Opinion issued June 18, 2020

In The

Court of Appeals

For The

First District of Texas

NO. 01-18-00970-CR

NO. 01-18-00971-CR

JESSIE LOUIS JOHNSON, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 180th District Court
Harris County, Texas
Trial Court Case Nos. 1411854 & 1411855

O P I N I O N

A jury convicted appellant Jessie Louis Johnson of two counts[1] of aggravated sexual assault of a child and assessed his punishment at 84 years'

[1] Johnson was convicted of the assault of D.S. in trial court cause number 1411855, resulting in appellate cause number 01-18-00970-CR. Johnson was convicted of

confinement for both counts. In his sole point of error on appeal, Johnson argues that the trial court erred in admitting the report of a DNA analyst because "the State failed to meet the predicate for its admission as a business record and because its admission violated [Johnson's] right of confrontation under the United States Constitution." Because we conclude that the State properly established that the report fell within the business records exception to the hearsay rule and that the Confrontation Clause was not implicated by the admission of the report, we affirm.

Background

In August 1997, the complainants in this case, E.A. and D.S., were 13 and 14 years old, respectively. While they were walking to D.S.'s house following an event at their middle school, a stranger "popped out from behind a tree" holding a gun in one hand and a knife in the other. He robbed the girls, and then he raped them. The girls were not able to identify their attacker, but they were taken to the hospital where a nurse performed sexual assault examinations and collected "rape kits," or samples from their bodies and clothing. Police officers with the Houston Police Department (HPD) collected the rape kits and other evidence from the hospital.

Years later, in 2013, police became aware that E.A. and D.S.'s attacker's DNA, collected in the 1997 rape kits, matched a suspect who had provided a DNA

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the assault of E.A. in trial court cause number 1411854, resulting in appellate cause number 01-18-00971-CR.

sample in an unrelated case. Upon further investigation, police arrested Johnson and charged him with the aggravated sexual assaults of E.A. and D.S.

At Johnson's trial, the State sought to introduce the DNA evidence collected in the 1997 rape kits through the testimony of Robert Boyle, who had been employed as a forensic DNA analyst at a private, independent laboratory called Orchid Cellmark. Boyle acknowledged that, at the time of trial, Cellmark was no longer operating and he was employed by an "outdoor outfitter." However, Boyle had been a forensic scientist for Cellmark from 2005 until 2015 and was still contractually obligated to be available to testify for the cases on which he had worked.

Boyle testified that sometime after the HPD collected the rape kits, it transferred the evidence to Cellmark for analysis. Boyle stated that, in his role as a forensic DNA analyst at Cellmark, he "was the one who collated all of the information at the end of the DNA analysis processes" and "composed the report for this case." This involved his "go[ing] over every single piece of evidence in the case file to ensure that everything was performed accurately and correctly, and that all processes followed our standard operating procedures as well as all of our protocols." Boyle further explained that he "took all of the information, read over it, and then I drew conclusions from the result of the DNA profiles. On a different case, I could have been the one doing the actual evidence examination. But in this

case I was the one that drew the conclusions from all the work. I reviewed all the work, peer reviewed all of the work that had been performed, drew conclusions from the result and DNA profiles, and read the report." He testified that his report "basically documents all the work [he] did on this case."

The State marked Boyle's report as State's Exhibit 34. The report listed the items of evidence that Cellmark examined, including a total of four vaginal swabs taken from both complainants, "debris collection swabs," and blood and saliva samples taken from both complainants. The report contained a section labeled, "Serology Results," which contained two lines identifying vaginal swabs by item number and the statements for both swabs that "Spermatozoa were identified on the vaginal swab." The majority of the report contained results from the DNA testing and concluded, in relevant part, that the two vaginal swabs contained DNA from the complainants and from an "unknown male." The report also concluded, "The same unknown male appears to be a donor of DNA to all of the sperm fractions tested."

Boyle testified that he created the report, that it was a true, accurate, and complete copy of the report that he created in the ordinary course of business for Cellmark, kept as a record in the regular course of business, that he created it at or near the time he did the analysis for this case, and that he was "a custodian of records for these reports as they're generated." Johnson engaged in voir dire

examination, during which Boyle acknowledged that he was no longer employed by Cellmark and was engaged in a "completely different field of work." However, Boyle also testified that he was "[a] custodian of record for that particular case file that I composed the report for."

Johnson then focused his voir dire examination on the serology findings in Boyle's report. Boyle acknowledged that he did not personally perform the serology analysis in the case, testifying that "the serology portion of the report is based upon communal [standard operating procedures] and protocols that we follow." Johnson responded, "But the bottom line is this document contains some level of hearsay, and you are not the actual custodian of records at this time; is that correct?" and then objected, stating, "Your Honor, I would object to State's Exhibit 34 as being hearsay, and [Boyle's] not a custodian of records."

Outside the jury's presence, Johnson restated his objections, emphasizing that Boyle "did not personally observe" the serology testing, and, as a result, that part of the report was hearsay. He asserted: "I would respectfully request that the Court not allow this exhibit in its current form. If the serology portion was to be redacted out and if it's only addressing those findings from this witness, Mr. Boyle, I would not have an objection to that."

The State responded by asserting that Boyle did qualify to establish the business records exception because he "still has access to his case files because

he's still required by Orchid, now Bode, to be available for testimony on any case he has worked previously." The State also argued that Boyle, as a DNA expert, could rely on hearsay that was relevant to his findings. Johnson responded that, by including the serology results, the State was "adding in an additional fact to this that not only do we just have a DNA match, it's sperm, it's not blood, or tears, or whatever else you have." He stated that the serology results added "an element of the type of material that is recovered through these sexual assault exams. There's not a witness to sponsor that."

In ruling on Johnson's objection, the trial court stated that "the case [law] makes clear that the law—the confrontation clause is not requiring every single person who has participated in laboratory process . . . to come in and testify." The trial court further stated that Boyle was "testifying as to his own expert opinion based on his work, some of which necessarily includes standard operating procedures and processes of the laboratory. It's overruled with respect to that issue." The trial court further held:

> [W]ith respect to the custodian of record hearsay issue, whether or not this witness is currently a custodian of records for the now [defunct] Cellmark, isn't really the issue. He certainly was at the time that the records were created, and otherwise meets all the other requirements of Texas Rule of Evidence [803(6)]. And [803(6)] doesn't exclusively require a custodian of records. It can also be another qualified witness. And I find that this witness does satisfy that.
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> That objection is overruled.

Boyle then testified regarding the results of his DNA analysis of the evidence in the rape kits, creating DNA profile for the "unknown male" whose DNA was recovered through the rape kits performed on E.A.'s and D.S.'s vaginal swabs. The trial court admitted the report, State's Exhibit 34, into evidence.

The State also presented the testimony of Courtney Head, the manager of the forensic biology unit at the Houston Forensic Science Center (HFSC). He testified that HFSC received the DNA report from Cellmark and that his lab analyzed the DNA on a buccal swab taken from Johnson in 2016 and compared it to the unknown profiles Cellmark had found in the samples taken as part of E.A.'s and D.S.'s rape kits. Head testified that the DNA testing established that Johnson's DNA matched the DNA from the "unknown male" in the complainants' rape kits.

The jury ultimately found Johnson guilty of the two aggravated sexual assaults and assessed Johnson's punishment at 84 years' confinement in both crimes with the sentences to run concurrently.

DNA Report

Johnson argues that the trial court erred in admitting State's Exhibit 34, the DNA report created by Boyle, because "the State failed to meet the predicate for its admission as a business record and because its admission violated [Johnson's] right of confrontation under the United States Constitution."

A. Relevant Law

Hearsay is an out-of-court statement offered to prove the truth of the matter asserted in the statement. TEX. R. EVID. 801(d). "Whether hearsay is admissible at a criminal trial is determined by the Texas Rules of Evidence and the Sixth Amendment to the federal Constitution," which contains the Confrontation Clause. *Sanchez v. State*, 354 S.W.3d 476, 484 (Tex. Crim. App. 2011).

Under the Rules of Evidence, hearsay generally is not admissible unless a statute or rule provides otherwise. TEX. R. EVID. 802. One such exception is provided in Rule of Evidence 803(6) for business records:

> A record of an act, event, condition, opinion, or diagnosis [is not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness] if:
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> > (A) the record was made at or near the time by—or from information transmitted by—someone with knowledge;
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> > (B) the record was kept in the course of a regularly conducted business activity;
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> > (C) making the record was a regular practice of that activity;
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> > (D) all these conditions are shown by the testimony of the custodian or another qualified witness . . . ; and
> >
> > (E) the opponent fails to demonstrate that the source of information or the method or circumstances of preparation indicate a lack of trustworthiness.

TEX. R. EVID. 803(6).

Furthermore, statements offered for some other purpose than to prove the truth of the matter asserted are not hearsay and would not be excluded based on the prohibition against hearsay. *Cf.* TEX. R. EVID. 801(d) (defining hearsay as a "statement . . . offered in evidence to prove the truth of the matter asserted"). Relevant here, the Court of Criminal Appeals has held that the "present opinion of a testifying witness does not constitute hearsay because it is not, and can never be, a statement 'other than one made by the declarant while testifying at trial.'" *Martinez v. State*, 22 S.W.3d 504, 508 (Tex. Crim. App. 2000) (quoting *Aguilar v. State*, 887 S.W.2d 27, 29 (Tex. Crim. App. 1994) (plurality op.)). This is true even when the expert relied in whole or in part upon information of which he has no personal knowledge, as long as the court determines that the expert has a sufficient basis for his opinion. *Id.*; *see Aguilar*, 887 S.W.2d at 30 (noting that there are limits to revealing basis for expert's opinion to jury, but those limitations do not apply to expert opinion itself, but only to underlying facts and data).

Relatedly, under the Confrontation Clause, "out-of-court statements offered against the accused that are testimonial in nature are objectionable unless the prosecution can show that the out-of-court declarant is presently unavailable to testify in court and the accused had a prior opportunity to cross-examine him." *Langham v. State*, 305 S.W.3d 568, 575–76 (Tex. Crim. App. 2010) (citing *Crawford v. Washington*, 541 U.S. 36, 59, 68 (2004)). While the Supreme Court

has not precisely defined what constitutes a "testimonial" statement, it has held that the definition includes "statements that were made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial." *Crawford*, 541 U.S. at 52; *Garret v. State*, 518 S.W.3d 546, 549 (Tex. App.—Houston [1st Dist.] 2017, pet. ref'd); *see also De La Paz v. State*, 273 S.W.3d 671, 680 (Tex. Crim. App. 2008) (holding that hearsay statement is testimonial when surrounding circumstances objectively indicated that primary purpose behind eliciting that statement was to establish or prove past events potentially relevant to later criminal prosecution). "The Sixth Amendment does not bar the admission of non-testimonial hearsay." *Sanchez*, 354 S.W.3d at 485.

Texas courts have held that "a forensic report that asserts a fact (e.g., about blood alcohol content or about the contents of a plastic bag) is testimonial." *See Adkins v. State*, 418 S.W.3d 856, 862 (Tex. App.—Houston [14th Dist.] 2013, pet. ref'd) (citing *Bullcoming v. New Mexico*, 564 U.S. 647 (2011), and *Burch v. State*, 401 S.W.3d 634 (Tex. Crim. App. 2013)). But when a testifying analyst "used non-testimonial information—computer-generated DNA data—to form an independent, testimonial opinion and appellant was given the opportunity to cross-examine her about her analysis," the right of confrontation is satisfied. *Paredes v. State*, 462 S.W.3d 510, 519 (Tex. Crim. App. 2015); *Garrett*, 518 S.W.3d at 554–55.

Furthermore, the Confrontation Clause is not violated merely because an expert bases an opinion on inadmissible hearsay, because the testifying expert's opinion is not hearsay and the testifying expert is available for cross-examination regarding his opinion. *Wood v. State*, 299 S.W.3d 200, 213 (Tex. App.—Austin 2009, pet. ref'd) (citing *Crawford*, 541 U.S. at 59) (also stating that when expert discloses to jury inadmissible testimonial statements from autopsy report on which expert opinions were based, such disclosure constitutes use of testimonial statements to prove truth of matters asserted and violates Confrontation Clause).

We further note that both the Court of Criminal Appeals and the United States Supreme Court have observed that "an out-of-court statement, even one that falls within [the] definition of testimonial statements, is not objectionable under the Confrontation Clause to the extent that it is offered for some evidentiary purpose other than the truth of the matter asserted." *Langham*, 305 S.W.3d at 576 (citing *Crawford*, 541 U.S. at 59 n.9). The Court of Criminal Appeals has recognized:

> When the relevance of an out-of-court statement derives solely from the fact that it was made, and not from the content of the assertion it contains, there is no constitutional imperative that the accused be permitted to confront the declarant. In this context, the one who bears "witness against" the accused is not the out-of-court declarant but the one who testifies that the statement was made, and it satisfies the Confrontation Clause that the accused is able to confront and cross-examine him.

Id. at 576–77 (citing *Tenn. v. Street*, 471 U.S. 409, 414 (1985) ("The *nonhearsay* aspect of [the out-of-court declarant's] confession—not to prove what happened at

the murder scene but to prove what happened when respondent confessed—raises no Confrontation Clause concerns. The Clause's fundamental role in protecting the right of cross-examination . . . was satisfied by [the interrogating officer's] presence on the stand.")); *see also Melendez-Diaz v. Mass.*, 557 U.S. 305, 311 n.1 (2009) (explicitly refusing to hold that "anyone whose testimony may be relevant in establishing the chain of custody, authenticity of the sample, or accuracy of the testing device, must appear in person as part of the prosecution's case").

We review a trial court's decision to admit or exclude evidence for an abuse of discretion. *Henley v. State*, 493 S.W.3d 77, 82–83 (Tex. Crim. App. 2016). A trial court abuses its discretion when its ruling "was so clearly wrong as to lie outside the zone within which reasonable people might disagree." *Id.* at 83 (quoting *Taylor v. State*, 268 S.W.3d 571, 579 (Tex. Crim. App. 2008)). However, "[w]hether a particular out-of-court statement is testimonial or not . . . is a question of law." *Langham*, 305 S.W.3d at 576. Thus, in considering that issue, "we defer to the trial court's resolution of credibility issues and historical fact, [but] we review de novo the ultimate constitutional question of whether the facts as determined by the trial court establish that an out-of-court statement is testimonial." *Id.* (citing *Wall v. State*, 184 S.W.3d 730, 742 (Tex. Crim. App. 2006)

B. Analysis

In his sole point of error, Johnson asserts that the trial court erred when it admitted the report over his objection because Boyle failed to meet the elements of the business records predicate, particularly with regard to the serology results included in the report. He further argues that Boyle's report contained "underlying persons' statements" in the form of serology results that Boyle relied on and that were testimonial in nature, and, thus, Johnson was entitled under the Confrontation Clause to confront the person who conducted the serology testing contained in the DNA report.

Johnson's objection at trial and arguments on appeal thus implicate both the evidentiary rules governing hearsay and the Confrontation Clause. He argued at trial that the two lines of Boyle's report recording the serology results—results that were generated by another technician and determined that the DNA sample being analyzed derived from the unknown male's sperm—was an improper out-of-court statement. He argued that the serology results should be redacted from the report because Boyle was not the "proper" witness to admit those testing results.

The State argues that Johnson failed to preserve his complaint under the Confrontation Clause because he failed to specifically object on that basis. *See* TEX. R. APP. P. 33.1(a); *Garrett*, 518 S.W.3d at 553 (discussing preservation of Confrontation Clause complaint as requiring distinct objection on that ground in

addition to hearsay or other objection). However, the record demonstrates that the trial court was aware that Johnson's objection implicated the Confrontation Clause because it expressly ruled that the caselaw "makes clear that the law—the confrontation clause is not requiring every single person who has participated in laboratory process" to "come in and testify," and it stated that Johnson's objection was "overruled with respect to that issue." *See Pena v. State*, 285 S.W.3d 459, 464 (Tex. Crim. App. 2009) ("To avoid forfeiting a complaint on appeal, the party must 'let the trial judge know what he wants, why he thinks he is entitled to it, and [he must] do so clearly enough for the judge to understand him at a time when the judge is in the proper position to do something about it.'"). The trial court then went on to overrule Johnson's objections to the purported hearsay under the Rules of Evidence.

We conclude that the trial court was thus aware of both the evidentiary and the Confrontation Clause implications raised by Johnson's objections and ruled on them at trial. *See* TEX. R. APP. P. 33.1(a) (providing that preservation is shown when complaint states grounds for ruling sought "with sufficient specificity to make the trial court aware of the complaint, *unless the specific grounds were apparent from the context*" and trial court ruled on request of objection) (emphasis added); *Diruzzo v. State*, 581 S.W.3d 788, 798 (Tex. Crim. App. 2019) (holding

that obtaining adverse ruling from trial court on his motion was sufficient for appellant to preserve error, if any).

Regarding the admissibility of Boyle's report generally, we conclude that the trial court did not abuse its discretion in determining that the report fell within the business-records exception to the hearsay rule. Boyle testified that he created the report; that it was a true, accurate, and complete copy of the report that he created in the ordinary course of business for Cellmark, kept as a record in the regular course of business; that he created it at or near the time that he did the analysis for this case; and that he was "a custodian of records for these reports as they're generated." Thus, Boyle's testimony satisfied the requirements of the business records exception regarding the report—i.e., he was the "custodian or another qualified witness" who testified that the report was made at or near the time of analysis by someone with knowledge, kept in the course of a regularly conducted business activity, and that making the report was a regular practice of that activity. *See* TEX. R. EVID. 803(6).

Johnson asserted at trial that Boyle did not qualify as a custodian of records under Rule 803(6) because he was no longer employed by Cellmark. Rule 803(6), however, does not require that the sponsoring witness be an employee of the same organization where he worked when he created the record. *See id.* Boyle testified that he was the custodian of the report, that the regular course of his business as a

forensic analyst required that he create the report and keep it, and that, despite his change in employment, he was required to be available to produce the report or testify when necessary. *See Melendez v. State*, 194 S.W.3d 641, 644 (Tex. App.—Houston [14th Dist.] 2006, pet. ref'd) (noting that Rule 803(6) permits business records exception to be established by "another qualified witness" and that Rule 803(6) "does not require that the witness be the person who made the record or even be employed by the organization that made or maintained the record"). And the admission of Boyle's report does not implicate the Confrontation Clause because Boyle himself testified at trial and was subject to cross-examination. *See, e.g.*, U.S. CONST. amend. VI (providing that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him"); *Langham*, 305 S.W.3d at 575–76.

Johnson's objections at trial focused specifically on the portion of Boyle's report incorporating the serology test results created by another technician at Cellmark. Johnson argues that these results were hearsay and that Boyle was not the proper witness to sponsor that "hearsay within hearsay." But the serology test results were not themselves hearsay or "hearsay within hearsay."

Johnson did not assert that the serology results were not a proper part of the business record or that the results constituted information from a person outside the business who had no business duty to report or to report accurately, such that the

business records exceptions would not cover those results. *See Garcia v. State*, 126 S.W.3d 921, 926–27 (Tex. Crim. App. 2004) ("When a business receives information from a person who is outside the business and who has no business duty to report or to report accurately, those statements are not covered by the business records exception" and must independently qualify for admission on their own hearsay exception); *see also Sanchez*, 354 S.W.3d at 485–86 ("When hearsay contains hearsay, the Rules of Evidence require that each part of the combined statements be within an exception to the hearsay rule."). To the contrary, the record demonstrated that the serology results were generated by a Cellmark employee following Cellmark's standard procedures, that the results were conveyed to Boyle for his review and verification, and that Boyle "collated" the results of the serology tests and other tests to draw his conclusions regarding the DNA and to create the final report regarding the DNA profile of the man who attacked the complainants.

Additionally, there was no dispute regarding the type of biological material collected by the vaginal swabs in the complainants' rape kits. According to Boyle's testimony, the serology results were included in his report because the serology testing was a step in completing the DNA testing. The report was not offered to prove that sperm was recovered from the complainants' vaginal swabs following their rapes; it was offered to establish that the DNA collected from both of the rape kits belonged to the same "unknown male" and to provide a DNA profile for that

"unknown male" that could then be compared to Johnson's DNA. Thus, the serology test results were one piece of data relied upon by Boyle and included in his report as a step in generating the DNA profile. Johnson cannot show that any portion of Boyle's report constituted inadmissible hearsay. *See* TEX. R. EVID. 801(d) (defining hearsay as a "statement . . . offered in evidence to prove the truth of the matter asserted"); *Martinez*, 22 S.W.3d at 508 (holding that "present opinion of a testifying witness does not constitute hearsay because it is not, and can never be, a statement 'other than one made by the declarant while testifying at trial'").

Thus, based on this record, we cannot conclude that the trial court abused its discretion in ruling that Boyle was a proper witness to establish the business records exception as to the entire report and admitting the report over Johnson's hearsay objection. *See* TEX. R. EVID. 803(6); *Henley*, 493 S.W.3d at 82–83 (holding that we review evidentiary rulings for abuse of discretion).

The same principals compel a conclusion that the serology tests in this case did not implicate the Confrontation Clause. Under the facts as presented here, the serology results are not "out-of-court statements offered against the accused that are testimonial in nature." *See Langham*, 305 S.W.3d at 575–76. The relevance of the serology results to Johnson's prosecution for the complainants' sexual assaults derives solely from the fact that the serology testing was completed as part of the DNA testing on samples taken from the rape kits. *See id.* at 576. The content of the

"assertion" in the serology results—that the DNA was recovered in the form of sperm—was not relevant or in dispute here, and, thus, "there is no constitutional imperative that the accused be permitted to confront the" technician who completed the serology testing. *See id.* In this context, Boyle was the one who bore "witness against" Johnson, and the Confrontation Clause was satisfied because Johnson was able to confront and cross-examine him. *See id.*; *see also Melendez-Diaz*, 557 U.S. at 311 n.1 (explicitly refusing to hold that "anyone whose testimony may be relevant in establishing the chain of custody, authenticity of the sample, or accuracy of the testing device, must appear in person as part of the prosecution's case").

Nothing in the serology results, standing alone, was relevant to establishing a controverted fact. Rather, the serology tests were a single step undertaken, not to provide testimonial evidence for use in court, but in completing the DNA analysis. *See, e.g.*, *Paredes*, 462 S.W.3d at 519 (holding that when data was used by expert "to form an independent, testimonial opinion"—not as a substitute for out-of-court testimony—and when appellant "was given the opportunity to cross-examine [the expert] about [the] analysis," the right of confrontation was satisfied). It was the DNA analysis that provided the relevant, probative evidence—i.e., the DNA

profile of the unknown male who attacked the complainants in this case.[2] Accordingly, considering de novo the nature of the serology results in the context of this case, we conclude that they were not out-of-court statements that were testimonial in nature and did not implicate the Confrontation Clause. *See id.*; *Langham*, 305 S.W.3d at 576.

We conclude that the trial court did not abuse its discretion in ruling that Boyle's expert report was admissible as under the business-records exception, and we conclude that the inclusion of the serology results in the report did not constitute impermissible hearsay, nor did it implicate the Confrontation Clause.

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[2] We further note that, for these same reasons, even if the serology results here could be considered testimonial in nature, Johnson cannot show that he suffered any harm from the trial court's admission of Boyle's report. "When reviewing harm for violations of the Confrontation Clause, we consider: (1) how important the out-of-court statement was to the State's case; (2) whether the out-of-court statement was cumulative of other evidence; (3) the presence or absence of evidence corroborating or contradicting the out-of-court statement on material points; and (4) the overall strength of the prosecution's case." *Henriquez v. State*, 580 S.W.3d 421, 429 (Tex. App.—Houston [1st Dist.] 2019, pet. ref'd). The relevant fact provided by Boyle's DNA analysis of the rape kits, Head's DNA analysis of Johnson's buccal swab, and the comparison of the two profiles was that Johnson's DNA matched DNA recovered from vaginal swabs taken from the complainants after the assault. The precise source of Johnson's DNA—whether the vaginal swabs collected his spermatozoa or his blood or a hair follicle—was incidental to the conclusions reached by the DNA experts in this case. In the context of the entire record, the results of the serology tests included in Boyle's report—as distinct from Boyle's DNA analysis—were not important to the State's case, and the State did not place any particular emphasis on the serology results. *See id.* Any error in admitting Boyle's report without allowing Johnson to cross-examine the technician who performed the serology testing was not actually a contributing factor in the jury's deliberations and did not contribute to the conviction. *See* TEX. R. APP. P. 44.2(a); *Henriquez*, 580 S.W.3d at 429.

We overrule Johnson's sole point of error.

Conclusion

We affirm the judgments of the trial court.

Richard Hightower
Justice

Panel consists of Justices Keyes, Lloyd, and Hightower.

Publish. TEX. R. APP. P. 47.2(b).