q. And they all got a giggle out of that;
11 correct?

12 A. Correct.

13 Q. You didn't find it funny, did you?

14 A. No.

15 Q. At that point, you walked the detectives
16 through the house; correct?

17 A. No. I believe I walked them through the
18 house before the pants episode.

19 Q. Okay.

20 A. They wanted to check the house to make
21 sure nobody was there. They went upstairs into my
22 bedroom. They checked in the closets and things
23 like that.

24 Q. Okay. But you did eventually walk the
25 detectives through your house; right?

1 A. Yes.

2 Q. And you took them to the bed; correct?

3 A. Yes.

4 Q. And you said that's where it happened;
5 right?

6 A. Yes.

7 Q. On direct examination, you said that you
8 pointed out stains to them, did you not?

9 A. Yes.

10 Q. Isn't it true that you did not see any
11 stains on the bedsheet and you did not point out
12 any stains to the detectives?

13 A. I believe that I did.

14 Q. You believe that you did?

15 A. To the best of my memory, I did.

16 Q. Okay. Would anything refresh your
17 recollection?

18 A. I don't know.

19 Q. Page 47, lines 23, 24, 25, could you
20 please read those lines to yourself.

21 A. Okay.

22 Q. Now, although today on direct
23 examination, you testified, yeah, there were
24 stains and I pointed them out, you were asked that
25 question once before, weren't you?

1 A. Yes.

2 Q. And do you remember how you responded to
3 that question?

4 A. I responded no.

5 Q. That you never saw any stains anywhere,
6 that you didn't point stains out; correct?

7 A. Correct.

8 Q. You don't remember your sheet being
9 stained in any way; correct?

10 A. At the point in time that I answered that
11 question; no, I did not remember.

12 Q. But today, you remember?

13 A. Yes.

14 Q. Well, what detective did you point it out
15 to?

16 A. The stains?

17 Q. Yes.

18 A. I don't know if it was a detective.

19 Q. Okay. It was a crime scene technician,
20 wasn't it, that you were going around showing
21 where everything was in the house? It was a crime
22 scene technician, wasn't it?

23 A. I have -- at this point, I am unsure.
24 There is -- there was somebody there who arrived
25 early on the scene after the two initial officers

1 I believe with the detective. And then there was
2 another technician that came in to do further work
3 when I was leaving at seven o'clock in the morning
4 to go to the clinic. So I -- I am not sure -- I
5 showed so many people the same things. I am
6 not --

7 Q. Oh, it's -- you showed a lot of people
8 the stains on the sheet; correct?

9 A. It started with the two officers, showing
10 them my apartment.

11 Q. And your testimony is, starting with
12 these two first officers, you showed them stains
13 on your sheet?

14 A. I took them upstairs. They saw the bed.
15 I don't know if I said: Hey, look at that. I
16 don't.

17 Q. That's exactly what we're talking about.
18 We're talking about the stains on the sheet that
19 you pointed out, the stains on the sheet?

20 A. At this point, I believe the stains on
21 the sheet were noted by someone other than myself
22 and I cannot say who.

23 Q. Okay. So you didn't see stains on your
24 sheet then?

25 A. Well, I did, if they were pointed out to

1 me.

2 Q. If somebody else pointed stains out to
3 you, then there's stains on your sheets?

4 A. Yes.

5 Q. Do you know if that ever happened? Did
6 anybody ever point something out to you and say:
7 That's a stain?

8 A. Yes, it did happen.

9 Q. It did?

10 A. Yes.

11 Q. Was it a male or female that did that?

12 A. I don't recall at this point. It was
13 pretty evenly split with the officers coming
14 through my house.

15 Q. Did they mark those stains?

16 A. No.

17 Q. Ms. [REDACTED] there'd be no reason to move
18 any of the evidence in that house prior to the
19 police coming, would there?

20 A. No.

21 Q. Especially that slip dress; correct?

22 A. No. Unless I carried it with me and I'm
23 not sure if I brought it down myself or if one of
24 the officers brought it down.

25 Q. So your testimony now today is that

1 you -- maybe you brought it downstairs?

2 A. I believe I've mentioned that to you once
3 before.

4 Q. Okay. Well, that question was certainly
5 asked to you once before, wasn't it?

6 A. Yes.

7 Q. Okay. I'm going to show you page 51,
8 line 22. Actually, question 21, 22 and 23.

9 Can you please read that to yourself?

10 A. Okay.

11 Q. The question was asked to you, was it
12 not, under oath -- let me ask again -- at no time
13 did you move the articles of clothing that were
14 laying right there? We're talking about the edge
15 of the bed. Do you remember how you responded to
16 that question?

17 A. I said know.

18 Q. But today now it's possible?

19 A. It was possible in the other deposition
20 as well.

21 Q. Oh, it was?

22 A. Yes.

23 Q. And can you tell us what deposition that
24 is?

25 A. It was the deposition I gave you.

1 Q. Ma'am, that was the deposition I just
2 showed you.

3 A. I know and they're not complete. The
4 typewritten pages are not complete. The one from
5 two weeks ago says I claim that I heard a fake
6 Hispanic accent. It's not correct.

7 Q. So your testimony is that on the
8 deposition that you gave to me under oath, that
9 this is not correct?

10 A. I'm saying it might not be 100 percent.

11 Q. Well, again your question -- actually,
12 you brought up the dress on May 12th, 1995, did
13 you not?

14 A. Yes.

15 Q. Okay. Then you're brought downstairs
16 after you point everything out and you end up
17 giving a statement to the detectives in your
18 mother's bedroom; correct?

19 A. Yes.

20 Q. Is it a taped statement?

21 A. It is.

22 Q. It lasted just a few minutes; correct?

23 A. No.

24 Q. No. Okay. How long did it last?

25 A. I thought it went about ten or 15

1 minutes.

2 Q. Okay. And that was the end of that
3 statement; correct?

4 A. Yes.

5 Q. And from there, they took you to the --
6 actually, I think a friend of yours --

7 A. She road with me. The detective took me.

8 Q. Did you shower before you went there?

9 A. No, I did not. I had to go in my
10 bathrobe.

11 Q. With no underwear on?

12 A. With nothing underneath.

13 Q. And at no time did you get a wet
14 washcloth and wipe your leg?

15 A. No.

16 Q. Did you brush your teeth?

17 A. No.

18 Q. Mouthwash?

19 A. No.

20 Q. You went directly?

21 A. Yes, I did.

22 Q. And, in fact, an officer followed you?

23 A. Yes.

24 Q. You made no stops between your house and
25 the SATC center?

1 A. No.

2 Q. While you were at that center, they did a
3 complete evaluation of you?

4 A. Yes.

5 Q. They took a leg smear from you?

6 A. Yes.

7 Q. Oral swabs?

8 A. Yes.

9 Q. And they drew blood?

10 A. No, they did not. Wait. I think they
11 did draw blood from my finger. They also took
12 pubic hair samples.

13 Q. When you came back to your house after
14 that, did you find anything left over from the
15 police?

16 A. Yes.

17 Q. And what was that?

18 A. The detective's tape recorder.

19 Q. And what tape recorder is that
20 specifically?

21 A. The one I gave my statement on.

22 Q. Was the detective there?

23 A. No.

24 Q. Did you tamper with that tape recording?

25 A. No.

1 Q. When did they pick that tape recorder up?

2 A. It was -- it was days later.

3 Q. You mentioned, I think on direct
4 examination, that you had just washed your sheets
5 two weeks before?

6 A. Yes.

7 Q. And this -- that there were no stains on
8 your sheet?

9 A. Correct.

10 Q. Now, I've got to do this again. The best
11 of your knowledge and your testimony today is that
12 there would be no stains on that sheet; correct?

13 A. Correct.

14 Q. I'm going to show you State's Exhibit 8.
15 Do you recognize what I'm unfolding here?

16 A. Yes. It's my bedsheet.

17 Q. Ma'am, do you see any stains?

18 MR. SEGAL: I'll object. This is five --
19 five and a quarter years later. That thing has
20 been repeatedly handled and this is its current
21 condition as opposed to the way it was on the day
22 this occurred.

23 THE COURT: May I see you sidebar.

24 MR. TERRELL: Judge; yes.

25 [WHEREUPON, the following sidebar

1 discussion was commenced]

2 MR. TERRELL: Judge, if the state is
3 suggesting the stains may have been placed since
4 it was taken into evidence, we'll take that as a
5 stipulation.

6 THE COURT: I don't know.

7 MR. SEGAL: He's just referring to exact
8 condition. There are holes torn in it, cut into
9 the sheet. If he's suggesting that the current
10 state of the sheet, after being handled repeatedly
11 by his client -- maybe not client but the
12 detectives repeatedly in order to show it to him,
13 defense attorneys, for the DNA testing that was on
14 there, I'll object in light of the way it was
15 handled. Nobody is saying it was placed but the
16 possibility in repeated handling and laying around
17 and for five years, something has happened over
18 time.

19 MR. TERRELL: Judge, I believe the state
20 brought that in through Detective Hanlon. Is this
21 the same condition minus the cut holes and she
22 said: Yes. It's in the same exact condition as
23 that night.

24 THE COURT: I think Detective Hanlon did
25 testify along those lines. And the fact that it's

1 five years ago is going to the weight that the
2 jury is going to ascribe to the testimony. I'm
3 going to overrule the objection.

4 [WHEREUPON, the sidebar discussion was
5 concluded]

6 BY MR. TERRELL:

7 Q. Ma'am, do you see any stains on this
8 bedsheet now?

9 A. Yes, I do.

10 Q. Okay. You see this big stain right here,
11 this yellow stain right in the middle of the bed?

12 A. Yes.

13 Q. Okay. Was that there the night of the
14 incident?

15 A. I don't know.

16 Q. You don't know?

17 A. No.

18 Q. Okay. But your earlier testimony was
19 that there was no stains.

20 Would you definitely agree that there's a
21 huge stain in the middle?

22 A. I thought you were talking about semen
23 stains.

24 MR. SEGAL: Is he talking about before
25 she was sexually assaulted or after?

1 THE COURT: Sustain the question --
2 objection. Restate your question.

3 BY MR. TERRELL:

4 Q. Were there any stains on your sheet the
5 night of the incident?

6 MR. SEGAL: Objection, your honor. He
7 didn't clarify anything. Is he talking before or
8 after?

9 MR. TERRELL: Judge, I don't know what
10 was on her bed before the incident.

11 THE COURT: Start before the alleged
12 incident.

13 BY MR. TERRELL:

14 Q. Before the incident, was there any stains
15 on your bed?

16 A. Those are not and they were not at the
17 time new sheets. There could have been stains.
18 At this point, I cannot say what stains that were
19 definitely there or were not.

20 Q. So you wouldn't remember if there are
21 stains all over your sheet there? You wouldn't
22 remember?

23 A. I would like to think that, no, there
24 weren't.

25 Q. And you just agreed that there's a stain

1 right here, this big yellow spot?

2 A. Yes, there is.

3 Q. And you see spots -- do you see spots
4 here?

5 A. Yes.

6 Q. Do you see spots here?

7 A. Yes.

8 Q. Were those stains there?

9 MR. SEGAL: Objection. Objection. When?

10 THE COURT: Restate the question.

11 MR. TERRELL: That's enough. Thanks.

12 BY MR. TERRELL:

13 Q. Is it fair to say then, based on your
14 testimony, that you don't remember any stains of
15 any type being on your sheet the night of the
16 incident?

17 A. I don't remember what stains would have
18 been there.

19 Q. You mentioned that you had just washed
20 your sheets two weeks beforehand?

21 A. Right.

22 Q. Do you know what the date was you did it?

23 A. Excuse me?

24 Q. Did you write that down?

25 A. No.

1 Q. How, five years later, do you know that
2 it was two weeks before this incident that you
3 washed them?

4 A. It was never affirm two weeks. It was
5 always about two weeks.

6 Q. So routinely, every two weeks you'd wash
7 your sheets?

8 A. Well, now I do it about once every week,
9 give or take a few days.

10 Q. Okay. One second, judge. Ms. [REDACTED] look
11 at Ernesto Behrens.

12 Can you say that's the person that was in
13 your house on May 12th, 1995?

14 A. No, I can't.

15 MR. TERRELL: Thank you very much.

16 THE COURT: Mr. Segal?

17 MR. SEGAL: Thank you.

18 RE-DIRECT EXAMINATION

19 BY MR. SEGAL:

20 Q. Mr. Terrell, the defendant's lawyer asked
21 you a bunch of questions about the man's height;
22 is that correct?

23 A. That is correct.

24 Q. And you referred to your deposition;
25 correct?

1 A. Yes.

2 Q. Okay. Do you remember the questions you
3 were asked and the answer concerning --

4 MR. TERRELL: Judge, I'm going to object
5 to leading because I don't know --

6 THE COURT: I'm going to let him set up
7 the question correctly.

8 Go ahead.

9 BY MR. SEGAL:

10 Q. Okay. Do you remember being asked this
11 question, page 14, line three.

12 MR. TERRELL: Objection, judge, for
13 him -- the attorney here is testifying. If
14 there's a question. I ask that he ask the
15 question and --

16 MR. SEGAL: I'm asking if she --

17 THE COURT: This relates to the
18 completeness of the question and answer before?

19 MR. SEGAL: Oh, yes, your honor.

20 THE COURT: I'm overrule the objection.

21 BY MR. SEGAL:

22 Q. Do you recall this question and giving
23 these questions. Page 14, line three: "Q. From
24 the silhouette, could you tell how tall the person
25 was? A. Roughly; yes. Q. Roughly what, do you

1 remember? A. I figured about five foot seven
2 inches."

3 Do you remember that, saying roughly?

4 A. Yes.

5 THE COURT: Okay.

6 BY MR. SEGAL:

7 Q. And do you remember Mr. Terrell asking
8 you questions about the age that you guesstimated
9 the person was based on the voice?

10 A. Yes.

11 Q. Remember, he started talking about the
12 police statement?

13 A. Yes.

14 Q. Do you remember when he suggested the
15 entire questions and answer and he went to a
16 different topic?

17 A. Yes.

18 Q. Do you remember giving these answering
19 and these questions?

20 MR. TERRELL: Objection, judge. The
21 state is testifying. Quit leading the witness and.

22 THE COURT: I'm going to overrule the
23 objection. He's entitled to put in the record the
24 complete question and answer that may have
25 occurred.

1 MR. TERRELL: Okay.

2 BY MR. SEGAL:

3 Q. And the question was, page four, at the
4 bottom. Okay. And you said: From his voice, you
5 could tell he was kind of young? A. Yes. Q.
6 Around in his 20s, you said? A. Probably; yes."

7 Is that correct?

8 A. Yes.

9 Q. Did you ever say in here anywhere that he
10 was in his young 20s?

11 A. No.

12 Q. The police officer asked the question,
13 you could tell he was kind of young and you
14 answered yes; correct?

15 A. Yes. That was based on the age of the
16 detective asking the question.

17 Q. Okay. But he never ever said he was in
18 his young 20s, did you?

19 A. No.

20 Q. Okay. Then when the defendant's lawyer
21 was asking you about the circumcision part, you
22 were giving an answer; is that correct, and you
23 were referring to your boyfriends?

24 A. Yes.

25 Q. Can you finish that answer?

1 A. My fiance is not circumcized and there
2 are times when we were intimate where you wouldn't
3 know that he wasn't circumcized. And that's at
4 points of full arousal and if he's manipulating
5 himself in any way.

6 Q. Okay. The defendant's lawyer was asking
7 you about, at some point, if you ever saw the
8 flashlight again after the pillow was over your
9 face or felt the knife again after he pressed it
10 against your stomach; is that correct?

11 A. Yes.

12 Q. Did you ever hear a knife being thrown
13 out someplace through a window or down the stairs
14 or anything?

15 A. No.

16 Q. Did the knife seem to have wings on it
17 where it could have flown off by itself?

18 A. No.

19 Q. Did you ever see in any way, perceive
20 that knife leaving that room --

21 A. No.

22 Q. -- while that man was sexually assaulting
23 you?

24 A. No.

25 Q. Okay. The defendant's lawyer was asking

1 you questions about your position on that bed at
2 various times; correct?

3 A. Yes.

4 Q. Okay. From the time when this first
5 started, your face was constantly covered by a
6 pillow; correct?

7 A. Yes.

8 Q. Could you see with your face covered
9 where you were positioned on the bed?

10 A. No.

11 Q. You were constantly -- he was telling you
12 to roll around, roll back this way; correct?

13 A. Yes.

14 Q. And in the rolling around on the bed,
15 that altered your position on the bed, did it not?

16 A. Yes.

17 MR. TERRELL: I'm going to object to all
18 these leading question.

19 THE COURT: I'll sustain the objection.

20 BY MR. SEGAL:

21 Q. What effect did it have on your position
22 on the bed with you rolling around as he was
23 ordering you to?

24 A. I was moving anywhere from the center of
25 the bed to the left side.

1 Q. Okay. And you never saw where you were
2 because there were pillows on your face?

3 A. Right.

4 Q. When the man ejaculated, was the pillow
5 still on your face?

6 A. Yes, it was.

7 Q. Did you see every -- could you see
8 anyplace where his ejaculate went?

9 A. No.

10 Q. You know some landed on your leg;
11 correct?

12 A. Yes.

13 Q. The sides that -- do you know if there
14 was any other semen that didn't land on your leg?

15 A. No.

16 Q. Do you know if it could have gone
17 elsewhere besides on your leg, do you know?

18 A. No.

19 Q. The defense attorney referred to the
20 shoes the man was wearing, his boots.

21 Did you ever say they were boots?

22 A. No, I don't believe I did.

23 Q. Do you have any knowledge as to what kind
24 of shoes he was wearing?

25 A. No.

1 Q. Okay. Now, remember the defendant's
2 lawyer was asking you questions about whether you
3 saw stains on the bed that evening afterwards
4 after the sexual assault?

5 Q. Do you remember on cross-examination
6 being asked by him questions about seeing stains
7 that night?

8 A. Yes.

9 Q. And he referred you to a section of the
10 deposition; correct?

11 A. Yes.

12 Q. Now, do you remember later on in your
13 deposition on page 60, line 13, do you remember
14 being asked these questions and giving these
15 answers. "Do you remember going back to the room
16 with the detectives and seeing semen spots, what
17 appeared to ejaculation spots on the bed? A. I
18 think we did point out spots that it could have
19 been."

20 MR. TERRELL: I'm going to object. Is he
21 asking a question or testifying. We could read
22 the entire deposition but I ask that he ask
23 specific questions.

24 THE COURT: Overruled. I think it's
25 specific.

1 BY MR. SEGAL:

2 Q. I think -- I think we did point out spots
3 that it could have been. That's why they took my
4 bedding. Were they wet spots? They could have
5 been?

6 Do you remember being asked those
7 questions in the same deposition that you referred
8 to before?

9 A. Yes.

10 Q. So in that deposition, you did tell them
11 that you saw stains on the bed, did you not?

12 A. Yes.

13 MR. SEGAL: Okay. I have nothing further.

14 THE COURT: Any recross, Mr. Terrell?

15 RE-CROSS-EXAMINATION

16 BY MR. TERRELL:

17 Q. Ms. [REDACTED] it's always accurate in this
18 deposition when the state asks you a question,
19 isn't it?

20 A. No.

21 MR. SEGAL: Objection. Arguing with the
22 witness.

23 THE COURT: Sustained. Go to your
24 question.

25 BY MR. TERRELL:

1 Q. Has the state asked you any questions
2 that were inaccurate in the deposition?

3 A. No.

4 Q. And you testified just a moment ago that
5 your fiance now is circumcized?

6 A. No. My fiance is not circumcized.

7 Q. Who is it that you said was not
8 circumcized; right, your fiance now?

9 A. My fiance is not circumcized.

10 Q. Were you with your fiance on May 12th,
11 1995?

12 A. No, I was not.

13 Q. Did you even know your fiance on May
14 12th, 1995?

15 A. Actually, I did.

16 Q. The state asked you, you know, if you
17 were all over the bed, rolling back and forth,
18 back and forth; correct?

19 A. Correct.

20 Q. And you're not sure where you were at
21 certain points; right?

22 A. I said I feel I was pretty much from the
23 center of the bed to the left side of the bed.

24 Q. Throughout this whole incident; correct?

25 A. Yes.

1 Q. But there's no question in your mind that
2 at the time the person ejaculated on your thigh,
3 you're at the left side of the bed; correct?

4 A. Yes. But I might have been turned
5 slightly.

6 Q. What do you mean, you may have been
7 turned slightly?

8 A. I could have been at an angle.

9 THE COURT: Let her answer the question.

10 THE WITNESS: I do not recall if I was in
11 a straight position on the bed or if I was angled
12 at a position on the bed.

13 BY MR. TERRELL:

14 Q. Have you --

15 A. If that's what you're trying to get me to
16 say.

17 Q. Have you ever testified to that before
18 today, that you may have been on an angle besides
19 flat on your back?

20 A. No. No one's ever asked me a question
21 like this.

22 MR. TERRELL: Okay. No further questions.

23 THE COURT: Thank you very much, ma'am.
24 You may step down.

25 [WHEREUPON, the witness was excused]

1 Okay. Ladies and gentlemen, I think this
2 is the appropriate time that we break for lunch.
3 A couple of comments.

4 First of all, take your personal items
5 with you. Don't leave them in the courtroom.
6 Don't discuss this case among yourselves. Don't
7 discuss it with anybody else. And certainly don't
8 form any fix or definite opinions on the merits of
9 this case.

10 Schedule-wise, I'm going to ask you to be
11 outside the jury assembly room no later than 1:30.
12 Somebody will come and escort you to the
13 courtroom.

14 Thank you very much. Have a nice lunch.

15 [WHEREUPON, the jury panel left the
16 courtroom]

17 THE COURT: All right. We'll see
18 everybody at 1:30.

19 Henry, you have Mr. Behrens?

20 THE SHERIFF: Yes, I do.

21 [WHEREUPON, a lunch recess was taken]

22 THE COURT: Let the record show
23 Mr. Behrens is present with Mr. Segal,
24 Mr. Terrell, Ms. Shelowitz.

25 Is there anything we need to address

1 before I have the jury come up? Okay.

2 MR. SEGAL: Judge, this probably could
3 wait. There's just -- there's a witness who's
4 going to testify to things -- Detective Geller
5 just --

6 THE COURT: He's with Plantation?

7 MR. SEGAL: Yes. The portion of his
8 testimony -- actually, there's two portions of his
9 testimony which I wanted to review with the court.
10 One is how he developed the defendant as a suspect
11 in this case. And again, in actuality, I know how
12 he did it.

13 What happened was, he -- he was
14 investigating some cases that were similar to this
15 case and he managed to pick up this case as well
16 and just reviewed stuff. In doing that, he spoke
17 with other detectives. One talked about
18 similarities about this case and in Coral Springs.
19 And he -- the other detective contacted Coral
20 Springs and there was discussion of that case and
21 this case. And a lot of similarities were noted.

22 And so obviously, none of that discussion
23 could take place but he developed the contacts, I
24 guess, as a result of an investigation, just leave
25 it open like that. As a result of an

1 investigation, he developed the defendant as a
2 suspect in this case. That's what lead to them
3 picking up the swabs.

4 THE COURT: Mr. Terrell, do you have any
5 input? Ms. Shelowitz?

6 MS. SHELOWITZ: The only question is,
7 what the investigation is, is an open question for
8 the jury at that point.

9 THE COURT: Do you have any proposal? I
10 mean, obviously, the fellow ought to be able to
11 testify. And I think you mentioned earlier,
12 Ms. Shelowitz, that actually you had kind of back
13 pedalled a little bit from yesterday, that you
14 didn't want this matter just being left dangling
15 in a vacuum, that you had no problem at least with
16 the detective in Dade County --

17 MS. SHELOWITZ: Right.

18 THE COURT: -- mentioning something about
19 this investigation of which Mr. Behrens was
20 exonerated on and cleared on. How do you propose
21 Detective Geller's testimony if you don't want it
22 in this same vacuum?

23 MR. SEGAL: Judge, while they were
24 talking -- if I can just bring up the second issue
25 while you're all talking about it. The second

1 issue is how Detective Geller learned that there
2 was a swab down in Miami-Dade Police Department.

3 He did that once he developed the suspect
4 as a -- attempted to locate the defendant and he
5 ended up getting a phone call from an attorney who
6 said he represented the defendant and said: Be
7 careful what you're doing. He's been falsely
8 accused before. He gave a swab as part of the
9 Miami-Dade investigation and I guess he was
10 exonerated from that so be careful.

11 That's how they learned that there was a
12 swab taken at the Miami-Dade Police Department so
13 however you want to deal with that.

14 MS. SHELOWITZ: Can we just have one
15 moment?

16 THE COURT: Sure. Take your time.

17 Ms. Shelowitz, you've had an opportunity
18 to review with Mr. Terrell and Mr. Behrens the
19 issues that Mr. Segal presented?

20 MS. SHELOWITZ: Yes.

21 THE COURT: Let me have your input.

22 MS. SHELOWITZ: I wish I could give you a
23 better answer. The problem we have is, most of
24 what Geller knows is through hearsay. And I'm not
25 going to suggest that he or agree at this time

1 that he had any conversations with anybody that
2 lead him to do certain things.

3 Those people should have testified if the
4 state wants that information to come in. As far
5 as I know, most of what Detective Geller did was
6 pieced together. He actually didn't do any
7 investigating on his own at all.

8 THE COURT: And let's just take an
9 example. If there was a phone conversation that
10 he had with a lawyer somewhere, certainly whatever
11 that conversation may have been would be hearsay.
12 But I think, you know, a question can be asked:
13 Did you have a conversation with a lawyer
14 wherever. And if he says yes, I think it then
15 would be appropriate to ask: What, if anything,
16 did you do as a result of that conversation.

17 I mean, I think you can certainly make an
18 argument -- I've it 101 times. Everything is
19 reliant on a hearsay conversation but I think the
20 law is fairly clear that he can testify to what he
21 may have done in reliance or based on that
22 conversation, what, if anything, he did. He can't
23 get into the conversation.

24 MS. SHELOWITZ: Okay. But also, the
25 characterization of who this attorney is. This

1 attorney never actually, I don't believe,
2 represented Mr. Behrens in any capacity.

3 THE COURT: Well, again, how -- anything
4 that the fellow may have told him would be hearsay
5 unless there's some exception that somebody would
6 want to present to me.

7 But I think there are two issues that
8 Mr. Segal brings up. The first more dealing with
9 the question of how he came into contact with
10 Mr. Behrens as a suspect in this case. And I
11 guess it kind of was the tentacles of other
12 investigations that he was conducting

13 MS. SHELOWITZ: Correct.

14 THE COURT: I need to know whether you
15 want that issue addressed as what you term in a
16 vacuum or whether you want Mr. Segal to have the
17 latitude of going into the circumstances by which
18 he came into that information.

19 MS. SHELOWITZ: We would object to any
20 reference to the circumstances as it related to
21 other cases.

22 THE COURT: Okay.

23 MS. SHELOWITZ: I just can't give the
24 court something that I think is inappropriate. I
25 think the state can proffer it and we can either

1 object to it or not.

2 THE COURT: I think the detective could
3 testify that as part of an investigation, you
4 know, he -- he came across Mr. Behrens. I don't
5 know how else to go into it. I mean, I can
6 certainly appreciate that these other cases are
7 not appropriate to go into in this case.

8 Do you have any other input on that,
9 Ms. Shelowitz? I think it's a fair issue to raise
10 to avoid a problem and what I'm trying to do is to
11 get some input on both ends so we can address it
12 in the least difficult manner

13 MR. TERRELL: Can we keep it as simple as
14 possible, simply Detective Geller went to Miami to
15 pick up swabs, was told to go to Miami to pick up
16 the swabs. That's all he did in this case.

17 THE COURT: I don't know the scope of
18 what he did or didn't do.

19 MR. SEGAL: The problem with that is, it
20 kind of -- what do you mean, drives down to Miami
21 to pick up swabs? And they're challenging chain
22 of custody and everything else. I -- I can
23 understand their concerns about other cases. I
24 don't know -- the problem with asking, as part of
25 your investigation, did you learn that Ernesto

1 Behrens may be a suspect in this case, it doesn't
2 say through what source.

3 THE COURT: Any further input on the
4 issue?

5 MS. SHELOWITZ: Our objection to that
6 would be, he did not learn he was a suspect in
7 this case.

8 THE COURT: Well, at some point,
9 apparently he did learn that he was a suspect
10 albeit through these other cases and maybe
11 speaking to other detectives.

12 MR. TERRELL: Until after the swabs were
13 tested here in Broward County. Sometime way after.

14 MR. SEGAL: That's wrong because there
15 was an arrest warrant prior to the swabs he had
16 picked up so that's wrong.

17 THE COURT: Well, let me ask this
18 question. Is it a correct statement to say that
19 prior to Detective Geller going to Miami for
20 these swabs, that in that detective's mind,
21 Mr. Behrens was a suspect in this case?

22 MR. SEGAL: Yes. And just signed the
23 warrant because the warrant pre-existed Detective
24 Geller going down to Miami to get the swabs.

25 THE COURT: Anything else on that issue?

1 MS. SHELOWITZ: Well, to bring up the
2 fact that there was already a warrant signed --

3 THE COURT: Well, I don't think that's --
4 I don't think that's where we're going, being
5 grounds on when or Mr. Behrens was a suspect.

6 MR. SEGAL: Right.

7 THE COURT: It sounds like the deal with
8 the issue for the detective to testify, that as
9 part of his investigation, he went -- on this
10 case, he went down to Dade County, picked up
11 whatever he did and did whatever he did.

12 MR. SEGAL: As part of the investigation,
13 he learned he was a suspect. He spoke with
14 somebody and as a result of the conversation --
15 after Mr. Behrens was developed as a suspect, he
16 spoke with somebody. As a result of that
17 conversation, he went down to Miami-Dade to pick
18 up swabs.

19 THE COURT: Any input on that,
20 Ms. Shelowitz?

21 MS. SHELOWITZ: Judge, I'm just going to
22 object.

23 THE COURT: Okay.

24 MS. SHELOWITZ: Okay. To the term that
25 he was already a suspect.

1 THE COURT: Well, again, I think the --
2 just that there's a clear record. I think the
3 detective, from what I understand, is going to
4 testify that prior to going to Dade County, he had
5 developed Mr. Behrens as a suspect in this case.
6 And based on that, I'm going to allow him to refer
7 to him as a suspect because that's apparently what
8 he was in his mind. And obviously, you'll
9 instruct him not to go into other cases.

10 MR. SEGAL: I've already done that.

11 THE COURT: I think that's the way to do
12 it. He had developed him as a suspect on this
13 case and then he went down to Dade County and did
14 what whatever he did.

15 All right. Let the record show
16 Mr. Behrens has been continuously present. He's
17 present now. Mr. Terrell, Ms. Shelowitz,
18 Mr. Segal are present.

19 Karen informs me that the --- one of the
20 jurors mentioned to her -- asked her, don't they
21 get a juror button so when they come in here, so
22 that nobody feels slighted or left out, I'm going
23 to make sure that they get buttons to wear. We're
24 going to make them happy.

25 THE SHERIFF: That's fine.

1 MR. TERRELL: I'm going to get a button,
2 defendant's attorney.

3 THE COURT: We'll get spectator buttons.

4 THE CLERK: You guys get name tags, state
5 and defendant's attorney.

6 MR. SEGAL: Judge, I'm not 100 percent
7 sure the witness is out there. I told her to come
8 back here at 1:30. I came back before that but I
9 didn't see her.

10 THE COURT: Just go and check real quick
11 if you don't mind.

12 MR. SEGAL: She's here.

13 THE COURT: All right. Again,
14 Mr. Behrens, Ms. Shelowitz, Mr. Terrell, Mr. Segal
15 are present.

16 Bring in the jury, please, Terry. Terry,
17 you got eight?

18 THE SHERIFF: Eight, judge.

19 [WHEREUPON, the jury panel entered the
20 courtroom]

21 THE COURT: Welcome back, ladies and
22 gentlemen. I hope you had a nice lunch. On the
23 railing in front of you are some buttons. And
24 some of you have already seen it. It had been
25 brought to my mention that you didn't have your

1 juror button. So now that you do have those
2 buttons, please wear them on your outer garment.

3 THE COURT: Mr. Segal, call your next
4 witness, please.

5 MR. SEGAL: Jean Swaby.

6 THE COURT: Good afternoon.

7 THE WITNESS: Good afternoon.

8 THE COURT: If you'll please come up to
9 the witness stand and then you'll stand and raise
10 your right hand and be sworn, please.
11 Thereupon,

12 JEAN SWABY, a witness herein, and having
13 been first duly sworn by the court clerk and
14 cautioned to tell the truth of HER knowledge as to
15 the within matters, was thereupon examined and
16 testified upon HER oath as follows:

17 THE CLERK: Please be seated. State your
18 full name and spell your last name for the record.

19 THE WITNESS: Jean Swaby, S-w-a-b-y.

20 DIRECT EXAMINATION ON VOIR DIRE

21 BY MR. SEGAL:

22 Q. Can you tell us where you are employed?

23 A. I'm currently employed at the Sexual
24 Assault Treatment Center in Fort Lauderdale.

25 Q. And how long have you been employed

1 there?

2 A. For the past nine and a half years.

3 Q. And what are your job responsibilities
4 there?

5 A. My function is to do the majority of the
6 physical exams, including evidence collection of
7 patients of alleged rape, sexual abuse. And I do
8 some physical exams.

9 Q. Physical abuse of children?

10 A. Yes.

11 Q. Okay. Can you go into your educational
12 background for us?

13 A. I'm a nurse practitioner. I am a
14 registered nurse with advanced clinical training
15 in the areas of obtaining medical histories, doing
16 physical exams, interpreting medical information
17 such as laboratory information and interpreting
18 x-rays and prescribing medication.

19 Q. Can you go over your professional
20 background?

21 A. I have a registered nurse diploma. I've
22 been employed as a registered nurse since 1964. I
23 obtained my diploma as a nurse practitioner in
24 1975. I'm also a midwife. I obtained my diploma
25 in I believe it was 1971. I also am a pediatric

1 nurse specialist. I obtained my diploma in
2 London, England.

3 Q. And before you started working with the
4 Sexual Assault Treatment Center, what type of work
5 did you do?

6 A. I was employed as a nurse practitioner at
7 the University of Miami for child development. My
8 function was to do physical exams with focus on
9 neurological development of -- I'm sorry --
10 children who were at risk for developmental delay.

11 Q. Okay. During the course of time that
12 you've worked at the Sexual Assault Treatment
13 Center, can you guesstimate as to how many exams
14 you have done of people that have been sexually
15 assaulted or children that have been sexually
16 abused?

17 A. I would say thousands of exams over the
18 past nine years.

19 Q. And as part of your work, do you attend
20 schools, conferences, et cetera, concerning
21 advances in medicine or things to look for in
22 medicine?

23 A. Yes, I do.

24 Q. And how frequently do you do -- and you
25 don't need to name the ones you've been to but

1 approximately how frequently did you attend these?

2 A. At least annually. Once annually in that
3 specific area of sexual assault evidence
4 collection and identification of any injuries that
5 may be present, as well as, you know, collection
6 evidence, collection process.

7 Q. Okay. Have you ever been declared an
8 expert before in any court concerning the medical
9 examination and evaluation of adults -- sexual
10 assault victims?

11 A. Yes, I have.

12 Q. Can you estimate approximately how many
13 times?

14 A. Including children and adults, I would
15 say approximately 99 times.

16 Q. Okay. And how many of those 99 times
17 were those courts here in Fort Lauderdale?

18 A. The majority of that -- those times.

19 Q. What other courts have you been declared
20 an expert in?

21 A. Once in Orange County and once in the
22 Keys.

23 MR. SEGAL: Your honor, I proffer
24 Ms. Swaby as an expert in the area of examination
25 of adult victims of sexual abuse?

1 THE COURT: Defense want to voir dire the
2 witness?

3 MR. TERRELL: No objection.

4 THE COURT: All right. I'll permit
5 Ms. Swaby to testify in the field of her
6 expertise.

7 DIRECT EXAMINATION

8 BY MR. SEGAL:

9 Q. In the course of your employment, were
10 you so working back in 1995?

11 A. Yes, I was.

12 Q. On that date, did you have occasion to
13 see a woman by the name of [REDACTED] [REDACTED]

14 A. Yes, I did.

15 Q. Now, as a result of your interaction with
16 Ms. [REDACTED] did you complete a report?

17 A. Yes. I completed a seven page report.

18 Q. Is that report completed as you go
19 through the examination with her?

20 A. Parts of it. As we obtain the medical
21 history and the history of the alleged event, we
22 take notes at that time. And the completion of
23 the report regarding any findings such as evidence
24 or any physical trauma, that is documented
25 immediately following the exam.

1 Q. Okay. Now, you saw -- do you know
2 approximately what time that day you saw Ms. [REDACTED]

3 A. No, I don't recall. May I refer --

4 Q. Sure. Go ahead.

5 A. -- to my notes?

6 THE COURT: You may use your report to
7 refresh your recollection.

8 THE WITNESS: Thank you. Well, I
9 completed the exam at 7:15 a.m. on the day of May
10 12th, 1995. The exams, we take approximately one
11 hour to complete. That includes turning over the
12 evidence to law enforcement. I would say
13 approximately 8:15.

14 Q. Okay. Now, during the examination, what
15 type of information do you get from Ms. [REDACTED] prior
16 to beginning?

17 A. We obtain a brief medical history,
18 personal history and a brief history of the
19 alleged event.

20 Q. Okay. Did you do that with Ms. [REDACTED]

21 A. Yes, I did.

22 Q. Okay. Then after you did that, then did
23 you conduct a physical exam of her?

24 A. Yes.

25 Q. And how did you go about conducting that

1 physical exam?

2 A. Well, we examined the skin for any
3 traumas -- any trauma that may be present and we
4 focus on the area of reported penetration.

5 Q. Which in her case was what?

6 A. Oral penetration.

7 Q. Okay. In conducting your examination for
8 trauma, did you find any trauma to her?

9 A. No, I did not.

10 Q. Given the history that she presented,
11 would you expect to find any trauma to her?

12 A. Not necessarily; no.

13 Q. Okay. After you conducted that
14 examination, then what did you do?

15 A. I collected oral swabs and a saliva swab.

16 Q. Okay. Did you collect any other swabs?

17 A. I did an oral smear as well for
18 examination under the microscope.

19 Q. Okay. Any other swabs?

20 A. May I refer to my notes?

21 Q. Go ahead.

22 A. I did obtain some head hairs and I
23 collected swabs from her right thigh. It was
24 reported to me that there was ejaculation in that
25 area.

1 Q. Was it the right thigh or --

2 A. I'm sorry. Left thigh.

3 Q. Okay. Now, you said that you looked at
4 something under a microscope?

5 A. Yes.

6 Q. What did you look at under a microscope?

7 A. We have a microscope at the center and
8 we -- we smear one of the oral swabs on a slide
9 and examine -- examine that slide under the
10 microscope for the presence of any sperm.

11 Q. And can you explain what an oral swab is
12 and how you go about collecting it?

13 A. The swab is a Q tip. It's similar to a Q
14 tip, only it's longer. And we swab the inner
15 cheeks and between the teeth and the gums. And
16 then that is smeared on a slide.

17 Q. Okay. And did you look at that slide
18 under a microscope?

19 A. Yes.

20 Q. Did you see any sperm on that slide?

21 A. No. I did not identify any.

22 Q. Okay. You say you collected swabs from
23 the left thigh.

24 How did you go about doing that?

25 A. I moistened the swab very minimally

1 and -- and scraped the area of the left thigh that
2 she indicated where the ejaculation occurred.

3 Q. Okay. You said you did something else
4 besides an oral swab.

5 You had an oral smear?

6 A. That was the smear that I examined under
7 the microscope.

8 Q. Okay. Which you refer to as a smear?

9 A. As the slide.

10 Q. As the slide?

11 A. Yes.

12 Q. Now, when you collect all these swabs and
13 smears and all that, do you create a kit that's
14 given to the police?

15 A. Yes. Each item is -- is individually
16 packaged in a small coin envelope and sealed with
17 a label with the patient's name, the examiner's
18 name and the witness's name, as well as the date
19 that it is collected. And the -- the examiner
20 initials that -- each envelope that's collected.

21 Then these items that are collected are
22 counted in the presence of the law enforcement
23 officer who is present at the center and they're
24 all placed in a larger envelope and sealed with
25 evidence tape.

1 MR. SEGAL: Can we mark this as a
2 composite? Judge, move into evidence if there's
3 no objection.

4 MR. TERRELL: No objection.

5 THE COURT: This is marked as Composite
6 Exhibit R?

7 THE CLERK: Yes.

8 THE COURT: State's Composite R admitted
9 as State's No. 16.

10 THE CLERK: Yes.

11 THE COURT: No objection?

12 MR. TERRELL: No objection, your honor.

13 THE COURT: Okay. Thank you.

14 [STATE'S EXHIBIT NO. 16 admitted into
15 evidence]

16 BY MR. SEGAL:

17 Q. Okay. Ms. Swaby, I'm going to show you
18 what's been marked as State's 16 and ask you, do
19 you recognize what this is?

20 A. Yes. This is the packet that the slides
21 and swabs obtained were placed in. There's a
22 label in the front with the patient's name and
23 signature of the examiner, which is me, and the
24 officer.

25 Q. Okay. Just to clarify one thing. On

1 this label, on the front part of the heading, it
2 says: Sexual Assault Treatment Center; correct?

3 A. Yes.

4 Q. But then under hospital, it says:
5 Phoenix Center.

6 What is the Phoenix Center?

7 A. It is one and the same. Our name was
8 changed to Phoenix Center at one point in time and
9 then we reverted back to the original name.

10 Q. It went from the Sexual Assault Treatment
11 Center to the Phoenix Center and then back to the
12 Sexual Assault Treatment Center?

13 A. That is correct.

14 Q. By the way, Sexual Assault Treatment
15 Center is run by who?

16 A. The county.

17 Q. Broward County?

18 A. Yes.

19 Q. Now, you said you packaged the various
20 swabs and stuff you got inside this big brown
21 envelope?

22 A. Yes.

23 Q. For the record, I'm going to open the
24 bottom -- the side of the envelope. Okay.

25 You have a bunch of littler, smaller

1 envelopes in front of you?

2 A. Yes.

3 Q. These are all of the items collected by
4 you during that examination?

5 A. That is correct.

6 Q. Now, did you attach to these envelopes
7 little stickers that indicate what was contained
8 in each envelope?

9 A. Yes.

10 Q. These are the little stickers that are
11 attached to them?

12 A. Yes. That's correct.

13 Q. And also on the stickers, there's other
14 information on there; is that correct?

15 A. Yes. The patient's name and the
16 examiner's name and the date of the exam.

17 Q. Okay. You being the examiner; correct?

18 A. Yes.

19 Q. Let me show you this one right here.

20 What's that one marked?

21 A. It's called a control swab.

22 Q. What is a control swab?

23 A. A control swab is a dry -- plain dry swab
24 used for comparison with the other items
25 collected.

1 Q. Okay. That's not actually -- that never
2 touches the victim's body, does it?

3 A. No, it does not.

4 Q. This little white envelope, what does it
5 say on there?

6 A. It says: Head hair, pulled right front.

7 Q. What's contained in here?

8 A. The hairs from the patient's scalp.

9 Q. From her -- the front area?

10 A. In front; yes.

11 Q. Okay. Then this other white envelope,
12 what's in here?

13 A. It says: Head scalp, pulled rear.

14 Q. Rear?

15 A. Left rear.

16 Q. Okay. Meaning the left rear part of her
17 head?

18 A. Yes.

19 Q. This white envelope?

20 A. That's hair scalp pulled pulled right
21 rear. That's the right back.

22 Q. Okay. And this one?

23 A. Hair scalp pulled left front.

24 Q. Okay. Left front of her head?

25 A. Yes.

1 Q. Okay. Now, I'm showing you, this looks
2 like, a gray cardboard I think.

3 It has some writing on the front; is that
4 correct?

5 A. Yes. What it is is, it's an envelope
6 that contains the slide to prevent breakage
7 because the slides are made of glass.

8 Q. This is a microscope?

9 A. Yes.

10 Q. And what's written on the white tab?

11 A. Oral smear.

12 Q. Okay. Now, I'm showing you this one
13 right here, this little envelope.

14 What does that say?

15 A. It says: Thigh swab.

16 Q. That's a swab that you described before
17 and scraped her thigh?

18 A. Yes.

19 Q. And what's in this one?

20 A. That's blood for DNA.

21 Q. Is that from her -- that's her blood?

22 A. Yes, that's the patient's blood.

23 Q. And here's another one.

24 A. That's the leg swab.

25 Q. Okay. Is that another -- a second swab

1 that you took from her leg?

2 A. Yes, from the same area.

3 Q. Okay. And this one?

4 A. That's a saliva swab.

5 Q. Okay. How did you take the saliva swab?

6 You described the swab in her mouth and running

7 the side --

8 A. No. That's different. She sucks on the
9 swab.

10 Q. And you have her suck on it?

11 A. Yes.

12 Q. Okay. This one?

13 A. That's an oral swab.

14 Q. Okay. That's a swab using the Q tip?

15 A. Yes.

16 Q. That you described before?

17 A. Yes.

18 Q. And this one?

19 A. That's another oral swab.

20 Q. Okay. Did you basically do the same type
21 of swabbing twice in her mouth?

22 A. Yes. Actually, I did three.

23 Q. Okay. Which is the last one, the third
24 oral swab?

25 A. Yes.

1 Q. Okay. Let me just open up one of these
2 so we have an idea what these look like. For the
3 record, I'm going to cut the -- one of the leg
4 swab envelopes at the bottom.

5 Actually, is this an example of the way
6 the swab looks?

7 A. Yes.

8 MR. SEGAL: Can I just publish this real
9 quickly?

10 THE COURT: Yes.

11 BY MR. SEGAL:

12 Q. There's two swabs in this envelope; is
13 that correct?

14 A. Yes.

15 Q. Why are there two swabs in the envelope?

16 A. We usually do it in pairs. In case
17 anything happens to one, we have a backup.

18 Q. Okay. Then is the same thing repeated in
19 each of the leg swab envelopes?

20 A. Yes.

21 Q. Okay. So there should be two swabs that
22 look about like that one?

23 A. That is correct.

24 Q. I'm taking the envelope that says what?

25 A. Saliva swab.

1 Q. I'm cutting it. And again, there's two
2 swabs in that envelope?

3 A. Yes.

4 Q. And they basically look like the swabs in
5 the first envelope that you showed?

6 A. Yes.

7 MR. SEGAL: Can I publish this real fast?

8 THE COURT: Yes.

9 BY MR. SEGAL:

10 Q. Now, just to save time, the oral swabs
11 are going to look the same way?

12 A. Yes.

13 Q. Correct?

14 A. Yes.

15 Q. You -- you packaged them in these little
16 manilla envelopes?

17 A. Yes.

18 Q. Correct?

19 A. Yes.

20 Q. And you put these little white tabs on
21 them?

22 A. Yes.

23 Q. Then what did you do after you packaged
24 and did that with those swabs as far as -- as far
25 as that rape kit? What did you do with the swabs?

1 A. It's sealed with evidence tape,
2 initialled and the front label is signed off with
3 both the officer and the examiner's signature --

4 Q. Okay.

5 A. -- and the date and time.

6 Q. The evidence tape you said you used to
7 seal the envelope, is that the red tape that's on
8 the big envelope?

9 A. Yes, it is.

10 Q. Now, as part of your examination of
11 Ms. [REDACTED] did you use any type of light source to
12 shine on her?

13 A. I used what is called black light or a
14 [REDACTED] lamp. It's a light that will flores bodily
15 fluids such as saliva, semen, feces.

16 Q. Okay. Does it necessarily pick it up all
17 the time?

18 A. No.

19 Q. What's the purpose of using this [REDACTED]
20 lamp?

21 A. It is a tool to assist the examiner in
22 identifying anybody -- bodily fluids. It's not a
23 diagnostic test.

24 Q. And did you shine the [REDACTED] lamp on
25 Ms. [REDACTED]

1 A. Yes, I did.

2 Q. Okay. And as a result of shining that
3 light on her, did you -- did it flores the
4 presence of any semen on her?

5 A. No, it didn't.

6 Q. Where did you shine the light?

7 A. On the area where she reported the
8 ejaculation occurring.

9 Q. Which is on her left thigh?

10 A. Left thigh.

11 Q. You saw no florescence?

12 A. No, I did not.

13 Q. If there had been semen on her left thigh
14 before it was wiped away through the use of some
15 type of cloth, could that cause there to be no
16 semen that would shine on the [REDACTED] lamp?

17 A. Yes, that's possible.

18 MR. SEGAL: Okay. Thank you very much.
19 I have nothing further.

20 THE COURT: Cross-examination?

21 MR. TERRELL: Yes, judge.

22 CROSS-EXAMINATION

23 BY MR. TERRELL:

24 Q. Good afternoon, ma'am. Ma'am, you stated
25 that you saw absolutely no signs of physical

1 trauma on [REDACTED] [REDACTED] on the morning that she came
2 to the Phoenix Center; correct?

3 A. No, I did not.

4 Q. In fact, through your experience and your
5 training -- how many years did you say you were
6 doing this type of work?

7 A. Nine and a half years.

8 Q. Through nine and a half years of training
9 and experience, could you tell in any way that she
10 was penetrated orally?

11 A. No. I couldn't see any evidence of any
12 physical trauma.

13 Q. In your training and experience, could
14 you tell at all that any ejaculation was ever on
15 her thigh?

16 A. I was not able to detect any ejaculate.

17 Q. And to the best of your knowledge, she
18 did not wipe that area or clean that area or wash
19 that area prior to coming to you; correct?

20 A. She did tell me the area was wiped.

21 Q. With what?

22 A. With a night dress.

23 Q. With a night dress?

24 A. Yes.

25 Q. Could it have been a slip dress that she

1 told you?

2 A. I believe so.

3 Q. A slip dress?

4 A. Yes.

5 Q. And she told you that a slip dress was
6 used to wipe that area and this was on May 12th,
7 1995?

8 A. Yes.

9 Q. You mentioned just a moment ago that the
10 black light's used to detect any minute particles
11 of a foreign substance; correct?

12 A. Bodily fluids.

13 Q. Bodily fluids. Okay. And, in fact, the
14 black light is used because it's keener than the
15 human eye; correct?

16 A. Yes. It floresces fluids.

17 Q. And isn't it true that when you're wiping
18 something, especially on skin, you don't wipe it
19 off? You wipe it in into the pores of the skin?

20 A. Well, not necessarily. You know, it
21 depends on how much force is used. And if it's
22 wiped thoroughly, the [REDACTED] lamp may not detect
23 any fluids at all.

24 Q. Would you expect to see semen there when
25 you lasered it with the black light? I said,

1 would you expect -- did you expect to see a sign
2 of semen on the thigh, on her left thigh, when you
3 lasered it with the black light?

4 A. Possibly not, given the history that the
5 area had been wiped.

6 Q. Certainly, at least in your experience,
7 if -- if it's not on the thigh, it would be on the
8 object that was used to wipe the thigh; right?

9 A. Yes.

10 Q. You testified that you moistened the swab
11 for her thigh?

12 A. Yes.

13 Q. Why did you moisten that swab?

14 A. To assist the lifting of any fluids that
15 may be present --

16 Q. To pick up --

17 A. -- or dried.

18 Q. To pick up even the tiniest substance;
19 correct?

20 A. Yes.

21 Q. It almost acts as a sticking agent, the
22 water, when you wetten the swab, to collect it
23 better?

24 A. Yes, it collects it better.

25 Q. You said you had put some stuff under the

1 microscope?

2 A. I used one of the swabs and smeared it on
3 the slide and examined it under the microscope.

4 Q. What was the purpose of examining it
5 under the microscope?

6 A. To detect the presence of any sperm.

7 Q. And what were your results of this
8 examining it under a microscope?

9 A. I was not able to detect any -- the
10 presence of any sperm.

11 Q. The evidence that you collected, nothing
12 that you collected corroborated the fact or
13 corroborated what she said; correct?

14 MR. SEGAL: Objection to characterizing
15 what she said.

16 MR. TERRELL: I'll rephrase.

17 BY MR. TERRELL:

18 Q. Did anything that you collect suggest
19 oral penetration?

20 A. No. But the patient did indicate she had
21 a drink of water and that does decrease the
22 likelihood of saliva and any fluids that are, you
23 know, consumed after ejac -- and after
24 ejaculation, if that occurred, would decrease the
25 likelihood.

1 Q. Decrease the likelihood?

2 A. And she also indicated that there was no
3 ejaculation in her mouth.

4 Q. Did she also tell you that she drank
5 beer?

6 A. No, she did not.

7 Q. Did you test her -- when you took the
8 blood from her, did you test the blood alcohol
9 level?

10 A. No, I did not. That is not part of our
11 protocol unless requested.

12 Q. There were a total of 13 swabs and smears
13 that you collected from her; correct?

14 A. Yes.

15 Q. And although you found no semen or any
16 foreign substance, you forwarded that off to
17 Broward Sheriff's Office; right?

18 A. Yes.

19 Q. You did a pre-examination interview of
20 her, correct, to get an idea of what happened?

21 A. Yes.

22 Q. And isn't it true when you asked her the
23 race of the male, that she had no idea what the
24 race of the male was?

25 A. She did indicate that; yes.

1 Q. She didn't tell you she believed him to
2 be Hispanic?

3 A. No.

4 Q. She didn't tell you she believed him to
5 be an African male?

6 A. No.

7 Q. She couldn't determine what type of race
8 this person was?

9 A. That is correct.

10 Q. Could you have done any further testing
11 of her to determine whether there was any kind of
12 semen orally or on her thigh?

13 A. Not that I can think of. I collected to
14 the best of my ability.

15 Q. So you exhausted all technological
16 modalities available to you through scientific
17 means that you had?

18 A. Yes, at the center. But keeping in mind
19 that these -- these items are forwarded to the
20 Forensic Lab which does do more indepth testing.

21 Q. Okay. And on your sheet, which you have
22 a figure of a person there, you put the area --
23 you circle the area in which she says the
24 ejaculation took place; correct?

25 A. Yes.

1 Q. And is it correct to say that it was on
2 the left thigh, up close towards the vagina?

3 A. Yes.

4 Q. And again, she told you that a slip dress
5 was used to clean that?

6 A. Yes.

7 Q. To wipe the area, I should say?

8 A. Yes.

9 Q. You took no photographs of her, did you?

10 A. No, I did not.

11 Q. Ma'am, do you know the average amount of
12 spermatozoa that is left when a man ejaculates?

13 Do you know how much spermatozoa are in an
14 ejaculation?

15 A. Not offhand.

16 Q. Would you agree that it's in the millions
17 or billions?

18 A. Yes.

19 Q. Billions?

20 A. Yes.

21 Q. None was detected here; right?

22 A. No.

23 MR. TERRELL: Okay. No further questions.

24 THE COURT: Anything further, Mr. Segal?

25 MR. SEGAL: Yes, your honor.

RE-DIRECT EXAMINATION

BY MR. SEGAL:

Q. Ms. Swaby, if the normal ejaculation has millions or billions of sperm in there, in order to find it, you have to have the ejaculate; correct?

A. Yes.

Q. If you don't ejaculate, then you don't expect to find sperm; right?

A. No.

Q. You said you saw no physical indication that she had been orally penetrated; is that correct?

A. That is correct.

Q. In the overwhelming number of cases that you've examined, do you ever see any physical evidence that somebody -- that a penis was put into somebody's mouth?

A. Not frequently; no.

Q. Okay. Did -- the questions you asked her about what she had to drink, you specifically asked her if she had anything to drink after the assault; is that correct?

A. That's correct.

Q. You don't -- does it matter to you what

1 she had to drink before the assault?

2 A. No.

3 Q. You wouldn't ask that?

4 A. No.

5 Q. So if she had a beer to drink before the
6 assault, that would not have been a part of the
7 conversation; right?

8 A. No.

9 Q. You asked her if she had anything to
10 drink after the assault?

11 A. That's correct.

12 Q. Okay. When you asked the question about
13 the race of the person, you ask the question about
14 the hair at that stage of the person, the
15 assaulter, the person who performed the attack.

16 Do you do it in terms of race? Is that
17 the way the question is asked?

18 A. Yes.

19 Q. Is Hispanic a race?

20 A. No. We basically try and determine if
21 she was able to see what color basically the
22 person was.

23 Q. Okay. And are -- Hispanics, there are
24 black and white?

25 A. That's correct.

1 Q. And Asian looking?

2 A. Some; yes.

3 MR. SEGAL: Okay. I have nothing further.

4 THE COURT: Mr. Terrell?

5 RE-CROSS-EXAMINATION

6 BY MR. TERRELL:

7 Q. Ma'am, if a man ejaculates and he's had a
8 vasectomy, are you going to detect any sperm?

9 A. No.

10 Q. So it's possible to have an ejaculation
11 without sperm?

12 A. That's correct.

13 Q. You just answered on re-cross that
14 there's no -- nowhere on your sheet for Hispanic
15 race; correct?

16 A. I don't think that's what I said. He
17 asked me if can -- we have that question. I
18 don't --

19 Q. Well, I'll try to clear it up. In fact,
20 you do have on your sheet that you fill out with
21 the victim whether the person was black, white
22 Latin, other or unknown; correct?

23 A. That's true. Yes.

24 Q. And you circled here unknown?

25 A. Right. She indicated that she wasn't

1 able to tell what color or --

2 Q. Nothing was done -- nothing -- she was
3 able to indicate nothing to you about possibly
4 what race it could have been?

5 A. No.

6 MR. TERRELL: Okay. Thank you.

7 THE COURT: Thank you very much, ma'am.
8 You may step down.

9 [WHEREUPON, the witness was excused]

10 THE COURT: Call your next witness,
11 please.

12 MR. SEGAL: Sergeant Archie Moore.

13 THE COURT: Good afternoon.

14 SARGEANT MOORE: Good afternoon.

15 THE COURT: Please come up to the witness
16 stand and just stand, face Karen and raise your
17 right hand.

18 Whereupon,

19 SARGEANT ARCHIE MOORE, a witness herein,
20 and having been first duly sworn by the court
21 clerk and cautioned to tell the truth of HIS
22 knowledge as to the within matters, was thereupon
23 examined and testified upon HIS oath as follows:

24 THE CLERK: Please be seated. State your
25 full name. Spell your last name for the record.

1 SARGEANT MOORE: My name is Archie Moore,
2 M-o-o-r-e.

3 DIRECT EXAMINATION

4 BY MR. SEGAL:

5 Q. Sir, how are you employed?

6 A. I'm a police sargeant with the Miami-Dade
7 Police Department, Homicide Bureau.

8 Q. And how long have you had that position?

9 A. I've worked in the Homicide Bureau for
10 about 15 years.

11 Q. And how long have you been a sargeant?

12 A. For two years.

13 Q. Okay. Were you so assigned back in early
14 1995?

15 A. I worked as a detective in the Homicide
16 Bureau at that time.

17 Q. Now, back during that timeframe, were you
18 part of a group or task force investigating serial
19 homicides occurring in Miami-Dade?

20 A. Yes, I was.

21 Q. And were these homicides occurring in a
22 particular part of town?

23 A. Yes. In the Southwest H Street area of
24 Dade County.

25 Q. And how many homicides did you have?

1 A. There were a total of six.

2 Q. Now, did you all have, as part of your
3 investigation of those homicides, some potential
4 DNA evidence?

5 A. Yes, we did.

6 Q. Now, in order to -- first of all, in the
7 early stages, did you all have a particular
8 suspect or a person that did this?

9 A. No, we did not.

10 Q. What were you doing as far as trying
11 to -- to try to see if you could find somebody
12 that would match the DNA evidence that you had?

13 A. What we were doing, we were contacting --
14 the detectives were following up on anybody that
15 was contacted by the police in the area of
16 Southwest H Street.

17 Q. You just trying to find people from
18 Southwest H Street generally to see if they would
19 voluntarily give you a DNA sample?

20 A. That is correct.

21 Q. Now, as part of that work, did there come
22 a time when you were assigned to try to get a DNA
23 swab from a Ernesto Behrens?

24 A. Yes, I was.

25 Q. And had you -- were you the original

1 person that had contacted Mr. Behrens or had
2 somebody else done that and you were assigned to
3 follow up with that?

4 A. Uniformed officers had first made contact
5 with Mr. Behrens back in February of '95. At that
6 time, they prepared a field interview report.
7 That report was then forwarded to the homicide
8 unit for follow-up. And as a result, I was given
9 that.

10 Q. And you were assigned to follow up on
11 that particular contact?

12 A. Yes.

13 Q. Okay. As a result of that, did you make
14 an attempt to contact Ernesto Behrens?

15 A. In March of '95. That's correct.

16 Q. Do you know the exact date that you did
17 that?

18 A. March 9th.

19 Q. Okay. Were you provided, as a result of
20 the field contact by the uniformed officer, with
21 an address to contact Ernesto Behrens?

22 A. Yes, I was.

23 Q. And where was that address?

24 A. 5300 Northwest 74th Terrace in the City
25 of Lauderdale, Broward County.

1 Q. Okay. And on March 9th, 1995, did you
2 follow up that lead and go to that address?

3 A. Yes, I did.

4 Q. And what did you have with you in order
5 to get the DNA swab that you wanted?

6 A. I had a consent form, had the cotton
7 applicator swabs that we were using to collect the
8 sample, evidence bag, property receipt.

9 Q. Okay. And you went to that address --

10 A. Yes.

11 Q. -- in Lauderhill?

12 A. Yes.

13 Q. Okay. Do you remember approximately what
14 time it was that you got there?

15 A. About 9:30 in the morning.

16 Q. Okay. When you got there about 9:30 that
17 morning, did you make contact with Ernesto
18 Behrens?

19 A. Yes.

20 Q. Do you see him here in court today?

21 A. Yes. Mr. Behrens is here.

22 Q. Just point out --

23 A. The gentleman sitting in the middle. His
24 hair's a lot longer now.

25 MR. SEGAL: Okay. For the record, the

1 witness has identified Ernesto Behrens.

2 THE COURT: Yes. The defendant's been
3 identified for the record.

4 BY MR. SEGAL:

5 Q. Okay. Tell me how -- what you did in
6 your contact with the defendant.

7 A. I identified myself as a Miami-Dade
8 police officer. I explained to Mr. Behrens my
9 reason for contacting him at that time. I asked
10 him some questions about his -- the contact that
11 lead to my contact with him. In other words, when
12 he was contacted with the -- by the police back in
13 February. He gave me some information as to how
14 that occurred.

15 I explained to him that as a result of
16 that contact, detectives in the Homicide Bureau
17 were following up on all leads of persons that
18 were stopped in the area of Southwest H Street.
19 And part of that reason was so that we could see
20 if we could obtain voluntary oral swabs for
21 analysis against the evidence in our case.

22 Q. Okay. Did he agree to provide oral swabs
23 to you?

24 A. Yes, he did.

25 Q. Did you have him -- before you did that,

1 did you have him go over the consent form?

2 A. Yes, of course.

3 MR. SEGAL: At this time, I'd admit
4 State's Exhibit for identification.

5 THE COURT: Any objection?
6 Ms. Shelowitz, Mr. Terrell, any objection?

7 MR. TERRELL: No objection.

8 THE COURT: All right. State's S will be
9 admitted into evidence without objection as number
10 17.

11 [STATE'S EXHIBIT NO. 17 entered]

12 BY MR. SEGAL:

13 Q. Okay. Sargeant Moore, I'm showing you
14 State's Exhibit 17.

15 What is that?

16 A. This is a Metro Dade Police Department
17 Consent to Provide Specimen for Investigation in
18 Laboratory Analysis Form.

19 Q. Okay. Is that a copy of the form that
20 you presented to the defendant back then?

21 A. Yes.

22 Q. Okay. In going over the form with him,
23 did you read it to him, have him read it or how
24 did you go about that?

25 A. I read it to him.

1 Q. Did you read it to him verbatim as
2 written there?

3 A. That's correct. I also gave him an
4 opportunity to read it as well.

5 Q. And did he do so?

6 A. Yes.

7 Q. After going over the form, did he then
8 sign it and agree to let you take a swab from him?

9 A. Yes, he did.

10 Q. Did you in any way threaten him, pressure
11 him or coerce him in any fashion --

12 A. No.

13 Q. -- to get him to agree to sign that form
14 to get the swabs?

15 A. That is correct.

16 MR. SEGAL: May I publish this, your
17 honor?

18 THE COURT: Yes.

19 BY MR. SEGAL:

20 Q. Before I do that, let me do this.

21 The writing at the top here, the
22 handwritten portion, who wrote that in?

23 A. That's my writing.

24 Q. Okay. Down here on the signature part,
25 who wrote that in?

1 A. That's his signature.

2 Q. And the date and the time?

3 A. Yes. That's his.

4 Q. His. And the signature here in the --
5 where it says witness, it says --

6 A. That's mine.

7 Q. Okay. And the date and time afterwards
8 is yours?

9 A. Yes.

10 Q. Okay. After you went over that form with
11 him and he signed it and agreed to provide the
12 swab to you, how did you go about collecting the
13 samples from him?

14 A. There was a cotton applicator that was
15 inside of a sealed receptacle. Also, I had
16 plastic gloves. Latex gloves, I mean. And I put
17 the gloves on. I then peeled back the portion of
18 the packaging and handed it to Mr. Behrens. He
19 took the cotton swabs out of the package. He was
20 instructed to place the swabs in his mouth like he
21 was brushing his teeth on the left side. And then
22 the second package was done on the opposite side
23 of the mouth --

24 Q. Okay.

25 A. -- until the saliva got the Q tips wet.

1 And then he was instructed to put the applicators
2 back into the sleeve that they came in.

3 Q. Okay. And did he do all that?

4 A. Yes, he did.

5 Q. And what did you do with that after he
6 put the swab back into the package?

7 A. It was then put into a brown evidence
8 bag.

9 Q. And what did you do with the evidence
10 bag?

11 A. It was impounded. It was forwarded to
12 the Miami-Dade Police Department. Metro Dade
13 Police Department at that time. Crime Laboratory
14 Bureau.

15 Q. Okay. And is that basically the extent
16 of your contact with the defendant as far as
17 getting a swab?

18 A. That was the extent of my contact.

19 Q. Okay. When you got the swab up in
20 Lauderhill, did you drive directly to the Crime
21 Lab to drop that swab off?

22 A. After I left his house. That's correct.
23 The other thing I did was check his tires on his
24 vehicle. We also had -- we were checking for
25 specific tire tread design and all the people that

1 we came in contact with in order to collect the
2 swabs, we also did a check of their vehicles --

3 Q. Okay.

4 A. -- as well.

5 Q. Okay. How long did it take you
6 approximately to drive from his house in
7 Lauderhill down to the Crime Lab in Miami?

8 A. It's probably a 45, 50 minute drive, 50
9 minute.

10 Q. So you did the 45, 50 minute drive to the
11 lab and dropped it off?

12 A. The lab is at Miami-Dade headquarters.

13 Q. Which is the same place your office is?

14 A. That's correct.

15 Q. So you basically went back to your
16 building and dropped it off at the lab?

17 A. That is correct.

18 Q. Did you subsequently learn that the
19 DNA -- the defendant's swab, the DNA from that,
20 was run against or compared to --

21 MR. TERRELL: Objection to hearsay,
22 judge.

23 MR. SEGAL: Okay.

24 THE COURT: Sustained. Calls for
25 hearsay.

1 BY MR. SEGAL:

2 Q. As a result of the investigation that was
3 done pertaining to the DNA and the tire treads,
4 was the defendant eliminated as being involved in
5 those murders?

6 A. Yes, he was.

7 Q. And, in fact, later on, somebody else was
8 arrested for those murders; is that correct?

9 A. That's correct.

10 Q. And that person was convicted?

11 A. That person was convicted of the crimes;
12 yes.

13 Q. And that person's name is Rory Condon?

14 A. Rory Condon; yes.

15 MR. SEGAL: Okay. I have nothing further
16 at this time.

17 THE COURT: Any cross?

18 MR. TERRELL: Yes, judge.

19 CROSS-EXAMINATION

20 BY MR. TERRELL:

21 Q. Good afternoon, detective --

22 A. Good afternoon.

23 Q. -- or sargeant. Just so the jury's
24 clear.

25 Before you made contact with Mr. Behrens,

1 you said you had contact with the police from
2 Miami?

3 A. Yes. That's correct.

4 Q. He was in no way arrested or accused of
5 any wrongdoing when he had contact with the police
6 prior to your contact?

7 A. No, he was not.

8 Q. And, in fact, it was just a police
9 citizen encounter?

10 A. That is correct. He was not arrested.
11 He did not commit any crime.

12 Q. And the idea was I guess back then was to
13 get anybody in the area, males, to give oral
14 swabs, to collect DNA?

15 A. Males that were in the area late at
16 night. That is correct.

17 Q. How many thousands of swabs did you
18 collect?

19 A. Several thousand.

20 Q. More than 10,000, do you think?

21 A. No, it wasn't that many but it was --

22 Q. Over 5,000?

23 A. I think it was three or 4,000.

24 Q. Thousands and thousands of swabs;
25 correct?

1 A. Yes.

2 Q. And you yourself collected hundreds and
3 hundreds of swabs; correct?

4 A. Yes.

5 Q. What period of time was this? How many
6 months was this collecting of swabs?

7 A. It was several months over the span of
8 the six murders that occurred.

9 Q. And then based on that, based on the
10 police citizen encounter, you went to Mr. Behrens'
11 house, correct, on March 9th?

12 A. Yes.

13 Q. Michelle Newman who is -- was Mr.
14 Behrens' wife at the time answered the door;
15 correct?

16 MR. SEGAL: Objection. Mr. Terrell is
17 testifying when he's asking question
18 if he was married and --

19 THE COURT: Sustained.

20 BY MR. TERRELL:

21 Q. Did a woman answer the door?

22 A. I don't recall.

23 Q. Do you remember a woman being there and a
24 baby?

25 A. There may have been a woman inside the

1 house.

2 Q. You don't recall her answering the door?

3 A. No.

4 Q. This was early on Saturday morning,
5 wasn't it?

6 A. No. It was Thursday, March 9th

7 Q. Thursday morning, March 9th?

8 A. Yes.

9 Q. Mr. Behrens was cooperative; correct?

10 A. Yes. Yes, he was.

11 Q. You explained to him why you were there?

12 A. Yes.

13 Q. He said: Okay, no problem?

14 A. Yes, he agreed to give a swab.

15 Q. Nice guy, isn't he?

16 MR. SEGAL: Objection, your honor.

17 THE COURT: Sustained.

18 BY MR. TERRELL:

19 Q. He was a nice guy to you, wasn't he?

20 A. He was cooperative with me; yes.

21 Q. The consent form that we just put into --
22 the state just put into evidence, you've testified
23 that you put his name there?

24 A. Yeah, that's my writing.

25 Q. Why would you put I, Ernesto Behrens

1 there? Why not have Ernesto Behrens put his name
2 there?

3 A. No particular reason. I was doing that
4 on a lot of the forms, writing -- printing the
5 name and then having them sign.

6 Q. How many swabs did you collect that day?

7 A. I don't recall.

8 Q. Multiple?

9 A. I was probably following up on several
10 leads that day.

11 Q. And also on this consent form, it's got a
12 place for the witness; correct --

13 A. That is correct.

14 Q. -- on the other side?

15 A. That is correct.

16 Q. Why didn't you have Michelle sign that?

17 A. If his wife was present at the time that
18 we were collecting the swab, she would have signed
19 it.

20 Q. So because -- you're saying because there
21 is no signature there, you're saying she wasn't
22 present?

23 A. She wasn't present in the room when I was
24 collecting the swab.

25 Q. Well, this was done in the kitchen,

1 wasn't it?

2 A. That is correct.

3 Q. And there was a high chair with a baby
4 eating in the kitchen, wasn't there?

5 A. There may have been a high chair. I
6 don't remember her being in the kitchen with us
7 when I collected the swab. Like I said, if she,
8 then I would have had her sign it. That's usually
9 our protocol.

10 Q. If she was there, she would have signed
11 it; correct?

12 A. Yeah. She could have been in another
13 part of the house.

14 Q. Okay.

15 A. That's probably why her name is not
16 there.

17 Q. You said you opened up the package of
18 swabs -- for the swabs?

19 A. That is correct.

20 Q. Okay. How many packages did you open?

21 A. Two, I think.

22 Q. And isn't it true, then you gave the Q
23 tip to Mr. Behrens?

24 A. The package.

25 Q. The package?

1 A. He took. He took the Q tip out of the
2 sleeve.

3 Q. Okay. At that point, isn't it true,
4 sargeant, that you went out to your police car?

5 A. No.

6 Q. It's not true. Is it your testimony that
7 you never left the house during the time that he
8 had the swabs?

9 A. That is correct.

10 Q. You're positively sure you didn't leave
11 the house and come back just two minutes later,
12 after going to your police vehicle?

13 A. No.

14 Q. You're not sure?

15 A. I'm sure I didn't leave.

16 Q. Okay. The evidence or property receipt
17 that you fill out when you take it back down to
18 Miami-Dade --

19 A. Yes.

20 Q. -- you've had a chance to review that,
21 haven't you?

22 A. Yes.

23 Q. And it says and asks you for the
24 quantity; correct?

25 A. Yes.

1 Q. And it says one?

2 MR. SEGAL: Your honor, I'm going to
3 object. He's referring to something that's not
4 been marked or in evidence.

5 THE COURT: Why don't you mark it for
6 identification.

7 MR. TERRELL: Sure.

8 BY MR. TERRELL:

9 Q. sargeant, I'm handing you what's been
10 marked as --

11 MR. SEGAL: Can I see that for a moment?
12 Thank you.

13 BY MR. TERRELL:

14 Q. I'm showing you what's been marked M,
15 Defense M for identification.

16 Do you recognize that?

17 A. Sure do.

18 Q. Could you explain to the jury what that
19 is?

20 A. That is a Metro Dade Police Department
21 property receipt listing the oral swab specimen
22 that was taken from Mr. Behrens.

23 Q. You just mentioned that it said oral swab
24 specimen.

25 Is that in the singular or in the plural?

1 A. Oral swab specimen meaning one swab, one
2 specimen.

3 Q. Since 1995, have you taken any other
4 swabs?

5 A. Yes.

6 Q. You have?

7 A. Yes.

8 Q. Okay. Isn't it true you haven't done any
9 tests like this since 1995?

10 A. Haven't done any tests?

11 Q. Have not?

12 A. I just said I had.

13 Q. I'm going -- do you remember giving a
14 sworn deposition on April 11th, 2000 and, in fact,
15 I believe I was the one giving the deposition?

16 A. Yes.

17 Q. And you obviously swore to tell the
18 truth; correct?

19 A. Sure.

20 Q. I'm referring to page nine, line 25,
21 answer, page ten, line 11. If you could please
22 review the questions and answers.

23 A. Line --

24 Q. Last line on the page, page 9.

25 A. Have you done any of these tests since

1 '95?

2 Q. And your answer was?

3 A. No.

4 Q. Thank you.

5 A. April 11th.

6 Q. April 11th, 2000. So when I asked you
7 that question then, you said you'd done no other
8 tests since 1995 like that; correct?

9 A. Between then and April 11th. That's
10 correct.

11 MR. TERRELL: Thank you. No further
12 questions.

13 THE COURT: Any other questions?

14 MR. SEGAL: Yes, your honor.

15 RE-DIRECT EXAMINATION

16 BY MR. SEGAL:

17 Q. Since April 11th, 1995 -- I'm not sure
18 it's called -- I'm not sure it's a test.

19 A. It's a swab, specimen; yes.

20 Q. Since April 11th, 19 -- april 11th of of
21 2000, have you had done some of these?

22 A. Yes.

23 Q. Now, on the property receipt, it says one
24 swab specimen; correct?

25 A. That is correct.

1 Q. How many swabs are in a swab specimen?

2 A. Two. One for the left side and one for
3 the right side of the mouth.

4 MR. SEGAL: Thank you very much. Nothing
5 further.

6 THE COURT: Anything, Mr. Terrell.

7 MR. TERRELL: Nothing further, judge.

8 THE COURT: Thank you very much. You may
9 step down.

10 SARGEANT MOORE: Thank you.

11 [WHEREUPON, the witness was excused]

12 THE COURT: Anybody on the jury panel
13 need a restroom break? Okay. We'll take a short
14 stretch break at this time.

15 Ladies and gentlemen, first of all, don't
16 leave any personal items in the jury box. Take
17 your personal things with you. Don't discuss this
18 case among yourselves. And certainly, don't form
19 any definite or fixed opinions on the merits of
20 this case.

21 Please be outside of these doors no later
22 then, let's say, five after 3:00. Thank you.

23 [WHEREUPON, a short recess was taken]

24 THE COURT: Mr. Behrens is present,
25 Mr. Segal and Mr. Terrell, Ms. Shelowitz

1 MS. SHELOWITZ: Just as a cautionary
2 matter so there's no accidental opening of any
3 doors. When Geller testifies, he did do police
4 reports on several of the Behrens --

5 THE COURT: Is this one of the next two
6 witnesses?

7 MS. SHELOWITZ: Yes. On several of the
8 Behrens cases. If there's a reference to the
9 police report, that it be stipulated to that he is
10 not opening the door to the other cases that are
11 also contained in those police reports.

12 MR. SEGAL: Before he testifies, if I
13 could have the opportunity to go over all the
14 things he's going to testify to. If we could just
15 take a break after the next witness and before
16 Officer Geller.

17 THE COURT: I certainly anticipate that,
18 you know, if there's a reference to your police
19 report, that barring something else out there,
20 that it relates only to this case.

21 MR. SEGAL: Right. Obviously, it's the
22 way the question is asked in the reports and the
23 way that developed. There's a lot of mixture of
24 stuff.

25 THE COURT: You speak to him about that.

1 MR. TERRELL: Who's coming next?

2 THE COURT: So we got Detective Geller
3 and --

4 MR. SEGAL: Detective Hinz from the Crime
5 Lab. She's just a chain of custody witness.

6 MR. TERRELL: Just so the court knows,
7 there's going to be a lot of testimony I think --
8 a lot of hearsay. She has very little personal
9 knowledge in this whatsoever. I would almost ask
10 that it's not necessary to proffer what she's
11 going to testify to. She's almost like Dr. Khan.
12 She touched the swabs for a second and transferred
13 them to someone else. She had nothing to do with
14 anything else. For her to testify to any of it
15 would be against the Rules of Evidence.

16 MR. SEGAL: Some of the stuff, she can
17 act as a -- almost as a records custodian. She
18 can testify to certain things that were done with
19 it. She again knew the way the whole
20 investigation was being conducted because there's
21 a retired person that handled one aspect of this.
22 She did more than touch it for two seconds. She
23 got the swabs after they had been tested by
24 Dr. Khan and put in an evidence locker.

25 When the -- when Detective Geller

1 contacted her, she removed the swabs, made a card
2 up for them, put them in an envelope and that's
3 the way they were delivered to Detective Geller.
4 So she's the one who basically took the swabs, his
5 swabs, and prepared them to be delivered to
6 Detective Geller.

7 THE COURT: Well, that doesn't sound like
8 hearsay, that portion of it.

9 MR. TERRELL: If that's what it's limited
10 to, I would agree that's not hearsay.

11 THE COURT: Again, just based on what
12 we've talked about, it doesn't sound like a
13 hearsay issue. If you need to raise an objection,
14 you'll do so when appropriate. It sounds like, as
15 Mr. Segal says, it's really a chain of custody
16 witness.

17 MR. TERRELL: Yes. I assume that's why
18 they're calling him; yes.

19 THE COURT: Are you they out there,
20 Henry?

21 THE SHERIFF: Yes, judge.

22 THE COURT: Mr. Behrens remains present,
23 all counsel.

24 Bring them in, please.

25 [WHEREUPON, the jury panel entered the

1 courtroom]

2 THE COURT: Welcome back, ladies and
3 gentlemen. Again, thank you for your patience.

4 Okay. Mr. Segal, call your next witness.

5 MR. SEGAL: Sharon Hinz.

6 THE COURT: Good afternoon. If you'll
7 please come up to the witness stand right up here,
8 come around, raise your right hand, Karen will
9 swear you in.

10 Thereupon,

11 SHARON DENISE HINZ, a witness herein, and
12 having been first duly sworn by the court clerk
13 and cautioned to tell the truth of HER knowledge
14 as to the within matters, was thereupon examined
15 and testified upon HER oath as follows:

16 THE CLERK: Please be seated. State your
17 full name and spell your last name for the record.

18 THE WITNESS: My name is Sharon Denise
19 Hinz, H-i-n-z.

20 DIRECT EXAMINATION

21 BY MR. SEGAL:

22 Q. Thank you. Ms. Hinz, where are you
23 employed?

24 A. Miami-Dade Police Department Crime
25 Laboratory Bureau in the Forensic Biology Section.

1 Q. What is the Forensic Biology Section?

2 A. Basically, we deal with evidence of a
3 biological nature, blood and other body fluids.

4 Q. And what is your position with that
5 section?

6 A. I'm what's called a Criminalist 2.

7 Q. And what do you do in that position?

8 A. In that position, basically what I do is,
9 I examine evidence when it comes first into the
10 laboratory in its bulk form, bags and boxes. I
11 take it: Blood, body fluids, any type of
12 biological material, and then I repackage it and
13 send it for DNA testing.

14 Q. And how long have you been in that
15 position?

16 A. It's been about seven and a half years,
17 doing that particular function.

18 Q. Okay. Were you so employed back in March
19 of '95 going up through June of '97?

20 A. Yes, I was.

21 Q. Now, back in March of '95, in that time
22 period, were you at all involved with any of the
23 DNA people involved in an investigation of a
24 serial murder that was down on Southwest H Street?

25 A. Yes, we were.

1 Q. And were you participating in that
2 investigation in the processing of the swabs, of
3 the thousands of swabs that you all were
4 receiving?

5 A. Yes, I was.

6 Q. Okay. And you were familiar with the
7 recordkeeping procedures that were occurring as
8 far as the swabs that were coming in?

9 A. Yes, I am.

10 Q. Okay. And the packaging of the swabs and
11 how that was done?

12 A. Yes, I was. Basically, most of the swabs
13 in those different cases were assigned to me to
14 repackage for further testing.

15 Q. Okay. Now, when you received the swabs
16 from the detectives or whoever obtained the swabs,
17 how -- what did you all do as far as assigning
18 numbers or letters or anything to keep track of
19 the swabs?

20 A. When the swabs first come into the
21 laboratory, they were assigned a specific case
22 number that they were attributed to. At this
23 point, it was a Miami-Dade Police case number
24 assigned to a particular one of the individuals
25 that was part of the homicide -- the grouping of

1 homicides that we had in Dade County so it came
2 under -- under one of those specific case numbers
3 from their person.

4 It's their function in the laboratory to
5 give each item an item number so they would have
6 given the item number in this case a case number
7 and item number. And that same item number would
8 follow through in our laboratory.

9 Q. And what other records were made of the
10 log number that was assigned to each particular
11 set of swabs or swab?

12 A. And then as each package was opened up,
13 each individual item was opened, it was put on a
14 sheet of paper as to the date and then the item
15 number and then the individual that that sample
16 came from.

17 Q. Okay. Now, as part of the case, did you
18 become familiar or aware that samples had come
19 into the lab from Ernesto Behrens?

20 A. Yes.

21 Q. How were those samples packaged when they
22 were received in the lab?

23 A. Basically, the samples would have been
24 received in a brown bag packaging and then the
25 swabs would be in -- actually, in like their

1 individual swab packets. It's like in a doctor's
2 office, the swabs that they use to do certain
3 examinations. They would pull that package. And
4 then usually there's two swabs in that packet. So
5 that's what it was in, a brown paper bag. Most of
6 them with the swab packets with the swab still in
7 the packets.

8 So actually, it was like they were opened
9 up, the swabs were removed, were used to make oral
10 swabs and then placed back into that little --
11 it's like a waxy type of paper packet. It's put
12 back in there. And then it was all sealed up in
13 the brown paper bags.

14 Q. And then what was done as far as getting
15 those swabs ready for DNA testing?

16 A. To get those swabs ready, the brown outer
17 packaging would have to be opened up and then the
18 swabs, because they're like a Q tip cotton swab,
19 are placed on a three by five index card. The
20 sticks are broken and then they would be placed
21 onto the card and taped to the card, labelled with
22 the item number and the person that is attributed
23 to that item number.

24 And then also from there, they would be
25 placed in another envelope and that would be

1 sealed up and sealed with evidence tape and
2 initialled. And that would be placed in the
3 freezer where -- when it was sent to DNA at a
4 later date.

5 Q. And the swabs were put back in the
6 freezer.

7 Would this -- those have markings on them
8 in some fashion to indicate which particular item
9 numbers or case numbers they were involved in?

10 A. Sure. The outer package would have the
11 case number. It would have some other details for
12 Miami-Dade when -- in this case, I don't think
13 there was some other type of agency number besides
14 the Miami-Dade police number, the item number
15 itself. Sometimes, the person's name is written
16 on the outside of the envelope.

17 Q. Okay. Now, when they came in, you said
18 the swabs, the first thing done is, they're
19 attached to a card?

20 A. Yes.

21 Q. And you break off the two long parts of
22 the --

23 A. Of the stick.

24 Q. -- of the [REDACTED] part of it?

25 Did that bother the swab part at all --

1 A. No.

2 Q. -- the Q tip part?

3 Okay. Then on the card that the swabs
4 were attached to, what's noted on that?

5 A. The actual three by five index card would
6 have the case number, the item number itself and
7 the person's name that they were collected from.

8 Q. Okay. And what was done with that --
9 with the card?

10 A. With the card that was put in the --
11 another envelope that we use in the laboratory for
12 storing things in the freezer. And then that's
13 the envelope that would have been sealed,
14 initialled and then put in the freezer.

15 Q. Okay. Then how were the swabs that were
16 brought into the lab tested? What was the
17 procedure for doing testing on those?

18 A. The envelopes then that were prepared
19 would be placed -- the item numbers and the
20 person's name would be placed on a DNA evidence
21 transmittal sheet. And then there's either ten or
22 12 slots. And it would be however many samples
23 would be transferred would be put on this piece of
24 sheet. And that would have gone to whoever was
25 going to do the DNA testing.

1 Q. The swabs for Ernesto Behrens, were those
2 sent for testing?

3 MR. TERRELL: Objection, judge.

4 THE COURT: What's the basis of the
5 objection?

6 MR. TERRELL: I'll withdraw that
7 objection.

8 BY MR. SEGAL:

9 Q. Were those swabs sent for testing?

10 A. Yes. They were sent within our
11 laboratory still. They were still --

12 Q. Who did the testing in the laboratory?

13 A. The person who accepted the swabs was
14 Roger Kahn.

15 Q. And who was Roger Kahn?

16 A. He's another Criminalist within our
17 laboratory who was doing the majority of the
18 samples on all these cases.

19 Q. By the way, what was the case number,
20 item number, assigned to --

21 MR. TERRELL: Objection, judge. Calls
22 for a hearsay answer.

23 THE COURT: May I see you, please.

24 [WHEREUPON, the following sidebar
25 discussion was had]

1 MR. TERRELL: The objection is two-fold.
2 First of all, she's now testifying to in general.
3 Her testimony is limited just to this case. She
4 did not process this swab. She did not assign the
5 number. She did not put the case number. She had
6 nothing to do with processing this swab and her
7 sworn testimony is she has nothing to do with it.
8 That's it. She can't testify to what it was
9 assigned to. She doesn't know it was done.
10 That's hearsay, when it was done, where it was
11 done. It's hearsay.

12 MR. SEGAL: She has records in front of
13 her that she can testify from as to what occurred
14 with that. Secondly, she was part -- she was part
15 of the processing of these materials with the item
16 number and the case number on there so she can
17 familiarize herself with that or she became
18 knowledgeable with that based on her contact with
19 the swabs. Therefore, as I discussed with the
20 court before she testified --

21 MR. TERRELL: The state has not shown any
22 unavailability of the witness who processed this
23 swab. The lady's name is Teresa Merit. She's not
24 on the witness list. He's known about this for
25 years now. It's completely prejudicial to allow

1 this lady to testify when the whole entire case
2 comes down to those swabs.

3 THE COURT: Let me send the jury out and
4 discuss this further.

5 [WHEREUPON, the sidebar discussion was
6 concluded]

7 THE COURT: Ladies and gentlemen, I need
8 to address a matter with the attorneys which is
9 going to take more than a couple of minutes so I'm
10 going to excuse you. I would appreciate it if you
11 didn't just hang outside these doors. Just wait
12 outside in the hallway. But don't go off anywhere
13 other than using the restroom.

14 Don't discuss this case among yourselves.
15 Don't discuss it with anyone else. And certainly
16 don't form and fixed opinion on the merits of the
17 case. And make sure you have your personal items.
18 Just again, after using the restroom if necessary,
19 be outside and we'll have you in here as soon as
20 we can.

21 Thank you.

22 [WHEREUPON, the jury panel left the
23 courtroom]

24 THE COURT: Let me ask Ms. Hinz, if
25 you'll excuse yourself. I'm trying to think of

1 where to put you so you're not around the jury.

2 Where did Henry go?

3 THE SHERIFF: He just stepped outside the
4 door. I think you were in there before.

5 THE COURT: If you'll just wait in there,
6 we'll get you back in here as quickly as we can.
7 Please don't discuss your testimony with anybody,
8 Ms. Hinz.

9 [WHEREUPON, the witness was stood down]

10 THE COURT: All right. Let the record
11 show the witness has left.

12 Let me make sure I understand this issue
13 now. You're going into questioning of this
14 witness as to, I gather, the identification or the
15 recording of some identifying marks or data on
16 these swabs; is that correct, Mr. Segal?

17 MR. SEGAL: Yes, your honor.

18 THE COURT: Okay. And I gather this
19 witness did not physically make those recordings.

20 Would you shut the door, please?

21 This witness did not make those
22 recordings. Is that a correct statement?

23 MR. SEGAL: Judge, it would be a better
24 idea to have Ms. Hinz come back in and testify to
25 the issues that Mr. Terrell raised so you can get

1 it from her.

2 THE COURT: Okay. Bring in Ms. Hinz
3 again.

4 The record will show the jury's out of
5 the courtroom. Mr. Behrens and all counsel are
6 present.

7 Ms. Hinz, welcome back. If you'll just
8 come back and have a seat on the witness stand.

9 Go ahead, Mr. Segal.

10 DIRECT EXAMINATION

11 BY MR. SEGAL:

12 Q. Ms. Hinz, going back to when the swabs
13 came into the lab, the assigning of a case number
14 and an item number to them.

15 That was done by whom?

16 A. The case number would have been -- I
17 guess by the homicide person as far as -- they're
18 the ones who submitted the -- the property receipt
19 and the sample to the laboratory so it would have
20 already had the homicide number on it, that they
21 were -- however they got that number.

22 Q. Okay.

23 A. You know, it was just one of the numbers
24 that we were using for the whole Tamiami case. As
25 far as the actual item number, that is done by a

1 person in our laboratory who -- that's their
2 specific function. Any property that comes into
3 the laboratory, they give them an item number.
4 The computer says the next item number available
5 is this number and they put that on the property
6 receipt and that's entered from this particular
7 person.

8 Q. And do you know who was it that did that?

9 A. There's in -- it's in here but I was
10 trying to make them out before but I don't know
11 the initials.

12 Q. Okay. But that information is inputted
13 into a computer?

14 A. Right. It's -- it's in the computer.

15 Q. Okay. And then it's in the computer for
16 anybody processing these particular -- these
17 particular things to know that the item number
18 is -- was it 232 assigned to Ernesto Behrens;
19 right?

20 A. Right, right. It's our computer tracking
21 system. At the time it was IMS. Now, it's a
22 different system. I don't know what the IMS is,
23 inventory maintenance system or something.

24 Q. Okay. Did whoever processed it in enter
25 into the computer what they did or is that done --

1 how was that done?

2 A. The person inputting would just -- again,
3 they would have called up and said this case
4 number and then the computer would have shown the
5 next available number was, you know, 232, when
6 they were inputting this. And then they would
7 have put it's oral swabs so -- but they put
8 something that's on the short description here.

9 They might have just put swabs, oral
10 swabs, the person's name. I don't know what they
11 would have entered into the computer as far as --
12 but they have to enter, like, that it's one
13 package, what the date is, all that -- any
14 information that's specific to the packaging.

15 Q. In fact, that item number, that's written
16 on the property receipt; is that correct?

17 A. That's correct.

18 Q. And you have a copy of that property
19 receipt in your file?

20 A. Yes.

21 Q. And it reflects on the property receipt
22 that that was originally done by Detective Moore;
23 is that correct?

24 A. Yes.

25 Q. There's an item number written on that;

1 is that correct?

2 A. Yes.

3 Q. And that followed the items throughout?
4 I mean, it stayed with the items that went to the
5 lab, that property receipt?

6 A. Right. It's with the -- the property
7 receipt that comes to me and then the evidence is
8 in the cooler. But then there's an inventory
9 number that connects the evidence to the property
10 receipt.

11 Q. Okay. At some point, then you handled it
12 after Dr. Khan finished his work?

13 A. After he finished his work. Not
14 immediately. But then in '97, when it was
15 requested of me, then I got the sample back in my
16 position -- my possession from Dr. Khan; yes.

17 Q. Okay. And that's when you turned it over
18 to Detective Geller?

19 A. Right.

20 Q. And you turned over item 232 to -- a
21 portion of --

22 A. A portion of item 232 to Detective
23 Geller; yes.

24 Q. Did you deal with the swabs submitted by
25 Detective Moore before Dr. Khan did his testing?

1 A. I would have taken the envelope -- the
2 swabs would have been in the envelope.

3 MR. TERRELL: Excuse me, judge. If we
4 could just take it to this particular swab other
5 than the generalization of the thousands of swabs.
6 BY MR. SEGAL:

7 Q. That's what I'm talking about, 232.

8 A. Item 232 swabs, on a three by five index,
9 in a foil envelope. That was prepared by somebody
10 else. And then it was put in the freezer. Then
11 when I was preparing the master list of samples to
12 be transferred to DNA, of course, because they
13 were in a box in the freezer so I went and pulled
14 the next set of ones that were going to DNA and
15 item 232 was within that grouping. So I at that
16 time took possession of them, filled out the DNA
17 transmittal form and gave them to Roger Kahn which
18 he then signed for them.

19 Q. And the item that you turned over to him
20 was the item 232 card with swabs on it?

21 A. It was the foil packet with the swabs in
22 this. That's the whole thing I gave him.

23 Q. Did you attach the swabs to the card to
24 give to Dr. Khan?

25 A. No.

1 Q. That had already been done?

2 A. That was done by Teresa Merit.

3 Q. You took it out of the freezer?

4 A. Right.

5 Q. For the transmittal to Dr. Khan?

6 A. Right.

7 Q. He did his testing?

8 A. Right.

9 Q. And it was placed back in the freezer?

10 A. Right.

11 Q. And then when Detective Geller wanted the
12 swabs in '97, you removed them from the freezer
13 and prepared them to give them to Detective
14 Geller?

15 A. Right, right. Because at that point, I
16 opened up the foil pack and I took two swabs out
17 of the foil packaging and created a new card, put
18 the two swabs on the new card, put them in a new
19 foil envelope. And that's the foil envelope that
20 went to Broward eventually. That's the one I gave
21 to Detective Geller.

22 MR. SEGAL: Okay. Thanks.

23 THE COURT: Mr. Terrell, any questions?

24 MR. TERRELL: Yes. Ms. Merit --

25 THE COURT: Ms. Hinz.

1 MR. TERRELL: I'm sorry. Ms. Hinz. I'm
2 tired.

3 BY MR. TERRELL:

4 Q. Specifically, with these swabs --

5 A. Right.

6 Q. -- you did not receive them in the lab,
7 did you?

8 A. I received the -- the -- the property
9 receipt and the swabs were placed in the
10 refrigerated unit that we store all our evidence
11 in.

12 Q. Ma'am, you did not -- you personally did
13 not receive the swabs in the lab; isn't that
14 correct?

15 A. Well, the property receipt and the swabs
16 are --

17 Q. Separated?

18 THE COURT: Well, let her answer the
19 question.

20 THE WITNESS: They're separated in space
21 but they are one unit. By signing the property
22 receipt, I'm --

23 BY MR. TERRELL:

24 Q. One more time. The swabs themselves, you
25 did not accept them? You did not receive them in

1 the lab, you personally, did you?

2 A. I did not receive them in the laboratory.
3 There's an evidence receptionist person that did
4 that.

5 Q. These particular swabs, you did not take
6 them out of the package and attach them to index
7 cards and place them into the computer, did you?

8 A. No. That wouldn't -- most of that is not
9 a function of my job.

10 Q. Okay. You were not the one who assigned
11 any number to it?

12 A. No. No analyst assigns any number to
13 anything in our laboratory.

14 Q. Okay. But I'm not talking about any
15 other analyst but you at this time.

16 You didn't put that number on there?

17 A. No.

18 Q. Do you know who put those numbers on
19 there?

20 A. From my receipt here, I do not; no.

21 Q. So had there been a mistake in numbering
22 them, you would not know?

23 A. In numbering the property receipts?

24 Q. No, ma'am. In numbering the index card?

25 A. If you can clarify as far as -- because

1 when I pulled the index card, that had number 232
2 on it. And when I opened it, it had 232 on it.
3 And it had the person's name that's attributed to
4 232.

5 Q. So what I'm saying --

6 A. That's as much as I know.

7 Q. If 232 is really Ty Terrell, you wouldn't
8 know because you weren't there when the number was
9 assigned and when the name was placed on it?

10 A. That's correct.

11 Q. Or if it should have been 231 instead of
12 232, you wouldn't know because you didn't process
13 these particular swabs?

14 A. That's correct.

15 Q. Okay. And there is a total of four swabs
16 that came in; correct?

17 A. Yes. There is -- well, either three or
18 four.

19 Q. Okay. Because you -- you sent two to
20 Detective Geller and you kept some down in
21 Miami-Dade; right?

22 A. Right.

23 Q. You were not the runner who took the
24 swabs from your lab over to the evidence
25 receptionist facility; correct?

1 A. The evidence receptionist facility?

2 Q. Yes. It's a different building, is it
3 not?

4 A. I -- I -- if you're talking about our
5 evidence receptionist, evidence -- these swabs
6 would never go anywhere. They would stay in the
7 laboratory.

8 Q. Really. And if it did go to another
9 building, that would be out of your knowledge;
10 correct?

11 A. It you're going to refer to my depo, then
12 right because I think you're confusing the
13 packaging with the actual swabs themselves which
14 is, the swabs never left our facility.

15 Q. Page 26. Date: May 2, 1999. Page 26,
16 lines 17, 18, 19 and 20.

17 Would you please review those.

18 A. Right.

19 Q. You were not with -- I'm sorry. Stick
20 to one thing.

21 Okay. You did not take them into the
22 evidence receptionist facility? And I'm talking
23 about these particular swabs.

24 A. Okay. These swabs never left our
25 building. These swabs are placed in a freezer

1 that is within sight of my work area. What I'm
2 specifically saying in there is the evidence
3 packaging. The packaging gets sent away with no
4 swabs in it.

5 Q. It's actually separated; correct?

6 A. Right. The swabs are over here and the
7 packaging, the original brown paper packaging, is
8 here.

9 Q. And, in fact, you were not one of the
10 people who put the information into the computer
11 to this particular swab; correct?

12 A. Right.

13 Q. How important is it to be accurate in the
14 information that goes into the computer?

15 MR. SEGAL: Objection, your honor, to the
16 nature of the question. Characterize the
17 importance of information.

18 MR. TERRELL: I'll rephrase it.

19 BY MR. TERRELL:

20 Q. It's important, is it not, to have
21 accurate information when it's placed into the
22 computer?

23 A. Right.

24 Q. Okay. You didn't do any of that --

25 A. Right.

1 Q. -- on this particular swab?

2 A. On any swab, on any evidence.

3 Q. Okay. You did not assign a name to this
4 swab, did you?

5 A. No, I did not.

6 Q. Somebody else assigned the name to the
7 swab; correct?

8 A. That would have been, I imagine,
9 Detective Moore, if that's what --

10 Q. I don't want you to imagine.

11 Do you know who assigned the name to the
12 swab or to the index card?

13 MR. SEGAL: If you assign a name to the
14 records --

15 BY MR. TERRELL:

16 Q. You said when it comes in, it's assigned
17 a name, an item number on the index card?

18 A. Well, the person's name is already
19 assigned because it's on the property report.

20 Q. Who puts it on the property receipt?

21 A. Detective Moore.

22 Q. Are you positive about that?

23 A. Well, Detective Moore filled out the
24 property receipt and it has Ernesto Behrens on it.

25 Q. Does that mean Detective Moore put the

1 name on the index card?

2 A. That's what I'm trying to explain to you.
3 You're talking about different things that are
4 not --

5 Q. All right. We can make it easy.

6 A. Detective Moore has never touched the
7 card because the person in our laboratory creates
8 the card.

9 Q. Which wasn't you?

10 A. Right.

11 Q. So as far as this particular swab, you
12 didn't take it into the lab; correct?

13 A. I accepted the property receipt and the
14 evidence into the laboratory.

15 Q. You personally did?

16 A. I personally signed for the evidence on
17 the property receipt; yes.

18 Q. What date?

19 A. 3/15 of 1995.

20 Q. Okay. And what did you do with the
21 property receipt?

22 A. The property receipt then would be in my
23 in basket until I then opened the rest of the
24 packages.

25 Q. Okay.

1 A. These particular packages, I did not end
2 up opening because I had an emergency.

3 Q. Somebody else did that; correct?

4 A. Right.

5 Q. You have no personal knowledge of
6 processing this particular swab?

7 A. Right.

8 Q. All right. Just so we're clear. You
9 didn't process this swab; correct?

10 A. Right.

11 Q. You didn't label this swab, give it a
12 name?

13 A. Right.

14 Q. Okay. You didn't assign a particular
15 number?

16 A. Right.

17 Q. You didn't put the information regarding
18 this swab into a computer?

19 A. Right.

20 MR. TERRELL: No further questions, judge.

21 THE COURT: Ms. Hinz, if you'll just wait
22 yourself outside and again separate yourself from
23 the jury, we'll have you back momentarily. And do
24 not discuss your testimony with anybody.

25 [WHEREUPON, the witness was stood down]

1 THE COURT: All right. The record will
2 show the witness has left the courtroom.

3 Mr. Behrens, all counsel are present.

4 You know, if I understand this, there's
5 really two questions or, perhaps better said,
6 there's two separate labelling or numberings that
7 we're really dealing with. One seems to be the
8 case number. And I think her testimony is, and
9 perhaps also Detective Moore's testimony or
10 Sargeant Moore, was that he assigned a case number
11 to the swabs with Mr. Behrens' name when he left
12 the house in Lauderhill and goes down to Dade
13 County and drops it off. He's the one that
14 generated that case number. And I think he
15 testified that he broke the stick and had it on
16 the index card.

17 MR. TERRELL: No, sir.

18 MR. SEGAL: No, sir.

19 THE COURT: Or she was the one in her
20 lab.

21 MR. TERRELL: She didn't do it.

22 THE COURT: Well, somebody in her offices
23 broke the stick. But then there's an item number
24 and the item number is generated, I think, within
25 their lab. And I think that's assigned through

1 inputting into the computer, which she did not
2 do --

3 MR. TERRELL: Right.

4 MR. SEGAL: Right.

5 THE COURT: -- is the way I understand
6 it.

7 MR. SEGAL: But she was knowledgeable of
8 the process.

9 THE COURT: So I think what's going to
10 have to be done is, she obviously can't testify to
11 any actual testing because she didn't do that.

12 MR. SEGAL: Right.

13 THE COURT: She can testify -- and I
14 don't recall whether she has in front of the jury
15 or not but she can testify to the labelling that
16 was on the -- I hate using the item number but she
17 can testify to the case number that was on the
18 property when she signed for it because she -- she
19 signed the property receipt in the lab.

20 MR. TERRELL: Right.

21 MR. SEGAL: Upon the property coming into
22 the lab.

23 MR. TERRELL: And that one case number
24 you're speaking of now, judge, if I understand it
25 right, was the case number for all 5,000 swabs

1 because the homicide case of Tamiami, that case
2 number is assigned to every one of them.

3 THE COURT: That may be. What I'm
4 getting towards is, there's going to be a
5 difference between what I see as a hearsay issue,
6 which I think is where you've gone on this,
7 Mr. Terrell, and I think that's a different
8 question than the question of what weight, if any,
9 the jury wants to ascribe to her testimony.

10 In other words, assuming Mr. Segal can
11 lay proper predicate in terms of her familiarity
12 with and knowledge of their internal work, that a
13 person, be it a colleague or whomever in her
14 office, they input into a computer every item
15 coming in but she testifies every item coming in,
16 a person then inputs into the computer the item
17 and it then generates an item number within the
18 lab.

19 She can testify that that's what's done,
20 assuming it to be the case on this item, as it was
21 done on every item coming in there. She obviously
22 can't testify to this specific item number because
23 she didn't generate or input it into the computer,
24 is the way I see it. She didn't do any testing.

25 She then I guess delivers it to Dr. Khan

1 who does what -- she can't really say what he does
2 because she doesn't know what he does. So all she
3 can really say is she receives an item pre-marked,
4 if you will, from Detective Moore, Sargeant Moore.
5 She can testify that it's separated. And I
6 understand what she's saying about the actual swab
7 staying within the refrigerated area versus the
8 bag it may have come in being returned. I mean,
9 she can testify to that.

10 I'm trying -- you know, with that in
11 mind, where further is your objection?

12 MR. TERRELL: She can't testify to the
13 assigning of the number like you just mentioned.

14 THE COURT: She cannot testify. In other
15 words, she's not going to be able to say: I know
16 from my personal knowledge that 232 was given to
17 Ernesto Behrens' swab because she didn't input
18 this number. The most it seems she can testify
19 to, assuming she can through questioning, is what
20 the -- if she has the familiarity with the
21 procedure internally in her office, then I think
22 she can testify to what that procedure is in her
23 office.

24 I mean, it's no different than her
25 being -- you know, this isn't really a business

1 record kind of thing because there's no memorandum
2 or document being proffered but it's similar in a
3 sense that, if she can be shown to be not the
4 custodian but a person with knowledge of, you
5 know, what their internal procedure is and if she
6 can testify to that procedure, then that's the
7 procedure we follow and, you know, but she can't
8 testify that it was followed in this case.

9 And that's where I get to the point that,
10 you know, the jury determines what weight they're
11 going to give her testimony. They can -- they can
12 believe it was done in this case or they can
13 totally discard it and say: I'm not going to
14 believe anything she says.

15 Let me hear from you further,
16 Mr. Terrell.

17 MR. TERRELL: I'm just going to say that
18 she can testify that the procedure in Miami-Dade
19 County is that when it's brought in, the property
20 receipt itself is taken to the computer where they
21 computer input all the data.

22 THE COURT: Assuming through questioning,
23 Mr. Segal can establish her personal familiarity
24 with what is done every time these items or items
25 such as this are received. I mean, if she says, I

1 really don't know what's done, that's the end of
2 the conversation.

3 MR. TERRELL: I think before we took
4 that --

5 THE COURT: I think she has that
6 familiarity.

7 MR. TERRELL: But beyond that, she can't
8 say: Oh, yeah. This is item 232. She can't
9 testify to that item. She didn't put that on
10 there. She's reading from a document. And I
11 don't -- reading the name, she can't say: There
12 is a mistake here. That's what I'm trying to get
13 to. She doesn't know where the mistake took
14 place. The name on the index card is not Ernesto
15 Behrens. It's misspelled, Ernest Behrens.

16 Is there another one? I don't know.
17 There is definitely a mistake. She was not in
18 personal control of these swabs and, therefore,
19 she cannot testify to that.

20 THE COURT: Mr. Segal?

21 MR. SEGAL: Judge, I don't know if there
22 was another person named Earnest or if there was
23 none and it's a misprint, typographical error,
24 whatever the terminology is. We all make those.
25 We had Detective Moore testifying he got a swab

1 from Ernesto Behrens. There's a letter left out.
2 That goes more to the weight of it than
3 admissible. It's almost ridiculous to think that
4 a person makes a small mistake of that nature,
5 then all evidence can't be used. That's what the
6 law says.

7 THE COURT: Let me ask you this.
8 Mr. Terrell, let me direct this towards you. If
9 she has the internal familiarity with the workings
10 of this lab in terms of when it receives swabs or
11 other items from -- from law enforcement --

12 MR. TERRELL: Yes.

13 THE COURT: -- if she has that internal
14 familiarity --

15 MR. TERRELL: Yes.

16 THE COURT: -- then she can testify to
17 what would be done as a matter of course on all
18 these items, this is how we do it and it generates
19 an item number and a name that stays with that
20 item? Do you agree with that?

21 MR. TERRELL: I would agree that if
22 that's what she says the procedure is, fine.
23 That's the procedure.

24 THE COURT: She's obviously going to
25 testify at some point that she's not the one that

1 did the inputting on this case. And I understand
2 that. But if she has the familiarity, then in my
3 mind, she's no different than a -- and I hate to
4 use the word -- custodian because we're partially
5 but not completely dealing with records.

6 She ought to be able to take the item
7 from her lab and say: You know, based on your
8 familiarity and based on the procedure that she is
9 personally familiar with, what was the item number
10 and whose name is on that item. She's going to
11 say -- from what you're telling me, she's going to
12 say: 232, Ernesto Behrens.

13 MR. TERRELL: Right.

14 THE COURT: Now, she -- how would she be
15 able to know whether that's a typo or not? That's
16 all she knows. This is what it says.

17 MR. TERRELL: That's why I want the
18 person who assigned that number. It's like saying
19 Andrea and Andrew.

20 THE COURT: I understand what you're
21 saying but I think whether it's Ernest or Ernesto,
22 that kind of direction, I think that's going to go
23 to the weight they will ascribe to her testimony
24 because I think if she can testify to the
25 procedure or the process internally in her lab, if

1 she can testify to that based on her personal
2 familiarity, then it -- then it's certainly
3 logical, to me anyway, that she would be able to
4 testify to what the result of that procedure,
5 which is the generating of an item showing number
6 232 and a name Ernesto Behrens.

7 And she doesn't know -- she doesn't know
8 whether it's this gentleman or me or anybody else
9 in this court. All she knows is how this item is
10 generated in the normal course.

11 MS. SHELOWITZ: Judge, why is it relevant
12 what they normally do? It doesn't go to prove
13 anything in this case. We don't allow officers to
14 testify about how they go about doing things. In
15 this case, she's talking about what they do down
16 there which is not relevant to this case.

17 MR. TERRELL: In addition to that, it
18 would be like saying all officers generate
19 reports, what the report of another officer says.
20 Absolutely not. It's hearsay.

21 THE COURT: I don't think that -- and I
22 guess we're perhaps going in a circle. I don't
23 think that an officer can testify to the
24 underlying truth --

25 MR. TERRELL: That's exactly -- sorry.

1 THE COURT: -- the underlying truth of
2 what was in Jones' report, as an example, but I
3 think they can testify that these are -- these are
4 the forms and -- that are generated and we use in
5 our reports and that when it says date of birth
6 and there's 4/30/50 written in there, that that
7 would mean Joe Blow's birthday was 4/30/50.

8 Whether in fact that is true or a
9 mistake, that officer will not know but he will
10 know based on his familiarity with that paperwork
11 that that -- that those numbers should mean
12 birthday to this person. He's not going to know
13 more than that.

14 MR. TERRELL: This is just a real crucial
15 area because this is really the crux of the case.
16 This is the entire two important things shows
17 there was a mistake here. One, again, the name.
18 And that is significant.

19 And two, she just testified just now that
20 she had three or four swabs. She kept one or two
21 and sent two with Detective Geller. Now, Sargeant
22 Moore said there was two swabs. So we went from
23 two swabs to possibly three or four swabs.

24 THE COURT: Nobody's saying you're not in
25 any way restricted from examining her on that

1 issue.

2 MR. TERRELL: But I need to be able to
3 ask: What did you do with the other two swabs?
4 Where are they at?

5 THE COURT: I can't -- I can't -- I don't
6 know who this person is or isn't.

7 MR. TERRELL: I don't either.

8 THE COURT: All I can say to you is, if
9 she testified contrary to Detective or Sargeant
10 Moore, I'm certainly not restricting your
11 cross-examination in that regard.

12 MR. TERRELL: This isn't a form. We're
13 talking about a piece of white card that a human
14 writes on it. It says 232, Ernesto Behrens. And
15 a mistake was made somewhere. That's hearsay.
16 She's reading something outside of the court and
17 certainly truth --

18 THE COURT: Is she reading off a
19 computer-generated -- what is it that she's
20 reading that gives the name Ernest Behrens and 232
21 because my understanding is that somebody receives
22 this evidence and inputs the items into the
23 computer and it generates Behrens' name and 232,
24 that it's -- that that's really what happens.

25 MR. SEGAL: Well, the 232, as she

1 testified, was written on a property receipt that
2 Detective Moore completed for Ernesto Behrens.
3 He's already testified to that. And I'll move
4 that property receipt in, that that was, it's
5 written on the property receipt that she has.

6 THE COURT: Well, where is his name
7 written? I guess that's the question. Where is
8 his name written?

9 MR. SEGAL: On the --

10 THE COURT: On the swab?

11 MR. TERRELL: It's on the index card.

12 MR. SEGAL: The name is written on the
13 index card. And that's where it says Ernesto
14 Behrens. That's by memory. It said Ernest
15 Behrens. The card came into that trial. Judge
16 Caan ruled it admissible. It said Ernest Behrens
17 but Ernesto Behrens --

18 THE COURT: Well, I mean, in the other
19 case, did the person not testify as to who
20 generated the cards? Didn't you have the same
21 issue?

22 MR. TERRELL: Judge, we're not litigating
23 that case. They weren't challenging any of the
24 evidence. This, we're certainly challenging.
25 You're going under the presumption that this was

1 computer-printed. This is handwritten stuff.

2 THE COURT: Somewhere, there was
3 testimony that something was computer-generated --

4 MR. SEGAL: The number --

5 THE COURT: -- the 232 number.

6 MR. SEGAL: Right. And again, the stuff,
7 as she testified to, has brown envelope --
8 brown -- I'm sorry. Brown evidence bag, some oral
9 swab specimen of Ernesto Behrens, white male, date
10 of birth, 11/10/64. And then you see the property
11 receipt. She has it. In fact, the one that Mr.
12 Terrell showed her has the number 232 written on
13 there.

14 THE COURT: She's already testified, if I
15 recall, that she's familiar with everything on
16 that paper with the exception she's not familiar
17 with the initials of that person. Is that a
18 correct statement?

19 MR. SEGAL: Right.

20 MR. TERRELL: Of all the people who
21 handled it, I know who these people are. I can
22 read and say: I know who the doctor is. Five
23 different people handled this -- this evidence.
24 And 232 is handwritten on there. It's a hard --
25 human error can happen here and we're alleging

1 human error.

2 We're in violation of the chain of
3 custody issue. I would like the person who said
4 232. Maybe the computer said 232. I don't know.
5 But I want to ask that person.

6 MR. SEGAL: They have every right to
7 subpoena whoever they want.

8 MR. TERRELL: It's not our burden, judge.

9 THE COURT: The question is, whether the
10 person is equally available. I assume whoever --

11 MR. TERRELL: It's their evidence.

12 THE COURT: Whoever the person in the
13 Crime Lab is or whoever worked in this case was
14 somehow put out in discovery. I mean, I don't
15 know who these people are.

16 MR. TERRELL: They've never been supplied
17 to us.

18 THE COURT: But I assume if they were
19 known, they -- they were made available.

20 MR. TERRELL: And, judge, they were known
21 I think a couple of years ago. The state never
22 put these people on the witness list, never
23 deposed them. They have to at least show
24 unavailability of the witness if they're going to
25 try to skip that, skip the chain of custody,

1 saying: This person was here and she's reading
2 from another --

3 MR. SEGAL: It's probable tampering. I
4 don't see any indication of probable tampering so
5 any chain of custody argument because there's no
6 evidence of any probable tampering --

7 MR. TERRELL: Yes, there is, judge. The
8 witness said: I had three or four swabs.
9 Detective Moore says: I only submitted two.
10 Something's wrong there. Tampering is done
11 somewhere there. Another thing is, the name is
12 wrong. In addition to that, I think I saw one
13 more on that property sheet. Where is the
14 property sheet?

15 Judge, there's three things that we're
16 alleging. Here it is. Besides the name, besides
17 the fact now, we have multiple swabs as opposed to
18 just two --

19 THE COURT: Well --

20 MR. SEGAL: If I can just address the
21 hearsay issue. If you accept Mr. Terrell's
22 argument, then basically nobody can come to court
23 and testify to date and you don't give yourself
24 your name --

25 THE COURT: I've heard that argument

1 before.

2 MR. SEGAL: So obviously, people are
3 going to testify to things.

4 THE COURT: Is it your intention to offer
5 into evidence this document that you both have
6 floating around there?

7 MR. SEGAL: I'll do that.

8 THE COURT: Well, it would seem that as
9 long as Mr. Segal can lay a proper foundation for
10 her to testify as a custodian of records and as to
11 the procedures they followed, the simple fact to
12 me is that if she cannot identify the initials of
13 the person does not flaw what would otherwise be
14 admissible as a hearsay exception.

15 And I don't know whether this is called a
16 lab report or item -- I don't know what they call
17 it in their technical terms. Is it marked for
18 identification?

19 MR. SEGAL: Well, Mr. Terrell's copy is
20 marked for identification.

21 MR. TERRELL: That's correct.

22 THE COURT: Well, just for the record,
23 what is it for identification?

24 MR. TERRELL: It's Defense Exhibit M.

25 THE COURT: Okay.

1 MR. TERRELL: And, judge, again, it's not
2 so much that she can't read the initials. She
3 didn't do the work.

4 THE COURT: Again, the work is the
5 two-fold issue. Number one, the testing, which we
6 know she didn't do. And, secondly, she didn't do
7 the inputting or generating of the items, number
8 232. She -- she's not going to be able to testify
9 whether the name is in error or not.

10 She can only testify that, our lab
11 generated item 232 with these specimens under the
12 name with presumably Ernesto Behrens. And I
13 gather that's where it's going to go where she is
14 concerned. And what the jury does with that
15 remains to be seen.

16 MR. TERRELL: Just note our objection.

17 THE COURT: Mr. Behrens has been
18 continuously present.

19 THE COURT: Welcome back, Ms. Hinz.

20 THE SHERIFF: Jurors coming in, your
21 honor.

22 [WHEREUPON, the jury panel entered the
23 courtroom]

24 THE COURT: Welcome back, ladies and
25 gentlemen. I appreciate your patience again.

1 Mr. Segal, you may continue.

2 BY MR. SEGAL:

3 Q. Ms. Hinz, let me go back for a moment.

4 The procedure by which these swabs were
5 taken into the lab, assigned numbers, et cetera,
6 are you familiar with that procedure?

7 A. Yes.

8 Q. Okay. And you were knowledgeable and, in
9 fact, participated in that procedure, did you not?

10 A. Which part of the procedure?

11 Q. Well, you participated in parts of the
12 procedure as far as bringing evidence into the lab
13 and assigning item numbers to them and repackaging
14 them to protect them?

15 A. Just the repackaging part. The actual
16 assignment of item numbers is one individual in
17 our laboratory.

18 Q. But you're familiar with the way that was
19 done?

20 A. Right.

21 Q. It's the way you testified to: Somebody
22 went into the computer and got an item number;
23 correct?

24 A. Right.

25 Q. And you were knowledgeable about this

1 throughout the course of the collection of the
2 several thousand swabs that were collected in this
3 case; correct?

4 MR. TERRELL: Judge, I'm going to object
5 to the leading question.

6 MR. SEGAL: Okay.

7 THE COURT: Sustained.

8 BY MR. SEGAL:

9 Q. When the procedure or -- I'm sorry.

10 When the procedures that were going to be
11 utilized to process these thousands of swabs were
12 formulated, were you part of that formulation in
13 participating and how they were put together and
14 did you continue to get -- involve yourself in
15 that at the Miami-Dade Crime Lab with respect to
16 the Miami-Dade Police Department?

17 A. Right. I'm the one who started the
18 whole -- with all the thousands of swabs. Of
19 course, originally, they came in and there
20 weren't -- there weren't thousands of swabs. They
21 came in little by little and then they mounted up
22 to the point where there were almost 3,000 swabs.

23 But yeah, I was there from the beginning
24 because the actual cases themselves were my cases
25 because they were thought to be linked to a string

1 of homicides. So as the swabs came in, they were
2 all given to me so I'm the one who developed the
3 procedure of -- of -- basically, after they came
4 into the laboratory, they were given to me.

5 And then how they were to be opened, that
6 they were to be checked when each individual
7 package was opened and that the swab packets
8 themselves on the inside, whatever was on there,
9 was then put on a log, as well a double check on
10 the samples as far as what the outside packaging
11 said and what the inside packaging said.

12 Q. Okay. And the log included the item?

13 A. That's correct.

14 Q. Okay. How about the part of the
15 procedure that was put in place that put the item
16 number on the property receipt as it was done in
17 this case?

18 A. No. Again, the putting the actual --

19 Q. Not the actual putting but coming up with
20 a plan to do that, the idea that that's how it was
21 going to be done as far as processing this stuff
22 in the lab?

23 A. No. That's standard for all evidence
24 that's entered into our laboratory so that's from
25 many years ago. That's how it originally started.

1 As evidence came in and when the computerized
2 system was first introduced into our laboratory,
3 whenever that was, before I was even in our
4 laboratory. So that's a standard that was in
5 place for as long as we've had the computerized
6 system in our laboratory.

7 Q. Okay, okay. You said you have a copy of
8 the property receipt with the item number on
9 there?

10 A. Yes, I do.

11 Q. Could you take that out?

12 A. Actually, I --

13 Q. Do you need a copy of it?

14 A. Yeah, I need a copy.

15 MR. SEGAL: Can we make a copy of that
16 made?

17 THE COURT: Can we make a copy of
18 something, Terry? Which one do you need for your
19 recordkeeping? Is one okay or you'd be in
20 trouble --

21 THE WITNESS: Right.

22 THE COURT: What's the problem there,
23 Mr. Segal?

24 BY MR. SEGAL:

25 Q. Okay. I'm going to show you what's been

1 marked as State's T for identification and ask you
2 if you recognize what that is?

3 A. That's the property receipt.

4 Q. Okay. That's a copy of this property
5 receipt that you had in your file; is that
6 correct?

7 A. That is correct.

8 Q. The copy that was made just now is not as
9 dark as the original property receipt; correct?

10 A. That's correct.

11 Q. Okay. Now, on this property receipt is
12 a -- the item number is written in; is that
13 correct?

14 A. Yes, it is.

15 Q. Okay. And where's the item number
16 written in on the property receipt?

17 A. It's underneath the description of what
18 is in the packaging that would have been with the
19 property receipt.

20 Q. Okay. And what's that number?

21 MR. TERRELL: Objection, judge. Hearsay.

22 THE COURT: Overruled.

23 THE WITNESS: Item number 232.

24 BY MR. SEGAL:

25 Q. Okay. Now, are these the property

1 receipts or a copy of these that followed the
2 swabs through the lab and stayed with the lab?

3 A. That's correct.

4 Q. They stay with the swabs through the trip
5 through the lab?

6 A. That's correct.

7 Q. And this thing with the card with the
8 swabs with 232s on them; correct?

9 A. The property -- this property receipt
10 would not remain with the swabs; no.

11 Q. Okay. But there would be some notation
12 on the swabs about the item number; correct?

13 MR. TERRELL: Objection. Leading.

14 THE COURT: Sustained.

15 BY MR. SEGAL:

16 Q. Would there be the item number on the
17 card attached to the swabs?

18 A. Yes.

19 Q. Okay. And that could -- you could check
20 back to which swabs or which piece of evidence it
21 was that the property receipt reflecting that
22 particular property?

23 MR. TERRELL: Objection. Leading.

24 MR. SEGAL: With the item number.

25 MR. TERRELL: Objection. Leading.

1 BY MR. SEGAL:

2 Q. Could you, yes or no?

3 THE COURT: Okay. Restate your question.
4 I want to hear the question again.

5 MR. SEGAL: Sure.

6 BY MR. SEGAL:

7 Q. With the -- with the swabs, as they went
8 through the lab, they had the -- did they have the
9 item number attached to them, the 232?

10 A. The item number would be written on the
11 index card and written on the outer packaging.

12 Q. Okay. Which could obviously be -- could
13 that be double-checked with the property receipt
14 which reflected the item number assigned to it?

15 A. Yes.

16 Q. Okay. And does State's Exhibit T
17 accurately reflect the way the property receipt in
18 your file looks other than lighter?

19 A. Other than lighter; yes.

20 MR. SEGAL: Okay. Move Exhibit T for
21 identification into evidence?

22 MR. TERRELL: Judge, may I voir dire the
23 witness?

24 THE COURT: Yes.

25 CROSS-EXAMINATION ON VOIR DIRE

1 BY MR. TERRELL:

2 Q. Ma'am, what is your badge number?

3 A. Mine is 6390.

4 Q. Okay. You personally didn't put any of
5 this information on here, did you?

6 A. No. Other than my name at the bottom and
7 my item -- my badge number and the date.

8 Q. Okay. Besides your badge number, more
9 importantly, you didn't put 232 on there, did you?

10 A. No.

11 Q. You did not assign that number in any
12 way, did you?

13 A. No.

14 MR. TERRELL: Judge, at this time, I
15 object to this coming into evidence as hearsay.

16 THE COURT: I'm going to overrule the
17 objection. I'm going to admit it in as State's
18 No. 18.

19 [STATE'S EXHIBIT NO. 18 entered entered
20 into evidence]

21 MR. SEGAL: Okay. Can I ask Ms. Hinz to
22 step down for a moment?

23 THE COURT: Yes.

24 DIRECT EXAMINATION

25 BY MR. SEGAL:

1 Q. Because of the different shading, if you
2 could, on the paper that's State's Exhibit 18,
3 point out where the 232 is and point it out on the
4 clearer copy.

5 A. And here is the not so clear and there's
6 the clear, not so clear, clear and not so clear
7 and there again.

8 Q. Okay. Could you show on there again
9 where Detective Moore's name is as the person that
10 obtained the swabs?

11 A. Sure. Detective Moore -- Detective Moore
12 is right there. And that's Detective Moore.

13 Q. Okay. And while you're here, can you
14 read the section here that gives a description as
15 to where this property receipt goes to?

16 A. Sure.

17 MR. TERRELL: Objection, judge. Hearsay.

18 THE COURT: Overruled.

19 THE WITNESS: The description is: One
20 quantity. It's a brown evidence bag containing
21 oral swab specimen of Ernesto Behrens, w/m.

22 Q. Which means what?

23 A. Which means in this case, white male.
24 DOB.

25 Q. Which stands for?

1 A. Date of birth. And then the date on
2 here. Do you want me to read the date?

3 Q. The date of birth is fine.

4 A. Right. Do you want me to read it
5 outloud?

6 Q. Yes.

7 A. 11/10/64.

8 Q. Now, did Detective Moore sign at the
9 bottom as the person that impounded the swab, that
10 took the swab into evidence?

11 MR. TERRELL: Objection, judge. Lack of
12 personal knowledge, hearsay.

13 THE COURT: I'll sustain it. She has no
14 personal knowledge.

15 BY MR. SEGAL:

16 Q. Is there a place on there where it has
17 the name of the impounding officer?

18 A. Yes. There is a space here for the
19 impounding officer.

20 Q. And what name is written in there as the
21 impounding officer?

22 MR. TERRELL: Objection, judge. Hearsay.

23 THE COURT: Overruled. You may answer.

24 THE WITNESS: In this case, it is, Moore,
25 M-o-o-r-e, which is somebody that I know that

1 works for our department, Detective Moore.

2 BY MR. SEGAL:

3 Q. Okay. Can you just point out on here, I
4 guess on the bad copy and the good copy, where
5 Moore's name is as the impounding officer?

6 A. Okay. Where it says Moore. I don't know
7 if you saw it before. It says impounding officer.
8 It says impounding officer under Moore. Okay.
9 Under Moore, it says impounding officer.

10 Q. Okay. At the top of the form, it has
11 date impounded and the address where the item was
12 impounded from; is that correct?

13 MR. TERRELL: Judge, leading. All these
14 questions are leading.

15 THE COURT: Sustained.

16 BY MR. SEGAL:

17 Q. What information is contained up here in
18 these two slots, in the upper left-hand corner and
19 the two -- two spaces below that?

20 A. The first space that you asked about was
21 the date and the time that the item that is
22 impounded that corresponds to the property
23 receipt.

24 Q. And what does it say on there?

25 A. It says: 3/9/95. And then a little

1 mark, ten -- it looks like 10:05 and I'm not sure
2 if it says a.m. or p.m.

3 Q. Okay. And two spaces below that, is that
4 an address?

5 A. The -- also in little print, it says:
6 Address where property impounded. And in this
7 case, it says: 5300 Northwest 74 Terrace. Well,
8 it says, T-e-r-r.

9 Q. Okay. Thank you. Okay. Then you said,
10 after Dr. Khan did the testing, the swabs would
11 have gone back to the evidence freezer?

12 A. That's correct.

13 Q. Okay. Now, there came a time in June of
14 '97, I think you said, where you handled that --
15 those items again?

16 A. Let me check the exact date.

17 Q. Okay.

18 A. On June 10th, 1997. Is that what you
19 said, June?

20 Q. Yes.

21 A. June 10th, 1997.

22 Q. Okay. What did you do with item 232 on
23 June 10th of 1997?

24 A. On June 10th, I took the foil packet,
25 which is the packet that the card and the swabs

1 would have been in so this is the packet that has
2 gone to Roger Kahn, if you remember the name from
3 before. It went to Roger Kahn in the DNA section.
4 Then it went into the freezer after his work was
5 done with it.

6 So then I retrieved that foil, that outer
7 foil packet, that says 232 on it. I retrieved
8 that from the freezer. I opened it up. I took
9 two swabs from the inside three by five index
10 card. I took two swabs from that card that has
11 item 232 on it, put those two swabs on another
12 three by five index card and again put the item
13 number on that card. And then put that -- those
14 two separate swabs in another foil envelope that I
15 then sealed with my initials and the date.

16 And then that sample, I made a new
17 property receipt for for a detective that was
18 going to pick those samples up to transport to
19 Broward Sheriff's Office.

20 Q. Okay. It's your testimony that you took
21 the card containing two swabs that was in the
22 freezer; correct?

23 A. Actually, contained more than two swabs.

24 Q. Okay.

25 A. The original -- the original card had --

1 had either three or four swabs on it.

2 Q. Okay.

3 A. At this point, I couldn't tell you if it
4 was three or four.

5 Q. Okay. You get that card and you said you
6 removed -- well, what was on that card? You said
7 you removed two swabs from that card; correct?

8 A. Right. That --

9 Q. And put it on a different card?

10 A. Right.

11 Q. What was written on the card that you
12 removed the two swabs from?

13 MR. TERRELL: Objection. Hearsay, judge.

14 THE COURT: Okay. May I see you sidebar
15 for just one second?

16 [WHEREUPON, the following sidebar
17 discussion was had]

18 THE COURT: Here again, I think at this
19 point, I'm going to sustain the objection. You're
20 going to have to lay some predicate with her.

21 MR. SEGAL: May I ask you something?
22 Hearsay is something that goes to the truth of the
23 matter. I am not asking about the truth of the
24 matter asserted. There's no truth. Numbers don't
25 have truth. I'm asking what number is on there.

1 A number does not have truth.

2 THE COURT: Is that the only thing that's
3 written on this card?

4 MR. SEGAL: I'll ask her what name and
5 number were on the card. It doesn't -- numbers
6 don't have truth.

7 MR. TERRELL: Judge, it certainly goes to
8 the truth. They're asserting that 232, Ernest
9 Behrens, is Ernesto Behrens. They're trying to
10 assert that those are his swabs so it certainly
11 goes to the truth of the matter. And their hand
12 generated. They're not even computer generated.
13 Somebody wrote the name and number down. It's
14 hearsay.

15 THE COURT: I think you're going to have
16 to ask her questions as to her knowledge of the
17 procedure that generates any writings on these
18 cards. And if she can do that -- I don't know
19 whether she can or not. But if she has knowledge
20 of, you know, what the procedures are in terms of
21 writing the items or identifying number, then I
22 think she's a qualified witness person. If she's
23 not familiar --

24 MR. SEGAL: I thought we went over that.
25 They got the item, you know, pulled out -- the

1 numbers were assigned to it. And then somebody
2 wrote it down on a card with the name and number.

3 THE COURT: Candidly, I don't recall
4 whether she said it was a card. She already
5 testified as to the cards.

6 MR. TERRELL: No. She testified as to
7 the procedure and how it gets to the card. She --
8 people put stuff in the computer. The computer
9 generates information. Then a person takes that
10 information and writes it out.

11 THE COURT: Why don't you just again go
12 over with her how the process of the items, number
13 and/or names would get generated on the cards.

14 [WHEREUPON, the sidebar discussion was
15 concluded]

16 BY MR. SEGAL:

17 Q. Again, Ms. Hinz, can you explain to us
18 how the names and the numbers get put on the cards
19 that the swabs are attached to? In this case, in
20 the processing of the swabs in this case, how the
21 names and the numbers got put on the card?

22 A. As far as this particular swab?

23 Q. No. Just the normal procedure. The
24 procedure in the lab for putting a name and a
25 number on the three by five card that the swabs

1 are attached to?

2 A. That would be the person who actually
3 opens up the brown paper bag that the swab comes
4 in. They actually then would pick up the three by
5 five index card and write the item number and the
6 person's name that is going to be put on that
7 card. And then from before, that item number came
8 from the person in our laboratory that assigns
9 item numbers.

10 Q. Okay.

11 A. So --

12 Q. The name --

13 A. So -- but the actual physical of putting
14 on the card would be the person that actually
15 opens up the -- opens up the bag and takes the
16 swabs out of the little -- the little long package
17 that they come in, breaks off the stick and puts
18 it on the card.

19 Q. Okay. Where does the name come from that
20 they put on the card?

21 A. The name and the number are both on the
22 property receipt.

23 Q. Okay. Name and case number?

24 A. Name, case number and the item number.

25 Q. Okay. Because the lab person had put the

1 case number on the property receipt that was done
2 with the one in this case?

3 A. Right. When it first comes into the
4 laboratory and an item number is assigned to it.

5 Q. Okay. So you get the -- on June 10th,
6 1997, you pull the stuff out of the freezer?

7 A. That's correct.

8 Q. Okay. And then you would take the two
9 swabs and put them on a new card?

10 A. That's right.

11 Q. Did you write on the new card name and
12 item number?

13 A. I did. I wrote that; yes.

14 Q. Okay. Where did you get the information
15 about the name from?

16 A. The name and the item number would have
17 been on the original card and it's also on the
18 property receipt.

19 Q. Okay. So you would have just -- you had
20 the property receipt with you when you were doing
21 this transfer and you were writing it? When you
22 were creating this new card, you had the property
23 receipt with you and the yellow card?

24 MR. TERRELL: Your honor, I'm going to
25 object if she's reading through something. If she

1 doesn't remember, the state can certainly refresh
2 her recollection but I don't know the document.

3 THE COURT: She can but try to answer
4 from your own recollection. If you need to
5 refresh your recollection, we can then address
6 that. But right now, try to answer from your
7 recollection.

8 THE WITNESS: Right. At that point, I
9 don't think I would have had the property receipt.
10 I would have had the original list because the
11 original -- the list that the names and item
12 numbers were entered on would be the list I would
13 be working from.

14 BY MR. SEGAL:

15 Q. Do you have that list with you today?

16 A. Yes.

17 MR. SEGAL: Can we get a copy of these
18 lists, please?

19 THE COURT: We need one more copy. Does
20 that machine have a place where you can make it
21 darker, a little bit darker.

22 BY MR. SEGAL:

23 Q. The list, Ms. Hinz, that he's copying
24 now, how was that list created?

25 A. That list was a running -- it was a

1 running list per case number, per our case number,
2 of the individuals as they're opened. So the list
3 is created, the -- as the package is opened and
4 the swabs are being looked at, that item number is
5 written down and the person's name just as an
6 added check as far as: This is the property
7 receipt. This is the item number. Again, this is
8 the item number. And this is the person's name.

9 Q. Okay. And that remained in the files of
10 the documents that you had concerning the
11 processing of these swabs?,

12 A. Right. That list is in my master folder
13 for the case that this -- this one item came in
14 under.

15 Q. Okay. Which is what you have in front of
16 you now?

17 A. Yes.

18 MR. TERRELL: Judge, can we have a
19 sidebar?

20 THE COURT: Yes.

21 [WHEREUPON, the following sidebar
22 discussion was had]

23 MR. TERRELL: This list by the state,
24 I've never seen this. It was never supplied in
25 discovery.

1 THE COURT: Well, we'll do a Richards
2 hearing on it. I'll excuse the jury.

3 [WHEREUPON, the sidebar discussion was
4 concluded]

5 THE COURT: Ladies and gentlemen, I need
6 to address a matter with the attorneys. It's
7 going to take a few minutes so at this time, I'm
8 going to ask that you just wait outside. Please,
9 do not hang right outside the doors. Don't
10 discuss this case among yourselves or with anyone
11 else. Certainly don't form any fixed opinion
12 about the merits of this case. Make sure you have
13 your personal items with you. I'll have you back
14 in here as soon as I can. Thank you very much.

15 [WHEREUPON, the jury left the courtroom]

16 MR. SEGAL: Judge, before you begin that,
17 could we just substitute the tag?

18 THE COURT: Can you just show it to
19 Mr. Terrell?

20 MR. TERRELL: Yes, yes.

21 THE COURT: Just let Karen mark the other
22 one.

23 All right. The record will show the
24 jury's left the courtroom. Mr. Behrens,
25 Mr. Segal, Mr. Terrell, Ms. Shelowitz are present.

1 Mr. Terrell, what's the discovery issue
2 you want to present to me?

3 MR. TERRELL: Judge, I was -- just
4 received a long list of names and numbers. And I
5 don't know who it's prepared by but I've never
6 seen it prior to today and the state I think is
7 trying introduce this into evidence or use this as
8 an exhibit. I've never been informed of it. I
9 haven't had time to question -- to look into it to
10 see the accuracy of it and who prepared it.

11 THE COURT: Can I just take a look at it
12 for one second?

13 MR. TERRELL: Sure.

14 MR. TERRELL: And what significance it
15 has.

16 THE COURT: Here you go. Well, let me
17 ask first. What's your position, Mr. Segal, as to
18 whether or not this is or is not a discovery
19 violation?

20 MR. SEGAL: Judge, he has not seen it
21 before. Of course, Ms. Hinz has been on the
22 witness list since the beginning of the case.
23 They never took her deposition that I'm aware of,
24 never asked her questions, never explored at all
25 in any fashion the processing of this evidence.

REPORTER'S DEPOSITION CERTIFICATE

STATE OF FLORIDA)

COUNTY OF MIAMI-DADE)

I, CARMEN JASIK, Shorthand Reporter,
certify that I was authorized to and did
stenographically report the hearing of STATE OF
FLORIDA versus ERNESTO BEHRENS; that a review of
the transcript was requested; and that the
transcript is a true and complete record of my
stenographic notes.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

Dated this 30th day of March, 2001.

CARMEN E. JASIK, ECSRA

CARMEN E. JASIK, BCSRA

Certified Shorthand Reporter