

TEXAS FORENSIC SCIENCE COMMISSION

Justice Through Science

**FINAL REPORT ON SELF-
DISCLOSURE BY THE TEXAS
DEPARTMENT OF PUBLIC SAFETY
(GARLAND) REGARDING
TESTIMONY OF CHRISTOPHER
YOUNGKIN (BLOOD ALCOHOL)**

April 20, 2018



TABLE OF EXHIBITS

- A. DPS Quality Action Plans**
- B. DPS Office of Inspector General Report with Exhibits**
- C. Youngkin's Affidavit**
- D. Youngkin's Courtroom Testimony Monitoring Forms 2010-2016**
- E. DPS New Testimony Training Materials**
- F. DPS Sample Disclosure Form**

I. SUMMARY OF THE COMMISSION’S STATUTORY AUTHORITY

A. Legislative Background and Membership

The Texas Legislature created the Texas Forensic Science Commission (“Commission”) during the 79th Legislative Session by passing House Bill 1068 (the “Act”). The Act amended the Texas Code of Criminal Procedure to add Article 38.01, which describes the composition and authority of the Commission.¹ During subsequent Legislative Sessions, the Legislature further amended the Code of Criminal Procedure to clarify and expand the Commission’s jurisdictional responsibilities and authority.²

The Commission has nine members appointed by the Governor of Texas.³ Seven of the nine commissioners are scientists or medical doctors and two are attorneys (one prosecutor nominated by the Texas District and County Attorney’s Association, and one criminal defense attorney nominated by the Texas Criminal Defense Lawyer’s Association).⁴ The Commission’s Presiding Officer is Jeffrey Barnard, MD. Dr. Barnard is the director of the Southwestern Institute of Forensic Science and the Chief Medical Examiner of Dallas County, Texas.

B. Accreditation Jurisdiction

Texas law prohibits forensic analysis from being admitted in criminal cases if the entity conducting the analysis is not accredited by the Commission:⁵

“...a forensic analysis of physical evidence under this article and expert testimony relating to the evidence are not admissible in a criminal action if, at the time of the analysis, the crime laboratory conducting the analysis was not accredited by the commission under Article 38.01.”⁶

¹ See Act of May 30, 2005, 79th Leg., R.S., ch. 1224, § 1, 2005.

² See e.g., Acts 2013, 83rd Leg., ch. 782 (S.B.1238), §§ 1 to 4, eff. June 14, 2013; Acts 2015, 84th Leg., ch. 1276 (S.B.1287), §§ 1 to 7, eff. September 1, 2015, (except TEX. CODE CRIM. PROC. art. 38.01 § 4-a(b) which takes effect January 1, 2019).

³ TEX. CODE CRIM. PROC. at art. 38.01 § 3.

⁴ *Id.*

⁵ Until the 84th Legislative Session, the accreditation program was under the authority of the Department of Public Safety (“DPS”).

⁶ TEX. CODE CRIM. PROC. art. 38.35 § (a)(4).

The term “forensic analysis” is defined as follows:

“Forensic analysis” means a medical, chemical, toxicologic, ballistic, or other expert examination or test performed on physical evidence, including DNA evidence, for the purpose of determining the connection of the evidence to a criminal action, except that the term does not include the portion of an autopsy conducted by a medical examiner or other forensic pathologist who is a licensed physician.⁷

The term “crime laboratory” is broadly defined, as follows:

“Crime laboratory” includes a public or private laboratory or other entity that conducts a forensic analysis subject to this article.⁸

The disclosure in this case involves blood alcohol analysis, a forensic discipline subject to accreditation under Texas law.⁹ The Texas Department of Safety (“DPS”) regional crime laboratory in Garland, which is the laboratory that is the subject of this self-disclosure, is accredited by the ANSI-ASQ National Accreditation Board (“ANAB”) under the International Organization for Standardization (“ISO”) accreditation standard 17025.¹⁰

C. Investigative Jurisdiction

Texas law requires the Commission to “investigate, in a timely manner, any allegation of professional negligence or professional misconduct that would substantially affect the integrity of the results of a forensic analysis conducted by an accredited laboratory, facility or entity.”¹¹ The Act also requires the Commission to: (1) implement a reporting system through which accredited laboratories, facilities or entities may report professional negligence or professional misconduct; *and* (2) require all laboratories, facilities or entities that conduct forensic analyses to report professional negligence or misconduct to the Commission.¹²

⁷ *Id.* at 38.35 § (a)(4).

⁸ *Id.* at § (d)(1).

⁹ Texas law exempts certain forensic disciplines from the accreditation requirement by statute or administrative rule. *Id.* at §(a)(4).

¹⁰ See <http://www.txcourts.gov/fsc/accreditation/> for a list of accredited laboratories.

¹¹ TEX. CODE CRIM. PROC. art. 38.01 § 4(a)(3).

¹² *Id.* at § 4(a)(1)-(2).

As part of the Commission's accreditation authority, Texas law provides that the Commission may:

- Establish minimum standards that relate to the timely production of a forensic analysis to the agency requesting the analysis....;
- Validate or approve specific forensic methods or methodologies; and
- Establish procedures, policies and practices to improve the quality of forensic analyses conducted in this State.

The Commission may, at any reasonable time, enter and inspect the premises or audit the records, reports, procedures, or other quality assurance matters of a crime laboratory that is accredited or seeking accreditation under this section.¹³

D. Limitations on the Commission's Authority

The Commission's authority contains important statutory limitations. For example, no finding by the Commission constitutes a comment upon the guilt or innocence of any individual.¹⁴ The Commission's written reports are not admissible in civil or criminal actions.¹⁵ The Commission has no authority to subpoena documents or testimony. The information the Commission receives during the course of any investigation is dependent upon the willingness of stakeholders to submit relevant documents and respond to questions posed. The information gathered in this report has *not* been subjected to the standards for admission of evidence in a courtroom. For example, no individual testified under oath, was limited by either the Texas or Federal Rules of Evidence (*e.g.*, against the admission of hearsay) or was subjected to cross-examination under a judge's supervision.

¹³ *Id.* at § 4-d(b-2).

¹⁴ *Id.* at § 4(g).

¹⁵ *Id.* at § 11.

II. INVESTIGATIVE PROCESS

When the Commission receives a complaint or self-disclosure, the Complaint and Disclosure Screening Committee conducts an initial review of the document at a publicly noticed meeting. (See Policies and Procedures at 3.0). After discussing the complaint or disclosure, the Committee votes to recommend to the full Commission whether the issues presented in the complaint or disclosure merit any further action. *Id.*

In this case, the Commission received a self-disclosure from DPS on May 25, 2017, after the DPS OIG had already reviewed the matter and issued a report (See **Exhibit B**). To avoid duplication, this report does not re-investigate the issues already reviewed by the OIG. Commissioners agree with the findings in the OIG report. This report is focused on additional observations and recommendations for quality improvements.

During the course of this review, Commission staff spoke with Assistant Division Director Brady Mills; Garland Regional Laboratory Manager James Nichols; and DPS Employee Christopher Youngkin. Staff also consulted with prosecutors from North Texas counties (Dallas, Tarrant, Collin) whose offices were impacted by DPS disclosures regarding Youngkin's testimony as described below. Staff also reviewed the following material:

- Transcripts from Youngkin's testimony (Ellis and Tarrant counties in particular)
- DPS OIG report and exhibits
- Youngkin's affidavit for OIG report
- Recordings of DPS OIG interviews
- Quality action plans associated with original error and with subsequent testimony
- Testimony training provided by DPS since incident
- Youngkin's courtroom monitoring forms from 2010-2016

III. SUMMARY OF DISCLOSURE FACTS AND OIG FINDINGS

A. 2013 Switched Blood Alcohol Sample

On May 6, 2013, DPS Garland analyst Christopher Youngkin began conducting blood alcohol analysis on cases GAR-1304-05568 and GAR-1304-05569. He was interrupted during the analysis and did not return to it until two days later on May 8, 2013. On May 16, 2013, Youngkin discovered he had switched the two blood tests and released the incorrect reports. A few minutes after he discovered the error, he received a telephone call from the submitting agency questioning the results.

The laboratory completed Quality Action Plan (QAP) #823 on May 20, 2013. The incident description on the report provided that the “Alcohol Content reports released through Justice Trax had the wrong results reported.” Youngkin was assigned as the investigator on this report, and he reported the incident as being isolated. The QAP identified the work interruption as a root cause but did not conduct any further assessment. Since the time the QAP was issued, DPS has expanded its approach to root cause analysis to include more extensive assessments as appropriate for the circumstances.

On May 21, 2013, the blood samples were retested, and the affected agencies and county attorney offices were notified of the new results. No further action was taken. The nonconformity was not reported to the Commission because it was a mistake that did not rise to the level of professional negligence or misconduct as defined in the Commission’s policies in procedures. At the time, the authority for accreditation of crime laboratories fell under DPS. The laboratory would not yet have copied the Commission on regular correspondence with its national accreditation body when the switched sample occurred.

Today, the Commission is copied on all substantive correspondence with the laboratory's accrediting body.

Testimony Regarding the 2013 Switched Sample

From September 18, 2013 to October 12, 2016, Youngkin testified many times regarding the 2013 switched sample and related disclosures by prosecutors in the counties served by the laboratories. An extensive discussion including transcript examples is provided in the OIG report at **Exhibit B**.

On October 12, 2016, a discovery motion regarding the 2013 switched sample was heard in Collin County. During the hearing, the defense attorney accused Youngkin of not being forthcoming when asked whether he had ever switched a blood sample. Youngkin attempted to explain that when he denied having switched a "vial" in response to questioning, he was distinguishing between switching vials (*i.e.*, headspace vials) and tubes (*i.e.*, grey top tubes). This was due to the fact that during the 2013 incident, he had switched a grey top tube, not a headspace vial. The attorney provided numerous examples of prior statements Youngkin had made under oath using the words "vial" and "tube" interchangeably.¹⁶ At the end of the exchange, the Judge advised Youngkin to invoke his 5th Amendment right against self-incrimination. Youngkin heeded the Judge's advice and stopped his testimony.

On October 24, 2016, representatives from Collin, Dallas, and Denton counties attended a deposition during which Youngkin withdrew his invocation and continued testifying regarding the discovery motion from October 12, 2016. An extensive discussion of the deposition may be found in the OIG Report. On December 22, 2016, Assistant Division

¹⁶ The OIG report also provides extensive examples of the terms "tube" and "vial" being used interchangeably in internal DPS reference materials including the physical evidence handbook and alcohol analysis worksheet. Youngkin was aware of the documents but maintained they were not sufficiently precise.

Director Mills contacted the OIG to advise that he had attended a meeting earlier in the day with prosecutors from five of the seven counties in the Garland regional laboratory's service area. The meeting was initiated by Bill Wirskye of the Collin County District Attorney's office. The purpose of the meeting was to discuss Youngkin's status as an expert witness. Prosecutors expressed concern about sponsoring Youngkin in future cases given that he had invoked his 5th Amendment right against self-incrimination and his responses to questioning regarding the 2013 switched sample were not as forthcoming as they should have been.

B. OIG Findings

The OIG report concluded that Youngkin provided unclear, inconsistent or misleading statements under oath on multiple occasions. Most examples involved Youngkin claiming he had never switched blood vials or blood samples, compared with other testimony in which he stated he had, one time, switch blood vials, samples and/or tubes, thus contradicting prior statements. OIG investigators concluded that Youngkin was not as forthcoming as he should have been and thus violated the following DPS policy LOG-03-02 requiring analysts to:

- Testify in a manner which is clear, straightforward, and objective.
- Avoid phrasing testimony in an ambiguous, biased or misleading manner.

The Commission concurs with the OIG findings regarding inconsistencies in Youngkin's testimony as well as the conclusion that he was not as forthcoming as he should have been when addressing the 2013 switched sample. Youngkin is still employed at DPS though he was transferred to headquarters in Austin and no longer performs forensic analysis in criminal cases.

DPS also updated its alcohol analysis worksheet (LAB-BA-01), BA SOP, and Physical Evidence handbook for consistent use of the terms "vial" and "tube" (analysis vial and blood tube) following the OIG report. This was also discussed at a statewide meeting of blood alcohol analysts.

IV. OBSERVATIONS AND RECOMMENDATIONS

To provide a framework for discussing quality system improvements and lessons learned for DPS from the events described above, the Commission offers the following observations and recommendations:

1. As a result of the incident described here, DPS implemented a new “disclosure form” across the entire laboratory system. (See **Exhibit F**.) This form was the result of extensive collaboration with the prosecutors in the five north Texas counties who were involved in the Youngkin matter (Collin, Dallas, Tarrant, Rockwall, Denton).

DPS should be commended for its work in developing and implementing this form, as it signifies a major step in implementing the provisions of Article 39.14 of the Texas Code of Criminal Procedure (Michael Morton Act) with respect to forensic laboratories.

- Recommendation: The Texas District and County Attorney’s Association should work with DPS to encourage its members across Texas to adopt the North Texas focus group work product for forensic disclosures.
 - Recommendation: DPS should provide training to analysts statewide on the purpose of the disclosure form including practical suggestions for how to respond to questions regarding the disclosure form, in addition to the FAQ guidance document already distributed to analysts internally. DPS should consider requesting assistance from practicing defense attorneys and prosecutors in developing the training.
2. At the time the original QAP was prepared regarding the 2013 switched sample, toxicology staff at the DPS lab in Garland received limited training on how to properly fill out a quality action plan and/or perform a root cause analysis. Current corrective actions at DPS have evolved and improved.
 - Recommendation: Implement regular training for analysts and management regarding root cause analysis, in particular use of tools like root cause mapping and the “Five Why’s.” Training should be implemented broadly across the system.
 3. At the time the original QAP was prepared, Youngkin was the “investigator” of his own QAP. In August 2015, the National Commission on Forensic Science issued a root cause analysis directive suggesting approaches to root cause involving a team-based approach.¹⁷ DPS incorporated a team-based approach in its new quality

¹⁷ <https://www.justice.gov/archives/nfcs/file/786581/download>

process released in June 2017. The term “investigator” has been removed from all QAPs and replaced with “requestor” to indicate the broader approach.

- Recommendation: Review NCFS directive and implement suggestions where possible.
4. In April 2017, DPS provided training on testimony at its 2017 Controlled Substances Statewide Meeting (*See Exhibit E*). The training is well-designed and comprehensive but was initially offered only to controlled substances analysts. It has since been incorporated into the pending 2018 revisions for General Laboratory Training for new analysts.
- Recommendation: Extend training to all sections in all regional laboratories.
5. All laboratories utilize moot court as a training tool but it does not always involve actual practicing attorneys but rather scientists acting as attorneys. DPS has access to many members of the defense community as well as prosecutors who would be willing to assist with this. The Commission can provide assistance in connecting DPS with attorneys as needed.
- Recommendation: Work collaboratively with attorneys in the defense community and prosecutors to implement moot court training programs that are closer to real-life scenarios.
6. DPS distributed the Youngkin transcripts to management throughout the system but did not provide specific instruction regarding how to facilitate a discussion about the transcripts. The transcripts can serve as good training tools for analysts to understand what is expected under DPS policy. The same is true of Youngkin himself—DPS management did not review the transcripts with him to explain what specific issues were problematic.
- Recommendation: Consider implementing system-wide facilitated discussions with analysts regarding the transcripts. Similarly, whenever there are issues in transcripts, they should be discussed promptly with analysts who testify (such as Youngkin in this case) so there is clarity regarding the instances where expectations were not met.
7. Youngkin’s testimony evaluations throughout his career were all “external” to DPS (i.e., completed by attorneys) and all were “excellent,” the highest possible rating. DPS has since required annual internal evaluations.
- Recommendation: Ensure that the testimony evaluations are performed by individuals not only within DPS but who have subject matter expertise in the area for which the analyst provides testimony. This will allow technical issues to be flagged that may otherwise not be flagged by experts whose practice is in other disciplines. This is both a Commission recommendation

and a new ANAB requirement that must be incorporated by January 1, 2019. Accordingly, DPS has developed new testimony forms and related policies which are scheduled for implementation this fall.

8. Because discovery packets are prepared by non-casework staff in most cases, analysts are not always aware when discovery is released or what exactly is in the discovery packets.
 - Recommendation: All regional laboratories should ensure their examiners are alerted when discovery is released and are familiar with the material in the discovery packet before they testify—this should be a mandatory component of pre-trial preparation.



TEXAS DEPARTMENT OF PUBLIC SAFETY
CRIME LABORATORY

Quality Incident Report

LAB-QA-04-Deviation (03/2017)p.1 Issued by: QAC

Tracking ID QI-GAR-2016-1012-BA
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Lab	Garland	Discipline	BA	Date Discovered	10/12/2016	Page 1 of 2
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Date of Incident:	07/15-16/2015	End Date of Incident (if applicable):	10/24/2016
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Related Policy, Procedure, and/or Specification:	LOG-03-02
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Related Work # (case, batch, or instrument#):	GAR-1211-13135 (Testimony on July 15, 2015 in Tarrant County); GAR-1303-03440 (Testimony on July 16, 2015 in Ellis County); GAR-1511-12948 (Testimony on October 12, 20116 in Collin County)
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Incident Description:

On October 12, 2016, Mr. Youngkin testified at a hearing in Collin County in which he invoked his 5th Amendment right in response to questions related to a Quality Action Plan from 2013. On October 24, 2016, Mr. Youngkin withdrew his invocation and testified in a deposition to resume the hearing from the 12th. As a result of the deposition, concerns were raised regarding the consistency of Mr. Youngkin's testimony on the 2013 issue. On October 28, 2016, Mr. Youngkin was removed from conducting casework.

Cause Analysis:

The testimony given by Chris Youngkin violated the following policy:
 LOG-03-02 2.1 Testimony Expectations of Witnesses
 B. Testify in a manner which is clear, straightforward, and objective;
 D. Avoid phrasing testimony in an ambiguous, biased, or misleading manner

There were occasions in which the testimony provided by Chris Youngkin was ambiguous and misleading in his answers to questions from defense attorneys. The questions posed by the defense attorneys were related to the event in May 2013 in which two case samples were switched and reported incorrectly by Chris Youngkin.

A Director's Inquiry was conducted by the DPS Office of the Inspector General. The Office of the Inspector General determined through the Director's inquiry that Mr. Youngkin did violate the crime lab service policy (LOG-03-02).

Neither the laboratory's training program nor Mr. Youngkin's technical training and abilities were causal factors in the incident. The violation was related only to the presentation of his testimony. His individual practice was the causal factor for the policy violation.

Involved Parties (who by direct actions were involved in the quality incident):
 Chris Youngkin

Corrections Corrected report issued?: No

Correction(s) to the Original Work (Indicate if not performed at this time):
 Chris Youngkin was removed from conducting case work and his job duties have been modified.
 As a preventive measure, the policy LOG-03-02 for testimony monitoring requirements were revised to require direct observation by a Quality Manager, Supervisor, Team Lead, or Quality Assurance Specialist on an annual basis.
 In an effort to improve the delivery of testimony, additional courtroom testimony training is being developed for forensic scientists.

Customer Notification (Indicate if not performed at this time or not applicable):
 On November 10, 2016, a letter from DPS was delivered to the elected District Attorneys to inform them of the status of Chris Youngkin and transcripts of his previous testimony were provided.

Corrective Action Necessary? Yes	Significant Disclosure? Yes
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TEXAS DEPARTMENT OF PUBLIC SAFETY
CRIME LABORATORY

Quality Incident Report

LAB-QA-04-Deviation (03/2017)p.1 Issued by: QAC

Tracking Number
QI-GAR-2016-1012-BA

Lab	Garland	Discipline	BA	Date Discovered	10/12/2016	Page 1 of 2
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Approval		
Requestor	<u>James Nichols, Quality Manager, Garland</u> <i>JN</i>	Date: <u>05/25/2017</u>
TL/TPOC	<u>Andrew Macey, Section Supervisor, Garland</u> <i>AM</i>	Date: <u>05/25/2017</u>
Lab QA	<u>Uyen Henson, Lab QA Specialist, Garland (via email)</u> <i>UH</i> <u>05-25-17</u>	Date: <u>05/25/2017</u>
Management	<u>Brady Mills, Deputy Assistant Director</u> <i>BM</i>	Date: <u>05/25/2017</u>
System QA	<u>Katherine G. Sanchez</u>	Date: <u>05/25/17</u>

Redacted File
OIG2016-0402

3 part(s) to this scanned file
1 DVD in file



**OIG2016-0402
ORIGINAL**

**MUST BE RETURNED TO THE
OFFICE OF INSPECTOR GENERAL**

TEXAS DEPARTMENT OF PUBLIC SAFETY

5805 N LAMAR BLVD • BOX 4087 • AUSTIN, TEXAS 78773-0001

512/424-2000

www.dps.texas.gov



STEVEN C. McCRAW
DIRECTOR
DAVID G. BAKER
ROBERT J. BODISCH, SR.
DEPUTY DIRECTORS



COMMISSION
A. CYNTHIA LEON, CHAIR
MANNY FLORES
STEVEN P. MACH
RANDY WATSON

March 23, 2017

Christopher Youngkin, Forensic Scientist
Texas Department of Public Safety
Law Enforcement Support - Crime Lab Service
350 W. IH 30
Garland, TX 75043

Dear Mr. Youngkin:

This is in reference to the Director's Inquiry initiated against you regarding counties discontinuing allowing you to testify as a witness because of inconsistent and contradictory testimony surrounding a quality event that occurred in 2013.

After review of this inquiry, it has been determined that you will receive a written reprimand. This letter will serve as your written reprimand and will be assessed by Deputy Assistant Director, Brady Mills.

Additionally, due to the issues surrounding the nature of your testimony over the last three years, your actions have affected your ability to function as a forensic scientist responsible for forensic casework. Furthermore, your continued presence in the Garland Lab is untenable for both yourself as well as other Garland Lab employees. As a result, you will be transferred for the good of the service to the Austin Headquarters Lab. The effective date of the transfer is to be determined.

Sincerely,

Mike Lesko, Assistant Director
Law Enforcement Support Division

ML/tw

cc: Brady Mills, Deputy Assistant Director, Crime Lab, LESD
Jack Webster, Regional Commander, Region 1
Norma Cortez, Deputy Assistant Director, Human Resources Management
Rhonda Fleming, Inspector General, Office of Inspector General
Phillip Adkins, General Counsel, Office of General Counsel
OIG2016-0402

Received at 11:43 a.m./ p.m. on this the 23 day of March 2017

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**TEXAS DEPARTMENT OF PUBLIC SAFETY
INTEROFFICE MEMORANDUM**

TO: Skylor Hearn, Assistant Director, Law Enforcement Support Division

FROM: Office of Inspector General

DATE: December 20, 2016

SUBJECT: OIG2016-0402

Concerning: Christopher Youngkin
LESD/Forensic Scientist
Garland/Region 1

Investigator: Adam Kinslow
ID #09128
IG/OIG Lieutenant
Austin

Complainant: Chain of Command

Reason: Director's Inquiry concerning circumstances that resulted in multiple prosecutors in Mr. Youngkins area of responsibility declining to accept his testimony.

Please be advised that Office of Inspector General file number OIG2016-0402 has been assigned to this case. This case was assigned on December 15, 2016.

BL:km

cc: Robert Bodisch, Deputy Director, Homeland Security and Services
Jack Webster, Regional Commander, Region 1

Miller, Kristy

From: Lillie, Brian
Sent: Thursday, December 15, 2016 9:30 AM
To: Kinslow, Adam
Cc: Lopez, James; Sanchez, Louis; Fleming, Rhonda; Miller, Kristy
Subject: Assignment of Director Inquiry- Region 1 LESD- Forensic Scientist Christopher Youngkin (OIG2016-0402)

Adam,

You have been assigned a Director Inquiry on Forensic Scientist Christopher Youngkin, Region 1, Crime Lab, Garland, concerning circumstances that resulted in multiple prosecutors in his area of responsibility declining to accept his testimony. All related documents will be provided to you and the approval will be uploaded to **OIG2016-0402**. The ROI for this investigation will be due no later than 1/25/17. If additional time is needed, please document the justification in memorandum form to me prior to the due date including the anticipated completion date. Kristy will send a notification to the appropriate Assistant Director and Regional Commander advising them of this investigation. Please contact me if you have any questions.

Thank you,

Brian Lillie, Captain
Texas Department of Public Safety
Office of Inspector General
512-424-5275 Office
512-801-4874 Cell



Miller, Kristy

From: Miller, Kristy
Sent: Monday, November 14, 2016 1:37 PM
To: Lillie, Brian
Subject: Administrative Investigation Youngkin, Christopher - Director's Inquiry

Brian,

This case was assigned #OIG2016-0419.

Thank you,
Kristy

From: Maloy, Sandra
Sent: Monday, November 14, 2016 1:29 PM
To: Miller, Kristy
Subject: FW: Youngkin testimony - Director's Inquiry request

OIG intake for Brian please. This is being assigned to Adam. Please note this is a Director's Inquiry.

Thank you,
Sandra

From: Fleming, Rhonda
Sent: Monday, November 14, 2016 7:36 AM
To: Sanchez, Louis; Lopez, James; Lillie, Brian
Cc: Maloy, Sandra
Subject: FW: Youngkin testimony - Director's Inquiry request

Approved for Director's Inquiry.

I spoke with Duke and got the confirmation verbally and you'll see below, he approved it to Skylor.

Rhonda Fleming, I.G.
Office of the Inspector General
W. 512-424-2054
C. 512-923-8687
rhonda.fleming@dps.texas.gov



This e-mail, including any attached files, may contain confidential and privileged information for the sole use of the intended recipient (or authorized to receive information for the intended recipient), please contact the sender by reply e-mail and delete all copies of this message.

From: Hearn, Skylor
Sent: Monday, November 14, 2016 7:34 AM
To: Fleming, Rhonda
Subject: Re: Youngkin testimony - Director's Inquiry request

Did this ever get approved?

Sent remotely

Skylor Hearn, Assistant Director
Texas Department of Public Safety
Chief - Law Enforcement Support Division
512-424-7901

On Nov 7, 2016, at 9:36 AM, Hearn, Skylor <Skylor.Hearn@dps.texas.gov> wrote:

FYI

Sent from my iPad

Begin forwarded message:

From: "Bodisch, Robert" <Robert.Bodisch@dps.texas.gov>
Date: November 4, 2016 at 4:50:42 PM CDT
To: "Hearn, Skylor" <Skylor.Hearn@dps.texas.gov>
Subject: Re: Youngkin testimony - Director's Inquiry request

10-4

Robert J. Bodisch, Sr.
Deputy Director
Homeland Security & Services
Texas Department of Public Safety
512-424-2368 w
512-563-3895 cell

On Nov 4, 2016, at 16:30, Hearn, Skylor <Skylor.Hearn@dps.texas.gov> wrote:

Although four prosecuting offices have requested that Chris Youngkin no longer provide expert testimony in their jurisdictions, there are other counties who have made no statement or indicated they will wait to see how this issue progresses before taking a position. We also have a responsibility to provide the Texas Forensic Science Commission with a report of our internal findings on this issue. To help address both of these areas, I am requesting the OIG conduct a Director's Inquiry to assess the veracity and consistency of testimony provided by Youngkin regarding the 2013 error at issue. This would effectively cover any trial testimony provided by Youngkin since May 22, 2013, related to the event. I have conferred with OGC and OIG regarding this avenue and both are supportive. OGC and LES can provide assistance to OIG as desired with technical or legal aspects.

SKYLOR D. HEARN, ASSISTANT DIRECTOR
TEXAS DEPARTMENT OF PUBLIC SAFETY
CHIEF - LAW ENFORCEMENT SUPPORT DIVISION
5805 N. LAMAR BLVD
AUSTIN, TX 78752

Hale, Lisa

From: Maloy, Sandra
Sent: Monday, November 07, 2016 10:42 AM
To: Hale, Lisa
Subject: FW: Youngkin testimony - Director's Inquiry request

OIG admin intake for James please. Please note this is a Directors Inquiry.

Thank you,
Sandra

From: Lopez, James
Sent: Monday, November 07, 2016 9:58 AM
To: Fleming, Rhonda; Sanchez, Louis; Lillie, Brian
Cc: Maloy, Sandra
Subject: RE: Youngkin testimony - Director's Inquiry request

Of course Rhonda, I will most likely assign to Patrick Heintz.

From: Fleming, Rhonda
Sent: Monday, November 07, 2016 9:39 AM
To: Sanchez, Louis; Lopez, James; Lillie, Brian
Cc: Maloy, Sandra
Subject: Fwd: Youngkin testimony - Director's Inquiry request

James, would one of your guys be able to take this?

Rhonda Fleming, I.G.
Office of the Inspector General
W. 512-424-2054
C. 512-923-8687
rhonda.fleming@dps.texas.gov

This e-mail, including any attached files, may contain confidential and privileged information for the sole use of the intended recipient (or authorized to receive information for the intended recipient), please contact the sender by reply e-mail and delete all copies of this message.

Begin forwarded message:

From: "Hearn, Skylor" <Skylor.Hearn@dps.texas.gov>
Date: November 7, 2016 at 9:36:52 AM CST
To: "Fleming, Rhonda" <Rhonda.Fleming@dps.texas.gov>
Subject: Fwd: Youngkin testimony - Director's Inquiry request

FYI

Sent from my iPad

Begin forwarded message:

From: "Bodisch, Robert" <Robert.Bodisch@dps.texas.gov>
Date: November 4, 2016 at 4:50:42 PM CDT
To: "Hearn, Skylor" <Skylor.Hearn@dps.texas.gov>
Subject: Re: Youngkin testimony - Director's Inquiry request

10-4

Robert J. Bodisch, Sr.
Deputy Director
Homeland Security & Services
Texas Department of Public Safety
512-424-2368 w
512-563-3895 cell

On Nov 4, 2016, at 16:30, Hearn, Skylor <Skylor.Hearn@dps.texas.gov> wrote:

Although four prosecuting offices have requested that Chris Youngkin no longer provide expert testimony in their jurisdictions, there are other counties who have made no statement or indicated they will wait to see how this issue progresses before taking a position. We also have a responsibility to provide the Texas Forensic Science Commission with a report of our internal findings on this issue. To help address both of these areas, I am requesting the OIG conduct a Director's Inquiry to assess the veracity and consistency of testimony provided by Youngkin regarding the 2013 error at issue. This would effectively cover any trial testimony provided by Youngkin since May 22, 2013, related to the event. I have conferred with OGC and OIG regarding this avenue and both are supportive. OGC and LES can provide assistance to OIG as desired with technical or legal aspects.

SKYLOR D. HEARN, ASSISTANT DIRECTOR
TEXAS DEPARTMENT OF PUBLIC SAFETY
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TEXAS DEPARTMENT OF PUBLIC SAFETY OFFICE OF INSPECTOR GENERAL REPORT OF INVESTIGATION



NUMBER: OIG2016-0402

DATE: January 24, 2017

SUBJECT: Director's Inquiry
Chris Youngkin, Forensic Scientist IV
Garland Crime Laboratory
Law Enforcement Support Division

BY: Adam Kinslow, Lieutenant, Office of Inspector General

BACKGROUND

On November, 29, 2016, Lieutenant Adam Kinslow received instructions to conduct Director's Inquiry #OIG2016-0402 (**TAB 1**). The inquiry was ordered by Deputy Director Duke Bodisch at the request of Assistant Director Skylor Hearn.

The inquiry centers on Chris Youngkin, a forensic scientist in the Garland Crime Laboratory. The Garland lab currently serves seven counties, including Collin, Cooke, Dallas, Denton, Grayson, Rockwall, and Tarrant. It was reported to DPS that some of the counties, including Dallas, Denton, Collin, and Rockwall, have discontinued allowing Youngkin to testify as a witness because of inconsistent and contradictory testimony surrounding an incident that occurred in 2013. The incident involved Youngkin switching two blood tubes during a blood alcohol test resulting in incorrect results (**TAB 13**) being reported to Anna Police Department (P.D.) and Region 1 THP. The error was identified and corrected, and accurate reports were redistributed (**TAB 14**).

Following the incident in 2013, Youngkin testified multiple times in court saying he had never switched blood vials or mixed up anyone's blood samples as part of a blood test. When questioned specifically about blood tubes, Youngkin testified that he did switch two blood "tubes", one time, temporarily. However, he would not admit he ever switched blood "samples" or blood "vials" because, in his judgment, they were not the same as blood "tubes". Defense attorneys then began dissecting Youngkin's past testimonies to show that he had, in fact, testified in separate trials that he switched blood vials and blood samples, thus contradicting his prior statements under oath.

Essentially, Youngkin was asked on the witness stand if he had ever switched blood vials, blood tubes, or blood samples that resulted in incorrect blood results. Since Youngkin claimed blood tubes and blood vials were different objects having different functions, the perception is that he

was trying to avoid having to explain the 2013 incident in court. The concern is whether Youngkin provided conflicting testimony under oath possibly perjuring himself in the process.

The transcripts describe 'blood tubes' as being glass containers found in blood kits used to collect blood evidence. They're often referred to as 'gray top tubes.' 'Headspace vials' are also glass containers, but they are used to test the alcohol concentration of each blood sample after it is received in the lab. The word 'vial' is more of a generic term referring to glass containers.

According to Dictionary.com, the following definitions are given for the words 'vial' and 'test tube' (**TAB 5**):

Vial- Noun. A small container, as of glass, for holding liquids.

Test Tube- Noun. A hollow cylinder of thin glass with one end closed, used in chemical and biological experimentation and analysis.

Youngkin's transcripts, in part, are attached to this report and are explained in more detail below.

DIRECTOR'S INQUIRY

Brady Mills, Deputy Assistant Director, Law Enforcement Support-Crime Laboratory Service

On November 30, 2016, OIG spoke with D.A.D. Mills via telephone regarding the Director's Inquiry. Mills stated he was under the impression the District Attorneys' offices in Dallas and Collin counties were no longer sponsoring Chris Youngkin as a witness based on his inconsistent testimony surrounding the 2013 incident. He was unsure about the other counties.

Mills forwarded OIG the transcripts that appear to show Youngkin giving inconsistent testimony in multiple trials and hearings after the 2013 incident (**TABS 6A through 6P**). Below is a timeline explaining Youngkin's testimony and involvement:

1. May 6, 2013- Youngkin began conducting blood alcohol tests on GAR-1304-05568 and GAR-1304-05569. Testing was interrupted and had to be completed two days later on May 8, 2013.
2. May 16, 2013- Eight days after completing the blood alcohol tests, Youngkin discovered the error regarding the two blood tests listed above being switched resulting in incorrect results being disseminated. A few minutes after discovering the error himself, Youngkin received a phone call from Anna P.D. questioning the results of the blood tests.
3. May 20, 2013- In response to the error, Quality Action Plan (QAP) #823 was completed explaining what occurred (**TAB 15**). The incident description on the report stated, "Alcohol Content reports released through Justice Trax had the wrong results reported." (Justice Trax is the information system used by the DPS Crime Labs to track the location of evidence and to electronically maintain case records.) Youngkin was assigned as the investigator on this report, and he reported the incident as being isolated with no root cause.

4. May 21, 2013- The blood samples were retested, and the affected agencies and county attorney offices were notified of the new results. No further action was taken on the matter.
5. September 18, 2013- (**TAB 6B**, Exhibit #1) County Court at Law #4, Collin County. In this case, Youngkin referred to a blood tube as a vial.

He was asked about a blood sample and what condition it was in when he received it. He replied, "The box itself is properly sealed, and the vial itself is also sealed."

6. October 28, 2013- The Annual Laboratory Management System Survey was completed by Garland Manager, James Nichols (**TAB 18**). On page 3 of 4, Nichols referred to Youngkin's 2013 incident as a "sample switch" by writing, "QAP #823: Sample switch resulting in wrong results reported."

*Note- there is nearly a two year gap between the above entry and the next entry because no transcripts were obtained in reference to this time period.

7. July 15, 2015- (**TAB 6C**, Exhibit #2) County Criminal Court #8, Tarrant County. Youngkin testified and referred to a blood tube as a blood vial. Some examples are below.

Youngkin was asked if he takes a vial of blood and makes notes about it when he first opens it. He replied, "That's correct." When asked how much blood is in each vial when he first receives it, Youngkin answered, "It's approximately three-quarters full."

Youngkin was also asked, "In 10,000 times, how many times have you switched vials?" He responded, "Never that I'm aware of." Youngkin was asked this question two times and responded with the same answer both times. He did not explain or offer clarification that he had switched blood tubes previously in 2013.

When asked if ethanol levels in a vial can decrease over time, Youngkin replied, "That has been my experience." When asked if ethanol levels in blood vials can also rise over time, Youngkin responded, "Are we still talking about gray top tubes?"

When asked if he was holding a vial with powder in it, Youngkin replied, "Yes, Ma'am."

Youngkin was then asked, "You don't think you switched vials?" Youngkin replied, "That's correct." He was then asked, "Because you've never done it before in 10,000 times?" Youngkin answered, "Not that I'm aware of." Again, Youngkin did not offer any explanation or clarification that he had switched blood tubes previously in 2013.

Youngkin appears to have answered multiple questions and referenced blood tubes and blood vials as being interchangeable, and he did not explain any differences between them.

8. July 16, 2015- (**TAB 6D**, Exhibit #3) County Court at Law #2, Ellis County. Youngkin testified and referred to a blood tube as a blood vial. Examples are below.

When asked, "Now does that look as though it's a vial that was contained... inside the box?" Youngkin replied, "It does."

When asked, "Now when you received that blood kit, what condition was it in? Was it sealed?" Youngkin replied, "It was. It indicates here that the box itself was properly sealed and the vial inside the box was also sealed."

When asked, "Now based on your report, Mr. Youngkin, what was the alcohol concentration or blood alcohol concentration of the vial of blood that you received in this case?" Youngkin answered, "0.163 grams of alcohol per 100 milliliters of blood."

When being questioned about the tubes of blood received in the blood kits, Youngkin was asked, "and then you open each box, correct?" Youngkin answered, "I do." "And then you take out the blood vial?" Youngkin again answered "I do."

Youngkin answered a separate question by stating, "Correct, it's just that we receive vials of blood that have varying amounts of blood in them and then we test them all and are able to get results."

When questioned about the possibility of switching samples while preparing them for testing or actually getting someone's blood mistaken, Youngkin replied, "I don't see how with his name being on the gray top tube and the laboratory case number being on there."

Youngkin was asked, "Have you ever swapped a vial?" Youngkin responded, "Swapped a vial with what?" He was then asked, "Have you ever got the samples switched out of order?" Youngkin replied, "What particular order are you talking about?" Youngkin never answered the question.

Youngkin was later asked specifically about headspace vials, "Have you ever gotten those head space vials out of order?" His response was, "Not that I'm aware of."

QAP #823 was then introduced in court for the first time.

Youngkin was then asked why he did not answer the question correctly when asked earlier if he had ever switched a sample or vial. Youngkin answered by stating, "Hopefully, I gave the precisely truthful answer to whatever it was that you asked."

When Youngkin was asked if he would consider what he did "sample switching", he replied, "I wouldn't consider it that. They're just out of numerical order." He further explained, "If we're talking about gray top tubes, I would differentiate gray top tubes and the other head space vials."

The 2013 Annual Laboratory Management System Survey was also introduced into court. It was completed by Garland Crime Lab Manager James Nichols. On page three of this report, Nichols refers to Youngkin's incident by using the terminology, "sample switch." Youngkin was then asked, "So your lab management, even though you don't call it a sample switch, calls what you did in (QAP) number 823 a sample switch?" Youngkin replied, "Correct."

9. June 22, 2016- (TAB 6E, Exhibit #4) County Criminal Court #3, Dallas County. Regarding the phone call from Anna P.D., Youngkin was asked, "So, samples were switched, results were reported, given to a police department, and they called and said, 'Something's wrong'?" Youngkin replied, "They did, yes, sir."

Youngkin was then asked, "And according to you, it just so happened that they called just about... the same time that you just happened to catch the mistake?" He replied, "It was shortly after, yes, sir."

10. July 19, 2016- (TAB 6L, Exhibit #12) Brady disclosure from Denton County regarding Youngkin. Attached to the disclosure is a partial transcript from a trial on January 26, 2016, in which Youngkin admitted to switching blood samples. Youngkin was asked on the witness stand, "Now, have you ever mixed up samples?" He replied, "Just once." Youngkin was then asked, "Ok. Tell us about the time you mixed up samples." He went on to describe the incident from 2013. This contradicts Youngkin's prior testimony from July 16, 2015 (Exhibit #3), when he stated several times that he did not switch samples and could not see how samples could be switched since names and case numbers were listed on the tubes.

11. September 19-20, 2016- (TAB 6F, Exhibit #5) County Court at Law #2, Collin County. Youngkin testified and referred to a blood tube as a blood vial. Examples are below.

When asked if Youngkin knew how the blood samples were placed in the vials, he stated, "I do not." He was asked this question two times and responded with the same answer both times.

While on the stand reviewing one of the blood tubes that he examined for a particular case, Youngkin was asked if it was the same vial that he had tested. He responded, "It is."

When asked if there were two vials in the blood kit, Youngkin replied, "Yes, Ma'am."

When asked to show the jury one of the vials, Youngkin replied, "Sure."

Youngkin also referred to a blood tube as a vial when he answered a question regarding having two unopened blood tubes in the blood kits. He stated, "Just that there would be an unopened vial- or tube of blood for any subsequent testing."

12. September 27, 2016- (TAB 6G, Exhibit #6) County Criminal Court #3, Dallas County. Youngkin testified and referred to a blood tube as a vial. Examples are below.

Youngkin was asked, "Did you receive a vial of blood labeled with the name of (defendant)?" He replied, "We did." He was asked, "How did you receive that vial?" Youngkin answered, "It came to the laboratory in person..."

When asked how much blood was in the vial when it was received in the lab, Youngkin responded, "I indicated here that it was approximately three-quarters full."

Youngkin was also asked by the defense attorney if he was aware that the Denton and Dallas County District Attorney's offices had sent out Brady material information regarding the 2013 incident. Youngkin stated he was not aware.

Youngkin was then asked, "First and foremost, without equivocation, without conjecture, without hypothesis, you switched vials on a person, correct?" Youngkin replied, "I did." This statement contradicts his prior testimony from July 15, 2015 (Exhibit #2), in which he answered by saying, "Never that I'm aware of."

Later in the questioning, Youngkin was asked, "So, since 2013, in over 160 trials, how many times have you told a defense attorney that you switched vials up in 2013?" Youngkin replied, "Probably approaching a hundred times now." He was then asked, "I'm sorry?" Youngkin replied, "I said we're probably approaching a hundred times that I've testified about this incident now."

Youngkin was asked, "And since 2013, you've known that you actually at least on one occasion switched samples, correct?" Youngkin replied, "I have."

Youngkin was asked, "Listen to my question very carefully. In the over 40 trials that you've had with me since 2013, have you ever disclosed to me that you had switched samples in May of 2013?" Youngkin replied, "Only when asked about it."

13. September 27, 2016- (TAB 6H, Exhibit #7) County Court at Law #4, Collin County.

Youngkin was asked if he had ever been sanctioned for "switching samples." He replied, "I have not been sanctioned, but it is something that did occur in 2013."

14. October 3, 2016- (TAB 6I, Exhibit #8) County Court at Law #2, Collin County.

Youngkin was asked if there was ever a situation where he had mixed up vials. Youngkin replied, "There was a situation in 2013 where two gray top tubes were found to be out of order." He was asked, "So how did you end up mixing up those tubes and how did it affect the tests that were done?" Youngkin replied, "As I answered previously, there was no cause or reason to determine why they were out of order."

Youngkin was asked if he had ever switched vials before. He replied, "Not that I'm aware of." This statement contradicts Youngkin's prior testimony from September 27, 2016 (Exhibit #6), when he advised he had switched vials before.

Youngkin was asked if there was a "big difference" between vials and tubes, and he replied, "Correct. They're two different things."

Youngkin was then asked, "So Ms. Grant asked the wrong question or used the wrong term; is that correct?" He replied, "I'm not in a position to determine what the right or wrong questions are. I just answered the questions that were asked."

Youngkin was asked, "So you will admit to switching things if it's samples or gray top tubes, correct?" "Correct." "But if I use the word 'vial,' that's not going to get me there, right?" "Correct. I mean, I may ask you what you're referring to specifically."

Youngkin was asked how many D.A. offices in his area he had turned Brady material over to in 2013. He replied, "None, because none asked." When told they didn't know to ask in 2013, he replied, "That's very possible, yes, sir." Youngkin was asked, "Because you didn't tell anyone about it in 2013, correct?" He replied, "Correct. It was not required."

When asked further about Brady materials and training received, Youngkin replied, "I have received training in regards to Brady materials. As to whether it was necessary for me to turn this over in 2013, I'm not familiar."

Youngkin was asked, "Well, let me ask you this... You've testified that 8,000 samples you've done since 2013... and only 200 people have challenged you in trial... How many people plead guilty of those 8,000 cases that had no idea that there was Brady material out there available that you did not turnover?" The Judge then interjected and said, "Stop. I'm not going to allow that question unless I give him an attorney. He's required to turn over things that are Brady. I don't know that it's been determined that it is Brady yet. But if it is, and it's determined that it is, I'm not going to allow him to answer the question. He has Fifth Amendment rights just like everyone else."

15. October 11, 2016- (**TAB 6J**, Exhibit #9) County Court at Law #2, Collin County. DPS Forensic Scientist Nirav Kumar was asked in court if tubes and vials meant the same thing. Kumar responds, "Yes." He also stated, "The word tube and vial can be used interchangeably when describing cylindrical objects that contain liquid." Kumar also stated it was possible to "mix up" vials and that it had happened before. When asked by whom, he replied, "Chris Youngkin." "So you know he mixed up vials, right?" "He did."
16. October 12, 2016- (**TAB 6K**, Exhibit #10) County Court at Law #3, Collin County. This was a discovery motion hearing to obtain Brady material under Brady vs Maryland concerning Chris Youngkin and the incident from 2013. The defense attorney advised the judge that he had received "Chris Youngkin Disclosure" notifications from Dallas and Denton counties. The attorney stated his office had received parts of what had occurred but not the complete story. He stated, "And I don't believe it's because of any District Attorney's office withholding any information. I believe it's 100 percent with Mr. Youngkin either withholding information, not being 100 percent forthcoming, or his belief that he had no obligation to turn over information."

The Collin County Assistant District Attorney (D.A.) rebutted by saying, "The State does believe that the motion is unnecessary at this time. There's no evidence with regard to this specific case that there has been any wrongdoing by Mr. Youngkin on this case." The Assistant D.A. also stated, "...all the disclosures have been made in accordance with the law."

After the questioning began, Youngkin was asked, "So you knew from May 16, 2013, that you had switched gray-top tubes and had given a person a wrong result?" He replied, "Correct, temporarily."

Youngkin was asked, "In 2013, did you switch samples?" He replied, "If gray-top tubes can be considered samples, then the answer is yes." "In 2013, did you switch vials?" "I did not." "You did not?" "That's correct."

Youngkin was asked, "Since 2013, have you ever testified that you switched samples?" He replied, "I have." Youngkin was asked, "Since 2013, have you ever testified that you switched vials?" He answered, "Not that I'm aware of." The defense attorney asked, "Yes or no?" Youngkin replied, "No." "And that's under oath, right?" "Yes, you've made that clear."

Youngkin was asked, "Is a gray-top tube considered the same thing as a vial?" He replied, "Not to me, it's not." "Have you ever testified to a gray-top tube being a vial?" "Not that I'm aware of." "So the answer would be no, right?" "Correct."

Later in the questioning, Youngkin was asked by the same attorney if he had ever referred to gray-top tubes as vials, and he responded, "No." He was asked if he had ever admitted to switching vials in 2013. He answered, "I have not." He was asked again if he testified this year that a gray-top tube was a vial. He responded, "Not that I'm aware of." He was asked, "Yes or no?" Youngkin replied, "No."

Youngkin was asked, "Mixing up gray-top tubes in 2013, does that mean the same as mixing vials to you?" "It is not." "That is your testimony under oath?" "It is."

Youngkin was asked how many times in the past three years had he testified as a witness for the State in regard to blood. Youngkin replied, "Probably close to 200 times." Youngkin was asked if in those 200 times he had ever referred to gray-top tubes as vials. Youngkin replied, "No." This contradicts his testimony from numerous examples listed in this report. For example, on September 18, 2013 (Exhibit #1), Youngkin was asked about a blood sample and what condition it was in when he received it. He replied, "The box itself is properly sealed, and the vial itself is also sealed."

Youngkin was asked if he had ever admitted to switching vials in 2013. He replied, "I have not." When asked if he ever admitted switching samples in 2013, Youngkin replied, "I have."

When discussing blood kits received by the lab, Youngkin was asked, "What's contained within those blood kits?" He responded, "Gray-top tubes." "Now, the gray-top tubes, again, you've never referred to those as vials, right?" "That's correct."

Youngkin was asked again if he had testified that a gray-top tube is a vial. He first replied, "Not that I'm aware of," and then answered, "No."

Youngkin was then reminded about his testimony from September 27, 2016 (Exhibit #6), when he was asked, "First and foremost, without equivocation, without conjecture, without hypothesis, you switched vials on a person, correct?" Youngkin replied, "I did."

Youngkin was then presented with multiple examples of prior statements he made using the words vial and blood tube interchangeably, therefore contradicting himself under oath.

The Judge advised Youngkin he had the right to remain silent and the right to an attorney. Youngkin replied by saying, "I would, under the advice of the Judge, I would like to invoke my Fifth Amendment right."

17. October 24, 2016- (TAB 6A, Deposition, Collin County) Representatives from Collin, Dallas, and Denton counties were present. The purpose of this hearing was for Youngkin to withdraw his revocation and continue testifying regarding the discovery motion hearing from October 12, 2016.

Youngkin was asked, "So you would admit that, under oath, you've actually been asked a question about a gray-top tube and you've answered a question when it was referred to as a vial, correct?" He replied, "I have, yes, sir."

Youngkin was asked, "Have you ever answered a generic question and actually called the containers within the DPS blood kit a vial?" He replied, "Not that I can recall."

Youngkin was then asked, "Well, let me ask you this. If a defense attorney asked you what's contained in a DPS blood kit, under oath, and you said it contained two vials, would that be a truthful or untruthful statement?" He replied, "It would be truthful in the sense that the word "vial" is often used in proceedings to refer to gray-top tubes."

Youngkin was then asked about the timing of the phone call from Anna P.D. and if he found the error on the same day as he received the call. Youngkin replied, "I did not. I noticed that the gray-top tubes were out of numerical order on that same day." "We generally wait for the reports to be released then replace the gray-top tubes back into the kits, and that's when Anna had the results on that report, and that's why they called me."

Youngkin was then asked, "Did you switch vials that day?" He replied, "Depending on what you mean specifically by the word, 'vial'." "My question is, under oath, did you switch vials?" "It depends, again, on what you mean specifically by the word 'vial'?"

Youngkin was asked, "Did you switch samples in 2013?" He replied, "I did" which contradicts earlier testimony from July 16, 2015, when Youngkin stated he did not switch samples (described earlier in Exhibit #3).

Youngkin was then asked a series of questions about the QAP #823 report and him being assigned as the investigator for the incident. Youngkin appeared defensive in his answering. He agreed the report showed him as the investigator, but he would not agree that he was "assigned" as the investigator for that report. He stated he only completed the report and was doing what he was asked to do. The report lists Youngkin as the investigator in two places, and Youngkin signed his name on two separate lines showing he was the investigator, but he refused to acknowledge that he was the investigator.

Youngkin was later asked more questions about blood tubes versus vials. "Isn't a gray-top tube the same thing as a vial?" Youngkin answered, "It depends on who you ask. To me, it's not..."

Youngkin was then shown excerpts from the Department's Physical Evidence Handbook that reference a blood tube and blood vial as being the same thing. For example, under the Blood Kit Packaging section (**TAB 6M**), it reads, "10 mL Blood Collection Vial (gray-top vacutainer)..." Further down on the page, it reads, "Blood Vial Seal (tamper-evident) for blood collection vial." The next page of the handbook also uses the word "vial" four times referring to the tube inside the kit used to collect blood.

Youngkin was also shown instructions for the collection and submission of blood specimens located inside the blood collection kit. These instructions reference a blood tube and blood vial as being the same thing (**TAB 6N**). Number 2 under the "Officer" section instructs the officer to complete the submission form and the blood vial seal. Number 2 under the "Blood Collector" section says to collect a full vial of blood specimen from the subject in each provided blood vial. The next instruction is to invert the blood vial several times immediately after being collected. The next section of instructions uses the word "vial" four times to describe the tube used to collect the blood specimen.

After being shown this paperwork in court, Youngkin was asked, "So Nirav Kumar says a gray-top tube is a vial. Your DPS handbook calls a gray-top tube a vial. The instructions given to police officers call a gray-top tube a vial. Is it still your testimony that a gray-top tube is different than a vial?" Youngkin replied, "It is."

Youngkin was then shown the Crime Laboratory Alcohol Analysis Worksheet (**TAB 6O**). This worksheet also describes gray-top tubes as vials.

Later in the questioning, Youngkin was asked several times, "So if you were ever asked if you ever got the wrong result for the wrong person's blood, what was the only truthful statement you could make under oath?" He replied, "Again, it's going to depend on the context of the question." "Well, it's a yes or no. Have you ever switched a person's blood?" "Well, it depends on how the question is asked." Youngkin never answered the question with a yes or no. He did answer by saying, "I have associated the wrong result with the wrong laboratory case number." Youngkin was asked again, "Did you not get a person's blood mistaken for another person in 2013?" He replied, "It wasn't mistaken. It was simply out of order."

As further discussions came to a close, Youngkin was asked if he had anything else to share for the record. He replied, "Just that often times parts of the transcript that was read was- there was no context for it. Certainly moving forward, I intend to be more forthcoming with this information so we don't end up in the situation again."

District Attorney Meeting

On December 22, 2016, D.A.D. Mills contacted OIG to advise he attended a meeting earlier in the day with five of the seven D.A. offices in the service area. The meeting was initiated by Bill Wirsky of the Collin County DA's office. The purpose of the meeting was to discuss Youngkin's status on being allowed to continue testifying in the area courts. Mills stated he did not receive a clear answer from any of the counties represented. Some county representatives advised Mills that Youngkin was on their "Brady list" and would not sponsor him as a witness. However, they pulled back and stated they would sponsor him in court if they had to. Mills stated

the group appeared uncommitted to provide a definitive answer, but the impression was the counties did not want to sponsor him but would if they needed to. None of the attendees provided anything in writing to document their stance on the issue.

James Nichols, Crime Laboratory Manager, Garland

On December 21, 2016, OIG interviewed James Nichols at the Garland Crime Lab (TAB 12D). Nichols is currently the Crime Lab Manager in Garland and has held that position since 2013. Nichols has worked with Youngkin in multiple capacities since 1998.

Nichols stated Youngkin is a very hard worker who focuses on completing his cases. However, he appears very “aloof” and detached from the rest of the section and does not interact with his coworkers unless necessary. Nichols stated there has never been a question concerning Youngkin’s credibility prior to the events leading up to this investigation.

Nichols stated the topic of tubes vs vials has never been an issue before with any of his employees. Nichols wrote in his sworn affidavit, “The terms ‘vials’ and ‘tubes’ are interchangeable by lab and Department personnel. I would expect any person to interchange these terms when testifying to blood alcohol. Chris did not always follow the expectation stated in the Lab Operations Guide to avoid phrasing testimony in an ambiguous, biased, or misleading manner. I believe he did most of the time, but his testimony in Ellis and Dallas counties was ambiguous and misleading.”

Nichols was asked about Youngkin being assigned as the investigator for QAP #823. Nichols stated it is common practice for an individual who is involved in an incident to be assigned as the investigator. The individual involved would be in the best situation to describe what happened and participate in the root cause analysis. Nichols stated the quality assurance process is non-disciplinary, and it is dependent upon employees being open and straightforward with any errors they detect in the process.

Nichols explained that all new employees must attend General Lab Training (GLT) that includes modules for “Ethics and Professionalism” and “Overview of Legal Processes and Testimony.” The training is taught by a supervisor for the section or an assigned trainer from a list of trainers. At the completion of the GLT training, court testimony training is conducted and focuses on each discipline’s specific area: blood alcohol, drug, DNA, etc. This portion of the training includes observing and participating in a mock trial alongside senior scientists.

Nichols explained that all lab employees must attend annual training to review American Society of Crime Lab Directors (ASCLD) guidelines that include Professionalism, Competency and Proficiency, and Clear Communication. The topic of clear communication refers specifically to the reports that are generated and how the scientists should conduct themselves when testifying.

Nichols was asked about the 2013 Annual Laboratory Management System Survey report. Nichols completed the report, and on page three he described the incident by using the term “sample switch.” Nichols stated he used the proper terminology in the report, and a sample switch did occur.

At the conclusion of the meeting, Nichols was asked if he believed Youngkin had accepted any responsibility for his actions. Nichols answered that question in his affidavit by writing, “At times he has expressed that he didn’t communicate as he should have, but he has continued to go

back to his initial response that according to him he was answering the specific question posed to him by the attorneys. I believe he placed significance on the difference between the terms for tubes and vials that was not previously present.”

Nichols supplied a written affidavit to OIG on January 4, 2016 (**TAB 10**).

Chris Youngkin, Forensic Scientist IV, Garland

On December 22, 2016, OIG met with Youngkin and served him with a written notice of investigation (**TAB 2**).

Andrew Macey, Drug Section Supervisor, Garland

On January 6, 2017, OIG spoke with Andrew Macey via telephone regarding the 2013 incident (**TAB 12C**). Macey is currently a section supervisor, but at the time of the incident he was a co-worker of Youngkin assigned to conduct blood alcohol tests. Macey stated Youngkin approached him after the incident and told him he had switched two blood samples during testing. Youngkin noticed the numbers on the tubes were out of order as he was returning them to the test kits. Youngkin advised Macey that he also received a phone call from Anna P.D. asking about the results. Youngkin did not know how the error occurred, but he knew the samples needed to be retested. The samples were eventually retested by Macey, and new reports were distributed.

Macey supplied a written affidavit to OIG on January 9, 2016 (**TAB 9**).

Jeff Caponera, Lieutenant, Anna Police Department

On January 6, 2017, OIG spoke with Lieutenant Caponera via telephone regarding the incident (**TAB 12A**). Anna Police Department submitted one of the two blood samples that were switched by Youngkin. Caponera stated he placed a call to the Garland Crime Lab after realizing the test results were incorrect. Caponera stated he could not recall exactly who he spoke with in the lab, but he believes it was Youngkin. Youngkin told Caponera he would review the results, and if an error did occur, the samples would be retested. Caponera's perception was that this was new information for Youngkin and he was not aware the blood samples were switched. Caponera stated he received a follow up call later that afternoon or possibly the next day from the lab confirming the results were incorrect, and they would be retested. Caponera could not recall who he spoke with on the follow up call.

Caponera supplied a written affidavit to OIG on January 11, 2016 (**TAB 7**).

Chris Youngkin, Forensic Scientist IV, Garland

On January 11, 2017, OIG interviewed Chris Youngkin at the DPS office in Waco (**TAB 12E**). He was read the Garrity Warning (**TAB 3**) and was provided a copy. Youngkin reports to Drug Section Supervisor Kenneth Evans, who reports to Lab Manager James Nichols. Youngkin started working for the Department in 1996. He began testing blood alcohol concentration in 1998, has conducted over 15,000 blood tests and has testified in over 500 trials.

The interview began by reviewing a timeline of events surrounding the incident. Youngkin concurred with the dates and times of the events.

Youngkin was first asked if he had ever provided inconsistent or conflicting testimony regarding blood tubes, vials, or samples being switched. He responded by saying, “No, not that I’m aware of.”

Youngkin was asked if the following equation was correct: a gray top tube (A) can be called a vial (B), and a vial (B) can be called a headspace vial (C), but a gray top tube (A) can never be called a headspace vial (C). Essentially, $A=B$, and $B=C$, but $A \neq C$. Youngkin stated that was a correct statement. He also provided several documents showing there are differences between blood tubes and headspace vials (**TAB 24**). Youngkin stated each has a specific function when it relates to testing blood, and he wanted to make sure that point was made.

Youngkin was given copies of multiple Department documents and training materials to review. Each of the forms provided show the words blood tube and blood vial being used interchangeably. These documents were previously discussed on page 10 of this report and include:

1. Physical Evidence Handbook- Blood Kit Packaging
2. Physical Evidence Handbook- Blood Collection Kit
3. Physical Evidence Handbook- Instructions for the Collection and Submission of Blood Specimens
4. Alcohol Analysis Worksheet

Youngkin agreed the above documents existed, but he did not believe they were accurate when describing blood tubes as blood vials. In fact, Youngkin stated because of the 2013 incident, many of these forms are in the process of being updated and will remove the word vial when used to reference a blood tube. Youngkin stated the LAB 12-b form has already been updated to show blood tube instead of blood vial. After checking the DPSNet, this was found to be true (**TAB 21**). Youngkin agreed the above forms were current in 2013, and he was surprised to learn the Department had been using the word vial when actually referencing a blood tube.

Youngkin was also provided a copy of the 2013 Annual Laboratory Management System Survey. The form was completed by his chain of command and contained the words “sample switch” to describe the incident. Youngkin was not aware these words were being used until he was shown the form in court in July of 2015.

Youngkin was asked about co-worker Nirav Kumar’s testimony from October of 2016. Kumar stated under oath that blood tubes and blood vials meant the same thing, and both terms can be used interchangeably. Youngkin stated Kumar’s words were taken out of context, and he was not able to answer for or explain Kumar’s responses.

Youngkin did point out that the defense attorney asked Kumar a question about a blood vial, and Kumar answered by using the word blood tube. For instance, the attorney asked, “For the DPS blood kit, how many vials of blood are there?” Kumar replied; “For the DPS kit, there would need to be two. Both blood tubes would need to be filled up.” Kumar answered positively to the question, but he used the word blood tube in his response. Youngkin stated he answers questions similarly to Kumar.

Youngkin was asked if he ever corrects the question when he is asked about blood vials but is actually referencing blood tubes. He stated he does not correct the questioner when the topic at hand has already been established, and everyone knows what is being discussed. He stated

attorneys purposely ask questions using incorrect terminology, and any corrections would need to be made frequently which would “look bad.” Youngkin stated he often knows what is being discussed based on the context of conversation and what physical evidence has been presented in court, but he always asks for clarification when unsure.

Youngkin was asked about his prior testimony regarding sample switching. On July 16, 2015 (Exhibit #3, page 85), he stated he HAD NOT switched samples in the past and could not understand how that error could ever occur, and on July 19, 2016 (Exhibit #12, page 4) and October 24, 2016 during the Collin County deposition, he stated he HAD switched samples in the past. Youngkin explained the conflicting statements by saying he was not aware during his 2015 testimony that his supervisor had considered the error to be a sample switch as was described in the 2013 Annual Laboratory Management System Survey report. After becoming aware of this report, Youngkin began using the same vocabulary during testimony and agreed that a ‘sample switch’ had occurred.

Youngkin also stated that the word ‘switch’ has different meanings to different people, and his definition included something done on purpose. Since the tubes were not purposely placed out of order, he did not consider them to have been switched.

Youngkin was then asked to explain further statements he made that appear to be conflicting. For instance, on July 15, 2015 (Exhibit #2, page 22) and on October 2, 2016 (Exhibit #8, page 16), Youngkin was asked how many times he had ever switched vials, and had he ever switched vials before. His response to these questions were, “Never that I’m aware of” and “Not that I’m aware of.” This contradicts a statement made on September 27, 2016 (Exhibit #6, page 52) when he was asked, “First and foremost, without equivocation, without conjecture, without hypothesis, you switched vials on a person, correct?” Youngkin replied, “I did.” Youngkin explained the inconsistency by saying the questions in the first two examples were not clear, and he was assuming they were asking about headspace vials. That’s why he answered, “Never that I’m aware of.” The question in the last example provided more information, “vials on a person,” which led Youngkin to believe he was being asked about specific evidence which would have been referring to blood tubes. Therefore, he answered, “I did.”

Youngkin wanted to point out that all the transcripts are from excerpts from testimony and are not the complete testimony, so it is difficult to fully know what is being described.

At this point in the interview, Youngkin stated, “I haven’t tried to mislead anyone, or be dishonest, or hide anything. I’m just answering the questions as I understand them. I carry these two things with me (blood tube and blood vial). It’s easy to see they’re clearly two different things. They serve different purposes.”

Youngkin was then asked about other excerpts of testimony that appear to be misleading or inconsistent. On September 18, 2013 (Exhibit #1, page 7), Youngkin was asked, “And in what condition was the blood in when you received it?” He replied, “The box itself is properly sealed, and the vial itself is also sealed. The condition of the blood was normal, and the gray top tube was approximately three quarters full.” He was later asked, “And did you analyze the contents of the vial to determine the alcohol content?” He replied, “I did.”

In contrast, on October 12, 2016 (Exhibit #10, page 10), Youngkin was asked, “Is a gray top tube considered the same thing as a vial?” He replied, “Not to me, it’s not.” Have you ever testified to a gray-top tube being a vial?” “Not that I’m aware of.” “So the answer would be no, right?”

“Correct.” Youngkin’s statements from the two above examples do not agree with one another. When asked to clarify, Youngkin explained in the 2013 example he was reading straight from an alcohol analysis worksheet in which it referred to the blood tube as a vial, so he also referred to it as a vial.

Youngkin was asked a similar question on July 15, 2015 (Exhibit # 2, page 38), “You don’t think you switched vials?” He replied, “That’s correct.” Youngkin explained the attorney was referring to headspace vials and not blood tubes.

Youngkin was asked if it ever occurred to him the need to clarify his responses and advise the court that he may not have switched headspace vials before, but he has switched blood tubes before. He replied, “It did not. To me, in my opinion, it was an isolated event, as the Quality Action Plan indicates. It only affected those two cases. They were corrected. Preventative action that was put into place is sufficient to prevent it from ever happening again. In addition to that, I had never encountered those circumstances where I found tubes out of order since then. So, no, it never occurred to me.”

Youngkin added that his duty in court was to answer questions asked of him and not provide additional information. He’s had defense attorneys in the past object to his testimony for being “unresponsive” when he attempted to add information to a question that only required a yes or no answer. Over time, Youngkin stated he has learned it is best to just answer the questions asked of him.

Youngkin stated that over time he has come to know the core group of defense attorneys and can anticipate the questions being asked. This has created a comfort level or familiarization between Youngkin and the attorneys. Because of the familiarization, Youngkin stated he may have answered questions regarding a blood tube and not even noticed the attorneys were actually using the word blood vial. He also stated he may have answered questions based on prior context and did not look at each question individually as he should have. He stated, “Perhaps that’s what’s in play.”

Youngkin was asked if his answers ever changed based on his knowledge of the defense attorneys having a copy of the Quality Action Plan #823 that references the blood tube error. He replied, “I think it did towards the end.” Youngkin stated his answers may also change based on what has already been discussed under direct examination, and it is difficult to know what has already been discussed because the transcripts are only excerpts.

Youngkin was asked why he invoked his Fifth Amendment right and decided to stop testifying during the hearing on October 12, 2016. He replied, “Because that’s what the judge had encouraged me to do. I wasn’t sure of what I was being accused of or what I was at risk of, incriminating myself of, so that was just a bizarre moment.” Youngkin stated he immediately contacted his chain of command after the hearing.

Youngkin stated he decided to return to court on October 24, 2016, to continue testifying after receiving advice from the Attorney General’s office.

Laboratory Operations Guide (LOG)

Youngkin was provided a copy of the Court Testimony Monitoring section of LOG-03-02 that discusses testimony expectations of witnesses (**TAB 22**). It states:

- 2.1 (B.) Testify in a manner which is clear, straightforward, and objective;
- 2.1 (D.) Avoid phrasing testimony in an ambiguous, biased, or misleading manner.

Youngkin stated he followed the two objectives above, and he believes the testimony he provided was clear. However, he stated the defense attorneys frequently asked him questions that were not clear.

Youngkin was asked if he believes he was being straightforward with his answers. He replied, "I do." Youngkin was then asked if any of his answers could have been considered misleading. He replied, "I don't think so, but I'm also much more familiar with the material than any juror would be. I think being misleading is another common tactic of defense attorneys."

Youngkin was asked about Exhibit #4, page 12, regarding not being asked the right questions in court. Youngkin stated that unless he is asked the correct questions in court, he may not have the window of opportunity to provide the full and correct answer. Youngkin stated again that his job is only to answer the questions asked and not to provide additional information. He stated that whatever the question is, he will answer it truthfully.

Quality Action Plan #823 (QAP)

Youngkin was asked why he was assigned as the investigator for this incident. He stated he was asked to complete the form by his chain of command after he advised them of what had occurred. He understands why he was assigned as the investigator since he had the most knowledge of the incident. Youngkin stated the form was more of a record of occurrence than an actual investigation. That is why he was so hesitant to use the term "investigator" in court. In addition, Youngkin stated the word "investigator" has been removed from the most recent version of the QAP form (TAB 16).

Youngkin was asked about the Quality Action Plan process instructions page (TAB 17). It reads, "This process is designed to encourage participation, open communication, and un-biased assessments of quality incidents for the purpose of transparency and process improvement." Youngkin stated he was unbiased in his report, but the potential does exist for the form to be completed in a biased manner based on who is assigned to complete the form. However, he has never seen or heard of any biased reports being completed.

Youngkin was asked how he found out about the 2013 blood tube error. He stated he noticed the tubes out of order on May 16, 2013, while placing the tubes back into the blood kits. This process is commonly done soon after the test results are sent out via email to the originating agencies. A few minutes after noticing the error himself, he received a phone call from Anna PD regarding the blood tests. Youngkin stated he spoke with Officer Caponera who called and questioned the test results. Youngkin could not recall what he said or how he replied to Caponera's concerns. He did state he would not have provided Caponera with any confirmation until after he spoke with his chain of command and retested the samples. After Caponera's phone call, Youngkin notified the section supervisor, Kenneth Evans.

Youngkin was then asked if he felt responsible for any part of his current situation. He stated he is responsible for the incident as described in QAP #823. He stated he is also the person who answered all the questions in court, so if he did not answer them appropriately, then that would also be his fault. Youngkin was then asked if he believed he answered any questions inappropriately, and he replied, "I do not. I believe the answers were always truthful. It would

appear that I did a poor job of listening to the specific question sometimes, even though in context, I believe I answered truthfully.”

Although he has always used the term ‘tube,’ Youngkin stated he has come to learn it is common practice for police officers, nurses, attorneys and several others in the process to use the term ‘vial.’ Youngkin called this an “unfortunate circumstance” because the two items are separate and have two separate functions. This can create confusion in the courtroom, so Youngkin chooses to bring an actual blood tube and a blood vial to court with him when he testifies to eliminate any possible confusion. He stated he just views it from a “different perspective” than everyone else in the process.

When asked if he would do anything different if given the opportunity, he answered by saying he would have provided “longer answers” to some of the questions asked of him. The transcripts give the appearance that the attorneys had to “pull information out of him,” but Youngkin viewed this only as him answering the questions asked of him.

Youngkin would have also changed the way he answered questions in July of 2016 (Exhibit #3) regarding the switching of vials. He would have taken the opportunity to discuss the issue more completely than he did. Youngkin stated the questions were answered truthfully, but he would have attempted to offer more clarification in the matter.

Youngkin was asked again if he ever gave inconsistent or conflicting testimony regarding blood tubes, vials, or samples being switched. He replied, “I don’t think so.”

Youngkin submitted a written affidavit to OIG on January 27, 2017. **(Tab 11)**

Nirav Kumar, Forensic Scientist II, Garland

On January 13, 2017, OIG spoke with Nirav Kumar via telephone **(TAB 12B)**. Kumar is a colleague of Youngkin in the Garland Crime Lab. Kumar was asked for his current view on the subject of blood vials and blood tubes. Kumar stated he currently uses the word vial and tube interchangeably, and it’s common for his colleagues and the chain of command to also use the words interchangeably.

Kumar stated the Department is in the process of removing the word ‘vial’ from the Physical Evidence Handbook and other Department documents and will replace it with the word ‘tube’ when referring to the gray-top blood tube used to collect blood specimens. Kumar stated he has been given verbal direction from the chain of command to be clear on the subject of blood tubes and blood vials when testifying in court.

Kumar supplied a written affidavit to OIG on January 17, 2017 **(TAB 8)**.

James Nichols, Crime Laboratory Manager, Garland

On January 18, 2017, Nichols called OIG and advised the Crime Lab is in the process of replacing the word ‘blood vial’ with ‘blood tube’ in several lab documents including the Physical Evidence Handbook. This decision was based on the events surrounding the 2013 incident. Nichols stated the current usage of the word ‘blood vial’ is not incorrect, but the change would provide consistency throughout the Crime Laboratory system.

Alice Amilhat, Assistant Lab Director, Technical Services, Austin

On January 19, 2017, Amilhat provided OIG with more explanation surrounding the changes being made in replacing the word 'vial' with 'tube' in DPS crime lab documents. Amilhat stated a Blood Alcohol and Toxicology statewide meeting was held on October 26-27, 2016. During this meeting, proposed changes to the crime lab documents were communicated because of the 2013 incident and the terminology issues surrounding the incident. Amilhat stated the changes in terminology would support the culture of continued process improvement within the Lab Service. As a result, the below changes have been made or are scheduled to be made.

- Physical Evidence Handbook- scheduled to be implemented in April 2017
- Instructions for the Collection and Submission of Blood Specimens (LAB-12b) - effective in December 2016
- The Blood Alcohol Standard Operating Procedures (SOP) were updated in November of 2016 and can be found at this link:

<https://txdpslabs.qualtraxcloud.com/ShowDocument.aspx?ID=4209>

Amilhat's email correspondence and forwarded documents are attached (**TAB 23**).

EVALUATION

This Director's Inquiry was initiated based on allegations that Forensic Scientist Chris Youngkin possibly provided conflicting or inconsistent testimony under oath regarding the incident from 2013.

The relevant issues identified throughout the course of this investigation include:

- Chris Youngkin testimony
- Quality Action Plan process
- Brady vs Maryland
- The use of 'vial' and 'tube' in DPS manuals and documents
- Testimony expectations of witnesses

Chris Youngkin Testimony

This report provides multiple examples of Youngkin providing unclear, inconsistent, or misleading statements under oath. The bulk of examples involve Youngkin claiming he never switched blood vials or blood samples, compared with other testimony in which Youngkin stated he had, one time, switched blood vials, samples, and/or tubes, thus contradicting his prior statements.

In response, Youngkin stated he was only answering the exact questions he was asked, and he never tried to conceal or hide any information. Youngkin offered few explanations for his actions and never fully explained the inconsistencies.

Youngkin wanted to add that he rarely sees transcripts or has the opportunity to review prior testimony, but he always tries to be clear in his testimony and not mislead anyone.

Youngkin had several opportunities to clarify and fully explain what occurred in 2013. He may have never switched headspace vials, but he did switch blood tubes on one occasion. Youngkin failed to bring up this point in court until after the release of the Quality Action Plan #823 report. When asked if his answers changed based on the knowledge of the defense attorneys having copies of the QAP report, Youngkin stated, "I think it did towards the end..."

Based on the appearance that Youngkin was providing inconsistent testimony under oath on October 12, 2016, the court provided Youngkin with the option of invoking his 5th Amendment Right and stopping his testimony. Youngkin stopped answering questions which created the strong appearance he was not being forthright in his testimony.

Quality Action Plan Process

Laboratory Operations Guide LOG-03-12 explains the scope and process for completing a quality action plan report. The below statement is included:

This process is designed to encourage participation, open communication, and unbiased assessments of quality incidents for the purpose of transparency and process improvement.

The QAP #823 report shows Youngkin as the investigator of his own incident. Youngkin still does not agree with the term 'investigator,' but he did sign his name as the investigator in two different locations on the form. He does not believe he investigated anything but rather was asked to fill out the report acknowledging what had occurred. After speaking with the chain of command, it appears it is common practice to assign the person involved as the investigator since he or she would have the most information regarding the incident. The possibility of biased reporting was not a concern to Youngkin or his chain of command in this matter.

There is no evidence to prove that Youngkin was aware or not aware of the blood tube error prior to receiving the phone call from Anna Police Department. Youngkin stated he was already aware prior to the phone call, and Nichols and Macey confirmed this is very possible based on how the blood test notification process works.

Brady vs Maryland

Defense attorneys attempted holding Youngkin responsible for not providing them the QAP #823 report as Brady material. Youngkin believed it was not required, and he stated it was not his direct responsibility to make sure the defense attorneys had that information. The Collin County Assistant District Attorney, on October 12, 2016, stated all the disclosures were made in accordance to law, and no wrongdoing was done by Youngkin in that specific case. The crime lab appears to have followed law and policy by notifying the local D.A. offices of the 2013 incident when requested or required (**TAB 6L and TAB 19**).

The Use of 'Vial' and 'Tube' in DPS Manuals and Documents

Current challenges in terminology and proposed changes to the crime lab documents and policies were communicated to the chain of command in October of 2016. The chain of command was responsive. As a result, positive changes are being made to address the issues of consistency which may help prevent a similar issue from occurring in the future. Nonetheless, Department documents from 2013 show the words 'tube' and 'vial' being used interchangeably as if to show

they mean the same thing. Lab personnel who were interviewed stated the two terms are still used interchangeably today.

Testimony Expectations of Witnesses

LOG-03-02 provides testimony expectations of witnesses. Under the Practices section, it reads:

- 2.1 (B) - Testify in a manner which is clear, straightforward, and objective
- 2.1 (D) - Avoid phrasing testimony in an ambiguous, biased, or misleading manner

On October 24, 2016, towards the end of the hearing, Youngkin was asked if he had anything further to share for the record. He replied, "Certainly moving forward, I intend to be more forthcoming with this information so we don't end up in the situation again."

Youngkin is a tenured member of this agency with twenty years of service and experience. According to his chain of command, he has a reserved personality, but he is intelligent and is meticulous in his work. The 2013 incident involving the tubes being placed out of order is the only job performance error documented in his twenty year career. This is a commendable achievement.

However, it was found that Youngkin was not as forthcoming with his testimony surrounding the 2013 event as he should have been according to Department policy. As a result of this investigation, sufficient evidence exists to justify the filing of a formal complaint against Youngkin for providing ambiguous, biased, or misleading statements under oath.

Respectfully submitted,



Adam Kinslow, Lieutenant
Office of Inspector General

I CONCUR

BRIAN LILLIE
CAPTAIN
1-31-17

I CONCUR

RHONDA FLEMING
INSPECTOR GENERAL
2-1-17

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OIG2016-0402

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 - M. Exhibit #17, Physical Evidence Handbook 'Blood Kit Packaging' form and 'Blood Collection Kit' instructions
 - N. Exhibit #18, Lab-12b 'Instructions for the Collection and Submission of Blood Specimens'
 - O. Exhibit #19, 'Alcohol Analysis Worksheet' form

P. Miscellaneous documents

Sworn Affidavits

7. Sworn affidavit from Jeff Caponera
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Recorded Interviews

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17. Laboratory Operations Guide- Quality Incident/Action Plan Process
18. 2013 Annual Laboratory Management System Survey
19. Training Manual DRN: GLT-TM-LAW-02 Federal/State Duty to Disclose
20. District Attorney letter from Deputy Assistant Director Brady Mills
21. Updated Lab-12b form (Revised 12/2016)
22. Laboratory Operations Guide- Testimony Expectations of Witnesses
23. Written correspondence and attachments from Assistant Lab Director Alice Amilhat
24. Written documentation from Youngkin

Kinslow, Adam

From: Lillie, Brian
Sent: Thursday, December 15, 2016 9:30 AM
To: Kinslow, Adam
Cc: Lopez, James; Sanchez, Louis; Fleming, Rhonda; Miller, Kristy
Subject: Assignment of Director Inquiry- Region 1 LESD- Forensic Scientist Christopher Youngkin (OIG2016-0402)

Adam,

You have been assigned a Director Inquiry on Forensic Scientist Christopher Youngkin, Region 1, Crime Lab, Garland, concerning circumstances that resulted in multiple prosecutors in his area of responsibility declining to accept his testimony. All related documents will be provided to you and the approval will be uploaded to **OIG2016-0402**. The ROI for this investigation will be due no later than 1/25/17. If additional time is needed, please document the justification in memorandum form to me prior to the due date including the anticipated completion date. Kristy will send a notification to the appropriate Assistant Director and Regional Commander advising them of this investigation. Please contact me if you have any questions.

Thank you,

Brian Lillie, Captain
Texas Department of Public Safety
Office of Inspector General
12-424-5275 Office
512-801-4874 Cell





TEXAS DEPARTMENT OF PUBLIC SAFETY

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COMMISSION
A. CYNTHIA LEON, CHAIR
MANNY FLORES
STEVEN P. MACH
RANDY WATSON

December 20, 2016

Re: Notice of Director's Inquiry and Related Investigation OIG2016-0402.

This letter is to inform you that a Director's Inquiry has been ordered by Deputy Director Duke Bodisch and will be conducted by this Office. The Office of Inspector General is committed to conducting Director Inquiries in a fair, judicious, and thorough manner. Pursuant to General Manual, Chapter 07.42.16, the Director's Inquiry is intended to provide factual information on performance issues for decision making by management.

In May 2013, Forensic Scientist Chris Youngkin reported incorrect results on two blood alcohol cases. The error was corrected, and revised reports were issued to the affected agencies. In October 2016, Youngkin is alleged to have given inconsistent testimony regarding the incident which resulted in multiple prosecutors in his area of responsibility no longer accepting his testimony.

The Department serves you notice and intends to conduct the Director's Inquiry. You are advised to refrain from contacting witnesses in any way, which might be interpreted as an attempt to discourage the witness from cooperating with the Department during the inquiry.

Unless the Office of Inspector General instructs you otherwise, you may only discuss issues related to the inquiry with the investigator or the Inspector General.

You are further reminded any employee who is subject to an investigation or inquiry conducted by the Office of Inspector General shall cooperate fully and answer all questions posed to them by the Department investigator during such investigation or inquiry.

Respectfully,

Captain Brian Lillie
TXDPS Office of Inspector General

Received at 2:10 am pm, on 12/21/16

by Chris Youngkin Chris Youngkin
(Printed Name) (Signature)

GARRITY WARNING

At this time, I, Adam Kinslow, Texas Department of Public Safety (Department), am going to ask you questions about OIG2016-0402. I am not questioning you for the purpose of any criminal investigation, but only for the internal, administrative purposes of the Department. Accordingly, you are required and ordered to answer the questions that I ask you, as provided in the Department's General Manual, Section 07.42.11 (3) and 07.42.12 (1 and 2).

During the course of this series of questions, your answers will be given pursuant to the Department's policy, as noted above, that requires you, as a condition of continued employment, to truthfully answer all such questions as may be asked. Since these responses are required to be made, the Courts have generally held that such statements may not be used against you in a criminal proceeding arising out of the same factual situation, because you are compelled to give them. In addition, if your responses lead to additional information or evidence, the Courts have generally held that such additional matters are likewise not available for use in any criminal proceeding arising from the same factual situation.

Since this is an administrative, internal matter, you are required to answer all questions asked of you; and if you do not answer such questions, disciplinary action may be instituted against you separate and apart from the matter referenced above. You are reminded of the provisions of the Department's General Order number 4, which provides that all employees are required "To know and obey at all times the U.S. and state constitutions, federal and state laws, and lawful orders and instructions." Department General Manual Section 06.10.01(4)

DO YOU UNDERSTAND WHAT I HAVE JUST EXPLAINED TO YOU?

YES NO Initials aj

I, THE UNDERSIGNED, CERTIFY THAT I HAVE RECEIVED AND UNDERSTOOD THE ABOVE WARNING.

Date: 1-11-17

Chris Youngkin
Signed

Time: 1:20 P

Chris Youngkin
Printed Name



Texas Department of Public Safety Performance Evaluation Forensic Scientist

Mission: Protect and Serve Texas

Goals:

- Combat Crime & Terrorism
- Enhance Public Safety
- Enhance State-wide Emergency Management
- Enhance Licensing & Regulatory Services

PART 1: Employee Information

a. **Employee's Name (Last, First, Initial):** Youngkin, Christopher M

b. **Last Four of Employee's SSN:** [] []

c. **I.D. No.:** 8814

d. **Position:** Forensic Scientist I – IV

e. **Division:** Law Enforcement Support

f. **Region/District/Co:** 1

g. **Section/Bureau:** Crime Laboratory

h. **Type of Evaluation:** Annual Probationary Close-out Special

i. **Period Covered:** From January 1, 2013 To December 31, 2013

j. **Date filed by HR:**

Name (Last, First, Initial): Youngkin, Christopher M

Last Four of Employee's SSN:

PART 2: Job Duties (Comments required for each evaluated Job Duty)

a. Job Duty 1: Analytical Reasoning/Attention to Detail

Performance Rating:

Exemplary Skilled/Effective Competent Marginal Ineffective

Comments:

Chris has demonstrated his ability to assess a situation and make the proper decision based on his observations. Chris' use of the electronic blood alcohol worksheet has proven to allow Chris to excel in working out a high volume of blood alcohol cases.

b. Job Duty 2: Responsibility/Accountability and Direction

Performance Rating:

Exemplary Skilled/Effective Competent Marginal Ineffective

Comments:

Chris has demonstrated his ability to accept directions from others and to have others accept directions from him. Chris served as mentor for Sam at the first part of the past year.
Chris served on the blood alcohol advisory board during the past year.
Chris worked 2,315 blood alcohol cases and 226 drug cases during the past year.

c. Job Duty 3: Communication and Interpersonal/Relationship Management Skills

Performance Rating:

Exemplary Skilled/Effective Competent Marginal Ineffective

Comments:

Chris made approximately 65 court appearance during the past year. Even with the high number of court appearances Chris has been able to maintain a high case volume. Chris' large number of court appearances has him in contact with prosecutors seeking assistance by e-mailing him with court questions before his testimony in the court room.

Name (Last, First, Initial): Youngkin, Christopher M

Last Four of Employee's SSN:

PART 2: Job Duties (Comments required for each evaluated Job Duty)

d. Job Duty 4: Organizational and Prioritization Skills

Performance Rating:

Exemplary Skilled/Effective Competent Marginal Ineffective

Comments:

Chris is very organized and maintains a neat and efficient work area.
Chris makes use of the blood alcohol electronic workbook and JusticeTrax that allows for him to be efficient with his time.

e. Job Duty 5: Ethics and Integrity

Performance Rating:

Exemplary Skilled/Effective Competent Marginal Ineffective

Comments:

Chris has demonstrated ethical behavior in keeping with DPS policy and regulations.

f. Job Duty 6: Regulatory/Compliance

Performance Rating:

Exemplary Skilled/Effective Competent Marginal Ineffective

Comments:

Chris read and follows Laboratory Operation Guide, Controlled Substances SOP, Alcohol SOP and local Garland Laboratory policies. Chris case work reflects his reading of the policies and procedures.

Name (Last, First, Initial): Youngkin, Christopher M

Last Four of Employee's SSN:

[]

PART 2: Job Duties (Comments required for each evaluated Job Duty)

g. Job Duty 7: Flexibility/Adaptability

Performance Rating:

Exemplary Skilled/Effective Competent Marginal Ineffective

Comments:

Chris has demonstrated good time management skills in keeping up with his case load.

Chris use of the blood alcohol workbook and interfacing with JusticeTrax has allowed Chris to maintain a case output that is above average.

f. Job Duty 8: Teamwork

Performance Rating:

Exemplary Skilled/Effective Competent Marginal Ineffective

Comments:

Chris suggested and created a chart to help with reminding fellow analysts in the blood alcohol section of events that needed to take place at a certain time interval. Chris stated that was necessary to help in reminding analysts of certain task that needed to perform at regular intervals throughout the year.

Chris working with Andrew and Sam maintained the backlog of blood alcohol cases to less than 30 day turnaround. After Sam transferred Chris working with Andrew were still able to keep the turnaround time less than 30 days.

h. Job Duty 9: Initiative

Performance Rating:

Exemplary Skilled/Effective Competent Marginal Ineffective

Comments:

Chris demonstrates his ability to maintaining his caseload by prioritizing his cases.

Name (Last, First, Initial): Youngkin, Christopher M

Last Four of Employee's SSN: [] [] [] []

PART 2: Job Duties (Comments required for each evaluated Job Duty)

Overall Performance Rating:

Exemplary Skilled/Effective Competent Marginal Ineffective

Comments:

Chris has proven himself to be an asset to the Garland laboratory drug/blood alcohol section in his ability and willingness to accept responsibility in performing his job duties.

Chris worked with blood alcohol advisory board that came up with guidelines to implement uncertainty reporting for alcohol cases.

Chris understands the responsibility that is needed on performing the duties by analysts at the crime laboratory.

Pat Johnson has made comments during the past year about the work that has been performed in Garland Lab's blood alcohol section and I can only say that both Chris and Andrew's tireless efforts in performing their duties is why they perform at a level above normal expectations.

The following will be goals for Chris during the upcoming year.

- Complete 200 blood alcohol cases or the equivalent of 80 drug cases as per crime laboratory management
- Serve on the blood alcohol advisory board
- Stay current with readings of Controlled Substances, Blood Alcohol SOPs and Laboratory Operation Guide
- Serve as mentor for Nirav and other trainees for blood alcohols

Parameters for Overall Performance Rating

1. An Ineffective rating for any job skill requires an overall Ineffective rating.
2. A Marginal rating for any job skill requires an overall Marginal rating (unless #1).
3. The same rating in greater than 50% of total job skills requires that rating as the overall rating (unless #1 or #2).
4. When there is no majority in any one rating category, the rating that represents the average should be selected (unless #1 or #2) (Ex: three Exemplary/two Skilled/four Competent, equals an overall Skilled rating). If the average is exactly halfway between two categories, the lower category should be selected (unless #1 or #2) (Ex. five Skilled/five Competent, equals an overall Competent rating).

Name (Last, First, Initial): Youngkin, Christopher M

Last Four of Employee's SSN:

PART 3: Signatures & Comments

EMPLOYEE

I certify that this performance evaluation has been discussed with me. I understand that my signature does not necessarily indicate agreement.

Employee's Signature: *Chris Youngkin* Date: 2-18-14

Printed Name: Christopher Youngkin

Employee comments (optional)

Please check box if attaching additional pages

I do not agree that this document accurately reflects my performance in 2013.

SUPERVISOR

I certify that this performance evaluation represents my best judgment of the employee's performance.

Supervisor Signature: *[Signature]* Date: 2-14-14

Printed Name: Kenneth Evans

Supervisor comments

Please check box if attaching additional pages

(This space is reserved for responding to any employee comments. It is not used for general comments.)

REVIEWER

I have read and approved this performance plan.

Reviewer: *[Signature]* Date: 2-13-14

Printed Name: James Nichols

Reviewer comments (optional)

Please check box if attaching additional pages

In Line Review: _____ Date: _____

Printed Name: _____

Rebuttal to Performance Evaluation for 2013

It is my opinion that I performed my job duties in 2013 much the same way I did in the previous fifteen years, effectively. This is evidenced by my continued completion of a high volume of cases, where a high volume is defined as more than 100% of the expectation in less than 100% of the available time. If one were to whip up a batch of "high volume" from scratch, it must contain certain ingredients, namely the effective performance of one's job duties.

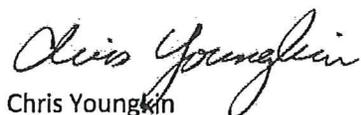
There are a couple of omissions from my evaluation regarding the duties that I regularly performed in 2013. First, blood alcohol analysts in the Garland Crime Lab review each other's cases. This means that I was responsible for the review of a portion of the thousands of other blood alcohol cases completed in the Garland Crime Lab in 2013. Secondly, I was responsible for providing documents requested by defense attorneys. (note: A quality assurance specialist was added to the Garland Crime Lab at some point in 2013 and this task became their responsibility) Together these two tasks consumed a significant amount of time in 2013. Considering this puts the high volume of cases I completed in 2013 into proper perspective.

I am described as being very organized (d. Job Duty 4) but given a rating in the middle of the performance scale. Completing a high volume of anything will certainly require that individual to be well organized. Being able to keep affidavits and document requests and cases being worked and cases being reviewed and cases going to court and scheduling court appearances and answering emails and phone calls from prosecutors preparing cases for court (and the list goes on) would not be possible without an exceptional amount of organization.

I am described as having good time management in keeping up with my caseload (g. Job Duty 7) except that this overlooks the fact that I kept up with more than just *my* caseload. I kept up with a caseload perhaps approaching that of two people. I demonstrated quite effectively how flexible and adaptive that I was in 2013 not only in adapting to meet the needs of a high volume of submissions but also by my willingness to complete cases out of order at the request of the customer.

It stills seems more fitting for the entry for h. Job Duty 9 Initiative to be placed in d. Job Duty 4 Organizational and Prioritization Skills since they both contain the word prioritize. The fact that I demonstrated great initiative in 2013 seems to have gone unnoticed. I was not asked or begged or persuaded or obligated to completing a high volume of cases in 2013. I took the initiative to do what was necessary for the Garland Crime Lab to continue to provide timely service to our customers in 2013.

Performing my jobs duties effectively in the past has earned me merit raises, incentive payments, numerous awards and letters of commendation. Performing my job duties effectively in 2013 earned me an overall rating in the middle of the performance scale. Perhaps DPS has adopted the same goal as that of our public education system, mediocrity.


Chris Youngkin

2/20/14

Received - JN 2.20.14

TEXAS DEPARTMENT OF PUBLIC SAFETY



STEVEN C. MCCRAW
DIRECTOR
DAVID G. BAKER
ROBERT J. BODISCH, SR.
CHERYL MacBRIDE
DEPUTY DIRECTORS

CRIME LABORATORY
402 W. Interstate 30
Garland, TX 75043-5902
Voice 214-861-2190 Fax 214-861-2194



COMMISSION
A. CYNTHIA LEON, CHAIR
CARIN MARCY BARTH
MANNY FLORES
STEVEN P. MACH
RANDY WATSON

To: James Nichols, Laboratory Regional Laboratory Manager
From: Kenneth Evans, Drug Section Manager
Date: February 24, 2014
Subject: Chris Youngkin Evaluation Response to Rebuttal

The evaluation process has changed from the old process. Working a large number of cases is only one part of being an overall skilled/effective person. The evaluation process now values a person of being a well-rounded individual that demonstrates the core values of the Department of Public Safety.

Chris is indeed highly focused in the area of working blood alcohol cases and this was noted in several areas of his evaluation. A person working a large number of cases is not the only task that an analyst should strive for. Working well with others, taking a leadership role in the laboratory, stepping in and seeing things that need attention are things that Chris did not exhibit during the past year. Chris works with the instruments for the blood alcohol section however has not showed an interest in learning more about the maintenance of the gas chromatographs or the hydrogen gas generator. I did note that Chris did indeed excel in areas of attention to detail, worked 2315 blood alcohol cases, had a large number of court appearance which would also include contact with prosecutors about some of his cases. I also noted that he worked well with Andrew and Sam and that they as a team worked to reduce the backlog not just Chris alone.

To summarize I feel though that Chris is indeed a hard worker but just working cases is not what the Department of Public Safety is wanting from our employees but to strive to increase the overall state of value, courtesy and respect to others and service to one's job.

A handwritten signature in black ink, appearing to read "KE".

Kenneth Evans
Drug Section Manager

Received - JN 2 24-14

From: Nichols, James
Sent: Friday, March 07, 2014 3:39 PM
To: Youngkin, Christopher; Evans, Kenneth
Cc: Robertson, Steve
Subject: 2013 Annual Performance Evaluation Review

Chris,

You are a very valuable member of the DPS Garland Lab team. As noted in the evaluation and your rebuttal you did complete a great number of cases in 2013 along with reviews, answering records requests, and communicating with attorneys. For these tasks you were rated skilled/effective for your analytical reasoning/attention to detail, responsibility/accountability and direction, communication and interpersonal/relationship management skills, and teamwork.

For the remaining job duties you were rated as competent – which is not the verbiage Kenneth or I choose, but the rating as given on the evaluation. You are a very good employee. I believe, as the evaluation reflects, you put forth a great deal of effort which was reflected with a favorable evaluation for 2013. I have taken time to consider the rebuttal that you provided. However, I do not believe the evaluation should change.

I would like for you and Kenneth to sit down as soon as possible to discuss ways that can bring the competent ratings to the level of skilled/effective.

I understand that you do not agree with this, but I want to express my appreciation for what you do and ask that you continue to bring a strong effort and strive to continue to improve.

Thank you,

James Nichols
Regional Lab Manager
Texas DPS Crime Lab - Garland
214-861-2326
James.Nichols@dps.texas.gov

E-MAIL CONFIDENTIALITY STATEMENT

This message contains information which may be confidential and privileged. Unless you are the addressee (or authorized to receive for the addressee), you may not use, copy or disclose to anyone the message or any information contained in this message. If you have received the message in error, please advise the sender by reply e-mail and delete the message.

Nichols, James

From: Youngkin, Christopher
Sent: Tuesday, March 18, 2014 7:35 AM
To: Nichols, James
Subject: RE: Discussion

I do appreciate your sentiments but I think my evaluation reflects how you truly feel about my performance. Talk is cheap. It was a revelation to me that my performance evaluation actually has very little to do with my performance. You contend that you were instructed that it is not just about numbers. I had always thought that was to comfort those who didn't have any. I never imagined it would be used to dismiss one's performance. Since production is my skill (I am not sure I have a skill set) it is unfortunate that that alone cannot be evaluated highly. It has been my experience that the department employs forensic scientists for the specific purpose of testing evidence. I was saddened that you received my comments as an effort to offend. My point was that it is so common that most parents would instruct their children (which is an assumption based on my own experiences) and so simple that a child can understand and execute the instructions. I do understand that there are those that find the truth offensive.

I do agree that the list below is reflective of the suggestions made yesterday. I guess we will see what the future holds.

Chris

From: Nichols, James
Sent: Monday, March 17, 2014 4:50 PM
To: Youngkin, Christopher; Evans, Kenneth
Subject: Discussion

Chris,

I'm glad we met today. As I said, you are a very good analyst and you deserve a good evaluation. I agree with your statement that if there is something you can do to bring up your evaluation from competent to skilled then you need to know.

I hope you can reflect upon areas to make yourself a better analyst and coworker-please add your thoughts to this list that we discussed:

- Assist with BA instrument maintenance
- Assist with ordering/scheduling supplies
- Attend management classes
- Work on improving open/positive communication with coworkers

Please add/edit these traits and I will send out a final version this week.

James Nichols
Regional Lab Manager
Texas DPS Crime Lab - Garland
214-861-2326
James.Nichols@dps.texas.gov

E-MAIL CONFIDENTIALITY STATEMENT

This message contains information which may be confidential and privileged. Unless you are the addressee (or authorized to receive for the addressee), you may not use, copy or disclose to anyone the message or any information contained in this message. If you have received the message in error, please advise the sender by reply e-mail and delete the message.



Texas Department of Public Safety Performance Evaluation Forensic Scientist I-V

Mission: Protect and Serve Texas

Goals:

- Combat Crime & Terrorism
- Enhance Public Safety
- Enhance State-wide Emergency Management
- Enhance Licensing & Regulatory Services

PART 1: Employee Information

a. **Employee's Name (Last, First, Initial):** Youngkin, Christopher M

b. **Last Four of Employee's SSN:** []

c. **I.D. No.:** 8814

d. **Position:** Forensic Scientist
Level: IV

e. **Division:** Law Enforcement Support

f. **Region/District/Co:** 1

g. **Section/Bureau:** Crime Laboratory

h. **Type of Evaluation:** Annual Probationary Close-out Special

i. **Period Covered:** From 1/1/2014 To 12/31/2014

HR-reviewed by: _____ **Date** _____

Accepted Rejected and returned to customer

PART 2: Job Duties (Comments required for each evaluated Job Duty)**JOB DUTY 1: LEADERSHIP***Performance Rating:*

Exemplary Skilled/Effective Competent Marginal Ineffective

Comments:

Chris brings to the attention of management of issues that may affect the operation of the blood alcohol section after he has attended a blood alcohol advisory board meeting.

Chris follows the guidelines and polices as outlined in the DPS General Manual and Laboratory Operation Guide. He has always demonstrated integrity and honesty in his work ethics while performing his duties and those duties that have been assigned to him.

It is evident that Chris is committed in performing his duties in working blood alcohol cases. He has been able to help the section in maintaining a 30 day turnaround in cases throughout most of the past year. This requires that a person needs to be organized while balancing providing testimony in court and the analysis of casework samples. Chris has demonstrated this ability throughout the past year.

Chris should continue his being proactive efforts of bringing to the attention management of ideas and suggestions that help make the section improve in all aspects of being productive and efficient.

PART 2: Job Duties (Comments required for each evaluated Job Duty)**JOB DUTY 2: COMMUNICATION***Performance Rating:*

Exemplary Skilled/Effective Competent Marginal Ineffective

Comments:

Chris volunteered and participated in the DPS Citizen's Academy this past fall. He gave a presentation on both controlled substance and blood alcohol. He conducted tours of the section and fielded questions from the students that had participated in the program. The feedback that I received from the organizer was positive and that all of the people that had presented did an excellent job.

Chris made 62 court appearances this year and testified 52 times with a total of 311 hours out of the laboratory. Chris has had pretrial conferences with attorneys concerning his testimony on several occasions throughout the year.

Chris seems to thrive working under the pressure of the caseload that is here in Garland blood alcohol section. He works the cases without the need of being asked to do so. He is able to make adjustments in his schedule to accommodate those requests that come in when the results are needed by the court system.

Chris has the respect of his fellow coworkers in the area of his job knowledge and they are willing to ask him questions regarding job related matters however they are sometimes reluctant to engage him on a more personal level. Chris has been observed in changing this aspect and has been seen speaking to his fellow coworkers in more causal settings.

PART 2: Job Duties (Comments required for each evaluated Job Duty)**JOB DUTY 3: JOB KNOWLEDGE AND EXECUTION***Performance Rating:*

Exemplary Skilled/Effective Competent Marginal Ineffective

Comments:

Chris during the past year attended the Southwestern Association of Forensic Scientist fall conference in South Padre Island in which he attended a two day workshop on Aspects of Forensic Alcohol Toxicology - Not Just Drinking and Driving.

Chris also attended an 18 hour course on alcohol and Drug Training for Forensic Scientist hosted by Texas A&M Transportation Institute in Austin this past August.

Chris completed 2,314 blood alcohol cases and 51 drug cases during the past year. The total number of completed cases equates to 96.98 cases per month. Chris completed 2256 blood alcohols or 97% of the cases that he completed had less than a 30 day turnaround time. Chris was able to perform this taking into consideration his 311 hours or 39 days being in court. This should be contributed to Chris and his fellow coworkers that he has working with him as a team committed to getting the job done. Chris knows what is needed and does not require a lot of direct supervision to be motivated. He has a high level of self-motivation.

Goals for Chris for the year 2015:

Meet case DPS Crime Management expectations of 80 drug case equivalents per 30 days throughout the year with checkpoints of this performance to be done at the end of each quarter. If expectations are not being met the analyst will be placed on an action plan with the goal that the next quarter the analyst must meet the average of 80 cases per 30 day output.

Assist Andrew with the training of our newest blood alcohol analyst, Christine Hay, to notify Andrew when he is performing an analysis so that Christine could observe Chris setting up a sample batch and learn the processing that is used by our blood alcohol analysts.

If money is available to attend either the Clandestine Laboratory Investigating Chemist Association fall conference meeting in Oklahoma City or the Southwestern Association of Forensic Scientists fall conference also being held in Oklahoma City.

Because of Chris' experience it would be beneficial to the laboratory staff preparing to study and take their ABC examinations if he could make a short presentation about the aspects of alcohol analysis.

Attend any DPS sponsored or in-house training that may be setup to prepare an analyst to take the ABC certification examinations.

Name (Last, First, Initial): Youngkin, Christopher M

Last Four of Employee's SSN:

PART 3: Signatures & Comments

EMPLOYEE

I certify that this performance evaluation has been discussed with me. I understand that my signature does not necessarily indicate agreement.

Employee's Signature:  Date: 1-27-15

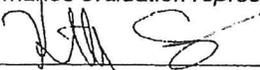
Printed Name: Christopher Youngkin

Employee comments (optional)

Please check box if attaching additional pages

SUPERVISOR

I certify that this performance evaluation represents my best judgment of the employee's performance.

Supervisor Signature:  Date: 1-27-15

Printed Name: Kenneth Evans

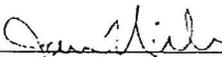
Supervisor comments

(This space is reserved for responding to any employee comments. It is not used for general comments.)

Please check box if attaching additional pages

REVIEWER

I have read and approved this performance evaluation.

Reviewer:  Date: 1-27-15

Printed Name: James Nichols

Reviewer comments (optional)

Please check box if attaching additional pages

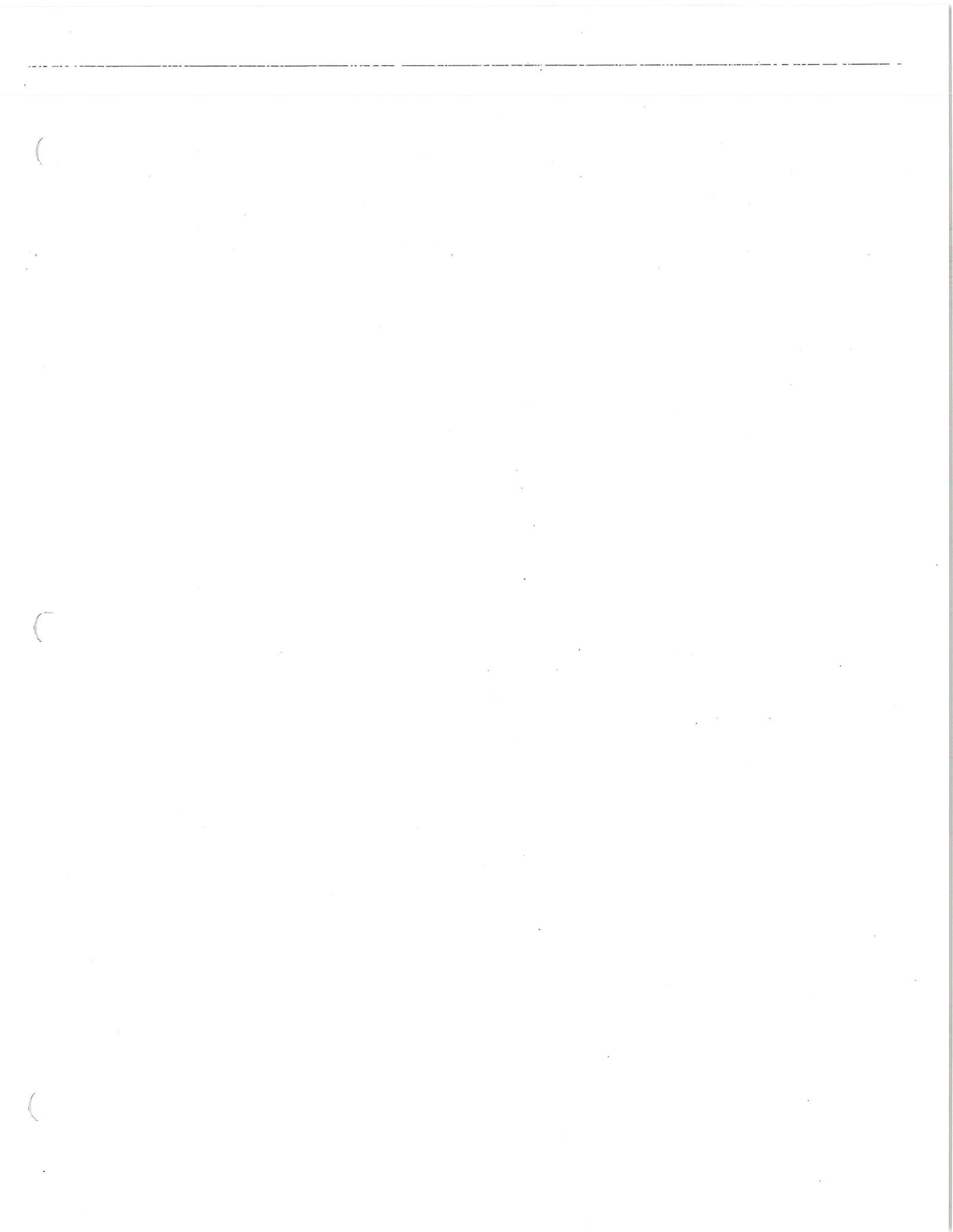
In Line Review #1: _____ Date: _____

Printed Name: _____

In Line Review #2: _____ Date: _____

Printed Name: _____

Recommended for permanent employment (if applicable)





Texas Department of Public Safety Performance Evaluation Forensic Scientist I-V

Mission: Protect and Serve Texas

Goals:

- Combat Crime & Terrorism
- Enhance Public Safety
- Enhance State-wide Emergency Management
- Enhance Licensing & Regulatory Services

PART 1: Employee Information

a. Employee's Name (Last, First, Initial): Youngkin, Christopher M

b. Last Four of Employee's SSN: []

c. I.D. No.: 8814

d. Position: Forensic Scientist
Level: IV

e. Division: Law Enforcement Support

f. Region/District/Co: 1

g. Section/Bureau: Crime Laboratory

h. Type of Evaluation: Annual Probationary Close-out Special

i. Period Covered: From January 1, 2015 To December 31, 2015

HR-reviewed by: _____ Date _____

Accepted Rejected and returned to customer

Name (Last, First, Initial): Youngkin, Christopher M

Last Four of Employee's SSN:

PART 2: Job Duties (Comments required for each evaluated Job Duty)

JOB DUTY 1: LEADERSHIP

Performance Rating:

Exemplary Skilled/Effective Competent Marginal Ineffective

Comments:

Chris brings to the attention of management of issues that may affect the operation of the blood alcohol section after he has attended a blood alcohol advisory board meeting.

Chris follows the guidelines and polices as outlined in the DPS General Manual and Laboratory Operation Guide. He has always demonstrated integrity and honesty in his work ethics while performing his duties and those duties that have been assigned to him.

Chris worked with Christine and Nirav on a presentation for the Statewide Blood Alcohol Analysts. The topic that he presented dealt with defense tactics or antics that they have encountered in court.

Chris should continue his being proactive communicating to management any ideas and suggestions that help improve the section improve in being productive and efficient. With Andrew serving as the controlled substance advisory chair Chris may be asked to give a summary of the blood alcohol advisory board meeting in the form of verbal communication in meetings. Chris may not realize it but he is looked upon as a leader because of his seniority in the laboratory and his job knowledge and experience that he has.

A goal for Chris is to keep management informed on communications that he has with officers of the courts which would include prosecutors and defense attorneys. It is understood that not all conversations have to be directed to management but to keep the management team informed throughout the year.

Name (Last, First, Initial): Youngkin, Christopher M

Last Four of Employee's SSN:

PART 2: Job Duties (Comments required for each evaluated Job Duty)

JOB DUTY 2: COMMUNICATION

Performance Rating:

Exemplary Skilled/Effective Competent Marginal Ineffective

Comments:

Chris gave a presentation on forensic science to students at Wylie High School.

Chris made 54 court appearances this year and testified 50 times with a total of 225 hours out of the laboratory.

Chris seems to thrive under the pressure of the caseload that is here in Garland blood alcohol section. He works his cases without being asked to do so and he is able to make adjustments in his schedule to respond to his many court appearances.

Chris has the respect of his fellow coworkers in the area of his job knowledge and they are willing to ask him questions regarding job related matters.

Chris should remember he is part of a team and that nonverbal actions that may seem insignificant could be misinterpreted by others around him. Due to the nature of with blood alcohol analysis, Chris has the opportunity to be a liaison with our customers and that Chris could keep management informed of these communications.

Name (Last, First, Initial): Youngkin, Christopher M

Last Four of Employee's SSN: [] [] [] []

PART 2: Job Duties (Comments required for each evaluated Job Duty)

JOB DUTY 3: JOB KNOWLEDGE AND EXECUTION

Performance Rating:

Exemplary Skilled/Effective Competent Marginal Ineffective

Comments:

Chris attended the Statewide Blood Alcohol Analyst meeting held in Austin in November 2015. During this meeting Chris gave a presentation on defense antics in the court room during the meeting. Steve Robertson made a statement at the closing of the meeting that Chris' presentation was an example of what he felt the state wide meeting of the analysts was for the sharing of ideas and experiences between labs in the system.

Chris assisted with the blood alcohol training of Christine Hay. He worked closely with Christine during her blood training. Chris completed 2,942 blood alcohol cases and performed 2,538 reviews during the past year. This resulted in Chris having 192 point average per month for the year. Chris is a self-motivated person who does not require a lot of direct supervision for him to perform the job working cases. Chris' number of cases completed was 51% of the total number of case completed for the year. There were 5,661 blood alcohol cases released for 2015.

Goals for Chris for the year 2016:

Continue to meet DPS Crime Management expectations of 100 point average per 30 days throughout the year with checkpoints of this performance to be done at the end of each quarter. If expectations are not being met the analyst will be placed on an action plan with the goal that the next quarter the analyst must meet the average of 200 blood cases per 30 day output.

Chris should continue to serve as a member of the blood alcohol advisory board. As a result of his being a member Chris maybe asked to help implement the new Shimadzu alcohol project. The Garland Lab will benefit from Chris' involvement on the advisory board as he will be able to communicate any concerns that the blood alcohol section members might have regarding the new project.

If money is available to attend the Southwestern Association of Forensic Scientists fall conference being held in Galveston Texas. Chris also had expressed an interest in attending the International Association for Chemical Testing (IACT) conference being held in Orlando Florida this year.

Name (Last, First, Initial): Youngkin, Christopher M

Last Four of Employee's SSN: []

PART 3: Signatures & Comments

EMPLOYEE

I certify that this performance evaluation has been discussed with me. I understand that my signature does not necessarily indicate agreement.

Employee's Signature:  Date: 1-29-16

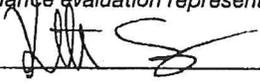
Printed Name: Christopher Youngkin

Employee comments (optional)

Please check box if attaching additional pages

SUPERVISOR

I certify that this performance evaluation represents my best judgment of the employee's performance.

Supervisor Signature:  Date: 1-29-16

Printed Name: Kenneth Evans

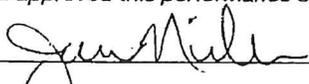
Supervisor comments

(This space is reserved for responding to any employee comments. It is not used for general comments.)

Please check box if attaching additional pages

REVIEWER

I have read and approved this performance evaluation.

Reviewer:  Date: 1-29-16

Printed Name: James Nichols

Reviewer comments (optional)

Please check box if attaching additional pages

In Line Review #1: _____ Date: _____

Printed Name: _____

In Line Review #2: _____ Date: _____

Printed Name: _____

Recommended for permanent employment (if applicable)

[From dictionary.com](http://dictionary.com)

Test tube- noun

A hollow cylinder of thin glass with one end closed, used in chemical and biological experimentation and analysis.

Vial- noun

A small container, as of glass, for holding liquids:

6A

CAUSE NO. 007-84061-2016

THE STATE OF TEXAS) IN THE COUNTY COURT
)
)
)
 VS) AT LAW NO. 7
)
)
 ROGER PAUL SARAS) COLLIN COUNTY, TEXAS

* * * * *

CAUSE NO. 006-86542-2016

THE STATE OF TEXAS) IN THE COUNTY COURT
)
)
)
 VS) AT LAW NO. 6
)
)
 AARON JOHN STEELE) COLLIN COUNTY, TEXAS

 ORAL AND VIDEOTAPED DEPOSITION OF

CHRIS YOUNGKIN

VOLUME 1

OCTOBER 24, 2016

1 ORAL AND VIDEOTAPED DEPOSITION OF CHRIS
2 YOUNGKIN, produced as a witness at the instance of the
3 Court, and duly sworn, was taken in the above-styled and
4 -numbered cause(s) on October 24, 2016, from 9:13 a.m.
5 to 12:04 p.m., before Terri L. Nelson, CSR in and for
6 the State of Texas, reported by computerized-machine
7 shorthand, at the Collin County Courthouse, Jury
8 Conference Room, 3100 Bloomdale Road, in the City of
9 McKinney, County of Collin, and State of Texas, pursuant
10 to the Texas Rules of Civil Procedure.

1 A P P E A R A N C E S

2 ATTORNEYS FOR THE STATE OF TEXAS:

3 Mr. Bill Wirskye
4 ASSISTANT DISTRICT ATTORNEY
5 Collin County District Attorney's Office
6 2100 Bloomdale Road
7 Suite 100
8 McKinney, Texas 75071
9 Phone: (972) 548-3883
10 E-mail: bwirskye@collincountytexas.gov
11 SBOT# 00788696

12
13 Mr. Bill Dobiyski
14 FIRST ASSISTANT DISTRICT ATTORNEY
15 Collin County District Attorney's Office
16 2100 Bloomdale Road
17 Suite 100
18 McKinney, Texas 75071
19 Phone: (972) 548-4335
20 E-mail: bdobiyski@collincountytexas.gov
21 SBOT# 05925925

22 ATTORNEYS FOR DEFENDANTS:

23 Mr. Troy Burleson
24 - and -
25 Mr. Hunter Biederman
BIEDERMAN & BURLESON
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Phone: (469) 333-3333
E-mail: friscolaw@gmail.com
SBOT #24048009 Burleson
SBOT #24048009 Biederman

26 ALSO PRESENT:

27 Mr. Kevin M. Brooks
28 FELONY TRIAL BUREAU CHIEF
29 Criminal District Attorney's Office
30 Frank Crowley Courts Building
31 133 North Riverfront Boulevard, LB 19
32 Dallas, Texas 75207-4399
33 Phone: (214) 653-3600
34 E-mail: kevin.brooks@dallascounty.org
35 SBOT# 03070735

A P P E A R A N C E S (continued)

1 Mr. Michael Moore
2 CHIEF OF FELONY TRIAL DIVISION
3 Denton County District Attorney's Office
4 1450 East McKinney Street
5 Third Floor
6 Denton, Texas 76202-2344
7 Phone: (940) 349-2623
8 E-mail: michael.moore@dentoncounty.com
9 SBOT# 00791295

10 Ms. Kristin Kidd
11 CHIEF OF THE MISDEMEANOR TRIAL DIVISION
12 Denton County District Attorney's Office
13 1450 East McKinney Street
14 Third Floor
15 Denton, Texas 76202-2344
16 Phone: (940) 349-2688

17 VIDEOPHOTOGRAPHER:

18 Mr. Billy Gonzalez
19
20
21
22
23
24
25

I N D E X

PAGE

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WITNESS: CHRIS YOUNGKIN

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Further Examination by Mr. Wirskye..... 152

Changes and Signature page..... 158

Reporter's Certificate..... 160-162

* * * * *

E X H I B I T S

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1 P R O C E E D I N G S

2 THE VIDEOGRAPHER: Going on the record,
3 Monday, October 24th, 2016. The time is approximately
4 9:13 a.m.

5 Will the reporter please swear in the
6 witness.

7 CHRIS YOUNGKIN,
8 having been first duly sworn, testified as follows:

9 EXAMINATION

10 BY MR. WIRSKYE:

11 Q. Okay. Could you tell us your full name.

12 A. Chris Youngkin.

13 Q. Okay. And you're an analyst with the
14 Department of Public Safety?

15 A. Yes, sir.

16 Q. And you work out of the Garland lab?

17 A. That's correct.

18 Q. And you know why you're here today?

19 A. I do.

20 Q. And, just for the record, you know my name is
21 Bill Wirskye. I'm a Second Assistant here in the Collin
22 County DA's office.

23 A. Yes, sir.

24 Q. And behind me is Bill Dobiyaniski, the First
25 Assistant. That's a yes or no?

1 A. Yes, I do --

2 Q. Okay.

3 A. -- see him. Sorry.

4 Q. And also in the room we have Kevin Brooks, the
5 Chief of the Felony Trial Division for the Dallas County
6 DA's office, as well as some representatives of the
7 Denton County DA's office, Mike Moore and Kristin Kidd.
8 And so you acknowledge all those people. Is that right?

9 A. I do.

10 Q. Okay. And you realize we're here today based
11 on some testimony that you gave last week in Collin
12 County. Is that right?

13 A. Potentially two weeks ago.

14 Q. Was it two weeks ago?

15 A. I believe so.

16 Q. Okay. But during that hearing you invoked your
17 Fifth Amendment right. You recall that?

18 A. I do.

19 Q. And it's my understanding here today you are
20 going to withdraw that invocation. Is that correct?

21 A. That's correct.

22 Q. And it is your intention today to withdraw and
23 waive any Fifth Amendment rights and proceed forward for
24 questioning; is that right?

25 A. It is.

1 Q. Okay. In just a few minutes I am going to pass
2 the witness over to these gentlemen. Do you have any
3 questions before we get started?

4 A. I do not.

5 MR. WIRSKYE: Okay. I'll pass the witness.

6 MR. BURLESON: Thank you, Mr. Wirskye.

7 Troy Burleson. For the record, that's
8 B-U-R-L-E-S-O-N. Before we begin, I'd like to thank the
9 representatives from Denton County for being here and
10 from Dallas County for being here and, of course, Collin
11 County for being here.

12 EXAMINATION

13 BY MR. BURLESON:

14 Q. Mr. Youngkin, before we begin, let's first talk
15 about why we're here. As you may know, my partner and
16 I, Hunter Biederman, filed discovery motions in order to
17 discover what we would think would be Brady material or
18 39.14 material out of the Texas Code of Criminal
19 Procedure. We did that in all seven courts here in
20 Collin County and we had hearings set.

21 Last Thursday the judges got together and
22 ordered us to a deposition. So instead of you
23 testifying in front of seven different judges, in front
24 of the seven different juries, potentially, the judges
25 ordered us to be here today.

1 A. Okay.

2 Q. Now, having said that, the Rules apply to this
3 hearing as they would in court. I am under strict rules
4 from the Judge to, one, be on my best behavior and,
5 number two, to treat you courteously. I will do that.
6 But you will answer my questions and you will answer my
7 questions yes or no, and if you don't, or if I think
8 you're being evasive, I have no problem having this in
9 front of seven different juries. Are we clear on that?

10 A. I am.

11 Q. Okay.

12 A. I will answer the questions yes or no, to the
13 best of my ability.

14 Q. Fair enough.

15 MR. WIRSKYE: Counsel, just let me
16 interject. To the best of his ability on the yes-or-no
17 questions seems fair to me.

18 MR. BURLESON: And I understand that,
19 Mr. Wirskye, and I agree with that.

20 MR. WIRSKYE: Thank you.

21 MR. BURLESON: Thank you, sir.

22 Q. (BY MR. BURLESON) All right. So let's back
23 up. Mr. Wirskye asked you this and I just want to be
24 perfectly clear. On October the 12th, 2016, in the
25 State of Texas versus Tyler Avaritt, you invoked your

1 Fifth Amendment privilege. Correct?

2 A. I did, at the Judge's encouragement.

3 Q. Okay, see. Did you invoke it knowingly,
4 intelligently, and freely or did -- are you saying you
5 were forced to invoke your Fifth Amendment?

6 A. I was not forced. I did it at the Judge's
7 recommendation.

8 Q. So you're saying that Judge Baxter recommended
9 that you take the Fifth?

10 A. Correct.

11 Q. And that's your testimony here under oath?

12 A. It is.

13 Q. Okay. So let's go back to where this kind of
14 all started. First and foremost, you work for the
15 Department of Public Safety crime laboratory in Garland.
16 Correct?

17 A. Correct.

18 Q. And that is a state agency, is it not?

19 A. It is.

20 Q. Your job is to test for blood alcohol contents
21 of potential defendants. Correct?

22 A. That is one of my duties. That's correct.

23 Q. Okay. And then to come and testify in court as
24 to those results. Correct?

25 A. Correct.

1 Q. Okay. The vast majority of your testimony is
2 as an expert for the State. Correct?

3 A. Correct.

4 Q. Okay. You began working for the DPS in 1998.
5 Is that correct?

6 A. That is not correct.

7 Q. Okay. When did you begin working for the DPS?

8 A. In 1996.

9 Q. '96. When did you begin testing for blood
10 alcohol concentrations?

11 A. That was in 1998.

12 Q. Okay. When did you start testifying in regard
13 to your findings in court on blood alcohol
14 concentration?

15 A. Most likely, in 1999 or 2000.

16 Q. Okay. So late 1999, early 2000. Correct?

17 A. Correct.

18 Q. Since late 1999 or early 2000, how many blood
19 specimens have you tested? And I want to focus that in
20 on individual blood specimens.

21 A. Potentially 15,000.

22 Q. Okay.

23 A. It's difficult for me to answer specifically.

24 Q. I'm not asking for, you know, 15,142.

25 A. Okay. Great.

1 Q. I totally get it.

2 A. Okay.

3 Q. If you ask me how many trials I had, I can give
4 you an estimate but not -- not specifically.

5 So if we use the estimate of 15,000 in the
6 remainder of this deposition, you would agree with me
7 that that's a -- not an accurate but a good enough
8 number as far as an estimate. Correct?

9 A. Correct.

10 Q. Since late '99, early 2000, how many times have
11 you testified as an expert for the State in a trial?

12 A. Potentially 4- to 500 times.

13 Q. Okay. 4- to 500 times.

14 All right. So you would agree with me that
15 anywhere between 14,600 people, the 14,500 people have
16 not challenged you on your blood findings since 2000.
17 Correct?

18 A. Potentially half of those testimonies would
19 have been related to controlled substance analysis.
20 It's a type of analysis that I performed previously.

21 Q. So half of the 400 to 500 would be a controlled
22 substance?

23 A. Correct.

24 Q. Okay. So how many times have you testified
25 about a person with just alcohol only?

1 A. Approximately half of those.

2 Q. So 200 to 250 times. Correct?

3 A. Correct. And, again, that's just an estimate.

4 Q. And how many of those 15,000 were actually just
5 alcohol related?

6 A. Well, those would be the 15,000 blood specimens
7 in answer to your question.

8 Q. Okay. So now we're talking 14,800 people to
9 14,750 people. Correct?

10 A. Potentially, yes, sir.

11 Q. Potentially, okay.

12 All right. Now let's talk about the DPS
13 crime lab. Again, you said that was a State agency.
14 Correct?

15 A. I did.

16 Q. Is there a fence around the Garland crime lab?

17 A. There is.

18 Q. Okay. Can a civilian go in and watch you work?

19 A. They cannot.

20 Q. Okay. Can an attorney, defense attorney, send
21 in an expert to watch you work?

22 A. They cannot.

23 Q. Okay. Let's assume for a second that I have a
24 client -- and we'll just use the generic name of

25 Mr. Smith -- and Mr. Smith hires me. Can I call you and

1 say, Mr. Youngkin -- or one of your coworkers -- I would
2 like to be present to watch you test Mr. Smith's blood?
3 Can I do that?

4 A. Can you call me and ask me that?

5 Q. Yes.

6 A. You certainly could.

7 Q. Okay. And what would your answer be?

8 A. No.

9 Q. No. Okay.

10 Now, when you do your work, who oversees
11 your work?

12 A. All the work that I do is reviewed by another
13 analyst. My section is managed by Kenneth Evans, who
14 was here today.

15 Q. Okay. So let's back up.

16 Do you understand what the term "batch"
17 means?

18 A. Batch?

19 Q. Yes. What does "batch" mean?

20 A. Just a collection of things that are being
21 tested.

22 Q. Okay. What is a blood kit?

23 A. A blood kit is this white box here that DPS
24 provides for sale for agencies to use.

25 Q. Okay. What would you recognize as a gas

1 chromatograph?

2 A. A gas chromatograph is a scientific instrument
3 used in a testing of blood for alcohol.

4 Q. Okay. Now, in your testing you deal with two
5 different objects that contain a person's blood.

6 Correct?

7 A. Correct. At some point in time.

8 Q. Some point in time.

9 Now, within the DPS blood kit, there are
10 two objects that contain a person's blood. What are
11 those objects called?

12 A. Gray-top tubes.

13 Q. Okay. Are they also known as vials?

14 A. It depends on who you ask. Some people do
15 refer to them as vials.

16 Q. Well, I'm asking you.

17 A. I refer to it as a gray-top tube.

18 Q. Okay. So if you were ever asked, under oath,
19 in a courtroom if a DPS blood kit contained a vial, what
20 would the only truthful answer be?

21 A. That would depend on the context of that
22 question. They do contain gray-top tubes. If this
23 context has been established in that proceeding, then I
24 would answer the question the way it was asked.

25 Q. Okay. Well, let me ask it this way. If you

1 were asked in a court proceeding, under oath, what's
2 contained in a DPS blood kit, what would your truthful
3 answer be?

4 A. A number of things. Some padding, some plastic
5 containers, and two gray-top tubes, potentially. All
6 the agencies don't necessarily submit both gray-top
7 tubes.

8 Q. Okay. Now, have you ever referred to a
9 gray-top tube as a vial?

10 A. I have answered questions about gray-top tubes
11 where the question was worded using the word "vial."

12 Q. So you would admit that, under oath, you've
13 actually been asked a question about a gray-top tube and
14 you've answered a question when it was referred to as a
15 vial. Correct?

16 A. I have, yes, sir.

17 Q. Have you ever answered a generic question and
18 actually called the containers within the DPS blood kit
19 a vial?

20 A. Not that I can recall, but as we've been over
21 already, I've testified many times.

22 Q. Okay. Well, let me ask you this. If a defense
23 attorney asked you what's contained in a DPS blood kit,
24 under oath, and you said it contained two vials, would
25 that be a truthful or untruthful statement?

1 A. I would presume it was recorded correctly in
2 that proceeding and having sworn to tell the truth and
3 if that was my answer, that was my answer.

4 Q. I appreciate your question -- or your answer,
5 but that's not the question I asked you. The question I
6 asked you was, If you were asked what's contained in a
7 DPS blood kit you said it contained two vials, would
8 that be a truthful or a not truthful statement?

9 A. It would be truthful in the sense that the word
10 "vial" is often used in proceedings to refer to gray-top
11 tubes.

12 Q. Okay. Now let's go back to DPS for a minute.
13 You've already said that civilians cannot be there to
14 see that you do your work correctly. Correct?

15 A. That's correct.

16 Q. The only people that oversee you are people
17 with DPS. Is that correct?

18 A. That's correct.

19 Q. Now let's talk a little bit about blood
20 testing. You would agree with me that a hospital test a
21 blood much differently than the DPS laboratory test
22 blood. Correct?

23 A. As I understand it, it is a different type of
24 testing, yes, sir.

25 Q. Okay. Let's talk about some differences.

1 Number one, hospitals test plasma, which is liquid
2 blood. Correct?

3 A. Plasma or serum. That's correct.

4 Q. Okay. You test gas. Correct?

5 A. Well, the method of the testing does employ
6 headspace sampling, but it's still the blood being
7 tested.

8 Q. Okay. Well, the blood is heated up and you
9 test the gas above the blood in your particular lab
10 instrument. Correct?

11 A. That's correct.

12 Q. All right. So, hospital, if they're testing
13 for a liquid, if there's any chance of
14 cross-contamination -- meaning, you've got two different
15 blood samples, for instance, like an A and an AB in that
16 blood sample, a hospital will be able to catch it.
17 Correct?

18 A. I don't have an answer to that question. I've
19 never worked in a hospital laboratory.

20 Q. Do you recall answering that question to me
21 under oath --

22 A. I remember questioning that it's probably
23 possible.

24 Q. Okay.

25 A. Just the way that you had worded it, I'm not --

1 Q. Fair enough.

2 With gas, you can't determine whether or
3 not you mixed two peoples' blood samples together.
4 Correct?

5 A. Not from the gas. That's correct.

6 Q. Okay. When a hospital tests your blood, let's
7 say, for basic diagnosis, you go in; you're not feeling
8 good; the hospital tests your blood. You would agree
9 with me that the lab analyst in the hospital is only
10 testing one blood sample at a time. Correct?

11 A. Again, I've never worked in a hospital
12 laboratory, so I can't answer that question.

13 Q. Okay. Well, you would agree that you are not
14 testing one person's blood sample at a time. Correct?

15 A. Again, it would depend on what you mean
16 specifically. We've already established that they are
17 tested in batches, but each one of these is then tested
18 individually.

19 Q. Okay. Well, let's kind of go through this.
20 And I'm going to stand up to the board and you can just
21 kind of turn around, if you will.

22 So, Mr. Youngkin --

23 MR. BIEDERMAN: He's not getting you on the
24 mic now, if you pull that off.

25 MR. BURLESON: I'll just switch -- I'll

1 just switch with Chris. Let me borrow yours real quick
2 and you can borrow that one. Thank you.

3 Can you hear me, sir?

4 THE VIDEOGRAPHER: (Affirms.)

5 MR. BURLESON: Okay.

6 Q. (BY MR. BURLESON) Okay. So, Mr. Youngkin,
7 basically what happens is -- I'm going to come in here
8 and say BC for blood kit. You get a blood kit in the
9 your laboratory. Correct?

10 A. Correct.

11 Q. Okay. That's number one.

12 Within that blood kit there contains two
13 objects that have a person's blood. Correct?

14 A. Potentially. That's correct.

15 Q. Okay. Well, you keep saying "potentially."
16 What do you mean by "potentially"?

17 A. The blood kits are not always submitted with
18 two gray-top tubes containing blood.

19 Q. Okay. How many of them are often submitted
20 with two gray-top tubes of blood?

21 A. I would say a majority of them. More than
22 half.

23 Q. Okay. All right. So what you do -- let's talk
24 about credibility, okay? Because this is not just about
25 you switching something in 2013 that we're going to get

1 to. This is about credibility.

2 When this gray-top tube -- or when this
3 blood kit comes into your lab, where does it go?

4 A. It's assigned a unique laboratory case number
5 and then it's placed into a refrigerator for storage.

6 Q. And how long does it stay there?

7 A. Until it's tested.

8 Q. How long is that normally?

9 A. Two or three weeks.

10 Q. Two or three weeks. Okay.

11 Now, within that time, how many people have
12 access to this refrigerated unit?

13 A. It would depend on what point in time. If it's
14 stored in the vault on the first floor, that access is
15 limited to management and evidence custodians. If it's
16 been moved to the third floor refrigeration unit, then
17 the analysts would have access to that.

18 Q. So there are quite a few people who have access
19 to this blood. Correct?

20 A. At certain points in time, that's correct.

21 Q. Okay. So we have to -- because we can't go in
22 and double-check. We can't send in someone that's not
23 associated with DPS. We have to rely on the credibility
24 of DPS to make sure that this blood is not tampered with
25 before you get it in your hands. Correct?

1 A. Correct. That would be recorded in the
2 records.

3 Q. Okay. Now, when you decide to test a batch --
4 I'm going to put a "batch" right here -- what you do is
5 you come in and you grab 40 of these blood kits.
6 Correct?

7 A. I would, yes, sir.

8 Q. Okay. And would you call the liquid in these
9 objects -- would you call those "samples"?

10 A. I certainly could. That would be accurate.

11 Q. Have you used "samples" before?

12 A. I have, yes, sir.

13 Q. So what you do is you grab 40 of these. And
14 you take one tube from each kit. Correct?

15 A. At some point in time. I'm not sure what the
16 rest of the question is.

17 Q. Well, you line them up sequentially. Correct?

18 A. I would, yes, sir.

19 Q. Okay. Do 40.

20 All right. Now, let's talk about how you
21 test. You basically have two columns. On the left side
22 you've got what's known as your gray-top tube. Correct?
23 That contains a sample, right? (Indicating.)

24 A. As it's drawn, that's correct.

25 Q. All right. On the right side you have what

1 you're calling a headspace vial. Correct?

2 A. Correct.

3 Q. All right. Now, headspace vials are empty and
4 unmarked when you get them. Correct?

5 A. They are. And I have examples of this with me
6 today.

7 Q. I see it right here --

8 A. Okay.

9 Q. -- a gray-top tube.

10 So what you do is you take out 40 samples,
11 one from each blood kit. Correct?

12 A. Correct.

13 Q. You program into your gas chromatograph -- for
14 instance, GAR-1, which is Mr. Smith's blood, is in
15 location one. Correct?

16 A. Is this a hypothetical?

17 Q. No. It's what you would do. Correct?

18 A. Okay. Well, the gray-top tubes don't start
19 until number 7, typically --

20 Q. Okay.

21 A. -- in the sequence.

22 Q. Well, we're going to make this simple.

23 We're --

24 A. Okay.

25 Q. -- we're going to go with 1, if that's okay.

1 A. Okay. Absolutely.

2 Q. All right. So GAR-1 is in location one.

3 Correct?

4 A. Correct. As it's drawn, that's correct.

5 Q. That's Smith's blood. Right?

6 A. As you label it, yes, sir.

7 Q. Okay. GAR-2 is Jones' blood, right?

8 Now, here's my question. You program your
9 machine as to whose blood is in what location before
10 these headspace vials are even created. Correct?

11 A. Not necessarily.

12 Q. Okay.

13 A. Typically I would prepare a list of the
14 40 cases that I intend to test in that batch.

15 Q. Okay.

16 A. I would then label the headspace vials at that
17 point.

18 Q. Okay. Now, this is why this is important
19 because your gas chromatograph, all right, it doesn't
20 test the gray-top tube that you get from a law
21 enforcement agency. Correct?

22 A. Not directly. That's correct.

23 Q. What you do is you take a pipette and you go
24 into the gray-top tube and you transfer into the empty
25 headspace vial. Correct?

1 A. I do, yes, sir.

2 Q. And you do that 40 times. Correct?

3 A. It would be 80. Each of the gray-top tubes are
4 tested twice.

5 Q. I was getting to that.

6 A. Okay.

7 Q. You do it 40 and then you do it an additional
8 40. Correct?

9 A. Correct. The pipe heading on the blood would
10 occur at the same time.

11 Q. Okay. And then you have some controls, right?

12 A. That's correct.

13 Q. All right. So the gas chromatograph, it has no
14 idea, anything about a gray-top tube. All it knows is
15 you programmed that in Slot 1 GAR is Smith's blood.
16 Correct?

17 A. That's correct.

18 Q. All right. Now, after you do all this, the
19 headspace vials go into the gas chromatograph. Correct?

20 A. They do. That's correct.

21 Q. And the results come from the sample that are
22 in the headspace vials. Correct?

23 A. Correct.

24 Q. All right. So, basically, your gas
25 chromatograph runs his thing and it says, location one,

1 Smith; the result is, let's just say, at 15. Correct?

2 A. Correct.

3 Q. Okay. And does that on down, right?

4 A. It does.

5 Q. All right. So here's my point. Let's talk
6 about the steps where we have to trust your credibility
7 on this.

8 A. Okay.

9 Q. Number one, we have to trust that you put the
10 right gray-top tube in the right order. Correct?

11 A. Correct.

12 Q. Okay. Is anybody there to check you to do
13 that?

14 A. There are not, not once the training is
15 complete.

16 Q. All right. So, just for instance, if you were
17 to put GAR-1, which is Smith, in 4 instead of 1, and
18 let's say -- Jones, Smith -- Williams in 1, you would
19 get a correct result in Slot 1, would you not?

20 A. For the Williams' blood, that's correct.

21 Q. Right. You would get an accurate result for
22 Williams' blood, right?

23 A. Correct.

24 Q. But the gas chromatograph is going to -- is
25 going to say Williams result to Smith. Correct?

1 A. It would. And this is a hypothetical
2 situation?

3 Q. Um-hum.

4 A. It would, yes, sir.

5 Q. Okay. So no one's there to check that you have
6 these in order, right?

7 A. Correct.

8 Q. So we have to believe you and your credibility
9 that you keep them in order. Correct?

10 A. You would, yes, sir.

11 Q. It'd be very easy for a lab analyst like
12 yourself just to go, I'm going to put 1 in 4, 4 in 1, 2
13 in 5. It'd be very easy for you to do. Right?

14 A. Again, this is hypothetical?

15 Q. Yes.

16 A. It would be easy, yes, sir.

17 Q. Okay. Now, another thing: Let's say you had
18 them in order. There's another way that your
19 credibility comes in to play.

20 Let's say you take your pipette, which
21 looks like a pen with a little tube on it. Correct?

22 A. Similar, yes, sir.

23 Q. Okay. So you basically dip into this blood and
24 you put it into the empty headspace vial. Correct?

25 A. Correct.

1 Q. All right. Now, there's a protocol in order to
2 clean it between each one, right?

3 A. Well, the tips of the pipe head are disposable
4 and so between each gray-top tube the tip would be
5 ejected.

6 Q. Why is that important?

7 A. Just so that there is no contamination between
8 the blood in the gray-top tubes.

9 Q. Right. Because let's say that Williams here
10 was highly intoxicated, .30, and if you took blood out
11 of his and put it in the headspace vial and you didn't
12 change the pipette too and then you went to Jones and
13 then Jones, you would give Ms. Jones a false high
14 positive, would you not?

15 A. This is a hypothetical still?

16 Q. Yes.

17 A. It's possible that alcohol may be detected from
18 the Williams blood.

19 Q. Okay.

20 A. That's correct.

21 Q. All right.

22 A. I don't know how -- the amounts of that.

23 Q. Well, when you're testing blood, you're testing
24 basically drops of blood. Correct?

25 A. Correct. It's several drops.

1 Q. Okay. So it's a very small amount, right?

2 A. Well, compared to the whole -- yes.

3 Q. Okay. So contamination could happen. Correct?

4 A. In the scenario that you have described, that's
5 correct.

6 Q. Okay. So we've got three situations so far
7 where we have to rely on the credibility of you and your
8 lab: Number one, that when the blood kit comes in, it's
9 not tampered with. Number two, you put them in the
10 right order. Correct? And then, number three, that you
11 don't cross-contaminate blood. Correct?

12 A. Correct. Those are the three that you have
13 presented today so far.

14 Q. Okay. Let's talk about a couple of other
15 things. When you put blood into this empty headspace
16 vial, do you put anything else in it?

17 A. I would.

18 Q. What's that?

19 A. Internal standard.

20 Q. Now, why is an internal standard important?

21 A. Just that the method that's being employed is
22 an internal standard method. The instrument would use
23 that internal standard in the calculation of the
24 concentration of alcohol.

25 Q. So just so we're clear on the record, when --

1 and I'm sorry, Mr. Youngkin. When --

2 Back to our original analysis, GAR-1,
3 Smith, .15, your gas chromatograph doesn't actually
4 print out a .15, does it?

5 A. Not to the many decimal places. It would have
6 more decimal places.

7 Q. Okay. Well, doesn't it actually print out a
8 graph?

9 A. It does. There would be a number of things
10 contained on that printout.

11 Q. How does it know that this is a .15, the gas
12 chromatograph?

13 A. It calculates it based on the calibration of
14 the instrument and the response from that particular
15 test.

16 Q. And the internal standard. Correct?

17 A. Correct. And that's related to the response.

18 Q. So basically what you do, when you get a
19 result, is you get a graph that looks something like
20 this for Smith and then you get the internal standard.
21 Correct?

22 A. Well, it doesn't look anything like that.

23 Q. Well, is it two linear lines on a -- on a
24 graph?

25 A. It would look more like an EKG, where it would

1 have a baseline and then the peaks would go --

2 Q. Okay.

3 A. -- up from the baseline.

4 Q. Well, let's do it that way.

5 A. Okay.

6 Q. More like an EKG. All right. Well, I'll tell
7 you what. Why don't you just stand up and do it for me.

8 A. Are we still doing this result?

9 Q. Um-hum. Yes, sir.

10 A. (Complies.)

11 Q. Okay. Thank you, Mr. Youngkin.

12 A. Sure.

13 Q. And if you don't mind putting your microphone
14 back on.

15 A. (Complies.)

16 Q. Okay. So what you drew, peak number 1 here,
17 what is that?

18 A. That would be the ethanol.

19 Q. Ethanol from who?

20 A. From --

21 Q. Jones?

22 A. Well, whoever the .15 was, yes, sir.

23 Q. Okay. So that's the peak of the person. All
24 right. What is this (indicating)?

25 A. That's the internal standard.

1 Q. I'm sorry.

2 Peak number 2 is the internal standard.

3 Correct?

4 A. Correct.

5 Q. Now, let me ask you this. Let's say your
6 internal standard is not correct. All right? And
7 instead of looking like peak 2, it looks more like this
8 peak right here (indicating). That's going to cause
9 this person to have a higher blood alcohol
10 concentration. Correct?

11 A. It would. There's an inverse relationship
12 between the internal standard amount and the calculated
13 alcohol result.

14 Q. And you realize this is nothing like plasma
15 testing that hospitals do. Correct?

16 A. Not to my understanding. But, again, I have
17 never performed that type of testing.

18 Q. Okay. So it would be very easy for you, if you
19 wanted to, to make a person have a higher blood alcohol
20 concentration just by manipulating the internal
21 standard. Correct?

22 A. Hypothetically?

23 Q. Yeah.

24 A. I guess so. I've never considered it.

25 Q. Well, you guess so. The answer is yes.

1 Correct?

2 A. That it would be easy?

3 Q. Yes.

4 A. Sure.

5 Q. Okay. And the only way that we know that's not
6 done is the credibility of the analyst. Correct?

7 A. Correct.

8 Q. Okay. Now, you have ethanol alcohol in your
9 lab. Correct?

10 A. We do.

11 Q. Okay. What are you testing for in Williams' or
12 Smith's blood?

13 A. We're testing for volatile substances of one of
14 which ethanol is.

15 Q. Could you take ethanol alcohol and add some to
16 either a gray-top tube or a headspace vial?

17 A. Hypothetically?

18 Q. Yeah.

19 A. I could.

20 Q. And would that give someone a higher blood
21 alcohol concentration than what they really had?

22 A. It certainly would, yes, sir.

23 Q. And the only way that we know that you don't do
24 that is your credibility. Correct?

25 A. It is.

1 Q. All right. So we've listed about ten things
2 that we have to trust your credibility as a lab analyst
3 in order to get an accurate result. Correct?

4 A. I don't know if we're up to ten, but you have
5 listed a number.

6 Q. Quite a few, right? And you've listed at least
7 a handful --

8 MR. BURLESON: Am I going too fast?

9 THE REPORTER: Go ahead.

10 Q. (BY MR. BURLESON) -- a handful of ways in which
11 a lab analyst, if he or she wanted, could give a person
12 a higher blood alcohol concentration. Correct?

13 A. You've mentioned two. That's correct.

14 Q. Now, what motive would a DPS lab analyst have
15 in order to give someone a higher blood alcohol
16 concentration; do you know?

17 A. They would have no motive, that I'm aware of.

18 Q. Okay. Do you know what a DPS surcharge is?

19 A. Related to a driver's license?

20 Q. Um-hum.

21 A. I'm aware of it.

22 Q. You work for the Department of Public Safety.
23 Correct?

24 A. I do.

25 Q. Okay. You realize if a person has a .16, or

1 higher, they've got to pay \$2,000 a year for three years
2 to the DPS? You realize that. Correct?

3 A. I did not before -- I'm aware of the concept of
4 surcharges, but as to the amount, I was not aware.

5 Q. If it's under a .16, it's \$1,000 a year for
6 three years. You're aware of that. Correct?

7 A. I am now.

8 Q. Okay. All right, Mr. Youngkin. Let me trade
9 this back with you.

10 A. Okay.

11 Q. Actually, let me keep it because I'm going to
12 get back up.

13 MR. BURLESON: Is everybody good? Anybody
14 need breaks? Okay.

15 Q. (BY MR. BURLESON) All right, Mr. Youngkin. So
16 we talked about credibility. We talked about lab
17 errors. Now let's go to 2013.

18 In 2013, you switched gray-top tubes on two
19 individuals, did you not?

20 A. They were found to be out of order. Me being
21 the one doing the analysis, the implication is that I
22 was responsible for that.

23 Q. Okay. So let's go through the timing. You
24 began on the 6th day of May 2013. You retrieved 40
25 blood kits, like we talked about, and then you had to

1 stop the proceedings because you had to go testify in
2 court. Correct?

3 A. That's my memory. I don't have the document in
4 front of me.

5 Q. (BY MR. BURLESON) Okay. I'm handing you
6 what's been marked Defense Exhibit No. 20. And a copy
7 to Mr. Wirsky, that's going to be in the Court's
8 record.

9 Okay. If you'll look at the midsection
10 right here, sir (indicating).

11 A. Okay. Gotcha.

12 Q. All right. So, back up. 5/6, you started --
13 you had to go to court. 5/8, you had actually completed
14 the testing. Is that correct?

15 A. Correct. It says here the analysis resumed on
16 5/8.

17 Q. Okay. When did you send the results out?

18 A. The reports were released on May 16th, 2013.

19 Q. Okay. So here's the question I want to ask
20 you. You did a testing on May the 8th, and the reports
21 went out on the 16th, you said?

22 A. And that's what's indicated here on this
23 amended alcohol --

24 Q. Okay.

25 A. -- report. I have --

1 Q. All right.

2 A. -- information with me that would answer that
3 question.

4 Q. So let's go back to this, if you'll turn
5 around.

6 How long does it take to test a batch like
7 this?

8 A. The complete time?

9 Q. Yes.

10 A. Potentially, 16 hours total.

11 Q. Okay. What happens to the headspace vials that
12 are actually tested in the gas chromatograph after the
13 testing's over with?

14 A. They're autoclaved and probably disposed of.

15 Q. That's means they're destroyed, right?

16 A. They are. They're thrown into the trash.

17 Q. All right. Within how many hours or days of
18 testing?

19 A. It depends on the circumstances. It could be
20 the following day. It could be several days.

21 Q. Okay. You finished testing on 5/8/13. You
22 sent the report on 5/16/13. So the headspace vials were
23 no longer in your lab. Correct?

24 A. Correct.

25 Q. Okay. Now, the only thing that you had left in

1 your lab were the gray-top tube, right?

2 A. Related to that test, that's correct.

3 Q. The only thing that you had that you can retest
4 would be the gray-top tubes. Correct?

5 A. It would be, yes, sir.

6 Q. Okay. So let's finish this up. 5/16, you send
7 out a report on GAR-568 and GAR-569. Correct?

8 A. We've omitted some numbers.

9 Q. Well, I'm just focusing on two and I'm focusing
10 on the last three numbers.

11 A. You are. And the first three letters.

12 Q. Okay.

13 A. That's correct.

14 Q. Would you agree with me that that's what you
15 did?

16 A. You'll have to repeat the question. I'm sorry.

17 Q. Okay. In court you typically testify to the
18 last three numbers in the sequence. Correct?

19 A. I would typically try to get the entire
20 laboratory case number in the record.

21 Q. Do you want to do the entire one or just the
22 last three?

23 A. It doesn't matter to me. I just was trying to
24 clarify how you were referring to it.

25 Q. Okay. I'm going to refer to it as GAR and the

1 last three. Is that fine?

2 A. Sure. Absolutely.

3 Q. Okay. So you tested GAR-568 and GAR-569,
4 right?

5 A. I did, yes, sir.

6 Q. Okay. And after your testing you sent out the
7 results. Where did those two results go?

8 A. I have the information with me to answer that
9 question. The reports were released electronically and
10 so they're sent to the persons' e-mail address that are
11 on that request in the information system.

12 Q. Okay. Well, one of them went to Cleburne,
13 Texas. Correct?

14 A. Johnson County. That's correct.

15 Q. Okay. And the other one went to Anna, Texas,
16 which is Collin County. Correct?

17 A. It is. And the report would indicate that the
18 offense was in Collin County.

19 Q. Okay. So let's go back here and let's do an
20 actual of what happened here. Do you know what location
21 GAR-568 or GAR-569 was in?

22 A. The numerical location?

23 Q. Yes.

24 A. I did not bring that information with me today.

25 Q. You know they were next to each other.

1 Correct?

2 A. They were. That's correct.

3 Q. Okay. So we had GAR-568 and GAR-569. So
4 let's -- would you be okay with me using slots 2 and 3
5 for these two?

6 A. Sure.

7 Q. Okay.

8 A. Again, this is a hypothetical?

9 Q. No. I want to talk about what you actually
10 did. I know you don't know the slot, but we know that
11 they were next to each other. Correct?

12 A. Okay. Correct.

13 Q. So when you got these, GAR-568 was supposed to
14 be in the slot right before GAR-569. Correct?

15 A. Correct. I would expect them to be in
16 numerical order.

17 Q. Okay. So if we're assigning this to number 2
18 and assigning this to number 3, your gas chromatograph
19 over here, when you programmed it, said slot number 2 is
20 GAR-568 and slot number 3 is GAR-569. Correct?

21 A. Correct.

22 Q. Okay. When you sent the result, you got a
23 phone call from Anna Police Department, did you not?

24 A. I did.

25 Q. Okay. That was on 5/16. Correct?

1 A. It is.

2 Q. Okay. What did they tell you?

3 A. They had indicated that the results on the
4 report did not correspond to the circumstances of that
5 evidence.

6 Q. Okay. Well, you know what happened was an Anna
7 PD employee got into an accident in an Anna city
8 vehicle. Correct?

9 A. It was my understanding it was a city employee
10 in a fleet accident situation.

11 Q. So, as a matter of the course, when an employee
12 gets in an accident in a fleet vehicle, they run -- or
13 they send it to you for alcohol testing and then on to
14 Garland for drug testing. Correct?

15 A. They did submit it to our laboratory for
16 alcohol testing. We then forward it to our Austin
17 laboratory --

18 Q. Okay.

19 A. -- for the drug testing.

20 Q. So I'm going to ask you this. GAR-568, what
21 was the correct blood alcohol score for GAR-568?

22 A. That it contains no alcohol.

23 Q. Okay. What did you report that it contained?

24 A. 0.152 grams of alcohol per 100 milliliters of
25 blood.

1 Q. Okay. So let me get this right. You test
2 blood. You send out the results on May 16th. You send
3 it out to Anna and you said that their public employee
4 had a .152. They immediately call you and said, There
5 must be a mistake because there's no alcohol. Were you
6 aware that that guy died?

7 A. I was not.

8 Q. So they call you and said the results are
9 wrong. Now, on that same day did you notice that the
10 results were wrong?

11 A. I did not. I noticed that the gray-top tubes
12 were out of numerical order on that same day.

13 Q. Okay. Now, between 5/8 and 5/16, how many
14 other batches of blood did you conduct or did you test
15 on? .

16 A. I don't have that information with me today.

17 Q. Okay.

18 A. I would have to look.

19 Q. How are you in a position to notice two
20 gray-top tubes out of order the same time you get a
21 phone call from Anna PD saying that you gave a .15 on a
22 dead man, who had no alcohol in his system?

23 A. The same event triggered those two other events
24 and that was a release of the reports. We generally
25 wait for the reports to be released to then replace the

1 gray-top tubes back into the kits, and that's when Anna
2 had the results on that report and that's why they
3 called me.

4 Q. Okay. So, basically, what you did is you
5 switched these gray-top tubes, so you say. Correct?

6 A. Correct.

7 Q. And what you did is you put GAR-569 -- I'm
8 sorry. You put GAR-569 in slot 2. Correct?

9 A. According to the diagram, that's correct.

10 Q. And GAR-568 in slot 3. Correct?

11 A. Correct.

12 Q. Okay. Did you switch vials that day?

13 A. Depending on what you mean specifically by the
14 word "vial." The Quality Action Plan and my testimony
15 has been clear that it involves gray-top tubes and not
16 the headspace vials.

17 Q. My question is, under oath, did you switch
18 vials?

19 A. It depends, again, on what you mean
20 specifically by the word "vial." If you're referring to
21 the headspace vial, the answer is no. If you're using
22 the word "vial" to refer to a gray-top tube, the answer
23 would be yes.

24 Q. Have you ever testified that you switched vials
25 in 2013?

1 A. It's certainly possible, given that the word
2 "vial" or "vials" is often used to refer to gray-top
3 tubes.

4 Q. And if you had testified that you switched
5 vials in 2013, would that be truthful testimony or a
6 false testimony?

7 A. It would be truthful if it -- the question was
8 in reference to the gray-top tubes.

9 Q. Okay. Did you switch samples in 2013?

10 A. I did.

11 Q. And you knew that on May 16th of 2013.
12 Correct?

13 A. The indication was that it was true on
14 May 16th, given that I had noticed the tubes being out
15 of order and the phone call from Anna Police Department.
16 That wasn't confirmed until later on, once the
17 reanalysis was completed.

18 Q. Mr. Youngkin, did you switch samples on
19 May 16th, 2013?

20 A. It would not have been on the 16th --

21 Q. Did you know you switched samples on the 16th?

22 A. It was suspected in that those two things
23 occurred.

24 Q. So you knew that from May 16, 2013 -- all of
25 2013. Correct?

1 A. Correct.

2 Q. You knew it all of 2014. Correct?

3 A. I did.

4 Q. All of 2015?

5 A. Yes, sir.

6 Q. And all of 2016?

7 A. To this point in time, yes, sir.

8 Q. So if you were asked under oath anytime after
9 May 20th or May 16th, 2013, have you ever switched
10 samples, what would the only truthful answer be?

11 A. The question was samples?

12 Q. Yes.

13 A. Yes, that I did.

14 Q. That would be the only truthful answer.
15 Correct?

16 A. Correct.

17 Q. Okay.

18 A. As long as the word "sample" was used in the
19 context of gray-top tubes.

20 Q. And you switched gray-top tubes and you knew
21 you switched gray-top tubes May 16th, 2013. Correct?

22 A. Correct. There, again, they were found out of
23 order on that date. It wasn't concluded until the
24 reanalysis was performed.

25 Q. Okay. And you knew you switched gray-top tubes

1 the rest of 2013. Correct?

2 A. I did.

3 Q. The rest of 2014. Correct?

4 A. Yes, sir.

5 Q. 2015. Correct?

6 A. Correct.

7 Q. And 2016. Correct?

8 A. Correct.

9 Q. So if you're asked under oath, have you ever
10 switched gray-top tubes before, what would your only
11 truthful answer be?

12 A. Yes.

13 Q. Okay. Have you ever referred to a gray-top
14 tube as a vial?

15 A. Again, not that I can recall, as far as me
16 offering that information. Again, I've answered many
17 questions about vials in reference to gray-top tubes.

18 Q. Have you ever testified under oath that you've
19 never switched vials?

20 A. Yes, I have.

21 Q. Okay. Is that truthful?

22 A. It is as long as we're speaking specifically
23 about headspace vials.

24 Q. Okay. Now, when DPS got this, they assigned an
25 investigator to determine what happened. Correct?

1 A. Once I noticed the gray-top tubes were out of
2 order, I notified management and then they put into
3 place the quality action process.

4 Q. Okay. That wasn't my question. My question
5 was, they assigned an investigator. Did they assign an
6 investigator?

7 A. At some point in that process this document was
8 completed, where on two of the sections I am identified
9 as the investigator.

10 Q. All right. For the third time: Did they
11 assign an investigator, DPS; yes or no?

12 A. I don't know that the word "assign" was used.
13 I am identified on the Quality Action Plan as the
14 investigator.

15 Q. So you investigated this incident. Correct?

16 A. I completed the Quality Action Plan as I was
17 asked to.

18 Q. Okay. You signed it two places on Defense
19 Exhibit No. 20 as the investigator, did you not?

20 A. That title or role does appear next to my name
21 in two places. That's correct.

22 Q. Did you sign next to it twice on that document
23 that says you were the investigator?

24 A. I signed --

25 Q. Yes or no?

1 A. -- again, next to my name in multiple
2 locations.

3 Q. Mr. Youngkin, on Defense 20 it says
4 "Investigator." It says "Chris Youngkin," and it's got
5 a signature. Is that your signature?

6 A. It is.

7 Q. Right underneath it it says "Investigator." It
8 says "Chris Youngkin," and it has a signature. Is that
9 your signature?

10 A. It is.

11 Q. So you investigated your own switch of gray-top
12 tubes or samples. Correct?

13 A. I completed this form, as I was instructed to,
14 and I was identified as the investigator on this form.

15 Q. And what did the investigator determine about
16 this event?

17 A. There's two different sections there and
18 there's one, two, three, four paragraphs.

19 Q. Okay.

20 A. Would you like me to read it all?

21 Q. In the incident description does the
22 investigator says that it was an isolated event?

23 A. The incident description does not contain an
24 investigator.

25 Q. Was it determined to be an isolated event?

1 A. It was identified as a level of concern to
2 isolated incident.

3 Q. Okay. All right. So it was determined that
4 this was an isolated event. Is that correct?

5 A. An isolated incident. That's correct.

6 Q. Okay. Now, we've talked before. What does an
7 isolated event mean to you?

8 A. That it only happened once or a few times.

9 Q. And what does it mean to you if something has
10 happened more than a few times?

11 A. That is not isolated.

12 Q. Okay. It could be ongoing. Correct?

13 A. Correct.

14 Q. Could be systematic. Correct?

15 A. Depending on how the system is defined, that's
16 correct.

17 Q. Now, how do you know if something is isolated
18 or if it was ongoing? How would you know that?

19 A. Dependent on the number of times it was
20 observed.

21 Q. Okay. Well, let's take this instant, Quality
22 Action Plan 823, which is Defense Exhibit No. 20.

23 MR. BURLESON: We're offering that into
24 evidence. Any objection by the State?

25 MR. WIRSKYE: No objection.

1 MR. BURLESON: Okay.

2 (Exhibit 20 premarked and offered.)

3 Q. (BY MR. BURLESON) In order to determine
4 whether or not this was an isolated or ongoing event,
5 three things could have happen. Number one, you could
6 have went back and retested your prior gray-top tubes
7 that are still in the lab to determine if there's any
8 other mistakes. Is that correct?

9 A. That is correct. A number of other tubes were
10 retested.

11 Q. Did you do that?

12 A. It was performed by another analyst.

13 Q. Okay. So did you go back and retest any prior
14 batches that you had tested; yes or no?

15 A. I did not.

16 Q. Okay. The other thing is an investigator could
17 be assigned, an impartial investigator, to go back in
18 and retest your work. Did that investigator go back and
19 retest your work?

20 A. Again, several other gray-top tubes were
21 retested by another analyst.

22 Q. Okay. That's not my question. Did the
23 investigator go back and retest your work? The answer's
24 no because you were the investigator. Correct?

25 A. Correct. If you're referring to the

1 investigator on this form, that's correct.

2 Q. Okay. All right. And then a third party could
3 come in and test your work. Did that happen?

4 A. Well, if you consider another one of the
5 analysts at DPS crime lab a third party, yes, that is
6 correct.

7 Q. Okay. Now, I want to be very clear on this
8 Quality Action Plan. This was completed on 5/20/13.
9 Correct?

10 A. Correct. That's the date that appears.

11 Q. Okay. And you told me that the headspace vials
12 were destroyed then. Correct?

13 A. They would most likely have been, yes, sir.

14 Q. No, no. You said they were destroyed. Were
15 they destroyed or were they not destroyed?

16 A. Well, I have no independent recollection of
17 that, but based on the dates contained within this
18 document, my expectation would be that they were.

19 Q. So you had an object that contained blood that
20 you could retest. Correct?

21 A. Correct. And the gray-top tubes were retested.

22 Q. So you're saying you had gray-top tubes to be
23 retested. Correct?

24 A. Correct. And there were a number of them
25 related to the case numbers that you mentioned, as well

1 as a number of others.

2 Q. I want you to look where it says "Action Plan."
3 Is that your signature down there?

4 A. It is.

5 Q. The second sentence, "The evidence for the
6 cases in the first quarter of the batch (vials 7 through
7 16) run on 5/8/13 still present at the laboratory will
8 be retested..."

9 What did you just call a gray-top tube?

10 A. There's no mention of gray-top tubes in that
11 sentence.

12 Q. I know there's not. But what you just told me
13 was that the only thing at the lab that you had to
14 retest was a gray-top tube -- was a gray-top tube.
15 Correct?

16 A. Correct.

17 Q. Okay. So if that was the only thing you had at
18 the laboratory to retest that had blood in it, what did
19 you just call it?

20 A. And, again, there's no mention of gray-top
21 tubes in that sentence.

22 Q. When you say "vials 7 through 16 still present
23 at the laboratory," what are you referring to,
24 Mr. Youngkin?

25 A. That's identifying the position 7 through 16 of

1 the batch.

2 Q. When you say "vials," what are you referring
3 to?

4 A. That would be the headspace vials in those
5 positions.

6 Q. Okay. You just told me they were destroyed and
7 there weren't there, available for you to be retested,
8 did you not?

9 A. I did.

10 Q. Okay, Mr. Youngkin. So you're saying -- well,
11 let me ask you this. What would you retest? What was
12 available for retesting?

13 A. The gray-top tubes.

14 Q. Okay. So when you said "the first quarter of
15 the batch (vials 7 through 16) run on 5/8/13 still
16 present at the laboratory will be retested," you're
17 saying you're not talking about gray-top tubes?

18 A. No. If you look at the construction of the
19 sentence, it says "the evidence" and then you would skip
20 down to the verb "still present at the laboratory."

21 Q. "The evidence" -- I'm trying to follow you.

22 A. The first part of the sentence.

23 Q. "The evidence for the cases in the first
24 quarter batch still present in the laboratory." You
25 just told me the only thing that was still present were

1 the gray-top tubes. Is that correct?

2 A. Correct. And so this sentence is indicating
3 that the evidence, the gray-top tubes contained in the
4 kits for the first quarter, that's location 7 through
5 16, that are still present will be retested.

6 Q. Okay. So the word "vial" there, is that just a
7 typo on your part?

8 A. That's not a typo. It's in reference to the
9 numbered locations of the batch.

10 Q. Okay. All right. So vial doesn't mean vial;
11 it means locations. Is that correct?

12 A. In this particular instance, it's identifying
13 which part of the batch is the first quarter.

14 Q. So your testimony here, under oath, is you've
15 never used -- or you did not use the word "vial" on
16 Exhibit No. 20 to describe a gray-top tube?

17 A. Correct. Because I've testified several times
18 already those were no longer present to be retested.

19 Q. All right. Okay. Now, let me ask you about
20 Quality Action Plan 823, Exhibit No. 20. I want you to
21 look at the bottom where it says "Action Plan."

22 It says, On 5/12 -- I'm sorry -- "5/21/12,
23 the affected agencies and county attorneys were notified
24 of the new results." 5/21/12 is obviously a typo.
25 Correct?

1 A. It is.

2 Q. What was it supposed to say?

3 A. 5/21/13 would be the correct year.

4 Q. Okay. Who were the affected agencies?

5 A. It would have been Anna Police Department and
6 the highway patrol -- highway patrol in Cleburne.

7 Q. Okay. Who were the county attorneys?

8 A. That would have been Johnson County and that
9 the evidence from Anna Police Department didn't
10 constitute a criminal offense. They may have still
11 received the report, though. I have the information
12 with me.

13 Q. So are you saying you did or did not send that
14 to Collin County?

15 A. I'm saying it's certainly possible. I don't
16 know that that would have been anything that I had to do
17 with, since I was not involved in the retest of the
18 evidence.

19 Q. Okay. I'm going to ask you one more time:
20 Have you ever used the word "vial" to describe a
21 gray-top tube?

22 A. Again, it would depend on the context. I don't
23 recall having used that in my testimony, but if I was
24 answering a question where the word "vial" was used in
25 reference to a gray-top tube, it's certainly possible.

1 Q. Isn't a gray-top tube the same thing as a vial?

2 A. It depends on who you ask.

3 Q. Okay.

4 A. To me, it's not, and I've brought them with me
5 today --

6 Q. Okay.

7 A. -- to demonstrate that.

8 Q. Who is Nirav Kumar?

9 A. He's another analyst in our laboratory.

10 (Exhibit 9 premarked and offered.)

11 MR. BURLESON: I'm offering Defense Exhibit
12 No. 9.

13 THE WITNESS: Would it be possible for us
14 to take a break between exhibits?

15 MR. BURLESON: Not between exhibits, but do
16 you need a break?

17 THE WITNESS: I would certainly appreciate
18 one.

19 MR. BURLESON: Sure.

20 THE VIDEOGRAPHER: Off the record,
21 10:04 a.m.

22 (Off the record: 10:04 to 10:11 a.m.)

23 THE VIDEOGRAPHER: Back on record,
24 10:11 a.m.

25 Q. (BY MR. BURLESON) Okay. So, Mr. Youngkin,

1 let's get back to it. You will admit switching samples
2 in 2013. Correct?

3 A. I will.

4 Q. You will admit switching gray-top tubes in
5 2013. Correct?

6 A. I will.

7 Q. And you would testify, under oath, if you were
8 asked, that you had switched either a sample or a
9 gray-top tube. Correct?

10 A. I would, yes, sir.

11 Q. You are saying that you did not switch a vial
12 in 2013?

13 A. Not a headspace vial, if that's what you mean
14 specifically.

15 Q. No. I mean vial. Did you switch a vial?

16 A. It depends on what you mean by the use of the
17 word "vial," if --

18 Q. Well, let's --

19 A. -- it's not clear from the record.

20 Q. Let's see what your coworker thinks a vial is.
21 Who is Nirav Kumar?

22 A. He's another one of the analysts in the Garland
23 laboratory.

24 MR. BURLESON: Offering Defense Exhibit
25 No. 9. Do you have that, Mr. Wirskye?

1 MR. WIRSKYE: I do and no objection.

2 MR. BURLESON: Okay.

3 Q. (BY MR. BURLESON) Nirav Kumar testified in
4 Court 2, and I'm going to show you. If you'll turn to
5 Page 4, here's my question.

6 "Question: For your purpose and for the
7 DPS blood kit, how many vials of blood are in there?"

8 "Answer: For the DPS kit, there would be
9 need to be two. Both blood tubes would need to be
10 filled up."

11 "Question: Tubes or vials; is that
12 correct?"

13 "Answer: Correct."

14 "Question: Tubes and vials mean the same
15 thing; right?"

16 Kumar's answer is "Yes."

17 "Question: You used the word the 'vial' in
18 describing that -- vials you had before; correct?"

19 "Correct."

20 So Mr. Kumar goes on to say, on Page 5,
21 Line 14: "The word tube and vial can be used
22 interchangeably when describing cylindrical objects that
23 contain liquid."

24 So Mr. Kumar, who has the same job as you?
25 Correct?

1 A. Generally. That's correct.

2 Q. Okay. Well, you say "generally." He tests
3 blood for DPS. Right?

4 A. That is one of his responsibilities. That's
5 correct.

6 Q. He testifies in court. Correct?

7 A. He does.

8 Q. So Mr. Kumar is saying a vial is the same thing
9 as a tube or gray-top tube. Is that correct?

10 A. He did answer those questions. That's correct.

11 Q. Now, Page 7 -- or Page 5, Line 25, on to Page
12 6: "Has anyone at your laboratory ever mixed up vials?"

13 His answer: "Yes, it's happened before."

14 "Question: Okay. Who was that?

15 "Answer: That was Chris Youngkin."

16 Who are you?

17 A. Chris Youngkin.

18 Q. Okay.

19 "Question: Okay. So you knew he mixed up
20 vials; right?"

21 His answer was, "He did. But that's before
22 I started working here." [As read.]

23 So your coworker, Nirav Kumar, not only
24 calls gray-top tubes vials but he said you switched
25 vials in 2013. Is he lying?

1 A. What he says in answer to your questions, you
2 would have to ask him.

3 Q. Well, you're saying you didn't switch vials,
4 under oath. He's saying you did. Those are two
5 inconsistent statements. Which one is correct?

6 A. Again, it's going to depend on how you
7 specifically define the word "vial."

8 Q. Well, let's see how the Department of Public
9 Safety crime lab defines the word gray-top tube and
10 vials, shall we?

11 A. Sure.

12 Q. Do you have a Physical Evidence Handbook in the
13 DPS crime lab?

14 A. We do.

15 (Exhibit 17 premarked and offered.)

16 MR. BURLESON: Offering State's Exhibit
17 No. 17.

18 MR. WIRSKYE: No objection.

19 Q. (BY MR. BURLESON) Showing you Page 1. It
20 lists "Blood Packaging Kit." All right.

21 So go down. It says, "10 milliliter Blood
22 Collection Vial (gray-top vacutainer) containing 10
23 [sic] milligrams of Sodium Fluoride and 20 milligrams of
24 Potassium oxalate."

25 Does DPS call a gray-top vacutainer a blood

1 vial?

2 A. In this document they appear to, yes, sir.

3 Q. Okay. Go to down a little further. "Blood
4 Vial Seal (tamper-evident) for blood collection vial."

5 It looks like they call it a vial.

6 Correct?

7 A. It's a seal for vial. That's correct.

8 Q. Okay. And what they're referring to is the
9 thing that's in the blood kit that you get from a police
10 agency. Correct?

11 A. That's my understanding, yes, sir.

12 Q. Okay. Is DPS lying when they call a gray-top
13 tube a vial?

14 A. No. In the first instance there it identifies
15 the -- in this document, the gray-top vacutainer and the
16 blood collection vial are the same thing.

17 Q. All right. Well, turn to Page 2. Do you see
18 the picture on Page 2?

19 A. I do.

20 MR. BURLESON: I'm just showing it to
21 everyone here. Sir, from Dallas.

22 Q. (BY MR. BURLESON) The picture on Page 2 is a
23 picture of this blood kit that you have with you right
24 here. Correct?

25 A. It's similar. It's a different iteration.

1 Q. Okay. It says, "Blood Collection Kit."

2 Correct?

3 A. It is.

4 Q. Can you find me anywhere on this that it says
5 "gray-top tube"?

6 A. I would have to read it.

7 Q. Go ahead.

8 A. (Complies.)

9 Okay. I've read this. What was your
10 question again?

11 Q. Do you see "gray-top tube" anywhere?

12 A. I have not.

13 Q. Okay. Now, what they're describing is this
14 (indicating). This is what you're calling a gray-top
15 tube. Correct?

16 A. It is.

17 Q. Is that a vial?

18 A. According to this document it would be, yes,
19 sir.

20 Q. Okay. DPS calls this a vial. Right?

21 A. The Physical Evidence Handbook would identify
22 that as a gray-top vacutainer, as well as a blood
23 collection vial.

24 Q. DPS is your employer. Correct?

25 A. They are.

1 Q. And in Step 2 on Page 2, Defense Exhibit 17,
2 they said "blood vial seal."

3 A. It does.

4 Q. Step 3: Verify the information on the blood
5 vial seal.

6 A. Correct. It refers to the gray-top tube as a
7 specimen in Step 3.

8 Q. Step 4: Insert the blood collection vial into
9 the absorbent pouch.

10 A. That's what it says, yes, sir.

11 Q. Step 5: Place the absorbent pouch containing
12 blood vial into the plastic screw-cap and close the lid.
13 So they call this a vial (indicating). Right?

14 A. They do. And for all fairness, they also call
15 it call a gray-top vacutainer.

16 Q. Okay. One time it said "gray-top vacutainer"
17 and one, two, three, four, five, six times they call it
18 a vial. Correct?

19 A. Potentially. I did not count the appearances
20 of the word "vial."

21 (Exhibit 18 premarked and offered.)

22 MR. BURLESON: Offering Defense Exhibit
23 No. 18.

24 Q. (BY MR. BURLESON) Officers are given
25 instructions on how to collect blood from the Department

1 of Public Safety, are they not?

2 A. They are. This is provided with the kit.

3 Q. Okay. And they have to fill that out when they
4 send in this blood kit. Correct?

5 A. Sometimes. I don't often see this.

6 Q. Okay. All right. Defense Exhibit 18.

7 Number 2: Complete information requested
8 on the Toxicology/Blood Kit Laboratory Submission form
9 and the Blood Vial Seal.

10 What they're talking about is they're
11 supposed to put a seal on this thing that you're calling
12 a gray-top tube. Correct?

13 A. Correct. And it looks like this (indicating).

14 Q. And what are they -- what is the DPS calling it
15 again?

16 A. They call it a blood sample vial, as well as a
17 gray-top vacutainer.

18 Q. They call it in number 2 --

19 A. They're referring to the seal in Number 2.

20 Q. And they say -- do they gray-top tubes --

21 A. It says "blood vial seal," and there's an S in
22 parenthesis.

23 Q. So they're calling it a vial.

24 Go down to Page 2 [sic]. "With hospital/
25 clinic procedures, collect a full vial, or vials, of

1 blood.

2 A. I'm not following you. You said Page 2. I
3 only have a single page.

4 Q. Line 2, under Blood Collector.

5 A. Okay. Gotcha.

6 Q. These are instructions to the blood collector.

7 A. Sorry. You said Page 2 and I wasn't following
8 you.

9 Q. I misspoke.

10 With hospital/clinical procedures, collect
11 a full vial, or vials, of blood.

12 So they're referring to this thing right
13 here that you're calling a gray-top tube. Right?

14 A. Correct. And, again, to be fair, if you would
15 read on, it identifies it as a gray-top 10 milliliter
16 vacutainer.

17 Q. Mr. Youngkin, we'll get there.

18 A. Okay.

19 Q. They're calling this a vial. Correct?

20 A. It appears, yes, sir.

21 Q. "It appears"? Do I not understand the English
22 language? It says, With hospital/clinical procedures,
23 collect a vial or a full vial of blood.

24 It seems to me like they said "collect a
25 full vial of blood." Is that what they collect blood

1 in?

2 A. Correct. If you will read the rest of the
3 sentence, it identifies it as a gray-top 10 milliliter
4 vacutainer.

5 Q. Mr. Youngkin, listen to my questions and just
6 answer the questions I ask you or --

7 A. I am.

8 Q. -- I'm going to lose decorum real quick. Do
9 you understand?

10 A. Yes, sir.

11 Q. Now, on Page -- continuing on 2: In each
12 provided blood vial or other gray-top vacutainer. So
13 they're calling this either a blood vial or a gray-top
14 vacutainer. Correct?

15 A. It's the same sentence, number 2?

16 Q. Yes?

17 A. Okay.

18 Q. Finishing off. I finished it for you.

19 A. Okay.

20 Q. You happy now?

21 So they've called a gray-top vacutainer the
22 same thing as a vial. Correct?

23 A. A blood vial. That's correct.

24 Q. All right. Go on to Page -- or not page but go
25 on to number 3. Again, for Blood Collector: Invert the

1 blood vial several times.

2 What is -- what are they referring to?

3 A. The gray-top tube.

4 Q. And do they call it a gray-top tube?

5 A. Not in that particular sentence, no.

6 Q. Okay. They call it a vial. Right?

7 A. They do.

8 Q. Officer -- under the Officer section on
9 Exhibit 18, number 1: Verify the information on a blood
10 vial seal.

11 A blood vial seal is a seal that goes on
12 this that you're calling a gray-tip tube. Right?

13 A. Correct. It looks like this (indicating).

14 Q. And what's DPS calling it?

15 A. This is a blood vial seal.

16 Q. Okay. It's not a gray-top tube seal. Correct?

17 A. Not in this document. That's correct.

18 Q. Okay. Number 2: Insert each blood collection
19 vial into absorbent pouch. Does it say anything about a
20 gray-top tube?

21 A. Not in that sentence, no, sir.

22 Q. It says, collection -- blood collection vials.
23 Correct?

24 A. It does.

25 Q. Now, going back up to Blood Collector on

1 Line 4: Transfer blood vials directly to officer to
2 ensure that your name and title are on the seal and
3 submission form.

4 Did that refer to a gray-top tube as a
5 gray-top tube?

6 A. It did not.

7 Q. Called it vial. Correct?

8 A. It did.

9 Q. All right. So Nirav Kumar says a gray-top tube
10 is a vial. Your DPS handbook calls a gray-top tube a
11 vial. The instructions given to police officers call a
12 gray-top tube a vial.

13 Is it still your testimony that a gray-top
14 tube is different than a vial?

15 A. It is.

16 Q. Okay.

17 A. Again, depending on how you specifically --

18 Q. I didn't ask you a question?

19 A. That's true. Well, you did but on a different
20 question. I apologize.

21 Q. No. 19. Here's where you come in to play,
22 Mr. Youngkin.

23 MR. BURLESON: Offering 19, Mr. Wirskye.

24 MR. WIRSKYE: No objection.

25 (Exhibit 19 premarked and offered.)

1 Q. (BY MR. BURLESON) Here's where you come in to
2 play. You get an alcohol analysis worksheet, do you
3 not?

4 A. I do.

5 Q. Now I want you to look at No. 19, where it says
6 Evidence. Okay? And it says it comes from a DPS blood
7 kit. Correct?

8 A. That is one of the choices, yes, sir.

9 Q. And it says, Specimen. What does it say?

10 A. Gray Top and Other.

11 Q. Okay. And what does it say about Vial Sealed?

12 A. It says, Yes.

13 Q. Okay. Now, if you're getting this and it asks
14 you is the vial sealed, why don't you write out here
15 "there is no vial"?

16 A. Just because I had no participation in the
17 creation of this form.

18 Q. Well, it says "Other" right there. Correct?
19 In that same box. Right?

20 A. Well, the specimen, if it is a gray-top tube,
21 that's certainly accurate.

22 Q. Okay.

23 A. If it's sealed, there is no other place on this
24 form to indicate that.

25 Q. So No. 19 seems to indicate a gray-top tube and

1 vial is the same thing. Correct?

2 A. It does.

3 Q. Okay. Again, your statement is gray-top tube
4 and vial is not the same thing. Is that correct?

5 A. Depending on how you specifically define
6 "vial," it could be two different things.

7 Q. Okay. All right.

8 So let's go through your specific
9 testimony. You've testified under oath that you
10 switched samples. Correct?

11 A. I have.

12 Q. And gray-top tubes. Correct?

13 A. Correct.

14 Q. All right.

15 (Exhibit 3 premarked and offered.)

16 MR. BURLESON: I'm offering State's
17 Exhibit 3, which is a certified transcript that's been
18 redacted out of Ellis County. State's Exhibit No. 3.

19 MR. WIRSKYE: No objection.

20 MR. BURLESON: Okay.

21 Q. (BY MR. BURLESON) All right, Mr. Youngkin. I
22 want you to turn Page 89, Lines 5 through 16.

23 Question was asked: "A moment ago you
24 testified 2,000 [sic] samples and you have no
25 recollection of ever swapping a sample or switching a

1 sample; right?"

2 Your answer was, "Well, you specifically
3 asked me about whether the headspace vials had been out
4 of order and that was my answer."

5 Okay. Question: So then you didn't --

6 "So then did you know you had switched
7 samples in the past, but because I didn't ask precisely
8 the right question, you gave me precisely the wrong
9 answer?"

10 Your answer was, Hopefully I gave
11 preciseful truthful answers to whatever it was you were
12 asking. [As read.]

13 Now, here's what's important. This was
14 attorney Courtney Stamper, July 16th, 2015. And he
15 asked you if you had ever switched samples before, or he
16 asked you if you had ever gotten the wrong result for
17 the wrong person.

18 Now, you just testified here that you had
19 switched samples before, you had gotten the right -- or
20 the wrong result for the right person. But that's not
21 what you told Mr. Sample, was it?

22 A. You would have to refer to a particular
23 question. I'm not following you.

24 Q. Page 85, Mr. Youngkin. I'll read the question.

25 But before I do, you have switched samples

1 before. Correct?

2 A. I have.

3 Q. And you've testified under oath you have.
4 Correct?

5 A. I have.

6 Q. And you've known it since 2013. Correct?

7 A. That's correct.

8 Q. So if anyone asked you after 2013, have you
9 ever switched a sample, what's your only truthful
10 answer?

11 A. Yes.

12 Q. Okay. You knew you got the wrong person's
13 result for the wrong blood. Correct?

14 A. In those particular -- on those two particular
15 cases, that's correct.

16 Q. And you knew that since 2013. Correct?

17 A. Since the incident happened in 2013.

18 Q. So if you were ever asked if you ever got the
19 wrong result for the wrong person's blood, what was the
20 only truthful statement you could make under oath?

21 A. Again, it's going to depend on the context of
22 that question.

23 Q. Well, it's a yes or no. Have you ever switched
24 a person's blood?

25 A. Well, it depends on how the question is asked.

1 Q. I'm asking it. Mr. Youngkin, have you ever
2 gotten the wrong result for the wrong person's blood?

3 A. I have.

4 Q. And that's --

5 A. Well, no, I take that back. Pardon.

6 Since the tubes have you been switched, the
7 result that I got for that blood was correct. It was
8 associated with the wrong laboratory case number. Is
9 that what you're asking?

10 Q. I don't know, but you need to be really careful
11 here.

12 A. Okay.

13 Q. Because I've got a lot of transcripts in front
14 of me.

15 A. You do.

16 Q. If asked after 2013 if you ever got the wrong
17 result for the wrong person's blood, what's the only
18 truthful answer that you could have given?

19 A. Again, it's going to depend on the specific
20 context of that question.

21 Q. I just asked it. Have you ever gotten the
22 wrong result for the wrong person's blood; yes or no?

23 A. It's not a yes-or-no question.

24 Q. It is a yes-or-no. You either did or you
25 didn't. Have you ever gotten the wrong result for the

1 wrong person's blood?

2 A. I have associated the wrong result with the
3 wrong laboratory case number.

4 Q. In 2013, you gave a .152 to GAR-568. Was that
5 the correct result for that person's blood?

6 A. Correct. Not for that laboratory case number.
7 Well, it was -- see, the way you're asking the question,
8 the result was accurate and the retest of that blood
9 demonstrated that the result was accurate. It was
10 simply associated with the wrong laboratory case number.

11 Q. Did you report that a person had a .15 that had
12 zero?

13 A. I did, temporarily. That's correct.

14 Q. Okay. So you reported a person had a wrong
15 result. Correct?

16 A. Correct. But it was not inaccurate.

17 Q. Was a .152 accurate for 568?

18 A. It was not.

19 Q. Okay. All right. So Mr. Stamper asked you on
20 Page 85, "Is it possible to switch samples while you're
21 preparing them for testing?

22 You said, "Switch them in what way?"

23 "Actually get someone else's blood mistaken
24 for Mr. Blank's blood."

25 Did you not get a person's blood mistaken

1 for another person in 2013?

2 A. It wasn't mistaken. It was simply out of
3 order.

4 Q. GAR-568, what was the actual blood score?

5 A. I would have to look back.

6 Q. It was zero.

7 A. Correct. For 568, that's correct.

8 Q. Okay. It was zero. And you report a .152.

9 Right?

10 A. Initially. That's correct.

11 Q. Okay. Now, your answer to him was, "I don't
12 see how with his name being on a gray-top tube and a
13 laboratory case number."

14 So when Mr. Stamper asked you "is it
15 possible to switch samples," not only did you not tell
16 him that you switched samples in 2013, you said it would
17 virtually be impossible to switch samples. Is that
18 correct?

19 A. Well, the question was, "Actually get someone
20 else's blood mistaken for Mr. Somebody's blood."

21 And there was never a question about it
22 being mistaken for something else. Never easily
23 identifiable.

24 Q. In 2013, did you get GAR-568's blood result
25 mistaken for GAR-569?

1 A. They were switched.

2 Q. Did you get them mistaken?

3 A. They were not mistaken, no, sir.

4 Q. You report the wrong result for them?

5 A. I did.

6 Q. Okay. And you knew you did. Correct?

7 A. Once the blood had been retested, that's
8 correct.

9 Q. So instead of telling Mr. Stamper, Well, one
10 time we had an issue, you told him you don't even see
11 how it's possible to make that mistake. Correct?

12 A. Correct, in response to the question, again,
13 about getting someone's else blood mistaken.

14 Q. Okay. And he asked you, "Have you ever swapped
15 a vial?"

16 And you said, Swapped it with what?

17 And he asked you if you've ever gotten
18 samples switched out of order. Now, you just testified
19 that you switched samples in 2013. Correct? Correct?

20 A. Sorry. I was reading the transcript that
21 you're referring to.

22 Q. You switched samples in 2013. Correct?

23 A. I have. Yes, sir.

24 Q. So he asked you on Page 85, 24: "Have you ever
25 got the sample switched out of order?"

1 Your answer: "What particular order are
2 you talking about?"

3 So then it goes through how you take it to
4 your workstation. Now, you knew at this time, when he
5 asked you "have you ever gotten samples out of order,"
6 you knew that you had done that in 2013. Correct?

7 A. Correct. What he's referring to in the
8 question by using the word "sample" is not clear from
9 the context.

10 Q. Have you ever got the samples switched out of
11 order? That's the question. It seems like a pretty
12 simple question.

13 A. It does.

14 Q. It's got ten words in it: Have you ever got
15 the samples switched out of order?

16 You said earlier, if you were ever asked
17 that after 2013, that your only truthful answer would be
18 "yes." Correct?

19 A. It would be in reference to the gray-top tubes.
20 That's correct.

21 Q. No, Mr. Youngkin. See, you're playing this
22 word game. I've asked you if in 2013 you knew you
23 switched samples. Your answer was "yes."

24 I asked you if you knew you switched
25 samples all of 2013, all of 2014, all of 2015, and all

1 of 2016. You said "yes."

2 I asked you: If you were ever asked if you
3 switched samples after 2013, what would your only answer
4 be? You said "yes." Then I asked you the same thing
5 about gray-top tubes.

6 So in this hearing today, under oath,
7 you've testified that either if someone asked you about
8 a gray-top tube or a sample, if they've asked if you've
9 switched them since 2013, your only truthful answer
10 would be "yes."

11 Do you recall any of that testimony?

12 A. I do. I was just --

13 Q. Okay.

14 A. -- confirming that the gray-top tube was
15 identified as a sample on the board.

16 Q. Okay. Now, then, we got that.

17 When Mr. Stamper asked you, on July 16,
18 2015, Have you ever got switched -- a sample switched
19 out of order, your only truthful answer would have been
20 what?

21 A. Again, it's going to depend on what he means
22 specifically by the use of the word "sample." There's
23 more than one thing in the process that can be referred
24 to as a sample.

25 Q. Well, the only thing that you told me the

1 sample was, was the blood contained in a vial. Remember
2 that?

3 A. That was the only question that you asked me
4 today.

5 Q. Okay.

6 A. I'd be glad to identify the different samples
7 in the process if you'd like me to.

8 Q. Mr. Youngkin, he asked if you got samples
9 switched. He's referring to blood samples. That's what
10 y'all were talking about. You knew you switched blood
11 samples. You got them out of order. You knew the only
12 question -- the answer was yes. You didn't answer that
13 question yes. Correct?

14 A. No, the answer is "What particular order are
15 you talking about?"

16 Q. Right. And he says, You have a workstation.
17 You say, Correct?

18 And then you put them into a rack one at a
19 time.

20 I do.

21 The rack is numbered. Each vial's got a
22 location.

23 It does.

24 Let's take a minute. So when you're
25 creating headspace vials, those look like the ones you

1 have here. There's nothing on them when you first get
2 them, right?

3 Correct. I'd have to label them.

4 And how do you label a headspace vial?

5 With a marker.

6 A marker?

7 Correct.

8 How many digits...

9 On this particular evidence...

10 On Line 20, Yeah.

11 We then go to Page 87, and he asks you,
12 You've done 10,000 samples. And have you ever got the
13 headspace vials out of order?

14 And you said, Not that I'm aware of.

15 Correct?

16 A. I'm going to have to find -- on Line 19?

17 Q. 17 through 19. Correct?

18 A. Correct. That was the question and my answer.

19 Q. Okay. So when he asked you if you switched
20 samples, you didn't answer his question. Correct?

21 A. I believe I asked a question of my own.

22 Q. Um-hum. And then he asked you about vials.

23 And you said, Not that you're aware of. Correct?

24 A. The headspace vials, that's correct.

25 Q. Okay. Here's my question to you, Mr. Youngkin.

1 When Mr. -- when Mr. Stamper asked you if you had ever
2 switched samples, you said you didn't know what context
3 he was talking about. Correct?

4 A. Well, I'm saying that today, in that I have not
5 had an opportunity to review this transcript.

6 (Exhibit 12 premarked and offered.)

7 MR. BURLESON: Defense Exhibit No. 12,
8 official Brady material given by Denton County.

9 MR. WIRSKYE: No objection.

10 Q. (BY MR. BURLESON) Mr. Youngkin, I'm showing
11 you a transcript from January 26, 2016. This is after
12 Mr. Stamper, on July 16th, 2015, asked you about
13 switching samples.

14 I'm handing you a copy. Page 4, Line 10.

15 Here is the question: "Tell us about the
16 time you mixed up samples." That's the question. "Tell
17 us about the time you mixed up samples."

18 What context is the defense attorney
19 talking about?

20 A. I don't know. The transcript only begins one,
21 two, three lines before that.

22 Q. Okay. Well, let's go to 8.

23 "Now, have you ever mixed up samples?"

24 That was the first question. What context is he talking
25 about?

1 A. Again, it's not possible to determine that from
2 this excerpt.

3 Q. Okay. Well, did you answer the question?

4 A. I did.

5 Q. So he asked you -- the first question, Page 4:
6 "Have you ever mixed up samples?" What was your answer?

7 A. "Just once."

8 Q. "Just once." "Just once."

9 So you had admitted that you had mixed up
10 samples before. Correct?

11 A. Correct. I answered that in the affirmative.

12 Q. And Mr. Gioffredi, in this case, he didn't say
13 what a was sample was. He just asked if you mixed up a
14 sample. And your answer was "yes." Correct?

15 A. From the excerpt, that's correct.

16 Q. Okay.

17 A. Again, I have no way to determining the context
18 of these questions.

19 Q. You keep saying that. It's a simple question.
20 Did you ever mix up the samples. Your answer was "yes."
21 Correct? What context do you need?

22 A. The answer was, "Just once."

23 Just that there's multiple things that it
24 could be referred to as samples in this testing process.

25 Q. Okay. Well, then, let's see what you -- you

1 are just digging, sir.

2 Page 10: "Tell us about the time you mixed
3 up samples." And you answered it. Correct?

4 A. Page 10.

5 Q. Yeah. I'm sorry. Line 10, Page 4. Line 10,
6 Page 4.

7 So let me set this up. You were asked,
8 "Have you ever mixed up samples?"

9 You said, "Just once."

10 You're sitting here saying, Well, I don't
11 know what the context is because he could be talking
12 about anything. The very next question was, "Tell us
13 about the time you mixed up samples."

14 Mr. Youngkin, Line 12, what's your answer?

15 A. "In 2013" --

16 Q. Stop. In 2013. Correct?

17 A. It was.

18 Q. So what are you talking about?

19 A. The incident recorded in the Quality Action
20 Plan.

21 Q. So, in 2013, you mixed up samples. Correct?

22 A. Correct. I believe I've answered that question
23 earlier.

24 Q. Well, then, when Mr. Stamper asked -- when
25 Mr. Stamper asked you, Have you ever switched up

1 samples, you knew you had. Correct?

2 A. Correct.

3 Q. And you didn't answer him. Correct?

4 A. I believe I asked for -- a clarifying question.

5 Q. You didn't ask Mr. Gioffredi for a clarifying
6 question, did you?

7 A. Not in the excerpt that I've been presented
8 with. That's correct.

9 Q. Okay. Do you know what's different about
10 Mr. Stamper's transcript at the time versus Gioffredi's?

11 A. The only obvious thing to me is the length.

12 Q. Well, you didn't know that Mr. Stamper had the
13 Quality Action Plan, Defense Exhibit No. 20.

14 A. I didn't?

15 Q. No.

16 A. Oh, okay.

17 Q. You didn't know. In fact, if you'll turn to
18 Page 91, you testified you didn't switch vials. You
19 testified you never switched samples. You testified you
20 didn't even see how it was possible with the name
21 written on it. And then, oops, guess what? Ellis
22 County had handed him Quality Action Plan 823 which
23 showed that you exactly did switch samples.

24 And he asked you on Page 89, "A moment ago
25 you testified 2,000 [sic] samples and you have no

1 recollection of ever swapping a sample or switching a
2 sample, right?"

3 And your answer was, "Well, you
4 specifically asked about whether the headspace vials had
5 been out of order, and that's my answer."

6 Page 89, 11. Question: So then you did
7 know that you had switched samples in the past, but
8 because I didn't ask precisely the right question, you
9 gave me precisely the wrong answer." All right?

10 Now go to Page 91 -- or Page 90.

11 Mr. Stamper breaks out Quality Action Plan 823. You had
12 no idea he had it. Page 90, 13.

13 And in Quality Action 823, which is Defense
14 No. 20, that's where it says you switched samples. Now,
15 what's interesting about this, Mr. Youngkin, is you were
16 asked on Page 92 by Ms. Jones, who is a prosecutor: Did
17 you have a hand in preparing this document? Page 92, 14
18 through 16. You said you did not. Do you remember
19 saying that?

20 A. I do not. This is from whatever year you said
21 it was.

22 Q. Uh-huh.

23 A. 2015.

24 Q. Is that your signature on 823?

25 A. It is.

1 Q. Okay. You told her you didn't have a hand in
2 making it, but your signature's on it. Is that correct?

3 A. The question by Mr. Jones was about this
4 particular document: Did I have a hand in preparing
5 this? "I did not" is my answer.

6 Q. Now, you then proceed to say that you don't
7 recognize this form. You didn't have it. You don't --
8 can't authenticate it. And on Page 94, Line 14,
9 Mr. Stamper said, Your Honor, we're talking about
10 authentication. The Ellis County DA's office gave me
11 this.

12 Do you see that on Line 14 through 16?

13 A. 14 through 16.

14 Q. Page 94.

15 A. Oh, sorry. I do not see that. Give me a
16 second.

17 Q. Now, finally, Mr. Youngkin, on Page 95, it
18 appears that the Judge in Ellis County -- I don't know
19 what his thoughts were, but here's what I do know. He
20 broke in and he asked you a question.

21 He says, "I guess my question is, are you
22 aware of that incident having been recorded and reported
23 in a report such as that in the past? I mean, what
24 we're trying to do, is that an accurate rendition of
25 something that happened in the past? Can you tell or

1 not? And your answer: "It appears to be." Correct?

2 A. Are we still on Page 94?

3 Q. Yes.

4 A. I have, "Potentially. Being related" --

5 Q. 95, Page 19 through 24.

6 A. 19. Page 95, 19 through 24?

7 Q. Um-hum.

8 A. The witness's answer is, "It appears to be."

9 Q. The witness. So you're not saying that's you
10 or not?

11 A. I'm just saying it's doesn't identify me by
12 name, but, yes, it would appear that I am the witness.
13 Yes.

14 Q. Okay. So basically you told Mr. Stamper you
15 never switched vials -- or you never switched samples
16 before. He then busts you with the Quality Action Plan.
17 You then say you didn't recognize the Quality Action
18 Plan or have any hand in making it. They then show you
19 your signature on it. The Judge then has to admonish
20 you and say, Did this happen or not? Then they let it
21 in.

22 And at that point in time you freely admit,
23 on Page 99, the gray-top tubes were found to be out of
24 order. Correct?

25 A. Correct. Well, I'd like to look at 99, but

1 that would make sense. Yeah, Line 8.

2 Q. Now, you realize the Quality Action Plan refers
3 to the switching of vials. Correct?

4 A. It refers to the gray-top tubes being found out
5 of order. The phrase "sample switch" appears in a
6 different document.

7 Q. That's right. Your lab called it a "sample
8 switch." Correct?

9 A. The manager did. That's correct.

10 Q. Okay. All right. So you weren't forthcoming
11 with Mr. Stamper about switching samples until a judge
12 told you. Is that correct?

13 A. I answered the questions that Mr. Stamper
14 asked.

15 Q. If he asked you if you switched samples, did
16 you answer that question?

17 A. I would have to look at that particular page
18 again. And, again, it would depend on what he was
19 referring to specifically.

20 Q. Okay. Now, in Exhibit No. 12 you were asked,
21 Have you ever switched up samples? You said, Once. And
22 you said, In 2013. And you said that you --
23 contemporaneously with that discovery, one of the
24 agencies that were affected called me indicating that
25 the results of the report not did not meet their

1 circumstances. Page 4, Line 19 through 21. Is that
2 correct?

3 A. Almost contemporaneously with that discovery...

4 THE REPORTER: Sir.

5 THE WITNESS: I'm sorry. I was trying to
6 read to myself.

7 A. That is what it says, yes, sir.

8 Q. (BY MR. BURLESON) Okay.

9 THE WITNESS: I apologize.

10 (Exhibit 4 premarked and offered.)

11 MR. BURLESON: All right. June 22nd, 2016,
12 Defense Exhibit No. 4. Offering Defense Exhibit No. 4.

13 MR. WIRSKYE: No objection.

14 MR. BURLESON: All right.

15 Q. (BY MR. BURLESON) Page 11, Line 16 through 21.

16 "So samples were switched, results were reported, given
17 to police department, and they called and said,
18 'Something's wrong?'"

19 And your answer was, "They did, yes, sir."

20 Do you see that?

21 A. I'm looking.

22 Q. Page 11, Line 16 through 19.

23 A. Okay. Yes, the answer on Line 19, Page 11, was
24 "They did, yes, sir."

25 Q. So you admitted to switching samples on

1 June 22nd, 2016. Correct?

2 A. Yes. The date on Page 1 is the 22nd day of
3 June, 2016.

4 (Exhibit 6 premarked and offered.)

5 MR. BURLESON: Okay. Exhibit No. 6
6 official transcript from Dallas County and offering to
7 the State.

8 MR. WIRSKYE: No objection.

9 MR. BURLESON: Thank you. Just keep these
10 with you.

11 Q. (BY MR. BURLESON) Page 60, Lines 19 through
12 21, Mr. Youngkin.

13 "And, since 2013, you've known that you
14 actually, at least on one occasion, switched samples,
15 correct?" What was your answer?

16 A. "I have."

17 Q. Okay. So you testified under oath that you had
18 switched samples at least once, and you did that on the
19 27th of September 2016. Correct?

20 A. Yes, that is the date that appears on Page 1 of
21 the Defense Exhibit 6.

22 Q. And you said you've known that since 2013.
23 Correct?

24 A. Since -- yes. That was the question that was
25 asked.

1 Q. But when Mr. Stamper asked you back in 2015, on
2 Page 85 -- I'm sorry.

3 When he asked you if you had you ever
4 gotten -- if you had ever switched samples -- here's his
5 question. "Is it possible to switch samples while
6 you're preparing them for testing?"

7 Your answer on 16 -- or on 14 was, "I don't
8 see how with his name being on the gray-top tube and a
9 laboratory case number being on there."

10 Do you see that?

11 A. I do not. Which page are we on?

12 Q. Page 85. The question's on Line 9.

13 "Question: Is it possible to switch
14 samples while you're preparing them for testing?"

15 Your answer's on 14, and it says, "I don't
16 see how with his name being on the gray-top tube and the
17 laboratory case number being on there."

18 Do you see that?

19 A. Well, I see that the answer to the question on
20 Line 9 actually appears on Line 11 and I asked,
21 "Switched them in what way?"

22 Q. And he told you. Correct?

23 A. "Actually get someone else's blood mistaken for
24 Mr. Someone's blood."

25 Q. Uh-huh. And you said?

1 A. "I don't see how with his name being on the
2 gray-top tube and the laboratory case number being on
3 there."

4 Q. Okay. Was the laboratory case number on
5 GAR-568?

6 A. It would have been, yes, sir.

7 Q. Was the name on there?

8 A. Most likely. You would have to look at the
9 evidence.

10 Q. Did you get the right result for the right
11 person?

12 A. The result was accurate for what was tested.
13 The result was associated with the wrong laboratory case
14 number.

15 Q. So you sent the wrong result on the wrong
16 person. Correct?

17 A. Initially. That's correct.

18 Q. Okay. And, in 2016, when you said, Since --
19 when you were asked, Since 2013, you know you actually
20 switched samples on one occasion, you said "I have."
21 Correct?

22 A. Which exhibit are we referring to?

23 Q. No. 6.

24 A. 6.

25 Q. Page 60.

1 A. Page 60.

2 Q. Line 19.

3 A. Correct. The answer to Line 21 is "I have."

4 Q. Okay.

5 (Exhibit 7 premarked and offered.)

6 MR. BURLESON: No. 7. Offering No. 7,
7 official transcript.

8 MR. WIRSKYE: No objection.

9 MR. BURLESON: Thank you.

10 Q. (BY MR. BURLESON) Line -- or Page 3, Line 9
11 through 13.

12 Question by the defense attorney: "In your
13 job have you ever -- might want to use this correct
14 word -- been -- have you ever been sanctioned for
15 switching samples?"

16 And your answer was, "I have not been
17 sanctioned, but it is something that did occur in 2013."

18 Is that correct?

19 A. That was the answer, yes, sir.

20 Q. Okay. So that's two times you admitted to
21 switching samples in 2013. Right?

22 A. At least.

23 Q. Okay. Let's go to Page 4, Lines 3 through 7.

24 "Okay. So when you noticed this switching
25 of samples, you left your workstation to go find a

1 supervisor?"

2 And your answer was, "I did." Correct?

3 A. Which lines are we on?

4 Q. 3 through 5.

5 A. My answer was, "I did. I immediately
6 understood that if those tubes had been in that order
7 when they were tested, that I associated the wrong
8 results with those two tubes."

9 Q. Right. When you switched sample, you got the
10 wrong result for the wrong tube. Correct?

11 A. I would associate the wrong result with that
12 tube. That's correct.

13 Q. Okay. And, again, going back to Mr. Stamper,
14 when he asked you if you switched samples, you said you
15 didn't see how it was possible. Correct?

16 A. He asked a question, I believe, about something
17 being mistaken.

18 Q. Okay.

19 A. And it would depend on which page you're
20 referring to specifically.

21 Q. All right.

22 (Exhibit 8 premarked and offered.)

23 MR. BURLESON: Exhibit 8, official
24 transcript from Dallas County.

25 MR. WIRSKYE: No objection.

1 MR. BURLESON: Thank you, sir.

2 Q. (BY MR. BURLESON) Turn to Page 19, 2 through
3 4. 19, Lines 2...

4 "So you will admit to switching things if
5 it's samples or gray-top tubes; correct?"

6 Your answer's "Correct." Right?

7 A. It is.

8 Q. Okay. Page 29 Line 19 through 25.

9 "You've testified recently that you did mix
10 up samples, but you self-found and self-reported those
11 sample changes; correct?"

12 And your answer was, "I did testify this
13 year, according to the transcript, the samples were
14 switched."

15 So that's another time you admitted to
16 switching samples. Correct?

17 A. That was the question and that was my answer,
18 yes, sir.

19 Q. Okay. Page 29, Lines 19 through 24.

20 "Question: And so, in this case, are you
21 saying the tubes are out of order and that affected --
22 and that's how the wrong reports were issued?"

23 A. Which page are we on?

24 Q. Page 29, Lines 19 through 24.

25 A. No, that was the last thing that you asked me.

1 Q. Okay. All right. Now, in the Avaritt trial --
2 do you recall that on October 12th?

3 A. The hearing?

4 Q. Um-hum.

5 A. Yes, I recall a hearing on the 12th.

6 Q. And you readily admitted switching gray-top
7 tubes and giving the wrong person the wrong result. Do
8 you remember that?

9 A. It's certainly possible. I would have to see
10 the transcript.

11 Q. Okay. Well, let me find it for you.

12 THE WITNESS: Is it time for another break?

13 MR. BURLESON: I don't need one. Does
14 anyone else need one?

15 THE WITNESS: How long has it been?

16 MR. WIRSKYE: I'm not paying attention. If
17 the witness wants a break, why don't we give him one?

18 MR. BURLESON: All right.

19 THE WITNESS: Please.

20 MR. BURLESON: Go ahead.

21 THE WITNESS: Thank you.

22 THE VIDEOGRAPHER: Off the record,

23 10:52 a.m.

24 (Off the record: 10:52 to 11:00 a.m.)

25 THE VIDEOGRAPHER: Back on record,

1 11:00 a.m.

2 MR. BURLESON: Are we ready? Okay.

3 Q. (BY MR. BURLESON) All right, Mr. Youngkin.
4 I'm about to get off samples. Just one more thing.

5 Again, Mr. Stamper asked on Page 85, "Is it
6 possible to switch samples while you're preparing them?"
7 85, Line 9.

8 You say, "Switch them in what way?"

9 He said, "Actually get someone's else blood
10 mistaken for Mr." -- that's redacted -- "blood."

11 Your answer, on 14, was, "I don't see how
12 with his name being on a gray-top tube and a laboratory
13 case number being on that."

14 Do you see that?

15 A. I do.

16 (Exhibit 10 premarked and offered.)

17 Q. (BY MR. BURLESON) All right. I'm showing you
18 Exhibit No. 10, an official transcript from Collin
19 County, October 12th, 2016.

20 MR. WIRSKYE: No objection.

21 Q. (BY MR. BURLESON) I want you to look at
22 Page 8, Lines 23 through 25 and Lines 1 through 6.

23 "Question: So you knew from 5/16/2013 that
24 you had switched gray-top tubes and given a person a
25 wrong result?"

1 And your answer was, "Correct,
2 temporarily." Right?

3 A. It was.

4 Q. Okay. How is that any different question than
5 what Mr. Stamper asked you back in 2015?

6 A. It uses the word "switched," instead of
7 "mistaken." It uses "gray-top tubes."

8 Q. Okay. He said, Have you ever switched samples,
9 and have you ever got the wrong result for the wrong
10 person's blood? How that is a different question than
11 this?

12 A. I'll have to look back. Was it Page 85?

13 Q. It was.

14 A. "Is it possible to switch samples when you're
15 preparing them for testing?"

16 And then I was asking for clarification:
17 "Switch them in what way?"

18 A sample can refer to more than one thing,
19 especially when these things are being prepared.

20 Q. Okay.

21 A. And then he uses the word "someone's else blood
22 being mistaken."

23 Q. So you're going back to sample meaning more
24 than one -- more than one thing, even though when you
25 were asked in the Denton Brady if you ever switched

1 samples? You said, Yes, and it was in 2013. Do you
2 recall that?

3 A. I do. And, again, there's no context before
4 that question.

5 Q. All right. Page 9 I asked you, "Question:
6 Okay. In 2013, did you switch samples?"

7 A. Are we back to Avaritt?

8 Q. Yep. Page 9, 21.

9 A. Page number 10. Line 21?

10 Q. Um-hum.

11 A. What was the question?

12 Q. Have you ever switched samples? What was your
13 answer?

14 A. Well, the question was, "Okay. In 2013, did
15 you switch samples?"

16 My response was, "If gray-top tubes can be
17 considered samples, then the answer is yes."

18 Q. Page 10, Lines 13: "Since 2013, have you ever
19 testified that you switched samples?"

20 And your answer was, "I have." Correct?

21 A. Line 3?

22 Q. Um-hum.

23 A. Yes. The answer on Line 5 was, "I have."

24 Q. Okay. Now let's get off samples for a minute.

25 A. Okay.

1 Q. So here's your basic contention. Your basic
2 contention is you switched a headspace vial. Right? Is
3 that correct?

4 A. Is not.

5 Q. Okay. You switched a gray-top tube. Correct?

6 A. Correct.

7 Q. And was that before the vials were ever made,
8 headspace vials?

9 A. Yes. Since it was reflected in the testing,
10 that would be correct.

11 Q. Okay. All right. So you'll admit to switching
12 gray-top tubes and samples but not admit to switching
13 vials. Right?

14 A. Not headspace vials specifically. That's
15 correct.

16 Q. Okay. Well, not vials. You won't admit to
17 switching vials. Correct?

18 A. It depends, again, on the context of the
19 question.

20 Q. Okay.

21 A. I believe a number of these transcripts you
22 presented me with today, you ask a question about vials
23 and I do answer it in the affirmative.

24 Q. Okay. Well, let's go to Exhibit No. 2.

25 (Exhibit 2 premarked and offered.)

1 MR. BURLESON: Offering Exhibit No. 2.

2 MR. WIRSKYE: No objection.

3 MR. BURLESON: Thank you.

4 Q. (BY MR. BURLESON) So we're going to go to the
5 times that you have testified that you have never
6 switched vials. So go to Page 22, Lines 2 through 7.

7 MR. DOBIYANSKI: What page?

8 MR. BURLESON: 22, Lines 2 through 7.

9 Q. (BY MR. BURLESON) You were asked by
10 Ms. Deandra Grant, July 15th, 2015: Here's my question.
11 10,000 times of doing this, how many times did you
12 switched vials?

13 And your answer is on Page 7 [sic] and you
14 said, "Never, that I'm aware of." Correct?

15 A. No. The answer on Page 22, on Line 5, was, "On
16 the trays there."

17 And apparently she shakes her head up and
18 down. And that was my answer, on Line 7: "Never, that
19 I'm aware of."

20 Q. Okay. What was she referring to when she was
21 talking about vials?

22 A. The headspace vials. The instrument has sample
23 trays, and that's where those vials are placed for
24 testing.

25 Q. Okay. Well, let's go back. Go to Page -- let

1 me see if I can find it here. Page 18. I'm sorry.

2 Page 17. Page 17, Line 5.

3 Her question: "Right. You go in there and
4 you get this box and many others?" What's the box
5 referring to?

6 A. I presume, the blood kit.

7 Q. Blood kit. Okay.

8 And you say, "Correct." Then you said --
9 and the question was, "How many?"

10 And your answer was, I would get 40 of
11 these boxes at one time. Right?

12 A. "I would typically test 40 of these boxes at
13 once."

14 Q. Okay. And she goes -- on Page 19, she asks you
15 about little glass vials. What was she referring to?

16 A. You'll have to tell me what line specifically.

17 Q. Line 20, Page 17.

18 A. We're on Page 17, Line 19, or Page 19?

19 Q. Well, let me skip over to Page 18.

20 A. Okay.

21 Q. Page 18, Line 9.

22 A. Line 9.

23 Q. The question is, And what do you do -- "what
24 you do is you take a vial of blood and you make notes
25 about it when you first open it, correct?"

1 And your answer was, "That's correct."

2 Right?

3 A. It was.

4 Q. Okay. What's the only thing that you make note
5 of that contains blood?

6 A. Typically we would record observations on the
7 alcohol worksheet.

8 Q. What object contains blood that you make notes
9 of?

10 A. The gray-top tubes.

11 Q. And what does Ms. Grant call it?

12 A. She calls it a vial.

13 Q. And did you answer the question?

14 A. I did.

15 Q. Okay. And right underneath that: "Can you
16 tell me how much blood is in that vial if you were just
17 opening it for the first time and taking a look at it?"

18 What is she referring to?

19 A. Again, it sounds like she's referring to the
20 gray-top tube.

21 Q. Do you answer the question?

22 A. I do.

23 Q. Okay. Do you tell her, I don't know what
24 you're talking about. There's no such thing as a vial.
25 That's a gray-top tube.

1 A. I do not.

2 Q. Okay. So then let's fast-forward to Line 22.
3 Again, she asks you if you had ever switched vials. And
4 your answer was, "Not that I'm aware of." Correct?

5 A. Which page are we on?

6 Q. Page 22.

7 A. 22. Line number 2 or 3?

8 Q. Yes.

9 She asks you, "In 10,000 times of doing
10 this, how many times have you switched vials?"

11 And down on Line 7 you said, Not that I'm
12 aware of. Right?

13 A. Well, the answer is on Line 5. Again I asked
14 for clarification about which vials she's referring to.

15 Q. Okay. What was she referring to?

16 A. It says here, "On the -- on -- the trays
17 there?" She moves her head up and down. She's
18 referring to the headspace vials.

19 Q. Is -- do you not put gray-top tubes on a tray?

20 A. I'm not following the question.

21 Q. Are gray-top tubes contained on a tray as well?

22 A. Well, they go into a plastic rack.

23 Q. Okay. A rack. Right?

24 A. It is.

25 Q. Okay. So she ask -- she said earlier, Gray-top

1 tube, use vials, and then you said you never switched,
2 that you're aware of. Correct?

3 A. She was -- my understanding of the question was
4 the headspace vials.

5 Q. Okay. Go to Page 38.

6 A. 38.

7 Q. Line 19.

8 "Question: You don't think you switched
9 vials?"

10 "Answer: That's correct."

11 "Because you've never done that in 10,000
12 times."

13 You're answer was, "Not that I'm aware of."
14 Is that correct?

15 A. That is the questions and answers. That's
16 correct.

17 Q. Okay. So we know in 2015 you, under oath, said
18 you did not switch vials. Is that correct?

19 A. That's what it says on Page 38. Again, I'm not
20 aware of the context of the questions.

21 Q. Okay. Let's go back to Exhibit No. 3. Do you
22 have Exhibit No. 3 with you?

23 A. I'll have to look.

24 Q. Page 87, Line 17.

25 A. Page 87.

1 Q. Um-hum.

2 A. Line 17.

3 Q. "Question: Have you ever gotten those
4 headspace vials out of order?"

5 Your answer is, "Not that I'm aware of."

6 Do you see that?

7 A. 17, 18 -- yes. The answer's on 19. I see
8 that.

9 Q. So that's three times you were asked if you got
10 vials out of order, and three times you said "no" under
11 oath. Correct?

12 A. The specific question was, "Have you ever
13 gotten those headspace vials out of order?" And that
14 was my answer, yes, sir.

15 Q. That's three times you've been asked a question
16 that contained the word "vials" in them and have you got
17 them out of order, and that's three times you said "no."
18 Correct?

19 A. That's correct. It also contains a number of
20 other words.

21 Q. Page 8 or -- Defense Exhibit No. 8, do you got
22 that?

23 A. Yes, sir.

24 Q. Page 16, Lines 11 through 12. This is a
25 question from a prosecutor.

1 "Question: In the past you've testified on
2 prior occasions. Since that time you testified that you
3 never mix up the tubes. Is that correct?"

4 And you said, "That is not correct."
5 Right?

6 A. Which line are we on?

7 Q. Mr. Youngkin, you've got to follow me when I
8 tell you what page and line it is. Okay?

9 A. I'm trying to, Mr. Burleson.

10 Q. All right. Page 6.

11 A. 6 or 16?

12 Q. Let's go back to -- let's go back to Page 6.

13 A. Okay. I was on 16.

14 Q. Yeah. Let's go back to Page 6, Line 23 through
15 25.

16 A. Page 6, 23. Okay.

17 Q. "Now, Mr. Youngkin, prior to this testing being
18 done, there was a situation wherein you had mixed up
19 vials; is that correct?"

20 Do you see that question?

21 A. I do.

22 Q. And you said, No, you didn't mix up vials; you
23 mixed up gray-top tubes. Correct?

24 A. The answer was, "There was a situation in 2013
25 where two gray-top tubes were found to be out of order."

1 Q. So you were asked if you switched vials and
2 basically you said you switched gray-top tubes. Right?

3 A. I did.

4 Q. Okay. Now Page 16, Lines 11 through 12.

5 Question from the prosecutor: "Have you
6 ever switched vials before?" What was your answer?

7 A. "Not that I'm aware of."

8 Q. Okay. So that's four times you've been asked
9 if you switched vials before and that's four times you
10 said "no." Correct?

11 A. In that particular question-and-answer
12 sequence, that's correct.

13 Q. Okay. Now, in this -- in this transcript you
14 also seem to say that there's a big difference between
15 vials and gray-top tubes. Do you remember that?

16 A. I do believe I remember being asked that
17 question.

18 Q. Page 17, Lines 12.

19 "Question: Now, to you it seems like
20 there's a big difference between when you're talking
21 about tubes versus talking about vials; is that
22 correct?"

23 And your answer was, "Correct. They're two
24 different things."

25 Is that right?

1 A. That was the answer, yes, sir.

2 Q. Okay. So you're saying there's a big
3 difference between gray-top tubes and vials?

4 A. My answer that they are two different things --

5 Q. Okay.

6 A. -- which I think I've demonstrated here today.

7 Q. And the question is, "So if you testified
8 before that you never switched up vials as far as you're
9 aware, were you trying to mislead anyone?"

10 And you said you were not. Correct?

11 A. That was the answer, in part, yes, sir.

12 Q. Okay. So that's five times in which you said
13 that you never switched up vials. Correct?

14 A. Potentially.

15 Q. Okay. Let's go to -- back to Avaritt, Defense
16 Exhibit No. 10. Let me know when you're ready.

17 A. Defense No. 10?

18 Q. Yes.

19 A. Yes, I'm ready.

20 Q. Page 9, Lines 24 through 25: "Have you ever
21 switched vials?" And your answer was, "I did not."
22 Correct?

23 A. The question was, "In 2013, did you switch
24 vials?" My answer was, "I did not."

25 Q. So that's six times you said you didn't switch

1 vials. Let's go to Page 10, Lines 6 through 16.

2 "Since 2013, have you ever testified you
3 switched vials?"

4 Your answer: "Not that I was aware of."
5 Is that correct?

6 A. That was the answer on Line 8, yes, sir.

7 Q. Okay. Line 10: "Since 2013, have you ever
8 testified you switched vials?"

9 Your answer: "No." Correct?

10 A. It was after being instructed to answer the
11 question yes or no.

12 Q. Okay. Did your answer it "no" again on 14?

13 A. I did.

14 Q. Okay. And that was under oath and you said
15 "yes." Correct?

16 A. "Yes, you've made that clear" was my answer.

17 Q. Okay. So three more times you said you didn't
18 switch vials. Correct?

19 A. Well, the question was asked once in --

20 Q. And you said --

21 A. -- Line number 11.

22 Q. -- "no" three times. Right?

23 A. Said it twice.

24 Q. Line 8 you said, "Not that I'm aware of."

25 That's one.

1 Line 12 you said "no." Line 14 you said
2 "no." So that's three times you denied it. Correct?

3 A. Correct. You had said that I said "no."

4 Q. All right. Page 10, Lines 25 and Page 11, 1
5 through 3: "Is a gray-top tube the same thing as a
6 vial?"

7 You said, "No, to me, it's not." Correct?

8 A. "Not to me, it's not." That was the answer,
9 yes, sir.

10 Q. "Have you ever testified to a gray-top tube
11 being a vial?"

12 "Not that I'm aware of." Is that correct?

13 A. That was the answer, yes, sir.

14 Q. Okay. Have you ever testified, after 2013,
15 that the mix-up of gray-top tubes is a mix-up of vials?
16 You said, "No." Correct?

17 A. That was the answer, Line 11.

18 Q. Okay. So, again, you're saying a gray-top tube
19 is not a vial. Correct?

20 A. Answer the question, that is not the same as a
21 vial, that's correct.

22 Q. Page 72.

23 A. State's 10?

24 Q. Um-hum.

25 Line 24: "I asked you six times today,

1 have you ever switched vials on a person, and what was
2 your answer?" What did you say?

3 A. "After you wouldn't let me say 'I don't
4 recall,' the answer was no."

5 Q. So the answer was "no." Correct?

6 A. It was to that question. That's correct.

7 Q. Okay. So now that we've established that
8 you've affirmatively denied switching vials and that you
9 say a gray-top tube is not a vial -- that's correct.
10 Right?

11 A. I mean, it's going to depend on the context of
12 the question.

13 Q. Okay. Well, let's see how many times you've
14 actually called a gray-top tube a vial. Is that fair
15 enough?

16 A. Sure.

17 (Exhibit 1 premarked and offered.)

18 MR. BURLESON: All right. Defense Exhibit
19 No. 1, official transcript from Collin County, Texas.
20 Offering Exhibit No. 1.

21 MR. WIRSKYE: No objection.

22 MR. BURLESON: Thank you, sir.

23 Q. (BY MR. BURLESON) Okay. Mr. Youngkin, if you
24 would, go to Page 7, Lines 11 through 17.

25 Okay. Here's the question: "What

1 condition was the blood in when you received it?"

2 Now, what blood do you receive?

3 A. Blood received in our laboratory is in gray-top
4 tubes in kits.

5 Q. Okay. So the only blood you receive is in
6 blood kit. Correct?

7 A. Typically, that's correct.

8 Q. Okay. Now, what was your answer?

9 A. On Line 13?

10 Q. Yes.

11 A. "The box itself is properly sealed and the vial
12 itself is also sealed. The condition of the blood was
13 normal, and the gray-top tube was approximately
14 three-quarters full."

15 Q. Okay. So what did you say was the object that
16 contained blood in a DPS blood kit?

17 A. I was reading from the worksheet where you've
18 pointed out earlier has the vial sealed, so that was
19 what I was referring to.

20 Q. Where does it say in your answer that you're
21 reading from a worksheet?

22 A. There's just no way that I would know whether
23 it was sealed or not, without looking at that piece of
24 paper.

25 Q. Okay. What did you call it?

1 A. I called it a vial.

2 Q. You called it a vial. Correct?

3 A. And it's misspelled.

4 Q. Great.

5 A. Yeah, sorry.

6 Q. You called it a vial. Right?

7 A. In the response I mentioned a vial being
8 sealed.

9 Q. So --

10 A. That's correct.

11 Q. -- you called a gray-top tube a vial. Correct?

12 A. It appears, yes, sir.

13 Q. Okay. Let's go to back to Defense Exhibit
14 No. 3, Page 17, Line 6 through 8, Mr. Youngkin.

15 A. What was the page again?

16 Q. 17, Lines 6 through 8.

17 A. 17.

18 Q. Here's a question by the prosecutor,
19 Mr. Youngkin. "I'm going to hand you State's Exhibit 3.
20 Now, when you received that blood kit, what condition
21 was it in? Was it sealed?"

22 Please read your answer.

23 A. "It was. It indicates here the box itself was
24 properly sealed and the vial inside the box was also
25 sealed."

1 Q. The vial inside the box, you say, is what?

2 A. A gray-top tube. And, again, it's clear that
3 I'm reading from the worksheet within --

4 Q. Okay.

5 A. -- the record.

6 Q. Well, let's take it that you're reading from
7 it. Did you say, Well, it says a vial, but it's really
8 not a vial; it's a gray-top tube? Correct?

9 A. I did not say that.

10 Q. Okay. Well, let me ask you this. On Line 11,
11 the prosecutor asks you if you can take the vial back
12 out. So she's asking you to take the vial out of the
13 box. Did you take it out of the box?

14 A. Mr. Jones did ask me, and the answer on Line 12
15 is the "witness complies."

16 Q. Okay. Well, if you didn't know what a vial
17 was, then how'd you know what to take out of a box?

18 A. I don't know that I've ever said I don't know
19 what a vial is.

20 Q. What is a vial?

21 A. Again, it depends on what you're referring to
22 specifically and who's --

23 Q. Okay. What did you take out of the box when
24 she said -- or he said take the vial out?

25 A. I would have taken the gray-top tube out of the

1 box.

2 Q. So you were ordered to take out -- or asked to
3 take out a vial and you knew that meant a gray-top tube.
4 Right?

5 A. I did with the evidence in front of me. That's
6 correct.

7 Q. Okay. Let's go to Page 51.

8 A. Same exhibit?

9 Q. Um-hum.

10 Now, you seem to be kind of wanting to
11 wiggle out a little bit -- I'll use that term -- and
12 say, Oh, well, I wasn't calling it a vial; I was just
13 reading from the report.

14 All right. Is that what you're trying to
15 say?

16 A. No. I'm trying to say that it appears I was
17 reading from a document when I was answering those
18 questions and, as you've established already today, that
19 that document has that language on there.

20 Q. Okay. Have you ever called a gray-top tube a
21 vial?

22 A. Apparently, I have.

23 Q. Okay. Page 51, you answer a question.

24 "Correct. It's just that we received vials of blood
25 that have varying amounts of blood in them and then we

1 test them all and are able to get a result."

2 Mr. Youngkin, what is the only object that
3 contains blood that you receive?

4 A. Gray-top tubes, typically.

5 Q. What did you call a gray-top tube?

6 A. The response recorded here is, "Correct. It's
7 just that we receive vials of blood..."

8 Q. Now, when you say "recorded here" -- did you
9 not say that? Are you saying that this court reporter
10 just made something up and decided that, you know, you
11 said "vial"? Is that what you're saying?

12 A. Not necessarily. I have noticed in reading
13 through transcripts that they do tend to contain some
14 errors.

15 Q. Well, unfortunately for you, it's a certified
16 transcript which means you said it. All right? So what
17 did you call a gray-top tube?

18 A. It appears that I referred to vials of blood
19 that we received.

20 Q. What did you call a gray-top tube?

21 A. A vial of blood.

22 Q. Okay. So you called a gray-top tube a vial.
23 Correct?

24 A. Yes.

25 Q. All right. Page 99, same exhibit. You were

1 asked if the Quality Action Plan was a concern to
2 switching of vials. And your answer was?

3 A. Well, the question ends with the word "correct"
4 and so that's the beginning of my answer. And then I go
5 on to say, "The gray-top tubes were found to be out of
6 numerical order."

7 Q. So you say, Correct, the gray-top tubes are out
8 of order. Right?

9 A. That was part of the answer. That's correct.

10 Q. Okay. So when you were asked about a switching
11 of vials, you said vials/gray-top tubes, pretty much the
12 same thing. Is that correct?

13 A. I was asked about the Quality Action Plan, and
14 I did respond about gray-top tubes.

15 Q. You were asked about vials and you responded
16 gray-top tube. Correct?

17 A. They were numerous words in the question. One
18 of them is "vials." That's correct.

19 (Exhibit 5 premarked and offered.)

20 MR. BURLESON: Okay. Defense Exhibit
21 No. 5, tendering official transcript to the State.

22 Thank you, sir.

23 Q. (BY MR. BURLESON) Page 72, Mr. Youngkin, Lines
24 3 through 5. Okay.

25 "Question: Why don't you test the other

1 one?" What are they talking about, "test the other
2 one"?

3 A. This is Line 3?

4 Q. Um-hum.

5 A. You'd have to give me a second to see what the
6 context is.

7 Q. Mr. Youngkin, you have a blood kit that
8 contains two things of blood. Why do you only test one
9 of those, Mr. Youngkin?

10 A. Just leave the other one untested.

11 Q. Right. So you can -- they can be retested.
12 Correct?

13 A. Correct. My answer in Line 4 of Page 72:
14 "Just that there would be an unopened vial -- or tube of
15 blood for any subsequent testing."

16 Q. So you called a gray-top tube a what?

17 A. I called it a tube of blood and an unopened
18 vial.

19 Q. Okay. So called it an unopened vial. Correct?

20 A. Correct.

21 Q. Okay. All right. Now, Mr. Youngkin, have you
22 ever testified that the 2013 mix-up was the same thing
23 to you as mixing up vials?

24 A. It may depend on the context of the question.

25 Q. Okay. Well, you testified in Ndirangu, which

1 is State's Exhibit -- or I'm sorry -- Defense Exhibit 8,
2 that there's a big different between gray-top tubes and
3 vials. Do you recall that?

4 A. I recall someone asked me a question if there
5 was a big difference and I answered that they are two
6 different things.

7 Q. Okay. Have you ever testified under oath
8 differently, that they were the same thing to you?

9 A. Gray-top tubes and vials?

10 Q. Um-hum.

11 A. Again, not that I can recall, but I've
12 testified many times.

13 Q. If I say to you "the mix-up of 2013," what does
14 that mean to you?

15 A. The two gray-top tubes were found to be out of
16 order.

17 Q. Okay. And if I say "switching of vials," what
18 would that mean to you?

19 A. Again, it would depend on the context. It
20 could refer to the same incident. It could also refer
21 to headspace vials.

22 Q. Okay. Defense Exhibit No. 8, Mr. Young- --

23 A. Do I have this?

24 Q. No. I'm sorry.

25 Defense Exhibit No. 12, Mr. Youngkin,

1 that's the Brady disclosure from Denton County.

2 A. Okay. Just give me a second.

3 Q. I want you to go to Page 8, Number 4. There it
4 is, Page 8, Number 4. Let me -- let me know when you're
5 ready.

6 A. I'm ready.

7 Q. You were asked about by the prosecutor,
8 Ms. Wood: "I want to talk to you about what defense was
9 asking you about in 2013. You said you didn't know how
10 the mix-up happened, correct?"

11 "The mix-up," what was she referring to?

12 A. The 2013 mix-up would be the two gray-top tubes
13 being out of order.

14 Q. Okay. And you said, "That's correct." You
15 didn't know how it happened. Right?

16 A. Correct.

17 Q. Okay. "Question: Are you not sure how the
18 mix-up happened, or are you not sure how the vials got
19 placed in the wrong order?"

20 So she asked you two things. She asked
21 you, Did you know how the mix-up happened or how the
22 vials got put in the wrong order. Is that correct?

23 A. She did ask me how the mix-up happened and
24 how --

25 Q. And your response was --

1 A. -- got placed in the wrong order.

2 Q. -- To me, both of those are kind of the same
3 thing. Is that correct?

4 A. Correct. And this specific answer was in
5 reference to the phrases "mixed up" and "being in the
6 wrong order."

7 Q. What being in the wrong order?

8 A. Whatever she's asking about, the incident --

9 Q. Which is what?

10 A. -- the incident in 2013.

11 Q. No, no, no. What does she ask was in the wrong
12 order?

13 A. She uses the word "vials" --

14 Q. Yeah.

15 A. -- but it's clear the context that we're
16 talking about the incident in 2013.

17 Q. No, it's clear from the context she said, Are
18 you sure how the mix-up happened or how the vials got
19 placed in the wrong order. That's pretty -- pretty
20 specific. And you said they're kind of the same thing.
21 Correct?

22 A. Well, the answer specifically is, "To me, both
23 of those things are kind of the same."

24 Q. Okay.

25 A. "They were the only two out of the 40 that were

1 out of order. So, again, no root cause was determined."

2 Q. So you testified once, under oath, in Collin
3 County that a vial and a gray-top tube is totally
4 different and then you testified in Denton County that
5 the mix-up of 2013, which was a mix-up of gray-top tubes
6 and vials being out of the wrong order were the same
7 thing. Is that correct?

8 A. I don't think that's what she was -- what I was
9 referring to in my answer.

10 Q. Okay. Mr. Youngkin, we've went through about
11 eight times today: You've never mixed up a vial. Is
12 that correct?

13 A. Again, it's going to depend on what you're
14 referring to specifically when you use the word "vial."

15 Q. Okay. Let me ask you this. Isn't it true that
16 the only way you get the wrong result on the wrong
17 person is if the headspace vial is mixed up?

18 A. It's not.

19 Q. Have you ever testified that the only way to
20 get the wrong result on the wrong person is the
21 headspace vial is mixed up?

22 A. Not that I can recall. But, again, I've
23 testified many times.

24 Q. Do you remember testifying October 3rd, here in
25 Collin County?

1 A. This would be in Ndirangu?

2 Q. Yeah.

3 A. I do.

4 Q. Exhibit 8.

5 Okay. In Exhibit 8 you were asked --
6 Page 28, Lines 21 through 13. 28, Lines 21 through 13.

7 "Okay. So the vial is what the result
8 comes from; right?"

9 And your answer is, "It is."

10 A. Correct. That was the question and the answer.

11 Q. Okay. Page 34, 9 through 15: So just to flesh
12 this out, you tested blood on May the 11th, 2013, and
13 sent it Anna PD. On May 16th, 2013, Anna PD calls and
14 said your blood appears to be incorrect. At about the
15 same time you notice a gray-top tube switch, which means
16 the vials in the gas chromatograph were testing the
17 wrong people's blood in the wrong slot. Correct?

18 A. Which page are we on?

19 Q. Page 34, Lines 9 through 15.

20 A. Okay. Sorry.

21 Q. Let me repeat.

22 So just to flesh this out, you tested blood
23 on or about May the 11th, 2013, and sent to it Anna PD.
24 On May 16, 2013, Anna PD calls you and says your blood
25 appears to be incorrect. At about that same time you

1 notice a gray-top tube switch, which means the vials in
2 the gas chromatograph were testing the wrong people of
3 blood in the wrong slot. Correct?

4 What was your answer?

5 A. "That's what was determined upon the reanalysis
6 of that evidence."

7 Q. Okay. So the vials were in the wrong position.
8 Correct?

9 A. The blood was in the wrong slots. That's what
10 I was answering. Since the gray-top tubes were out of
11 order, that blood got put into the headspace vial for a
12 different laboratory case number.

13 Q. Okay, Mr. Youngkin. Would you please turn
14 around?

15 A. Sure. I'm just trying to decide which way I
16 wanted to turn.

17 Q. All right. GAR-568 and GAR-569.

18 GAR-569 -- or 568 was supposed to be in,
19 let's say, number 2. Correct?

20 A. According to the diagram, that's correct.

21 Q. Okay. I'm going to call the blood X on this
22 and I'm going to call blood Y on this (indicating).
23 Where was blood X supposed to be?

24 A. In position number 2.

25 Q. It's supposed to be here (indicating).

1 Correct? And Y was supposed to be here. Correct?

2 A. Correct.

3 Q. That's not what happened. Right?

4 A. Correct.

5 Q. Okay. You said you got the gray-top tubes out
6 of order. Right?

7 A. That is what I said.

8 Q. Okay. So basically you had GAR-569 here with
9 blood X and GAR-568 -- I'm sorry -- blood Y, 568, and 3
10 (indicating). Correct?

11 A. Correct. According to the diagram.

12 Q. Okay. Where was X blood supposed to be?

13 A. In position 2.

14 Q. Where did you have it?

15 A. In position 3.

16 Q. Where was Y blood supposed to be?

17 A. Position 3.

18 Q. Where'd you have it?

19 A. In position 2.

20 Q. Okay. So you had the wrong blood in the wrong
21 vial. Correct?

22 A. Correct. And that X was supposed to be --
23 you've got me all confused now. Correct. Because the
24 gray-top tubes are out of order. That's correct.

25 Q. So you had the wrong blood in the wrong vial?

1 A. Headspace vial, that's correct.

2 Q. So the vials were switched, Mr. Youngkin.

3 A. No, the headspace vials are in the same order.

4 Q. Hang on. The headspace vials are not marked,
5 nor do they have any substance in them when you line
6 them up. Correct?

7 A. Not initially. That's correct.

8 Q. Okay. So you can mark a headspace vial Apple,
9 Coco Crisp, Giant. It doesn't matter. As long as the
10 blood that's supposed to go in slot 2 is in the
11 headspace vial in slot 2, you will always get an
12 accurate result. Correct?

13 A. Well, accuracy is going depend on a number of
14 things. As far as the result --

15 Q. You will always get the right result for the
16 right person?

17 A. As long as the gray-top tube with that
18 laboratory case number is in its right position.

19 Q. No, no, no, no, no. GAR-568 could be in slot
20 40, but blood X, as long as blood X is in slot 1, you
21 get the right result for the right person (indicating).
22 Correct?

23 A. I'm not following you.

24 Q. It doesn't matter where the gray-top tube is.
25 It matters where the blood goes.

1 A. It does matter where the gray-top tube is.

2 Q. No, Mr. Youngkin, it doesn't.

3 A. I can show you.

4 Q. Show me.

5 A. The rack that I brought is labeled position 17
6 through 24, just for demonstrative purposes, and when we
7 perform this analysis, the gray-top tubes are removed
8 from the kits and placed in their respective location.

9 So let's just assume this is the gray-top
10 tube that goes in position number 18. And then we
11 have -- these other two rows are filled up with
12 headspace vials (indicating), and so we'll take these
13 two here.

14 And so this is the setup. And so I would
15 take this gray-top tube. I open this gray-top tube. I
16 remove the blood --

17 Q. Just get to your point.

18 A. I'm trying to.

19 Q. You said that the gray-top tube had to be in
20 the right order for you to get the right result.

21 Correct?

22 A. Correct. I'm saying that this gray-top tube
23 that's in line with these two headspace vials, this
24 blood gets placed in these two vials.

25 Q. Um-hum. Yeah.

1 A. That's what I'm saying.

2 Q. Okay. Now, Mr. Youngkin, let's say that
3 Mr. Biederman works for you or with you.

4 A. Okay.

5 Q. And you've already tested these (indicating).

6 A. Okay.

7 Q. And you've already got results. And you go to
8 lunch and he takes the gray-top tube and he puts it from
9 line 18 to 23. Did you get the right result for the
10 right person?

11 A. I did.

12 Q. Okay. So it does not matter where the gray-top
13 tube is.

14 A. Not in -- not in that circumstance. That's
15 correct.

16 Q. Okay, Mr. Youngkin. And by the way, we're
17 about to get to this. You've already told me that the
18 only way that you get a wrong result is if the wrong
19 blood's in the headspace vial or a headspace vial is in
20 the right order. Do you not remember testifying to
21 that?

22 A. I would have to look. I don't remember any of
23 my testimony --

24 Q. Okay.

25 A. -- independently.

1 Q. Okay, Mr. Youngkin. It's hard wiggling. It's
2 hard wiggling, I know it. Let's break this down as easy
3 as we can. I'm going to have GAR-121 and GAR-122.
4 Okay? They're supposed to go in 2 and 3 (indicating).

5 GAR-121 has Y blood. GAR-122 has X blood.
6 Does that make sense to you?

7 A. It does.

8 Q. Are you able to follow that?

9 A. I'm trying to. You switched the letters now
10 from the previous example.

11 Q. I know.

12 A. Okay.

13 Q. I'm starting over.

14 A. Okay.

15 Q. Okay. GAR-121 has Y blood. GAR-122 has X
16 blood. Do you get it?

17 A. I see it on the board, yes, sir.

18 Q. Okay. You program into your machine over here:
19 Slot 2, GAR-121, Y blood. GAR-122, X blood.

20 Okay. Now, you go to line them up,
21 Mr. Youngkin. I put the gray-top tubes in slots 39 and
22 40, but I put blood Y in slot 2 and blood X in slot 3.
23 Gray-top tube's out of order. Right?

24 A. Is this a hypothetical?

25 Q. No, it's not hypothetical. They're supposed to

1 be in 2 and 3. You put in them 39 and 40. But you take
2 the blood and you put the blood in the right space. Do
3 you get it?

4 A. It has to be a hypothetical because that -- I
5 wouldn't do that.

6 Q. Well, obviously you did it in May of 2013.
7 Correct?

8 A. No. The gray-top tubes were in the wrong
9 place. The headspace vials were in the correct place.

10 Q. I know you don't want to answer my question.
11 Follow my question.

12 A. I'm trying to.

13 Q. If these are in 39 and 40 and they're supposed
14 to be in 2 and 3, but you put the right blood in 2 and
15 the right blood in 3, would you get the right result for
16 the right person; yes or no?

17 A. No, because the Garland laboratory case number
18 is associated with position number 39.

19 Q. Mr. Youngkin, you tell it that you're in
20 slot 2, but you switch them and you move them from slot
21 2 down to slot 39 and 40. But you've got the right
22 blood in slot 2 and slot 3. When you test, you're going
23 to get the right result for GAR-121, Y, are you not?

24 A. So you're saying that GAR-121 is supposed to be
25 in location 2?

1 Q. Yes.

2 A. That's where it's supposed to be?

3 Q. Yes.

4 A. Well, why isn't it there?

5 Q. Because you switched it, like you did in 2013.

6 Here's my point. It doesn't matter where
7 this is. As long as the blood's in the right place, you
8 get the right result. Correct?

9 A. Well, in that scenario, since the blood is in
10 the right headspace vial, that is correct.

11 Q. Correct.

12 A. But that's --

13 Q. Correct. Hang on. Correct.

14 All right. So you have a scenario where
15 gray-top tubes are not in the right order but you get a
16 correct result. Correct.

17 A. They're in numerical order. They're in the
18 wrong location.

19 Q. They're in the wrong location.

20 All right. Do me a favor. Y is supposed
21 to be in 2. X is supposed to be in 3. I put X in 2.
22 Y in 3 (indicating).

23 How would you ever get a right result?

24 A. How would I get a right result?

25 Q. You never would, right?

1 A. Not if X is supposed to go with position
2 number 3.

3 Q. Right. So the only way you would ever get a
4 wrong result is if the blood in the headspace vials was
5 in the wrong location or the headspace vial with the
6 right blood was in the wrong location. Correct?

7 A. As related to the testing, that's correct.

8 Q. But you could get numerous right results if you
9 just had the gray-top tubes out of order. Correct?

10 A. "Numerous right results"?

11 Q. Yeah.

12 A. Not if they're out of order in this process
13 that we use.

14 Q. They can all be out of order. As long as
15 whatever location you associate the headspace vial, as
16 long as that blood is in the right headspace vial and
17 the right location, it doesn't matter where these are
18 (indicating). Right?

19 A. It does. Because the location of the gray-top
20 tube determines what blood goes in these particular
21 headspace vials.

22 Q. I get what you're saying, Mr. Youngkin.

23 A. Okay.

24 Q. Do you write a number on this (indicating)?

25 A. I do.

1 Q. What do you write?

2 A. I write two numbers, the position and the
3 laboratory case number.

4 Q. Okay. So you take the gray-top tube; you write
5 the same laboratory case number. In this situation it's
6 assigned to slot 18. Correct?

7 A. The front vial would be labeled with 18. This
8 vial would be labeled with 18 plus 44.

9 Q. Okay. I take this out.

10 A. Um-hum.

11 Q. As long as I put the blood that's in this, in
12 this -- in these headspace containers, you're going to
13 get the right result. Right?

14 A. Is that tube still located in this location?

15 Q. I just took it out and I'm pipetting it.

16 A. Okay. Correct.

17 Q. All right. Am I still getting the right
18 result?

19 A. You would, but there would be a gray-top tube
20 in that location at that point in time.

21 Q. No, I just switched them.

22 A. Right, but this is not a complete setup.

23 Q. Okay. I can switch these all day long,
24 Mr. Youngkin, as long as these are correct (indicating).
25 Right?

1 A. Correct. But once you -- there's no place for
2 you to put this anywhere else. These are all full with
3 other gray-top tubes.

4 Q. Oh. So you can't lift them out of the rack?

5 A. You can't place in it a different location when
6 you return it.

7 Q. You can't take two out, like this,
8 (indicating)?

9 A. Well, you would require two hands to do that.

10 Q. Do you have two hands?

11 A. I do.

12 Q. All right. And obviously you did it because
13 you did it in 2013. Right?

14 A. Like I said in the Quality Action Plan, there
15 was no root cause determined for why the gray-top tubes
16 were found to be out of order.

17 Q. Mr. Youngkin, have you ever testified under
18 oath that you switched vials?

19 A. It's certainly possible that I answered a
20 question when a person used the word "vial" in relation
21 to the incident in 2013.

22 Q. Mr. Youngkin, have you testified under oath
23 that you switched vials in 2013?

24 A. I am not able to recall all of my testimony.

25 Q. Were you able to you recall it on October 12th?

1 A. I was probably presented with a transcript on
2 October 12th.

3 Q. If you had testified to switching vials in over
4 a hundred trials, would you recall that?

5 A. Potentially.

6 Q. Have you testified to switching vials in over a
7 hundred trials?

8 A. Again, not that I'm aware of, but I don't
9 remember much of my testimony.

10 Q. Page -- Defense Exhibit 6, Page 52.

11 Mr. Youngkin, if you were asked, after
12 2013, if you had ever switched files, what's the only
13 truthful answer you could have given?

14 A. Are we on Page 52?

15 Q. No, no. I'm asking you a question?

16 A. Okay. I'm sorry.

17 Q. If you were asked, after 2013, if you ever
18 switched vials, what's the only truthful answer you
19 could give?

20 A. It's going to depend on the context the word
21 "vial" is used in.

22 Q. If you've ever been -- if you've ever been
23 asked, after 2013, if you switched vials, what was your
24 only answer? Yes --

25 A. Again --

1 Q. Yes or no?

2 A. It's not a yes-or-no question.

3 Q. Are you a lawyer?

4 A. I am not.

5 Q. Do you want me to go get a judge? Do you want
6 to do this in seven different judges'...

7 A. I do not.

8 Q. Okay. Answer my question. If, after 2013, if
9 you've been asked if you switched vials, is the answer
10 yes or no?

11 A. The answer has been yes and no. It depends on
12 the context of the question.

13 Q. What do you mean by "context of the question"?

14 A. It depends on what is being discussed at that
15 point in the testimony.

16 Q. Give me an example.

17 A. If we're talking about headspace vials, the
18 answer would be no, because it has not happened. If the
19 person -- if we're talking about the incident in 2013 or
20 gray-top tubes, the answer would be yes, because that
21 has happened.

22 Q. So wait a minute. Now you're admitting that
23 you have switched a vial?

24 A. I'm admitting that I have answered questions
25 with a person --

1 Q. That wasn't my question.

2 Have you switched a vial since 2013; yes or
3 no?

4 A. It depends on what you mean by the word "vial."

5 Q. Okay. Give me two examples.

6 A. I just did.

7 Q. Have you switched a headspace vial?

8 A. Not that I'm aware of.

9 Q. Have you switched a vial?

10 A. Not that I'm -- see, you're doing it again.

11 Q. I'm doing what?

12 A. It depends on what you mean by the word "vial."

13 Q. There are seven attorneys in here and I think
14 that it's not me doing it. I think they all know who's
15 doing what.

16 When you say "it depends on the meaning of
17 the word 'vial,'" give me an example because I'm not
18 letting you wiggle out of this. I swear to you, Chris
19 Youngkin, I will yank you in front of any judge --

20 MR. WIRSKYE: Counsel -- Counsel --

21 Q. (BY MR. BURLESON) -- in front of here.

22 MR. WIRSKYE: -- Counsel, let's keep this
23 civil.

24 Q. (BY MR. BURLESON) You answer my question.

25 MR. WIRSKYE: Keep it civil.

1 A. I believe that I have.

2 Q. (BY MR. BURLESON) I don't think you have.

3 A. Well, could you ask it again, please?

4 Q. Since 2013, if you were ever asked if you
5 switched vials, what's your answer?

6 A. I've answered that question both yes and no.

7 Q. What's the only truthful answer; yes or no?

8 A. It depends on the context of the word "vial."

9 Q. Page 52, Mr. Youngkin, Line 9.

10 Context of a vial is, have you ever
11 switched a vial where you gave a person a .15 that had
12 zero blood sample. What would your answer be; yes or
13 no?

14 A. I'm sorry. I was reading.

15 Q. Here's the context of the question.

16 A. Okay.

17 Q. Have you ever switched a vial before in which
18 you gave a person that had no alcohol in their system a
19 .15?

20 A. Okay. I'm not able to locate that in the
21 transcript.

22 Q. I'm asking you a question.

23 A. Well, you're telling me what context is and I
24 would like to see it.

25 Q. I'm asking you the question.

1 A. Okay.

2 Q. My question is, have you ever switched a vial
3 on someone and gave them a .15 blood alcohol score when
4 they had zero in their system; yes or no?

5 A. As long as you mean by a gray-top tube when you
6 use the word "vial," the answer is yes.

7 Q. What if I didn't use "gray-top tube"? I just
8 used "vial"?

9 A. It would depend on the context of the question.

10 Q. Okay. Well, let's find out. 52, Line 9.

11 A. 52, Line 9.

12 Q. You ready?

13 A. I am.

14 Q. "First and foremost, without equivocation,
15 without conjecture, without hypothesis, you switched
16 vials on a person, correct?"

17 What was your answer?

18 A. On line 12: "I did."

19 Q. "And when you did that, you caused a person who
20 had no alcohol in their blood to receive a blood score
21 of .15; is that correct?"

22 A. The answer, line 16: "Correct, temporarily."

23 Q. Hold up. Let's talk about context,

24 Mr. Youngkin.

25 A. Okay.

1 Q. When's the only time that you've given a person
2 who had zero alcohol in their blood a .15 blood score?

3 A. The incident in 2013.

4 Q. Okay. So, context, when I asked you if you
5 switched vials, what am I referring to?

6 A. The incident in 2013.

7 Q. Okay. Good. We can get on the same page.

8 So when I asked you if you switched vials
9 in 2013, you knew what I was talking about. Correct?

10 A. I did, from the context of the question.

11 Q. And what was your answer?

12 A. That I did, Line 12.

13 Q. Okay. So you've testified here seven times
14 you've never switched vials and then you testified here
15 that you did switch vials. Do you know what an
16 inconsistent statement is?

17 A. I do not. I'm not a lawyer.

18 Q. If you got two inconsistent statements, one of
19 which that cannot be true. So either you did switch
20 vials and admitted to it or you did not.

21 MR. WIRSKYE: Counsel, on behalf of five of
22 the lawyers here, I think we're beating a dead horse.
23 We've got the point.

24 MR. DOBIYANSKI: Can we go off the record?

25 MR. BURLESON: Yeah, go off the record.

1 THE VIDEOGRAPHER: Off the record,

2 11:47 a.m.

3 (Off the record: 11:47 to 11:49 a.m.)

4 THE VIDEOGRAPHER: Back on the record,

5 11:49 a.m.

6 MR. BURLESON: Are you ready, sir?

7 THE VIDEOGRAPHER: (Affirms.)

8 MR. BURLESON: Ma'am?

9 THE REPORTER: (Affirms.)

10 MR. BURLESON: Okay.

11 Q. (BY MR. BURLESON) All right. So,

12 Mr. Youngkin, on September 27th, 2016, you admitted to
13 switching vials and you admitted that that was the 2013
14 incident. Correct?

15 A. Which page are we on?

16 Q. 52.

17 A. You're looking at Lines 9 through and 12?

18 Q. Yes.

19 A. Yes. The answer on 12 is "I did."

20 Q. And you're referring to the 2013 in Lines 13
21 through 15. Correct?

22 A. I am. That line of questioning began on the
23 previous page.

24 Q. Okay. Page 57, you were asked, "Since 2013, in
25 over 160 trials, how many times have you told a defense

1 attorney that you switched vials in 2013?"

2 What was your answer?

3 A. The answer was, "Probably approaching a hundred
4 times now."

5 Q. Okay. So not only did you testify in this case
6 that you switched vials, you testified that you've
7 testified over a hundred times about switching vials in
8 2013. Correct?

9 A. I said, "Probably approaching a hundred times
10 now."

11 Q. Okay.

12 A. So I don't have an accurate way to --

13 Q. And then I said to you --

14 A. -- answer that question.

15 Q. -- I said to you, "I'm sorry?"

16 And you said, "Approaching a hundred times
17 I've testified about this incident." Is that correct?

18 A. That was the answer, yes, sir.

19 Q. Now I want to talk about Brady material. What
20 is Brady material?

21 A. My general understanding of Brady material is
22 information possessed by the State that needs to be
23 provided to the defense that may be viewed in a
24 favorable light.

25 Q. You've been trained on it. Correct?

1 A. Some, about the concept of Brady material.

2 Q. Okay. Defense Exhibit No. 8, Lines -- Page 19,
3 Lines 9 through 20. Question --

4 A. I'm not there.

5 Q. 8. 19, Lines 9 through 20.

6 A. Give me a second. Page 19?

7 Q. Um-hum.

8 A. Okay. I'm there. Thank you.

9 Q. "Are you aware -- have you been trained in your
10 obligations as a state actor in Brady versus Maryland?

11 "Answer: I have."

12 "And do you know what that obligation is?"

13 Your answer is, "To provide the information
14 to the State so it can then be provided to the
15 defendant, any information that could be considered -- I
16 don't know what the word is -- "beneficial."

17 And you say -- and I said, "Sure.

18 Exculpatory. Beneficial."

19 And you said, Correct. Exculpatory.

20 Right?

21 A. Correct. That's my understanding.

22 Q. So you knew what it was. Right?

23 A. Yeah, to the extent what I answered here.

24 Q. So let's go back to the original 2013. How
25 many times did you self-report to a defense attorney

1 that you had switched gray-top tubes or samples in 2013?

2 A. Just each time that that was requested.

3 Q. How many times did you tell them that you had
4 switched vials?

5 A. In 2015?

6 Q. Since 2013, how many times did you tell the
7 defense attorneys you switched vials?

8 A. It would depend on how many times I was asked
9 that particular question in context.

10 Q. The only time we have in front of us is when I
11 asked you about it in Hagmeier. Correct?

12 A. I have no way of remembering everything that
13 I've looked at today.

14 Q. Okay. But you were asked by Deandra Grant,
15 twice, back in 2015, and Mr. Stamper, twice, once in
16 2015 and 2016, if you had switched vials, and the answer
17 was different than what you gave me. Correct?

18 A. It was in that -- those two instances they were
19 referring to headspace vials.

20 Q. Okay. Now let me ask you this. So you don't
21 tell a defense attorney that you switched samples.
22 Correct?

23 A. I did at some point, yes, sir.

24 Q. You don't volunteer that information. Correct?

25 A. What do you mean by "volunteer"?

1 Q. I've asked you before, Do you volunteer that
2 information? And you said, No. You only answer the
3 questions that are asked. Do you remember that?

4 A. I do.

5 Q. Okay.

6 A. Well, potentially.

7 Q. So basically what you've decided to do is
8 you've tried to use language on the 2013 situation. So
9 if I ask you if you switched gray-top tubes, you'll say
10 "yes." Right?

11 A. I would, yes, sir.

12 Q. If I ask you if you switched samples, you may
13 or may not say "yes," depending on the context of the
14 question. Correct?

15 A. Correct. That's absolutely true.

16 Q. And if I ask you if you switched vials,
17 sometimes you say "no," sometimes you say "yes."
18 Correct?

19 A. Again, depending on the context, that's
20 correct.

21 Q. Okay. Now, you realize that there's been two
22 attorneys that I know of in three trials that had this
23 Quality Action Plan, one given by Dallas County and then
24 Denton County gave us discovery.

25 So just based on the Quality Action Plan

1 alone, Mr. Stamper got two not-guilty verdicts by using
2 this when a person had a blood score, and I got a
3 not-guilty verdict when a person had a blood score. So
4 you would agree with me that the Quality Action Plan
5 alone is pretty powerful information. Correct?

6 A. If it is true, I don't know that those
7 not-guilties were based solely on that information.

8 Q. Did you enjoy my cross-examining of you in the
9 Hagmeier trial?

10 A. Which one was that?

11 Q. The one in Dallas.

12 A. On the 27th?

13 Q. Yeah.

14 A. Well, it started off humorously enough.

15 Q. Okay. So do you think if defense attorneys
16 knew that you may have given inconsistent statements,
17 that would be even more powerful information that could
18 be used to impeach you?

19 A. I have no way of answering that question.

20 Q. So, finally, I want to know this. What
21 District Attorneys' Offices did you tell about this 2013
22 switch?

23 A. Since 2013?

24 Q. In 2013, what District Attorneys' Office of the
25 seven that you worked for did you tell about switching

1 of gray-top tubes, samples, or vials?

2 A. There were -- two affected counties would have
3 been notified by the release of the new reports.

4 Q. Any other?

5 A. You said in 2013?

6 Q. Since 2013.

7 A. Just any county that has requested information,
8 that was one of the requests, or if a defense attorney
9 had requested that information and a District Attorney's
10 Office was copied.

11 Q. So the answer is to my question is, you haven't
12 told any District Attorney's Office. Correct?

13 A. Well, not necessarily. I mean, me, personally,
14 having talked to someone about that?

15 Q. I want an official notification. Who did you
16 give official notification to at a District Attorney's
17 Office of let's just say the Quality Action Plan? Who'd
18 you give that to?

19 A. I didn't provide it to anyone. It was not my
20 responsibility.

21 Q. Okay. Defense Exhibit No. 8, Ndirangu,
22 Page 36, Lines 24 through 25; Page 37, Lines 1 through
23 3. You were asked, "How many District Attorney's
24 Offices, of the seven that you testified to, did you
25 turn over the Brady material in 2013?"

1 Your answer was, "None, that I'm aware of."

2 That's correct. Right?

3 A. Which line are we on?

4 Q. Lines 24 through 25 on Page 36.

5 A. Oh, sorry.

6 Q. Lines 1 through 13 on 37.

7 A. Correct, that was the answer, Line 3, Page 37.

8 Q. And that's because you answered, "No one would
9 have been asking for it in 2013." Do you see that
10 answer?

11 A. Line 6, Page 37, that's correct.

12 Q. And my question was, "Because no one would have
13 known about it in 2013. Correct?"

14 And you said, "That's very possible."
15 Right?

16 A. It was the answer, Line 10, correct.

17 Q. And then the question was, "Because you didn't
18 tell anyone in 2013." Is that correct?

19 A. "Correct" was the answer, Line 13.

20 Q. What else did you answer?

21 A. "It was not required."

22 Q. So not only did you not tell the DA's office,
23 you decided upon yourself that it was not required of
24 you to tell the DA's office. Is that correct?

25 A. My understanding, that's correct.

1 Q. And you only answered defense attorneys'
2 questions if they specifically asked you. Right?

3 A. That is part of my training regarding to court
4 testimony. That's one of the basic things, answer the
5 question that's asked.

6 Q. Let me ask you this.

7 MR. BURLESON: And, Mr. Wirskye, this will
8 be my final question, I promise.

9 Q. (BY MR. BURLESON) Let's say I was a defense
10 attorney that didn't know anything about this, and I
11 asked you, Mr. Youngkin, Is it possible that you
12 switched up the blood here and got a wrong result? What
13 would your testimony be?

14 A. When was the testing conducted?

15 Q. Would you testify that there are protocols
16 against switching?

17 A. I would.

18 Q. So you would tell the jury, the judge, and the
19 defense attorney, It's not possible because we've got
20 protocols. Correct?

21 A. Correct. Since this Quality Action Plan in
22 2013, preventative action was taken.

23 Q. And you would not tell that defense attorney,
24 that judge, or that jury about the 2013 incident unless
25 you were specifically asked about it. Correct?

1 A. Correct. If the testing had been done since
2 the incident, then there's no concern about this
3 happening again.

4 MR. BURLESON: Mr. Wirskye.

5 MR. WIRSKYE: Okay. Thank you.

6 FURTHER EXAMINATION

7 BY MR. WIRSKYE:

8 Q. I should probably know this, but what are the
9 seven counties you work in?

10 A. Dallas, Tarrant, Rockwall, Collin, Denton,
11 Cooke, and Grayson. Is that seven?

12 Q. I've got seven. Okay.

13 And as far as -- let me direct your
14 attention to Defense Exhibit No. 20, the Quality Action
15 Plan, and under the Action Plan it has that incorrect
16 date, the 5/21/12.

17 A. Yes, sir.

18 Q. "The affected agencies and county attorneys
19 were notified of the new results." You see that?

20 A. I do.

21 Q. I think you mentioned earlier this morning you
22 may have brought some documents that would shed some
23 light on what that notification consisted of, or did I
24 mishear that?

25 A. I certainly could. Because if you'll turn to

1 the third page of that exhibit, and the fourth page,
2 those are the amended reports and an issue date for
3 those reports is contained on the top.

4 Q. Okay. And James Nichols, is he your lab
5 manager there at Garland?

6 A. He is.

7 Q. And I've had some phone calls with him in the
8 last week or so, because I was concerned about this
9 language, and let me tell you what he told me and run it
10 past you --

11 A. Okay.

12 Q. -- to see if it sounds reasonable.

13 He said, As far as the affected agencies,
14 the lab reports initially, the incorrect lab reports
15 would have gone out to Johnson County DPS and back to
16 Anna PD. Is that -- that's a yes or no.

17 A. It is.

18 Q. Okay. And also there is a -- I guess an e-mail
19 account here at the Collin County DA's office where a
20 copy of that initial incorrect lab report would have
21 gone.

22 A. That's correct.

23 Q. Okay.

24 A. We would have to look specifically at those
25 other documents.

1 Q. That's the way it should have worked?

2 A. It is.

3 Q. Right.

4 A. And each request has e-mail addresses
5 associated with it and so whichever ones are in the
6 information system, that's where the report goes.

7 Q. And, of course, here at the DA's office, we
8 never had a case filed with Anna, so we're just getting
9 these reports with no context. Correct?

10 A. Correct. And if an agency is in more than one
11 county, historically you've gotten reports that --

12 Q. And then --

13 A. -- have no context.

14 Q. -- the amended lab reports came out reporting
15 the correct results, and that would have gone, at least
16 as Collin County is concerned, to Anna PD and to the
17 that same e-mail account at the DA's office. Correct?

18 A. That's correct.

19 Q. And he said, as far as he can tell, no one ever
20 picked up the phone, told us about this. No one at the
21 Collin County District Attorney's Office was ever
22 provided a copy of the Quality Action Plan. Is that --
23 is that your understanding as well?

24 A. It's certainly possible that someone in your
25 office has received it at some point in time, but --

1 Q. I'm talking -- I'm talking --

2 A. -- but not then. Correct.

3 Q. -- then.

4 A. Correct.

5 Q. Okay. And what's your understanding of how we
6 would have received it in the meantime, to date?

7 A. If someone had requested it either as an open
8 records request, by subpoena, or by court order and then
9 the DA's office had requested or we copied the DA's
10 office on that provision of documents.

11 Q. And it's your testimony, to the extent anything
12 that happened in this 2013 sample switch or the actions
13 that generated this QAP, the Q-A-P, if that was Brady,
14 that would have been a decision made above your pay
15 grade at the lab. Right?

16 A. It would. And my participation in preparing
17 this document was that I was essentially doing what I
18 was asked to do in preparation for these persons listed
19 and the approval to sign it.

20 Q. And if I heard your testimony correct, you said
21 there's been some remedial measures since this Quality
22 Action Plan that gives y'all some measure of confidence
23 that this type of thing couldn't happen again. Is that
24 right?

25 A. That is right. And there were two types of

1 actions taken. One was corrective and it's in that the
2 evidence was retested and the new reports were released.
3 The other is a preventative action that would prevent it
4 from happening again.

5 Q. And what exactly is the nature of that?

6 A. Just that, as these are prepared, the person
7 doing the testing is careful to compare the laboratory
8 case number, that's written on the gray-top tube, with
9 the laboratory case number written on the headspace
10 vials at the time that the blood is placed into the
11 headspace vials.

12 Q. Okay. We've been here all morning. Is there
13 anything else that you want to add while we're here on
14 the record? Anything that you think was not fully
15 fleshed out or anything that you think is important for
16 this record to reflect with respect to all the questions
17 you got this morning from defense counsel?

18 A. Just that oftentimes parts of the transcript
19 that was read was -- there was no context for it.
20 Certainly moving forward, intend to be more forthcoming
21 with this information so we don't end up in the
22 situation again.

23 Q. Okay. And with respect to the Dallas DA's
24 office and the Denton DA's office here in the room
25 today, the scenario you laid out for Collin County, they

1 would have gotten even less notification, as they
2 wouldn't have gotten the incorrect report followed by
3 the amended report. Correct?

4 A. Correct. Again, if they had been copied on any
5 kind of open records response, then they would be in
6 possession of that information.

7 MR. BURLESON: Anything else? I think
8 that's all I have. Thanks.

9 THE VIDEOGRAPHER: Off the record,
10 12:04 p.m.

11 (Exhibits 11, 13, 14, 15, and 16 premarked
12 and offered.)

13 (Proceedings concluded at 12:04 p.m.)

14 - - - - -

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1 CHANGES AND SIGNATURE

2 WITNESS NAME: CHRIS YOUNGKIN

3 DATE OF DEPOSITION: OCTOBER 24, 2016

4 PAGE LINE	CHANGE	REASON
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5 _____

6 _____

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25 _____

1 I, CHRIS YOUNGKIN, have read the foregoing
 2 deposition and hereby affix my signature that same is
 3 true and correct, except as noted above.

4
5

 CHRIS YOUNGKIN

6

7 THE STATE OF _____)

8 COUNTY OF _____)

9

10 BEFORE ME, _____, on this day
 11 personally appeared CHRIS YOUNGKIN, known to me (or
 12 proved to me under oath or through _____
 13 [description of identity card or other document]) to be
 14 the person whose name is subscribed to the foregoing
 15 instrument and acknowledged to me that he executed the
 16 same for the purposes and consideration therein
 17 expressed.

18 Given under my hand and seal of office this _____
 19 day of _____, 2016.

20

21

 NOTARY PUBLIC IN AND FOR
 22 THE STATE OF _____
 COMMISSION EXPIRES: _____

23

24

25

1 CAUSE NO. 007-84061-2016
 2 THE STATE OF TEXAS) IN THE COUNTY COURT
 3)
 4 VS) AT LAW NO. 7
 5)
 6 ROGER PAUL SARAS) COLLIN COUNTY, TEXAS
 7

* * * * *

8 CAUSE NO. 006-86542-2016
 9 THE STATE OF TEXAS) IN THE COUNTY COURT
 10)
 11 VS) AT LAW NO. 6
 12)
 13 AARON JOHN STEELE) COLLIN COUNTY, TEXAS
 14

15 REPORTER'S CERTIFICATION
 16 ORAL AND VIDEOTAPED DEPOSITION OF
 17 CHRIS YOUNGKIN

18 VOLUME 1

19 OCTOBER 24, 2016

20 I, TERRI L. NELSON, Certified Shorthand Reporter in
 21 and for the State of Texas, hereby certify to the
 22 following:

23 That the witness, CHRIS YOUNGKIN, was duly sworn by
 24 the officer and that the transcript of the oral
 25 deposition is a true record of the testimony given by

1 the witness;

2 That the deposition transcript was submitted on
3 _____ to MR. CHRIS YOUNGKIN, the Witness,
4 for examination, signature, and return to the Deposition
5 Officer by _____ (20 days);

6 That the amount of time used by each party at the
7 deposition is as follows:

8 MR. BILL WIRSKYE - 00 hours, 6 minutes;

9 MR. TROY BURLESON - 2 hours; 27 minutes.

10 That pursuant to information given to the
11 deposition officer at the time said testimony was taken,
12 the following includes counsel for all parties of
13 record:

14 MR. BILL WIRSKYE and MR. BILL DOBIYANSKI,
15 Attorneys for The State of Texas;

16 MR. TROY BURLESON AND MR. HUNTER BIEDERMAN,
17 Attorneys for Defendants.

18 I further certify that I am neither counsel for,
19 related to, nor employed by any of the parties or
20 attorneys in the action in which this proceeding was
21 taken, and further that I am not financially or
22 otherwise interested in the outcome of the action.

23 Further certification requirements pursuant to Rule
24 203 of TRCP will be certified to after they have
25 occurred.

Certified to b

ober, 2016.

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Frisco, Texas 75034

FURTHER CERTIFICATION UNDER RULE 203 TRCP
DEPOSITION OF CHRIS YOUNGKIN

The original deposition was/was not returned to the deposition officer on _____;

If returned, the attached Changes and Signature page contains any changes and the reasons therefor;

If returned, the original deposition was delivered to MR. TROY BURLESON, Custodial Attorney;

That \$ _____ is the deposition officer's charges for preparing the original deposition transcript and any copies of exhibits, charged to the Defendants;

That the deposition was delivered in accordance with Rule 203.3, and that a copy of this certificate was served on all parties shown herein and filed with the Clerk.

Certified to _____, 2016.



6005
31/16

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REPORTER'S RECORD

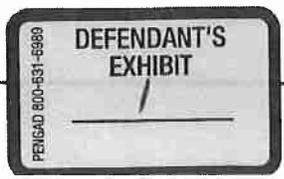
TRIAL COURT CAUSE NO. 004-82209-2013

STATE OF TEXAS) IN THE COUNTY COURT
)
)
VS.) AT LAW NUMBER 4
)
)
[REDACTED]) COLLIN COUNTY, TEXAS

TESTIMONY OF MR. CHRIS YOUNGKIN

On the 18th day of September, 2013, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable David Rippel, Judge presiding, held in McKinney, Collin County, Texas;

Proceedings reported by machine shorthand.



A P P E A R A N C E S

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1 Q. And at what point in the process does the case
2 number get assigned?

3 A. At the point that the evidence is received.

4 Q. And when the evidence is received, where does it
5 go?

6 A. This particular type of evidence would then be
7 placed in the refrigerator for storage.

8 Q. Why does it go in the refrigerator?

9 A. To preserve the amount of alcohol that's present
10 in the sample.

11 Q. And in what condition was the blood in when you
12 received it?

13 A. The box itself is properly sealed, and the vile
14 itself is also sealed. The condition of the blood was
15 normal, and the gray tube was approximately three
16 quarters full.

17 Q. First, I want to talk about the "normal" that you
18 said. What does that mean?

19 A. That it's red and it looks like blood.

20 Q. And you talked about the gray-top tube, why is
21 that significant?

22 A. The gray-top tubes are manufactured to contain
23 two substances. One of those is an anticoagulant just
24 to keep the blood from clotting so it can be tested, and
25 the other is a preservative, sodium chloride.

1 was true. I guess if it was not present and the sample
2 had been contaminated sufficiently, then alcohol could
3 be formed under certain conditions.

4 Q. And did you have any evidence that any -- either
5 the preservative or the anticoagulant was not working?

6 A. No. Like I mentioned, the condition of the
7 sample was normal.

8 Q. And did you analyze the contents of the vile to
9 determine the alcohol content?

10 A. I did.

11 Q. And what scientific process do you use to do
12 that?

13 A. The instrument that we use is called a gas
14 chromatograph, the type of sampling that we employ is
15 called a headspace.

16 Q. And what is that?

17 A. We would take two samples of blood from the
18 gray-top tube and place each of those into a vile that
19 looks like this. We then seal these vials and then
20 label and place it on the instrument in it's respective
21 location. The instrument would then come and retrieve
22 these and sample them one at a time and then provide a
23 sample of the space inside the tube.

24 Q. The space inside the tube, does that contain a
25 gas?

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1 Q. And one day you go to the refrigerator and you have
2 access to it because it's a controlled area, correct?

3 A. I would have to be given access. Someone would
4 have to let me into that area.

5 Q. Right, and you go in there and you get this box and
6 many others?

7 A. Correct.

8 Q. How many?

9 A. I would typically test 40 of these boxes at once.

10 Q. 40 at once?

11 A. Yes, ma'am.

12 Q. All right. When did you go get it out of the
13 refrigerator and pull it out for testing?

14 A. December 11th, 2012.

15 Q. Okay. You pull it out for testing along with 40
16 others, and you have a Batch Run Sheet in front of you that I
17 just saw, correct?

18 A. Yes, ma'am.

19 Q. It looks to me like you conducted analysis and you
20 had a total of 94 of those little glass vials that were going
21 through the analysis process, correct?

22 A. Correct.

23 Q. All right. So let's talk a little bit about what
24 you did. You have these rectangular trays, and how many
25 vials, though, can go in each tray?

1 A. 32.

2 Q. Is it eight and four?

3 A. Yes, ma'am.

4 Q. Eight down, four across?

5 A. That's correct.

6 Q. And then so on, so on, and so on. There are all
7 these little slots, correct?

8 A. Yes, ma'am.

9 Q. And what you do is you take a vial of blood and you
10 make notes about it when you first open it, correct?

11 A. That's correct.

12 Q. Can you tell me how much blood is in that vial if
13 you were just opening it for the first time and taking a look
14 at it?

15 A. It's approximately three-quarters full.

16 Q. Okay. Is that the one you tested or is this the
17 one you tested?

18 A. The one that you're holding is the one that I
19 tested.

20 Q. Can you tell how much blood is in this? And I
21 don't want to mix them up.

22 A. Not with all the labels on the side of it. I would
23 need the aid of something else, a flashlight.

24 Q. It looks full to me. Does it look full -- does it
25 feel full to you? You hold these all the time.

1 A. That's correct.

2 Q. Okay. Here's my question for you, sir. In 10,000
3 times of doing this, how many times have you switched
4 vials?

5 A. On the -- on -- the trays there?

6 Q. (Moving head up and down.)

7 A. Never that I'm aware of.

8 Q. Okay. How do we know if you did? Does anybody in
9 your lab ever come in, take your tray and retest your whole
10 tray and see how you did?

11 A. They do not.

12 Q. Okay. So in all these years that you've been doing
13 this, it's kind of the honor system, would you agree?

14 A. It is. I will point out that since it's being
15 tested twice, there's separate samples being tested at a
16 later time, so if something is out of sequence, then the
17 results from those two tests would not correspond to one
18 another.

19 Q. Well, sir, on your batch -- alcohol batch list or
20 Blood Alcohol Batch List that you've got in front of you, you
21 put them in the same order, though, correct?

22 A. Correct. We would run through the sequence once,
23 and then the sequence is repeated.

24 Q. But they're not all scrambled up with each other.
25 They're run in the same spot the next go-round, correct?

1 Q. All right. Now, let's talk about what happened
2 before you got it.

3 A. Okay.

4 Q. Because I know what you did, you refrigerated it.

5 You are aware that there are circumstances in
6 which blood ethanol levels in a vial can actually decrease
7 over time, correct?

8 A. I am. That has been my experience.

9 Q. Okay. Because once you open it and expose it to
10 air, it can start -- you have a little evaporation, you also
11 have what's called oxidation, right?

12 A. Correct.

13 Q. Before you open it, while it's still sealed, there
14 are also circumstances in which ethanol levels can rise in a
15 blood vial, correct?

16 A. Are we still talking about gray top tubes?

17 Q. Correct.

18 A. Drawn from a living donor?

19 Q. Talking about any gray top tube with blood in it,
20 are there circumstances in the scientific literature where
21 ethanol levels can rise?

22 A. There were; some very specific circumstances.

23 Q. Okay. If you have a sample that was contaminated
24 with certain microorganisms and that sample is exposed to
25 heat, that specimen is exposed to heat, that is a

1 A. Well, to answer your questions in order, it does
2 say that here.

3 No, we wouldn't have any disagreement about
4 that.

5 I have an unused kit, if you'd like to use it
6 for demonstrative purposes.

7 Q. Can I look at yours and this one, because I'm not
8 sure they're going to be the same.

9 It's an old one.

10 A. It's the same as that one.

11 Q. Oh, yeah, they are. Let's use yours.

12 All right. You've got a vial. It's got a
13 powder in it, right?

14 A. Yes, ma'am.

15 Q. And it's got -- if it's manufactured properly, it's
16 got preservative anticoagulant in it, correct?

17 A. That's correct.

18 Q. So if we see the nurse doing this, that means
19 they're mixing the powder through so that the anticoagulant
20 preservatives go all the way through, correct?

21 A. Correct. That would be them following the
22 instructions.

23 Q. All right. Do you see here in the clinical
24 guidelines where Dr. Dubowski specifically references the
25 issue of candida albicans, in that care needs to be taken two

1 doctor runs a test and doesn't agree with it, he can just
2 rerun it, right?

3 A. Potentially.

4 Q. Or redraw. Order the nurse to go upstairs and
5 redraw; that can't be right. Correct?

6 A. Assuming the patient is still present, I don't see
7 why not.

8 Q. Right. I mean, you get test results out of the
9 hospital lab that says the guy is pregnant, obviously
10 something's wrong. You're going to go, hey, nurse, go
11 withdraw that blood, let's test that again. Correct?

12 A. Well, these days that could be possible.

13 Q. All right. Okay. Now you've just got me all
14 confused.

15 Okay. So going on, Mr. Youngkin. Let's talk
16 about the number that you got. You're standing behind that
17 number, right? You think it's right. Correct?

18 A. I do.

19 Q. You don't think you switched vials?

20 A. That's correct.

21 Q. Because you've never done it before in 10,000
22 times?

23 A. Not that I'm aware of.

24 Q. All right. So let's talk about a .20. That is a
25 big number, right?

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1 test?

2 A. I would. I would open these kits one at a time,
3 labeling a gray top tube inside with the respective
4 laboratory case number.

5 Q. And would you mind opening that kit? And for the
6 record, it has been already unsealed by an officer
7 during prior testimony. Now does that look as though
8 it's the vial that was contained therein -- I'm sorry.
9 Inside the box?

10 A. It does.

11 Q. And how would you know that?

12 A. Again, the same laboratory case number is
13 present, as well as my initials.

14 Q. And as you're looking at the vial --

15 MR. JONES: Actually, Your Honor, at this
16 time, I'd move admit State's Exhibit 3 and its contents
17 into evidence.

18 MR. STAMPER: Can I take a look at it?

19 THE COURT: Go ahead.

20 MR. STAMPER: Can I have just a couple of
21 questions for Mr. Youngkin, Your Honor?

22 THE COURT: What's your objection?

23 MR. STAMPER: I don't have one at this time,
24 Your Honor. I'd like to determine whether or not -- I
25 have some questions about the condition when he received

1 it.

2 THE COURT: Overruled. It's admitted.

3 Q. (BY MR. JONES) I'm going to hand you back State's
4 Exhibit 3. Now when you received that blood kit, what
5 condition was it in? Was it sealed?

6 A. It was. It indicates here that the box itself
7 was properly sealed and the vial inside the box was also
8 sealed.

9 Q. Okay, so everything seemed to be properly sealed?

10 A. Yes, sir.

11 Q. Now, can you take the vial back out?

12 A. (Witness complies.)

13 Q. Can you see the blood at this point?

14 A. I can.

15 Q. Does that vial appear to be full?

16 A. Not completely, no, sir.

17 Q. Okay, did it arrive to you full?

18 A. I indicated here that it was approximately
19 one-half full when I tested it.

20 Q. Approximately one-half. How big a vial is that?

21 A. It's a ten milliliter tube.

22 Q. So it was half full?

23 A. Approximately.

24 Q. Five milliliters?

25 A. Correct.

1 for objections.

2 MR. STAMPER: We have no objection.

3 THE COURT: It's admitted.

4 Q. (BY MR. JONES) Now based on your report, Mr.
5 Youngkin, what was the alcohol concentration or blood
6 alcohol concentration of the vial of blood that you
7 received in this case?

8 A. 0.163 grams of alcohol per 100 milliliters of
9 blood.

10 Q. Are you aware of the legal limit in the State of
11 Texas?

12 A. I am.

13 Q. And what is the legal limit?

14 A. 0.08 grams of alcohol.

15 Q. So in this case, it would be approximately two
16 times the legal limit?

17 A. That's correct.

18 Q. Now Mr. Youngkin, are you familiar with the
19 concept of candida albicans?

20 A. I am.

21 Q. Can you tell the Jury what those are?

22 A. It's a type of organism that's capable of
23 producing alcohol.

24 Q. Okay, and are those in the environment around us
25 generally?

1 of Public Safety?

2 A. He is not.

3 Q. How long has he been there?

4 A. Almost as long as I have.

5 Q. So over 15 years?

6 A. Correct.

7 Q. So someone that has been employed at the
8 department for over 15 years checked your work?

9 A. Correct, and since the testing was performed,
10 he's now become a supervisor.

11 Q. So he's been promoted?

12 A. Correct.

13 Q. After you're done testing the sample, what
14 happens?

15 A. The gray top tube would be placed back into the
16 box and then it would be returned to the agency that
17 submitted it.

18 Q. And it would be returned to that agency so
19 someone would come pick it up or it would be mailed
20 back?

21 A. Correct. In this particular case, it was
22 returned to Kevon Howard on May 17th of 2013.

23 Q. So Kevon Howard came and picked it up and took it
24 and you never saw it again?

25 A. Correct.

1 A. That's correct.

2 Q. And because they're prepared by a human being,
3 those, that preparation process, is subject to error as
4 well, correct?

5 A. Correct.

6 Q. In other words, just because the machine gives
7 you a result, doesn't necessarily mean that result is
8 valid?

9 A. Well, it would be based on a number of other
10 things that we require for a result to be valid.

11 Q. And those number of other things includes proper
12 sample preparation, correct?.

13 A. The result is only going to be for what it was
14 tested and so --

15 Q. Let me stop you for a moment.

16 A. Okay.

17 Q. The sample that gets there, that Exhibit 3, that
18 blood tube that came into the lab, correct?

19 A. Correct.

20 Q. Do you know what I'm talking about?

21 A. I do.

22 Q. That's not what ran through the machine, right?

23 A. That's correct.

24 Q. As you testified earlier, you had to open that,
25 create another bottle, put that, some of that into this

1 that sample, that gray top tube, right?

2 A. I do.

3 Q. And just to be clear, you retrieved the whole
4 box, not just the tube?

5 A. Correct.

6 Q. And you transport it to your work station or
7 wherever you're going?

8 A. Yes.

9 Q. And then that one with how many other boxes?

10 A. 39 others typically.

11 Q. So 39 other boxes like that, you bring to your
12 work area, correct?

13 A. I do.

14 Q. And then you open each box, correct?

15 A. I do.

16 Q. And you take out the blood vial?

17 A. I do.

18 Q. Now then, when you get done and you get ready to
19 put it into the machine, how many vials actually enter
20 that machine?

21 A. There would be 94 vials total.

22 Q. 94 vials?

23 A. Correct.

24 Q. So we've turned 40 into 94?

25 A. We have.

1 condition as it was, things like that, and you testified
2 that; that would have no effect on the testing, really
3 all that meant was, you could test a substance, correct?

4 A. Correct, it's just that we receive vials of blood
5 that have varying amounts of blood in them and then we
6 test them all and are able to get results.

7 Q. Right, you test what you're given, and get a
8 result from what you're given, right?

9 A. Correct.

10 Q. However, what you're given isn't necessarily --
11 and I'm not saying necessarily reflective of what was
12 inside the person's body, correct?

13 A. Well, I mean if the blood is taken from the
14 person in that tube, I guess I'm not following you.

15 Q. Sure, it's taken from that person. If nothing
16 went wrong along the way, then yes it would be
17 reflective of that person, correct?

18 A. Correct.

19 Q. However, if something happened between the time
20 it was taken and the time you received it, then that
21 potentially could mean what you received is not what
22 came out of that person's vein?

23 A. Correct, depending on what you're meaning
24 specifically.

25 Q. And to be more specific, the characteristics of

1 A. I don't know. I was provided with a tube of
2 blood of the subject's name. I tested it and obtained
3 the results.

4 Q. Let's go back to your testimony from the State a
5 moment ago or a few minutes ago.

6 A. Okay.

7 Q. You testified that [REDACTED]'s blood alcohol
8 concentration was .162, correct?

9 A. 163. Yes, sir, that's correct.

10 Q. 163, I'm sorry. And then the State asked you
11 about whether or not he had a blood alcohol
12 concentration over the legal limit, right?

13 A. Correct, 0.163 is over the legal limit.

14 Q. And then they asked you, would that impair his
15 ability to drive, correct?

16 A. Correct.

17 Q. And you said yes?

18 A. It would.

19 Q. But you don't know without making a lot of
20 assumptions, whether or not [REDACTED] had a .163 when his
21 blood was drawn, do you?

22 A. I don't have any reason not to believe that,
23 being collected into a gray top tube, being submitted to
24 the laboratory in a timely fashion, being refrigerated
25 once we received it. I tested it twice and it got

1 THE COURT: You may.

2 Q. (BY MR. STAMPER) Take a look at this. Do you
3 recognize this publication or the logo there?

4 A. Again the BD logo is present.

5 Q. Now, I want to ask you, does this look like the
6 same thing as this?

7 A. It does.

8 Q. So that's exactly the same thing, just a bigger
9 version?

10 A. It is.

11 Q. Now I want you to take a look at this and review
12 it, if you will?

13 A. Okay.

14 Q. Based on that, what is proper inversion?

15 A. The tube would be turned upsidedown and then
16 turned to it's original position.

17 Q. So this my vial. A proper inversion would be to
18 go down and back up?

19 A. Correct, according to that document.

20 Q. And that document being produced by BD?

21 A. The logo was present on the document.

22 THE COURT: Counsel, I'm going to give you
23 one more hour for cross-examination on this witness. We
24 need to speed thing up.

25 Q. (BY MR. STAMPER) What's the point of inversion?

1 A. Well, I'm not sure what the lab thinks because I
2 haven't asked it, but the record would indicate that I
3 did not.

4 Q. But the lab, it's fair to say, if you were to
5 make a -- obviously, it's not a human being, but the
6 lab's knowledge is reflected in its records?

7 A. Correct, we make records of things so that we
8 don't have to remember them.

9 Q. Is it possible to switch samples while you're
10 preparing them for testing?

11 A. Switch them in what way?

12 Q. Actually get someone else's blood mistaken for
13 Mr. [REDACTED]'s blood?

14 A. I don't see how with his name being on the gray
15 top tube and the laboratory case number being on there.

16 Q. In fact, earlier you said it's very difficult?

17 A. Correct.

18 Q. Now how many tests have you performed? Earlier
19 you said thousands, but how many?

20 A. I don't have an exact number. It's probably
21 approaching 10,000.

22 Q. 10,000. Have you ever swapped a vial?

23 A. I swapped a vial with what?

24 Q. Have you ever got the samples switched out of
25 order?

1 A. What particular order are you talking about?

2 Q. Mr. Youngkin, you have the samples that you've
3 taken to your work station?

4 A. Correct.

5 Q. And then you put them into a rack one at a time?

6 A. I do.

7 Q. And that rack is numbered. Each vial's got
8 locations, right?

9 A. It does.

10 Q. Let's take a minute. So when you're creating a
11 head space vial, those look like the one you have there.
12 There's nothing on them when you first get them, right?

13 A. Correct, I would have to label them.

14 Q. And how do you label the head space vial?

15 A. I would label them with a marker.

16 Q. A marker?

17 A. Correct.

18 Q. How many digits is your unique identifier?

19 A. On this particular piece of evidence?

20 Q. Yeah, so you have GAR1303-03440?

21 A. Correct.

22 Q. You agree with me, that's 12 letters or 12 items,
23 12 characters?

24 A. Correct, letters and numbers.

25 Q. You put all of that on every one of those head

1 space vials?

2 A. I do not.

3 Q. What do you put on head space vials?

4 A. Typically the last three digits of the laboratory
5 case number.

6 Q. So you just take the last three digits and with a
7 magic marker and write on the head space vial?

8 A. That's correct.

9 Q. And you do that 80 times?

10 A. Yes, sir.

11 Q. And you've done that at least 10,000 samples?

12 A. I think it's approaching like I said earlier. I
13 don't have an exact number.

14 Q. So are we talking 10,000 samples, two head space
15 vials a piece, that's 20,000 head space vials?

16 A. It is.

17 Q. Have you ever gotten those head space vials out
18 of order?

19 A. Not that I'm aware of.

20 Q. When a mistake has been made in a lab and it's
21 identified, what's the inversion of that correction?
22 What's it called?

23 A. The inversion of it?

24 Q. Yeah, so if a mistake has been identified in a
25 lab, what's the process to correct it?

1 A. I guess it would depend on what type of mistake
2 you're talking about. If it's something that affects
3 the quality of the product, then we as a laboratory
4 system, would generate a quality action plan.

5 Q. A QAP?

6 A. Correct.

7 MR. STAMPER: May I approach the witness,
8 Your Honor?

9 THE COURT: You may.

10 Q. (BY MR. STAMPER) And do you recognize this form?
11 First of all, do you recognize generally that quality
12 action plan form?

13 A. I do.

14 Q. And let me ask you this. Is this your name here?

15 A. It is.

16 Q. Is this something that you all keep as a routine
17 matter at the lab?

18 A. It is.

19 Q. It's a record that you maintain?

20 A. Correct.

21 Q. Do you have any reason to believe that this is
22 not in the same condition as it was when the lab created
23 it?

24 A. Not that I can tell.

25 MR. STAMPER: Your Honor, I'm moving to

1 admit Defense Exhibit 4 and tendering to the State's
2 counsel.

3 MR. JONES: No objection.

4 THE COURT: It's admitted.

5 Q. (BY MR. STAMPER) A moment ago you testified
6 20,000 samples and you have no recollection of ever
7 swapping a sample or switching a sample, right?

8 A. Well, you specifically asked about whether the
9 head space vials had been out of order and that was my
10 answer.

11 Q. So then did you know that you had switched
12 samples in the past, but because I didn't ask precisely
13 the right question, you gave me a precisely wrong
14 answer?

15 A. Hopefully I gave the precisely truthful answer to
16 whatever it was that you asked.

17 Q. But you knew all along that on May 16, 2013,
18 about six weeks after the testing in this case --

19 THE COURT: Counsel, return back to your
20 seat.

21 Q. (BY MR. STAMPER) You knew that on May 16th,
22 about six weeks after the testing in this case, that in
23 fact, you noticed that the tubes for these two cases
24 were out of numerical order?

25 A. Correct, the gray top tubes.

1 Q. Exactly, and that's called sample switching,
2 right?

3 A. It's just those two particular tubes were not in
4 numerical order as it states.

5 Q. So is that sample switching?

6 A. I wouldn't consider it that. They're just out of
7 numerical order.

8 MR. STAMPER: May I approach the witness,
9 Your Honor?

10 THE COURT: You may.

11 Q. (BY MR. STAMPER) This is looking at Defendant's
12 Exhibit Number 4. What is that number right there?

13 A. Number 823.

14 Q. Uh-huh. What is that?

15 A. That I don't know.

16 Q. Would that be an identifier for that particular
17 quality action plan?

18 A. Yes, on the first page of Defendant's 4, the QA
19 tracking number is 823.

20 Q. That's how we identify that particular instant,
21 right?

22 A. Apparently.

23 Q. Well, you worked there for 18 years; is that
24 right?

25 A. It appears that this is not a form that I've

1 participated with frequently.

2 Q. Okay, but you signed it, right?

3 A. I did.

4 Q. So frequently or not, you know this form?

5 A. I know that it's exist, that's correct.

6 Q. And you know it exists because you presumably
7 read it and signed it?

8 A. Correct.

9 Q. Now then, do you recognize this form?

10 A. Well, it's got the Texas Department of Public
11 Safety crime laboratory in the header.

12 Q. Now then, do you recognize this as being a report
13 for an annual survey of the lab's practices, how you're
14 doing, kind of a where are we survey?

15 A. It's titled annual laboratory management system
16 survey.

17 Q. Right, and this is the report of that survey,
18 right?

19 A. Correct.

20 Q. Do you recognize this as something that you all
21 maintain as part of your lab accreditation, part of your
22 lab regular business?

23 A. I recognize that it's numbered consistently with
24 the forms at DPS manager. Here is James Nichols who is
25 the manager of my laboratory.

1 Q. And in fact, it even identifies a QAP number 823;
2 isn't that true?

3 A. It does.

4 Q. So this is something that you're familiar or that
5 you recognize as coming from your lab?

6 A. I do.

7 MR. STAMPER: Your Honor, I'm moving to
8 admit Defense Exhibit 5 and tender to State's counsel.

9 MR. JONES: Your Honor, permission to take
10 the witness on voir dire?

11 THE COURT: You may.

12 VOIR DIRE EXAMINATION

13 BY MR. JONES:

14 Q. Mr. Youngkin, this particular document, did you
15 have a hand in preparing this?

16 A. I did not.

17 Q. Are you a custodian of this record, of this
18 particular record?

19 A. I didn't have any input into the creation of it.
20 I do work for the Texas Department of Public Safety so I
21 probably have access to it, but I'm not aware of its
22 location.

23 Q. So you don't keep this record?

24 A. Correct.

25 Q. And you didn't create this record?

1 its modified form, is admitted.

2 Q. (BY MR. STAMPER) Mr. Youngkin, before the lunch
3 break, we had talked about QAP 823. That's quality
4 action plan, correct?

5 A. Yes, sir.

6 Q. And that was a quality action plan that concerned
7 the switching of vials, correct?

8 A. Correct, the gray stop tubes were found to be out
9 of numerical order.

10 Q. You had previously testified that as to swapping
11 vials including head space vials, that you didn't have
12 any recollection of that, correct?

13 A. No, your question was specifically about head
14 space vials and that was my answer.

15 Q. And so the QAP number 823 was also signed by you
16 in -- May I see that document -- signed by you on
17 September 13th -- no I'm sorry, May 20th, 2013, right?

18 A. Potentially. I would have to see the document.

19 MR. STAMPER: May I approach, Your Honor?

20 THE COURT: You may.

21 Q. (BY MR. STAMPER) Is that your signature?

22 A. It is.

23 Q. And can you read the date?

24 A. Appears to be 5-20-2013.

25 Q. And when I asked you, I said that was a quality

1 action plan regarding switching vials and you said that
2 you wouldn't call it that?

3 A. Correct, my memory of my testimony was that you
4 had asked about the head space vials. And then, my
5 response was not that I could recall.

6 Q. Right, and now I'm asking you about the switching
7 of vials. You said you wouldn't call what happened in
8 that incident as switching vials, correct?

9 A. Correct, if we're talking about gray top tubes, I
10 would differentiate gray top tubes and the other head
11 space vials.

12 MR. STAMPER: May I approach the witness,
13 Your Honor?

14 THE COURT: You may.

15 Q. (BY MR. STAMPER) This is page three of four of
16 that Defense Exhibit Number 5. If you'll follow on,
17 it's blood alcohol dash QAP 823?

18 A. Correct.

19 Q. Which you believe was the same one that we
20 referenced in Defense Exhibit 4?

21 A. Correct.

22 Q. And it says, quote, sample switched resulting in
23 wrong results reported?

24 A. Correct, that's what it says.

25 Q. And this was a survey, as we talked about

1 earlier, that's created by your lab, correct?

2 A. Correct, an annual survey.

3 Q. And by survey, we mean kind of a report of where
4 the lab is in terms of various things?

5 A. Correct, something that's created on an annual
6 basis.

7 Q. So your lab management, even though you don't
8 call it sample switch, calls what you did in number 823
9 a sample switch?

10 A. Correct.

11 Q. Are you familiar with the number of inversions
12 required for gray top tubes?

13 A. I'm familiar with the instructions that are
14 provided with the blood collection kits.

15 Q. Okay, do you happen to have one of those with
16 you?

17 A. I do.

18 MR. STAMPER: May I approach, Your Honor?

19 THE COURT: You may.

20 Q. (BY MR. STAMPER) We have this in evidence, so
21 I'm going to use the one that's in evidence. I think we
22 have it in evidence. Well, I was mistaken. Where it
23 says ten milliliters Vacutainer, with a little R, that's
24 a specific name brand so to speak?

25 A. Correct, that brand would have a registered

1 Q. (BY MR. STAMPER) Certainly nothing indicated on
2 those documents that would explain why somebody would
3 just -- in fact, let me back up. Do you have any idea
4 who would have added that year?

5 A. I would presume the person that made the next
6 entry.

7 Q. Again, just an assumption, right?

8 A. Correct, I was not responsible for making those
9 entries.

10 Q. I'm not asking you that you were, but I am asking
11 you, if someone went back and added a year to those
12 entries, that would not be contemporaneous with when
13 those entries were originally put there?

14 A. Correct.

15 MR. STAMPER: Your Honor, we pass the
16 witness.

17 REDIRECT EXAMINATION

18 BY MR. JONES:

19 Q. Okay, Mr. Youngkin, now I believe it was your
20 testimony that normally, the vials that you get are
21 about three-quarters, between a half and three-quarters
22 of the way full?

23 A. Correct, that would be the most common volume
24 that I observe.

25 Q. And does that restrict your ability to examine

1 the blood in those vials in any way?

2 A. It does not.

3 Q. Would that change the ethenol concentration or
4 alcohol concentration in those vials or in that blood?

5 A. It would not.

6 Q. We talked a little bit about on cross-examination
7 refrigeration and the lack thereof. And I believe we
8 talked about how, if something is left for long enough
9 without being refrigerated, the ethenol concentration --

10 MR. STAMPER: Objection, leading, Your
11 Honor.

12 THE COURT: I'll allow him to frame the
13 question, but avoid leading the witness.

14 MR. JONES: Yes, Judge.

15 Q. (BY MR. JONES) What we talked about in
16 cross-examination, and I believe your testimony was,
17 that the ethenol concentration can go down based on how
18 long something is left un-refrigerated?

19 A. That's correct.

20 Q. How long in your estimation would something need
21 to be left un-refrigerated before the ethenol
22 concentration would go down?

23 A. Several months at room temperature. If it's
24 subjected to higher temperature, say higher than room
25 temperature, then that process would happen faster.

1 Q. So and the blood alcohol concentration going
2 down, would that bring it closer to the legal limit from
3 if it was a point 16?

4 A. It would.

5 Q. Now with respect to the result that you got, I
6 believe it was a point 163 in this case, how many
7 samples of this vial of blood did you test?

8 A. Two.

9 Q. And is this 163 based upon an average of those
10 samples?

11 A. It is. The results of the testing, there's four
12 numerical results. Those four numbers are averaged and
13 then cut off to three decimal places.

14 Q. So you got slightly different results each time,
15 they were averaged, and that's where the point 163 comes
16 from?

17 A. Correct.

18 Q. Now on direct examination when I was asking you
19 questions earlier this morning, we talked about Andrew
20 Macey? Or is it Massey?

21 A. Macey, that's correct.

22 Q. Macey. Is that the person that checks your work?

23 A. He was the reviewer in this particular case.

24 Q. He reviewed your work in this particular case?

25 A. Yes, sir.

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REPORTER'S RECORD

VOLUME 1 OF 1 VOLUME

TRIAL COURT CAUSE NO. [REDACTED]

THE STATE OF TEXAS * IN THE COUNTY CRIMINAL
VS. * COURT NUMBER 3
[REDACTED] * DALLAS COUNTY, TEXAS

EXCERPT OF PROCEEDINGS

On the 22nd day of June, 2016, the above-entitled
and numbered cause came on to be heard before the
HONORABLE DOUG SKEMP, Judge of County Criminal Court
Number 3 of Dallas County, Texas, and a jury, at which
time the following proceedings were had:

Proceedings reported by machine shorthand.

DEFENDANT'S
EXHIBIT
4

CERTIFIED COPY

PENGAO 800-651-6589

A P P E A R A N C E S

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APPEARING FOR THE DEFENDANT

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1 A "On 5/16/13, Chris Youngkin was replacing the
2 gray-top tubes into the DPS blood kits when it was
3 noticed that the tubes for these two cases were out of
4 numerical order. The analysis of this batch of cases had
5 been interrupted by court after the opening of the
6 evidence on 5/6/13. The analysis resumed on 5/8/13 with
7 the sampling of the evidence."

8 The second paragraph. "Also on 5/16/13,
9 Officer Caponera, Anna Police Department, called
10 regarding the results for the three cases that were
11 submitted by their agency on 4/29/13, two which are the
12 affected cases. A retest of these two cases indicated
13 that the tubes were switched before the sampling of the
14 evidence, thereby resulting in the wrong results being
15 reported."

16 Q So, samples were switched, results were
17 reported, given to a police department, and they called
18 and said, "Something's wrong"?

19 A They did, yes, sir.

20 Q And, according to you, it just so happened
21 that they called just about, you know, right at the same
22 time that you just happened to catch the mistake?

23 A It was shortly after, yes, sir.

24 Q Did you ask the prosecutors to make sure I was
25 aware that they had received that document?

1 A I did not.

2 Q Do you think it's fair that disclosure to
3 myself regarding issues such as quality assurance and
4 quality control within your lab, do you think it's fair
5 to release that stuff?

6 A It is. I was aware from our previous
7 experiences that you had this document in your possession
8 already.

9 Q So then how come you didn't tell the State to
10 make sure I had it in this case?

11 A It's not my position to instruct the State on
12 what to do.

13 Q Do you give advice to the State regarding
14 blood alcohol testing?

15 A No. The Dallas County D.A.'s office does not
16 test blood.

17 Q That wasn't my question. Do you advise them
18 about the testing you that you performed that they
19 sponsor as evidence for trials like this?

20 A I would answer any questions that they would
21 ask me about it.

22 Q So as long as the right person asks the right
23 answer -- excuse me, asks you the right question, then
24 the truth may never come out?

25 A That's possible, yes, sir

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REPORTER'S RECORD VOLUME 1 OF 1
TRIAL COURT CAUSE NO. 002-83223-2016

STATE OF TEXAS) (IN THE COUNTY COURT
) (AT LAW NO. 2
VS.) (COLLIN COUNTY, TEXAS
VASANT KUMAR VELAYUDHAN) (

EXCERPTED TESTIMONY
OF
CHRIS YOUNGKIN
September 19 and 20, 2016

On the 19th and 20th days of September, 2016, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable David Waddill, County Court at Law 7, held in McKinney, Collin, Texas;

Proceedings reported by Computerized Stenotype Machine.



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A P P E A R A N C E S

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I N D E X

WITNESS:	Direct	Cross	Voir Dire
CHRIS YOUNGKIN	3,11,25,70	37,77	5

1 P R O C E E D I N G S

2 (The following is excerpted proceedings,
3 the testimony of Chris Youngkin, from State of Texas
4 versus Vasant Velayudhan, Cause No. 002-03223-2016, held
5 on September 19, 2016.)

6 MS. WOODALL: State calls Chris Youngkin.

7 (Witness sworn.)

8 MR. BURLESON: Judge, just for the record,
9 Mr. Youngkin -- I understand Mr. Youngkin's scientific
10 background. I've cross-examined him a hundred times.

11 THE COURT: You have.

12 MR. BURLESON: And he's been certified as
13 an expert in this county, and so I stipulate to his
14 credentials as far as the testing on the blood in this
15 case.

16 THE COURT: So stipulated.

17 MS. WOODALL: All right.

18 CHRIS YOUNGKIN,
19 having been duly sworn, testified under oath as follows:

20 DIRECT EXAMINATION

21 BY MS. WOODALL:

22 Q. Mr. Youngkin, will you introduce yourself to
23 the jury.

24 A. My name is Chris Youngkin.

25 Q. And, Mr. Youngkin, what do you do for a living?

1 A. I'm a forensic scientific with the Texas
2 Department of Public Safety Crime Laboratory in Garland.

3 Q. How long have you worked there?

4 A. Almost 20 years.

5 Q. What kind of training and education did you
6 receive in order to become a forensic scientist?

7 A. I have a Bachelor of Science degree with a
8 major in Chemistry from Texas A&M University. I was
9 initially trained at our laboratory in Austin to test
10 controlled substances, and later, after transferring to
11 the Garland laboratory, it was there that I was trained
12 to test blood for alcohol.

13 Q. All right. Was your lab accredited by DPS on
14 May 4th, 2016?

15 A. Yes, ma'am.

16 Q. And were you also certified to conduct the
17 blood analysis on that date?

18 A. I'm an approved examiner, yes, ma'am.

19 Q. All right. Now, let's go through the whole
20 testing process, starting at the beginning.

21 A. Okay.

22 Q. How do you initially get blood?

23 A. It comes to my laboratory in a number of ways.
24 It can be brought to us in person, it can be sent to us
25 through the mail, or it can be deposited in a drop box

1 after hours.

2 Q. Did you end up testing blood for Vasant
3 Velayudhan?

4 MR. BURLESON: Permission to voir dire the
5 witness?

6 THE COURT: Go ahead.

7 VOIR DIRE EXAMINATION

8 BY MR. BURLESON:

9 Q. Mr. Youngkin, good afternoon. How are you?

10 A. Well. Thank you.

11 Q. Essentially, you testified that you don't know
12 how the blood got to your lab, you just know what the
13 procedures generally are, correct?

14 A. Correct, from whatever is reported in the
15 record.

16 Q. Okay. Now, the difference -- and you know the
17 difference between personal knowledge and what you read
18 off a record, correct?

19 A. I do.

20 Q. Okay. Do you have any personal knowledge as to
21 how this blood got to you?

22 A. I do not.

23 Q. Okay. Do you have any personal knowledge how
24 the blood that you tested got into the vial that you
25 tested it in?

1 A. I do not.

2 Q. Okay. Do you have any personal knowledge as to
3 whose blood it was that you tested?

4 A. I don't.

5 Q. So as far as establishing chain of custody --
6 and you know what that is, correct?

7 A. I do.

8 Q. Okay. You have never testified to the first
9 chain of custody, correct?

10 A. That's correct.

11 Q. You've only testified to the back end, correct?

12 A. Generally, that's correct.

13 Q. Okay. So when we're talking about my client's
14 blood, which the state just asked you, you have nothing
15 to add to the first part of the chain of custody,
16 correct?

17 A. Probably not. It would depend on the
18 questions, though.

19 Q. Okay. Based on your experience, do you have
20 anything to add to the first part of the chain of
21 custody?

22 A. Not as I understand it, no, sir.

23 Q. Okay. So you don't know how it got -- just so
24 I'm clear here, because this is a very important issue
25 and I want to make sure my questions are clear. You

1 know sometimes I don't ask clear questions.

2 A. I do.

3 Q. Okay. You don't know how the blood got in the
4 vial that you tested?

5 A. Not specifically. I have a good idea.

6 Q. Okay. You don't know how it got to your office
7 from personal knowledge?

8 A. That's correct.

9 Q. You don't know where the blood was drawn or
10 where the blood was taken after it was drawn, correct?

11 A. Not to my personal knowledge.

12 Q. Okay. And you just did your job. You got the
13 blood, you tested it, correct?

14 A. I did.

15 MR. BURLESON: Okay. Judge, at this point
16 I'm going to object to any further -- well, can we have
17 a hearing outside the presence, Judge?

18 THE COURT: Okay. We'll be taking five
19 minutes.

20 THE BAILIFF: All rise.

21 (Open court, defendant present, no jury.)

22 THE COURT: Okay. The jury's out. We're
23 off the record.

24 (A discussion was held off the record.)

25 THE COURT: Any objection you've got, do

1 Q. All right. Is that the blood that you tested
2 that day?

3 A. Yes, ma'am.

4 Q. How do you know?

5 A. The laboratory case number on it is the same
6 and my initials are present on the exhibit.

7 Q. All right. Now, if we open it up, is that the
8 blood vial that you tested?

9 A. It is.

10 Q. And how do you know?

11 A. Again, my initials are present as well as the
12 laboratory case number.

13 Q. Okay. As far as you can tell, have there been
14 any changes or alterations?

15 A. No, everything looks the same still. And this
16 one is still unopened.

17 MS. WOODALL: At this time state offers
18 State's Exhibit No. 11.

19 (State's Exhibit No. 11 offered.)

20 MR. BURLESON: Same running objection to
21 foundation, Judge.

22 THE COURT: Same one?

23 MR. BURLESON: Yes, sir.

24 THE COURT: Overruled. It's admitted.

25 MR. BURLESON: Thank you, Judge.

1 (State's Exhibit No. 11 admitted.)

2 Q. (BY MS. WOODALL) All right. Now, there are
3 two vials in this blood kit, right?

4 A. Yes, ma'am.

5 Q. Why are there two vials?

6 A. Just there is a tube remaining that's been
7 unopened for subsequent testing.

8 Q. Now, did you test Mr. Velayudhan's blood?
9 Sorry. Vasant Velayudhan's blood?

10 A. I did. I tested the blood present in the kit.

11 Q. And was there anything unusual that happened
12 during that testing process?

13 A. No, ma'am.

14 Q. That process that you described to us earlier,
15 was that the same process that you used in this case?

16 A. It was.

17 Q. Did you reach -- did you generate a lab report
18 in this case?

19 A. I did.

20 MS. WOODALL: Your Honor, may I approach?

21 THE COURT: Sure.

22 Q. (BY MS. WOODALL) I'm handing you what's been
23 marked as State's Exhibit No. 12. Do you recognize
24 this?

25 A. I do.

1 A. That's certainly possible.

2 Q. And you would agree with me that hospitals do
3 test blood for DWI cases?

4 A. They would test blood for a multitude of
5 things, one of them being alcohol.

6 Q. Right. So, for instance, if there's an
7 accident case and someone goes to the hospital, you
8 wouldn't be the one testifying about the blood, it would
9 be the hospital lab, correct?

10 A. Potentially. I have testified about hospital
11 results before.

12 Q. That is true. Sometimes you do get blood as
13 well. But sometimes it's by the person at the hospital,
14 correct?

15 A. Correct. They had -- would testify to their
16 analysis.

17 MR. BURLESON: May I approach the witness,
18 Judge?

19 THE COURT: Yes.

20 Q. (BY MR. BURLESON) Mr. Youngkin, do you have
21 gloves?

22 A. I have a glove, I believe.

23 Q. Do you want to put on any gloves to testify?

24 A. Depends on what you're asking me to do.

25 Q. Just take it out and show the jury the vial.

1 A. Sure.

2 (Sotto voce discussion between witness,
3 counsel, court reporter, and Judge.)

4 Q. (BY MR. BURLESON) Mr. Youngkin, would you
5 please take out the vial that you tested.

6 MR. BURLESON: Can I have a little leeway,
7 Judge?

8 THE COURT: What do you mean?

9 MR. BURLESON: A little leeway in the well
10 so I don't have to keep asking.

11 THE COURT: You don't need to ask,
12 Mr. Burlison. You -- it's a court of law.

13 MR. BURLESON: Yes, sir.

14 Q. (BY MR. BURLESON) Mr. Youngkin, that's the one
15 that you tested, correct?

16 A. It is.

17 Q. Okay. Now, how much blood was in it when you
18 received it?

19 A. Indicated here that it was approximately
20 three-quarters full.

21 Q. How full is it right now?

22 A. It's still approximately three-quarters full.

23 Q. Okay. Would you mind stepping down and showing
24 the jury how full it is?

25 MR. BURLESON: Permission for the witness

1 Q. Eighty to a hundred vials of blood that you
2 received from some law enforcement agency?

3 A. There would only be 40 of those given that each
4 of them are being tested twice.

5 Q. Right. And then we have some controls there?

6 A. That's correct.

7 Q. Thank you. Then you go into the ones that you
8 receive, pipette to pipette, you go vial to vial, and
9 then you go to the next vial, correct?

10 A. That is correct. Now, we -- I would sample
11 that grey-top tube twice, the vial like that. The
12 pipette has a disposable tip. So at that point I would
13 eject that tip and get a new one.

14 Q. All right. Now, that's the procedure, correct?

15 A. It is.

16 Q. Okay. Now, have you ever been anywhere,
17 whether it's an oil change or a doctor's office,
18 laboratory, department store, where a procedure wasn't
19 followed?

20 A. I have.

21 Q. And would you agree with me that procedures
22 aren't followed in all aspects of life, correct?

23 A. That's correct.

24 Q. And we don't have to have a nefarious reason,
25 meaning that you're wanting to do something incorrect,

1 Q. How many do you test?

2 A. Just one of them.

3 Q. And why don't you test the other one?

4 A. Just that there would be an unopened vial -- or
5 tube of blood for any subsequent testing.

6 Q. All right. So that blood result can be
7 retested?

8 A. Yes, ma'am.

9 Q. All right. And you talked a little bit earlier
10 about how you at one point had mixed up vials. What
11 have you done since to make sure that you're following
12 proper protocols?

13 A. Just when samples are prepared --

14 MR. BURLESON: Objection. Calls for a
15 narrative, Judge.

16 THE COURT: Overruled.

17 Q. (BY MS. WOODALL) You may answer.

18 A. Just that as these samples are prepared, I
19 would compare the laboratory case numbers that are on
20 written on the grey-top tubes with the laboratory case
21 number that is written on these vials to see that they
22 are the same.

23 Q. During the testing process, what mechanisms are
24 in place where if, you know, you're testing two
25 different samples, how do you know that?

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TRIAL COURT CAUSE NO. M15-45862-C

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THE STATE OF TEXAS * IN THE COUNTY CRIMINAL

6

VS. * COURT NUMBER 3

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ROBIN NICOLE HAGMEIER * DALLAS COUNTY, TEXAS

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EXCERPT OF PROCEEDINGS

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On the 27th day of September, 2016, the above-

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entitled and numbered cause came on to be heard before

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the HONORABLE DOUG SKEMP, Judge of County Criminal Court

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Number 3 of Dallas County, Texas, and a jury, at which

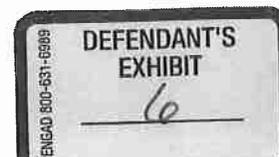
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time the following proceedings were had:

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MS. KRISTEN JACKSON
Assistant District Attorney
Dallas County, Texas
SBOT #24091042

* Since 2013
Know 10cc switched
Samples I have
p. 60 l. 19

MS. AARON BONIFIELD
Assistant District Attorney
Dallas County, Texas
SBOT #24099913

pg. 64 l. 1
Disclose Sample only
when used

APPEARING FOR THE STATE OF TEXAS

MR. TROY BURLESON
Attorney at Law
Law Offices of Biederman & Burleson
2591 Dallas Parkway, Suite 207
Frisco, Texas 75034
SBOT #24048009

pg. 64 o l 141
Text. Set against court
to prevent Sample
don't tell about switches
Samples unless agreed

APPEARING FOR THE DEFENDANT

1st Hand of
Brady last week
p. 51 l. 12
Don't know Dallas
Brady until trial
p. 51 l. 14

Samples - 31
pg. 60 - *
Admits he
switched
samples on 1
occasion.

Switched vials
(p. 52 l. 9)
0 - 15 (52/13)

pg. 57 - 2013 accuse
Att'y of switch

Document sent to
Countries that ask
for it
p. 60 l. 5

pg. 44 - 2013 Sample
Switch question

I N D E X

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CHRIS YOUNGKIN

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E X C E R P T

(IN THE PRESENCE OF THE JURY:)

THE COURT: Call your next witness.

MS. JACKSON: The State calls Christopher
Youngkin.

(Witness sworn.)

CHRIS YOUNGKIN,

was called as a witness by the State, having been first
duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. JACKSON:

Q Good morning, Mr. Youngkin. Could you please
introduce yourself to the jury?

A Sure. My name is Chris Youngkin.

Q And how are you currently employed?

A I'm a forensic scientist at the Texas
Department of Public Safety Crime Laboratory in Garland.

Q And how long have you been a forensic
scientist?

A Almost 20 years.

Q Have you been with the crime lab in Garland
that whole time?

A I was initially trained at their laboratory in
Austin to test controlled substances. Then later, after
I transferred to the Garland laboratory, it was there

1 that I was trained to test blood for alcohol.

2 Q And can you tell us a little bit about your
3 educational background?

4 A Sure. I have a Bachelor of Science degree
5 with a major in chemistry from Texas A&M University.

6 Q And are you a member of any professional
7 organizations?

8 A I am.

9 Q Which ones?

10 A The International Association for Chemical
11 Testing.

12 Q Mr. Youngkin, have you ever testified as a
13 expert in the area of toxicology before?

14 A I have.

15 Q A few times? Many times?

16 A Many.

17 Q And does that include here in this county, in
18 Dallas County?

19 A It does.

20 Q Can you explain to the jury what toxicology
21 is?

22 A Toxicology is testing body fluids for
23 substances.

24 Q And as a forensic scientist, what exactly do
25 you do?

1 A The laboratory where I work receives evidence
2 from law enforcement agencies. We test that evidence.
3 In this particular case, it was a testing of blood for
4 alcohol content. We then prepare reports to our findings
5 and testify in court.

6 Q Now, Mr. Youngkin, I'm going to draw your
7 attention to this case, okay? Did you ever receive a
8 vial of blood labeled with the name of Robin Hagmeier?

9 A I did.

10 MR. BURLESON: Objection, asking about evidence
11 not admitted into court.

12 THE COURT: Overruled.

13 MR. BURLESON: The vial is hearsay. It's not
14 been authenticated, and I still have a running objection
15 on that, Your Honor.

16 THE COURT: She did not ask him anything about
17 a vial; she asked him if he did blood on this person.

18 MR. BURLESON: I thought --

19 THE COURT: It has nothing to do with the
20 exhibit. The objection is overruled.

21 MR. BURLESON: I'm sorry, Your Honor, I didn't
22 mean to speak over you.

23 I thought I heard her ask, did you receive a
24 vial marked Robin Hagmeier with blood in it? That's what
25 I thought she asked.

1 THE COURT: Yeah, that's a yes or no question,
2 did it have her name on it. The objection is overruled.

3 MR. BURLESON: Thanks, Judge.

4 Q (By Mr. Jackson) Can you repeat your answer?

5 A Can you repeat the question?

6 Q Okay. Did you receive a vial of blood labeled
7 with the name of Robin Hagmeier?

8 A We did.

9 Q And how did you receive that vial?

10 A It came to the laboratory in person from
11 Brandy Johnson on June 9, 2015.

12 Q And was it sealed when you received it?

13 A Indicates here that it was properly sealed
14 when it was received.

15 Q Was there anything to indicate that it had
16 been tampered with?

17 A No, ma'am.

18 MR. BURLESON: Objection, leading -- or
19 testifying from a document not in evidence.

20 THE COURT: Overruled.

21 MR. BURLESON: Your Honor, if I may, if he
22 looks down at the document and then looked up and
23 testified --

24 THE COURT: Overruled.

25 Q (By Ms. Jackson) Was there anything attached

1 to it to identify it?

2 A Yes, ma'am. When evidence is submitted to our
3 laboratory, a submission form is provided by the agency.

4 Q Did you receive any paperwork with it?

5 A Yes, ma'am.

6 Q So once you receive the vial, what do you do?

7 A It's assigned a unique laboratory case number;
8 in this case, it's GAR-1506-06375. This type of evidence
9 is then placed into a refrigerator for storage.

10 Q And when you test the blood, what do you do?

11 A I open the kit, make some observations about
12 the gray-top tubes contained inside, and then I would
13 open one of those gray-top tubes, remove two samples of¹
14 the blood for testing.

15 Q And can you explain to the jury how you
16 perform the analysis?

17 A Sure. For one of the gray-top tubes, I would
18 remove two samples of the blood for testing. Each of²
19 those is placed into a vial like this. This is a
20 headspace vial. These vials are properly labeled.
21 They're sealed.

22 I would then place them on the instrument in
23 their respective location. The instrument retrieves them
24 one at a time. They're heated for a few minutes before
25 removing a sample of gas from the vial.³

4
1 That sample is then introduced into the
2 instrument where the components are separated, and if
3 alcohol is present, the amount would be determined.

4 Q And what is that method of testing blood
5 called?

6 A A heated headspace gas chromatography.

7 Q And is the machine used called a headspace gas
8 chromatograph?

9 A It is.

5
10 Q Now, when you remove samples from the vials,
11 how many -- do you test multiple at once or just one
12 vial?

13 A I would typically test 40 of these kits at the
14 same time.

15 Q Are they all in the machine at the same time?

6
16 A All the samples are prepared and placed in
17 their location. The instrument would then test them one
18 at a time.

19 Q And how do you ensure that there's no mix-up?

7
20 A As these samples are prepared, I would compare
21 the laboratory case number that I've written on the
22 gray-top tube with the number I've written on this vial,
23 and these vials are also labeled with their position and
24 I would place them on the instrument in numerical order
25 one at a time.

1 Q And when you're taking the sample out of the
2 vial and putting them in your vial that you use, is there
3 any chance of cross-contamination?

4 A There is not. I would only have one of the
5 gray-top tubes open at a time. The pipette that we use
6 to sample the blood has disposable tips, and so after
7 each gray-top tube, that tip is ejected and a new tip is
8 placed on there.

9 Q Is this technique that you use accepted by the
10 scientific community?

11 A It is.

12 MS. JACKSON: May I approach, Judge?

13 THE COURT: You may.

14 Q (By Ms. Jackson) Mr. Youngkin, I'm showing
15 you what has been premarked as State's Exhibit 3. Do you
16 recognize this document?

17 A I do.

18 Q What is it?

19 A It's an alcohol content laboratory report,
20 Laboratory Case Number GAR-1506-06375.

21 Q Now, is this the same number you identified
22 earlier that's identified with this case?

23 A It is.

24 Q And is this an original or a copy?

25 A It appears to be a copy.

1 A Not today? This will be the last time,
2 though.

3 Q Is that your last glove?

4 A It is.

5 Q Okay. If you'll just take the vial out that
6 you tested, please, sir.

7 A (Witness complies.)

8 Q So let's talk about some basics. How much
9 blood was in that vial when you received it?

10 A I indicated here that it was approximately
11 three-quarters full.

12 Q How full is it right now?

13 A Approximately one-half.

14 Q Let me look at it. How much blood did you
15 actually test?

16 A Four-hundred microliters would have been
17 required.

18 Q Is 400 microliters one-half of the tube or --

19 A It is.

20 Q -- one-quarter of the tube?

21 A It is not.

22 Q It's much less than that, correct?

23 A It is.

24 Q So we had a tube that was three-quarters full;
25 now it's half-full, and you didn't test enough for it to

1 that you can't hold it anymore.

2 Q The inability to hold your bodily function.

3 A Okay.

4 Q What else?

5 A Impaired consciousness.

6 Q Impaired consciousness.

7 All right. Is that it?

8 A Yeah. It just goes on to talk about sleep or
9 stupor.

10 Q Anywhere in there on either of the ones you
11 read say normal behavior?

12 A No, sir.

13 Q So in your learned treatise, there's nothing
14 in there that said a person from a .18 to a .30 would
15 exhibit normal behavior, correct?

16 A Correct.

17 Q But it does say at a 26, we're at vomiting,
18 incontinence, muscle incoordination, and then before
19 that, the things you testified to, correct?

20 A Correct, certainly possible.

21 Q Did you see -- and again, you didn't see any
22 of that on the video, correct?

23 A I did not.

24 Q Now, Mr. Youngkin, do you know what Brady
25 material means?

1 A I do.

2 Q And what does that mean?

3 A That's information that could be potentially
4 beneficial to a defendant.

5 Q So if the State of Texas has Brady material,
6 they're required to turn it over; is that your
7 understanding?

8 A Correct, that's the rules.

9 Q And are you aware that the State of Texas
10 turned over Brady material in regards to your testimony
11 here today?

12 A You made me aware last week that the Denton
13 County was sending out material about myself.

14 Q So last week in our trial, we talked to you
15 about the Brady material from Denton County. Were you
16 aware that Dallas is also sending out that information?

17 A I was not.

18 MR. BURLESON: May I approach the witness, Your
19 Honor?

20 THE COURT: You may.

21 Q (By Mr. Burleson) Showing you a form that we
22 received through the Michael Morton Act, through
23 discovery, from the District Attorney's Office. Take a
24 look at that again and tell me (a) if you recognize this
25 second form and then (b) if you recognize that as coming

1 from the Dallas District Attorney's Office.

2 A I do recognize the second page, and the first
3 page does appear to have come from Dallas County.

4 Q I want to talk to you about the second page.
5 I'm going to leave this up here with you.

6 A Okay.

7 Q Because there's some troubling things I want
8 to talk to you about on the second page.

9 First and foremost, without equivocation,
10 without conjecture, without hypothesis, you switched
11 vials on a person, correct?

12 A I did.

13 Q And when you did that, you caused a person who
14 had no alcohol in their blood to receive a blood score of
15 a .15; is that correct? ✓

16 A Correct, temporarily.

17 Q Now, let's clarify how you were made aware of
18 this situation. The fact of the matter is, the police
19 department made you aware of this situation, correct?

20 A That's not completely correct. That is an
21 aspect of the incident.

22 MR. BURLESON: Let me approach, Judge?

23 THE COURT: You may.

24 Q (By Mr. Burleson) On there, does it say how
25 you were made aware and when you were made aware?

1 A It does.

2 Q What does it say?

3 A It says, "On 5-16-13, Chris Youngkin was
4 replacing the gray-top tubes into the DPS blood kits when
5 it was noticed that the tubes for these two cases were
6 out of numerical order."

7 Q What else does it say?

8 A "The analysis of this batch of cases had been
9 interrupted by court after the opening of the evidence on
10 5-6-13."

11 Q Well, that's not exactly what it says. Let me
12 show you.

13 MR. BURLERSON: May I approach, Judge?

14 THE COURT: You may..

15 Q (By Mr. Burleson) It says at the top how you
16 were made aware of this and matter of the identification,
17 it lists two things. So you identified the error, and it
18 lists two reasons. What were those two reasons?

19 A Observation, and other is officer inquiry.

20 Q Right. The same day you allegedly had caught
21 your mistake, a police officer contacted your office and
22 said, "We got a result from you that's not correct"; is
23 that right?

24 A They indicated that the result did not match
25 the circumstances of their case.

1 Q Okay. Okay. So, miraculously, on the same
2 day that a police department called you and said, "Wait
3 a minute, we got your result back and this dude or this
4 lady" --

5 MR. BURLESON: Excuse my language, Judge.

6 Q (By Mr. Burleson) "...this person had no
7 alcohol in their system and you're saying it's a .15,"
8 you miraculously discover the mistake yourself, correct?

9 A It did occur on the same day, that's correct.

10 Q That's a coincidence, isn't it?

11 A It is.

12 Q Isn't it more likely that you didn't catch it
13 at all, that it was caught by the police department and
14 whoever the investigator was in this case kind of gave
15 you some cover to say that you caught it at the same
16 time?

17 A That is not possible.

18 Q It's not possible?

19 A No, sir.

20 Q Let me ask you this: Who was this third-party
21 independent investigator who investigated how this came
22 to pass?

23 A Well, I completed that document. Management
24 was made aware of the circumstances.

25 MR. BURLESON: Well, let me approach?

1 Q (By Mr. Burleson) That's not what I asked
2 you. I asked who the investigator was that researched
3 this information, who determined that you caught it
4 yourself, who determined that there was no wrongdoing and
5 determined to allow you to keep working? Who was that
6 investigator?

7 A The investigator listed here is Chris
8 Youngkin.

9 Q And who are you?

10 A I am Chris Youngkin.

11 Q Oh, okay. So, just so I understand, on May
12 20, 2013, a police department contacted you and said,
13 "Whoa, Mr. Youngkin, we just got a blood result from you
14 and it can't be right because the person you're telling
15 us had a .15 had no alcohol in their system." On that
16 same day, you caught your own mistake, correct?

17 A I would have to look at the form as to the
18 exact dates, but, yes, it did occur on the same day.

19 Q It was then assigned to an investigator. Who
20 was that investigator?

21 A According to the form, it was myself.

22 Q And that investigator not only determined that
23 you found it yourself, but what else did they determine?

24 A You would have to let me read the document.

25 Q Miraculously, what else did they determine?

1 Top of the form.

2 A What are you asking?

3 Q What else did they determine? Starts with an
4 "i," first letter.

5 A Incident description?

6 Q Isolated event, isolated event.

7 A Correct. Level of concern, two, isolated
8 incident.

9 Q Do you see how that's self-serving, Mr.
10 Youngkin?

11 A I do not.

12 Q You don't? An error was reported to you.
13 Instead of having someone else investigate it, you
14 investigate it yourself. You then come to the conclusion
15 that not only did you catch the error prior to the
16 officer catching the error, but you also determined by
17 yourself that it was an isolated event. You don't see
18 how that's self-serving?

19 A I do not. I was asked to complete this form,
20 and so I did.

21 Q Well, let me ask you this: When did this
22 occur?

23 A The dates here are 5-16-13 --

24 Q Five-16-13?

25 A And 5-6 and 5-8.

1 Q Five-16-13, that's three-and-a-half years ago,
2 correct?

3 A Approximately.

4 Q You testified to this jury that you appear in
5 60 cases per year, correct?

6 A Correct, approximately.

7 Q You testified in 60 cases per year. You told
8 this jury that you and I have had 40 or 50 cases per
9 year?

10 A Certainly possible, yes, sir -- not per year,
11 but total.

12 Q Total, correct? Do you have basic tenets you
13 live by as a scientist?

14 A Basic tenets?

15 Q Yeah, things that you don't waiver on?

16 A Sure.

17 Q I do, too; it's called I never ask a question
18 I don't already know the answer to.

19 A Correct.

20 Q Okay. So, since 2013, in over 160 trials, how
21 many times have you told a defense attorney that you
22 switched vials up in 2013?

23 A Probably approaching a hundred times now.

24 Q I'm sorry?

25 A I said we're probably approaching a hundred

1 times that I've testified about this incident now.

2 Q How many times did you self-report it to the
3 defense attorney? The answer is zero, correct?

4 A Well, it would depend on what you mean exactly
5 by that question.

6 Q Have you been asked multiple times during
7 trials, specifically by me, if you've ever messed up
8 samples? ¹⁷

9 A Potentially. I don't have a memorization of
10 all the questions I've ever been asked.

11 ~~A~~ Wasn't last week the first time that you had
12 ever admitted to me that you had switched samples? ¹⁸

13 ~~A~~ It was the first time I had received those
14 questions from you, yes, sir.

15 Q The first time you received the questions from
16 me?

17 A That's correct.

18 Q Do you know what a disconnect there is?

19 A Something that's disconnected?

20 ~~A~~ ~~A~~ Yes. In every trial we've had, I've said that
21 the numbers doesn't match the person, or in a lot of
22 those trials, correct?

23 A That's correct.

24 Q And I've presented to the jury the possibility
25 that you switched samples, ¹⁹ is that correct?

1 A It could be.

2 Q So you're saying that I've never asked you if
3 it's possible you switched ²⁰ samples?

4 A Not specifically.

5 Q Okay. Then how come you've told me in over 40
6 trials that there are safeguards to prevent from you
7 switching ²¹ samples?

8 A Because there are.

9 Q Were there safeguards in place in 2013?

10 A Well, the expectation has always been that you
11 would associate the results from a piece of evidence with
12 that piece of evidence.

13 Q Wasn't my question. My question was, were
14 there safeguards in place?

15 A There were. The process was that we tested
16 things in numerical order.

17 Q Isn't the fact of the matter, Mr. Youngkin,
18 that the only reason that I got a chance to cross-
19 examine you in the last three-and-a-half years about
20 switching ²² samples is because Denton County happened to
21 give me Brady information?

22 ~~A~~ That would depend on the information that you
23 requested from our laboratory in the past and that we
24 have provided, whether you received that document or not.

25 ~~Q~~ Even better. So you're telling me that

1 document exists in your lab?

2 A Correct. The day it was created is on the
3 document.

4 Q Did you send that to every county?

5 A We sent it to those that had asked for it. 

6 Q Those that had asked for it?

7 A Yes, sir.

8 Q Well, Brady material is not something that you
9 ask for; Brady material is Constitutionally required to
10 be given.

11 So, since 2013, you only sent it to the D.A.
12 that asked you for it, correct?

13 A We sent it to many people that had asked for
14 it since its creation.

15 Q And how many times have you testified since
16 2013 that there are safeguards in place?

17 A I guess each time those questions have been
18 asked.

19  Q And since 2013, you've known that you actually
20 at least on one occasion switched samples, correct? ²³

21 A I have. 

22 MR. BURLESON: Your Honor, no further
23 questions.

24 THE COURT: Anything else?

25 MS. JACKSON: Briefly, Your Honor.

1. REDIRECT EXAMINATION

2. BY MS. JACKSON:

3. Q Mr. Youngkin, on direct, you talked about this
4. mistake from 2013, right?

5. A I did.

6. Q Now, we talked a little bit about the ²⁴
7. safeguards that are in place to prevent samples from
8. being mixed. Did you kind of fine-proof that after this
9. mistake happened?

10. A I did.

11. Q ²⁵ And so do you double-check when you're putting
12. the samples into the headspace gas chromatograph before
13. you test them?

14. A I do.

15. Q So would you say that there's a high
16. likelihood that this ²⁶ sample was switched?

17. A I would not.

18. Q How sure are you that -- estimate how sure you
19. are that this ²⁷ sample was correct.

20. A Very.

21. Q Now, Defense counsel was talking to you a
22. little bit about retrograde extrapolation and signs of
23. intoxication. Have you ever met the Defendant in this
24. case?

25. A Not that I'm aware of.

1 Q Were you there at the scene that night?

2 A I was not.

3 Q Did you see her drinking?

4 A No, ma'am.

5 Q Did you see her eating?

6 A I did not.

7 Q Did you see what she did or did not tell the
8 officer?

9 A No, ma'am.

10 Q Did you see whether or not what she told the
11 officer was truthful?

12 A No, ma'am.

13 Q So you don't know whether or not that that's
14 actually the number of drinks she had or whether she ate
15 anything, anything of that nature?

16 A That's correct.

17 Q You don't know what time she would have been
18 drinking those things?

19 A That's correct.

20 Q Okay. Now, you talked about these signs of
21 intoxication or the range of blood scores. Does
22 tolerance effect that?

23 A It certainly could.

24 Q Can you explain that?

25 A Well, tolerance, in general, is just the

1 resistance to the effects of a substance with repeated
2 exposure to that substance.

3 Q So if someone has a high tolerance of alcohol,
4 meaning -- what does that mean, that they drink a lot or
5 they drink on a daily basis?

6 A Correct, it would mean that a person consumed
7 alcohol to this concentration frequently.

8 Q So if they have a high tolerance, it's
9 possible that they're not showing those signs that you
10 listed?

11 A Correct, it's certainly possible.

12 MS. JACKSON: Pass the witness.

13 THE COURT: Anything else?

14 REXCROSS EXAMINATION

15 BY MR. BURLESON:

16 Q Mr. Youngkin, I hope you understand that we're
17 taking a record of this testimony and that testimony will
18 be available and used in perhaps subsequent prosecutions
19 and --

20 MS. JACKSON: Objection, sidebar.

21 THE COURT: Yeah. Just ask questions.

22 MR. BURLESON: That's fine, Judge. I was
23 trying to surmise --

24 THE COURT: Don't make argument to the jury.

25 MR. BURLESON: I'll go forward.

1 Q (By Mr. Burleson) Listen to my question very
2 carefully. In the over 40 trials that you've had with me
3 since 2013, have you ever disclosed to me that you had
4 switched samples ²⁸ in May of 2013?

5 A Only when asked about it.

6 Q So the answer to that is no, correct?

7 A It would have been yes for last week,
8 certainly. I don't have a memory of every case that
9 we've had together.

10 Q Since 2013, have you testified in every trial
11 that we've --

12 MS. JACKSON: Asked and answered.

13 THE COURT: Overruled. (X)

14 Q (By Mr. Burleson) Have you testified in every
15 trial with me that there are safeguards to prevent the
16 samples ²⁹ from being switched and it's impossible for
17 samples ³⁰ to be switched? Have you testified to that?

18 A I don't think that I would have testified it's
19 impossible. If you asked this question, I've certainly
20 answered them.

21 Q And what would your answer have been?

22 A There are safeguards in place to prevent that.

23 Q And if I asked you that, did you ever say,
24 well, I've mixed up samples ³¹ before?

25 ~~★~~ ~~★~~ ~~★~~ A No, because that was not the question that you

Ray

1 asked.

2 MR. BURLESON: No further questions, Judge.

3 THE COURT: Anything else?

4 MS. JACKSON: Nothing further, Judge.

5 (End excerpt of proceedings.)

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VOLUME 1 OF 1

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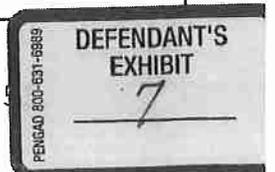
STATE OF TEXAS) IN THE COUNTY COURT
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 VS.) COLLIN COUNTY, TEXAS
)
)
 HALIE MADISON MANSOUR) COUNTY COURT AT LAW NO. 4

EXCERPTS FROM
TRIAL BEFORE A JURY ON GUILT-INNOCENCE
 (Excerpt Testimony of Chris Youngkin)
 September 27, 2016

On the 27th day of September, 2016, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable David Waddill, Presiding Judge, County Court at Law No. 7, Collin County, Texas:

Proceedings reported by shorthand method.

JENNIFER K. CORLEY, CSR, RPR
 Official Court Reporter
 County Court at Law No. 6
 2100 Bloomdale Rd., Ste. 30354
 McKinney, Texas 75071
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A P P E A R A N C E S

1
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COUNSEL FOR THE DEFENDANT

25
* * *

1 AFTERNOON SESSION

2 SEPTEMBER 27, 2016

3 PROCEEDINGS

4 (Proceedings in progress.)

5 (Defendant present; Jury present.)

6 CHRIS YOUNGKIN,

7 having been duly sworn, testified as follows:

8 CROSS-EXAMINATION

9 Q. (BY MR. WILDER) Now, in your job, have you ever --
10 might want to use this correct word -- been -- have you ever
11 been sanctioned for switching samples?

12 A. I have not been sanctioned, but it is something that
13 did occur in 2013.

14 Q. And it happened with an individual who is a civilian
15 employee with the Melissa Police Department?

16 A. One of the two tubes involved in the incident,
17 that's my understanding.

18 Q. Okay. And, according to you, you tested these
19 samples, issued reports, and then ten days later you were
20 reviewing this data?

21 A. Well, the way the story goes is that, after the
22 reports have been released, I replace the gray-top tubes into
23 these kits, and at that time, I noticed that two of the tubes
24 were out of numerical order.

25 Q. Okay. So this occurred at the time of testing or

1 ten days later?

2 A. It occurred sometime after the time of testing.

3 Q. Okay. So when you noticed this switching of
4 samples, you left your workstation to go find a supervisor?

5 A. I did. I immediately understood that if those tubes
6 had been in that order when they were tested, that I had
7 associated the wrong results with those two tubes.

8 Q. The supervisor wasn't in his room, so you went -- or
9 walked back to your workstation?

10 A. I did. It's almost like you were there.

11 Q. I've heard this before.

12 A. Oh, okay.

13 Q. And when you got back to your workstation, the phone
14 then rang with someone telling you you made a mistake?

15 A. One of the agencies affected did call me and
16 indicate the results on the report did not match the
17 circumstances of their case.

18 Q. Because when the blood was drawn, the police
19 department knew their civilian employee hadn't had anything to
20 drink?

21 A. That was the understanding, yes, sir.

22 Q. And what you reported was that the person was a .15?

23 A. Correct, temporarily.

24 Q. Now, when you do your work it's behind closed doors?

25 A. Sometimes.

1 Q. I mean, I can't just go to the Garland Crime Lab and
2 walk into the lab, can I?

3 A. No, you cannot.

4 Q. It's a governmental lab?

5 A. Well, it's a crime laboratory operated by the Texas
6 Department of Public Safety.

7 Q. Well, if I were to send you a blood sample to test,
8 independently, would you do it for me?

9 A. I would not.

10 Q. That's because you only test samples for the
11 government?

12 A. Correct, or samples that we've been ordered to by
13 the Court.

14 Q. Did you watch the video in association with this
15 case and the Field Sobriety Tests on Halie Mansour?

16 A. I did not.

17 MR. WILDER: Pass the witness.

18 (End of requested excerpt.)

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1 AFTERNOON SESSION (Continued)

2 SEPTEMBER 27, 2016

3 PROCEEDINGS

4 (Proceedings in progress.)

5 (Defendant present; Jury present.)

6 CHRIS YOUNGKIN,

7 having been duly sworn, testified as follows:

8 REDIRECT-EXAMINATION

9 Q. (BY MR. REESE) Let's go back to the incident that
10 happened in 2013 in Melissa.

11 A. Okay.

12 Q. Nobody lost their job or anything because of the --
13 of the -- of what happened, correct?

14 A. Not that I'm aware of.

15 Q. And, I mean, you're -- we're all human. People make
16 mistakes, right?

17 A. We all are human. I think the Judge, even. And we
18 do make mistakes.

19 (Laughter)

20 THE COURT: I want a copy of that record.

21 (Laughter)

22 THE COURT: So wrap it up, Mr. Reese.

23 MR. REESE: Yes, sir.

24 Q. (BY MR. REESE) What have you -- what -- what have
25 you done in order -- what have you done so this doesn't happen

1 again?

2 A. I'm just careful to compare the laboratory case
3 number that's written on the gray-top tube and on the head
4 space vial as the samples are prepared.

5 Q. And you're even more careful because this is always
6 in the back of your head, right?

7 A. I've always been careful. I had relied upon the
8 samples staying in numerical order previously.

9 Q. In this -- in this case was there ever a request for
10 the vials to be retested?

11 A. Not that I'm aware of, but the evidence was returned
12 to the Plano Police Department.

13 Q. Could you look at those vials and tell me if they
14 could be retested again?

15 A. Well, the one that I viewed earlier certainly
16 contained enough blood for that, and if the other one's never
17 been opened, then it's certainly possible.

18 Q. So if there was any question about the result that
19 you got, it could have been retested?

20 A. It certainly could have, yes, sir.

21 Q. Do you know why the Defense Counsel didn't ask for
22 it to be retested?

23 A. I do not.

24 MR. REESE: No further questions, Your Honor.

25 THE COURT: Any recross?

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REPORTER'S RECORD
VOLUME 1 OF 1 VOLUMES

TRIAL COURT CAUSE NO. 002-80150-2016

THE STATE OF TEXAS

§ IN THE COUNTY COURT

VS.

AT LAW NO. 2

PAULINE NJERI NDIRANGU

§ COLLIN COUNTY, TEXAS

PRETRIAL HEARING

On the 3rd day of October, 2016, the following proceedings came on to be heard in the above-entitled and -numbered cause before the Honorable Barnett Walker, Judge Presiding, held in Collin County, McKinney, Texas.

Proceedings reported by computerized-machine shorthand.



A P P E A R A N C E S

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COUNSEL FOR THE DEFENDANT

09:13AM 1 correct?

09:13AM 2 A. Yes.

09:13AM 3 Q. And you have slated to testify as an expert

09:13AM 4 witness in this case either later today or tomorrow; is

09:13AM 5 that correct?

09:13AM 6 A. Yes, that's my understanding.

09:13AM 7 Q. You'll be the one that's sponsoring the blood

09:13AM 8 alcohol results in this case; is that right?

09:13AM 9 A. Yes.

09:13AM 10 Q. Now, as part of your job with the Department of

09:13AM 11 Public Safety, you are responsible for alcohol testing

09:13AM 12 in blood; correct?

09:13AM 13 A. I am.

09:13AM 14 Q. And you performed that in accordance with your

09:13AM 15 policies in this case; right?

09:13AM 16 A. Correct.

09:13AM 17 Q. You work in the Texas Department of Public

09:13AM 18 Safety Crime Laboratory in Garland; is that right?

09:13AM 19 A. I do.

09:13AM 20 Q. And that's an agency in the State; is that

09:13AM 21 correct?

09:13AM 22 A. Yes.

09:13AM 23 Q. Now, Mr. Youngkin, prior to this testing being

09:13AM 24 done, there was a situation wherein you had mixed up

09:13AM 25 vials; is that correct?

09:13AM 1 A. There was a situation in 2013 where two gray
09:13AM 2 top tubes were found to be out of order.

09:14AM 3 Q. There was an investigation into that conducted
09:14AM 4 by your lab; is that correct?

09:14AM 5 A. There was a quality action plan that was
09:14AM 6 completed and associated with that incident.

09:14AM 7 Q. Now, let's back up a little bit. With regards
09:14AM 8 to that case, it is my understanding that on that
09:14AM 9 particular case, you were testing the blood of a police
09:14AM 10 officer from the City of Anna; is that correct?

09:14AM 11 A. I believe it was a public employee from that
09:14AM 12 city. As to their position, I'm not sure.

09:14AM 13 Q. All right. And you tested the blood, it came
09:14AM 14 back over the legal limit, and you reported those
09:14AM 15 results to either Anna Police Department or City of
09:14AM 16 Anna; is that correct?

09:14AM 17 A. Correct, initially.

09:14AM 18 Q. At that point in time, they then contacted your
09:14AM 19 lab and said this employee wasn't necessarily part of a
09:14AM 20 DWI investigation and the results here don't match what
09:14AM 21 we were anticipating; is that correct?

09:14AM 22 A. They did contact the laboratory following the
09:14AM 23 release of the report.

09:14AM 24 Q. After that, that's when it was noticed that the
09:14AM 25 gray top tubes had been switched; is that correct?

09:24AM 1 process is prescribed in the LOG. At that time, it was
09:24AM 2 followed.

09:24AM 3 MR. ABEL: I'll pass the witness at this
09:24AM 4 point in time, your Honor.

09:24AM 5 CROSS-EXAMINATION

09:24AM 6 BY MS. WOODALL:

09:24AM 7 Q. Mr. Youngkin, in July of 2015, did you testify
09:24AM 8 that you had switched the vials or the tubes?

09:24AM 9 A. The question that he has presented to me today,
09:24AM 10 a transcript, is regarding headspace vials.

09:24AM 11 Q. And have you ever switched vials before?

09:24AM 12 A. Not that I'm aware of.

09:24AM 13 Q. Okay. And so what's the difference between
09:24AM 14 switching vials and switching tubes like you were
09:24AM 15 talking about?

09:24AM 16 A. I can show you if you'd like.

09:24AM 17 Q. Okay.

09:25AM 18 A. This is a headspace vial. This is a gray top
09:25AM 19 tube. In 2013, two of these gray top tubes I worked on
09:25AM 20 had become out of numerical order. It had nothing to do
09:25AM 21 with these headspace vials. They had not even been
09:25AM 22 created at that time.

09:25AM 23 Q. So how did you end up mixing up those tubes and
09:25AM 24 how did it affect the tests that were done?

09:25AM 25 A. As I answered previously, there was no cause or

09:25AM 1 reason to determine why they were out of order. It
09:25AM 2 affects the results in that the position of the gray top
09:25AM 3 tube -- it determines how the results are associated
09:25AM 4 with a particular laboratory case number.

09:25AM 5 Q. And so in this case, are you saying that the
09:25AM 6 tubes were out of order and that affected -- and that's
09:25AM 7 how the wrong reports were issued?

09:25AM 8 A. Correct. It was determined, based on the
09:25AM 9 results of the reanalysis, that the tubes had been out
09:26AM 10 of order when they were tested, thereby reversing those
09:26AM 11 two results.

09:26AM 12 Q. Now, to you it seems like there's a big
09:26AM 13 difference between when you're talking about tubes
09:26AM 14 versus talking about vials; is that correct?

09:26AM 15 A. Correct. They're two different things.

09:26AM 16 Q. So if you testified before that you never
09:26AM 17 switched up vials as far as you're aware, were you
09:26AM 18 trying to mislead anyone?

09:26AM 19 A. I was not. In both of those transcripts that I
09:26AM 20 was presented with today are the orange headspace vials
09:26AM 21 apparently in both of them.

09:26AM 22 MS. WOODALL: I'll pass the witness.

09:26AM 23 REDIRECT EXAMINATION

09:26AM 24 BY MR. ABEL:

09:26AM 25 Q. So Ms. Grant asked the wrong question or used

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the wrong term; is that correct?

A. I'm not in a position to determine what the right or wrong questions are. I just answered the questions that were asked.

MR. ABEL: Sure. May I approach again?

THE COURT: Yes, sir.

Q. (BY MR. ABEL) I'll show you one more transcript. It's the last one I've got, I promise. Do you recall testifying the 26th of January this year in the State of Texas versus Tammy Robinson, County Criminal Court No. 5 of Denton County, Texas?

Do you recall that?

A. Not everything, no, sir.

Q. I'm going to draw your attention here to Page 4 of this transcript here where you're questioned by Mr. Gioffredi. Just look at the first few questions here.

Does that refresh your memory at all?

A. Only that I'm able to read it.

Q. On that occasion, you were asked if you ever mixed up the samples; is that correct?

A. That is correct.

Q. And you answered in the affirmative just one time -- or just once; is that correct?

A. The part of the transcript that I was able to

09:27AM 1 read, yes, that was my response.

09:27AM 2 Q. So you will admit to switching things if it's

09:27AM 3 samples or gray top tubes; correct?

09:27AM 4 A. Correct.

09:27AM 5 Q. But if I use the word "vial," that's not going

09:27AM 6 to get me there; right?

09:27AM 7 A. Correct. I mean, I may ask you what you're

09:27AM 8 referring to specifically.

09:27AM 9 Q. Okay. Are you aware -- have you been trained

09:28AM 10 in your obligations as a state actor in Brady versus

09:28AM 11 Maryland?

09:28AM 12 A. I have.

09:28AM 13 Q. And do you know what that obligation is?

09:28AM 14 A. To provide the information to the State so it

09:28AM 15 can then be provided to a defendant, any information

09:28AM 16 that could be considered -- I don't know what the word

09:28AM 17 is -- "beneficial" to their cause.

09:28AM 18 Q. Sure. Exculpatory. Beneficial.

09:28AM 19 A. Correct. I think "exculpatory" is the big

09:28AM 20 word. Correct.

09:28AM 21 Q. And, Mr. Youngkin, you did not turn this over

09:28AM 22 to the District Attorney's Office of Collin County; is

09:28AM 23 that correct?

09:28AM 24 A. I'm certain at this point in time it has been

09:28AM 25 provided to their office. When it took place, I don't

09:28AM 1 remember.

09:28AM 2 Q. And you were not the person who provided it; is
09:28AM 3 that correct?

09:28AM 4 A. Certainly could have been. Again, I don't have
09:28AM 5 any independent memory of that.

09:28AM 6 MR. ABEL: I'll pass the witness,
09:28AM 7 your Honor.

09:28AM 8 MS. WOODALL: I have nothing further.

09:28AM 9 THE COURT: All right. So that I
09:28AM 10 understand exactly what the testimony is: Does the
09:29AM 11 State or defense -- either one, have any objection to me
09:29AM 12 asking any questions?

09:29AM 13 MS. WOODALL: No, sir.

09:29AM 14 MR. ABEL: No objection.

09:29AM 15 THE COURT: Mr. Youngkin, correct me if I
09:29AM 16 am wrong. You're testing a batch of gray top tubes?

09:29AM 17 THE WITNESS: Correct.

09:29AM 18 THE COURT: The position of those tubes
09:29AM 19 correlates to a report?

09:29AM 20 THE WITNESS: Correlates to results. And
09:29AM 21 once those results were obtained, the report is
09:29AM 22 generated.

09:29AM 23 THE COURT: Okay. Let's assume that
09:29AM 24 Mr. Abel is supposed to be -- his -- his blood is
09:29AM 25 supposed to be in Tube Position No. 1 and my blood is in

09:37AM 1 gray top tube.

09:37AM 2 Q. I know that. But what I'm saying is: You
09:37AM 3 don't load the glass tube that was given to you by the
09:37AM 4 police agency into the gas chromatograph. You're
09:37AM 5 loading this (indicating) into the gas chromatograph;
09:37AM 6 correct?

09:37AM 7 A. Correct.

09:37AM 8 Q. So it is reading the substance that's in this
09:37AM 9 tube in the gas chromatograph; correct?

09:37AM 10 A. It is.

09:37AM 11 THE COURT: All right. So that the
09:37AM 12 record's clear, the witness has identified that he
09:37AM 13 refers to that as a vial. So let's -- someone reading
09:37AM 14 this can't see what you're holding. Refer to that as
09:37AM 15 the vial. Refer to the gray top tube as a tube.

09:37AM 16 MR. BURLESON: Yes, sir.

09:37AM 17 Q. (BY MR. BURLESON) So the vial is a disposable
09:37AM 18 piece of machinery, I guess, that you use in your
09:37AM 19 scientific lab; correct?

09:37AM 20 A. It is.

09:38AM 21 Q. Okay. So the vial is what the result comes
09:38AM 22 from; right?

09:38AM 23 A. It is.

09:38AM 24 Q. Okay. Now, when you test your blood, how long
09:38AM 25 does it test -- take to test a batch of blood?

09:38AM 1 A. Approximately 11 hours.

09:38AM 2 Q. And how many do you do per week?

09:38AM 3 A. Batches?

09:38AM 4 Q. Uh-huh.

09:38AM 5 A. It just depends on which week it is.

09:38AM 6 Q. Okay. Give me an average.

09:38AM 7 A. Between one to three.

09:38AM 8 Q. One to three a week.

09:38AM 9 When your batch is done, what happens to

09:38AM 10 these blue tubes?

09:38AM 11 THE COURT: Vials.

09:38AM 12 Q. (BY MR. BURLESON) Blue vials.

09:38AM 13 A. They're autoclaved and disposed of.

09:38AM 14 Q. They're disposed of?

09:38AM 15 A. Yes.

09:38AM 16 Q. So they're disposed of within a day of testing?

09:38AM 17 A. It depends what day the testing is conducted.

09:38AM 18 If it's on a Friday, it may not be until Monday.

09:38AM 19 Q. All right. So let's go back to this quality

09:38AM 20 action plan. You have testified recently that you did

09:38AM 21 mix up samples, but you self-found and self-reported

09:39AM 22 those sample changes; correct?

09:39AM 23 A. I did testify this year, according to the

09:39AM 24 transcript, the samples were switched.

09:39AM 25 Q. And your testimony at that time was that you're

09:43AM 1 A. There is an investigator identified on that
09:43AM 2 quality action plan.
09:43AM 3 Q. And that investigator determined that this was
09:44AM 4 an isolated event; correct?
09:44AM 5 A. Not certain if that person determined that. It
09:44AM 6 was indicated to be an isolated event.
09:44AM 7 Q. Who is that investigator, Mr. Youngkin?
09:44AM 8 A. My name is listed there.
09:44AM 9 Q. So just to flesh this out. You test blood on
09:44AM 10 about May the 11th, 2013, and send it to Anna PD. On
09:44AM 11 May 16th, 2013, Anna PD calls you and says your blood
09:44AM 12 appears to be incorrect. At about that same time, you
09:44AM 13 notice that you switched gray top tubes, which means
09:44AM 14 that the vials in the gas chromatograph was testing the
09:44AM 15 wrong people's blood in the wrong slot; correct?
09:44AM 16 A. That's what was determined upon the reanalysis
09:44AM 17 of that evidence.
09:44AM 18 Q. You then assign an investigator who is
09:44AM 19 yourself; correct?
09:44AM 20 A. Well, I would not have made that assignment,
09:44AM 21 but --
09:44AM 22 Q. Okay. Well, let me -- let me approach. In
09:45AM 23 Defendant's Exhibit No. 1, it says the requester is
09:45AM 24 Chris Youngkin; correct?
09:45AM 25 A. It is.

09:46AM 1 What was your response?

09:46AM 2 A. Again, I have no independent recollection of

09:46AM 3 what I said last week.

09:46AM 4 Q. Okay. You didn't -- don't recall in that

09:46AM 5 transcript that we will be getting that you said "only

09:46AM 6 to those that ask, I only turn it over to the defense

09:46AM 7 attorneys who ask"?

09:46AM 8 A. It would certainly make sense, yes, sir.

09:46AM 9 Q. That's what you said; right?

09:46AM 10 A. It's very possible.

09:47AM 11 Q. Okay. I then asked you that both Denton County

09:47AM 12 and Dallas County in 2016 determined that the switch

09:47AM 13 that was made in 2013 to be Brady material; correct?

09:47AM 14 A. You indicated to me approximately two weeks ago

09:47AM 15 that you had received some materials from Denton County

09:47AM 16 with regard to myself.

09:47AM 17 Q. Well, the Hagmeier case that was last week,

09:47AM 18 Dallas County gave me the same Brady material; correct?

09:47AM 19 A. Potentially. I was not present when you

09:47AM 20 received those materials.

09:47AM 21 Q. Do you not remember me cross-examining you on

09:47AM 22 it and showing it to you?

09:47AM 23 A. I do remember testifying about it last week.

09:47AM 24 Q. Okay. And then I asked you: Mr. Youngkin, how

09:47AM 25 many District Attorney's Offices of the seven that you

09:47AM 1 testify to did you turn over Brady material in 2013?

09:47AM 2 What was your answer?

09:47AM 3 A. None that I'm aware of.

09:47AM 4 Q. Your answer was: Only the District Attorneys

09:47AM 5 that ask; is that correct?

09:47AM 6 A. Correct. No one would have been asking for it

09:47AM 7 in 2013.

09:47AM 8 Q. Because no one would have known about it in

09:47AM 9 2013; is that correct?

09:48AM 10 A. That's very possible, yes, sir.

09:48AM 11 Q. Because you didn't tell anyone about it in

09:48AM 12 2013; correct?

09:48AM 13 A. Correct. It was not required.

09:48AM 14 Q. Are you a state actor?

09:48AM 15 A. I don't know that I understand the question.

09:48AM 16 Q. Who do you work for?

09:48AM 17 A. Department of Public Safety --

09:48AM 18 Q. Continue.

09:48AM 19 A. -- Crime Laboratory.

09:48AM 20 Q. The crime lab for the Department of Public

09:48AM 21 Safety which means you are a state actor; is that

09:48AM 22 correct?

09:48AM 23 A. I'll take your word for it.

09:48AM 24 Q. Okay. Have you been trained that state actors

09:48AM 25 have a constitutional duty to turn over Brady material?

09:48AM 1 A. I have received training in regards to Brady
09:48AM 2 materials. As to whether it was necessary for me to
09:48AM 3 turn this over in 2013, I'm not familiar.

09:48AM 4 Q. Well, let me ask you this -- finally, Judge, I
09:48AM 5 beg you for your patience. You've testified that 8,000
09:48AM 6 samples you've done since 2013; correct?

09:48AM 7 A. Approximately since May of 2013.

09:48AM 8 Q. And only 200 people have challenged you in
09:49AM 9 trial; correct?

09:49AM 10 A. Approximately 200 of those have gone to trial.
09:49AM 11 And this could have been tested prior to that date.

09:49AM 12 Q. How many people plead guilty of those
09:49AM 13 8,000 cases that had no idea that there was Brady
09:49AM 14 material out there available that you did not turnover?

09:49AM 15 THE COURT: Stop. I'm not going to allow
09:49AM 16 that question unless I give him an attorney. He's
09:49AM 17 required to turnover things that are Brady. In an
09:49AM 18 abundance of caution, many of the District Attorneys are
09:49AM 19 turning it over. I don't know that it's been determined
09:49AM 20 that it is Brady yet. But if it is and it's determined
09:49AM 21 that it is, I'm not going to allow him to answer the
09:49AM 22 question. He has Fifth Amendment rights just like
09:49AM 23 everyone else.

09:49AM 24 All right. Anything further?

09:49AM 25 MR. BURLESON: No, your Honor.

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PARTIAL REPORTER'S RECORD
VOLUME 1 OF 1 VOLUME

TRIAL COURT CAUSE NO. 002-86748-2015

THE STATE OF TEXAS

IN THE COUNTY COURT

VS.

AT LAW NO. 2

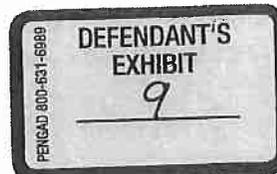
DAMON MICHAEL DOUGLASS

COLLIN COUNTY, TEXAS

REQUESTED EXCERPTS FROM THE TESTIMONY OF NIRAV KUMAR

On the 11th day of October, 2016, the following proceedings came on to be heard in the above-entitled and -numbered cause before the Honorable Barnett Walker, Judge Presiding, held in Collin County, McKinney, Texas.

Proceedings reported by computerized-machine shorthand.



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I N D E X

VOLUME 1
REQUESTED EXCERPTS FROM THE TESTIMONY OF NIRAV KUMAR

October 12, 2016

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P R O C E E D I N G S

(Beginning of Excerpt 1)

NIRAV KUMAR

having been first duly sworn, testified in part as follows:

CROSS-EXAMINATION

BY MR. BURLESON:

Q. For your purpose and for the DPS blood kit, how many vials of blood are there?

A. For the DPS kit, there would need to be two. Both blood tubes would need to be filled up.

Q. Tubes or vials; is that correct?

A. Correct.

Q. Tubes and vials mean the same thing; right?

A. Yes.

Q. You used the word "vial" in describing that -- vials you had before; correct?

A. Correct.

Q. There are three other analysts in your office -- Christine Hay, Andrew Macey, and Chris Youngkin; correct?

A. Correct.

Q. They've used the term "vial" in describing what's in the DPS blood kit --

MS THOMAS: Objection, your Honor. Hearsay

03:53PM 1 and speculation.

03:53PM 2 THE COURT: Sustained.

03:53PM 3 Q. (BY MR. BURLESON) You use it -- right? --

03:53PM 4 "vial?" The word "vial?"

03:53PM 5 A. Correct. I would describe this as a vial.

03:53PM 6 Q. Well, let me approach because I asked you how

03:54PM 7 many vials are in a DPS blood kit.

03:54PM 8 Does this come in a DPS blood kit?

03:54PM 9 A. No.

03:54PM 10 Q. You said there were two vials in a DPS blood

03:54PM 11 kit; correct?

03:54PM 12 A. Correct.

03:54PM 13 Q. Can you show me the vial.

03:54PM 14 A. The word tube and vial can be used

03:54PM 15 interchangeably when describing cylindrical objects that

03:54PM 16 contain liquid.

03:54PM 17 Q. Right. The nurse that was just here said that,

03:54PM 18 too. Show me the vial.

03:54PM 19 A. These can be described as tubes or vials.

03:54PM 20 (End of Excerpt 1)

03:53PM 21 (Beginning of Excerpt 2)

03:53PM 22 Q. (BY MR. BURLESON) Okay. Now, is it possible

04:06PM 23 to mix up the vials?

04:06PM 24 A. It's possible, yes.

04:06PM 25 Q. Has anyone in your laboratory ever mixed up

04:06PM 1
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04:06PM 5
04:06PM 6
04:06PM 7
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vials?

A. Yes, it has happened before.

Q. Okay. Who was that?

A. That was Chris Youngkin.

Q. Okay. So you knew he mixed up vials; right?

A. He did. But this was before I started working
there.

(End of Excerpt 2)

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REPORTER'S RECORD
VOLUME 1 OF 1 VOLUMES

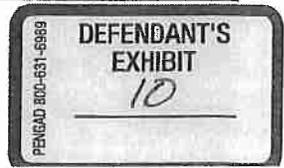
TRIAL COURT CAUSE NO. 003-80603-2016

STATE OF TEXAS)	IN THE COUNTY COURT
)	
VS.)	AT LAW NUMBER 3
)	
TYLER KENT AVARITT)	COLLIN COUNTY, TEXAS

DISCOVERY MOTION

On the 12th day of October, 2016, the following
proceedings came on to be heard in the above-entitled
and numbered cause before the Honorable Lance S. Baxter,
Judge presiding, held in McKinney, Collin County, Texas;

Proceedings reported by machine shorthand.



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P R O C E E D I N G S

1
2 THE COURT: 003-80603-2016, State of Texas
3 versus Tyler Kent Everett. Is he coming?

4 MR. BURLESON: No, this is just a discovery
5 hearing.

6 MR. BURLESON: Judge, we've got a couple of
7 preliminary things to put on the record before we call
8 the witness. May I?

9 THE COURT: Yes.

10 MR. BURLESON: Your honor, the purpose of
11 the hearing here today is to seek discoverable material
12 under Brady V. Maryland and under Section 39.14 of the
13 Texas Penal Code, specifically in regard to
14 Christopher Youngkin who is a DPS lab analyst for the
15 Department of Public Safety, and he is the analyst in
16 the case here today.

17 Your Honor, starting in 2016, we started
18 getting discovery notices from other counties on
19 Mr. Youngkin, one from Denton, one from Dallas. And we
20 have, in this case -- last week, I spoke with the
21 prosecutor, and they've given me a discovery notice
22 on -- let me read it specifically. I think it was a
23 potential Brady notice. It was called a disclosure --
24 it was called a Chris Youngkin Disclosure. All of these
25 relate to one event that happened back in May of 2013.

CCP

1 The purpose of it, we got pieces of what happened in
2 2013, but we have not gotten the whole story. And I
3 don't believe it's because of any District Attorney's
4 office withholding any information. I believe it's
5 100 percent with Mr. Youngkin either withholding
6 information, not being 100 percent forthcoming, or his
7 belief that he had no obligation to turn over
8 information. So, that is the purpose.

9 MS. DUNAGAN: Your Honor, I will say we were
10 originally here for pretrial September 29th of 2016.
11 The day before, our office had sent out a notice to all
12 the prosecutors with regard to Christopher Youngkin. On
13 the 29th, I had a verbal conversation with Mr. Burleson
14 with regard to that, and then I also -- I believe we put
15 on the record that the case was being reset due to the
16 information on Mr. Youngkin. I then sent him an e-mail
17 disclosure with regard to Mr. Youngkin. I believe it
18 was either -- I think it was last week. I don't have
19 the e-mail right in front of me, but I believe it was
20 last week. He does have a copy of that e-mail.

21 MR. BIEDERMAN: October, 6th.

22 MS. DUNAGAN: October 6th, Your Honor, that
23 it had the official disclosure. In addition, with
24 regard to this motion, the State does believe that the
25 motion is unnecessary at this time. There's no evidence

1 with regard to this specific case that there has been
2 any wrongdoing by Mr. Youngkin on this case. And that,
3 therefore, all the Brady exculpatory, mitigating or
4 impeachment evidence and all the requirements under
5 39.14 have been met by the State given the disclosure
6 that was given to defense counsel with regard to
7 Mr. Youngkin, and we would argue that this is not the
8 proper avenue for this type of hearing since all the
9 disclosures have been made in accordance with the law.

10 THE COURT: And I think that a lot of the
11 case law says that Brady doesn't really apply so much on
12 a case that hasn't been pled yet. It's mostly a post
13 pleading -- post-finding remedy. But because we're here
14 and he's here, we might as well get this knocked out
15 and --

16 MR. BURLESON: Judge, if I can address that.
17 Brady says that any material -- any documents, items
18 material to the guilt or punishment of the defendant
19 should be turned over. 39.14 says if the State has any
20 documents -- or if there are any documents that can
21 impeach a witness, be used to discipline a witness on
22 cross-examination, I believe it's Section G or H says it
23 must be turned over prior, during, or after a trial.
24 So, whether we're talking Brady or 39.14, it's still
25 applicable.

1 Q. Mr. Youngkin, you understand that you just swore
2 an oath to tell the truth to questions, correct?

3 A. I do.

4 Q. You don't have any misgivings about that or --
5 you understand what you just took an oath to, correct?

6 A. I do.

7 Q. Let's get to it. In 2013 you switched gray-top
8 tubes during a testing of batches in your job as a DPS
9 lab analyst, correct?

10 A. I did.

11 Q. As a result of that, you reported a person had a
12 .15 blood alcohol concentration when that person had
13 zero alcohol in their blood, correct?

14 A. That's correct.

15 Q. And that was on May 16, 2016 -- 2013, correct?

16 A. That's the day the observation -- I was made
17 aware that the tubes had been switched. I believe the
18 reports may have been released the day before.

19 Q. Okay. They released the report the day before,
20 and on 5/16/2013, you realized that you switched
21 gray-top tube, correct?

22 A. I did, that's correct.

23 Q. So, you knew from 5/16/2013 that you had switched
24 gray-top tubes and had given a person a wrong result?

25 A. Correct, temporarily.

1 Q. And you knew that in 2014, correct?

2 A. I did.

3 Q. You knew that in 2015, correct?

4 A. Yes, sir.

5 Q. You knew that all 2016 through today, correct?

6 A. Yes.

7 Q. "Yes" or "no", in 2013, did you switch samples?

8 A. If you consider --

9 MR. BURLESON: Objection, nonresponsive.

10 Q. (By Mr. Burleson) In 2013, did you switch
11 samples?

12 THE COURT: Answer it if you can.

13 Q. (By Mr. Burleson) "Yes" or "no"?

14 A. I can't answer the question "yes" or "no".

15 Q. Have you ever answered that question "yes" or
16 "no" before under oath?

17 A. I would have to have reviewed all the records of
18 my testimony to answer that question.

19 Q. We'll get to that.

20 A. Okay.

21 Q. Okay. In 2013, did you switch samples?

22 A. If gray-top tubes can be considered samples, then
23 the answer is, yes.

24 Q. In 2013, did you switch vials?

25 A. I did not.

1 Q. You did not?

2 A. That's correct.

3 Q. Since 2013, have you ever testified that you
4 switched samples?

5 A. I have.

6 Q. Since 2013, have you ever testified that you
7 switched vials?

8 A. Not that I'm aware of.

9 Q. "Yes" or "no"? You just said that you never
10 switched vials, so, "yes" or "no", since 2013, have you
11 ever testified that you switched vials?

12 A. No.

13 Q. No?

14 A. No.

15 Q. And that's under oath, right?

16 A. Yes, you've made that clear.

17 Q. And if you -- If I showed you a transcript under
18 oath where you said you did switch vials in 2013, that
19 would be a prior inconsistent statement under oath,
20 correct?

21 A. That would depend on the context of the question.

22 Q. Okay. Is a gray-top tube considered the same
23 thing as a sample?

24 A. It can be.

25 Q. Is a gray-top tube considered the same thing as a

1 vial?

2 A. Not to me, it's not.

3 Q. Have you ever testified to a gray-top tube being
4 a vial?

5 A. Not that I'm aware of, no.

6 Q. So, the answer would be no, right?

7 A. Correct. I was trying to cut you off.

8 Q. Have you ever testified, after 2013, that to you
9 the mix up that happened in 2013 of gray-top tubes was
10 the same as mixing up vials?

11 A. No.

12 Q. Sure about that?

13 A. I am.

14 Q. Okay. Who is Nirav Kumar?

15 A. Nirav Kumar?

16 Q. Yes.

17 A. He's another analyst in our laboratory.

18 Q. Does he have the same job that you do?

19 A. Generally, yes.

20 Q. What do you mean, generally? Is he a forensic
21 analyst for the Department of Public Safety?

22 A. He is. He also tests controlled substances where
23 I do not.

24 Q. So, basically he does more than you do, correct?

25 A. He does different things.

1 Q. But he tests blood, right?

2 A. He does.

3 Q. And he testifies in court about testing blood?

4 A. He does.

5 Q. Are you aware that yesterday, the 11th of
6 October, 2016, Nirav Kumar testified under oath that a
7 gray-top tube and a vial is the same thing?

8 A. I'm not aware of anything that Nirav Kumar
9 testified to yesterday.

10 Q. Are you aware yesterday, October 11, 2016,
11 Nirav Kumar testified that he was aware that you
12 switched vials before?

13 A. Again, I'm not aware of anything that Nirav Kumar
14 testified to yesterday.

15 MR. BURLESON: Your Honor, may I approach?

16 THE COURT: You may.

17 Q. (By Mr. Burleson) I'm marking what's marked as
18 Defense Exhibit Number 7, which is a certified excerpt
19 from a hearing yesterday, State of Texas versus
20 David Michael Douglass.

21 MR. BURLESON: I'm giving a copy to the
22 State, giving a copy to the Court.

23 Q. (By Mr. Burleson) Mr. Youngkin, I want to show
24 you this transcript from yesterday. First question,

25 page 4 --

1 Q. So, it's a state agency, correct?

2 A. It is.

3 MR. BURLESON: May I approach, Judge?

4 THE COURT: You may.

5 Q. (By Mr. Burleson) In the past three years, how
6 many times have you testified as a witness for the State
7 in regard to blood?

8 A. Probably close to 200 times.

9 Q. Okay. So, past three years -- and that would
10 encompass since the May 16, 2013, incident, correct?

11 A. Correct.

12 Q. So, 200 times. Again, in those 200 times have
13 you ever referred to gray-top tubes as vials?

14 A. No.

15 Q. Have you ever admitted to switching vials in
16 2013?

17 A. I have not.

18 Q. Have you ever admitted to switching samples in
19 2013?

20 A. I have.

21 Q. You have. Okay. Now, let me ask you a
22 hypothetical. Let's say tomorrow you do a batch run, so
23 to speak, you get results and you send out the results.
24 You then find out that you had switched either the
25 gray-top tubes or the head space vials. What would you

1 laboratory, correct?

2 A. That's correct.

3 Q. How many of those do you retrieve?

4 A. Typically, 40 at a time.

5 Q. What's contained within those blood kits?

6 A. A gray-top tubes. Typically they contain blood.

7 Q. Now, the gray-top tubes, again, you've never
8 referred to those a vials, right?

9 A. That's correct.

10 Q. Okay. And you take one gray-top tube out of each
11 blood kit, and you line them up in sequential order,
12 correct?

13 A. Depending on how many gray-top tubes the kit
14 contains, I would remove the tubes at some point to
15 label them, then one tube would remain out of the kit to
16 be tested.

17 Q. How many gray-top tubes are normally in a DPS
18 blood kit?

19 A. It depends what year it is.

20 Q. Well, let's assume it's this year?

21 A. The current iteration of the kit contains two
22 gray-top tubes.

23 Q. And this year, have you testified that that
24 gray-top tube is a vial?

25 A. Not that I'm aware of.

1 Q. "Yes" or "no"?

2 A. No.

3 Q. Okay. So, you test these in batches, meaning you
4 test 40 samples at one time, right?

5 A. That's correct.

6 Q. So, you take 40 gray-top tubes from 40 different
7 blood kits, correct?

8 A. Correct.

9 Q. You line them up in sequential order, right?

10 A. In numerical order, that's correct.

11 Q. Okay. And the order numerically is where they
12 are assigned a location on the gas chromatograph,
13 correct?

14 A. That's correct.

15 Q. Okay. So, you line them up. You then program
16 your gas chromatograph and you say, for instance, GAR123
17 is in one, GAR124 is in location two, and sequentially
18 down, correct?

19 A. Correct.

20 Q. All right. Now, what's important when you're
21 testing is the head space vials, correct?

22 A. Well, there's many things that could be
23 considered important. I'm not sure I understand the
24 question.

25 Q. Well, the gas chromatograph does not test the

1 A. I did.

2 Q. Okay. Then 20 pages later on page 38, line 19,
3 she asked you, "Have you ever switched vials in
4 10,000 cases?" And what was your answer? Line 23, what
5 was your answer?

6 A. "Not that I'm aware of".

7 Q. Okay. Let me ask you a question, July 15th,
8 2015, were you aware that you had switched gray-top
9 tubes?

10 A. I was.

11 Q. How long have you been aware of that?

12 A. Since it happened in 2013.

13 Q. So, when Ms. Grant asked you that question, in
14 10,000 samples, have you ever switched vials, you said,
15 no, correct?

16 A. "Not that I'm aware of" was my response.

17 Q. Did you tell her, "I switched gray-top tubes"?

18 A. I did not. That was not the question that was
19 asked.

20 Q. Now, let's move forward. I want to go through
21 some other transcripts where you may have used samples,
22 vials -- things like that -- interchangeably that we
23 know of. You were aware that Denton County, in July,
24 started sending out Brady material on you, correct?

25 A. I was not aware of that in July.

1 Do you recall that -- that question?

2 A. Today?

3 Q. Yeah.

4 A. Not independently.

5 Q. Fair. I'll ask it again. Mixing up gray-top
6 tubes in 2013, does that mean the same as mixing vials
7 to you?

8 A. It is not.

9 Q. That's your testimony under oath?

10 A. It is.

11 MR. BURLESON: Page 8, Judge, line eight,
12 Defense Exhibit Number 2.

13 Q. (By Mr. Burlison) Line, you were asked by a
14 prosecutor -- I just want you to read 8, "Are you not
15 sure how the mixup happened?" Do you see that?

16 A. I do see that.

17 Q. What was she talking about the mixup?

18 A. No idea.

19 Q. No idea?

20 A. You've got the rest of it obscured.

21 Q. Was she talking about the 2013 incident?

22 A. That, I cannot answer. I haven't read the entire
23 transcript.

24 Q. Oh, perfect, question, page 4, "I want to talk to
25 you about what the defense was asking you about in 2013,

1 A. Yes.

2 Q. Yes? I thought a blood kit didn't contain vials.
3 I thought it contained gray-top tubes?

4 A. You thought correctly.

5 Q. Well, I guess then you're mistaken about the
6 language, because she asked you, "All right. Now, there
7 are two vials in this blood kit, right?" What was your
8 answer?

9 A. Line 4?

10 Q. Yep.

11 A. "Yes".

12 Q. She asked you again, "Why are there two vials?"
13 What was your answer?

14 A. "I just" -- "there is a tube remaining that's
15 been unopened for subsequent testing".

16 Q. Both of those questions were asking you about
17 gray-top tubes, correct?

18 A. It appears so, yes, sir.

19 Q. Both of those questions used the word "vials"
20 when describing gray-top tube, correct?

21 A. Vials, plural, yes, sir.

22 Q. Did you say, "You don't know what you're talking
23 about"?

24 A. Not this time, no, sir.

25 Q. Okie dokie. All right. Go to page 45. On page

1 45, line 25:

2 MS. DUNAGAN: Can you repeat the page
3 number?

4 MR. BURLESON: Page 45, line 20.

5 Q. (By Mr. Burleson) I ask if you have gloves.

6 What did you say?

7 A. "I have a glove, I believe".

8 Q. Why would I ask you to take out gloves?

9 A. I have no idea.

10 Q. Why would you take out gloves in trial?

11 A. Generally if I touch something that's a
12 biological hazard.

13 Q. And what's the only thing that's a biological
14 hazard that you touch in trial? A gray-top tube?

15 A. Typically, yes, sir.

16 Q. Okay. Also known as a vial; is that correct?

17 A. Depends on who's doing the talking.

18 Q. Okay. Well, let me ask you this: Page 45, line
19 25, I asked you, "Just take it out and show the jury the
20 vial". Did I ask you that?

21 A. It's recorded here. It's not really a question.

22 Q. It was a statement, correct?

23 A. It is.

24 Q. "I told you to take the vial out and show it to
25 the jury," right?

1 A. You did.

2 Q. What did you say?

3 A. "Sure".

4 Q. "Sure"? Well, how can you take out something
5 that wasn't there? If a vial is not a gray-top tube,
6 Mr. Youngkin, how could you have taken it out of the DPS
7 blood kit in trial?

8 A. Just because the evidence was in front of me, and
9 you repeatedly referred to it as a vial.

10 Q. And you never corrected me, right?

11 A. Not those times.

12 Q. Specifically this time did you say "Mr. Burleson,
13 I don't know what you're talking about. There's no vial
14 in the DPS blood kit"?

15 A. That was not recorded here.

16 Q. Page 47, line 8, "Okay. Mr. Youngkin, you
17 received a vial three-quarters full, and you produced a
18 vial today that appears to be three-quarters full of
19 blood. How much blood do you actually test?" Did you
20 answer that question.

21 A. I did not, actually. I asked you a question.

22 Q. What did you ask me?

23 A. I said, "Are we through with this?"

24 Q. Right. Because you were about to touch another
25 gray-top tube, right?

1 A. No, I was asking if it would be necessary in the
2 future.

3 Q. Okay. That's 47 -- 49. Question, "Now,
4 yesterday you said that you didn't test the blood in
5 that vial that you just showed the jury". Now, what
6 vial did you just show a jury?

7 A. It would depend on what the testimony was if this
8 is you talking, then you're referring to the gray-top
9 tube.

10 Q. Gray-top tube, right? "You didn't test it in the
11 vial, meaning the vial that you got in your machine?"
12 And you said, "Correct," right?

13 A. Part of the answer was "Correct".

14 Q. So, I referred to a gray-top tube as a vial
15 twice, and you answered the question twice, right?

16 A. I answered the question once.

17 Q. You didn't tell me, "You don't know what you're
18 talking about," right?

19 A. Not that time, correct.

20 Q. Okay. Page 49 -- I'm sorry. Page 50, Your
21 Honor, line 14. "The vial that goes into the machine is
22 not the vial that you receive?" The vial that goes into
23 the machine is called a what?

24 A. A head space vial.

25 Q. The vial you receive is called a what?

1 A. Well, it's called a gray-top tube. It's not a
2 vial.

3 Q. Did you answer that question?

4 A. I did.

5 Q. Did you answer it as a vial?

6 A. The first use of the word "vial" was correct.

7 Q. Okay. Well, your answer was "That's correct,"
8 right?

9 A. It was.

10 Q. You didn't correct me, right?

11 A. Well, I mean, I answered the question as it was
12 asked.

13 Q. Page 51, line 13, "Now, how does the blood get
14 from the blood vial that you received into here?" The
15 blood vial you received is what?

16 A. A gray-top tube.

17 Q. Okay. And I call it a gray-top tube, but what?

18 A. The question contains the word "vial".

19 Q. Did you answer the question?

20 A. I did.

21 Q. And what did you say?

22 A. "It's transferred with a pipette".

23 Q. Okay. That's 11. Page 52, line one, "eighty to
24 one hundred vials that you receive from some law
25 enforcement agency?" What do you receive from law

1 enforcement agencies that contained blood? I'm asking
2 you a question. What did you see that contained blood?

3 A. Typically gray-top tubes.

4 Q. So, when I say 80 to 100 vials you receive from
5 law enforcement, what am I referring to?

6 A. Gray-top tubes.

7 Q. Okay. Now, in your answer, you say, "There would
8 only be 40 of those". What are "those"?

9 A. "Those" are the gray-top tubes that are being
10 tested.

11 Q. Did the question before ask you about a gray-top
12 tube?

13 A. Not specifically.

14 Q. No, it said "The vials you get from law
15 enforcement," correct?

16 A. -- "of blood that you receive from".

17 Q. "Vials". And you said that you receive 40 of
18 those, meaning, you receive 40 vials of blood from law
19 enforcement, right?

20 A. There would only be 40 of those given, and each
21 of them are being tested twice.

22 Q. Okay. Then I asked you, page 7 -- or 52, line 8,
23 "you go vial to vial, and then you go on to the next
24 vial, correct?" What was your answer?

25 A. That is correct.

1 Q. So, you answered another question about vials?

2 MS. DUNAGAN: Your Honor, I would object to
3 optional completeness and ask that he finish the rest of
4 that -- his answer to that question.

5 THE COURT: I'm reading it.

6 MS. DUNAGAN: Okay. Thank you.

7 Q. (By Mr. Burleson) Page 52, line 10, you say
8 "That is correct. Now, we -- I would sample that
9 gray-top tube twice, the vial like that". That was your
10 words. Let me show you your words. Fifty-two, line
11 10 -- what was your answer on 52, line 10.

12 A. "That is correct. Now we -- I would sample that
13 gray-top tube twice, the vial like that".

14 Q. When you said "The vial like that," what were you
15 referring to?

16 A. Probably the head space vial that I carry with me
17 to court.

18 Q. Okay.

19 A. I can show it to you. You've seen it before.

20 Q. Read the whole thing.

21 A. Okay.

22 Q. I want you to read the question.

23 A. You interrupted me, I'm sorry.

24 Q. Read the question. Thank you.

25 A. Now I'm reading the question. Okay.

1 Q. Are you ready?

2 A. I am.

3 Q. Page 52, Question, "Thank you. Then you go into
4 the ones that you receive, pipette to pipette. You go
5 vial to vial, and then go to the next vial, correct?"

6 What was your answer?

7 A. "That is correct. Now we -- I would sample that
8 gray-top tube twice, a vial like that. The pipette has
9 a disposable tip. So, at that point, I would eject that
10 tip and get a new one".

11 Q. "With a vial like that," what were you referring
12 to? You're under oath.

13 A. I can only think that it was a head space vial
14 that I use for demonstrative purposes.

15 Q. It could also be "the vial like that," meaning
16 the gray-top tube, right?

17 A. I have no way of determining it from this
18 transcript.

19 Q. Let's go to page 54.

20 MR. BURLESON: Fifty-four is just a repeat,
21 Judge. You can read it starting at line 10.

22 Q. (By Mr. Burleson) I want to address your
23 attention to page 72, line 4. You answered a question,
24 72, line 4. Read your answer. Read it.

25 A. Right now?

1 Q. Yes.

2 A. "Just that there would be any unopened vial or
3 tube of blood for any subsequent testing.

4 Q. What were you referring to?

5 A. It sounds like a gray-top tube.

6 Q. Now, Mr. Youngkin, I didn't -- that wasn't my
7 question, was it?

8 A. The question preceding that answer was, "And why
9 don't you test the other one?"

10 Q. I didn't say anything about a gray-top tube, I
11 didn't say anything about a head space vial, I didn't
12 say anything about a vial, did I?

13 A. These are actually questions by Ms. Woodall, it
14 appears.

15 Q. Oh, even better. She didn't say anything, right?

16 A. I just read the question that you directed me to.

17 Q. On page 72 on that transcript, what did you call
18 a gray-top tube?

19 A. A tube of blood.

20 Q. Read starting from line 4.

21 A. The entire answer?

22 Q. Yeah.

23 A. "Just that there would be an unopened vial" --

24 Q. Hang on.

25 A. You told me to read that.

1 A. I'm ready.

2 Q. Are you?

3 A. I am.

4 Q. All right. Did you testify on September 27,
5 2016, State of Texas versus Robin Hagmeier?

6 A. I did.

7 Q. Okay. It wasn't a body double? It wasn't
8 anybody else? It was you, right, Christopher Youngkin?

9 A. Correct.

10 Q. All right. Go to page 52. Read the question.

11 A. Which question would you like me to read?

12 Q. Starting at line number 9.

13 A. "First and foremost, without equivocation,
14 without conjecture, without hypothesis, you switched
15 vials on a person, correct?"

16 Q. What was your answer?

17 A. I did.

18 Q. Did you make that statement under oath?

19 A. Yes, it would appear to be.

20 Q. You said six times here today under oath that you
21 never switched a vial on a person?

22 A. That I didn't recall answering the question that
23 I had.

24 Q. Oh, no, no, no. I asked you six times today,
25 have you ever switched a vial on a person, and what was

1 your answer?

2 A. After you wouldn't let me say that "I don't
3 recall," the answer was no.

4 MR. BURLESON: Can we pull back that
5 question by the court reporter, Judge?

6 THE COURT: We can probably try and pull it
7 back.

8 MR. BURLESON: Okay. Judge, do you recall
9 him saying on the record?

10 THE COURT: Uh-huh.

11 MR. BURLESON: Do you recall me asking him
12 if he had ever switched vials before?

13 THE COURT: Uh-huh.

14 MR. BURLESON: And what was his answer? No,
15 correct.

16 THE COURT: Uh-huh.

17 MR. BURLESON: Oh.

18 MS. DUNAGAN: Your Honor, I'm sorry. Is the
19 Court testifying? I believe in the beginning, I recall
20 his answer being that he did not recall ever testifying.
21 I think that was in the first part of the record. Since
22 there seems -- that's what I remember him saying. I
23 don't recall him saying -- there were two different
24 questions asked with regard to the vial. I think that's
25 why I'm confused.

1 MR. BURLESON: That's fine. I am more than
2 willing to let the court reporter --

3 MR. BIEDERMAN: If not, now may be the time
4 to get an attorney appointed.

5 MR. BURLESON: And now may be the time for
6 Mr. Youngkin to get an attorney appointed, Judge.

7 THE COURT: Let's take a break.

8 (Discussion off the record.)

9 (State's Exhibits 1 and 2 admitted.)

10 THE COURT: All right. Mr. Youngkin, you
11 have the right to remain silent. You have the right to
12 an attorney. Would you like to take time to talk to
13 someone in your department?

14 THE WITNESS: Yes.

15 MR. BURLESON: No, no, no, Judge. I want
16 him -- he needs to say it.

17 THE COURT: Well --

18 MR. BURLESON: He needs to say it, Judge.

19 THE WITNESS: I would -- under the advice of
20 the Judge, I would like to invoke my Fifth Amendment
21 right.

22 MR. BURLESON: Do we need to take a break
23 and find someone?

24 THE COURT: We'll take a break and --

25 MS. DUNAGAN: Well, do we just need to reset

1 this for another time?

2 THE COURT: Yeah, that's what we'll do.

3 (Recess.)

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CAUSE NUMBER: M1545862

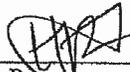
THE STATE OF TEXAS § IN THE COUNTY CRIMINAL
VS. § COURT NO. 3
ROBIN HAGMEIER § DALLAS COUNTY, TEXAS

STATE'S NOTICE PURSUANT TO BRADY V. MARYLAND

The State of Texas hereby gives the Court and Counsel for the Defendant formal written notice that the State has come into possession of evidence which should be disclosed pursuant to *Brady v. Maryland*. Specifically, the following information is being disclosed as potentially exculpatory or for impeachment purposes:

The State is disclosing *Texas DPS Crime Lab Quality Action Plan* in regards to *Chris Youngkin*.

Respectfully submitted,



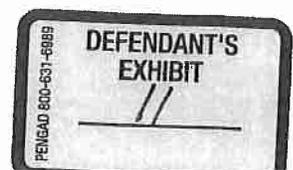
Holly Rasmussen
Assistant District Attorney
Dallas County, Texas
Bar Card Number: 24086672

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion has been hand-delivered, emailed, faxed, to the Attorney for the Defendant on this the 11 day of July, 2016.



Assistant District Attorney





TEXAS DEPARTMENT OF PUBLIC SAFETY
CRIME LABORATORY

Quality Action Plan

LAB-QA-04 Rev.03 (09/2008)

Lab	Garland	Discipline	Blood Alcohol	Incident Date	5/8/13	Page 1 of 1
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Manner of Identification

Observation Audit Complaint Other Officer inquiry

Area(s) Impacted (Check All That Apply):

Evidence Safety Reagent Contamination Quality Control
 Equipment Test Result Proficiency Process Client Relations
 Other

Incident Description:

Alcohol Content reports released through Justice Trax had the wrong results reported.

GAR-1304-05568 and GAR-1304-05569

Level of concern 2 – Isolated incident

Requestor Chris Youngkin Date 5/20/13

Explanation/Root Cause:

On 5/16/13, Chris Youngkin was replacing the gray top tubes into the DPS Blood Kits when it was noticed that the tubes for these two cases were out of numerical order. The analysis of this batch of cases had been interrupted by court after the opening of the evidence on 5/6/13. The analysis resumed on 5/8/13 with the sampling of the evidence.

Also on 5/16/13, Officer Caponera, Anna PD, called regarding the results for the three cases that were submitted by their agency on 4/29/13, two which are the affected cases. A retest of these two cases indicated that the tubes were switched before the sampling of the evidence thereby resulting in the wrong results being reported.

Investigator Chris Youngkin Date 5/20/13

Action Plan:

A list indicating the order the samples are to be run in will be consulted at the time the sample vials are prepared to verify the proper placement of the gray top tubes in the numbered rack locations.

The evidence for the cases in the first quarter of the batch (vials 7-16) run on 5/8/13 still present at the laboratory will be retested to verify the reported results are correct.

On 5/21/12, the affected agencies and County Attorneys were notified of the new results.

Investigator Chris Youngkin Date 5/20/13

Approval

Quality Manager _____ Date _____

Additional Comments:

Quality Assurance _____ Date _____

10/13/2016

Mail - Brady disclosure for Tyler Hamilton



Keri Dollinger <assistant@dwifrisco.com>

Brady disclosure for Tyler Hamilton

[Redacted]@dentoncountytx. [Redacted]

Tue, Jul 19, 2016 at 11:49 AM

To: "assistant@dwifrisco.com" <assistant@dwifrisco.com>

Cc: [Redacted]@dentoncounty.com>, [Redacted]@dentoncounty.com>

I also have a Brady disclosure on the lab analyst for [Redacted] DWI, CR-[Redacted]. He testified to mixing-up lab results in 2013. We will still sponsor him as a witness. I have attached the transcript of his testimony.

Thank you,

[Redacted]

Assistant District Attorney

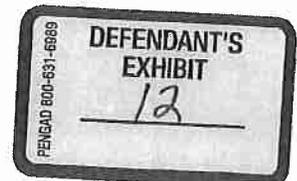
Denton County, Texas

[Redacted]

[Redacted]

Attachments to this e-mail are subject to the provisions of Article 39.14 section (e) and (f) of the Texas Code of Criminal Procedure. By opening any attachment to this e-mail counsel for the defendant agrees not to disclose to any third party not otherwise permitted under Article 39.14 any documents, evidence, materials, or witness statements received from the state without first obtaining a court order authorizing said disclosure upon a showing of good cause. Counsel for the defendant further agrees not to provide copies to the defendant, a witness, or prospective witness of any documents, evidence, materials, or witness statements, other than a copy of the witnesses' own statement. Before allowing the defendant, a witness, or prospective witness to view a document or the witness statement of another, counsel for the defendant shall redact the address, telephone number, driver's license number, social security number, date of birth, and any bank account or other identifying numbers contained in the document or witness statement. Thank you.

Chris Youngkin Testimony.pdf
413K



P R O C E E D I N G S

CHRISTOPHER YOUNGKIN,

having been previously sworn by the Court, testified as follows:

(Begin Excerpt.)

CROSS-EXAMINATION

BY MR. GIOFREDDI:

Q Now, have you ever mixed up the samples?

A. Just once.

Q. Okay. Tell us about the time you mixed up the samples.

A. In 2013, I was opening my evidence for analysis. I got a phone call; I needed to -- in court. And so I suspended the analysis. A couple days later I came back and completed it. Once the results were generated, I went through my process of generating the reports. As I was replacing the gray-top tubes back into these kits, I noticed that two of them were out of order. Almost contemporaneously with that discovery, one of the agencies that was affected called me indicating that that result on the report did not meet their case circumstances. So we immediately retested the evidence and issued new reports, and no innocent persons were affected.

Q. Okay. But are there not procedures in place so that results don't get mixed with other results?

1 (Begin Excerpt.)

2 REDIRECT EXAMINATION

3 BY MS. SARAH WOOD:

4 Q. I want to talk to you about what defense was
5 asking you about in 2013. You said that you don't know how
6 the mix-up happened, correct?

7 A. That's correct.

8 Q. Are you not sure how the mix-up happened or are
9 you not sure how the vials got placed in the wrong order?

10 A. To me, both of those things are kind of the same.
11 They were the only two out of the 40 that were out of order.
12 So, again, no root cause was determined.

13 Q. When you say -- what do you mean by "root cause"?

14 A. Well, whenever you have something that happens
15 that's considered to be wrong, that would affect the quality
16 of our results. And so we perform this analysis of what the
17 potential causes of that were, and that process is called "a
18 root cause analysis". You're looking for what is the root
19 to that issue.

20 Q. Are there any sort of checks in place now that you
21 do, that you didn't do before?

22 A. There are. As I mentioned previously, I'm very
23 careful now to make sure that the laboratory case number on
24 the gray-top tube matches the laboratory case number on the
25 vials that I'm placing the blood into.



Hunter Biederman <friscolaw@gmail.com>

Justin Dale Carter - Potential Brady Information - Chris Youngkin

Wes Wynne <wwynne@co.collin.tx.us>

Tue, Oct 4, 2016 at 9:48 AM

To: "friscolaw@gmail.com" <friscolaw@gmail.com>, "admin@dwifrisco.com" <admin@dwifrisco.com>

Troy or Hunter,

I'm not sure who is handling the Carter case now, but Chris Youngkin is our analyst from DPS on the case. We recently received the following information on Youngkin:

On 5/16/13 Chris Youngkin was replacing the gray top tubes into the DPS Blood Kits when it was noticed that the tubes for these two cases were out of numerical order. A retest of these two cases indicated that the tubes were switched before the sampling of the evidence thereby resulting in the wrong results being reported. DPS reviewed the situation and considered it an isolated incident.

Wes Wynne

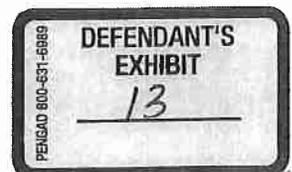
Assistant District Attorney

Collin County, Texas

(972) 548-3623

wwynne@co.collin.tx.us

Any discovery attached to this email is being handed over to you as part of our office's open file policy and in compliance with Article 39.14 of the Texas Code of Criminal Procedure. These documents contain non-public information that cannot be disclosed to a third party without a court order. You are responsible for redacting personal information of all persons listed in these reports before sharing the documents with your client or any other third party. You are prohibited from divulging a witnesses' personal information to your client or any third party. Personal information includes, but is not limited to, social security numbers, drivers' license numbers, phone numbers, home addresses, dates of birth, account information, or any other identifying numbers of a victim or witness. By accepting these documents, you are agreeing to the above terms. If you need clarification as to your duties, please see Art. 39.14 of the Texas Code of Criminal Procedure. Thank you for your cooperation in this matter.





Troy Burleson <troy@burlesonlawoffice.com>

Youngkin Disclosure -- State v. Avaritt

Marisa Dunagan <mdunagan@co.collin.tx.us>

Thu, Oct 6, 2016 at 3:00 PM

To: Troy Burleson <biedermanburlesonlaw@gmail.com>, "troy@burlesonlawoffice.com"
<troy@burlesonlawoffice.com>

Troy,

Per our conversation on September 29, 2016, this is the disclosure I spoke to you about during docket.

On 5/16/13 Chris Youngkin was replacing the gray top tubes into the DPS Blood Kits when it was noticed that the tubes for these two cases were out of numerical order. A retest of these two cases indicated that the tubes were switched before the sampling of the evidence thereby resulting in the wrong results being reported. DPS reviewed the situation and considered it an isolated incident.

Mr. Youngkin is scheduled to attend the hearing in Ct. 3 on Wednesday, Oct. 12, 2016.

Thank you,

Marisa A. Dunagan

Assistant District Attorney

Chief, County Court at Law #3

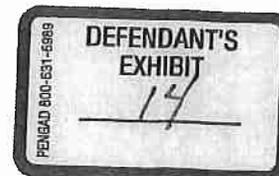
Collin County District Attorney's Office

2100 Bloomdale Road

McKinney, TX 75071

Office: (972) 548-3620

Fax: (214) 491-4860



10/9/16, 12:23 PM



Troy Burleson <troy@burlesonlawoffice.com>

Youngkin Disclosure: Susanne Anding 003-84792-2016

Taylor Reese <treese@co.collin.tx.us>

Mon, Oct 10, 2016 at 2:06 PM

To: "troy@burlesonlawoffice.com" <troy@burlesonlawoffice.com>

Troy,

You are probably aware but Chris Youngkin tested the blood in the above case. Please see the disclosure below:

On 5/16/13 Chris Youngkin was replacing the gray top tubes into the DPS Blood Kits when it was noticed that the tubes for these two cases were out of numerical order. A retest of these two cases indicated that the tubes were switched before the sampling of the evidence thereby resulting in the wrong results being reported. DPS reviewed the situation and considered it an isolated incident.

I also have noted in our file that you asked for a TBC and were willing to stipulate to the blood since there is a MTS. Does this still stand?

Thanks,

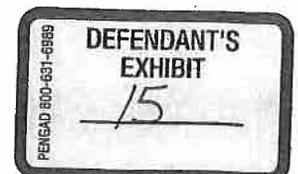
Taylor B. Reese

Assistant District Attorney

Collin County District Attorney's Office

Treese@Co.Collin.TX.US

972.548.3638





Troy Burleson <troy@burlesonlawoffice.com>

State vs. Chad Manint - Chris Youngkin Disclosure

Tiffany Green <tigreen@co.collin.tx.us>

Tue, Oct 11, 2016 at 3:14 PM

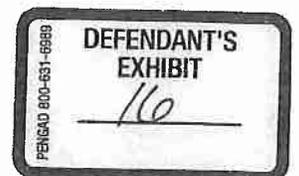
To: "troy@burlesonlawoffice.com" <troy@burlesonlawoffice.com>, "Hunter Biederman (friscolaw@gmail.com)" <friscolaw@gmail.com>

The following information was provided to our office regarding DPS Lab employee Chris Youngkin –

On 5/16/13 Chris Youngkin was replacing the gray top tubes into the DPS Blood Kits when it was noticed that the tubes for these two cases were out of numerical order. A retest of these two cases indicated that the tubes were switched before the sampling of the evidence thereby resulting in the wrong results being reported. DPS reviewed the situation and considered it an isolated incident.

Tiffany C. Green
Assistant District Attorney
Collin County, Texas
Felony Prosecutor
972-548-3658

- Def. EX# 13, Def Copy -



6M



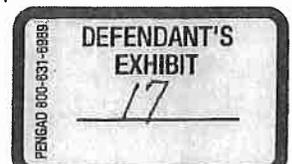
For Urine:

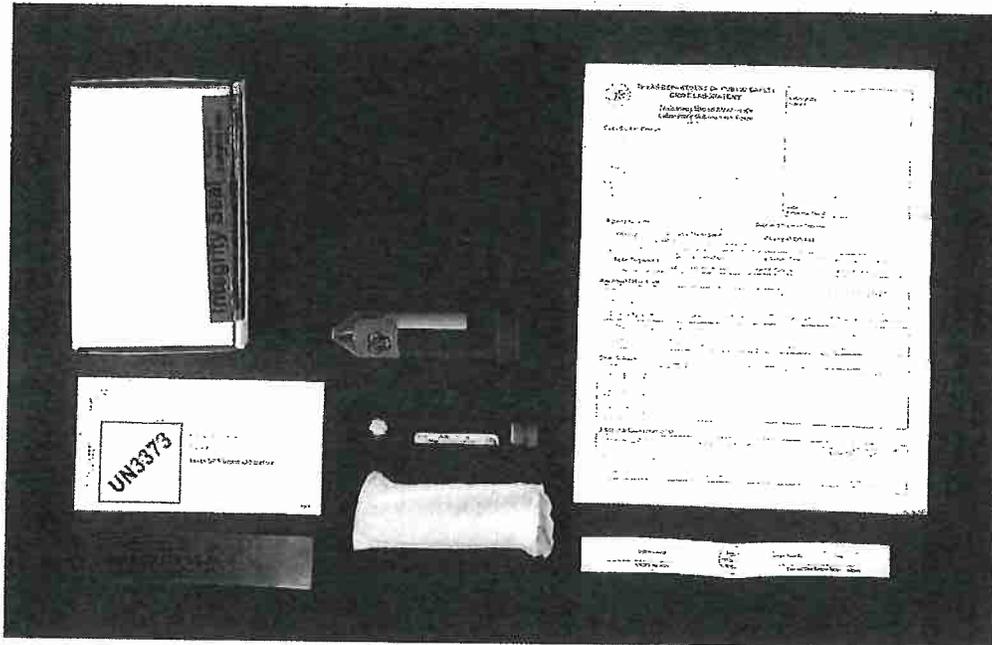
- The urine collection **must be witnessed** by the arresting officer or his/her representative. The observation is documented on the paperwork that accompanies the kit.
- A **urine specimen** must be submitted to detect Marihuana usage.

Blood Kit Packaging

Contents of the DPS blood kit include:

- Pre-sealed **Blood Kit**
- **Kit Instruction Sheet** and **Subject's Consent Form** (to be retained by officer)
- **Toxicology/Blood Alcohol Kit Laboratory Submission Form (LAB-12)**
- 10 mL **Blood Collection Vial** (gray-top vacutainer) containing 100 mg of Sodium Fluoride and 20 mg of Potassium Oxalate
- **Absorbent pouch** to cushion the blood collection vial and to absorb the blood if breakage should occur
- **Plastic screw-cap tube** to hold blood collection vial in the absorbent pouch
- **Foam padding** with space to hold plastic screw-cap tube
- **Blood Vial Seal** (tamper-evident) for blood collection vial
- **Integrity Seal** (tamper-evident) to reseal box
- **Mailing Label**
- **Plastic Sleeve** on the outside of the blood specimen mailer box to hold laboratory submission form





BLOOD COLLECTION KIT

Follow these steps to assemble a blood collection kit:

STEP 1: Complete the Subject Consent Form and ensure that both the subject and witnesses sign the form where indicated. This form should be retained for your records.

STEP 2: Complete information requested on the Toxicology/Blood Alcohol Kit Laboratory Submission Form (LAB-12) and the Blood Vial Seal.

STEP 3: After the specimen has been collected by a qualified professional as described by the Texas Transportation Code, verify the information on the Blood Vial Seal (especially the subject's name), remove the backing from the seal, affix the circle on the seal to the rubber stopper, and press the ends of the seal down the sides of the blood vial.

STEP 4: Insert the blood collection vial into the absorbent pouch.

STEP 5: Place the absorbent pouch containing the blood vial into the plastic screw-cap tube and close the lid.

STEP 6: Place the plastic screw-cap tube in the foam holder inside the box.

STEP 7: Close the box lid and seal the box with the enclosed Integrity Seal. Initial and date the seal.

STEP 8: Completely fill out the self-adhesive mailing label (see listing of DPS labs on the back of the instruction sheet). For the mailing of biological specimens, it is **very** important that your name and phone number are included in the return address. Affix this label to the top of the sealed box.

STEP 9: Check the submission form for completeness, refold, and insert the submission form into the plastic sleeve attached to the outside of the box and seal. If appropriate,

6N



TEXAS DEPARTMENT OF PUBLIC SAFETY
CRIME LABORATORY

**Instructions for the Collection and Submission of Blood
Specimens For Alcohol and/or Drug Determinations**

LAB-12b Rev.05 (11/2014) p.1 Issued by: QAC

OFFICER (Before Collection)

1. Complete the Subject Consent Form and ensure that both subject and witnesses sign the form where indicated.
2. Complete information requested on the Toxicology/Blood Alcohol Kit Laboratory Submission Form and the Blood Vial Seal(s).
3. The blood specimen(s) **must** be drawn by a qualified professional (e.g. a physician, qualified technician, registered professional nurse, licensed vocational nurse, licensed or certified emergency medical technician) as described in the Texas Transportation Code §724.017. The blood collection should be observed.
4. **Note: The second blood tube is a precautionary measure to provide an additional sample for testing.**

BLOOD COLLECTOR

1. Cleanse blood withdrawal site only with a **non-alcoholic** prep pad.
2. With hospital/clinic procedures, collect a full vial(s) of blood specimen from the subject in each provided blood vial or other gray top 10 mL Vacutainer®. In a 2 tube kit, both tubes should be collected at the same time.
3. **Immediately after blood collection, slowly mix the anticoagulant powder and blood by inverting the blood vial(s) several times.**
4. Transfer blood vial(s) directly to officer and ensure that your name and title are on the seal(s) and submission form.

OFFICER (After Collection)

1. Immediately upon receipt of the filled blood collection vial(s), verify the information on the Blood Vial Seal(s), remove the backing from the seal for that subject, affix the circle on the seal to the rubber stopper, and press the ends of the seal down the sides of the blood vial(s).
2. **In order to comply with US Postal regulations**, insert each blood collection vial(s) into an absorbent pouch. Then place the pouch into a plastic tube and close the lid.
3. Place the plastic tube(s) in the foam holder inside the box and close the lid. Seal the box with the INTEGRITY SEAL where indicated and initial and date the seal.
4. Check the Kit Laboratory Submission Form for completeness, refold, insert into the plastic pouch which is affixed to the outside of the box, and seal. If appropriate, include the lab copy of the DIC-23A in with the submission form.
5. The sealed kit may be either mailed or hand-delivered to the appropriate laboratory.
6. If submission is delayed, it is recommended to refrigerate the specimen until sent to the lab.
7. Affix self-adhesive mailing label to the box. If mailed to the laboratory, completely fill out the label (see listing of DPS labs on the back of the instruction sheet). **It is VERY important that your name and phone number are included in the return address.** Postage will be necessary if the kit is mailed to the laboratory.
8. For ALR cases, submit DIC-23A and case documents to: Enforcement and Compliance Service, PO Box 4040, Austin, TX 78765

SUBJECT'S CONSENT FORM

THE STATE OF TEXAS VS. _____
(subject name)

Be it remembered that on this day of _____, 20____, I _____
(subject name)

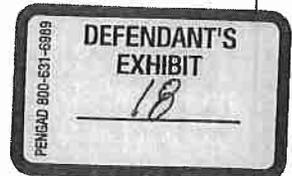
having been placed under arrest on a charge of driving a motor vehicle on a public highway while

intoxicated, do voluntarily give a specimen of my blood to _____
(arresting officer).

Signature of Subject: _____

Subject Address: _____

Witness of the Collection: _____
Print Name and Signature



Retain for your File. Do not send to laboratory.



TEXAS DEPARTMENT OF PUBLIC SAFETY
CRIME LABORATORY

Lab Case # **GAR-1501-00180**

Analyst **Chris Youngkin**

Date Started **1/22/15**

Date Completed **1/24/15**

Total # of pages **3**

Alcohol Analysis Worksheet

LAB-BA-01 Rev.03 (11/2014) p. 1 Issued by: QAC

Evidence

Subject's Name (Submission form):

Evidence Container:

DPS Blood Kit Blood Kit Urine Kit Envelope
Other

Specimen: Gray Top Other

Vial Sealed: Yes No

Specimen Label: None Same as Submission Form

Results

Reported Ethanol Results **0.129** grams per **100** mL

BAC 1	
Run 1	0.1306
Run 2	0.1285

BAC 2	
Run 1	0.1311
Run 2	0.1291

Other Volatiles:

Disposition

Drug Screen Request:

Yes No
 Not sent for drug screen; alcohol content $\geq 0.100\text{g}/100\text{ml}$

Disposition Note:

Retain Drug Screen Return
URETAIN

Type/Amount

Blood
 Urine
 Serum/Plasma
 Vitreous
 Other

Condition
 Normal Thick Clotted
Other

Approximate Amount
 Full 3/4 1/2 1/4 <1 mL
Other

Analysis Method

Heated Head-Space Gas Chromatography

Sample Preparation:

200 μl sample, 1.4ml NaCl/n-Propanol

Instrument: Shimadzu GC 2010 with AOC-5000 Autoinjector

Equipment #70 Equipment #83

GC Columns:

- RTX BAC-1 30 meters 0.32mm i.d. 1.8 μm film (Equip. 83)
- RTX BAC-2 30 meters 0.32mm i.d. 1.2 μm film (Equip. 83)

- RTX BAC Plus-1 30 meters 0.32mm i.d. 1.8 μm film (Equip. 70)
- RTX BAC Plus-2 30 meters 0.32mm i.d. 0.6 μm film (Equip. 70)

Column Conditions:

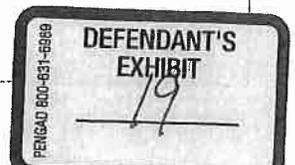
	Equipment 83	Equipment 70
Oven Temperature	40°C	27°C
Column Flow Rate	2.74 cc/min	2.21 cc/min
Injection Temperature	200°C	200°C
Detector Temperature	250°C	250°C

Autosampler Program:

Sample Temperature	60°C
Sample Volume	1 mL
Syringe Temperature	90°C
Injections per vial	1
Thermostating Time	12 min
GC Cycle Time	6 min

Additional Notes

Measurement Uncertainty (at 99.7% confidence):
Reported Ethanol Result \pm (9.4% * Reported Ethanol Result)





TEXAS DEPARTMENT OF PUBLIC SAFETY
CRIME LABORATORY

Quality Action Plan
LAB-QA-04 Rev.03 (09/22/08)

NC 2 #823

Lab	Garland	Discipline	Blood Alcohol	Incident Date	5/8/13	Page 1 of 1
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Method of Identification
 Observation Audit Complaint Other Officer Inquiry

Area(s) Impacted (Check All That Apply):
 Evidence Safety Reagent Contamination Quality Control
 Equipment Test Result Proficiency Process Client Relations
 Other

Incident Description:
 Alcohol Content reports released through Justice Trax had the wrong results reported.
 GAR-1304-05568 and GAR-1304-05569
 Level of concern 2 - Isolated incident

Requestor Chris Youngkin *Chris Youngkin* Date 5/20/13

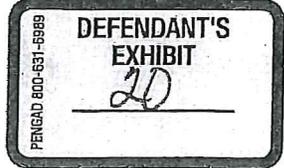
Explanation/Root Cause:
 On 5/16/13, Chris Youngkin was replacing the gray top tubes into the DPS Blood Kits when it was noticed that the tubes for these two cases were out of numerical order. The analysis of this batch of cases had been interrupted by court after the opening of the evidence on 5/8/13. The analysis resumed on 5/8/13 with the sampling of the evidence.
 Also on 5/16/13, Officer Caponera, Anna PD, called regarding the results for the three cases that were submitted by their agency on 4/29/13, two which are the affected cases. A retest of these two cases indicated that the tubes were switched before the sampling of the evidence thereby resulting in the wrong results being reported.

Investigator Chris Youngkin *Chris Youngkin* Date 5/20/13

Action Plan:
 A list indicating the order the samples are to be run in will be consulted at the time the sample vials are prepared to verify the proper placement of the gray top tubes in the numbered rack locations.
 The evidence for the cases in the first quarter of the batch (vials 7-16) run on 5/8/13 still present at the laboratory will be retested to verify the reported results are correct.
 On 5/21/12, the affected agencies and County Attorneys were notified of the new results. ** 2 amended reports issued.*

Investigator Chris Youngkin *Chris Youngkin* Date 5/20/13

Approval
 Quality Manager *Juan Nolasco* Date 8.2.13
 Additional Comments: *it open evidence to be retested, was retested per supplemental*
 Quality Assurance *Valerie Turner* Date 9/24/13





TEXAS DEPARTMENT OF PUBLIC SAFETY
CRIME LABORATORY

Quality Action Plan Supplement

LAB-QA-01A Rev.01 (03/2013) p.1 Issued by QAC

Lab	Garland	Discipline	Blood Alcohol	Incident Date	5/8/13	QA Tracking Number	823
-----	---------	------------	---------------	---------------	--------	--------------------	-----

Supplemental Information (Additional Actions/Follow-up):

Be sure to include any related suspension and/or resumption of services or imposed limitations on the procedure, instrument, examiner, or technician.

Technical Amended Report Issued NA/ Yes Date

Technical Amended Reports were issued for the affected cases, GAR-1304-05568 and GAR-1304-05569. Seven additional cases surrounding the affected cases in the batch:

- GAR-1304-05180
- GAR-1304-05567
- GAR-1304-05573
- GAR-1304-05574
- GAR-1304-05575
- GAR-1304-05588
- GAR-1304-05589

were also retested and were shown to have concordant results. Supplemental reports were issued for these cases.

Investigator(s) Chris Youngkin *Chris Youngkin* Date 5/20/13
 Quality Manager Jan Nicks Date 9-3-13

System Quality Assurance Review:

- INCIDENT CLOSED (All actions implemented, documented, and completed.)
- INCIDENT OPEN (Additional actions pending, supplemental actions/documentation required, and/or review required.)

Comments:

System QA Valerie Turner Date 9/24/13



TEXAS DEPARTMENT OF PUBLIC SAFETY

CRIME LABORATORY
402 W IH 36

Garland, TX 75042-5922
Voice 214-661-2180 Fax 214-661-2184
GarlandCrimeLab@texas.gov



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COMMISSION
A. CYNTHIA LEON, CHAIR
CARIN MARCY BARTH
ADA BROCKIN
ALLAN B. FOLUNSKY
RAEYD WATSON

Amended Alcohol Content Laboratory Report

Issue Date: May 22, 2013

Chris Reeves
Anna Police Department
PO Box 776
Anna, TX 75408

Laboratory # GAR-1304-05568
Agency # 13000185
County: Collin
Offense Date: 04/16/2013

Subject(s): UNDERWOOD, Rodney
RYDELL, Trent Carmichael

Submission Information:

01 DPS Blood Kit on April 28, 2013 by Copin, Pete VIA In Person

Corrected Evidence Description, Results of Analysis and Interpretation:

01 : Blood In DPS Blood Kit from Rodney Underwood

Note: This report reflects a correction to the results of Analysis Section of the Alcohol Content Laboratory Report dated May 16, 2013.

01-01 : Blood In gray top tube from Rodney Underwood

No alcohol detected.

Note: The evidence is being forwarded to the DPS Austin Crime Laboratory for the requested drug analysis. Please advise via email (grp_austintox@dps.texas.gov) if analysis is no longer needed so that the DPS Austin crime laboratory may devote efforts to other cases in the Toxicology backlog.

Original Evidence Description, Results of Analysis and Interpretation:

01 : Blood In DPS Blood Kit

01-01 : Blood In gray top tube from Rodney Underwood

0.152 grams of alcohol per 100 milliliters of blood.

Note: No drug analysis due to the alcohol concentration. We are unable to retain the evidence. Please make arrangements to pick up this evidence at your earliest convenience.

This report has been electronically prepared and approved by:

Andrew Macey
Forensic Scientist
Texas DPS Garland Crime Laboratory

ACCREDITED BY THE AMERICAN SOCIETY OF CRIME LABORATORY DIRECTORS - LAB ACCREDITATION BOARD

TX DPS 05/21/13



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TEXAS DEPARTMENT OF PUBLIC SAFETY

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CAREN MARDY BARTHA
ADA BROWN
ALLAN R. POLLINSKY
RANDY WATSON

Amended Alcohol Content Laboratory Report

Issue Date: May 22, 2013

William Fowler
Texas Highway Patrol
600 W Kilpatrick
Cleburne, TX 76033-7467

Laboratory # GAR-1304-06669
Agency # TX13360HKD00J
County: Johnson
Offense Date: 04/24/2013

Subject(s): RILEY, Carol Lynn []

Submission Information:

01 DPS Blood Kit on April 29, 2013 VIA Certified Mail 7012305000027283479

Corrected Evidence Description, Results of Analysis and Interpretation:

01 : Blood In DPS Blood Kit from Carol Lynn Riley

Note: This report reflects a correction to the results of Analysis Section of the Alcohol Content Laboratory Report dated May 16, 2013.

01-01 : Blood in gray top tube from Carol Lynn Riley

0.151 grams of alcohol per 100 milliliters of blood.

Note: No drug analysis due to the alcohol concentration. The evidence will be retained until notified of the disposition.

Original Evidence Description, Results of Analysis and Interpretation:

01 : Blood In DPS Blood Kit

01-01 : Blood In gray top tube from Carol Lynn Riley

No alcohol detected.

Note: The evidence is being forwarded to the DPS Austin Crime Laboratory for the requested drug analysis. Please advise via email (grp_austintox@dps.texas.gov) if analysis is no longer needed so that the DPS Austin crime laboratory may devote efforts to other cases in the Toxicology backlog.

This report has been electronically prepared and approved by:

Andrew Macey
Forensic Scientist
Texas DPS Garland Crime Laboratory





QUALITY ACTION PLAN (QAP)

1 Scope

This document addresses the process for initiating, implementing, and checking the effectiveness of corrective actions or quality improvements of laboratory nonconformance, deficiencies, and/or work product of an unacceptable quality.

Nonconforming event is when one or more characteristic(s) or condition(s) are observed that do not conform to required specifications in standards, procedures, or policies. Examples of nonconforming events may include: contamination, failed control, observations recorded inaccurately, incorrect conclusions/interpretations, sample switch, sample preparation error, and unsupported conclusions.

Corrective Action is a quality assurance activity or response to bring about continuous improvement; immediate resolution of incorrect results; remediation of nonconforming event(s) in similar work, as appropriate; and minimize recurrence. The intent is to prevent unintended delivery or use of nonconforming work.

Preventive Action is a proactive approach to preventing possible problems or potential nonconformity, preventing the recurrence of problems, managing risk, and improvement.

The Quality Action Plan may also serve as documentation of Preventive Action (PA).

2 Practice

2.1 Quality Action Plan Process

A. Incident Description

1. When a nonconforming event has been identified, the individual responsible for the work must halt testing and/or calibration (and withhold test or calibration reports as necessary) until the scope of the incident has been determined. The Technical Point of Contact, Technical Leader, supervisor, manager, and/or Quality Manager also have the responsibility to identify nonconformance and halt testing.
2. Briefly describe the event and initiate a **Quality Action Plan** (LAB-QA-04), and provide details to the technical and quality management chain of command about the unsatisfactory condition that needs to be corrected including:
 - a) *Related policy/procedure/specification*
 - b) *Time-frame of the condition*
 - c) *Area(s) of impact*
 - d) *Affected work (case, batch, and/or instrument numbers)*
 - e) *If laboratory data/results could have been compromised*

B. Evaluation and/or Root Cause

1. **Evaluate and define the scope and significance of the potential nonconforming event** (e.g. nature of incident, risk, significance, impact to completed and in-progress work). Identify the potential stake holders and assess the potential impact to them. Determine to what extent casework must cease.



Laboratory Operations Guide

DRN: LOG-03-12

Version: 04

Page 2 of 5

Subject: Quality Action Plan

- a) **Suspend the procedure/method/process in the laboratory.** The Technical Point of Contact, Technical Leader, supervisor, manager, and/or Quality Manager has the authority to suspend work in the laboratory if the event appears broader than the immediate event.
 - b) **Temporarily limit work duties of individual(s) in the laboratory.** The Technical Leader, supervisor, manager, and/or Quality Manager have the authority to limit the duties of individual(s) if the event was determined to be a result of unacceptable performance by the scientist/technician.
 - c) **Other items that should be documented as part of the evaluation, as applicable:**
 - i. If customer was notified to recall evidence or results;
 - ii. If results may be conditionally accepted;
 - iii. If nonconforming event could recur;
 - iv. If there is concern about compliance to standards/policies/procedures.
2. **Root Cause Investigation** should go beyond the symptoms to the underlying events or problems. Investigate and identify the potential root cause(s) for the nonconformity. The investigation should seek to detect and correct systemic problems.
- C. **Action Plan**
1. **Procedures Resumed or Resumption of Work.** If work was halted or limited for the laboratory or scientists, authorization to resume testing activities must be given by the Quality Manager, and/or Director.
 2. **Consider recall of previous work.** A review and evaluation should be conducted of previous work to determine if any work needs to be recalled or reworked.
 3. **Notify customer(s)** as applicable to the following conditions. Documentation of the customer's notification shall be included in the record.
 - a) *If reexamination of work in progress is necessary and no results have been released to the customer, then it is not necessary to notify the submitting agency of the additional work or technical issue, so long as it has been fully resolved.*
 - b) *If reexamination occurs and the results of analysis for those samples are different than what has already been released to the submitting agency, an amended report must be issued, which identifies the affected samples, results, and opinions.*
 - c) *If reexamination of evidence is not possible because the evidence had been lost, consumed by analysis, or returned to the customer, then it is necessary to notify the submitting agency of the issue.*
 4. **Correction to the Nonconforming Work.** Rework, regrade (revise or re-state acceptable specifications or conditions for results), or repair of nonconforming work should be taken immediately and documented.
 5. **Remedial Actions.** The remedial actions taken and plan should be listed, including who is to perform the action and the associated milestones for



completion, in order to correct the issue and ensure that the issue is not recurring. It is expected that the action plan and supporting documentation will be reviewed to provide both immediate containment of the problem, and to resolve the issue. When individuals are identified as participants to the action plan, they should specifically sign the action plan item(s) to acknowledge their responsibility for them. If an amended or supplemental report was a required action, then include the report as supporting documentation.

Note: Supporting documentation of the completion of action items and relevant communications should be included. Communications such as email and minutes of meetings are objective documentation of when discussions occurred with key stakeholders and what was discussed.

6. The Quality Manager shall approve the Quality Action Plan and any supporting documentation, and submit it to System Quality Assurance for review and approval.
 7. New action items or progress/completion of action items after the submission of the original Quality Action Plan should be submitted on a Quality Action Plan Supplement form (LAB-QA-04A) and include relevant milestones towards remediation of the nonconformity.
- D. System Quality Assurance Review
1. Review the Quality Action Plan for completeness and assignment of final level of concern. A determination of the status of the Quality Action Plan will be made (e.g. closed vs. open). Additional reviews may be required by management and the respective advisory boards to achieve satisfactory resolution. Additional documentation or information may be requested to clarify or support the plan and it will be documented with a Quality Action Plan supplement form (LAB-QA-04A).
 2. Determine which action plans will require monitoring for effectiveness and direct the review and its documentation. The extent and nature of the monitoring will be based on the likelihood the nonconforming event could recur or that there is doubt about the compliance of the laboratory's operations with its own policies and procedures. Corrective actions require monitoring such as those related to audits, inspections, assessments, or complaints, and those that involve restrictions to examiner(s)/technician(s)/procedure(s).

2.2 Levels of Concern for Nonconforming Work

1. **Level 1** – The nature or cause of the nonconformance directly affects and has a fundamental impact on the work product of the laboratory; or there is a concern that if the nonconformance continues for an extended period, the work product of the laboratory or integrity of evidence/test item/calibration item could be negatively affected.
 - a) **Examples:**
 - i. *Inaccuracy was a result of information entered on the report by the laboratory and is significant to the test result (technical amended or supplemental report issued, level 1 or 2 depending on significance to outcome);*



Laboratory Operations Guide

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Subject: Quality Action Plan

- a) **Examples:**
 - i. A typographical or transcriptional error depending on its relationship to the test/calibration results;
 - ii. Inaccuracy was a result of information reported by the laboratory insignificant to the test result (technical amended report issued, insignificant to the outcome such as insignificant misspelled words, omission of a disposition, and other insignificant clerical oversights)
 - b) Such instances require that the Quality Assurance Coordinator/Quality Assurance Specialist/Quality Manager be notified of the event within 30 days from the date of discovery of the potential non-conformity.
4. **Level 4** does not constitute a significant concern to the quality system. Typically does not require either a Quality Action Plan or notification. Exception: corrective actions related to systemic, pervasive or recurring issues.
- a) **Examples:**
 - i. Non-substantive transcriptional mistakes in the examination record that have been corrected;
 - ii. Correction of notes or draft reports as a result of the review process;
 - iii. Non-technical amended report issued where inaccuracy was a result of incorrect information provided by customer and had no bearing on laboratory conclusions.

3 Records

Quality Action Plan (LAB-QA-04)

Quality Action Plan Supplement (LAB-QA-04A)

QAP/Customer Complaint LOG (LAB-QA-19)



Laboratory Operations Guide

DRN: LOG-03-12

Version: 03

Subject: Quality Action Plan

Preparer

Heather Greco
Quality Assurance Specialist

Date: 03/07/2013

Concurrence

Forrest W. Davis
Quality Assurance Coordinator

Date: 03/07/2013

Version #	Effective Date	Brief Description of Change(s)
00	12/01/2002	Original Problem; Renamed from Technical Problems. Material taken from LOG 3.6
01	07/01/2003	Minor revision with respect to reference of Quality Assurance Coordinator Modification Section 2 with respect to Technical Leader responsibility given same responsibility as Quality Manager
02	05/01/2005	Major Revision; Title change to Quality Action Plan; Entire document modifications
03	05/29/2012	Major revision - Sections 1, 2, 3, 4, and 5 Minor revision - Title
04	03/11/2013	Major revision

ARCHIVED
05/13/2013

AFFIDAVIT

STATE OF TEXAS

COUNTY OF COLLIN

Before me, the undersigned authority in and for the State of TEXAS, on this day personally appeared, JEFF A. CAPONERA who, after being by me duly sworn, deposed and said:

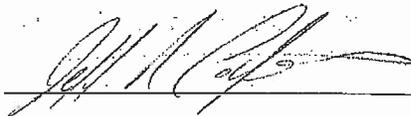
My name is JEFF A. CAPONERA. I am of sound mind, 18 years of age or older, and competent to give this affidavit.

On May 16, 2013, I received information from Sgt. Copin – then Investigator Copin – that there was a possible mix-up at the lab on two cases we submitted for analysis on April 29, 2013. The case that caught our attention involved a male driver of a semi-tractor who was involved in a fatal crash on April 15, 2013. The blood results on the driver of the semi-tractor (Underwood, Rodney) showed a BAC of 0.152.

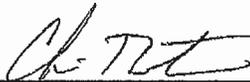
We knew Underwood was not intoxicated for several reasons. First, the officers on scene did not detect any odor of alcohol on Underwood's breath or about his person. Second, we conducted a roadside PBT on Underwood at the time of the accident. The results were .000. Third, the trucking company conducted an independent test and the results showed .000. Based on this information, I contacted the DPS lab in Garland and requested to speak with a supervisor. I do not recall who it was I spoke to at the time and I did not write down any notes. During the conversation, I explained the situation to the supervisor and requested that the blood be reanalyzed. The supervisor appeared to be caught off guard by this, which led me to believe this was the first time they had heard of the mix up. I was told they would look into the potential switch and contact me later in the afternoon.

I received a call back, either that afternoon or the next day, and was told by the supervisor that the blood would be reanalyzed. We received the new results on May 22, 2013. The results showed what we originally expected, a BAC of .000.

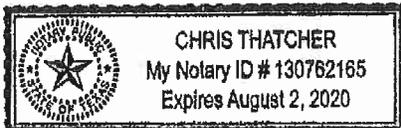
I have read the above statement consisting of 1 page(s), which is based on my personal knowledge, and it is true and correct.



Subscribed and sworn to before me, the undersigned authority, on this the 11 day of January A.D. 2017.



Notary



AFFIDAVIT

STATE OF TEXAS

COUNTY OF DALLAS

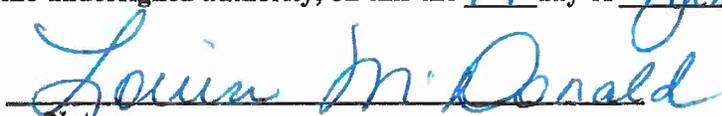
Before me, the undersigned authority in and for the State of Texas, on this day personally appeared, Nirav Kumar who, after being by me duly sworn, deposed and said:

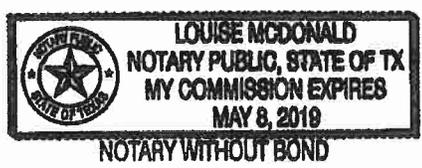
My name is Nirav Kumar. I am of sound mind, 18 years of age or older, and competent to give this affidavit. On January 13, 2017 I spoke with Adam Kinslow of the Inspector General's Office through a telephone conversation. I explained that I am a Forensic Scientist level 2, have been employed by the Texas Department of Public Safety since October 2013, and that I report to the section supervisor Kenneth Evans and to the Technical Supervisor Andrew Macey. We talked about testimony I gave on October 11, 2016 in County Court 2 at Collin County, specifically the cross examination done by Mr. Burlison. I explained how at the time I would use the term "vial" to describe a gray top tube found in the DPS Blood Kit or to describe a headspace vial, which is what is used in laboratory testing. I explained that when testifying I have used the terms "vial" and "tube" interchangeably during testimony to describe the gray top tube in the DPS blood kit depending on the context of the questions being asked of me, and also depending on what objects I have with me on the stand. I stated at the time there were DPS documents that used the term "vial" and "tube" interchangeably and that since October of 2016 the department is moving away from using those terms interchangeably both in official documents and in testimony. I explained how I have heard other scientists and my supervisors use the terms "vial" and "tube" interchangeably when referring to the gray top tube found in the DPS blood kit.

I have read the above statement consisting of 1 page(s), which is based on my personal knowledge, and it is true and correct.



Subscribed and sworn to before me, the undersigned authority, on this the 17th day of January A.D. 2017.


Notary



AFFIDAVIT

STATE OF Texas

COUNTY OF Dallas

Before me, the undersigned authority in and for the State of Texas, **on this day personally appeared, Andrew Macey who, after being by me duly sworn, deposed and said:**

My name is Andrew Macey. I am of sound mind, 18 years of age or older, and competent to give this affidavit.

On March 16, 2013 Chris Youngkin came to discuss with me a concern he had about two blood samples that he had run the prior week. Chris told me that while he was returning the gray top tubes back to the boxes, he noticed that two gray top tubes were out of order in the white plastic rack. He knew the gray top tubes were out of order because he was comparing the laboratory number on the blood tube mailer box with the number on the gray top tube. The laboratory number is written on the gray top tube by him before sampling begins. Later that morning he received a call from Anna PD asking about the results of their blood alcohol cases. The call involved the two gray top tubes that he had noticed being out of order. This caused him concern and that is when he came and talked to me. In discussing what had happened, Chris could not explain why the gray top tubes might have been out of order in the white plastic rack. So we decided that it would be best for me to reanalyze the samples since both blood tube mailers were still in the laboratory's possession. This would let us know if the gray top tubes were analyzed out of order on the headspace GC. After my results showed that the samples were indeed analyzed out of order, an amended report was generated and a QAP was filled out.

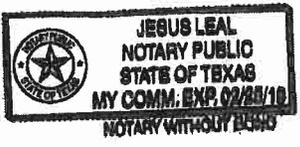
I have read the above statement consisting of 1 page(s), which is based on my personal knowledge, and it is true and correct.

Andrew Macey

Subscribed and sworn to before me, the undersigned authority, on this the 9th day of January A.D. 2017.

[Signature]

Notary



AFFIDAVIT

STATE OF Texas

COUNTY OF Dallas

Before me, the undersigned authority in and for the State of Texas , on this day personally appeared, James Nichols who, after being by me duly sworn, deposed and said:

My name is James Nichols. I am of sound mind, 18 years of age or older, and competent to give this affidavit.

I was hired by the Department of Public Safety July 13, 1998. I trained in serology/DNA at the Austin Crime Lab and was assigned to work in the Garland Lab in October 1998. At this time, Chris Youngkin was working in the Garland Crime Lab in the Drug section. I continued to work in the Serology/DNA section as a forensic scientist until November 2012 when I promoted to the DNA Section Supervisor. January 28, 2013 I promoted to Garland Crime Lab Manager at which time I entered the chain of command for Chris Youngkin. As the lab manager I supervise the Drug Section Supervisor, Kenneth Evans, to whom Chris Youngkin reports.

Chris is viewed as a very hard worker that focuses on working his cases. However, he is very aloof to the rest of the section and does not interact with his coworkers unless needed. He views his job as completing cases so any other task that needs to be done for the lab is not his to do. Prior to the events this fall, there has never been a question about his credibility. The terms "vials" and "tubes" are interchangeable by lab and Department personnel. I would expect any person to interchange these terms when testifying to blood alcohol. Chris did not always follow the expectation stated in the Lab Operations Guide to avoid phrasing testimony in an ambiguous, biased, or misleading manner. I believe he did most of the time, but his testimony in Ellis and Dallas counties was ambiguous and misleading.

Chris Youngkin was assigned as the "investigator" for QAP #823 as the individual that brought this error to his supervisor's attention. The term "investigator" is referring to a scientific investigator. The quality process is dependent on employees being open with any errors they detect in the scientific process, and is not part of a disciplinary action. It is common practice for the person that has made an error to be involved as the investigator or requestor for the QAP. This person is in the best situation to describe what happened and participate in the root cause analysis. The QAP report is completed in consultation with the chain of command. The error, root cause, and action plan are discussed between the individual, supervisor, and lab manager. The report is then submitted to System Quality Assurance for review and final closure. This is the process that was followed for QAP #823. I would still include Chris in this portion of the QAP report.

The QAP report remains part of the case file. The testing report is the only document that is released for every single case. The case file is only distributed upon requests from the prosecutors or defense attorneys. This specific QAP report was disseminated approximately 90 times through open records requests. Most of these were to defense attorneys, but some county attorneys also received this report. The records are burned to a CD and mailed to the requestor. Since all QAPs are not routinely distributed the process is for the forensic scientist to notify the prosecutor when preparing for court that a QAP is associated with that specific case.

I prepared the 2013 Annual Laboratory Management System Survey for our accrediting body, the American Society of Crime Laboratory Directors/Lab Accreditation Board (ASCLD/LAB), that I submitted through my chain of command.

The action plan for the QAP states that the forensic scientist is to place a paper print-out in the bio-hood of the batch list of cases to use as a reference to prepare the samples. The incident was discussed in meetings to bring awareness to the other scientists. I don't recall this specific error being discussed as to whether it was possible

Brady material. However, it is routinely discussed in meetings that we have a good process in place to document errors and it is our responsibility to openly discuss these with our clients. Additionally, I conduct annual meetings for all employees to attend to review "ASCLD/LAB Guiding Principles of Professional Responsibility for Crime Laboratories and Forensic Scientists". The three discussion points cover Professionalism, Competency and Proficiency, and Clear Communication. The topic of clear communication refers specifically to the reports we generate and how the scientists should conduct themselves when testifying.

New employees complete the General Lab Training (GLT) which includes modules for Ethics and Professionalism and Overview of Legal Processes and Testimony. These modules are taught by a supervisor for the section or an assigned trainer. In Garland this has been myself, Kenneth Evans, Kaye Davis, Melissa Haas, Jenna Dunton, Trish Kacer, and Uyen Henson. At the completion of the GLT, court testimony training is covered within each discipline's specific training: blood alcohol, drug, DNA, etc. This training includes reading materials, mock court is conducted, and the trainee observes senior scientists testify.

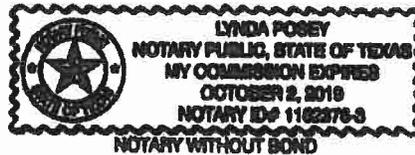
I don't believe Chris has accepted responsibility for his actions. At times he has expressed that he didn't communicate as he should have testified, but he has continued to go back to his initial response that according to him he was answering the specific question posed to him by the attorneys. I believe he placed significance on the difference between the terms for tubes and vials that was not previously present.

I have read the above statement consisting of 2 page(s), which is based on my personal knowledge, and it is true and correct.

Jan Hiler

Subscribed and sworn to before me, the undersigned authority, on this the 4th day of January A.D. 2017.

Linda Posey
Notary



OIG-2

AFFIDAVIT

STATE OF Texas

COUNTY OF Dallas

Before me, the undersigned authority in and for the State of Texas, on this day personally appeared, Christopher Youngkin who, after being by me duly sworn, deposed and said:

My name is Christopher Youngkin. I am of sound mind, 18 years of age or older, and competent to give this affidavit.

I want to address the exhibits (1-20) from the deposition (Collin County 10/24/2016) in numerical order. References to the exhibits will be made in the format of ex.# p.# - line #(s). A list of attachments will appear at the end of this affidavit.

Exhibit 1

This exhibit contains the use of the word "vile" (p.7-13) and gray tube (the word "top" has been omitted). For the use of the word "vile" see ex 3. The prosecutor in this case brings up a good point on page 7 line 20 "you talked about the gray-top tube". The gray top is indicative of the contents of the tubes when they are manufactured. Gray top tubes have been recommended for use in cases where blood will be taken and not refrigerated immediately (ex.2 p.34). On page 9 lines 17 through 23, you will find my typical description of the analysis process differentiating between gray-top tubes and head space vials. I bring with me to every court appearance examples of both gray-top tubes and head space vials for this reason. With this trial being in September 2013 after the completion of the Quality Action Plan (QAP, ex.20), on page 11 when I am asked "how do you prevent the mixing up of the samples" I respond with the preventative action detailed in the QAP.

On page 23 lines 19,20 and 24 an example of my recognition of the responsibility I have as a witness and how seriously I take that responsibility can be found. Here I state that I intend to tell the truth and strive to be objective. (see also ex.3 p.89-12-16 117-16,17,23,24) The defense attorney in this case, Ms. Grant, also refers to the head space vial in a variety of different ways ("those little glass containers" p.26-13,14 "glass vials like that" p.28-13 "...a jar,..." p.29-17). This makes the important point that I would make every effort to answer the question as it is asked given that I am able to understand the question in the context that it is asked.

Exhibit 2

This exhibit demonstrates a common feature for the 11 transcripts that are contained within the 20 exhibits, that there is no record of the direct examination. Eight of the 11 transcripts are excerpts of testimony offered in those proceedings. This does not afford the opportunity to see what was asked and answered on direct examination.

Ms. Grant makes the point on page 4 line 16 that "we see each other with some frequency..." as does Mr. Burluson in later exhibits (5,6). This familiarity plays an important part in that I have potentially answered very similar questions in prior proceedings. In this exhibit, I answer questions

about "...a vial of blood..." (p.18-9) and it is clear that the evidence is present in the courtroom and in hand (p.18-12-21). Once again, this makes the point that I would answer the questions as they are asked if I am able to understand them. I would not necessarily "correct" the attorney on their word choice, but would answer the question with the correct terminology. (see ex.3 p.17-21 and many more) There are times that it is necessary to ask for clarification. Examples of this can be found on pages 22-5, 31-22 and 33-15.

This is also the first exhibit where I am asked about switching vials (p.22-2-4). Even though the previous three pages (19-21) have concerned the instrument and head space vials, I still ask for clarification. Ms. Grant has the opportunity to indicate exactly what she means by the use of the word "vial". The same question is asked again on page 38 and, understanding it the same way, I give the same answer. Ms. Grant goes on to ask on page 22, "How would we know if you did?" which can be answered by the question asked by the prosecutor in exhibit 7 p.7-18,19 "So if there was any question about the result that you got, it could have been retested?" There have been occasions over the years that I have been made aware of the results of re-tests, but how many more have been done that I am not aware of?

This exhibit also establishes a common practice for me and that is to qualify samples as the blood taken from the gray-top tube, the head space vials themselves and the gas removed from the head space vials during the instrumental analysis. (see p. 22-15 23-10,11 24-15-17 28-13 28-25) The concept of samples will be important in the next exhibit.

Exhibit 3

This exhibit contains another use of the word "vial" by myself in reference to the gray-top tube. I initially refer to the gray-top tube being contained in the DPS blood kit on page 16 line 3. The prosecutor, Mr. Jones, then goes on to repeatedly refer to the gray-top tube as a vial. I am recorded reading from the Internal Chain of Custody Report and the Alcohol Analysis Worksheet. (p.17 6-8 also see attachments) The word "vial" does not appear on the version of the worksheet in use at the time this case was tested (3/2013). The word "vial" was added to the worksheet in the 11/2014 version which would have been in use for more than eight months at the time of this trial (7/16/2015). I would always take with me to every court appearance the specific records relating to the case being tried. Those records would include the two documents mentioned above plus the Alcohol Content Laboratory Report (an example is in ex.20), the Laboratory Submission form, the chromatograms resulting from the testing, the Blood Alcohol Batch List (attached) and any other administrative documentation contained in the file folder.

This exhibit also demonstrates a trait common to transcripts and that is they do contain errors. Just to list a few: p.18-15 "they" should be "the", p.19-12 "positioned" should be "position", p.20-7 "ethenol" should be "ethanol" and p.26-10 "or" should be "our". Although the transcript contains a certificate at the end, that does not mean that it is free from errors.

Mr. Stamper does ask me about making mistakes during the sample preparation. (p.40) He asks whether it is "very difficult", "impossible" and "has it happened" but then moves on without giving me the opportunity to answer. When asked later about mistakes I do offer that the quality action plan process would be followed. (p.88) This exhibit reinforces my use of the word "sample" in reference to things other than the gray-top tube. (see p.19-8,16 39-21 and many more) This is one of several reasons that there is some confusion when Mr. Stamper asks me later about the QAP and "switching samples". The samples, as I have defined them, have not been switched. It is not inaccurate to qualify the gray-top tube as a sample. It is a portion of that person's blood. It is simply not the way I would typically use the word "sample".

The use of the word "switch" also presented some confusion initially. The idea that I switched something sounds intentional, as if two people who are seated were to switch seats. That does not

happen by accident. Being that only two of the gray-top tubes were out of order, those two tubes did switch places. The QAP states "that the tubes were switched before the sampling of the evidence..." The phrase "sample switch" appears in a separate document, the Annual Laboratory Management System Survey (attached and defendant's exhibit 5 in this trial). It is there that the laboratory manager has characterized the incident as a sample switch. This survey first appears on page 91 line 9. It is clear starting with line 15 on the same page (and several pages that follow) that I am not familiar with the survey.

Mr. Stamper makes an important point on page 94 that the laboratory had provided documents to the DA's office in response to his request. This is further evidenced by the email discussion between myself and Mr. Jones. (see attachments) Once I became aware of how the laboratory manager had characterized the incident, I then answer that the incident did concern switching. (p.99 6,7 although I do answer that it concerns gray-top tubes and not vials) This is a very important point for a number of the other exhibits. While I was aware of the incident since it occurred, I did not recognize it as sample switching until I was presented with the survey in this trial on 7/16/2015.

Further confusion came from the fact that the QAP was assigned a QA Tracking number after its completion. This number is hand-written on both the QAP and the Quality Action Plan Supplement. For this reason, I did not identify with the QAP tracking number. Mr. Stamper also questions whether someone else's blood could be mistaken. (p.85) Again, the word mistaken to me means that I thought that it was someone else's. The gray-top tubes were not mistaken as a part of the incident. The gray-top tubes and the head space vials are all clearly labeled. That is why the preventative action in the QAP is to simply compare the numbers and why that action would be sufficient to prevent any further incidents.

This exhibit also demonstrates the demeanor of certain defense attorneys. Later exhibits will demonstrate that this is also true of Mr. Burluson. The judge in this case admonishes Mr. Stamper on a number of occasions for a variety of reasons. These range from asking compound questions, to asking broad questions, to being argumentative (and being asked to return to his seat), to straying from the intent of voir dire, to asking questions repeatedly. To Mr. Stamper's credit, he does apologize for not being clear. (ex.4 p.25-9) These actions are all part of the tactics that defense attorneys would use in order to vigorously defend their clients. Another tactic that is present in this exhibit (as well as others) is to misquote, misrepresent or simply make things up. A clear example of this is found on page 70 line 1 where Mr. Stamper tries to indicate that I had testified about fermentation when in fact I had not. Despite the defense attorney's demeanor, I remain respectful until the end continuing to address him as sir. (p.120)

Exhibit 4

Mr. Stamper touches on some of the same points in this exhibit as he had in the previous exhibit. One of those is the truth. (ex.3 p.89-15,16) He asks on page 12 lines 22-24 about the questions that are asked and about the truth coming out. The question doesn't make any sense the way that it is asked but I think the point that he is trying to make is that witnesses can only relay the truth about what they are asked about. A second point that is repeated is the idea of switching samples. With this trial coming after I became aware of the Annual Laboratory Management System Survey, I answer in the affirmative.

There is one additional point in this exhibit that I think is worth mentioning. On page 5 line 25 I indicate that I believe that records are important if they are related to that particular case. The incident in 2013 only directly involved two cases. So for those two cases the QAP would be important. The judge in this case goes through the process of determining what is relevant before it is admitted into evidence. (p.71) This cements the idea that only things that are relevant should be introduced.

Exhibit 5

This exhibit is similar to the previous exhibits just with Mr. Burleson as the defense attorney. He and I are very familiar with one another, him making the point immediately that he has cross examined me "a hundred times". (p.3 8-10) At the end of this exhibit it is clear that even the judge is familiar with me. (p.78) The wrong word appears on page 4 line 1 ("scientific" should be "scientist"). The error contained on page 52 line 11 is much more problematic as the sentence makes no sense the way it is typed. Mr. Burleson also offers on page 6 line 25 that I know that "sometimes he asks questions that are not clear." When asked questions about "vials" I answer using the correct terminology of gray-top tubes (p.19-5 p.49-3-6 p.52-7-9 p.55-4,5 etc.) I continue to refer to the head space vials as samples (p.14-16 p.15-13 etc.) Mr. Burleson is admonished for being argumentative on a couple of different occasions (p.57 and 64).

This exhibit does indicate when Mr. Burleson became aware of the QAP. He had stated that he would allow me some "leeway to explain" (p.68-14,15) having discussed the QAP the day before. When asked "so what if law enforcement didn't notify you of it?" (p.69-17,18), I answer that the evidence would still have been retested and the QAP would have been completed.

In this exhibit Mr. Burleson also introduces the concept of disconnect theory. (p.65-11) This concept is also presented in ex.6 p.58-18 and ex.8 p.24-18. Mr. Burleson contends that there is a disconnect between the results on the report and the appearance of his client in the video from the offense. This is addressed in Garriott's *Medicolegal Aspects of Alcohol* 6th ed. p. 429 (attached). Here the conclusion is "outward physical signs of intoxication do not correlate well with blood alcohol concentrations as measured by alcohol testing."

Exhibit 6

This exhibit contains my similar treatment of vials, gray-top tubes and samples. Mr. Burleson again brings up how familiar we are with one another and even asks me "you know where I am going with this?" (p.23-7,8) This transcript contains its own errors on pages 24 line 9 and page 58 line 18. Again, Mr. Burleson is admonished by the judge for being argumentative. (p.63)

This exhibit does contain a couple of unique things that I would like to address. On page 52 lines 9-11 a question is asked about whether I had "switched vials on a person". Having already testified about the QAP on direct (p.17), having been questioned by Mr. Burleson the week before regarding the QAP and having been handed the QAP during this proceeding (p.51) I received and answered the question in that context. The facts of the QAP had already been established under direct examination. From Mr. Burleson's line of questioning it is clear that he is not familiar with the QAP process that was in place in 2013. He also hints at a possible motive (p.63) when he indicates that he intends to obtain a copy of the record for this trial.

Exhibit 7

This exhibit is yet another example of an occasion where I am asked if I have switched samples (p.3-11) after 7/16/2015. My answer (p.3-16) is then about the gray-top tubes as stated in the QAP. Page 4 lines 5-7 contain perhaps the clearest evidence that I did discover the gray-top tubes out of order before receiving the call from the agency. I use the word "if" meaning that I am not aware of any indication that the results have been switched. The prosecutor makes the point in this case that "if there was any question about the result that you got, it could be retested?" (p.7 18-19)

Exhibit 8

This exhibit is similar in some respects to the others. I am asked about "vials" and I reply with tubes (p.6,7). There are obvious errors in the transcript (p.17-20 p.21-20 p.22-4 p.38-11). I clearly demonstrate the difference between gray-top tubes and head space vials (p.16-18-22). Mr. Burleson is admonished a number of times by the judge to use these terms correctly (p.28,29,33).

What is different about this exhibit is the judge actually asks me questions himself (p.20-22). The incident and the corrective and preventative action in the QAP could not be presented any clearer. There appears to be some confusion by Mr. Burleson as to whether certain roles/titles listed on the QAP were actually assigned. This topic comes up in ex.6 as well. I would not have the need to investigate my own incident since it happened to me. I did not ask or insist on being assigned any role/title. I simply completed the form as instructed. Subsequent revisions of the QAP forms removed the investigator designation completely.

Mr. Burleson then goes on to say, yet again, that he intends to get the transcript from the trial in Dallas Co. on 9/27/2016 (ex.6). This to me is a further indication of his motives. The judge goes on the record to point out that Mr. Burleson (nor Mr. Abel p.7) does not appear to be familiar with the QAP process. When I offered this idea to Mr. Burleson he indicated the thing that he was familiar with was Brady material. (p.35 20-21) This hearing comes to an end when the judge indicates that I have a right to an attorney and that I also have 5th Amendment rights. Exhibit 10, being in a different court before a different judge, ends very differently.

Exhibit 9

This particular transcript barely contains two pages of testimony from what Mr. Kumar indicated was perhaps an hour to an hour and a half in length. Even in these two pages it is clear that Mr. Kumar answers the questions in like fashion. When asked about "vials" and the kit (p.4-9) he answers with "tubes". (p.4-11) The judge sustains an objection of hearsay and speculation with regards to Mr. Burleson's questioning. Again on the subject of vials (p.5-5), Mr. Kumar produces an example of the head space vial. Mr. Kumar goes on to indicate that head space vials do not come in the DPS Blood kits. (p.5-9) This in my opinion is more scheming on the part of Mr. Burleson as will be seen in the next exhibit.

Exhibit 10

This particular exhibit stands out to me as the most concerning. The purported reason for the hearing on page 5 is "we have not gotten the whole story". After having questioned me in three previous proceedings (and the judge questioning me himself in one of them), this seems implausible. The judge agrees (p.6 10-15) with the prosecutor's argument that this is "not the proper avenue for this". (p.6 7-8) Mr. Burleson does clearly indicate his motive on page 6 line 21 when he states "to discipline a witness". It would seem that Mr. Burleson was not happy that the QAP had not been disclosed to him earlier than September of 2016 and that I am somehow to blame for it. The QAP is an internal quality document, owned by the DPS, which was disclosed to the laboratory's accrediting body as required. The laboratory has also provided it over 170 times to those that have requested it.

Mr. Burleson goes on to further identify his motives by referencing ex. 8 on page 33. He states "Yeah, the judge made me stop saying vials...Even though I knew what I was doing." Mr. Burleson seemed intent on asking me enough trick questions to catch me in my words. This is why I believe these circumstances are manufactured.

On pages 8 and 9 Mr. Burleson makes the point again that I knew of the contents of the QAP since it occurred in 2013. That being true, I did not recognize it as sample switching until 7/16/2015 when

I became aware of the Annual Laboratory Management System Survey. I make this point on page 9 lines 22-23. This also affects the question and answer on page 47 lines 7-10. I was aware of the incident on 7/15/2015 but not as switching. Mr. Burleson claimed I was asked if I had "switched vials" six times throughout this proceeding. (p.72) The question is asked in more than one way and I would distinguish between them with "vials on a person" having a different meaning (ex.6).

Mr. Burleson also insists on asking me about vials again even though the incident has already been discussed as tubes and samples. The judge goes on the record to say that scientists may have different definitions as to what gray-top tubes and vials might be. (p.13) Mr. Burleson then proceeds to read the portions of Mr. Kumar's testimony that he wants to, a practice known as optional completeness. This objection is sustained on p.65.

Once again, as in previous exhibits, the judge sustains an objection about Mr. Burleson's demeanor. (p.44) Again I remain respectful to the end continuing to address him as sir (p.69) This exhibit also contains a number of errors as do all of the others. (p.4-3 p.20-5 p.21-16 p.25-6 p.27-11 p.28-10 etc.)

This exhibit does contain the assertion of my 5th Amendment rights. (p.74) After defense counsel indicates "that now may be the time to get an attorney appointed", there is a discussion not recorded in the record. (p.74-8) The judge then advises me that I have the right to remain silent (which I now know I should have) and the right to an attorney. After indicating "yes" that I would like to talk to someone from my department, defense counsel is successful in chiding the judge into suggesting that I take the 5th. I was not aware at that time what exactly I was about to incriminate myself of. I don't know that I am aware today. It was my expectation that this hearing, having reached a similar point, would end the way the hearing did on 10/13/2016. (ex.8)

Exhibit 12

This transcript, from January 26, 2016, is the first chronologically to record an affirmative answer to the fact that I have "...mixed up the samples" (p.4-8 apart from the previously mentioned instance. ex.3 p.99-6,7) Again, this trial is taking place after 7/16/2015, the day that I became aware of the Annual Laboratory Management System Survey. The answers that I provide in this exhibit continue to support the ideas that I have presented in earlier exhibits. Namely, that I would differentiate between gray-top tubes and head space vials (p.5-6), that I believe the preventative action in the QAP is sufficient and effective (p.7-9-13) and that samples are something that I would prepare (p.7-12,13).

Exhibits 17-19

These three exhibits represent DPS publications or forms that contain the word "vial". The two publications (ex.17 and 18) are intended for use by our customers and are not things that I would rely on in the execution of my duties. Each of these exhibits has been revised since the date of the deposition removing any occurrences of the word "vial".

Exhibit 20

The word "vial" does appear in this document. It is used to reference positions on the Blood Alcohol Batch List. (attached)

There are a number of subjects that I want to address individually.

I was asked to clarify my answers to the questions regarding when I realized or knew that the results were wrong for the two affected cases in the QAP. I had the indication that the results could

be wrong when I discovered the tubes out of order. (ex.6 p.17,18) It is possible for the tubes to have gotten out of order after they were tested but before I placed them back into the kits. After the tubes are sampled from, they are consolidated into fewer racks to conserve refrigerator space. It is also possible that the person reviewing the cases had consulted the tubes during their review and changed the order of the tubes. Further indication that the results could be wrong came when the agency called concerning the results on the report that they had received. Their expectation of a no alcohol result and the fact that one of the results was no alcohol supported this. The confirmation that the results were indeed wrong came once the reanalysis of the affected cases was complete.

Quality Action Plan LOG 03-12 Version: 06 Effective Date: 12/05/2016 – While this version was not effective when the incident occurred in 2013, I was asked to address the first sentence in the second paragraph in section 1 Scope. The sentence reads:

This process is designed to encourage participation, open communication and un-biased assessments of quality incidents for the purpose of transparency and process improvement.

I believe that I accomplished these things in the open and immediate reporting of the incident to management. I believe the assessment is un-biased in that the facts contained in the QAP are exactly what happened. I believe the language in the QAP is clear and that the preventative action improved what was already a robust process, having only a single incident in the 15 years of using this process to that point in time.

Court Testimony Monitoring LOG 03-02 Version: 05 Effective Date: 12/05/2016 – I was asked to address sections 2.1 B. and D. which are:

- B. Testify in a manner which is clear, straightforward and objective;
- D. Avoid phrasing testimony in an ambiguous, biased or misleading manner;

I do believe that I have avoided offering testimony that is ambiguous, biased or misleading and that my testimony was objective. I am even recorded stating this as a goal in ex.3 page 117 line 23. I believe that my testimony was as straightforward as possible given that the questions are often asked in a manner that is not straightforward. (see ex.3 p.73-74) The clarity of my testimony may have been affected by the brevity of many of my answers. In an effort to be concise, I was often asked for clarification. This points out the conflict between wanting to address things fully while I have the opportunity (redirect may not address them) and not wanting to say too much knowing the defense attorney is likely to misrepresent my testimony. Having rarely had the opportunity to review transcripts of my testimony (I can recall two in 20 years), the only indication (evaluation forms and verbal and written communications with both prosecuting and defense attorneys) I had was that I was performing this duty satisfactorily.

I was also asked if I felt responsible for these circumstances. Implicit in that is the notion that there is something that I could have done to prevent these circumstances. I do not believe that is entirely possible. Although it may have been possible for me to offer the information about the incident in my testimony in 2015, there are still the issues of "sample switch" and the disclosure of the QAP. The laboratory first provided the QAP to Mr. Stamper in August 2014 and Ms. Grant appeared on tv with the QAP in December 2015. Why no one shared it with Mr. Burleson before September 2016 I do not know. Knowledge of the QAP or its presence are not necessary to establish the idea that a person is capable of making mistakes. This is demonstrated in ex.6 page17 lines 17-18. We are all human so the saying goes. Additionally, had I simply said "yes" to switching vials, I can imagine that being used to argue that I admitted to switching head space vials. (which has not happened) I believe that Mr. Burleson would still have sufficient motivation to manufacture a similar circumstance.

Attachments

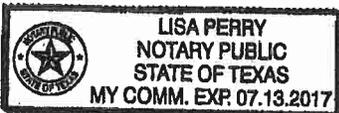
- Annual Laboratory Management System Survey for 2013.
- Blood Alcohol Batch List form L1D-FRM-BA-01.
- Request Reports for GAR-1304-05568 and GAR-1304-05569 for both the original analysis and the reanalysis showing when the reports were released and to whom.
- Email to Russell Jones, Assistant County & District Attorney for Ellis Co, concerning the documents provided in response to defense request.
- Alcohol Analysis Worksheet and Internal Chain of Custody Report for GAR-1303-03440.
- Email to Kenneth Evans on 5/16/2013.
- Statement of Qualifications.
- Courtroom training: Courtroom Performance Syllabus, Courtroom Testimony Techniques and two pages from the syllabus for The Robert F. Borkenstein Course on Alcohol , Drugs and Highway Safety, plus two slides, six pages total.
- Quality Action Plan LOG 03-12 Version 04 Effective Date: 3/11/2013.
- Garriott's Medicolegal Aspects of Alcohol 6th ed. p. 429.

I have read the above statement consisting of 43 page(s), which is based on my personal knowledge, and it is true and correct.

Christopher Youngkin

Subscribed and sworn to before me, the undersigned authority, on this the 27th day of January A.D. 2017.

[Signature]
Notary



NOTARY WITHOUT BOND



TEXAS DEPARTMENT OF PUBLIC SAFETY
CRIME LABORATORY

Annual Laboratory Management System Survey

LAB-QA-32 Rev.00 (03/2010)

Laboratory	Garland		
Manager	James Nichols	Review Date	10/28/13

Comment on the following as they pertain to meeting laboratory goals and objectives:

1. *Workload and laboratory information (e.g., turn-around time, staffing, equipment, facility, outsource, subcontracts)*

The laboratory received a number of high profile homicide cases this year requiring a significant amount of analysis in the Biology/DNA, Firearms/Toolmark, Latent Print, and Trace Evidence Sections.

Controlled Substance

Cases Received – 7,833 (Avg 653/month)
Cases Completed – 5,670 (Avg 473/month)
Backlog – 5,613

Four forensic scientists are approved for all controlled substance analysis. Catalina Cuervo, Meagan Richey, Danny Taylor, and Katina Campbell were employed with DPS this period. Catalina Cuervo has transferred to the Corpus Christi lab and Danny Taylor has transferred to the Austin lab. Jose Martinez transferred to the Austin Lab and Juan Campos was separated from the Department. Three forensic scientists (David Eckre, Reina Davidson, and Rene Eckelkamp) are currently in training in the Austin lab and scheduled to begin work in Garland in December 2013. The Controlled Substance section needs at least 11 forensic scientists to meet the current case load and the 30 day expectation. This will require two additional FTE's. The section supervisor regularly communicates with the larger counties to prioritize cases to be completed in time for the attorneys. The lab continues to receive numerous requests for quantitations. Additionally, a Technician would be beneficial for this section in the preparation of reagents, instrument maintenance, and evidence movement. A new GC will be needed to replace the one currently being used for quantitations. Also, a Waters LC/MS would be a beneficial addition to the section to assist in quantitations.

Blood Alcohol

Cases Received – 6,038 (Avg 503/month)
Cases Completed – 5,926 (Avg 494/month)
Backlog – 386

Two forensic scientists are approved for blood alcohol analysis and have done a superb job in completing the requests in 30 days. Samuel Salinas was employed with DPS this period and has transferred to the Austin lab. Nirav Kumar has been employed and started training in Garland to work in the Blood Alcohol section. The addition of a third forensic scientist will greatly help this section. The number of court appearances for the two forensic scientists is a concern that will be mitigated with the third forensic scientist.

Biology/DNA

New Requests – 2,291 (Avg 190/month)
Completed – 1,919 (Avg 160/month)
Backlog – 1,270

Ten forensic scientists are approved for biological screening and/or DNA analysis. Melissa Haas was hired as the Regional Section Supervisor. Christie Cheng and Amelia Dowhower were hired as forensic scientists during this period and are approved for case work. Catharine Worthen transferred to Garland from the Weslaco lab. Trisha Kacer was selected as the Forensic DNA Specialist and Uyen Henson transferred to the Garland Quality Assurance Specialist. Drew Dean was hired as the DNA Section Technician. Four forensic scientists (Chelsy Wingate, Kristen Cossota, Ben Habdas, and Shauna Schoonover) are currently in training. Misty Simons and Holly Oommen resigned from DPS during their DNA training, and Kathleen McKinney transferred to the Houston lab. Amber Moss functions as the Local CODIS Administrator for which these duties consume a majority of her time. It would be beneficial to designate this as a separate position.



TEXAS DEPARTMENT OF PUBLIC SAFETY
CRIME LABORATORY

Annual Laboratory Management System Survey

LAB-QA-32 Rev.00 (03/2010)

Laboratory	Garland
Date of Review	10/28/13

Firearm/Toolmark

Cases Received – 198 (Avg 17/month)

Completed – 218 (Avg 18/month)

Backlog – 20

Two forensic scientists are approved for firearm/toolmark analysis. Kristina Goodson resigned from DPS in this period and Kevin Callahan transferred to Garland from the Lubbock lab. A NIBIN unit was installed during this period and there have been 5 hits since the installation.

Trace

Cases Received – 261 (Avg 22/month)

Completed – 221 (Avg 18/month)

Backlog – 103

Two forensic scientists are approved for all of the sub-disciplines conducted in Garland. Lindsey Bynum and Angel Rios were employed by DPS and are currently in training in Garland to work in the Lubbock lab. Their anticipated completion of training is June 2014. Until their training is complete, the Garland lab is working cases for the Lubbock Regional lab. Additionally, the Tarrant and Dallas county labs have limited Trace service offered. The Trace section has been able to manage the current work load. A new MSP (Foster Freeman) will be needed for Garland since the one currently being used will be sent to the new Lubbock Regional lab.

Latent Print

Cases Received – 242 (Avg 20/month)

Completed – 205 (Avg 17/month)

Backlog – 90

Two forensic scientists are approved for Latent Print processing and comparison. Courtney Wassung transferred to Garland after training in the Austin Lab. The section is able to manage the current work load.

Evidence Coordination

The Garland lab has five Crime Lab Specialists that receive, return, transfer, and destroy evidence. The evidence techs received 16,863 cases which averages to 1,405/month this period. The lab continues to receive large destruction-only cases that require storage here until the Sharps facility is available to conduct the destruction. The section will greatly benefit with the hiring of an Admin Tech to assist with the ORR and general administrative duties in the front office.

2. *Identify and review the managerial and supervisory reports, including budgets relating to the laboratory and noted observations (e.g., trends, strengths, weaknesses, needs)*

The budge was sufficient for FY 2013 to obtain consumables and maintain equipment. The lab greatly benefits from the use of grant money available to maintain the consumable and equipment for the DNA Section. The FY 2014 budget will need to have funds available for the new equipment in the Trace and Controlled Substance Sections as outlined above.

3. *Proficiency testing (e.g., trends, strengths, weaknesses)*

Quarterly Controlled Substances Re-examinations were completed in June and September 2013 in compliance with LOG-05-04, Section 2.2.A.

There were no issues regarding the proficiency tests for the year.

Several new proficiency tests are available or will become available in the near future. FTS now provides proficiency tests for fabric damage, quantitative chemical analysis and tire impressions. CTS is providing proficiency tests for adhesive tape, latent print processing and blood drug and urine drug analyses. In 2014, CTS will also be providing a proficiency test for DNA interpretation and Technical Review only.



TEXAS DEPARTMENT OF PUBLIC SAFETY
CRIME LABORATORY

Annual Laboratory Management System Survey

LAB-QA-32 Rev.00 (03/2010)

Laboratory	Garland
Date of Review	10/28/13

4. *Outcome of internal audit activities and identify areas of improvement for laboratory consideration*

A Safety Audit was conducted on 06/06/2013. One eye wash and one safety shower did not meet specifications. These were serviced. A fire drill was conducted in March 2013 and all fire safety devices functioned properly.

The Evidence Audit of the Main Vault was conducted on 10/21/2013 and revealed errors in the filing of evidence. Of the 407 items of evidence that were checked, 23 items were either in the wrong location or scanned to the wrong location. One item had the wrong barcode label for that evidence. Therefore, 6% of the evidence inspected had errors.

An area for improvement would be to develop a method for filing evidence where they would be placed in the correct locations in the main vault.

5. *Accreditation, inspection, and/or audit reports prepared by the external bodies identify areas of improvement for laboratory consideration*

No external inspection was conducted between 09/01/2012 and 08/31/2013.

6. *Corrective and preventive actions related to the laboratory and identify areas of improvement for laboratory consideration (e.g., trends, strengths, weaknesses)*

Between 09/01/2012 and 08/31/2013, the Garland Crime Lab issued 15 QAPs. This is a 46% decrease from the previous year's 28 QAPs.

Blood Alcohol – QAP #823: Sample switch resulting in wrong results reported.

Controlled Substances – QAP #665: Results reported as "Contains Dihydrocodeine" instead of "Contains Dihydrocodeinone." QAP #692: One analyst was documenting that the autotunes were passing when they did not meet the "pass" criteria.

Evidence Coordination – QAP #673: Evidence in an envelope was dropped which contained a glass container of liquid. QAP #798: Evidence was returned to the wrong agency.

Latent Prints – QAP #766: Report released stated that "No latent prints were developed" instead of "No suitable latent prints."

DNA – QAP #611: Contamination of sample by analyst; sample was depleted and could not be re-extracted. QAP #630: Report released incorrectly stated that the evidence was from the suspect and not the victim. QAP #652: DNA profile was consistent with the Trace analyst. QAP #653: Contamination between evidence from two different cases during the collection of the samples. QAP #689: Analyst had inconsistent results on the screening of the proficiency test. QAP #694: Reanalysis of a sexual assault case from one analyst determine that a spermatozoan was present when the analyst reported that no semen was detected. QAP #794: Reagent blank contamination possibly from the consumable. QAP #797: Differential extraction yielded no results in sperm cell fractions; samples were re-extracted. QAP #799: Reagent blank contamination from the analyst performing the Tecan extraction.

Between 09/01/2012 and 08/31/2013, the Garland Crime Lab issued 63 Amended Reports. Eight were technical errors and 55 were non-technical corrections.

An area for improvement for the Evidence Coordination section is the evidence return process. From 09/01/2011 to 08/31/2012, three QAPs were issued for returning evidence to the wrong agency. Another QAP for the same issue was written this past fiscal year (QAP #798).



TEXAS DEPARTMENT OF PUBLIC SAFETY
CRIME LABORATORY

Annual Laboratory Management System Survey

LAB-QA-32 Rev.00 (03/2010)

Laboratory	Garland
Date of Review	10/28/13

7. *Identify laboratory deviations to policies and procedures and their suitability and need for continual use of deviation*

Garland Crime Lab deviations that can be rescinded include the following:

Dev-L1D-MAIN-GCMS-2010-0709-2010-0826, Dev-L1D-BA-02-01-2010-1112, and Dev-L1D-CS-01-02A-2005-0531. Dev-L1D-DNA-02-07-2010-0802-2010-0826, Dev-L1D-LOG-04-01-2008-1222, and Dev-L1D-SAF-01-01-2008-1222: Issues have been resolved.

Dev-L1D-LOG-01-02-2011-0411 and Dev-L1D-LOG-03-03-2011-0411: Applied only to Manuel Valadez.

Dev-L1D-TE-07-08-2012-0110: Deviation applied to only one case.

All current Garland Deviations regarding Oil Red O can be rescinded as Oil Red O has been incorporated into the LP SOP. (Dev-GAR-LP-01-05-2012-0822, Dev-GAR-LP-02-01A-2012-0822, Dev-GAR-LP-02-05-2012-0822, DEV-GAR-LP-02-06-2012-0822 and Dev-GAR-LP-02-17-2012-0822)

8. *Suitability of laboratory policies and procedures for all disciplines and general documents for laboratory consideration*

The Garland Crime Lab local documents were evaluated and the following require further review:

GAR-INS-Balances, GAR-Main-Balances, GAR-POL-AppointmentOfDeputy, GAR-POL-Evacuation, GAR-POL-Evidence Storage, GAR-POL-HardCopiesMicrofilmCases, GAR-POL-LostEvidenceOrFiles, GAR-POL-Photographs, GAR-POL-Security, GAR-PRO-CSR-VehicleProcessing, GAR-PRT-CaseFolderDesignations, GAR-PRT-DestructionOfEvidence, GAR-PRT-DestructionOnlySubmissions, GAR-PRT-QCRecordsLocation

GAR-MAIN-FTM-BulletRecoveryTank and GAR-MAIN-FTM-FiringRange: Unnecessary and involve procedures that may be hazardous. These were rescinded.

GAR-INS-37 -- No longer needed; GAR-INS-SPME -- Was moved to drug section folder; GAR-INS-15,38 and GAR-FRM-TE-01.

GAR-Main-BAGC70, GAR-INS-148 and GAR-INS-20

GAR-POL-LP on Drug Evidence is currently being rewritten for clarification.

9. *Customer surveys, customer complaints, and other feedback from the customer (e.g., trends, strengths, weaknesses)*

Customer survey indicates that laboratory personnel are helpful in person and on the phone. It will be beneficial to more actively solicit customer surveys similarly to the testimony evaluations. An online survey tool (such as Survey Monkey) would be useful to obtain valuable information to address issues from our customers. In addition, I have met in person with the Smith County, Dallas County, and Ellis County District Attorney's offices to discuss the services provided by the lab.

10. *Other relevant factors that have impacted the management system (e.g., quality control activities, resources and staff training)*

The Garland lab will benefit with the addition of a Quality Assurance Specialist that can focus on the organization of QA documents and the overall Quality System of the laboratory.



Texas Department of Public Safety
Crime Laboratory

Blood Alcohol Batch List

LID-FRM-BA-01

Date Started:

GC Equipment # 83

Analyst: Chris Youngkin

Completion:

Pipette Equipment # 160

Reviewer: _____

Diluter Equipment # 149

Sample Name

Sample 1			Sample 2			Low	High	Agreement
Vial	Channel 1	Channel 2	Vial	Channel 1	Channel 2			
40			84			0.0000	0.0000	0.0000
41			85			0.0000	0.0000	0.0000
42			86			0.0000	0.0000	0.0000
43			87			0.0000	0.0000	0.0000
44			88			0.0000	0.0000	0.0000
45			89			0.0000	0.0000	0.0000
46			90			0.0000	0.0000	0.0000
47			91			0.0000	0.0000	0.0000
48			92			0.0000	0.0000	0.0000
49			93			0.0000	0.0000	0.0000
50			94			0.0000	0.0000	0.0000

0
0
0
0
0
0
0
0
0
0
0

0.08 Std Lot # 28082014-B

REQUEST REPORT

Laboratory Case #: GAR-1304-05568
Request #: 0001
Requesting Agency: ANNA PD
Anna Police Department

Alcohol Content and Toxicology

Status: Admin. Reviewed

MILESTONES

Requested On: 04/29/2013 by Chris Reeves (labresults@annatexas.gov)

Due Date: 06/10/2013

Assigned On: 05/03/2013 to Chris Youngkin

Marked Draft Complete On: 05/09/2013

Tech Reviewed On: 05/16/2013 by Samuel Salinas

Admin Reviewed On: 05/16/2013 by Samuel Salinas

Released On: 05/16/2013

Distributed On:

Requestor Note:

Assignor Note:

Reviewer Note:

CC List

ADMINISTRATIVE LICENSE REVOCATION (ALR)

Austin ALR (ALRBAC@dps.texas.gov)

ADMINISTRATIVE LICENSE REVOCATION (ALR)

Austin ALR (ALRBAC@dps.texas.gov)

REQUEST REPORT

Laboratory Case #: GAR-1304-05568
Request #: 0001_0001
Requesting Agency: ANNA PD
Anna Police Department

Amended Alcohol

Status: Admin. Reviewed

MILESTONES

Requested On: 05/20/2013 by Chris Reeves (labresults@annatexas.gov)

Due Date:

Assigned On: 05/20/2013 to Andrew Macey

Marked Draft Complete On: 05/20/2013

Tech Reviewed On: 05/22/2013 by Kenneth Evans

Admin Reviewed On: 05/22/2013 by Kenneth Evans

Released On: 05/22/2013

Distributed On:

Requestor Note:

Assignor Note:

Reviewer Note:

CC List

Collin County District Attorney's Office

DA Collin (dalabreport@co.collin.tx.us)

ADMINISTRATIVE LICENSE REVOCATION (ALR)

Austin ALR (ALRBAC@dps.texas.gov)

ADMINISTRATIVE LICENSE REVOCATION (ALR)

Austin ALR (ALRBAC@dps.texas.gov)

REQUEST REPORT

Laboratory Case #: GAR-1304-05569
Request #: 0001
Requesting Agency: CLEBURNE THP
Texas Highway Patrol

Alcohol Content and Toxicology

Status: Admin. Reviewed

MILESTONES

Requested On: 04/29/2013 by William Fowler (william.fowler@dps.texas.gov)

Due Date: 06/10/2013

Assigned On: 05/03/2013 to Chris Youngkin

Marked Draft Complete On: 05/09/2013

Tech Reviewed On: 05/16/2013 by Samuel Salinas

Admin Reviewed On: 05/16/2013 by Samuel Salinas

Released On: 05/16/2013

Distributed On:

Requestor Note:

Assignor Note:

Reviewer Note:

CC List

Johnson County District Attorney's Office

DA Johnson (labs@johnsoncountytexas.org)

ADMINISTRATIVE LICENSE REVOCATION (ALR)

Austin ALR (ALRBAC@dps.texas.gov)

ADMINISTRATIVE LICENSE REVOCATION (ALR)

Austin ALR (ALRBAC@dps.texas.gov)

REQUEST REPORT

Laboratory Case #: GAR-1304-05569
Request #: 0001_0001
Requesting Agency: CLEBURNE THP
Texas Highway Patrol

Amended Alcohol

Status: Admin. Reviewed

MILESTONES

Requested On: 05/20/2013 by William Fowler (william.fowler@dps.texas.gov)

Due Date:

Assigned On: 05/20/2013 to Andrew Macey

Marked Draft Complete On: 05/20/2013

Tech Reviewed On: 05/22/2013 by Kenneth Evans

Admin Reviewed On: 05/22/2013 by Kenneth Evans

Released On: 05/22/2013

Distributed On:

Requestor Note:

Assignor Note:

Reviewer Note:

CC List

ADMINISTRATIVE LICENSE REVOCATION (ALR)

Austin ALR (ALRBAC@dps.texas.gov)

ADMINISTRATIVE LICENSE REVOCATION (ALR)

Austin ALR (ALRBAC@dps.texas.gov)

Johnson County District Attorney's Office

DA Johnson (labs@johnsoncountytx.org)

Youngkin, Christopher

From: Youngkin, Christopher
Sent: Friday, July 10, 2015 7:17 AM
To: 'Russell Jones'
Subject: RE: Henry Lewis Byrd (Trial July 15th, 2015)

I was able to locate the information. I can look over it and we can talk about it. I may be off to court Monday afternoon so let's not wait too long.

Also, when do you envision me actually testifying? It looks like I have a number of cases going next week in Collin, Denton and Tarrant counties so we will need to be spot on with the scheduling.

From: Russell Jones [mailto:russell.jones@co.ellis.tx.us]
Sent: Thursday, July 09, 2015 4:25 PM
To: Youngkin, Christopher
Subject: RE: Henry Lewis Byrd (Trial July 15th, 2015)

Mr. Youngkin:

We provided the defense with a standard litigation packet in this case. I am hoping you are familiar with the information contained therein. Would you be able to obtain that information with respect to this particular case and look it over in time to speak with me on the phone about it on Monday? I am hoping you wouldn't have to compile it again since someone from your lab already did so. Basically, I am wanting to see if you notice any red flags that Ms. Arvisu could use to attack the test's reliability. Things such as expired materials and inaccurate maintenance logs would be examples of what she looks for and testifies to. I would greatly appreciate it.

Sincerely,

Russell L. Jones III

Assistant County & District Attorney
Ellis County & District Attorney
Ellis County Courts Building
109 S. Jackson, 4th Floor
Waxahachie, TX 75165
972-825-5204
Fax 972-825-5047
russell.jones@co.ellis.tx.us



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From: Youngkin, Christopher [<mailto:Christopher.Youngkin@dps.texas.gov>]
Sent: Wednesday, July 01, 2015 1:52 PM
To: Russell Jones
Subject: RE: Henry Lewis Byrd (Trial July 15th, 2015)

I have seen her name recently. A fellow employee in our Austin lab sent me her resume and a transcript of her testimony from a case in New Mexico. I would ordinarily answer those questions, but I guess it may depend on what the questions are as to whether I have an answer or not.

Look forward to meeting with you next week.

Chris Youngkin

Forensic Scientist
Crime Laboratory Service
Texas Department of Public Safety
(214)861-2190 (main)
(214)861-2317 (direct)
(214)861-2194 (fax)

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From: Russell Jones [<mailto:russell.jones@co.ellis.tx.us>]
Sent: Wednesday, July 01, 2015 1:35 PM
To: Youngkin, Christopher
Subject: Henry Lewis Byrd (Trial July 15th, 2015)

Mr. Youngkin:

I am the prosecutor on an upcoming trial on July 14th, 2014. The lab report number is GAR 1303-03440. I wanted to touch base first so that you can have my information to contact me with questions and to let you know that you should expect to be contacted by myself or my investigator to schedule a time most likely next week where we can meet to discuss the blood results and your testimony.

Also, I have notice that the defense may call Janine Arvisu. She is an "expert" they plan to call to testify that your results are unreliable based on her training in quality assurance and quality control and her review of the standard litigation packet produced in this case. Is there someone there at the lab that can testify to the proper protocols for maintenance of equipment, testing materials, and anything else involving quality assurance?

Thanks,

Russell L. Jones III
Assistant County & District Attorney
Ellis County & District Attorney
Ellis County Courts Building
109 S. Jackson, 4th Floor

Waxahachie, TX 75165
972-825-5204
Fax 972-825-5047
russell.jones@co.ellis.tx.us



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TEXAS DEPARTMENT OF PUBLIC SAFETY
CRIME LABORATORY

Lab Case # **GAR-1303-03440**

Analyst **Chris Youngkin** *CY*

Date Started **3/29/13**

Date Completed **4/1/13**

Total # of pages **3**

Alcohol Analysis Worksheet

LAB-BA-01 Rev.01 (08/2011)

Evidence

Subject's Name (Submission form):

Henry Lewis Byrd

Evidence Container:

Box Tube Envelope

Other _____

Specimen: Gray Top Other _____

Sealed: Yes No

Specimen Label: None Same as Submission Form

Type/Amount

Blood
 Urine
 Serum
 Vitreous
 Other

Condition
 Normal Thick Clotted

Other _____

Approx. Amount

Full 3/4 1/2 1/4 <1 mL
Other _____

Additional Notes

Measurement Uncertainty (at 99.7% confidence):
Reported Ethanol Result \pm (9.4% * Reported Ethanol Result)

Results

Reported Ethanol Results **0.163** grams per **100** mL

BAC 1	
Run 1	0.1643
Run 2	0.1629

BAC 2	
Run 1	0.1647
Run 2	0.1638

Other Volatiles: _____

Disposition

Drug Screen Request:

Yes No

Not sent for drug screen; alcohol content \geq 0.100g/100ml

Disposition Note:

Retain Drug Screen Return

Other **URETAIN**

Analysis Method

Heated Head-Space Gas Chromatography

Sample Preparation:

200 ul sample, 1.4ml NaCl/n-Propanol

Instrument: Shimadzu GC 2010 with AOC-5000 Autoinjector

Equipment #70

Equipment #83

GC Columns:

- RTX BAC-1 30 meters 0.53mm i.d. 3 μ m film
- RTX BAC-2 30 meters 0.53mm i.d. 2 μ m film

Column Conditions:

Oven Temperature 40 °C
Column Flow Rate 10 cc/min
Injection Temperature 200 °C
Detector Temperature 210 °C

Autosampler Program:

Sample Temperature 80 °C
Sample Volume 1 ml
Syringe Temperature 90 °C
Injections per vial 1
Thermostating Time 12 min
GC Cycle Time 6 min

INTERNAL CHAIN OF CUSTODY REPORT

GAR-1303-03440

GLENN HEIGHTS PD

LIMS #: 01

Agc Item #:

Description: PS DPS Blood Kit

Evidence Notes:

Current Container: Not enclosed in another container

<u>From</u>	<u>LAB</u>	<u>To</u>	<u>LAB</u>	<u>Date/Time</u>	<u>Notes</u>
Howard, Kevon		McDonald, Louise		03/14/2013 10:57:57AM	VIA In Person
McDonald, Louise	GAR	FRIG - PENDING	GAR	03/14/2013 10:57:59AM	
FRIG - PENDING	GAR	Youngkin, Chris	GAR	04/01/2013 02:00:36PM	
Youngkin, Chris	GAR	RETURN MV	GAR	04/08/2013 02:32:19PM	
RETURN MV	GAR	Leal, Jesus	GAR	04/08/2013 04:03:52PM	
Leal, Jesus	GAR	1112	GAR	04/08/2013 04:03:54PM	
1112	GAR	Posey, Lynda	GAR	05/17/2013 10:58:57AM	
Posey, Lynda	GAR	Howard, Kevon	GAR	05/17/2013 10:58:59AM	

Youngkin, Christopher

From: Youngkin, Christopher
Sent: Thursday, May 16, 2013 10:27 AM
To: Evans, Kenneth
Subject: talk to you

Importance: High

Is it possible to talk to you privately in the BA room. Soon.

Chris Youngkin

Forensic Scientist
Crime Laboratory Service
Texas Department of Public Safety
(214)861-2190 (main)
(214)861-2317 (direct)
(214)861-2194 (fax)

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TEXAS DEPARTMENT OF PUBLIC SAFETY
 CRIME LABORATORY
Statement of Qualifications
 LAB-QA-35 Rev.00a (01/2016) p.2 Issued by: QAC

Name	Chris Youngkin	Date	01/13/2017
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(Continued)

Employment History: List all scientific or technical positions held, particularly those related to forensic science. Be sure to indicate employer and give a brief summary of principal duties and tenure in each position. (List current position first)

Job Title:	Forensic Scientist	Tenure:	10/96-present
Employer:	Texas DPS		
Provide a brief description of principal duties: Receive evidence from and return evidence to law enforcement agencies, maintain the chain of custody for said evidence, analyze said evidence for the presence of controlled substances, dangerous drugs and other compounds of interest, determine blood alcohol concentration, prepare reports reflecting the results of said analysis, testify in court about said results as needed and prepare contraband for destruction.			

Job Title:		Tenure:	
Employer:			
Provide a brief description of principal duties:			

Job Title:		Tenure:	
Employer:			
Provide a brief description of principal duties:			

Job Title:		Tenure:	
Employer:			
Provide a brief description of principal duties:			

Job Title:		Tenure:	
Employer:			
Provide a brief description of principal duties:			

Other Qualifications: List below any scientific publication and/or presentation you have authored or co-authored, research in which you are or have been involved, academic or other teaching positions you have held, any awards you have received, and any other information which you consider relevant to your qualification as a forensic scientist. (Use additional sheets if necessary).

Publication/Presentation
Research
Academic/Teaching Positions
Awards
Other

Other Training: List continuing education, workshops, in-service and formal training received.

Course Title, Source, and Date
<u>Basic Forensic Drug Analysis</u> , Headquarters Laboratory, Austin, Texas, October 28 – December 27, 1996.



TEXAS DEPARTMENT OF PUBLIC SAFETY
CRIME LABORATORY
Statement of Qualifications

LAB-QA-35 Rev.00a (01/2016) p.2 Issued by: QAC

Name	Chris Youngkin	Date	01/13/2017
------	----------------	------	------------

(Continued)

Forensic Chemist Seminar, Drug Enforcement Agency, Fairfax, Virginia, March 3-7, 1997.

Physiology of Alcohol, Training Academy, Headquarters, Austin, Texas, February 2-3, 1998.

An Overview of Forensic Science, Southwestern Association of Forensic Scientists, South Padre Island, Texas, April 20-23, 1998.

Courtroom Performance, Southwestern Association of Forensic Scientists, South Padre Island, Texas, April 20-23, 1998.

Headspace Alcohol Determination, Texas Department of Public Safety Garland Laboratory, Garland, Texas, Spring 1998.

Forensic Drug Chemists Workshop, Texas Department of Public Safety, Austin, Texas, June 29-July 1, 1999.

Basic Crime Scene Investigation, University of North Texas Police Academy, Denton, Texas, March 13-15, 2000.

Spectroscopic Solutions Seminar, Nicolet Instruments, Double Tree at Lincoln Center, Dallas, Texas, May 10, 2000.

Agilent GC/MS User's Meeting, Agilent Technologies, Omni Hotel, Richardson, Texas, May 24, 2000.

Capillary Chromatography, Restek Corporation, Holiday Inn Select DFW North, Irving, Texas, September 20, 2000.

Clandestine Drug Labs, University of North Texas Police Academy, Denton, Texas, April 21, 2001.

Courtroom Testimony Techniques: Success Instead of Survival, seminar presented by Ron Smith, Texas Department of Public Safety, Austin, Texas, August 13-14, 2001.

Basic Clandestine Laboratory Safety Training, Texas Department of Public Safety, Austin, Texas, April 21-25, 2003.

Overview of PCP, Harry Skinner, DEA Southwest Laboratory, Dallas, Texas, August 1, 2003.

Clandestine labs in the Ft. Worth Area, Southwestern Association of Forensic Scientists, Ft. Worth, Texas, November 3, 2003.

Anhydrous Ammonia Analysis and ID, Southwestern Association of Forensic Scientists, Ft. Worth, Texas, November 3, 2003.

GHB Analysis, Southwestern Association of Forensic Scientists, Ft. Worth, Texas, November 4, 2003.



TEXAS DEPARTMENT OF PUBLIC SAFETY
CRIME LABORATORY
Statement of Qualifications

LAB-QA-35 Rev.00a (01/2016) p.2 Issued by: QAC

Name	Chris Youngkin	Date	01/13/2017
------	----------------	------	------------

(Continued)

The Use of GC/MS in Modern Drug Analysis, Lynn Griffin, DEA Southwest Laboratory, Dallas, Texas, December 4, 2003.

Forensic Photography, Ed Hueske, East Texas Police Academy, Kilgore, Texas, May 26-28, 2004.

GC/MS Data Acquisition and Data Analysis, Agilent Training Seminar, Austin, Texas, September 28-30, 2004.

GC/MS Data Acquisition and Data Analysis, Agilent Training Seminar, Houston, Texas, July 27-29, 2005.

Clandestine Laboratory Updates, DEA Training Seminar, Dallas, TX, September 29, 2005.

Tryptamines, DEA Training Seminar, Dallas, TX, May 15, 2006.

The Robert F. Borkenstein Course on Alcohol and Highway Safety: Testing, Research and Litigation, Indiana University, Bloomington, IN, May 21-26, 2006.

Capillary Electrophoretic Analysis of Clandestine Methamphetamine Laboratory Evidence, Washington State Patrol Crime Lab, Seattle, WA, August 6-8, 2007.

Crime Scene, Southwestern Association of Forensic Scientists, Austin, Texas, October 8-9, 2007.

Myth of Fingerprints, Southwestern Association of Forensic Scientists, Austin, Texas, October 10, 2007.

Quantitative Method Validation, Southwestern Association of Forensic Scientists, Little Rock, AR, September 25, 2008.

Uncertainty of Measurement, Southwestern Association of Forensic Scientists, Little Rock, AR, September 22, 2008.

Utilization of LCMS in Forensic Toxicology, Southwestern Association of Forensic Scientists, Little Rock, AR, September 24, 2008.

Ethics in Forensics, Southwestern Association of Forensic Scientists, Little Rock, AR, September 25, 2008.

THC Extraction Labs, Southwestern Association of Forensic Scientists, Little Rock, AR, September 26, 2008.

Instrumental Evaluations, DEA Training Seminar, Dallas, TX, December 4, 2008.

Liquid Chromatography in the Forensic Laboratory, DEA Training Seminar, Dallas, TX, April 29, 2009.

From Clan Lab to Court, DEA Training Seminar, Dallas, TX, November 19, 2009.



TEXAS DEPARTMENT OF PUBLIC SAFETY
CRIME LABORATORY
Statement of Qualifications
LAB-QA-35 Rev.00a (01/2016) p.2 Issued by: QAC

Name	Chris Youngkin	Date	01/13/2017
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(Continued)

Clandestine Laboratory Synthesis Routes, DEA Training Seminar, Dallas, TX, June 7, 2010.

Drug Analysis Secrets You Wish You Learned in Kindergarten, Southwestern Association of Forensic Scientists, Dallas, TX, September 22, 2010.

Toxicology – What Does This Number Mean?, Southwestern Association of Forensic Scientists, Dallas, TX, September 23, 2010.

Current JWH Compounds, Southwestern Association of Forensic Scientists, Dallas, TX, September 23, 2010.

GC/MS Method Development and Optimization for Forensic Samples, Southwestern Association of Forensic Scientists, Santa Fe, NM, October 2013.

Spice, Spice Baby...(and some Cathinones too!), Southwestern Association of Forensic Scientists, Santa Fe, NM, October 2013.

Contemporary Issues in Drunk Driving and Driving Under the Effects of Drugs, Southwestern Association of Forensic Scientists, Santa Fe, NM, October 2013.

Courtroom Challenges, Southwestern Association of Forensic Scientists, Santa Fe, NM, October 2013.

Alcohol and Drug Training for Forensic Scientists, Texas A&M Transportation Institute, Austin, TX, August 6-7, 2014.

Blood Alcohol: Aspects of Forensic Alcohol Toxicology – Not Just Drinking and Driving, Southwestern Association of Forensic Scientists, South Padre Island, TX, October 2014.

Texas Department of Public Safety Statewide Blood Alcohol and Toxicology Meeting, Austin, TX, November 18-19, 2015.

Texas Department of Public Safety Statewide Blood Alcohol and Toxicology Meeting, Austin, TX, October 26-27, 2016.

COURTROOM PERFORMANCE SYLLABUS

INSTRUCTOR: STEPHEN MCKASSON

Introduction

Review of syllabus, handouts, opening remarks

Video: "Courtroom Performance"

Review of video

Dress and Demeanor

What is an Expert Witness?

Developing Qualifying Questions

Establish yourself as an expert

Establish the competency of your techniques

Introducing the evidence - chain of control

Basis for your conclusion

Courtroom Basics

Preparation - Pretrial Conference

Direct Examination

Cross Examination

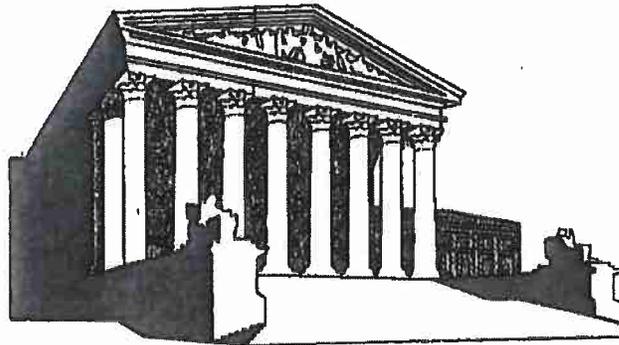
Strategies for Answering Cross Examination Questions

Review of material

Q & A session

COURTROOM TESTIMONY TECHNIQUES

“SUCCESS INSTEAD OF SURVIVAL”



INSTRUCTOR

**RON SMITH
MERIDIAN, MISSISSIPPI**

***CERTIFIED LATENT PRINT EXAMINER
CERTIFIED SENIOR CRIME SCENE ANALYST***

**THE ROBERT F. BORKENSTEIN COURSE ON ALCOHOL, DRUGS
AND HIGHWAY SAFETY: TESTING, RESEARCH AND LITIGATION**
Founded by R. F. Borkenstein, Professor Emeritus, Indiana University

May 21-26, 2006
Center for Studies of Law in Action

Jere Joiner, Course Director
Darlana Lindsay, Program Coordinator
Barry K. Logan Ph.D., Executive Director

All sessions will be held in the Indiana Memorial Union Building on the Bloomington, IN campus of Indiana University. Attendance at all sessions is mandatory except by permission of the Course Director. (All times listed are Eastern Standard time).

Sunday, May 21st, 2006 (Frangipani Room)

- 11:30 A.M. - Noon** Registration, distribution of course materials, and payment of fees.
Coffee, iced tea, soft drinks, deli tray w/ ham, roast beef, turkey, cheese, and chips.
- 12:00 - 12:15** **Orientation**
- 12:15 - 1:15** **Pharmacology of Alcohol**
Dr. Robert B. Forney, Jr., Director of Toxicology, Medical University of Ohio
- 1:15 - 1:30** **Break**
- 1:30 - 2:30** Forney (Cont'd)
- 2:30 - 2:45** **Break - Cookies provided.**
- 2:45 - 4:00** Forney (Cont'd)
- 4:00 - 4:15** **Break**
- 4:15 - 5:15** **The Alcohol Tradition at Indiana University**
Dr. Kurt M. Dubowski, George Lynn Cross Distinguished Professor Emeritus of Medicine, University of Oklahoma College of Medicine

- 6:00 - 9:00** Attendees are invited to join the faculty for dinner and cash bar in the University Club.

4:00 – 4:15 Break

4:15 – 5:15 Montgomery (Cont'd)

Friday, May 26th, 2006 (Frangipani Room)

7:45 a.m. Coffee, hot tea, orange juice, banana nut bread and pumpkin bread provided.

8:00 – 8:15 **Review Questions: Alcohol Literature, Defense Challenges, and Case Law**

8:15 – 9:15 **Expert Testimony**

Ms. Mary Anderson, Deschutes County District Attorneys' Office

9:15 – 9:30 Break: Iced tea and soft drinks added.

9:30 -10:30 Anderson (Cont'd)

10:30 – 10:45 Break

10:45 – 11:30 **Expert Testimony – Q & A**

Mary Anderson and Patrick Harding

11:30 – 11:45 Break

11:45 – 12:15 Distribution of Certificates and Close of Course

Testimony

- Jurors have short attention spans, you need to remember:
 - Primacy and recency
 - 5-7 minute blocks of testimony
 - Visuals
 - Impact words
 - Visuals
 - Repetition

Testimony

- Cross examination
 - Relax, you have no control
 - Understand the question
 - Answer the question
 - Be professional
 - Redirect is coming

Expert Testimony



- L Listen to the question
- U Understand the question
- C Consider your answer
- A Answer
- S Shut up



QUALITY ACTION PLAN (QAP)

1 Scope

This document addresses the process for initiating, implementing, and checking the effectiveness of corrective actions or quality improvements of laboratory nonconformance, deficiencies, and/or work product of an unacceptable quality.

Nonconforming event is when one or more characteristic(s) or condition(s) are observed that do not conform to required specifications in standards, procedures, or policies. Examples of nonconforming events may include: contamination, failed control, observations recorded inaccurately, incorrect conclusions/interpretations, sample switch, sample preparation error, and unsupported conclusions.

Corrective Action is an quality assurance activity or response to bring about continuous improvement; immediate resolution of incorrect results; remediation of nonconforming event(s) in similar work, as appropriate; and minimize recurrence. The intent is to prevent unintended delivery or use of nonconforming work.

Preventive Action is a proactive approach to preventing possible problems or potential nonconformity, preventing the recurrence of problems, managing risk, and improvement.

The Quality Action Plan may also serve as documentation of Preventive Action (PA).

2 Practice

2.1 Quality Action Plan Process

A. Incident Description

1. When a nonconforming event has been identified, the individual responsible for the work must halt testing and/or calibration, and withhold test or calibration reports (as necessary) until the source of the incident has been determined. The Technical Point of Contact, Technical Leader, supervisor, manager, and/or Quality Manager also have the responsibility to identify nonconformance and halt testing.
2. Briefly describe the event, and initiate a **Quality Action Plan** (LAB-QA-04), and provide details to the technical and quality management chain of command about the unsatisfactory condition that needs to be corrected including:
 - a) *Related policy/procedure/specification*
 - b) *Time-frame of the condition*
 - c) *Area(s) of impact*
 - d) *Affected work (case, batch, and/or instrument numbers)*
 - e) *If laboratory data/results could have been compromised*

B. Evaluation and/or Root Cause

1. **Evaluate and define the scope and significance of the potential nonconforming event** (e.g. nature of incident, risk, significance, impact to completed and in-progress work). Identify the potential stake holders and assess the potential impact to them. Determine to what extent casework must cease.



Laboratory Operations Guide

Subject: Quality Action Plan

DRN: LOG-03-12

Version: 04

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- a) **Suspend the procedure/method/process in the laboratory.** The Technical Point of Contact, Technical Leader, supervisor, manager, and/or Quality Manager has the authority to suspend work in the laboratory if the event appears broader than the immediate event.
 - b) **Temporarily limit work duties of individual(s) in the laboratory.** The Technical Leader, supervisor, manager, and/or Quality Manager have the authority to limit the duties of individual(s) if the event was determined to be a result of unacceptable performance by the scientist/technician.
 - c) **Other items that should be documented as part of the evaluation, as applicable:**
 - i. If customer was notified to recall evidence or results;
 - ii. If results may be conditionally accepted;
 - iii. If nonconforming event could recur;
 - iv. If there is concern about compliance to standards/policies/procedures.
2. **Root Cause Investigation** should go beyond the symptoms to the underlying events or problems. Investigate and identify the potential root cause(s) for the nonconformity. The investigation should seek to detect and correct systemic problems.
- C. Action Plan
1. **Procedures Resumed or Resumption of Work.** If work was halted or limited for the laboratory or scientists, authorization to resume testing activities must be given by the Quality Manager, and/or Director.
 2. **Consider recall of previous work.** A review and evaluation should be conducted of previous work to determine if any work needs to be recalled or reworked.
 3. **Notify customer(s)** as applicable to the following conditions. Documentation of the customer's notification shall be included in the record.
 - a) *If reexamination of work in progress is necessary and no results have been released to the customer, then it is not necessary to notify the submitting agency of the additional work or technical issue, so long as it has been fully resolved.*
 - b) *If reexamination occurs and the results of analysis for those samples are different than what has already been released to the submitting agency, an amended report must be issued, which identifies the affected samples, results, and opinions.*
 - c) *If reexamination of evidence is not possible because the evidence had been lost, consumed by analysis, or returned to the customer, then it is necessary to notify the submitting agency of the issue.*
 4. **Correction to the Nonconforming Work.** Rework, regrade (revise or re-state acceptable specifications or conditions for results), or repair of nonconforming work should be taken immediately and documented.
 5. **Remedial Actions.** The remedial actions taken and plan should be listed, including who is to perform the action and the associated milestones for



completion, in order to correct the issue and ensure that the issue is not recurring. It is expected that the action plan and supporting documentation will be reviewed to provide both immediate containment of the problem, and to resolve the issue. When individuals are identified as participants to the action plan, they should specifically sign the action plan item(s) to acknowledge their responsibility for them. If an amended or supplemental report was a required action, then include the report as supporting documentation.

Note: Supporting documentation of the completion of action items and relevant communications should be included. Communications such as email and minutes of meetings are objective documentation of when discussions occurred with key stakeholders and what was discussed.

6. The Quality Manager shall approve the Quality Action Plan and any supporting documentation, and submit it to System Quality Assurance for review and approval.
 7. New action items or progress/completion of action items after the submission of the original Quality Action Plan should be submitted on a Quality Action Plan Supplement form (LAB-QA-04A) and include relevant milestones towards remediation of the nonconformity.
- D. System Quality Assurance Review
1. Review the Quality Action Plan for completeness and assignment of final level of concern. A determination of the status of the Quality Action Plan will be made (e.g. closed vs. open). Additional reviews may be required by management and the respective advisory boards to achieve satisfactory resolution. Additional documentation or information may be requested to clarify or support the plan and it will be documented with a Quality Action Plan supplement form (LAB-QA-04A).
 2. Determine which action plans will require monitoring for effectiveness and direct the review and documentation. The extent and nature of the monitoring will be based on the likelihood the nonconforming event could recur or that there is doubt about the compliance of the laboratory's operations with its own policies and procedures. Corrective actions require monitoring such as those related to audits, inspections, assessments, or complaints, and those that involve restrictions to examiner(s)/technician(s)/procedure(s).

2.2 Levels of Concern for Nonconforming Work

1. **Level 1** – The nature or cause of the nonconformance directly affects and has a fundamental impact on the work product of the laboratory; or there is a concern that if the nonconformance continues for an extended period, the work product of the laboratory or integrity of evidence/test item/calibration item could be negatively affected.
 - a) **Examples:**
 - i. *Inaccuracy was a result of information entered on the report by the laboratory and is significant to the test result (technical amended or supplemental report issued, level 1 or 2 depending on significance to outcome);*



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- a) **Examples:**
- i. A typographical or transcriptional error depending on its relationship to the test/calibration results;
 - ii. Inaccuracy was a result of information reported by the laboratory insignificant to the test result (technical amended report issued, insignificant to the outcome such as insignificant misspelled words, omission of a disposition, and other insignificant clerical oversights)
- b) Such instances require that the Quality Assurance Coordinator/Quality Assurance Specialist/Quality Manager be notified of the event within 30 days from the date of discovery of the potential non-conformity.
4. **Level 4** does not constitute a significant concern to the quality system. Typically does not require either a Quality Action Plan or notification. Exception: corrective actions related to systemic, pervasive or recurring issues.
- a) **Examples:**
- i. Non-substantive transcriptional mistakes in the examination record that have been corrected;
 - ii. Correction of notes or draft reports as a result of the review process;
 - iii. Non-technical amended report issued where inaccuracy was a result of incorrect information provided by customer and had no bearing on laboratory conclusions.

3 Records

Quality Action Plan (LAB-QA-04)

Quality Action Plan Supplement (LAB-QA-04-N)

QAP/Customer Complaint LOG (LAB-QA-19)

ARCHIVED
05/31/2013



Laboratory Operations Guide

DRN: LOG-03-12

Version: 03

Subject: Quality Action Plan

Preparer

Heather Greco
Quality Assurance Specialist

Date: 03/07/2013

Concurrence

Forrest W. Davis
Quality Assurance Coordinator

Date: 03/07/2013

Version #	Effective Date	Brief Description of Change(s)
00	12/01/2002	Original Problem; Renamed from Technical Problems, Material taken from LOG 1.6
01	07/01/2003	Minor revision with respect to reference of Quality Assurance Coordinator Modification Section 2 with respect to Technical Leader responsibility given same responsibility as Quality Manager
02	05/01/2005	Major Revision; title change to Quality Action Plan; Entire document modifications
03	05/19/2012	Major revision - Sections 1, 2, 3, 4, and 5 Minor revision - Title
04	03/11/2013	Major revision

ARCHIVED
05/31/2013

Garriott's Medicolegal Aspects of Alcohol Sixth Edition

**Edited by
Yale H. Caplan, Ph.D.
Bruce A. Goldberger, Ph.D.**

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pared to chronic drinkers ($r = 0.154$). However both were still poor. The positive predictive value of estimating BAC at or above a particular cutoff BAC decreased from 93.2% at 0.1 g/dL to 37.7% at 0.3 g/dL. In this population of patients with BAC mostly > 0.10 g/dL, the ability to estimate the degree of intoxication was limited. The limitation was greatest when the ASC score was applied to chronic drinkers. The authors concluded that a measured BAC did not correlate well with the outward physical signs of intoxication, especially for chronic drinkers.

15.5 Conclusion

In conclusion, outward physical signs of intoxication do not correlate well with blood alcohol concentrations as measured by alcohol testing. This is especially true for chronic drinkers with tolerance that masks visible signs of intoxication as BACs increase above 0.10 g/dL. Each state sets their own standards for defining visible or obvious intoxication and the role or lack of role of a measured blood alcohol concentration.

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OIG2016-0402

Tab 12

1 DVD

TEXAS DEPARTMENT OF PUBLIC SAFETY



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COMMISSION
A. CYNTHIA LEON, CHAIR
CARIN MARCY BARTH
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Alcohol Content Laboratory Report

Issue Date: May 16, 2013

Chris Reeve
Anna Police Department
PO Box 776
Anna, TX 75409

Laboratory # **GAR-1304-05568**

Agency # 13000185

County: Collin

Offense Date: 04/15/2013

Subject(s): UNDERWOOD, Rodney []
RYDELL, Trent Carmichael []

Requested Analysis: Examine for alcohol and drug content

Submission Information:

01 DPS Blood Kit on April 29, 2013 by Copin, Pete VIA In Person

Evidence Description, Results of Analysis and Interpretation:

01 : DPS Blood Kit

01-01 : Blood in gray top tube from Rodney Underwood

0.152 grams of alcohol per 100 milliliters of blood.

Note: No drug analysis due to the alcohol concentration. We are unable to retain the evidence. Please make arrangements to pick up this evidence at your earliest convenience.

This report has been electronically prepared and approved by:

Chris Youngkin
Forensic Scientist
Texas DPS Garland Crime Laboratory



TEXAS DEPARTMENT OF PUBLIC SAFETY



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COMMISSION
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Alcohol Content Laboratory Report

Issue Date: May 16, 2013

William Fowler
Texas Highway Patrol
600 W Kilpatrick
Cleburne, TX 76033-7467

Laboratory # **GAR-1304-05569**

Agency # TX13360HKD00J

County: Johnson

Offense Date: 04/24/2013

Subject(s): RILEY, Carol Lynn [C] [J]

Requested Analysis: Examine for alcohol and drug content

Submission Information:

01 DPS Blood Kit on April 29, 2013 VIA Certified Mail 70123050000027283479

Evidence Description, Results of Analysis and Interpretation:

01 : DPS Blood Kit

01-01 : Blood in gray top tube from Carol Lynn Riley

No alcohol detected.

Note: The evidence is being forwarded to the DPS Austin Crime Laboratory for the requested drug analysis. Please advise via email (grp_austintox@dps.texas.gov) if analysis is no longer needed so that the DPS Austin crime laboratory may devote efforts to other cases in the Toxicology backlog.

This report has been electronically prepared and approved by:

Chris Youngkin
Forensic Scientist
Texas DPS Garland Crime Laboratory





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COMMISSION
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RANDY WATSON

Amended Alcohol Content Laboratory Report

Issue Date: May 22, 2013

Chris Reeves
Anna Police Department
PO Box 776
Anna, TX 75409

Laboratory # GAR-1304-05568

Agency # 13000185

County: Collin

Offense Date: 04/15/2013

Subject(s): UNDERWOOD, Rodney []
RYDELL, Trent Carmichael []

Submission Information:

01 DPS Blood Kit on April 29, 2013 by Copin, Pete VIA In Person

Corrected Evidence Description, Results of Analysis and Interpretation:

01 : Blood in DPS Blood Kit from Rodney Underwood

Note: This report reflects a correction to the results of Analysis Section of the Alcohol Content Laboratory Report dated May 16, 2013.

01-01 : Blood in gray top tube from Rodney Underwood

No alcohol detected.

Note: The evidence is being forwarded to the DPS Austin Crime Laboratory for the requested drug analysis. Please advise via email (grp_austintox@dps.texas.gov) if analysis is no longer needed so that the DPS Austin crime laboratory may devote efforts to other cases in the Toxicology backlog.

Original Evidence Description, Results of Analysis and Interpretation:

01 : Blood in DPS Blood Kit

01-01 : Blood in gray top tube from Rodney Underwood

0.152 grams of alcohol per 100 milliliters of blood.

Note: No drug analysis due to the alcohol concentration. We are unable to retain the evidence. Please make arrangements to pick up this evidence at your earliest convenience.

This report has been electronically prepared and approved by:

Andrew Macey
Forensic Scientist
Texas DPS Garland Crime Laboratory

TEXAS DEPARTMENT OF PUBLIC SAFETY



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Amended Alcohol Content Laboratory Report

Issue Date: May 22, 2013

William Fowler
Texas Highway Patrol
600 W Kilpatrick
Cleburne, TX 76033-7467

Laboratory # GAR-1304-065689
Agency # TX13360HKD00J
County: Johnson
Offense Date: 04/24/2013

Subject(s): RILEY, Carol Lynn []

Submission Information:

01 DPS Blood Kit on April 29, 2013 VIA Certified Mail 70123050000027283479

Corrected Evidence Description, Results of Analysis and Interpretation:

01 : Blood In DPS Blood Kit from Carol Lynn Riley

Note: This report reflects a correction to the results of Analysis Section of the Alcohol Content Laboratory Report dated May 16, 2013.

01-01 : Blood in gray top tube from Carol Lynn Riley

0.151 grams of alcohol per 100 milliliters of blood.

Note: No drug analysis due to the alcohol concentration. The evidence will be retained until notified of the disposition.

Original Evidence Description, Results of Analysis and Interpretation:

01 : Blood In DPS Blood Kit

01-01 : Blood in gray top tube from Carol Lynn Riley

No alcohol detected.

Note: The evidence is being forwarded to the DPS Austin Crime Laboratory for the requested drug analysis. Please advise via email (grp_austintox@dps.texas.gov) if analysis is no longer needed so that the DPS Austin crime laboratory may devote efforts to other cases in the Toxicology backlog.

This report has been electronically prepared and approved by:

Andrew Macey
Forensic Scientist
Texas DPS Garland Crime Laboratory



TEXAS DEPARTMENT OF PUBLIC SAFETY
CRIME LABORATORY

Quality Action Plan

LAB-QA-04 Rev.03 (09/2006)

NC 2 #823

Lab	Garland	Discipline	Blood Alcohol	Incident Date	5/8/13	Page 1 of 1
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Manner of Identification
 Observation Audit Complaint Other Officer Inquiry

Area(s) Impacted (Check All That Apply):
 Evidence Safety Reagent Contamination Quality Control
 Equipment Test Result Proficiency Process Client Relations
 Other _____

Incident Description:
 Alcohol Content reports released through Justice Trax had the wrong results reported.
 GAR-1304-05568 and GAR-1304-05569
 Level of concern 2 – Isolated incident

Requestor Chris Youngkin *Chris Youngkin* Date 5/20/13

Explanation/Root Cause:
 On 5/16/13, Chris Youngkin was replacing the gray top tubes into the DPS Blood Kits when it was noticed that the tubes for these two cases were out of numerical order. The analysis of this batch of cases had been interrupted by court after the opening of the evidence on 5/8/13. The analysis resumed on 5/8/13 with the sampling of the evidence.
 Also on 5/16/13, Officer Caponera, Anna PD, called regarding the results for the three cases that were submitted by their agency on 4/29/13, two which are the affected cases. A retest of these two cases indicated that the tubes were switched before the sampling of the evidence thereby resulting in the wrong results being reported.

Investigator Chris Youngkin *Chris Youngkin* Date 5/20/13

Action Plan:
 A list indicating the order the samples are to be run in will be consulted at the time the sample vials are prepared to verify the proper placement of the gray top tubes in the numbered rack locations.
 The evidence for the cases in the first quarter of the batch (vials 7-16) run on 5/8/13 still present at the laboratory will be retested to verify the reported results are correct.
 On 5/21/12, the affected agencies and County Attorneys were notified of the new results. ** 2 amended reports issued.*

Investigator Chris Youngkin *Chris Youngkin* Date 5/20/13

Approval
 Quality Manager *Jan Niles* Date 8-2-13

Additional Comments: *Open evidence to be retested, was retested per supplemental closed*
 Quality Assurance *Valerie Turner* Date 9/24/13



QUALITY INCIDENT (QI) / ACTION PLAN PROCESS (QAP)

1 Scope

This document addresses the processes for evaluating and documenting observations of nonconformance or nonconforming work, the determination of associated root cause(s), and implementation of corrective action plans as necessary. Instructions are also included to provide guidance regarding disclosure.

This process is designed to encourage participation, open communication, and un-biased assessments of quality incidents for the purpose of transparency and process improvement. Personnel disciplinary issues are handled by a separate process.

Nonconformance or nonconforming work is when characteristic(s) or condition(s) are observed that do not follow required specifications in standards, procedures, or policies. Nonconforming work shall be addressed upon discovery.

The observation of a nonconformance is also referred to as a quality incident. Resolution of a quality incident involves an evaluation of the nonconformance and associated corrections (such as reanalysis, correction/repair, limitations applied to the use of results, or rejection of the results).

When it has been identified during evaluation of the nonconformance that corrective action(s) is necessary to eliminate the root cause(s) of a nonconformance, actions or measures are taken to minimize or prevent the recurrence. Preventive actions may also be taken to prevent recurrence.

The corrective action process is also referred to as a Quality Action Plan.

2 Related Documents

Template for Disclosure of Significant Nonconformance (LOG-03-12A)

3 Practice

4 Quality Incident (QI) Workflow

4.1 Initiate Quality Incident

- A. When a nonconformance related to current or previous work has been identified, the individual(s) responsible for the work must halt the related testing and/or calibration. Associated reports should be withheld until the impact of the nonconforming work has been evaluated. Documentation that work is halted should be included in the quality incident description.
- B. In the event that members from another DPS laboratory identified the nonconformance, the Quality Manager of the laboratory that identified the incident should discuss the incident with the Quality Manager or designee of the laboratory where the incident occurred.
 1. If the two Quality Managers agree that it is warranted, the quality incident process will be initiated by the Quality Manager or designee who identified the incident.
 2. If consensus cannot be reached, the issue may be further discussed with the Quality Assurance Coordinator or Assistant Laboratory Director of Technical Services.



TEXAS DEPARTMENT OF PUBLIC SAFETY
CRIME LABORATORY

Annual Laboratory Management System Survey

LAB-QA-32 Rev.00 (03/2010)

Laboratory	Garland		
Manager	James Nichols	Review Date	10/28/13

Comment on the following as they pertain to meeting laboratory goals and objectives:

1. *Workload and laboratory information (e.g., turn-around time, staffing, equipment, facility, outsource, subcontracts)*

The laboratory received a number of high profile homicide cases this year requiring a significant amount of analysis in the Biology/DNA, Firearms/Toolmark, Latent Print, and Trace Evidence Sections.

Controlled Substance

Cases Received – 7,833 (Avg 653/month)
Cases Completed – 5,670 (Avg 473/month)
Backlog – 5,613

Four forensic scientists are approved for all controlled substance analysis. Catalina Cuervo, Meagan Richey, Danny Taylor, and Katina Campbell were employed with DPS this period. Catalina Cuervo has transferred to the Corpus Christi lab and Danny Taylor has transferred to the Austin lab. Jose Martinez transferred to the Austin Lab and Juan Campos was separated from the Department. Three forensic scientists (David Eckre, Reina Davidson, and Rene Eckelkamp) are currently in training in the Austin lab and scheduled to begin work in Garland in December 2013. The Controlled Substance section needs at least 11 forensic scientists to meet the current case load and the 30 day expectation. This will require two additional FTE's. The section supervisor regularly communicates with the larger counties to prioritize cases to be completed in time for the attorneys. The lab continues to receive numerous requests for quantitations. Additionally, a Technician would be beneficial for this section in the preparation of reagents, instrument maintenance, and evidence movement. A new GC will be needed to replace the one currently being used for quantitations. Also, a Waters LC/MS would be a beneficial addition to the section to assist in quantitations.

Blood Alcohol

Cases Received – 6,038 (Avg 503/month)
Cases Completed – 5,926 (Avg 494/month)
Backlog – 386

Two forensic scientists are approved for blood alcohol analysis and have done a superb job in completing the requests in 30 days. Samuel Salinas was employed with DPS this period and has transferred to the Austin lab. Nirav Kumar has been employed and started training in Garland to work in the Blood Alcohol section. The addition of a third forensic scientist will greatly help this section. The number of court appearances for the two forensic scientists is a concern that will be mitigated with the third forensic scientist.

Biology/DNA

New Requests – 2,291 (Avg 190/month)
Completed – 1,919 (Avg 160/month)
Backlog – 1,270

Ten forensic scientists are approved for biological screening and/or DNA analysis. Melissa Haas was hired as the Regional Section Supervisor. Christie Cheng and Amelia Dowhower were hired as forensic scientists during this period and are approved for case work. Catharine Worthen transferred to Garland from the Weslaco lab. Trisha Kacer was selected as the Forensic DNA Specialist and Uyen Henson transferred to the Garland Quality Assurance Specialist. Drew Dean was hired as the DNA Section Technician. Four forensic scientists (Chelsy Wingate, Kristen Cossota, Ben Habdas, and Shauna Schoonover) are currently in training. Misty Simons and Holly Oommen resigned from DPS during their DNA training, and Kathleen McKinney transferred to the Houston lab. Amber Moss functions as the Local CODIS Administrator for which these duties consume a majority of her time. It would be beneficial to designate this as a separate position.



TEXAS DEPARTMENT OF PUBLIC SAFETY
CRIME LABORATORY

Annual Laboratory Management System Survey

LAB-QA-32 Rev.00 (03/2010)

Laboratory	Garland
Date of Review	10/28/13

Firearm/Toolmark

Cases Received – 198 (Avg 17/month)

Completed – 218 (Avg 18/month)

Backlog – 20

Two forensic scientists are approved for firearm/toolmark analysis. Kristina Goodson resigned from DPS in this period and Kevin Callahan transferred to Garland from the Lubbock lab. A NIBIN unit was installed during this period and there have been 5 hits since the installation.

Trace

Cases Received – 261 (Avg 22/month)

Completed – 221 (Avg 18/month)

Backlog – 103

Two forensic scientists are approved for all of the sub-disciplines conducted in Garland. Lindsey Bynum and Angel Rios were employed by DPS and are currently in training in Garland to work in the Lubbock lab. Their anticipated completion of training is June 2014. Until their training is complete the Garland lab is working cases for the Lubbock Regional lab. Additionally, the Tarrant and Dallas county labs have limited Trace service offered. The Trace section has been able to manage the current work load. A new MSP (Foster Freeman) will be needed for Garland since the one currently being used will be sent to the new Lubbock Regional lab.

Latent Print

Cases Received – 242 (Avg 20/month)

Completed – 205 (Avg 17/month)

Backlog – 90

Two forensic scientists are approved for Latent Print processing and comparison. Courtney Wassung transferred to Garland after training in the Austin Lab. The section is able to manage the current work load.

Evidence Coordination

The Garland lab has five Crime Lab Specialists that receive, return, transfer, and destroy evidence. The evidence techs received 16,863 cases which averages to 1,405/month this period. The lab continues to receive large destruction-only cases that require storage here until the Sharps facility is available to conduct the destruction. The section will greatly benefit with the hiring of an Admin Tech to assist with the ORR and general administrative duties in the front office.

2. Identify and review the managerial and supervisory reports, including budgets relating to the laboratory and noted observations (e.g., trends, strengths, weaknesses, needs)

The budge was sufficient for FY 2013 to obtain consumables and maintain equipment. The lab greatly benefits from the use of grant money available to maintain the consumable and equipment for the DNA Section. The FY 2014 budget will need to have funds available for the new equipment in the Trace and Controlled Substance Sections as outlined above.

3. Proficiency testing (e.g., trends, strengths, weaknesses)

Quarterly Controlled Substances Re-examinations were completed in June and September 2013 in compliance with LOG-05-04, Section 2.2.A.

There were no issues regarding the proficiency tests for the year.

Several new proficiency tests are available or will become available in the near future. FTS now provides proficiency tests for fabric damage, quantitative chemical analysis and tire impressions. CTS is providing proficiency tests for adhesive tape, latent print processing and blood drug and urine drug analyses. In 2014, CTS will also be providing a proficiency test for DNA interpretation and Technical Review only.



TEXAS DEPARTMENT OF PUBLIC SAFETY
CRIME LABORATORY

Annual Laboratory Management System Survey

LAB-QA-32 Rev.00 (03/2010)

Laboratory	Garland
Date of Review	10/28/13

4. Outcome of internal audit activities and identify areas of improvement for laboratory consideration

A Safety Audit was conducted on 06/06/2013. One eye wash and one safety shower did not meet specifications. These were serviced. A fire drill was conducted in March 2013 and all fire safety devices functioned properly.

The Evidence Audit of the Main Vault was conducted on 10/21/2013 and revealed errors in the filing of evidence. Of the 407 items of evidence that were checked, 23 items were either in the wrong location or scanned to the wrong location. One item had the wrong barcode label for that evidence. Therefore, 6% of the evidence inspected had errors.

An area for improvement would be to develop a method for filing evidence where they would be placed in the correct locations in the main vault.

5. Accreditation, inspection, and/or audit reports prepared by the external bodies identify areas of improvement for laboratory consideration

No external inspection was conducted between 09/01/2012 and 08/31/2013.

6. Corrective and preventive actions related to the laboratory and identify areas of improvement for laboratory consideration (e.g., trends, strengths, weaknesses)

Between 09/01/2012 and 08/31/2013, the Garland Crime Lab issued 15 QAPs. This is a 46% decrease from the previous year's 28 QAPs.

Blood Alcohol – QAP #823: Sample switch resulting in wrong results reported.

Controlled Substances – QAP #665: Results reported as "Contains Dihydrocodeine" instead of "Contains Dihydrocodeinone." **QAP #692:** One analyst was documenting that the autotunes were passing when they did not meet the "pass" criteria.

Evidence Coordination – QAP #673: Evidence in an envelope was dropped which contained a glass container of liquid. **QAP #798:** Evidence was returned to the wrong agency.

Latent Prints – QAP #766: Report released stated that "No latent prints were developed" instead of "No suitable latent prints."

DNA – QAP #611: Contamination of sample by analyst; sample was depleted and could not be re-extracted. **QAP #630:** Report released incorrectly stated that the evidence was from the suspect and not the victim. **QAP #652:** DNA profile was consistent with the Trace analyst. **QAP #653:** Contamination between evidence from two different cases during the collection of the samples. **QAP #689:** Analyst had inconsistent results on the screening of the proficiency test. **QAP #694:** Reanalysis of a sexual assault case from one analyst determine that a spermatozoan was present when the analyst reported that no semen was detected. **QAP #794:** Reagent blank contamination possibly from the consumable. **QAP #797:** Differential extraction yielded no results in sperm cell fractions; samples were re-extracted. **QAP #799:** Reagent blank contamination from the analyst performing the Tecan extraction.

Between 09/01/2012 and 08/31/2013, the Garland Crime Lab issued 63 Amended Reports. Eight were technical errors and 55 were non-technical corrections.

An area for improvement for the Evidence Coordination section is the evidence return process. From 09/01/2011 to 08/31/2012, three QAPs were issued for returning evidence to the wrong agency. Another QAP for the same issue was written this past fiscal year (QAP #798).



TEXAS DEPARTMENT OF PUBLIC SAFETY
CRIME LABORATORY

Annual Laboratory Management System Survey

LAB-QA-32 Rev.00 (03/2010)

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7. *Identify laboratory deviations to policies and procedures and their suitability and need for continual use of deviation*

Garland Crime Lab deviations that can be rescinded include the following:

Dev-L1D-MAIN-GCMS-2010-0709-2010-0826, Dev-L1D-BA-02-01-2010-1112, and Dev-L1D-CS-01-02A-2005-0531. Dev-L1D-DNA-02-07-2010-0802-2010-0826, Dev-L1D-LOG-04-01-2008-1222, and Dev-L1D-SAF-01-01-2008-1222: Issues have been resolved.

Dev-L1D-LOG-01-02-2011-0411 and Dev-L1D-LOG-03-03-2011-0411: Applied only to Manuel Valadez.

Dev-L1D-TE-07-08-2012-0110: Deviation applied to only one case.

All current Garland Deviations regarding Oil Red O can be rescinded as Oil Red O has been incorporated into the LP SOP. (Dev-GAR-LP-01-05-2012-0822, Dev-GAR-LP-02-01A-2012-0822, Dev-GAR-LP-02-05-2012-0822, DEV-GAR-LP-02-06-2012-0822 and Dev-GAR-LP-02-17-2012-0822)

8. *Suitability of laboratory policies and procedures for all disciplines and general documents for laboratory consideration*

The Garland Crime Lab local documents were evaluated and the following require further review:

GAR-INS-Balances, GAR-Main-Balances, GAR-POL-AppointmentOfDeputy, GAR-POL-Evacuation, GAR-POL-Evidence Storage, GAR-POL-HardCopiesMicrofilmCases, GAR-POL-LostEvidenceOrFiles, GAR-POL-Photographs, GAR-POL-Security, GAR-PRO-CSR-VehicleProcessing, GAR-PRT-CaseFolderDesignations, GAR-PRT-DestructionOfEvidence, GAR-PRT-DestructionOnlySubmissions, GAR-PRT-QCRecordsLocation

GAR-MAIN-FTM-BulletRecoveryTank and GAR-MAIN-FTM-FiringRange: Unnecessary and involve procedures that may be hazardous. These were rescinded.

GAR-INS-37 – No longer needed; GAR-INS-SPME – Was moved to drug section folder; GAR-INS-15,38 and GAR-FRM-TE-01.

GAR-Main-BAGC70, GAR-INS-148 and GAR-INS-20

GAR-POL-LP on Drug Evidence is currently being rewritten for clarification.

9. *Customer surveys, customer complaints, and other feedback from the customer (e.g., trends, strengths, weaknesses)*

Customer survey indicates that laboratory personnel are helpful in person and on the phone. It will be beneficial to more actively solicit customer surveys similarly to the testimony evaluations. An online survey tool (such as Survey Monkey) would be useful to obtain valuable information to address issues from our customers. In addition, I have met in person with the Smith County, Dallas County, and Ellis County District Attorney's offices to discuss the services provided by the lab.

10. *Other relevant factors that have impacted the management system (e.g., quality control activities, resources and staff training)*

The Garland lab will benefit with the addition of a Quality Assurance Specialist that can focus on the organization of QA documents and the overall Quality System of the laboratory.



Training Manual

General Laboratory Training

Subject: Rules of Evidence and General Legal Opinions

DRN: GLT-TM-LAW-02

Version: 02

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3. Federal "Fruit of the Poisonous Tree" Doctrine

- a) *Silverthorne Lumber Co. v. United States* 251 U.S. 385 (1920) was a U.S. Supreme Court Case in which Silverthorne attempted to evade paying taxes. Federal Agents illegally seized tax books from Silverthorne, and created photocopies of the records. The issue in this case is whether or not derivatives of illegal evidence are permissible in court. The ruling was that to permit derivatives would encourage police to circumvent the 4th Amendment (unreasonable search and seizures), so the illegal photocopied evidence was held tainted and inadmissible. This precedent is known as Fruit of the Poisonous Tree and is an extension of the exclusionary rule, which prevents evidence obtained in violation of the 4th Amendment from being admitted in a criminal trial.
- b) *Mapp v. Ohio* (1961) was a landmark case in the area of U.S. criminal procedure, in which the United States Supreme Court decided that all evidence obtained by searches and seizures in violation of the Federal Constitution is inadmissible in a criminal trial in a state court.

4. Federal Duty to Disclose

- a) The landmark decision of *Brady v. Maryland* (1963) places an affirmative constitutional duty on a prosecutor to disclose exculpatory evidence to a defendant. This duty has been extended to police agencies through case law, requiring law enforcement agencies to notify the prosecutor of any potential exculpatory information.
- i. *Exculpatory evidence/Brady material*: Evidence in the government's possession that is favorable to the accused and that is material to either guilt or punishment, including evidence that may impact the credibility of a witness.
- b) In 1972, the *Giglio v. United States* case expanded the Brady decision to require prosecutors to provide information to the defense counsel which could tend to impeach a witness.
- c) The Jencks Act is a statute entitling a criminal defendant in a federal prosecution to discover any witness statement against him which is relevant to the witness's testimony and which is in the possession of the United States government. It was enacted after the U.S. Supreme Court held that defendants were entitled to such material. Since the Act restricts the defendant's access to such material until after the witness has testified in court against him, pretrial discovery of such material is not permitted. Testimony of a grand jury witness is specifically included in the definition of "statement" by virtue of a later-enacted amendment to the Act.

5. State Duty to Disclose

- a) The *Michael Morton Act* is a statute designed to ensure a more open discovery process and to reduce wrongful convictions. The U.S. Supreme Court's decision in *Brady v. Maryland* already requires prosecutors to hand over to defendants any evidence that is "material either to guilt or to punishment," but the Michael Morton Act requires



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disclosure of all police reports and witness statements, regardless of whether the evidence is material to guilt or punishment.

6. Texas Duty to Preserve Evidence, Records
 - a) *Juan Manuel Fonseca v. Texas (2004) [spoliation]*
 - b) *Jose Pena v. Texas (2007)*
7. Texas Admissibility of Testimony by Other than Examiner
 - a) *Timothy Brian Cole v. Texas (1992)*
 - b) *Fidel Y. Aguilar v. Texas (1994)*
 - c) *Maria Martinez v. Texas (2000)*
 - d) *Melendez-Diaz (2008)*
 - e) *People v. Holmes (2012)*
 - f) *Bullcoming v. New Mexico (2011)*
 - g) *Paredes v. Texas (2015)*

2.2 Required Readings

All cited cases

3 Practice

3.1 Supervised Performance

Perform a mock trial/deposition as required by the discipline (usually completed during supervised casework).

4 Assessment

4.1 Competency and Qualifying Examination

The trainee must complete all assignments. Successful completion of this module is determined by the trainer.

The trainer may opt for the trainee to complete a written exam.

TEXAS DEPARTMENT OF PUBLIC SAFETY

5805 N LAMAR BLVD • BOX 4087 • AUSTIN, TEXAS 78773-0001

512/424-2000

www.dps.texas.gov



STEVEN C. McCRAW
DIRECTOR
DAVID G. BAKER
ROBERT J. BODISCH, SR.
DEPUTY DIRECTORS



COMMISSION
A. CYNTHIA LEON, CHAIR
MANNY FLORES
FAITH JOHNSON
STEVEN P. MACH
RANDY WATSON

November 30, 2016

Dear District Attorney:

The Texas Department of Public Safety Crime Laboratory Service is committed to providing quality expert forensic services and it demands quality workmanship from all employees. The department employs an extensive quality assurance program to this end. One aspect of the quality assurance program is the use of a formal process to document quality incidents that occur when conducting case work. Those quality action plans describe the incident in detail, examine the root cause, and develop an action plan to prevent the incident from recurring. The quality action plan is included within the case file of the affected case or cases.

In May 2013, Mr. Youngkin, a forensic scientist assigned to the DPS crime laboratory in Garland, was replacing the gray top tubes into the DPS Blood kits when it was determined that the tubes for two cases were out of numerical order causing incorrect results to be reported in two blood alcohol cases. As per our quality assurance procedures, a quality action plan was initiated. The error was corrected, preventative actions were taken, and amended reports with the correct results were issued the following week. The error was determined to be isolated to only these two cases.

On October 12, 2016, Mr. Youngkin testified at a hearing in Collin County in which he invoked his 5th Amendment right in response to questions related to the event from 2013. On October 24, 2016, Mr. Youngkin withdrew his invocation and testified in a deposition to resume the hearing from the 12th. As a result of the deposition, concerns were raised regarding the consistency of Mr. Youngkin's testimony on the 2013 issue.

The purpose of this notice is to inform your office that the DPS will be conducting an inquiry regarding Mr. Youngkin's testimony relating to these events and are providing all quality action plans associated with Mr. Youngkin. Additionally, the transcripts presented during the deposition are attached. Mr. Youngkin has been removed from casework pending the outcome of the department's inquiry.

At the request of court officials, cases pending trial worked by Mr. Youngkin can be reanalyzed to facilitate expert testimony by another DPS forensic scientist. Please have the agencies resubmit the evidence to the lab. Felony cases will be worked as a priority within 30 days of submission. The misdemeanor cases will be worked within 60 days.

Sincerely,

Brady W. Mills
Deputy Assistant Director
Law Enforcement Support Division
Crime Laboratory Service
Texas Department of Public Safety

BWM:cg

Attachments:

1. Youngkin Chris
2. Youngkin Cover
3. Youngkin Ex 1 of 20
4. Youngkin Ex 2 of 20
5. Youngkin Ex 3 of 20
6. Youngkin Ex 4 of 20
7. Youngkin Ex 5 of 20
8. Youngkin Exs 6-8 of 20
9. Youngkin Exs 9-20 of 20
10. YoungkinVoll.pdf
11. QAP-C-GAR-2007-0529-CS
12. QAP-C-GAR-2012-0228-BA-499
13. QAP-C-GAR-2012-0721-CS-665
14. QAP-C-GAR-2013-0508-BA-823
15. QAP-NA-GAR-2013-0715-BA-1039



TEXAS DEPARTMENT OF PUBLIC SAFETY
CRIME LABORATORY

**Instructions for the Collection and Submission of Blood
Specimens For Alcohol and/or Drug Determinations**

LAB-12b Rev.06 (12/2016) p.1 Issued by: QAC

OFFICER (Before Collection)

1. Complete the Subject Consent Form and ensure that both subject and witnesses sign the form where indicated.
2. Complete information requested on the Toxicology/Blood Alcohol Kit Laboratory Submission Form and the Blood Tube Seal(s).
3. The blood specimen(s) must be drawn by a qualified professional (e.g. a physician, qualified technician, registered professional nurse, licensed vocational nurse, licensed or certified emergency medical technician) as described in the Texas Transportation Code §724.017. The blood collection should be observed.
4. **Note: The second blood tube is a precautionary measure to provide an additional sample for testing.**

BLOOD COLLECTOR

1. Cleanse blood withdrawal site only with a **non-alcoholic** prep pad.
2. With hospital/clinic procedures, collect a full tube(s) of blood specimen from the subject in each provided blood tube or other gray top 10 mL Vacutainer®. In a 2 tube kit, both tubes should be collected at the same time.
3. **Immediately after blood collection, slowly mix the anticoagulant powder and blood by inverting the blood tube(s) several times.**
4. Transfer blood tube(s) directly to officer and ensure that your name and title are on the seal(s) and submission form.

OFFICER (After Collection)

1. Immediately upon receipt of the filled blood collection tube(s), verify the information on the Blood Tube Seal(s), remove the backing from the seal for that subject, affix the circle on the seal to the rubber stopper, and press the ends of the seal down the sides of the blood tube(s).
2. **In order to comply with US Postal regulations**, insert each blood collection tube(s) into an absorbent pouch. Then place the pouch into a plastic container and close the lid.
3. Place the plastic container(s) in the foam holder inside the box and close the lid. Seal the box with the INTEGRITY SEAL where indicated and initial and date the seal.
4. Check the Kit Laboratory Submission Form for completeness, refold, insert into the plastic pouch which is affixed to the outside of the box, and seal. If appropriate, include the lab copy of the DIC-23A in with the submission form.
5. The sealed kit may be either mailed or hand-delivered to the appropriate laboratory.
6. If submission is delayed, it is recommended to refrigerate the specimen until sent to the lab.
7. Affix self-adhesive mailing label to the box. If mailed to the laboratory, completely fill out the label (see listing of DPS labs on the back of the instruction sheet). **It is VERY important that your name and phone number are included in the return address.** Postage will be necessary if the kit is mailed to the laboratory.
8. For ALR cases, submit DIC-23A and case documents to:

Enforcement and Compliance Service, PO Box 4040, Austin, TX 78765

SUBJECT'S CONSENT FORM

THE STATE OF TEXAS VS. _____
(subject name)

Be it remembered that on this day of _____, 20____, I _____
(subject name)

having been placed under arrest on a charge of driving a motor vehicle on a public highway while intoxicated,
do voluntarily give a specimen of my blood to _____
(arresting officer).

Signature of Subject: _____

Subject Address: _____

Witness of the Collection: _____
Print Name and Signature

Retain for your File. Do not send to laboratory.



COURT TESTIMONY MONITORING

1 Scope

The purpose of monitoring court testimony is to evaluate the accuracy and effectiveness of crime laboratory personnel's testimony.

2 Practices

2.1 Testimony Expectations of Witnesses

- A. Accurately and completely disclose his or her involvement in the legal proceeding;
- B. Testify in a manner which is clear, straightforward, and objective;
- C. Limit conclusions to reliable, accurate, and factual results that logically follow from the underlying data and analytical results;
- D. Avoid phrasing testimony in an ambiguous, biased, or misleading manner; and
- E. Respectfully decline to answer questions outside the witness' discipline or area of expertise.

2.2 Monitoring Methods

- A. Direct Observation – The preferred method of monitoring is direct observation.
- B. Videotape – videotape of the witness' testimony may be reviewed.
- C. Audiotape –An audiotape of the witness' testimony may be reviewed provided the voices of the witness and other trial participants are easily distinguishable.
- D. Transcript Review – A court transcript of the witness' testimony may be reviewed.
- E. External Evaluation by a Court Official – The testifying witness or supervisor may provide a court official with an External Testimony Evaluation Form (LAB-QA-12) and request that he or she complete and return the form after hearing the testimony.

2.3 Frequency of Monitoring

- A. Each examiner's courtroom testimony shall be monitored at least once per calendar year via direct observation by a Quality Manager, Supervisor, Team Lead, or Quality Assurance Specialist.
- B. The Quality Manager or designated monitor should observe the first testimony of any examiner testifying in a discipline or sub-discipline.

2.4 Documentation

- A. Internal monitors should use the Testimony Evaluation form (LAB-QA-11); however, additional criteria may be evaluated at the discretion of the Quality Manager.
- B. The Quality Manager or designated monitor shall review the testimony evaluation with the witness and forward to Quality Assurance.
- C. In the event that an examiner does not testify during the calendar year, documentation will be forwarded to Quality Assurance.

Kinslow, Adam

From: Amilhat, Alice
Sent: Wednesday, January 18, 2017 4:53 PM
To: Kinslow, Adam
Cc: Nichols, James
Subject: RE: question- tube vs vial (amilhat)
Attachments: PEH-02-03.docx; LAB-12b.docm; 2016-1026 Tox BA Statewide meeting.pdf; Agenda-SYS-BA-2016-1026.pdf; BA worksheet example.pdf; LAB-BA-01.xlsx

Good afternoon Adam,

James began Command College (orientation) this week. I'm glad to assist.

Short answer: Yes Kumar and Youngkin are correct.

The reason for the changes in terminology are based on what we learned from the testimony in Garland. We maintain a culture of continued process improvement as a Service.

Long answer:

These terminology challenges and proposed changes to our documents/policies were communicated during the Blood Alcohol and Toxicology statewide meeting of all forensic scientists performing such testing October 26-27, 2016. I've attached a copy of that Statewide Meeting Agenda and attendance list in case you need it. We also conducted testimony refresher training during that statewide meeting and the instructor was presented with information from the Garland testimony to use during the training.

We are updating the Physical Evidence Handbook. I've attached a draft of the revised related chapter regarding Toxicology evidence, PEH-02-03. There are terminology changes (of vial to tube) and additional routine changes in this document unrelated to the tube vs vial terminology, such as inserting pictures of the new collection kits. The Physical Evidence Handbook changes are scheduled to be implemented in April 2017.

We have also updated the Instructions for the Collection and Submission of Blood Specimens (LAB-12b) for consistency in terminology, effective in December 2016. That form is attached and found on our public website Blood Kit Instructions **(LAB-12B) (DOCM)**.

In November 2016, we implemented a number of scheduled changes to our BA analysis workflow (unrelated to the incident you are reviewing) to include moving to an electronic (paperless) BA process. The analysis worksheet is now contained in our LIMS system and an example is attached. Specimen and tube are used to be consistent with terminology.

The LAB-BA-01 analysis worksheet is no longer routinely used in casework as of November in Regional Labs (due to the electronic paperless BA process); it is currently used only in the Austin Lab and as a contingency in the regional sites if the network is down. The updated excel form is planned for implementation to be effective on Monday 1/23/17. (In case you are curious why, the Austin Laboratory has models of instruments used for alcohol analysis that is different from all the alcohol detection instruments in the regional labs.)

The BA SOP found here <https://txdpslabs.qualtraxcloud.com/ShowDocument.aspx?ID=4209> was updated in November 2016 to be consistent with the scheduled changes in addition to the terminology changes.

This is a lot of information. Please feel free to ask any follow-up questions.

Alice

Alice E. Amilhat
Assistant Lab Director, Technical Services
Law Enforcement Support Division
5800 Guadalupe Street
Austin
(512) 424-2143

From: Kinslow, Adam
Sent: Wednesday, January 18, 2017 9:05 AM
To: Amilhat, Alice
Subject: FW: question- tube vs vial (amilhat)

Good morning, Alice-

I'm conducting an investigation involving the Garland crime lab. I've been speaking with James Nichols and sent him the below email on Monday, but I understand he's out of the office this week. Could you help me with the below information or know who I should contact? Thank you!

Sincerely,
Adam

Adam Kinslow, Lieutenant
Office of Inspector General
Texas Department of Public Safety
13706 Research Blvd., Ste. 100
Austin, TX 78750

512.438.6533 – office
512.801.6044 – mobile

From: Kinslow, Adam
Sent: Monday, January 16, 2017 10:54 AM
To: Nichols, James
Subject: question- tube vs vial (nichols)

Hello, Sir-

Youngkin and Kumar both stated the Department is in the process of removing the word 'blood vial' from the physical evidence handbook, blood collection kit, analysis worksheet, and all other documents to be replaced with 'blood tube.' Is that correct? And if so, do you know the reason behind the change, and when the change will be complete? Thank you, sir!

Adam Kinslow, Lieutenant
Office of Inspector General
Texas Department of Public Safety
13706 Research Blvd., Ste. 100
Austin, TX 78750

512.438.6533 – office



INTRODUCTION

Alcohol and/or toxicology drug analysis of biological

specimens is performed by the Department of Public Safety Crime Laboratory Service to support investigations of traffic DWI enforcement, homicide, and drug-facilitated sexual assaults. Typical evidence samples include blood collection kits and/or urine collection kits.

The DPS Toxicology Laboratory does not detect and/or confirm the following: antibiotics, Lithium, vitamins, Psilocybin (mushrooms), diabetic medications, diuretics, Mescaline (peyote), GHB, LSD, heart and blood pressure medications, and synthetic cannabinoids (including "K2" and "spice").

Inform the laboratory of any suspected substances that may have been used by the subject including those above. For information concerning these and other drugs/medications, refer to common reference materials (e.g., Physician's Desk Reference [PDR] or www.drugs.com). Designer drugs and other substances (such as bath salts) are continually being produced to avoid law changes and maintain the desired effects of illegal substances. However, the laboratory may not have the capability to detect and/or confirm some substances.

The Austin Toxicology Laboratory may be contacted for additional information at [GRP_AustinTox@dps.texas.gov] or 512-424-5793.

SUBMISSION OF BIOLOGICAL SAMPLES

- Use DPS approved collection kits for collection and submission. The submission of alternate kits does not invalidate the testing, however, using the recommended kits increases the efficiency of the testing.
- It is laboratory policy to perform only one alcohol analysis per subject per incident for any traffic case.
 - No blood alcohol analysis will be performed on a specimen collected from a subject on whom a valid breath alcohol test was obtained.
 - If multiple blood samples are submitted, the sample collected closest in time to the incident will be analyzed for alcohol, unless it is specifically noted/requested to analyze a particular sample.
 - If a gray top tube is submitted with other types of blood tubes, then only the gray top tube will be analyzed for alcohol regardless of the collection time (unless specifically noted/requested to test a different tube).
 - If both blood and urine are submitted, only the blood will be analyzed for alcohol.
- If a laboratory has already analyzed the sample for alcohol, it will typically not be re-analyzed for blood alcohol by a DPS laboratory, except for quality assurance purposes, by court order or with the approval of the Deputy Assistant Director/Assistant Laboratory Director. Exceptions may be considered on a case by case basis for those re-analysis circumstances listed in the Statement of Services. Customers are encouraged to contact the testing laboratory to discuss re-



analysis needs and limitations. Some of the statements listed in the Statement of Services will not apply.

- If multiple kits from the same individual are collected, **DO NOT separate the kits** or samples ~~as this decreases the efficiency of our case process analysis.~~ Maintaining the kits/samples together ensures that the evidence maintains a proper chain of custody and there is ample evidence for testing. Submit the kits ONLY to the laboratory in your service area to ensure the case remains under the same case number. The additional kits/samples should be noted on the laboratory submission form.
- **Inform the laboratory on the submission form if particular types of drugs are suspected to have been used by the subject.** It must be noted on the laboratory submission form if toxicology drug analysis is also requested. This information will assist the laboratory in directing the analysis of your samples.
- Mail or personally submit the blood and/or urine kit to a DPS Crime Laboratory as soon as possible.
- Kits should be submitted **without additional packaging.**

Submit all kits/samples for alcohol analysis to the appropriate DPS Crime Laboratory for your service area (see PEH-01-03 Figure 6 Laboratories Examining Blood Alcohol Evidence). Failure to submit the evidence to the proper laboratory may result in a delay in processing the evidence.

EXCEPTION: When ONLY Toxicology Drug Analysis is requested and Alcohol and/or Volatile analysis is NOT being requested for the same subject, submit samples and requests to the DPS Crime Laboratory in Austin.

All alcohol concentration requests for sexual assault cases should be sent to the Austin Crime Laboratory for analysis. The Austin Crime Laboratory Toxicology section will analyze the specimens for both alcohol/volatile and drug toxicology analysis, as requested.

- **Inform the laboratory on the submission form if particular types of drugs are suspected to have been used by the subject.**
- If the presence of **Cocaine** or **Flunitrazepam (Rohypnol)** is suspected in a blood sample, keep the sample refrigerated or submit as soon as possible. Refrigeration retards the degradation of these drugs in the sample.
- For information regarding ~~our~~ detection capabilities, contact the Austin Toxicology Laboratory.

TYPE OF TESTING PERFORMED

Alcohol and Volatile Analysis

An alcohol laboratory report will list the alcohol concentration and/or the presence of volatile compounds. Volatile analysis may include compounds that are abused as inhalants. If continued analysis is necessary for toxicology drug analysis, the laboratory in your service area will forward the appropriate samples to the Austin Crime Laboratory and indicate its disposition on the report.

If toxicology drug analysis was requested and the alcohol concentration is determined to be less than 0.100 grams per 100 milliliters, it will be forwarded to the Austin Crime Laboratory for drug analysis.



If toxicology drug analysis was requested and the alcohol concentration is determined to be equal to or greater than 0.100 grams per 100 milliliters (or equivalent breath test), drug analysis will not be performed unless it is a non-traffic offense (e.g., death investigation or drug facilitated sexual assault) or is a traffic incident that involves a deceased victim and living suspect. The request and offense must be documented on the laboratory submission form.

NOTE: By policy, ~~the~~ DPS laboratories will perform alcohol analysis on only one specimen (breath or blood) per subject per incident for any traffic case.

Toxicology Drug Analysis

The DPS Crime Laboratory performs a screen for eight classes of drugs to determine the presumptive presence of drugs in the sample. Immunoassay screening does not identify any specific drug and will be followed with confirmation to identify the specific drugs present. Cases which fall below screen cut-off levels are reported as "no drug detected" unless additional information is provided to indicate significant impairment or the involvement of a drug not detectable by the immunoassay screen.

All drugs reported undergo identification by GCMS (Gas Chromatography-Mass Spectrometry) and/or LCMS (Liquid Chromatography-Mass Spectrometry).

A toxicology laboratory report will list the identity of the drug(s) detected. The concentration of some drugs detected in blood samples may also be reported.

The report will not include the following non-prescription drugs which may be detected during analysis: caffeine, nicotine, acetaminophen (Tylenol), nonsteroidal anti-inflammatory drugs (NSAIDs) such as ibuprofen (Advil) and naproxen (Aleve).

A note will be included on the report for drugs or class of drugs suspected by your initial investigation that could not be excluded by our methodology. The note is to inform you that a drug from this drug class may have been present but the laboratory was unable to detect it or it was at a concentration below the reporting criteria, or it simply was not present. Further explanation can be provided by the laboratory if desired by contacting the Austin Toxicology Section Laboratory.

Blood

The DPS Crime Laboratory Service measures the concentration (amount) of the common drugs that can cause driving impairment. The concentration can be compared to literature values to support impairment cases.

Urine

Some drugs undetected in blood may be detected in urine due to higher concentrations and the presence of metabolites (the products of drug metabolism in the body).

For urine specimens, the concentration (amount) of drug is not reported - only the fact that the drug has been detected is reported.

Detection of Additional Drugs

Information regarding significant impairment or additional suspected drugs should be listed on the submission form. The list of suspected drugs is evaluated to employ methodology within our capabilities for detection. Cases where specific drugs are listed as suspected but are not detected by immunoassay screening may undergo additional screening by GCMS (Gas Chromatography-Mass Spectrometry) or LCMS (Liquid



Chromatography-Mass Spectrometry). The report will include a note if a suspected drug cannot be excluded by DPS methodology.

RECOMMENDATIONS REGARDING OFFENSE

TRAFFIC OFFENSES

For a traffic-related offense, a blood sample is preferred over any other specimen type. If only urine is submitted, it should have the support of a DRE (Drug Recognition Expert) evaluation for prosecution. Testimony from urine analysis is limited. Drugs detected in urine show prior usage of drugs and may not match drugs in the blood when the urine specimen was taken. Drug detection in blood shows the influence of the drug(s) at the time the sample was taken.

DEATH INVESTIGATIONS

In death investigations, the Toxicology Section normally performs analysis of blood, vitreous, and/or urine specimens.

- **Blood** is analyzed to evaluate any impact of drugs on the cause of death or to determine contributing factors for other death causes.
- **Vitreous** is analyzed primarily to support the blood alcohol level or analyzed when the blood is contaminated.
- **Urine** is analyzed primarily to support the drug detection in blood or to evaluate the time of drug usage relative to time of death.

If there is a question about a particular situation, call the Austin Crime Laboratory Toxicology Section to determine the appropriate specimens to be submitted.

SEXUAL ASSAULT INVESTIGATIONS

In sexual assault investigations, the Austin Crime Laboratory Toxicology Section normally performs alcohol analysis of blood and/or urine specimens and toxicology drug analysis on urine specimens. The Austin Crime Laboratory Toxicology Section will perform toxicology drug analysis of blood if that is the only specimen submitted for a sexual assault investigation. Urine provides the longest window of detection for drug facilitated sexual assaults. The sooner a specimen is collected the greater the chance of detecting drugs which may have been used. Most drugs are detectable in blood within 12 hours, however some may be quickly eliminated. Most drugs are detectable in urine within 72 hours.

Both alcohol and toxicology drug analysis are recommended in sexual assault investigations where victims report impairment or unconsciousness.

The Toxicology/Blood Alcohol Kit Laboratory Submission Form (LAB-12) is preferred to request type of analysis and specify the time of incident and time of sample collection. If the general Laboratory Submission Form (LAB-06) is used, please indicate clearly the analysis requested. "Toxicology" will be interpreted as a request for both alcohol and drug analysis. The date and time of offense and the date and time of sample collection must be added to the Laboratory Submission Form (LAB-06).

- **Blood** - Collect the blood in 10 mL gray-top vacutainer ~~vials~~ tubes containing a preservative and an anticoagulant. The DPS Blood Specimen Kit (680-93-8050) contains gray-top vacutainer ~~vials~~ tubes and protective materials for safe shipping and handling. The sample should be refrigerated until transported to the laboratory.



- **Urine** - If the specimen is collected in a urine collection cup, transfer to a leak proof bottle. The DPS Urine Specimen Kit (680-93-8060) contains a secure bottle and protective materials for safe shipping and handling.

Important: Collect a gray top blood tube and urine specimen separately from any DNA specimens and send to the Austin Crime Laboratory for alcohol and drug content toxicology.

SAFETY CONSIDERATIONS

Toxicological evidence is associated with biological fluids and considered a biohazard. Universal Bloodborne Pathogen Precautions should be observed. Treat all biological samples as if they are infected with a bloodborne pathogen. Personal protective equipment (such as eye protection and gloves) is recommended.

DPS evidence collection kits are designed to meet United States Postal Service International Air Transportation Association regulations and are the preferred collection kits to facilitate efficient analysis. Follow the instructions in the kit to maintain conformity with shipping regulations. If a DPS evidence collection kit is not used, ensure that the package complies with all postal regulations for shipping Biological Specimens - Substances Category B including protective containers, absorbent material, and biohazard warning labels.



Additional information regarding packaging and air-shipment requirements of a biological sample-substance category B can be acquired from the carrier service.

Please see guidelines from US Postal Service the International Air Transportation Association for their specific instructions. http://pe.usps.gov/text/pub52/pub52apxc_019.htm (International Air Transportation Association).

DPS BLOOD AND URINE KIT PROCEDURES

Evidence collection kits should be purchased from DPS General Stores. DPS evidence collection kits are the preferred collection kits to facilitate efficient evidence handling.

Blood Specimen Kit	680-93-8050
Urine Specimen Kit	680-93-8060



DPS General Services Bureau

108 Denson Dr.

Austin, TX 78761-5999

Call 512-424-5424 for ordering and price information. Only these approved test kits should be used, as they are prepared according to strict specifications under DPS authority and knowledge of component preservatives and anti-coagulants.

For Blood:

- Only qualified medical personnel should collect blood samples from a person. Refer to the ~~Texas Transportation Code §724.017~~ Texas Transportation Code §724.017 for a listing of qualified personnel.
- Cleanse the blood withdrawal site with only a non-alcoholic prep pad.
- Provide a **full gray-top tube/vial of blood**, if possible. A full vacutainer will be about ¾ full of blood. Newer DPS Kits contain 2 gray-top blood ~~vial~~ tubes; both ~~vials~~ tubes should be filled with blood during the blood collection.

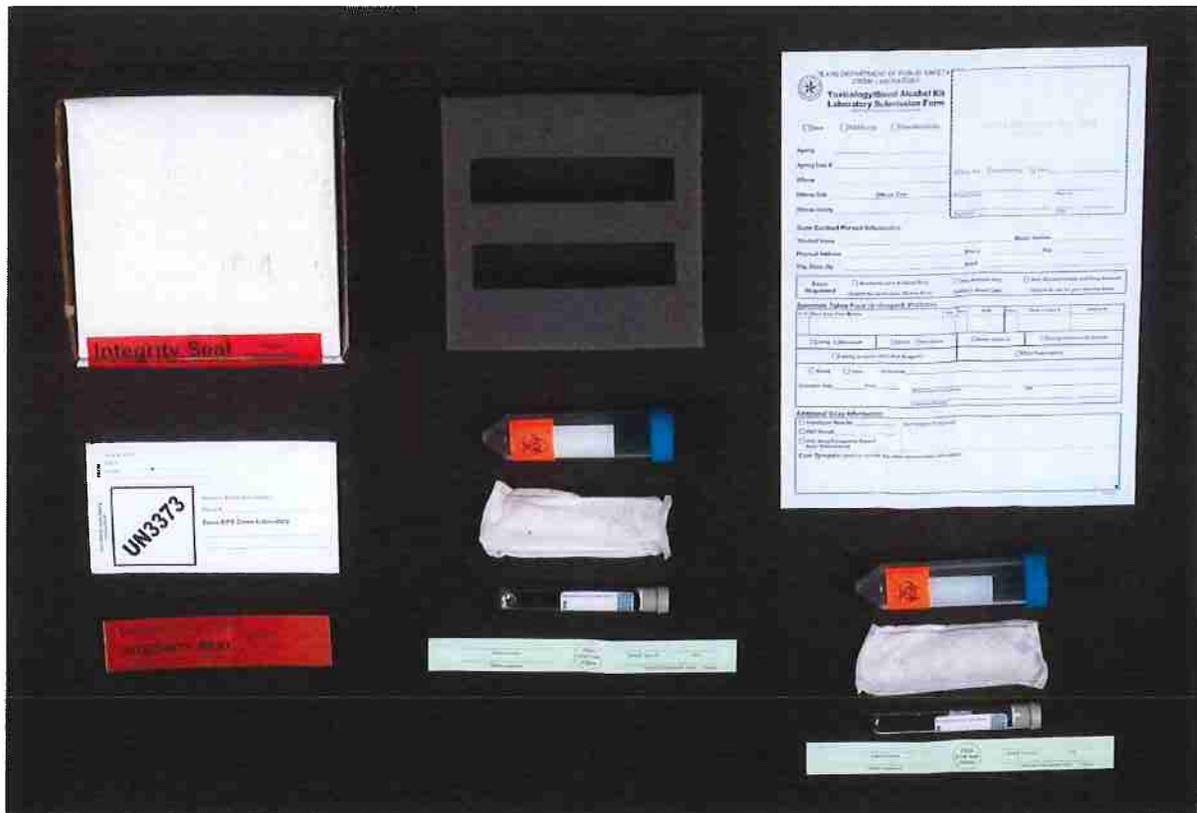
For Urine:

- The urine collection **must be witnessed** by the arresting officer or his/her representative. The observation is documented on the paperwork that accompanies the kit.

Blood Kit Packaging

Contents of the DPS blood kit include:

- Pre-sealed **Blood Kit**
- **Kit Instruction Sheet** and **Subject's Consent Form** (to be retained by officer)
- **Toxicology/Blood Alcohol Kit Laboratory Submission Form (LAB-12)**
- Two 10 mL **Blood Collection ~~Vial~~ Tubes** (gray-top vacutainers) each containing 100 mg of Sodium Fluoride and 20 mg of Potassium Oxalate
- **Two absorbent pouches** to cushion the blood collection ~~vials~~ tubes and to absorb the blood if breakage should occur
- **Two plastic screw-cap ~~tubes~~ containers** to hold blood collection ~~vials~~ tubes in the absorbent pouches
- **Foam padding** with two spaces to hold plastic screw-cap tubes
- **Blood ~~Vial~~ Tube Seals** (tamper-evident) for each blood collection ~~vial~~ tube
- **Integrity Seal (tamper-evident)** to reseal box
- **Mailing Label**
- **Plastic Sleeve on the** outside of the blood specimen mailer box to hold laboratory submission form





BLOOD COLLECTION KIT (THIS IS NOT A CURRENT KIT)

Follow these steps to assemble a blood collection kit:

STEP 1: Complete the Subject Consent Form and ensure that both the subject and witnesses sign the form where indicated. This form should be retained for your records.

STEP 2: Complete information requested on the Toxicology/Blood Alcohol Kit Laboratory Submission Form (LAB-12) and the Blood Vial-Tube Seal(s).

STEP 3: After the specimen(s) has been collected by a qualified professional as described by the Texas Transportation Code, verify the information on the Blood Vial-Tube Seal(s) (especially the subject's name), remove the backing from the seal(s), affix the circle on the seal to the rubber stopper, and press the ends of the seal down the sides of each blood tubevial.

Note: The second blood tube is a precautionary measure to provide an additional evidence sample for testing.

STEP 4: Insert each blood collection vial-tube into an absorbent pouch.

STEP 5: Place each absorbent pouch containing a blood vial-tube into a plastic screw-cap tube-container and close the lid.

STEP 6: Place both plastic screw-cap tubes-containers in the foam holder inside the box. **(PICTURE BELOW IS NOT CURRENT)**



STEP 7: Close the box lid and seal the box with the enclosed Integrity Seal. Initial and date the seal. ~~(PICTURE BELOW IS NOT CURRENT)~~

STEP 8: Completely fill out the self-adhesive mailing label (see listing of DPS labs on the back of the instruction sheet). For the mailing of biological specimens, it is **very** important that your name and phone number are included in the return address. Affix this label to the top of the sealed box. Postage will be necessary if the box is mailed to the laboratory. ~~(PICTURE BELOW IS NOT CURRENT)~~

STEP 9: Check the submission form for completeness, refold, and insert the submission form into the plastic sleeve attached to the outside of the box and seal. If appropriate, include the lab copy of the DIC-23A in with the submission form. No paperwork should be placed inside the box. ~~(PICTURE BELOW IS NOT CURRENT)~~

STEP 10: Protect the specimen from extreme temperatures. If submission is delayed, it is recommended to refrigerate the sample. Submit blood kit to the appropriate laboratory as soon as possible for analysis.

STEP 11: For Administrative License Revocation (ALR) cases, submit both DIC-23A (Specimen Routing Report) and Case documents to: Enforcement and Compliance Service, PO Box 4040, Austin, Texas 78765.



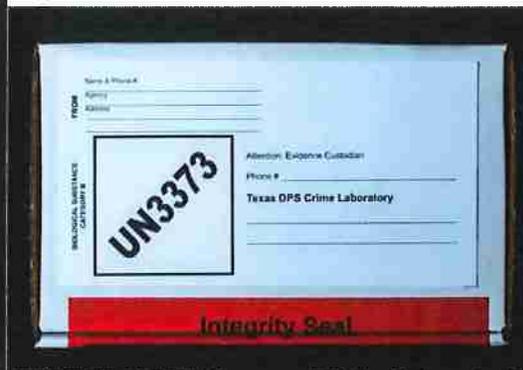
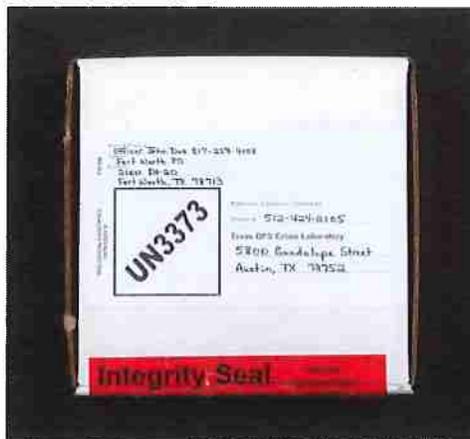
STEP 3



STEPS 4 and 5



STEP 6



STEP 7 and 8

STEP 9

In the absence of a kit, have the medical personnel use **“gray-top” vial tubes**. Submit with a current ~~Toxicology/Blood Alcohol Kit Laboratory Submission Form (LAB-12)~~Toxicology/Blood Alcohol Kit Laboratory Submission Form (LAB-12). This form can be downloaded from the DPS website. The package must comply with all postal regulations for shipping biological specimens including protective containers, absorbent material, and biohazard warning labels. To maintain the integrity of the sample, a tamper evident seal and proper labeling must also be used.

The vacuum expiration date of the vial tube is listed on both the vial tube and the box seal. If the expiration date on the blood collection vial tube has passed, have the medical personnel use unexpired gray-top vial tubes(s) and replace the gray-top vial tube(s) in the kit. Note the replacement vial tube expiration date in the “Comments” of the laboratory submission form and near the vacuum expiration date printed on the box seal. If a replacement vial tube is unavailable, please be aware that the vial tube may collect less blood than normal and testing may have to be limited.

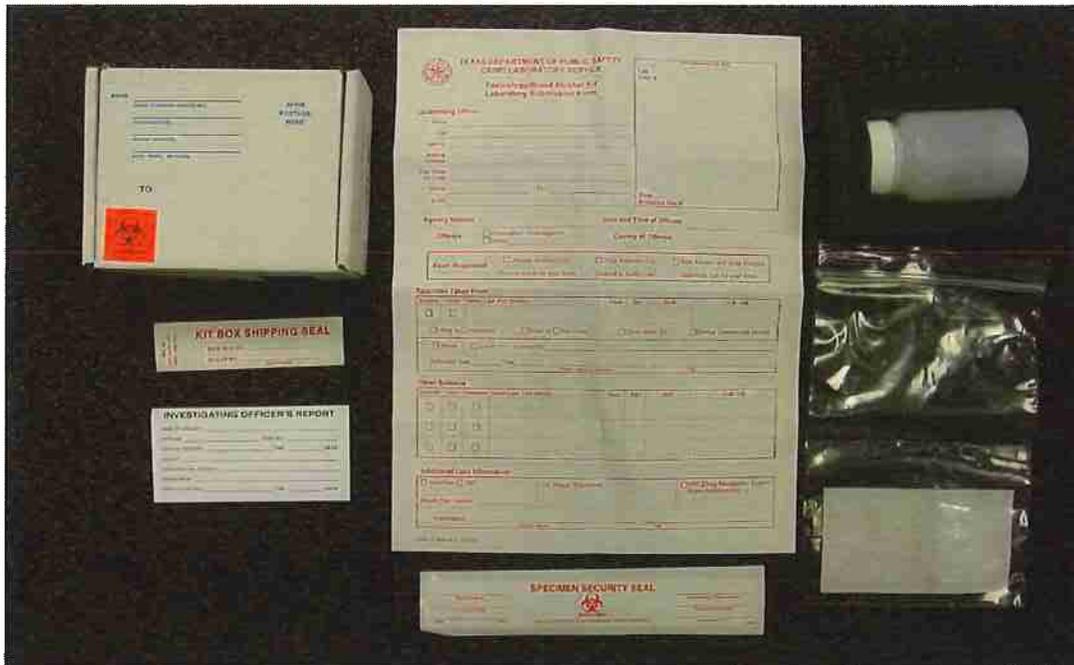
Urine Kit Packaging

Contents of the urine kit include:

- Pre-sealed **Urine Kit**
- **Kit Instruction Sheet** and **Subject’s Consent Form** (to be retained by the officer)
- Toxicology/Blood Alcohol Kit Laboratory Submission Form (LAB-12)



- **Foam padding** with space to hold specimen bottle
- **100 mL Urine Specimen Bottle**
- **Plastic specimen bag** containing a liquid adsorbent pad
- Investigating **Officer's Report (with Chain of Custody) Label** for plastic bag
- **Specimen Security Seal** (tamper-evident) for specimen bottle
- **Kit Box Shipping Seal** (tamper-evident) to reseal box



URINE COLLECTION KIT (IS THIS CURRENT)?

Follow these steps to assemble a urine collection kit:

STEP 1: Complete the Subject's Consent Form and ensure that both the subject and witness sign the form where indicated. This form should be retained for your records.

STEP 2: Complete information requested on the Toxicology/Blood Alcohol Kit Laboratory Submission Form (LAB-12), Investigating Officer's Report label, and Specimen Security Seal.

STEP 3: The urine collection must be witnessed by the arresting officer or his/her representative.

STEP 4: Give the subject the specimen bottle and instruct subject to remove bottle cap and then partially peel back or remove the bottle integrity seal.

STEP 5: Instruct subject to fill the bottle at least half-full by voiding directly into the bottle and then return the specimen bottle directly to the arresting officer or representative.

Note: Subject may urinate into a non-waxed paper or plastic cup, and the specimen can then be poured into the specimen bottle by you.

STEP 6: Immediately after receiving the specimen bottle, replace bottle cap and tighten to prevent leakage.



STEP 7: Verify the information on the Specimen Security Seal, remove backing from the seal, affix center of seal on the bottle cap, and press ends of seal down both sides of the bottle. The collection witness should initial the specimen seal.

STEP 8: Affix the Investigating Officer's Report Label to the plastic bag.

STEP 9: In order to comply with US Postal regulations, place the specimen bottle into the foam holder, insert into the ziplock bag provided with the liquid absorbing sheet, and press the ziplock seal closed to prevent any leakage.

Note: Do not remove the liquid absorbing sheet.

STEP 10: Insert the ziplock bag containing the urine specimen into the mailing box and close the lid. Secure the lid of the box with the Kit Box Shipping Seal where indicated, initial and date so that the writing goes across the seal and the box.

NOTE: The kit instructions describe placing the completed submission form on top of the ziplock bag.

Crime Laboratory personnel request that the completed submission form be placed inside an envelope and taped to the outside of the mailing box. Do not place the submission form in the box.

STEP 11: Completely fill out the mailing information on top of the box (see listing of DPS labs and associated service areas).

STEP 12: Submit urine mailer to the appropriate laboratory as soon as possible for analysis. If submission is delayed more than a few days, refrigeration of the sample is recommended. Postage will be necessary if the box is mailed to the laboratory.

STEP 13: For Administrative License Revocation cases, submit both DIC-23A (Specimen Routing Report) and Case documents to: Enforcement and Compliance Service, PO Box 4040, Austin, Texas 78765.

EVIDENCE DISPOSITION/RETENTION

Effective September 1, 2015, House Bill 1264 amended Article 38.50 of the Texas Code of Criminal Procedure clarifying the retention period for Toxicology evidence collected under Chapter 49 of the Penal Code.

EVIDENCE RETENTION – SAFETY HAZARD

Evidence received that is considered a safety hazard will be photographed and destroyed (e.g. broken blood tubes). The laboratory will attempt to preserve any intact biological specimen containers.

EVIDENCE DISPOSITION – Non-DPS Customers

As with other evidence submitted by non-DPS law enforcement, the biological evidence is returned following analysis.

Biological evidence submitted by Non-DPS law enforcement is returned after completion of analysis.



EVIDENCE DISPOSITION – DPS Customers

DPS **biological** evidence will be retained until the court-authorized disposition date.

For those cases submitted by DPS **law enforcement** personnel, after alcohol-only testing is completed in any of the Regional Laboratories other than Austin ~~[unless it's done in Austin]~~, the evidence will be forwarded to the Houston Regional Laboratory. ~~There it~~ will be stored in the evidence storage facility established under Government Code 411.053, commonly referred to as the Bio-Warehouse.

Alcohol and/or Toxicology cases submitted by DPS ~~troopers~~ and ~~ultimately~~ completed by the Austin Laboratory will remain stored refrigerated in Austin. ~~[Does this mean any tox case is stored in Austin, or only those that complete the testing in Austin?]~~

STORED EVIDENCE NEEDED FOR COURT

The long-term storage for DPS Toxicology cases will require at least 48 hours notification if evidence is ~~required~~**needed** for court. Prosecuting attorneys or DPS submitting officers should contact the testing laboratory to initiate the evidence transfer process. ~~The evidence will be forwarded from the Houston Bio-Warehouse or the Austin Laboratory to the testing laboratory from its storage location.~~

~~Evidence received that is considered a safety hazard will be photographed and destroyed (e.g. broken blood tubes). The laboratory will attempt to preserve any intact biological specimen containers.~~

~~— When we keep evidence and when we return evidence.~~



Physical Evidence Handbook

DRN: PEH-02-03

Toxicology and Blood Alcohol Evidence

Preparer

Forrest W. Davis
Quality Assurance Coordinator

Date: 07/23/2014

Concurrence

D. Pat Johnson
Laboratory Deputy Assistant Director

Date: 08/04/2014

Version #	Effective Date	Brief Description of Change(s)
00	05/04/2007	Original Issue
01	07/09/2010	Major Revision – All sections
02	05/16/2012	Major Revision – All sections
03	08/08/2014	Major Revision – All sections
<u>04</u>		<u>Minor Revision – Submission of Biological Samples, DPS Blood and Urine Kit Procedures</u> <u>Major Revision – Safety Considerations, Evidence Disposition</u>

[08/08/2014]

The most current copy of the Physical Evidence Handbook is available at:
<http://www.dps.texas.gov>

Blood Alcohol Worksheet

WAC-1701-00015

Brianna Simpson

Start Date: 01/13/2017

Completion Date: 01/14/2017



Item 01 : DPS Blood Kit

Item 01-01 : gray top tube

Results:

01-01 : Blood in gray top tube from Nita Kay Mesker

Evidence Notes: PS

0.108 (+/- 0.005) grams of alcohol per 100 milliliters of blood. (99.7% Confidence Level)

Dilution: No

$$(0.1089 + 0.1084)/2 = 0.108$$

Specimen Notes:

Case Individual: Mesker, Nita Kay

Name on Specimen: **Same as Submission Form**

Location of Subject Name: **Specimen Container**

Location of Innermost Seal: **Specimen Container**

Specimen Label Notes: **Time on tube: 1557**

Condition of Sample: **Normal**

Condition Notes:

Volume of Specimen (mL): **1/2 tube**

Additional Notes: **Second tube did not contain any blood.**



TEXAS DEPARTMENT OF PUBLIC SAFETY
CRIME LABORATORY

**Instructions for the Collection and Submission of Blood
Specimens For Alcohol and/or Drug Determinations**

LAB-12b Rev.06 (12/2016) p.1 Issued by: QAC

OFFICER (Before Collection)

1. Complete the Subject Consent Form and ensure that both subject and witnesses sign the form where indicated.
2. Complete information requested on the Toxicology/Blood Alcohol Kit Laboratory Submission Form and the Blood Tube Seal(s).
3. The blood specimen(s) must be drawn by a qualified professional (e.g. a physician, qualified technician, registered professional nurse, licensed vocational nurse, licensed or certified emergency medical technician) as described in the Texas Transportation Code §724.017. The blood collection should be observed.
4. **Note: The second blood tube is a precautionary measure to provide an additional sample for testing.**

BLOOD COLLECTOR

1. Cleanse blood withdrawal site only with a **non-alcoholic** prep pad.
2. With hospital/clinic procedures, collect a full tube(s) of blood specimen from the subject in each provided blood tube or other gray top 10 mL Vacutainer®. In a 2 tube kit, both tubes should be collected at the same time.
3. **Immediately after blood collection, slowly mix the anticoagulant powder and blood by inverting the blood tube(s) several times.**
4. Transfer blood tube(s) directly to officer and ensure that your name and title are on the seal(s) and submission form.

OFFICER (After Collection)

1. Immediately upon receipt of the filled blood collection tube(s), verify the information on the Blood Tube Seal(s), remove the backing from the seal for that subject, affix the circle on the seal to the rubber stopper, and press the ends of the seal down the sides of the blood tube(s).
2. **In order to comply with US Postal regulations**, insert each blood collection tube(s) into an absorbent pouch. Then place the pouch into a plastic container and close the lid.
3. Place the plastic container(s) in the foam holder inside the box and close the lid. Seal the box with the INTEGRITY SEAL where indicated and initial and date the seal.
4. Check the Kit Laboratory Submission Form for completeness, refold, insert into the plastic pouch which is affixed to the outside of the box, and seal. If appropriate, include the lab copy of the DIC-23A in with the submission form.
5. The sealed kit may be either mailed or hand-delivered to the appropriate laboratory.
6. If submission is delayed, it is recommended to refrigerate the specimen until sent to the lab.
7. Affix self-adhesive mailing label to the box. If mailed to the laboratory, completely fill out the label (see listing of DPS labs on the back of the instruction sheet). **It is VERY important that your name and phone number are included in the return address.** Postage will be necessary if the kit is mailed to the laboratory.
8. For ALR cases, submit DIC-23A and case documents to:

Enforcement and Compliance Service, PO Box 4040, Austin, TX 78765

SUBJECT'S CONSENT FORM

THE STATE OF TEXAS VS. _____
(subject name)

Be it remembered that on this day of _____, 20_____, I _____
(subject name)

having been placed under arrest on a charge of driving a motor vehicle on a public highway while intoxicated,
do voluntarily give a specimen of my blood to _____
(arresting officer).

Signature of Subject: _____

Subject Address: _____

Witness of the Collection: _____
Print Name and Signature

Retain for your File. Do not send to laboratory.



TEXAS DEPARTMENT OF PUBLIC SAFETY
CRIME LABORATORY

Lab Case # _____

Analyst _____

Date Started _____

Date Completed _____

Alcohol Analysis Worksheet

LAB-BA-01 Rev.06a (01/2017) p.1 Issued by: QAC

Evidence

Subject's Name (Submission form):

Evidence Container:
 DPS Blood Kit Blood Kit Urine Kit Envelope
 Other _____

Specimen: Gray Top Other

Vial Tube Sealed Yes No

Specimen Label: None Same as Submission Form

Results

Reported Ethanol Result _____ grams per _____ mL

Other Volatiles:

Disposition

Drug Screen Request:
 Yes No
 Not sent for drug screen; alcohol content $\geq 0.100\text{g}/100\text{mL}$

Disposition Note:
 Retain Drug Screen Return
 Other _____

Type/Amount

<input type="checkbox"/> Blood <input type="checkbox"/> Urine <input type="checkbox"/> Serum/Plasma Vitreous <input type="checkbox"/> Other	Condition				
	<input type="checkbox"/> Normal	<input type="checkbox"/> Thick	<input type="checkbox"/> Clotted		
	Other _____				
	Approximate Amount				
	<input type="checkbox"/> Full	<input type="checkbox"/> 3/4	<input type="checkbox"/> 1/2	<input type="checkbox"/> 1/4	<input type="checkbox"/> <1 mL
	Other _____				

Analysis Method

Heated Head-Space Gas Chromatography

Sample Preparation:

Instrument ID: _____	Pipettor ID: _____
-------------------------	-----------------------

GC Columns:

Column Conditions:

Autosampler Program:

Additional Notes

Measurement Uncertainty (at 99.7% confidence):

Reported Ethanol Result $\pm (4.3\% * \text{Reported Ethanol Result})$

Blood Alcohol Statewide Meeting

October 26-27, 2016

DPS Training Academy Classrooms C and D for Forensic Scientists

For managers and supervisors web-ex meeting:

[Join WebEx meeting](#)

Meeting number (access code): 922 929 389

Join by phone

12404540879 USA Toll

Wednesday, October 26, 2016

1:00 pm to 1:30 pm	Welcome and Opening Remarks Brady Mills, Deputy Assistant Director, Crime Laboratory Service
1:30 pm to 2:00pm	Validation Refresher - Multipoint Curve and Single Column Quantitation Speaker: Jamie Mraz, current Blood Alcohol Advisory Board Chairperson
2:00 pm to 4:00 pm	LIMS to Shimadzu and Back Again: BAL Reports paperless BA workflow Speakers: Haley Yaklin, Section Supervisor, Houston and Sharon Mason, LIMS Specialist
4:00 pm to 5:00 pm	Testimony Refresher Speaker: Scott Ruplinger, Forensic Scientist, Austin
5:30 pm	Evening Reception – Sherlock's Baker St. Pub & Grill 9012 Research Blvd Austin, TX 78758 (coordinated by Sam Salinas)

Thursday, October 27, 2016

8:00 am to 9:00 am	Measurement Uncertainty Refresher Speaker: Greg Hilbig, Chairman, Uncertainty Advisory Board
9:00 am to 9:30 am	Group Picture
9:30 am to 10:00 am	SOP changes effective November 7, 2016 Speaker: Brian Nacu, Manager, Corpus Christi
10:00 am to 11:00 am	Open Discussion – Possible Topics: Ethanol detection in non-blood/urine samples Accreditation conformance with a paperless process FSC complaint and resolution Terminology – vial vs. tube
11:00 am to 11:30 am	Topic: LIMS Testing Report Changes for BA Reports; Q&A Speaker: Fayth Davis, LIMS Manager
11:30 am to 12:00 pm	Awards and Closing Remarks Steve Robertson, Assistant Laboratory Director

Statewide Blood Alcohol Staff Meeting

October 26-27, 2016

Abilene

Avalos Belli, Mary - Abilene

Mary Avalos Belli

Carrel, Herman - Abilene

Herman Carrel

McGinty, Bridget - Abilene

Bridget McGinty

~~Todsen, William L. - Abilene~~

William L. Todsen

Zellinski, Ashley - Abilene

Austin

Barton, Megan - Austin

Megan Barton

Burris, James - Austin

James Burris

Erwin, Kathy - Austin

Kathy Jean Erwin

Gauger, Vanessa - Austin

Hawkins, Renée - Austin

Renée Hawkins

Holladay, Megan - Austin

Howard, Jennifer - Austin

Martin, Sarah - Austin

Sarah Martin

Mellon, Monica - Austin

Melo, Michelle - Austin

Miller, Kelsi - Austin

Mraz, Jamie - Austin

*Jamie Mraz
(via WebEx)*

Mudd, Anna - Austin

Padilla, Eduardo - Austin

Peyton, Sheryl - Austin

Sheryl Peyton

Pierce, Nick - Austin

Nick Pierce

Renson, Christine - Austin

Rios, Dan - Austin

Sachs, Aaron - Austin

Aaron Sachs

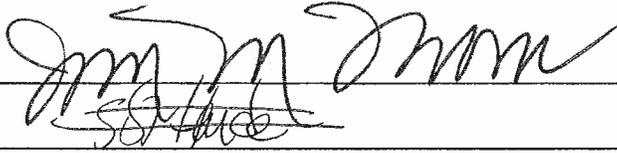
Sallnas, Samuel - Austin

Statewide Blood Alcohol Staff Meeting

October 26-27, 2016

Austin

Thomas, Jim M. - Austin



Tox, BA - Austin

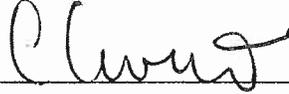
Valadez, Melissa - Austin

SMITH, ZOE

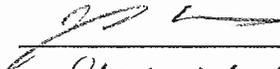
(via WebEx)
(via WebEx)

Corpus Christi

Cuervo, Catalina - Corpus Christi



Evans, James - Corpus Christi



Hanke, Sharla - Corpus Christi



Nacu, Brian - Corpus Christi

El Paso

Alonzo, Monica - El Paso



Correa, Joseph J. J. - El Paso

Hernandez, Laura - El Paso

(via WebEx)

Garland

Evans, Kenneth - Garland

(via WebEx)

Hay, Christine - Garland

Christine Hay

Kumar, Nirav - Garland

Macey, Andrew - Garland

(via WebEx)

Nichols, James - Garland

(via WebEx)

Youngkin, Chris - Garland

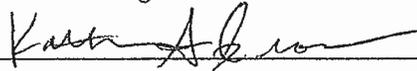
Chris Youngkin

Houston

Aubel, Rachel - Houston

Rachel Aubel

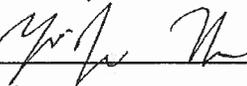
Brown, Katherine - Houston



Gibson, Keith A. - Houston

Webex

Ho, Yen-Jun - Houston



Lopez, Jr., Severo - Houston

Webex

Statewide Blood Alcohol Staff Meeting

October 26-27, 2016

Houston

Stasicha, Devin - Houston

Yaklin, Haley - Houston

LAZARINE, VANESSA

Haley Yaklin
(via WebEx)

Laredo

Gardiner, Andrew - Laredo

Lubbock

Keinath, John - Lubbock

McCord, Cathy - Lubbock

Parker, Tifani - Lubbock

Salazar, Theresa - Lubbock

Williams, Scott D. - Lubbock

CONDEL, KEVIN

John Keinath
(via WebEx)

Tifani Parker

Theresa Salazar
(via WebEx)
(via WebEx)

Midland

Kubilus, Janeen - Midland

Silva Gomez, Marissa -
Midland

Janeen Kubilus
(via WebEx)

Tyler

Hilbig, R. Greg - Tyler

Prince, Jr., Robert J. - Tyler

Ream, Karen - Tyler

Shumate, Karen - Tyler

R. Greg Hilbig
Robert Prince
Karen Ream
Karen Shumate

Waco

Copeland, Starla - Waco

Gasche, Lindsay - Waco

Hatfield, Lindsay - Waco

Milam, James - Waco

Simpson, Brianna - Waco

Uptmor, Araceli - Waco

Lindsay Gasche
Lindsay Hatfield
James Milam
Brianna Simpson
(via WebEx)

Statewide Blood Alcohol Staff Meeting

October 26-27, 2016

Weslaco

Dodson, Maegan E. - Weslaco

Maegan E. Dodson

Hanson, Gene - Weslaco

(via WebEx)

Marchan, Joe H. - Weslaco

Tucker, Adam - Weslaco

Adam C. Tucker

Zuniga, Jose A. - Weslaco

Mason, Sharon

Sharon Mason

Davis, Fayth

Fayth Davis

Ben G. ...

Texas Department of Public Safety

Purchase Order

P.O. Date: 2/29/2016



Purchase Order Number

405-16-P006786

SHOW THIS NUMBER ON ALL
PACKAGES, INVOICES AND
SHIPPING DOCUMENTS.

V E N D O R	Vendor Number: 00007097 1562445503400 VWR INTERNATIONAL, LLC 100 MATSONFORD RD STE 200 USA RADNOR, PA 19087-4558
----------------------------	--

S H I P T O	Texas Department of Public Safety Garland Regional Crime Laboratory 402 West IH 30 Garland, TX 75043-5902 US Email: eprocurementshipping@dps.texas.gov (512) 424-2000
----------------------------	---

B I L L T O	Texas Department of Public Safety Finance - Accounts Payable - MSC 0130 PO Box 4087 Austin, TX 78773-0130 US Email: apinvoices@dps.texas.gov (512) 424-2060
----------------------------	---

State Sales Tax Exemption Certificate: The undersigned claims an exemption from taxes under Chapter 20, Title 122A, Revised Civil Statutes of Texas, for purchase of tangible personal property described in this numbered order, purchased from contractor and/or shipper listed above, as this property is being secured for the exclusive use of the State of Texas.

Solicitation (Bid) No.: 405-16-B001522	Payment Terms: State of Texas Prompt Pay Shipping Terms: F.O.B., Destination Delivery Calendar Day(s) A.R.O.: 4
--	---

Item # 13

****DO NOT DUPLICATE THIS ORDER. PURCHASE ORDER NUMBER 16085737 HAS BEEN SUBMITTED TO THE VENDOR VIA TEXAS SMART BUY** **FOR PAYMENT PROCESSING PURPOSE ONLY****

Best Value award in accordance with Texas Gov. Code, Title 10, Subtitle D, Chapter 2155, Section 2155.074.

TXMAS Contract TXMAS-14-66040, dated through 03/31/2016, shall apply to this Purchase Order.

Item # 2
Class-Item 175-14

Clear Glass Vial Snap Ring w/patch
Size: 2mL

VWR Item #: 66030-554

Quantity	Unit Price	UOM	Discount %	Total Discount Amt.	Tax Rate	Tax Amount	Freight	Total Cost
3.00	\$ 326.36	CS	0.00 %	\$ 0.00		\$ 0.00	\$ 0.00	\$ 979.08

Item # 3
Class-Item 175-14

Snap Cap 11mm Natural rubber/Teflon 100/pack

VWR Part #: 66030-568

Quantity	Unit Price	UOM	Discount %	Total Discount Amt.	Tax Rate	Tax Amount	Freight	Total Cost
6.00	\$ 18.11	PKG	0.00 %	\$ 0.00		\$ 0.00	\$ 0.00	\$ 108.66

Item # 4
Class-Item 175-14

Snap Cap 11mm Red Rubber/Teflon 100/pack

VWR Part #: 66030-574

Quantity	Unit Price	UOM	Discount %	Total Discount Amt.	Tax Rate	Tax Amount	Freight	Total Cost
6.00	\$ 17.79	PKG	0.00 %	\$ 0.00		\$ 0.00	\$ 0.00	\$ 106.74

Item # 5
Class-Item 175-14

Snap Cap 11mm Green Rubber/Teflon 100/pack

VWR Part #: 66030-572

Quantity	Unit Price	UOM	Discount %	Total Discount Amt.	Tax Rate	Tax Amount	Freight	Total Cost
6.00	\$ 17.85	PKG	0.00 %	\$ 0.00		\$ 0.00	\$ 0.00	\$ 107.10

Item # 6
Class-Item 175-14

Snap Cap 11mm Blue Rubber/Teflon 100/pack

VWR Part #: 66030-570

Quantity	Unit Price	UOM	Discount %	Total Discount Amt.	Tax Rate	Tax Amount	Freight	Total Cost
6.00	\$ 17.68	PKG	0.00 %	\$ 0.00		\$ 0.00	\$ 0.00	\$ 106.08

Item # 7
Class-Item 175-14

Snap Cap 11mm Yellow Rubber/Teflon 100/pack

VWR Part #: 66030-576

Quantity	Unit Price	UOM	Discount %	Total Discount Amt.	Tax Rate	Tax Amount	Freight	Total Cost
6.00	\$ 17.61	PKG	0.00 %	\$ 0.00		\$ 0.00	\$ 0.00	\$ 105.66

Item # 8
Class-Item 175-14

Vial 2 ml VM Crimp MS 100/pack 20 pack/case

VWR Part #: 66030-12

Quantity	Unit Price	UOM	Discount %	Total Discount Amt.	Tax Rate	Tax Amount	Freight	Total Cost
1.00	\$ 274.00	CS	0.00 %	\$ 0.00		\$ 0.00	\$ 0.00	\$ 274.00

Item # 9
Class-Item 175-14

Crimp Cap 11mm Silver Rubber/Teflon 100/pack

VWR Item #: MISC-CHROM

Quantity	Unit Price	UOM	Discount %	Total Discount Amt.	Tax Rate	Tax Amount	Freight	Total Cost
10.00	\$ 11.54	PKG	0.00 %	\$ 0.00		\$ 0.00	\$ 0.00	\$ 115.40

Item # 10
Class-Item 175-14

Vial 20mL Headspace, Clear Glass 23x75mm

VWR Part #: 66064-348

Quantity	Unit Price	UOM	Discount %	Total Discount Amt.	Tax Rate	Tax Amount	Freight	Total Cost
5.00	\$ 263.50	CS	0.00 %	\$ 0.00		\$ 0.00	\$ 0.00	\$ 1,317.50

Item # 11
Class-Item 175-14

Aluminum Seal 20mm w/Magnetic Ring

VWR Part #: MISC-CHROM

Quantity	Unit Price	UOM	Discount %	Total Discount Amt.	Tax Rate	Tax Amount	Freight	Total Cost
10.00	\$ 56.60	PKG	0.00 %	\$ 0.00		\$ 0.00	\$ 0.00	\$ 566.00

Item # 12
Class-Item 175-14

Stopper 20mm Gray Chlorobutyl/46 2-Leg

VWR Part #: VWR PN 89079-400

Quantity	Unit Price	UOM	Discount %	Total Discount Amt.	Tax Rate	Tax Amount	Freight	Total Cost
5.00	\$ 135.30	CS	0.00 %	\$ 0.00		\$ 0.00	\$ 0.00	\$ 676.50

TAX: \$ 0.00
FREIGHT: \$ 0.00
TOTAL: \$ 4,462.72

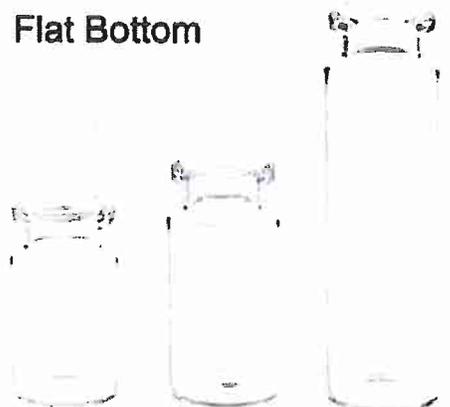
APPROVED

By: Brent Morgan, CTP

Phone#: (512) 424-5990

BUYER

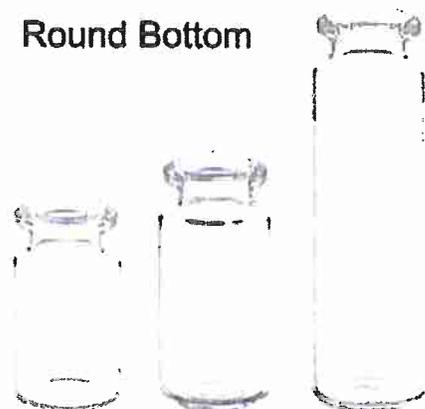
Flat Bottom



CV-1280-2238 CV-1280-2346 CV-1280-2375

[Click Here for Blue Bi-Metal Magnetic Caps](#)[Click Here for Crimpers](#)[Click Here for Crimp Style De-Cappers](#)[Click Here for Plier Style De-Cappers](#)

Round Bottom



CV-1281-2238 CV-1281-2346 CV-1281-2375

Items		PQ = Package Quantity, DPrice = Discounted Price
Item Number	Item Description	Price
CV-1280-2238	Vial, 6.0mL, Clear, 20mm Headspace, Flat Bottom, 22x38mm, 20mm Crimp	P100 ▲ \$34.15
CV-1280-2346	Vial, 10mL, Clear, 20mm Headspace, Flat Bottom, 23x46mm, 20mm Crimp	P100 ▲ \$38.85
CV-1280-2375	Vial, 20mL, Clear, 20mm Headspace, Flat Bottom, 23x75mm, 20mm Crimp	P100 ▲ \$46.30
CV-1281-2238	Vial, 6.0mL, Clear, 20mm Headspace, Round Bottom, 22x38mm, 20mm Crimp, for use with Perkin Elmer Autosamplers	P100 ▲ \$34.15
CV-1281-2346	Vial, 10mL, Clear, 20mm Headspace, Round Bottom, 23x46mm, 20mm Crimp, for use with LEAP Autosamplers	P100 ▲ \$38.85
CV-1281-2375	Vial, 20mL, Clear, 20mm Headspace, Round Bottom, 23x75mm, 20mm Crimp, for use with Perkin Elmer Autosamplers	P100 ▲ \$43.90
CLS-4209-12	Aluminum Seal Only, Open Hole, 20mm	P100 ◆ \$9.20
CLS-3225-0020	Stopper, Grey Butyl Rubber, 20mm ASF	P100 ◆ \$43.90

▲ Subject to Vials/Containers Discount. ◆ Subject to LS Consumables Discount.

Replacement Parts		PQ = Package Quantity, DPrice = Discounted Price
Item Number	Item Description	Price
CV-5730-0009	Cabinet, Storage, Vial and Closure	EACH ▲ \$144.70

▲ Subject to Vials/Containers Discount.

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3600 N. Hill Road
Farmingdale, New York 11735

Tel: 516-340-1754
Fax: 516-340-4361

Contact Us



Helping all people live healthy lives

BD Vacutainer® Venous Blood Collection Tube Guide

For the full array of BD Vacutainer® Blood Collection Tubes, visit www.bd.com/vacutainer.

Many are available in a variety of sizes and draw volumes (for pediatric applications). Refer to our website for full descriptions.

BD Vacutainer® Tubes with BD Hemogard® Closure	BD Vacutainer® Tubes with Conventional Stopper	Additive	Inversions at Blood Collection*	Laboratory Use	Your Lab's Draw Volume/Remarks
Gold	Red/Gray	• Clot activator and gel for serum separation	5	For serum determinations in chemistry. May be used for routine blood donor screening and diagnostic testing of serum for infectious disease.** Tube inversions ensure mixing of clot activator with blood. Blood clotting time: 30 minutes.	
Light Green	Green/Gray	• Lithium heparin and gel for plasma separation	8	For plasma determinations in chemistry. Tube inversions ensure mixing of anticoagulant (heparin) with blood to prevent clotting.	
Red	Red	• Silicone coated (glass) • Clot activator, Silicone coated (plastic)	0 5	For serum determinations in chemistry. May be used for routine blood donor screening and diagnostic testing of serum for infectious disease.** Tube inversions ensure mixing of clot activator with blood. Blood clotting time: 60 minutes.	
Orange	Gray/Yellow	• Thrombin	8	For stat serum determinations in chemistry. Tube inversions ensure mixing of clot activator (thrombin) with blood to activate clotting.	
Royal Blue		• Clot activator (plastic serum) • K ₂ EDTA (plastic)	8 8	For trace-element, toxicology, and nutritional-chemistry determinations. Special stopper formulation provides low levels of trace elements (see package insert). Tube inversions ensure mixing of either clot activator or anticoagulant (EDTA) with blood.	
Green	Green	• Sodium heparin • Lithium heparin	8 8	For plasma determinations in chemistry. Tube inversions ensure mixing of anticoagulant (heparin) with blood to prevent clotting.	
Gray	Gray	• Potassium oxalate/sodium fluoride • Sodium fluoride/Na ₂ EDTA • Sodium fluoride (serum tube)	8 8 8	For glucose determinations. Oxalate and EDTA anticoagulants will give plasma samples. Sodium fluoride is the antiglycolytic agent. Tube inversions ensure proper mixing of additive with blood.	
Tan		• K ₂ EDTA (plastic)	8	For lead determinations. This tube is certified to contain less than .01 µg/mL (ppm) lead. Tube inversions prevent clotting.	
	Yellow	• Sodium polyanethol sulfonate (SPS) • Acid citrate dextrose additives (ACD): Solution A - 22.0 g/L trisodium citrate, 8.0 g/L citric acid, 24.5 g/L dextrose Solution B - 13.2 g/L trisodium citrate, 4.8 g/L citric acid, 14.7 g/L dextrose	8 8 8	SPS for blood culture specimen collections in microbiology. ACD for use in blood bank studies, HLA phenotyping, and DNA and paternity testing. Tube inversions ensure mixing of anticoagulant with blood to prevent clotting.	
Lavender	Lavender	• Liquid K ₂ EDTA (glass) • Spray-coated K ₂ EDTA (plastic)	8 8	K ₂ EDTA and K ₃ EDTA for whole blood hematology determinations. K ₂ EDTA may be used for routine immunohematology testing, and blood donor screening.** Tube inversions ensure mixing of anticoagulant (EDTA) with blood to prevent clotting.	
White		• K ₂ EDTA with gel	8	For use in molecular diagnostic test methods (such as, but not limited to, polymerase chain reaction [PCR] and/or branched DNA [bDNA] amplification techniques.) Tube inversions ensure mixing of anticoagulant (EDTA) with blood to prevent clotting.	
Pink	Pink	• Spray-coated K ₂ EDTA (plastic)	8	For whole blood hematology determinations. May be used for routine immunohematology testing and blood donor screening.** Designed with special cross-match label for patient information required by the AABB. Tube inversions prevent clotting.	
Light Blue	Light Blue	• Buffered sodium citrate 0.105 M (=3.2%) glass 0.109 M (3.2%) plastic • Citrate, theophylline, adenosine, dipyridamol (CTAD)	3-4 3-4	For coagulation determinations. CTAD for selected platelet function assays and routine coagulation determination. Tube inversions ensure mixing of anticoagulant (citrate) to prevent clotting.	
Clear		• None (plastic)	0	For use as a discard tube or secondary specimen tube.	
Clear	New Red/Light Gray				

Note: BD Vacutainer® Tubes for pediatric and partial draw applications can be found on our website.

BD Diagnostics
Preanalytical Systems
1 Becton Drive
Franklin Lakes, NJ 07417 USA

BD Global Technical Services: 1.800.631.0174
vacutainer_techservices@bd.com
BD Customer Service: 1.888.237.2762
www.bd.com/vacutainer

* Invert gently, do not shake
** The performance characteristics of these tubes have not been established for infectious disease testing in general; therefore, users must validate the use of these tubes for their specific assay-instrument/reagent system combinations and specimen storage conditions.
*** The performance characteristics of these tubes have not been established for immunohematology testing in general; therefore, users must validate the use of these tubes for their specific assay-instrument/reagent system combinations and specimen storage conditions.



Healthcare Providers

Overview

Test Directory

Clinical Testing

- Clinical Tube Types

- Order of Blood Draw

- Blood Specimens

IgG Allergens

IgE Allergens

Microbiology Testing

Cytology Testing

Surgical Pathology

Supplies

Billing

Insurance Contracts

Publications

Clinical Tube Types

[Home](#) | [Healthcare Providers](#) | [Clinical Testing](#) | Clinical Tube Types

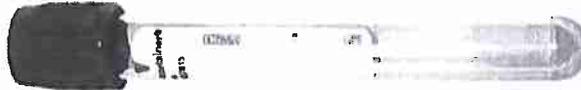
PathLabs - Medical Testing Laboratory



Blue-Top Tube - Sodium Citrate (NaCitrate): This tube is primarily used for coagulation studies (PT and PTT). Complete filling of this tube is essential to obtain accurate results.



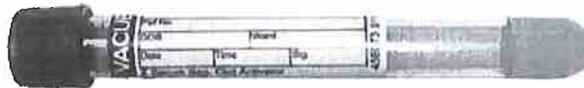
Lavender-Top Tube - EDTA: EDTA is the anticoagulant used for most hematology procedures. Its primary use is for the CBC and individual components of the CBC. The larger (6ml) tube is used for blood bank procedures.



Red-Top Tube - This tube has no anticoagulant and is used for many chemistry tests, drug levels, and blood bank procedures.



Navy Blue-Top Tube - There are two general types - one with K2 EDTA and one with no anti-coagulant. This tube is used primarily for trace metal analysis.



Serum Separator Tube (SST®) - This tube contains a clot activator and serum gel separator. It has no anticoagulant and is used for many chemistry tests. It cannot be used for certain drug levels or any blood bank procedures.



Green-Top Tube - Sodium Heparin or Lithium Heparin

TEXAS DEPARTMENT OF PUBLIC SAFETY



STEVEN C. MCCRAW
DIRECTOR
DAVID G. BAKER
CHERYL MacBRIDE
DEPUTY DIRECTORS

CRIME LABORATORY
402 W IH 30
Garland, TX 75043-5902
Voice 214-861-2180 Fax 214-861-2194
GarlandCrimeLab@dps.texas.gov



COMMISSION
A. CYNTHIA LEON, CHAIR
CARIN MARCY BARTH
ADA BROWN
ALLAN B. POLUNSKY
RANDY WATSON

Amended Alcohol Content Laboratory Report

Issue Date: May 22, 2013

Chris Reeves
Anna Police Department
PO Box 776
Anna, TX 75409

Laboratory # GAR-1304-05568

Agency # 13000185

County: Collin

Offense Date: 04/15/2013

Subject(s): UNDERWOOD, Rodney
RYDELL, Trent Carmichael

Submission Information:

01 DPS Blood Kit on April 29, 2013 by Copin, Pete VIA In Person

Corrected Evidence Description, Results of Analysis and Interpretation:

01 : Blood in DPS Blood Kit from Rodney Underwood

Note: This report reflects a correction to the results of Analysis Section of the Alcohol Content Laboratory Report dated May 16, 2013.

01-01 : Blood in gray top tube from Rodney Underwood

No alcohol detected.

Note: The evidence is being forwarded to the DPS Austin Crime Laboratory for the requested drug analysis. Please advise via email (grp_austintox@dps.texas.gov) if analysis is no longer needed so that the DPS Austin crime laboratory may devote efforts to other cases in the Toxicology backlog.

Original Evidence Description, Results of Analysis and Interpretation:

01 : Blood in DPS Blood Kit

01-01 : Blood in gray top tube from Rodney Underwood

0.152 grams of alcohol per 100 milliliters of blood.

Note: No drug analysis due to the alcohol concentration. We are unable to retain the evidence. Please make arrangements to pick up this evidence at your earliest convenience.

This report has been electronically prepared and approved by:

Andrew Macey
Forensic Scientist
Texas DPS Garland Crime Laboratory



AFFIDAVIT

STATE OF Texas

COUNTY OF Dallas

Before me, the undersigned authority in and for the State of Texas, on this day personally appeared, Christopher Youngkin who, after being by me duly sworn, deposed and said:

My name is Christopher Youngkin. I am of sound mind, 18 years of age or older, and competent to give this affidavit.

I want to address the exhibits (1-20) from the deposition (Collin County 10/24/2016) in numerical order. References to the exhibits will be made in the format of ex.# p.# - line #(s). A list of attachments will appear at the end of this affidavit.

Exhibit 1

This exhibit contains the use of the word "vile" (p.7-13) and gray tube (the word "top" has been omitted). For the use of the word "vile" see ex 3. The prosecutor in this case brings up a good point on page 7 line 20 "you talked about the gray-top tube". The gray top is indicative of the contents of the tubes when they are manufactured. Gray top tubes have been recommended for use in cases where blood will be taken and not refrigerated immediately (ex.2 p.34). On page 9 lines 17 through 23, you will find my typical description of the analysis process differentiating between gray-top tubes and head space vials. I bring with me to every court appearance examples of both gray-top tubes and head space vials for this reason. With this trial being in September 2013 after the completion of the Quality Action Plan (QAP, ex.20), on page 11 when I am asked "how do you prevent the mixing up of the samples" I respond with the preventative action detailed in the QAP.

On page 23 lines 19,20 and 24 an example of my recognition of the responsibility I have as a witness and how seriously I take that responsibility can be found. Here I state that I intend to tell the truth and strive to be objective. (see also ex.3 p.89-12-16 117-16,17,23,24) The defense attorney in this case, Ms. Grant, also refers to the head space vial in a variety of different ways ("those little glass containers" p.26-13,14 "glass vials like that" p.28-13 "...a jar,..." p.29-17). This makes the important point that I would make every effort to answer the question as it is asked given that I am able to understand the question in the context that it is asked.

Exhibit 2

This exhibit demonstrates a common feature for the 11 transcripts that are contained within the 20 exhibits, that there is no record of the direct examination. Eight of the 11 transcripts are excerpts of testimony offered in those proceedings. This does not afford the opportunity to see what was asked and answered on direct examination.

Ms. Grant makes the point on page 4 line 16 that "we see each other with some frequency..." as does Mr. Burleson in later exhibits (5,6). This familiarity plays an important part in that I have potentially answered very similar questions in prior proceedings. In this exhibit, I answer questions

about "...a vial of blood..." (p.18-9) and it is clear that the evidence is present in the courtroom and in hand (p.18-12-21). Once again, this makes the point that I would answer the questions as they are asked if I am able to understand them. I would not necessarily "correct" the attorney on their word choice, but would answer the question with the correct terminology. (see ex.3 p.17-21 and many more) There are times that it is necessary to ask for clarification. Examples of this can be found on pages 22-5, 31-22 and 33-15.

This is also the first exhibit where I am asked about switching vials (p.22-2-4). Even though the previous three pages (19-21) have concerned the instrument and head space vials, I still ask for clarification. Ms. Grant has the opportunity to indicate exactly what she means by the use of the word "vial". The same question is asked again on page 38 and, understanding it the same way, I give the same answer. Ms. Grant goes on to ask on page 22, "How would we know if you did?" which can be answered by the question asked by the prosecutor in exhibit 7 p.7-18,19 "So if there was any question about the result that you got, it could have been retested?" There have been occasions over the years that I have been made aware of the results of re-tests, but how many more have been done that I am not aware of?

This exhibit also establishes a common practice for me and that is to qualify samples as the blood taken from the gray-top tube, the head space vials themselves and the gas removed from the head space vials during the instrumental analysis. (see p. 22-15 23-10,11 24-15-17 28-13 28-25) The concept of samples will be important in the next exhibit.

Exhibit 3

This exhibit contains another use of the word "vial" by myself in reference to the gray-top tube. I initially refer to the gray-top tube being contained in the DPS blood kit on page 16 line 3. The prosecutor, Mr. Jones, then goes on to repeatedly refer to the gray-top tube as a vial. I am recorded reading from the Internal Chain of Custody Report and the Alcohol Analysis Worksheet. (p.17 6-8 also see attachments) The word "vial" does not appear on the version of the worksheet in use at the time this case was tested (3/2013). The word "vial" was added to the worksheet in the 11/2014 version which would have been in use for more than eight months at the time of this trial (7/16/2015). I would always take with me to every court appearance the specific records relating to the case being tried. Those records would include the two documents mentioned above plus the Alcohol Content Laboratory Report (an example is in ex.20), the Laboratory Submission form, the chromatograms resulting from the testing, the Blood Alcohol Batch List (attached) and any other administrative documentation contained in the file folder.

This exhibit also demonstrates a trait common to transcripts and that is they do contain errors. Just to list a few: p.18-15 "they" should be "the", p.19-12 "positioned" should be "position", p.20-7 "ethenol" should be "ethanol" and p.26-10 "or" should be "our". Although the transcript contains a certificate at the end, that does not mean that it is free from errors.

Mr. Stamper does ask me about making mistakes during the sample preparation. (p.40) He asks whether it is "very difficult", "impossible" and "has it happened" but then moves on without giving me the opportunity to answer. When asked later about mistakes I do offer that the quality action plan process would be followed. (p.88) This exhibit reinforces my use of the word "sample" in reference to things other than the gray-top tube. (see p.19-8,16 39-21 and many more) This is one of several reasons that there is some confusion when Mr. Stamper asks me later about the QAP and "switching samples". The samples, as I have defined them, have not been switched. It is not inaccurate to qualify the gray-top tube as a sample. It is a portion of that person's blood. It is simply not the way I would typically use the word "sample".

The use of the word "switch" also presented some confusion initially. The idea that I switched something sounds intentional, as if two people who are seated were to switch seats. That does not

happen by accident. Being that only two of the gray-top tubes were out of order, those two tubes did switch places. The QAP states "that the tubes were switched before the sampling of the evidence..." The phrase "sample switch" appears in a separate document, the Annual Laboratory Management System Survey (attached and defendant's exhibit 5 in this trial). It is there that the laboratory manager has characterized the incident as a sample switch. This survey first appears on page 91 line 9. It is clear starting with line 15 on the same page (and several pages that follow) that I am not familiar with the survey.

Mr. Stamper makes an important point on page 94 that the laboratory had provided documents to the DA's office in response to his request. This is further evidenced by the email discussion between myself and Mr. Jones. (see attachments) Once I became aware of how the laboratory manager had characterized the incident, I then answer that the incident did concern switching. (p.99 6,7 although I do answer that it concerns gray-top tubes and not vials) This is a very important point for a number of the other exhibits. While I was aware of the incident since it occurred, I did not recognize it as sample switching until I was presented with the survey in this trial on 7/16/2015.

Further confusion came from the fact that the QAP was assigned a QA Tracking number after its completion. This number is hand-written on both the QAP and the Quality Action Plan Supplement. For this reason, I did not identify with the QAP tracking number. Mr. Stamper also questions whether someone else's blood could be mistaken. (p.85) Again, the word mistaken to me means that I thought that it was someone else's. The gray-top tubes were not mistaken as a part of the incident. The gray-top tubes and the head space vials are all clearly labeled. That is why the preventative action in the QAP is to simply compare the numbers and why that action would be sufficient to prevent any further incidents.

This exhibit also demonstrates the demeanor of certain defense attorneys. Later exhibits will demonstrate that this is also true of Mr. Burlison. The judge in this case admonishes Mr. Stamper on a number of occasions for a variety of reasons. These range from asking compound questions, to asking broad questions, to being argumentative (and being asked to return to his seat), to straying from the intent of voir dire, to asking questions repeatedly. To Mr. Stamper's credit, he does apologize for not being clear. (ex.4 p.25-9) These actions are all part of the tactics that defense attorneys would use in order to vigorously defend their clients. Another tactic that is present in this exhibit (as well as others) is to misquote, misrepresent or simply make things up. A clear example of this is found on page 70 line 1 where Mr. Stamper tries to indicate that I had testified about fermentation when in fact I had not. Despite the defense attorney's demeanor, I remain respectful until the end continuing to address him as sir. (p.120)

Exhibit 4

Mr. Stamper touches on some of the same points in this exhibit as he had in the previous exhibit. One of those is the truth. (ex.3 p.89-15,16) He asks on page 12 lines 22-24 about the questions that are asked and about the truth coming out. The question doesn't make any sense the way that it is asked but I think the point that he is trying to make is that witnesses can only relay the truth about what they are asked about. A second point that is repeated is the idea of switching samples. With this trial coming after I became aware of the Annual Laboratory Management System Survey, I answer in the affirmative.

There is one additional point in this exhibit that I think is worth mentioning. On page 5 line 25 I indicate that I believe that records are important if they are related to that particular case. The incident in 2013 only directly involved two cases. So for those two cases the QAP would be important. The judge in this case goes through the process of determining what is relevant before it is admitted into evidence. (p.71) This cements the idea that only things that are relevant should be introduced.

Exhibit 5

This exhibit is similar to the previous exhibits just with Mr. Burleson as the defense attorney. He and I are very familiar with one another, him making the point immediately that he has cross examined me "a hundred times". (p.3 8-10) At the end of this exhibit it is clear that even the judge is familiar with me. (p.78) The wrong word appears on page 4 line 1 ("scientific" should be "scientist"). The error contained on page 52 line 11 is much more problematic as the sentence makes no sense the way it is typed. Mr. Burleson also offers on page 6 line 25 that I know that "sometimes he asks questions that are not clear." When asked questions about "vials" I answer using the correct terminology of gray-top tubes (p.19-5 p.49-3-6 p.52-7-9 p.55-4,5 etc.) I continue to refer to the head space vials as samples (p.14-16 p.15-13 etc.) Mr. Burleson is admonished for being argumentative on a couple of different occasions (p.57 and 64).

This exhibit does indicate when Mr. Burleson became aware of the QAP. He had stated that he would allow me some "leeway to explain" (p.68-14,15) having discussed the QAP the day before. When asked "so what if law enforcement didn't notify you of it?" (p.69-17,18), I answer that the evidence would still have been retested and the QAP would have been completed.

In this exhibit Mr. Burleson also introduces the concept of disconnect theory. (p.65-11) This concept is also presented in ex.6 p.58-18 and ex.8 p.24-18. Mr. Burleson contends that there is a disconnect between the results on the report and the appearance of his client in the video from the offense. This is addressed in Garriott's Medicolegal Aspects of Alcohol 6th ed. p. 429 (attached). Here the conclusion is "outward physical signs of intoxication do not correlate well with blood alcohol concentrations as measured by alcohol testing."

Exhibit 6

This exhibit contains my similar treatment of vials, gray-top tubes and samples. Mr. Burleson again brings up how familiar we are with one another and even asks me "you know where I am going with this?" (p.23-7,8) This transcript contains its own errors on pages 24 line 9 and page 58 line 18. Again, Mr. Burleson is admonished by the judge for being argumentative. (p.63)

This exhibit does contain a couple of unique things that I would like to address. On page 52 lines 9-11 a question is asked about whether I had "switched vials on a person". Having already testified about the QAP on direct (p.17), having been questioned by Mr. Burleson the week before regarding the QAP and having been handed the QAP during this proceeding (p.51) I received and answered the question in that context. The facts of the QAP had already been established under direct examination. From Mr. Burleson's line of questioning it is clear that he is not familiar with the QAP process that was in place in 2013. He also hints at a possible motive (p.63) when he indicates that he intends to obtain a copy of the record for this trial.

Exhibit 7

This exhibit is yet another example of an occasion where I am asked if I have switched samples (p.3-11) after 7/16/2015. My answer (p.3-16) is then about the gray-top tubes as stated in the QAP. Page 4 lines 5-7 contain perhaps the clearest evidence that I did discover the gray-top tubes out of order before receiving the call from the agency. I use the word "if" meaning that I am not aware of any indication that the results have been switched. The prosecutor makes the point in this case that "if there was any question about the result that you got, it could be retested?" (p.7 18-19)

Exhibit 8

This exhibit is similar in some respects to the others. I am asked about "vials" and I reply with tubes (p.6,7). There are obvious errors in the transcript (p.17-20 p.21-20 p.22-4 p.38-11). I clearly demonstrate the difference between gray-top tubes and head space vials (p.16-18-22). Mr. Burleson is admonished a number of times by the judge to use these terms correctly (p.28,29,33).

What is different about this exhibit is the judge actually asks me questions himself (p.20-22). The incident and the corrective and preventative action in the QAP could not be presented any clearer. There appears to be some confusion by Mr. Burleson as to whether certain roles/titles listed on the QAP were actually assigned. This topic comes up in ex.6 as well. I would not have the need to investigate my own incident since it happened to me. I did not ask or insist on being assigned any role/title. I simply completed the form as instructed. Subsequent revisions of the QAP forms removed the investigator designation completely.

Mr. Burleson then goes on to say, yet again, that he intends to get the transcript from the trial in Dallas Co. on 9/27/2016 (ex.6). This to me is a further indication of his motives. The judge goes on the record to point out that Mr. Burleson (nor Mr. Abel p.7) does not appear to be familiar with the QAP process. When I offered this idea to Mr. Burleson he indicated the thing that he was familiar with was Brady material. (p.35 20-21) This hearing comes to an end when the judge indicates that I have a right to an attorney and that I also have 5th Amendment rights. Exhibit 10, being in a different court before a different judge, ends very differently.

Exhibit 9

This particular transcript barely contains two pages of testimony from what Mr. Kumar indicated was perhaps an hour to an hour and a half in length. Even in these two pages it is clear that Mr. Kumar answers the questions in like fashion. When asked about "vials" and the kit (p.4-9) he answers with "tubes". (p.4-11) The judge sustains an objection of hearsay and speculation with regards to Mr. Burleson's questioning. Again on the subject of vials (p.5-5), Mr. Kumar produces an example of the head space vial. Mr. Kumar goes on to indicate that head space vials do not come in the DPS Blood kits. (p.5-9) This in my opinion is more scheming on the part of Mr. Burleson as will be seen in the next exhibit.

Exhibit 10

This particular exhibit stands out to me as the most concerning. The purported reason for the hearing on page 5 is "we have not gotten the whole story". After having questioned me in three previous proceedings (and the judge questioning me himself in one of them), this seems implausible. The judge agrees (p.6 10-15) with the prosecutor's argument that this is "not the proper avenue for this". (p.6 7-8) Mr. Burleson does clearly indicate his motive on page 6 line 21 when he states "to discipline a witness". It would seem that Mr. Burleson was not happy that the QAP had not been disclosed to him earlier than September of 2016 and that I am somehow to blame for it. The QAP is an internal quality document, owned by the DPS, which was disclosed to the laboratory's accrediting body as required. The laboratory has also provided it over 170 times to those that have requested it.

Mr. Burleson goes on to further identify his motives by referencing ex. 8 on page 33. He states "Yeah, the judge made me stop saying vials...Even though I knew what I was doing." Mr. Burleson seemed intent on asking me enough trick questions to catch me in my words. This is why I believe these circumstances are manufactured.

On pages 8 and 9 Mr. Burleson makes the point again that I knew of the contents of the QAP since it occurred in 2013. That being true, I did not recognize it as sample switching until 7/16/2015 when

I became aware of the Annual Laboratory Management System Survey. I make this point on page 9 lines 22-23. This also affects the question and answer on page 47 lines 7-10. I was aware of the incident on 7/15/2015 but not as switching. Mr. Burleson claimed I was asked if I had "switched vials" six times throughout this proceeding. (p.72) The question is asked in more than one way and I would distinguish between them with "vials on a person" having a different meaning (ex.6).

Mr. Burleson also insists on asking me about vials again even though the incident has already been discussed as tubes and samples. The judge goes on the record to say that scientists may have different definitions as to what gray-top tubes and vials might be. (p.13) Mr. Burleson then proceeds to read the portions of Mr. Kumar's testimony that he wants to, a practice known as optional completeness. This objection is sustained on p.65.

Once again, as in previous exhibits, the judge sustains an objection about Mr. Burleson's demeanor. (p.44) Again I remain respectful to the end continuing to address him as sir (p.69) This exhibit also contains a number of errors as do all of the others. (p.4-3 p.20-5 p.21-16 p.25-6 p.27-11 p.28-10 etc.)

This exhibit does contain the assertion of my 5th Amendment rights. (p.74) After defense counsel indicates "that now may be the time to get an attorney appointed", there is a discussion not recorded in the record. (p.74-8) The judge then advises me that I have the right to remain silent (which I now know I should have) and the right to an attorney. After indicating "yes" that I would like to talk to someone from my department, defense counsel is successful in chiding the judge into suggesting that I take the 5th. I was not aware at that time what exactly I was about to incriminate myself of. I don't know that I am aware today. It was my expectation that this hearing, having reached a similar point, would end the way the hearing did on 10/13/2016. (ex.8)

Exhibit 12

This transcript, from January 26, 2016, is the first chronologically to record an affirmative answer to the fact that I have "...mixed up the samples" (p.4-8 apart from the previously mentioned instance. ex.3 p.99-6,7) Again, this trial is taking place after 7/16/2015, the day that I became aware of the Annual Laboratory Management System Survey. The answers that I provide in this exhibit continue to support the ideas that I have presented in earlier exhibits. Namely, that I would differentiate between gray-top tubes and head space vials (p.5-6), that I believe the preventative action in the QAP is sufficient and effective (p.7-9-13) and that samples are something that I would prepare (p.7-12,13).

Exhibits 17-19

These three exhibits represent DPS publications or forms that contain the word "vial". The two publications (ex.17 and 18) are intended for use by our customers and are not things that I would rely on in the execution of my duties. Each of these exhibits has been revised since the date of the deposition removing any occurrences of the word "vial".

Exhibit 20

The word "vial" does appear in this document. It is used to reference positions on the Blood Alcohol Batch List. (attached)

There are a number of subjects that I want to address individually.

I was asked to clarify my answers to the questions regarding when I realized or knew that the results were wrong for the two affected cases in the QAP. I had the indication that the results could

be wrong when I discovered the tubes out of order. (ex.6 p.17,18) It is possible for the tubes to have gotten out of order after they were tested but before I placed them back into the kits. After the tubes are sampled from, they are consolidated into fewer racks to conserve refrigerator space. It is also possible that the person reviewing the cases had consulted the tubes during their review and changed the order of the tubes. Further indication that the results could be wrong came when the agency called concerning the results on the report that they had received. Their expectation of a no alcohol result and the fact that one of the results was no alcohol supported this. The confirmation that the results were indeed wrong came once the reanalysis of the affected cases was complete.

Quality Action Plan LOG 03-12 Version: 06 Effective Date: 12/05/2016 – While this version was not effective when the incident occurred in 2013, I was asked to address the first sentence in the second paragraph in section 1 Scope. The sentence reads:

This process is designed to encourage participation, open communication and un-biased assessments of quality incidents for the purpose of transparency and process improvement.

I believe that I accomplished these things in the open and immediate reporting of the incident to management. I believe the assessment is un-biased in that the facts contained in the QAP are exactly what happened. I believe the language in the QAP is clear and that the preventative action improved what was already a robust process, having only a single incident in the 15 years of using this process to that point in time.

Court Testimony Monitoring LOG 03-02 Version: 05 Effective Date: 12/05/2016 – I was asked to address sections 2.1 B. and D. which are:

- B. Testify in a manner which is clear, straightforward and objective;
- D. Avoid phrasing testimony in an ambiguous, biased or misleading manner;

I do believe that I have avoided offering testimony that is ambiguous, biased or misleading and that my testimony was objective. I am even recorded stating this as a goal in ex.3 page 117 line 23. I believe that my testimony was as straightforward as possible given that the questions are often asked in a manner that is not straightforward. (see ex.3 p.73-74) The clarity of my testimony may have been affected by the brevity of many of my answers. In an effort to be concise, I was often asked for clarification. This points out the conflict between wanting to address things fully while I have the opportunity (redirect may not address them) and not wanting to say too much knowing the defense attorney is likely to misrepresent my testimony. Having rarely had the opportunity to review transcripts of my testimony (I can recall two in 20 years), the only indication (evaluation forms and verbal and written communications with both prosecuting and defense attorneys) I had was that I was performing this duty satisfactorily.

I was also asked if I felt responsible for these circumstances. Implicit in that is the notion that there is something that I could have done to prevent these circumstances. I do not believe that is entirely possible. Although it may have been possible for me to offer the information about the incident in my testimony in 2015, there are still the issues of “sample switch” and the disclosure of the QAP. The laboratory first provided the QAP to Mr. Stamper in August 2014 and Ms. Grant appeared on tv with the QAP in December 2015. Why no one shared it with Mr. Burleson before September 2016 I do not know. Knowledge of the QAP or its presence are not necessary to establish the idea that a person is capable of making mistakes. This is demonstrated in ex.6 page17 lines 17-18. We are all human so the saying goes. Additionally, had I simply said “yes” to switching vials, I can imagine that being used to argue that I admitted to switching head space vials. (which has not happened) I believe that Mr. Burleson would still have sufficient motivation to manufacture a similar circumstance.

Attachments

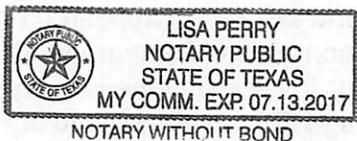
- Annual Laboratory Management System Survey for 2013.
- Blood Alcohol Batch List form L1D-FRM-BA-01.
- Request Reports for GAR-1304-05568 and GAR-1304-05569 for both the original analysis and the reanalysis showing when the reports were released and to whom.
- Email to Russell Jones, Assistant County & District Attorney for Ellis Co, concerning the documents provided in response to defense request.
- Alcohol Analysis Worksheet and Internal Chain of Custody Report for GAR-1303-03440.
- Email to Kenneth Evans on 5/16/2013.
- Statement of Qualifications.
- Courtroom training: Courtroom Performance Syllabus, Courtroom Testimony Techniques and two pages from the syllabus for The Robert F. Borkenstein Course on Alcohol , Drugs and Highway Safety, plus two slides, six pages total.
- Quality Action Plan LOG 03-12 Version 04 Effective Date: 3/11/2013.
- Garriott's Medicolegal Aspects of Alcohol 6th ed. p. 429.

I have read the above statement consisting of 43 page(s), which is based on my personal knowledge, and it is true and correct.

Christopher Younger

Subscribed and sworn to before me, the undersigned authority, on this the 27th day of January A.D. 2017.

[Signature]
Notary





TEXAS DEPARTMENT OF PUBLIC SAFETY
CRIME LABORATORY



Annual Laboratory Management System Survey

LAB-QA-32 Rev.00 (03/2010)

Laboratory	Garland		
Manager	James Nichols	Review Date	10/28/13

Comment on the following as they pertain to meeting laboratory goals and objectives:

1. *Workload and laboratory information (e.g., turn-around time, staffing, equipment, facility, outsource, subcontracts)*

The laboratory received a number of high profile homicide cases this year requiring a significant amount of analysis in the Biology/DNA, Firearms/Toolmark, Latent Print, and Trace Evidence Sections.

Controlled Substance

Cases Received – 7,833 (Avg 653/month)
Cases Completed – 5,670 (Avg 473/month)
Backlog – 5,613

Four forensic scientists are approved for all controlled substance analysis. Catalina Cuervo, Meagan Richey, Danny Taylor, and Katina Campbell were employed with DPS this period. Catalina Cuervo has transferred to the Corpus Christi lab and Danny Taylor has transferred to the Austin lab. Jose Martinez transferred to the Austin Lab and Juan Campos was separated from the Department. Three forensic scientists (David Eckre, Reina Davidson, and Rene Eckelkamp) are currently in training in the Austin lab and scheduled to begin work in Garland in December 2013. The Controlled Substance section needs at least 11 forensic scientists to meet the current case load and the 30 day expectation. This will require two additional FTE's. The section supervisor regularly communicates with the larger counties to prioritize cases to be completed in time for the attorneys. The lab continues to receive numerous requests for quantitations. Additionally, a Technician would be beneficial for this section in the preparation of reagents, instrument maintenance, and evidence movement. A new GC will be needed to replace the one currently being used for quantitations. Also, a Waters LC/MS would be a beneficial addition to the section to assist in quantitations.

Blood Alcohol

Cases Received – 6,038 (Avg 503/month)
Cases Completed – 5,926 (Avg 494/month)
Backlog – 386

Two forensic scientists are approved for blood alcohol analysis and have done a superb job in completing the requests in 30 days. Samuel Salinas was employed with DPS this period and has transferred to the Austin lab. Nirav Kumar has been employed and started training in Garland to work in the Blood Alcohol section. The addition of a third forensic scientist will greatly help this section. The number of court appearances for the two forensic scientists is a concern that will be mitigated with the third forensic scientist.

Biology/DNA

New Requests – 2,291 (Avg 190/month)
Completed – 1,919 (Avg 160/month)
Backlog – 1,270

Ten forensic scientists are approved for biological screening and/or DNA analysis. Melissa Haas was hired as the Regional Section Supervisor. Christie Cheng and Amelia Dowhower were hired as forensic scientists during this period and are approved for case work. Catharine Worthen transferred to Garland from the Weslaco lab. Trisha Kacer was selected as the Forensic DNA Specialist and Uyen Henson transferred to the Garland Quality Assurance Specialist. Drew Dean was hired as the DNA Section Technician. Four forensic scientists (Chelsy Wingate, Kristen Cossota, Ben Habdas, and Shauna Schoonover) are currently in training. Misty Simons and Holly Oommen resigned from DPS during their DNA training, and Kathleen McKinney transferred to the Houston lab. Amber Moss functions as the Local CODIS Administrator for which these duties consume a majority of her time. It would be beneficial to designate this as a separate position.



TEXAS DEPARTMENT OF PUBLIC SAFETY
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Laboratory	Garland
Date of Review	10/28/13

Firearm/Toolmark

Cases Received – 198 (Avg 17/month)
Completed – 218 (Avg 18/month)
Backlog – 20

Two forensic scientists are approved for firearm/toolmark analysis. Kristina Goodson resigned from DPS in this period and Kevin Callahan transferred to Garland from the Lubbock lab. A NIBIN unit was installed during this period and there have been 5 hits since the installation.

Trace

Cases Received – 261 (Avg 22/month)
Completed – 221 (Avg 18/month)
Backlog – 103

Two forensic scientists are approved for all of the sub-disciplines conducted in Garland. Lindsey Bynum and Angel Rios were employed by DPS and are currently in training in Garland to work in the Lubbock lab. Their anticipated completion of training is June 2014. Until their training is complete the Garland lab is working cases for the Lubbock Regional lab. Additionally, the Tarrant and Dallas county labs have limited Trace service offered. The Trace section has been able to manage the current work load. A new MSP (Foster Freeman) will be needed for Garland since the one currently being used will be sent to the new Lubbock Regional lab.

Latent Print

Cases Received – 242 (Avg 20/month)
Completed – 205 (Avg 17/month)
Backlog – 90

Two forensic scientists are approved for Latent Print processing and comparison. Courtney Wassung transferred to Garland after training in the Austin Lab. The section is able to manage the current work load.

Evidence Coordination

The Garland lab has five Crime Lab Specialists that receive, return, transfer, and destroy evidence. The evidence techs received 16,863 cases which averages to 1,405/month this period. The lab continues to receive large destruction-only cases that require storage here until the Sharps facility is available to conduct the destruction. The section will greatly benefit with the hiring of an Admin Tech to assist with the ORR and general administrative duties in the front office.

2. *Identify and review the managerial and supervisory reports, including budgets relating to the laboratory and noted observations (e.g., trends, strengths, weaknesses, needs)*

The budge was sufficient for FY 2013 to obtain consumables and maintain equipment. The lab greatly benefits from the use of grant money available to maintain the consumable and equipment for the DNA Section. The FY 2014 budget will need to have funds available for the new equipment in the Trace and Controlled Substance Sections as outlined above.

3. *Proficiency testing (e.g., trends, strengths, weaknesses)*

Quarterly Controlled Substances Re-examinations were completed in June and September 2013 in compliance with LOG-05-04, Section 2.2.A.

There were no issues regarding the proficiency tests for the year.

Several new proficiency tests are available or will become available in the near future. FTS now provides proficiency tests for fabric damage, quantitative chemical analysis and tire impressions. CTS is providing proficiency tests for adhesive tape, latent print processing and blood drug and urine drug analyses. In 2014, CTS will also be providing a proficiency test for DNA interpretation and Technical Review only.



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4. *Outcome of internal audit activities and identify areas of improvement for laboratory consideration*

A Safety Audit was conducted on 06/06/2013. One eye wash and one safety shower did not meet specifications. These were serviced. A fire drill was conducted in March 2013 and all fire safety devices functioned properly.

The Evidence Audit of the Main Vault was conducted on 10/21/2013 and revealed errors in the filing of evidence. Of the 407 items of evidence that were checked, 23 items were either in the wrong location or scanned to the wrong location. One item had the wrong barcode label for that evidence. Therefore, 6% of the evidence inspected had errors.

An area for improvement would be to develop a method for filing evidence where they would be placed in the correct locations in the main vault.

5. *Accreditation, inspection, and/or audit reports prepared by the external bodies identify areas of improvement for laboratory consideration*

No external inspection was conducted between 09/01/2012 and 08/31/2013.

6. *Corrective and preventive actions related to the laboratory and identify areas of improvement for laboratory consideration (e.g., trends, strengths, weaknesses)*

Between 09/01/2012 and 08/31/2013, the Garland Crime Lab issued 15 QAPs. This is a 46% decrease from the previous year's 28 QAPs.

Blood Alcohol – QAP #823: Sample switch resulting in wrong results reported.

Controlled Substances – QAP #665: Results reported as "Contains Dihydrocodeine" instead of "Contains Dihydrocodeinone." QAP #692: One analyst was documenting that the autotunes were passing when they did not meet the "pass" criteria.

Evidence Coordination – QAP #673: Evidence in an envelope was dropped which contained a glass container of liquid. QAP #798: Evidence was returned to the wrong agency.

Latent Prints – QAP #766: Report released stated that "No latent prints were developed" instead of "No suitable latent prints."

DNA – QAP #611: Contamination of sample by analyst; sample was depleted and could not be re-extracted. QAP #630: Report released incorrectly stated that the evidence was from the suspect and not the victim. QAP #652: DNA profile was consistent with the Trace analyst. QAP #653: Contamination between evidence from two different cases during the collection of the samples. QAP #689: Analyst had inconsistent results on the screening of the proficiency test. QAP #694: Reanalysis of a sexual assault case from one analyst determine that a spermatozoan was present when the analyst reported that no semen was detected. QAP #794: Reagent blank contamination possibly from the consumable. QAP #797: Differential extraction yielded no results in sperm cell fractions; samples were re-extracted. QAP #799: Reagent blank contamination from the analyst performing the Tecan extraction.

Between 09/01/2012 and 08/31/2013, the Garland Crime Lab issued 63 Amended Reports. Eight were technical errors and 55 were non-technical corrections.

An area for improvement for the Evidence Coordination section is the evidence return process. From 09/01/2011 to 08/31/2012, three QAPs were issued for returning evidence to the wrong agency. Another QAP for the same issue was written this past fiscal year (QAP #798).



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7. *Identify laboratory deviations to policies and procedures and their suitability and need for continual use of deviation*

Garland Crime Lab deviations that can be rescinded include the following:

Dev-L1D-MAIN-GCMS-2010-0709-2010-0826, Dev-L1D-BA-02-01-2010-1112, and Dev-L1D-CS-01-02A-2005-0531. Dev-L1D-DNA-02-07-2010-0802-2010-0826, Dev-L1D-LOG-04-01-2008-1222, and Dev-L1D-SAF-01-01-2008-1222: Issues have been resolved.

Dev-L1D-LOG-01-02-2011-0411 and Dev-L1D-LOG-03-03-2011-0411: Applied only to Manuel Valadez.

Dev-L1D-TE-07-08-2012-0110: Deviation applied to only one case.

All current Garland Deviations regarding Oil Red O can be rescinded as Oil Red O has been incorporated into the LP SOP. (Dev-GAR-LP-01-05-2012-0822, Dev-GAR-LP-02-01A-2012-0822, Dev-GAR-LP-02-05-2012-0822, DEV-GAR-LP-02-06-2012-0822 and Dev-GAR-LP-02-17-2012-0822)

8. *Suitability of laboratory policies and procedures for all disciplines and general documents for laboratory consideration*

The Garland Crime Lab local documents were evaluated and the following require further review:

GAR-INS-Balances, GAR-Main-Balances, GAR-POL-AppointmentOfDeputy, GAR-POL-Evacuation, GAR-POL-Evidence Storage, GAR-POL-HardCopiesMicrofilmCases, GAR-POL-LostEvidenceOrFiles, GAR-POL-Photographs, GAR-POL-Security, GAR-PRO-CSR-VehicleProcessing, GAR-PRT-CaseFolderDesignations, GAR-PRT-DestructionOfEvidence, GAR-PRT-DestructionOnlySubmissions, GAR-PRT-QCRecordsLocation

GAR-MAIN-FTM-BulletRecoveryTank and GAR-MAIN-FTM-FiringRange: Unnecessary and involve procedures that may be hazardous. These were rescinded.

GAR-INS-37 – No longer needed; GAR-INS-SPME – Was moved to drug section folder; GAR-INS-15,38 and GAR-FRM-TE-01.

GAR-Main-BAGC70, GAR-INS-148 and GAR-INS-20

GAR-POL-LP on Drug Evidence is currently being rewritten for clarification.

9. *Customer surveys, customer complaints, and other feedback from the customer (e.g., trends, strengths, weaknesses)*

Customer survey indicates that laboratory personnel are helpful in person and on the phone. It will be beneficial to more actively solicit customer surveys similarly to the testimony evaluations. An online survey tool (such as Survey Monkey) would be useful to obtain valuable information to address issues from our customers. In addition, I have met in person with the Smith County, Dallas County, and Ellis County District Attorney's offices to discuss the services provided by the lab.

10. *Other relevant factors that have impacted the management system (e.g., quality control activities, resources and staff training)*

The Garland lab will benefit with the addition of a Quality Assurance Specialist that can focus on the organization of QA documents and the overall Quality System of the laboratory.



Texas Department of Public Safety
Crime Laboratory



Blood Alcohol Batch List

LID-FRM-BA-01

Date Started:

GC Equipment # 83

Analyst: Chris Youngkin

Completion:

Pipette Equipment # 160

Reviewer: _____

Diluter Equipment # 149

Sample Name	Sample 1			Sample 2			Low	High	Agreement
	Vial	Channel 1	Channel 2	Vial	Channel 1	Channel 2			
Mixture	01								
Water Blank	02								
Calibration #FN10281510	03								
Calibration #FN10281510	04								
0.01 Std Lot #FN10241403	05						0.0000	0.0000	0.0000
0.50 Std Lot #FN07031402	06						0.0000	0.0000	0.0000
0	07			51			0.0000	0.0000	0.0000
0	08			52			0.0000	0.0000	0.0000
0	09			53			0.0000	0.0000	0.0000
0	10			54			0.0000	0.0000	0.0000
0	11			55			0.0000	0.0000	0.0000
0	12			56			0.0000	0.0000	0.0000
0	13			57			0.0000	0.0000	0.0000
0	14			58			0.0000	0.0000	0.0000
0	15			59			0.0000	0.0000	0.0000
0	16			60			0.0000	0.0000	0.0000
0.08 Std Lot #FN10281510	17			61			0.0000	0.0000	0.0000
0	18			62			0.0000	0.0000	0.0000
0	19			63			0.0000	0.0000	0.0000
0	20			64			0.0000	0.0000	0.0000
0	21			65			0.0000	0.0000	0.0000
0	22			66			0.0000	0.0000	0.0000
0	23			67			0.0000	0.0000	0.0000
0	24			68			0.0000	0.0000	0.0000
0	25			69			0.0000	0.0000	0.0000
0	26			70			0.0000	0.0000	0.0000
0	27			71			0.0000	0.0000	0.0000
0.08 Std Lot #FN10281510	28			72			0.0000	0.0000	0.0000
0	29			73			0.0000	0.0000	0.0000
0	30			74			0.0000	0.0000	0.0000
0	31			75			0.0000	0.0000	0.0000
0	32			76			0.0000	0.0000	0.0000
0	33			77			0.0000	0.0000	0.0000
0	34			78			0.0000	0.0000	0.0000
0	35			79			0.0000	0.0000	0.0000
0	36			80			0.0000	0.0000	0.0000
0	37			81			0.0000	0.0000	0.0000
0	38			82			0.0000	0.0000	0.0000
0.08 Std Lot #FN10281510	39			83			0.0000	0.0000	0.0000

Mixture Prep Date: NK 10/05/16

Internal Standard: NK 10/04/16



Texas Department of Public Safety
Crime Laboratory

Blood Alcohol Batch List

LID-FRM-BA-01

Date Started:

GC Equipment # 83

Analyst: Chris Youngkin

Completion:

Pipette Equipment # 160

Reviewer: _____

Diluter Equipment # 149

Sample Name

Sample Name	Sample 1			Sample 2			Low	High	Agreement
	Vial	Channel 1	Channel 2	Vial	Channel 1	Channel 2			
0	40			84			0.0000	0.0000	0.0000
0	41			85			0.0000	0.0000	0.0000
0	42			86			0.0000	0.0000	0.0000
0	43			87			0.0000	0.0000	0.0000
0	44			88			0.0000	0.0000	0.0000
0	45			89			0.0000	0.0000	0.0000
0	46			90			0.0000	0.0000	0.0000
0	47			91			0.0000	0.0000	0.0000
0	48			92			0.0000	0.0000	0.0000
0	49			93			0.0000	0.0000	0.0000
0.08 Std Lot # 28082014-B	50			94			0.0000	0.0000	0.0000

REQUEST REPORT

Laboratory Case #: GAR-1304-05568
Request #: 0001
Requesting Agency: ANNA PD
Anna Police Department

Alcohol Content and Toxicology

Status: Admin. Reviewed

MILESTONES

Requested On: 04/29/2013 by Chris Reeves (labresults@annatexas.gov)

Due Date: 06/10/2013

Assigned On: 05/03/2013 to Chris Youngkin

Marked Draft Complete On: 05/09/2013

Tech Reviewed On: 05/16/2013 by Samuel Salinas

Admin Reviewed On: 05/16/2013 by Samuel Salinas

Released On: 05/16/2013

Distributed On:

Requestor Note:

Assignor Note:

Reviewer Note:

CC List

ADMINISTRATIVE LICENSE REVOCATION (ALR)

Austin ALR (ALRBAC@dps.texas.gov)

ADMINISTRATIVE LICENSE REVOCATION (ALR)

Austin ALR (ALRBAC@dps.texas.gov)

REQUEST REPORT

Laboratory Case #: GAR-1304-05568
Request #: 0001_0001
Requesting Agency: ANNA PD
Anna Police Department

Amended Alcohol

Status: Admin. Reviewed

MILESTONES

Requested On: 05/20/2013 by Chris Reeves (labresults@annatexas.gov)

Due Date:

Assigned On: 05/20/2013 to Andrew Macey

Marked Draft Complete On: 05/20/2013

Tech Reviewed On: 05/22/2013 by Kenneth Evans

Admin Reviewed On: 05/22/2013 by Kenneth Evans

Released On: 05/22/2013

Distributed On:

Requestor Note:

Assignor Note:

Reviewer Note:

CC List

Collin County District Attorney's Office

DA Collin (dalabreport@co.collin.tx.us)

ADMINISTRATIVE LICENSE REVOCATION (ALR)

Austin ALR (ALRBAC@dps.texas.gov)

ADMINISTRATIVE LICENSE REVOCATION (ALR)

Austin ALR (ALRBAC@dps.texas.gov)

REQUEST REPORT

Laboratory Case #: GAR-1304-05569
Request #: 0001
Requesting Agency: CLEBURNE THP
Texas Highway Patrol

Alcohol Content and Toxicology

Status: Admin. Reviewed

MILESTONES

Requested On: 04/29/2013 by William Fowler (william.fowler@dps.texas.gov)

Due Date: 06/10/2013

Assigned On: 05/03/2013 to Chris Youngkin

Marked Draft Complete On: 05/09/2013

Tech Reviewed On: 05/16/2013 by Samuel Salinas

Admin Reviewed On: 05/16/2013 by Samuel Salinas

Released On: 05/16/2013

Distributed On:

Requestor Note:

Assignor Note:

Reviewer Note:

CC List

Johnson County District Attorney's Office

DA Johnson (labs@johnsoncountytexas.org)

ADMINISTRATIVE LICENSE REVOCATION (ALR)

Austin ALR (ALRBAC@dps.texas.gov)

ADMINISTRATIVE LICENSE REVOCATION (ALR)

Austin ALR (ALRBAC@dps.texas.gov)

REQUEST REPORT

Laboratory Case #: GAR-1304-05569
Request #: 0001_0001
Requesting Agency: CLEBURNE THP
Texas Highway Patrol

Amended Alcohol

Status: Admin. Reviewed

MILESTONES

Requested On: 05/20/2013 by William Fowler (william.fowler@dps.texas.gov)

Due Date:

Assigned On: 05/20/2013 to Andrew Macey

Marked Draft Complete On: 05/20/2013

Tech Reviewed On: 05/22/2013 by Kenneth Evans

Admin Reviewed On: 05/22/2013 by Kenneth Evans

Released On: 05/22/2013

Distributed On:

Requestor Note:

Assignor Note:

Reviewer Note:

CC List

ADMINISTRATIVE LICENSE REVOCATION (ALR)

Austin ALR (ALRBAC@dps.texas.gov)

ADMINISTRATIVE LICENSE REVOCATION (ALR)

Austin ALR (ALRBAC@dps.texas.gov)

Johnson County District Attorney's Office

DA Johnson (labs@johnsoncountytexas.org)

Youngkin, Christopher

From: Youngkin, Christopher
Sent: Friday, July 10, 2015 7:17 AM
To: 'Russell Jones'
Subject: RE: Henry Lewis Byrd (Trial July 15th, 2015)

I was able to locate the information. I can look over it and we can talk about it. I may be off to court Monday afternoon so let's not wait too long.

Also, when do you envision me actually testifying? It looks like I have a number of cases going next week in Collin, Denton and Tarrant counties so we will need to be spot on with the scheduling.

From: Russell Jones [mailto:russell.jones@co.ellis.tx.us]
Sent: Thursday, July 09, 2015 4:25 PM
To: Youngkin, Christopher
Subject: RE: Henry Lewis Byrd (Trial July 15th, 2015)

Mr. Youngkin:

We provided the defense with a standard litigation packet in this case. I am hoping you are familiar with the information contained therein. Would you be able to obtain that information with respect to this particular case and look it over in time to speak with me on the phone about it on Monday? I am hoping you wouldn't have to compile it again since someone from your lab already did so. Basically, I am wanting to see if you notice any red flags that Ms. Arvisu could use to attack the test's reliability. Things such as expired materials and inaccurate maintenance logs would be examples of what she looks for and testifies to. I would greatly appreciate it.

Sincerely,

Russell L. Jones III

Assistant County & District Attorney
Ellis County & District Attorney
Ellis County Courts Building
109 S. Jackson, 4th Floor
Waxahachie, TX 75165
972-825-5204
Fax 972-825-5047
russell.jones@co.ellis.tx.us



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From: Youngkin, Christopher [mailto:Christopher.Youngkin@dps.texas.gov]
Sent: Wednesday, July 01, 2015 1:52 PM
To: Russell Jones
Subject: RE: Henry Lewis Byrd (Trial July 15th, 2015)

I have seen her name recently. A fellow employee in our Austin lab sent me her resume and a transcript of her testimony from a case in New Mexico. I would ordinarily answer those questions, but I guess it may depend on what the questions are as to whether I have an answer or not.

Look forward to meeting with you next week.

Chris Youngkin

Forensic Scientist
Crime Laboratory Service
Texas Department of Public Safety
(214)861-2190 (main)
(214)861-2317 (direct)
(214)861-2194 (fax)

E-MAIL CONFIDENTIALITY STATEMENT

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Disclaimer

This e-mail contains the thoughts and opinions of (employee name) and does not represent official Texas Department of Public Safety's policy.

From: Russell Jones [mailto:russell.jones@co.ellis.tx.us]
Sent: Wednesday, July 01, 2015 1:35 PM
To: Youngkin, Christopher
Subject: Henry Lewis Byrd (Trial July 15th, 2015)

Mr. Youngkin:

I am the prosecutor on an upcoming trial on July 14th, 2014. The lab report number is GAR 1303-03440. I wanted to touch base first so that you can have my information to contact me with questions and to let you know that you should expect to be contacted by myself or my investigator to schedule a time most likely next week where we can meet to discuss the blood results and you testimony.

Also, I have notice that the defense may call Janine Arvisu. She is an "expert" they plan to call to testify that your results are unreliable based on her training in quality assurance and quality control and her review of the standard litigation packet produced in this case. Is there someone there at the lab that can testify to the proper protocols for maintenance of equipment, testing materials, and anything else involving quality assurance?

Thanks,

Russell L. Jones III
Assistant County & District Attorney
Ellis County & District Attorney
Ellis County Courts Building
109 S. Jackson, 4th Floor

Waxahachie, TX 75165
972-825-5204
Fax 972-825-5047
russell.jones@co.ellis.tx.us



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TEXAS DEPARTMENT OF PUBLIC SAFETY
CRIME LABORATORY

Lab Case # **GAR-1303-03440**

Analyst **Chris Youngkin** *cy*

Date Started **3/29/13**

Date Completed **4/1/13**

Alcohol Analysis Worksheet

LAB-BA-01 Rev.01 (08/2011)

Total # of pages **3**

Evidence

Subject's Name (Submission form):

Henry Lewis Byrd

Evidence Container:

Box Tube Envelope

Other _____

Specimen: Gray Top Other _____

Sealed: Yes No

Specimen Label: None Same as Submission Form

Type/Amount

Blood
 Urine
 Serum
 Vitreous
 Other

Condition
 Normal Thick Clotted
Other _____

Approx. Amount
 Full 3/4 1/2 1/4 <1 mL
Other _____

Additional Notes

Measurement Uncertainty (at 99.7% confidence):
Reported Ethanol Result ± (9.4% * Reported Ethanol Result)

Results

Reported Ethanol Results **0.163** grams per **100** mL

BAC 1	
Run 1	0.1643
Run 2	0.1629

BAC 2	
Run 1	0.1647
Run 2	0.1638

Other Volatiles: _____

Disposition

Drug Screen Request:

Yes No

Not sent for drug screen; alcohol content ≥0.100g/100ml

Disposition Note:

Retain Drug Screen Return
Other **URETAIN**

Analysis Method

Heated Head-Space Gas Chromatography

Sample Preparation:

200 ul sample, 1.4ml NaCl/n-Propanol

Instrument: Shimadzu GC 2010 with AOC-5000 Autoinjector

Equipment #70 Equipment #83

GC Columns:

- RTX BAC-1 30 meters 0.53mm i.d. 3 µm film
- RTX BAC-2 30 meters 0.53mm i.d. 2 µm film

Column Conditions:

Oven Temperature 40 °C
Column Flow Rate 10 cc/min
Injection Temperature 200 °C
Detector Temperature 210 °C

Autosampler Program:

Sample Temperature 60 °C
Sample Volume 1 ml
Syringe Temperature 90 °C
Injections per vial 1
Thermostating Time 12 min
GC Cycle Time 6 min

INTERNAL CHAIN OF CUSTODY REPORT

GAR-1303-03440

GLENN HEIGHTS PD

LIMS #: 01

Agc Item #:

Description: PS DPS Blood Kit

Evidence Notes:

Current Container: Not enclosed in another container

<u>From</u>	<u>LAB</u>	<u>To</u>	<u>LAB</u>	<u>Date/Time</u>	<u>Notes</u>
Howard, Kevon		McDonald, Louise		03/14/2013 10:57:57AM	VIA In Person
McDonald, Louise	GAR	FRIG - PENDING	GAR	03/14/2013 10:57:59AM	
FRIG - PENDING	GAR	Youngkin, Chris	GAR	04/01/2013 02:00:36PM	
Youngkin, Chris	GAR	RETURN MV	GAR	04/08/2013 02:32:19PM	
RETURN MV	GAR	Leal, Jesus	GAR	04/08/2013 04:03:52PM	
Leal, Jesus	GAR	1112	GAR	04/08/2013 04:03:54PM	
1112	GAR	Posey, Lynda	GAR	05/17/2013 10:58:57AM	
Posey, Lynda	GAR	Howard, Kevon	GAR	05/17/2013 10:58:59AM	

Youngkin, Christopher

From: Youngkin, Christopher
Sent: Thursday, May 16, 2013 10:27 AM
To: Evans, Kenneth
Subject: talk to you

Importance: High

Is it possible to talk to you privately in the BA room. Soon.

Chris Youngkin

Forensic Scientist

Crime Laboratory Service

Texas Department of Public Safety

(214)861-2190 (main)

(214)861-2317 (direct)

(214)861-2194 (fax)

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TEXAS DEPARTMENT OF PUBLIC SAFETY
 CRIME LABORATORY
Statement of Qualifications

LAB-QA-35 Rev.00a (01/2016) p.2 Issued by: QAC



Name	Chris Youngkin	Date	1/13/2017
Laboratory	Texas DPS Crime Laboratory Garland		
Job Title	Forensic Scientist IV		

Forensic Testing Categories

N/A (non-testing activities)

List all disciplines and category(ies) of testing in which you conduct casework:

- Drug Chemistry** Controlled Substances Quantitative Analysis General Chemical Testing
 Clandestine Laboratory Analysis
- Toxicology** Human Performance Forensic: Toxicology Blood/Urine Alcohol
 Post-Mortem Forensic Toxicology
- Trace Evidence** Paint Fibers and Textiles Glass Hair Impression Evidence Gunshot Residue
 General Physical and Chemical Analysis
- Biology** Body Fluid Identification DNA Nuclear Individual Characteristic Database
- Firearms/Toolmarks** Firearms Individual Characteristic Database Toolmarks Serial Number Restoration
- Questioned Documents** Document Examination
- Latent Prints** Latent Print Processing Latent Print Comparison
- Digital & Multimedia** Computer Forensics Video Analysis Audio Analysis

Breath Alcohol Calibration Categories

N/A (non-calibration activities)

List all disciplines and category(ies) of calibration in which you conduct work:

- Toxicology** Breath Alcohol Measuring Instruments (Calibration)
 Breath Alcohol Reference Material (Calibration)

List additional categories of testing you have been qualified to perform:

--

Education: List all higher academic institutions attended (list high school only if no college degree has been attained)

Institution	Dates Attended	Major	Degree Completed
Texas A&M University	8/91-5/95	Chemistry	BS

Courtroom Experience: List the discipline/category(ies) in which you have qualified to testify as an expert witness and indicate over what period of time and approximately how many times you have testified in each.

Testified as an expert in controlled substances and blood alcohol determination since 1997 in excess of 400 times.
--

Certifications: List certifications held, the issuing body, and dates certified.

--

Professional Affiliations: List any professional organizations of which you are or have been a member. Indicate any offices or other positions held and the date(s) of these activities.

Southwestern Association of Forensic Scientists (SWAFS), regular member International Association for Chemical Testing (IACT), regular member
--



TEXAS DEPARTMENT OF PUBLIC SAFETY
 CRIME LABORATORY
Statement of Qualifications

LAB-QA-35 Rev.00a (01/2016) p.2 Issued by: QAC

Name	Chris Youngkin	Date	01/13/2017
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(Continued)

Employment History: List all scientific or technical positions held, particularly those related to forensic science. Be sure to indicate employer and give a brief summary of principal duties and tenure in each position. (List current position first)

Job Title: Forensic Scientist	Tenure: 10/96-present
--------------------------------------	------------------------------

Employer: Texas DPS

Provide a brief description of principal duties:

Receive evidence from and return evidence to law enforcement agencies, maintain the chain of custody for said evidence, analyze said evidence for the presence of controlled substances, dangerous drugs and other compounds of interest, determine blood alcohol concentration, prepare reports reflecting the results of said analysis, testify in court about said results as needed and prepare contraband for destruction.

Job Title:	Tenure:
-------------------	----------------

Employer:

Provide a brief description of principal duties:

Job Title:	Tenure:
-------------------	----------------

Employer:

Provide a brief description of principal duties:

Job Title:	Tenure:
-------------------	----------------

Employer:

Provide a brief description of principal duties:

Job Title:	Tenure:
-------------------	----------------

Employer:

Provide a brief description of principal duties:

Other Qualifications: List below any scientific publication and/or presentation you have authored or co-authored, research in which you are or have been involved, academic or other teaching positions you have held, any awards you have received, and any other information which you consider relevant to your qualification as a forensic scientist. (Use additional sheets if necessary).

Publication/Presentation

Research

Academic/Teaching Positions

Awards

Other

Other Training: List continuing education, workshops, in-service and formal training received.

Course Title, Source, and Date
<u>Basic Forensic Drug Analysis</u> , Headquarters Laboratory, Austin, Texas, October 28 – December 27, 1996.



TEXAS DEPARTMENT OF PUBLIC SAFETY
CRIME LABORATORY

Statement of Qualifications

LAB-QA-35 Rev.00a (01/2016) p.2 Issued by: QAC



Name	Chris Youngkin	Date	01/13/2017
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(Continued)

Forensic Chemist Seminar, Drug Enforcement Agency, Fairfax, Virginia, March 3-7, 1997.

Physiology of Alcohol, Training Academy, Headquarters, Austin, Texas, February 2-3, 1998.

An Overview of Forensic Science, Southwestern Association of Forensic Scientists, South Padre Island, Texas, April 20-23, 1998.

Courtroom Performance, Southwestern Association of Forensic Scientists, South Padre Island, Texas, April 20-23, 1998.

Headspace Alcohol Determination, Texas Department of Public Safety Garland Laboratory, Garland, Texas, Spring 1998.

Forensic Drug Chemists Workshop, Texas Department of Public Safety, Austin, Texas, June 29-July 1, 1999.

Basic Crime Scene Investigation, University of North Texas Police Academy, Denton, Texas, March 13-15, 2000.

Spectroscopic Solutions Seminar, Nicolet Instruments, Double Tree at Lincoln Center, Dallas, Texas, May 10, 2000.

Agilent GC/MS User's Meeting, Agilent Technologies, Omni Hotel, Richardson, Texas, May 24, 2000.

Capillary Chromatography, Restek Corporation, Holiday Inn Select DFW North, Irving, Texas, September 20, 2000.

Clandestine Drug Labs, University of North Texas Police Academy, Denton, Texas, April 21, 2001.

Courtroom Testimony Techniques: Success Instead of Survival, seminar presented by Ron Smith, Texas Department of Public Safety, Austin, Texas, August 13-14, 2001.

Basic Clandestine Laboratory Safety Training, Texas Department of Public Safety, Austin, Texas, April 21-25, 2003.

Overview of PCP, Harry Skinner, DEA Southwest Laboratory, Dallas, Texas, August 1, 2003.

Clandestine labs in the Ft. Worth Area, Southwestern Association of Forensic Scientists, Ft. Worth, Texas, November 3, 2003.

Anhydrous Ammonia Analysis and ID, Southwestern Association of Forensic Scientists, Ft. Worth, Texas, November 3, 2003.

GHB Analysis, Southwestern Association of Forensic Scientists, Ft. Worth, Texas, November 4, 2003.



TEXAS DEPARTMENT OF PUBLIC SAFETY
CRIME LABORATORY

Statement of Qualifications

LAB-QA-35 Rev.00a (01/2016) p.2 Issued by: QAC



Name	Chris Youngkin	Date	01/13/2017
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(Continued)

The Use of GC/MS in Modern Drug Analysis, Lynn Griffin, DEA Southwest Laboratory, Dallas, Texas, December 4, 2003.

Forensic Photography, Ed Hueske, East Texas Police Academy, Kilgore, Texas, May 26-28, 2004.

GC/MS Data Acquisition and Data Analysis, Agilent Training Seminar, Austin, Texas, September 28-30, 2004.

GC/MS Data Acquisition and Data Analysis, Agilent Training Seminar, Houston, Texas, July 27-29, 2005.

Clandestine Laboratory Updates, DEA Training Seminar, Dallas, TX, September 29, 2005.

Tryptamines, DEA Training Seminar, Dallas, TX, May 15, 2006.

The Robert F. Borkenstein Course on Alcohol and Highway Safety: Testing, Research and Litigation, Indiana University, Bloomington, IN, May 21-26, 2006.

Capillary Electrophoretic Analysis of Clandestine Methamphetamine Laboratory Evidence, Washington State Patrol Crime Lab, Seattle, WA, August 6-8, 2007.

Crime Scene, Southwestern Association of Forensic Scientists, Austin, Texas, October 8-9, 2007.

Myth of Fingerprints, Southwestern Association of Forensic Scientists, Austin, Texas, October 10, 2007.

Quantitative Method Validation, Southwestern Association of Forensic Scientists, Little Rock, AR, September 25, 2008.

Uncertainty of Measurement, Southwestern Association of Forensic Scientists, Little Rock, AR, September 22, 2008.

Utilization of LCMS in Forensic Toxicology, Southwestern Association of Forensic Scientists, Little Rock, AR, September 24, 2008.

Ethics in Forensics, Southwestern Association of Forensic Scientists, Little Rock, AR, September 25, 2008.

THC Extraction Labs, Southwestern Association of Forensic Scientists, Little Rock, AR, September 26, 2008.

Instrumental Evaluations, DEA Training Seminar, Dallas, TX, December 4, 2008.

Liquid Chromatography in the Forensic Laboratory, DEA Training Seminar, Dallas, TX, April 29, 2009.

From Clan Lab to Court, DEA Training Seminar, Dallas, TX, November 19, 2009.



TEXAS DEPARTMENT OF PUBLIC SAFETY
CRIME LABORATORY

Statement of Qualifications

LAB-QA-35 Rev.00a (01/2016) p.2 Issued by: QAC

Name	Chris Youngkin	Date	01/13/2017
------	----------------	------	------------

(Continued)

Clandestine Laboratory Synthesis Routes, DEA Training Seminar, Dallas, TX, June 7, 2010.

Drug Analysis Secrets You Wish You Learned in Kindergarten, Southwestern Association of Forensic Scientists, Dallas, TX, September 22, 2010.

Toxicology – What Does This Number Mean?, Southwestern Association of Forensic Scientists, Dallas, TX, September 23, 2010.

Current JWH Compounds, Southwestern Association of Forensic Scientists, Dallas, TX, September 23, 2010.

GC/MS Method Development and Optimization for Forensic Samples, Southwestern Association of Forensic Scientists, Santa Fe, NM, October 2013.

Spice, Spice Baby...(and some Cathinones too!), Southwestern Association of Forensic Scientists, Santa Fe, NM, October 2013.

Contemporary Issues in Drunk Driving and Driving Under the Effects of Drugs, Southwestern Association of Forensic Scientists, Santa Fe, NM, October 2013.

Courtroom Challenges, Southwestern Association of Forensic Scientists, Santa Fe, NM, October 2013.

Alcohol and Drug Training for Forensic Scientists, Texas A&M Transportation Institute, Austin, TX, August 6-7, 2014.

Blood Alcohol: Aspects of Forensic Alcohol Toxicology – Not Just Drinking and Driving, Southwestern Association of Forensic Scientists, South Padre Island, TX, October 2014.

Texas Department of Public Safety Statewide Blood Alcohol and Toxicology Meeting, Austin, TX, November 18-19, 2015.

Texas Department of Public Safety Statewide Blood Alcohol and Toxicology Meeting, Austin, TX, October 26-27, 2016.

COURTROOM PERFORMANCE SYLLABUS

INSTRUCTOR: STEPHEN MCKASSON

Introduction

Review of syllabus, handouts, opening remarks

Video: "Courtroom Performance"

Review of video

Dress and Demeanor

What is an Expert Witness?

Developing Qualifying Questions

Establish yourself as an expert

Establish the competency of your techniques

Introducing the evidence - chain of control

Basis for your conclusion

Courtroom Basics

Preparation - Pretrial Conference

Direct Examination

Cross Examination

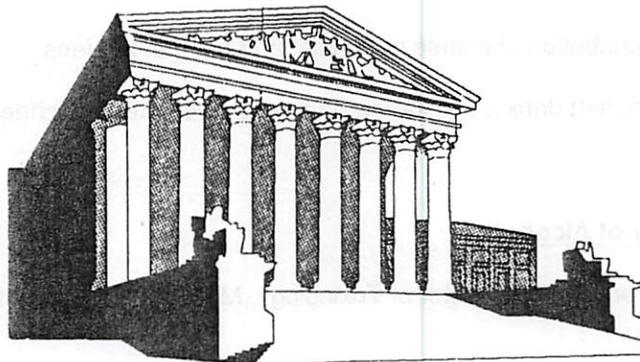
Strategies for Answering Cross Examination Questions

Review of material

Q & A session

COURTROOM TESTIMONY TECHNIQUES

“SUCCESS INSTEAD OF SURVIVAL”



INSTRUCTOR

**RON SMITH
MERIDIAN, MISSISSIPPI**

***CERTIFIED LATENT PRINT EXAMINER
CERTIFIED SENIOR CRIME SCENE ANALYST***

**THE ROBERT F. BORKENSTEIN COURSE ON ALCOHOL, DRUGS
AND HIGHWAY SAFETY: TESTING, RESEARCH AND LITIGATION**
Founded by R. F. Borkenstein, Professor Emeritus, Indiana University

May 21-26, 2006
Center for Studies of Law in Action

Jere Joiner, Course Director
Darlana Lindsay, Program Coordinator
Barry K. Logan Ph.D., Executive Director

All sessions will be held in the Indiana Memorial Union Building on the Bloomington, IN campus of Indiana University. Attendance at all sessions is mandatory except by permission of the Course Director. (All times listed are Eastern Standard time).

Sunday, May 21st, 2006 (Frangipani Room)

- 11:30 A.M. - Noon** Registration, distribution of course materials, and payment of fees.
Coffee, iced tea, soft drinks, deli tray w/ ham, roast beef, turkey, cheese, and chips.
- 12:00 - 12:15** **Orientation**
- 12:15 - 1:15** **Pharmacology of Alcohol**
Dr. Robert B. Forney, Jr., Director of Toxicology, Medical University of Ohio
- 1:15 - 1:30** **Break**
- 1:30 - 2:30** Forney (Cont'd)
- 2:30 - 2:45** **Break - Cookies provided.**
- 2:45 - 4:00** Forney (Cont'd)
- 4:00 - 4:15** **Break**
- 4:15 - 5:15** **The Alcohol Tradition at Indiana University**
Dr. Kurt M. Dubowski, George Lynn Cross Distinguished Professor Emeritus of Medicine, University of Oklahoma College of Medicine
- *****
- 6:00 -- 9:00** Attendees are invited to join the faculty for dinner and cash bar in the University Club.

4:00 – 4:15 Break

4:15 – 5:15 Montgomery (Cont'd)

Friday, May 26th, 2006 (Frangipani Room)

7:45 a.m. Coffee, hot tea, orange juice, banana nut bread and pumpkin bread provided.

8:00 – 8:15 **Review Questions: Alcohol Literature, Defense Challenges, and Case Law**

8:15 – 9:15 **Expert Testimony**

Ms. Mary Anderson, Deschutes County District Attorneys' Office

9:15 – 9:30 Break: Iced tea and soft drinks added.

9:30 -10:30 Anderson (Cont'd)

10:30 – 10:45 Break

10:45 – 11:30 **Expert Testimony – Q & A**

Mary Anderson and Patrick Harding

11:30 – 11:45 Break

11:45 – 12:15 Distribution of Certificates and Close of Course

Testimony

- Jurors have short attention spans, you need to remember:
 - Primacy and recency
 - 5-7 minute blocks of testimony
 - Visuals
 - Impact words
 - Visuals
 - Repetition

Testimony

- Cross examination
 - Relax, you have no control
 - Understand the question
 - Answer the question ✖
 - Be professional
 - Redirect is coming

Expert Testimony



- . L Listen to the question
- . U Understand the question
- . C Consider your answer
- . A Answer
- . S Shut up



QUALITY ACTION PLAN (QAP)

1 Scope

This document addresses the process for initiating, implementing, and checking the effectiveness of corrective actions or quality improvements of laboratory nonconformance, deficiencies, and/or work product of an unacceptable quality.

Nonconforming event is when one or more characteristic(s) or condition(s) are observed that do not conform to required specifications in standards, procedures, or policies. Examples of nonconforming events may include: contamination, failed control, observations recorded inaccurately, incorrect conclusions/interpretations, sample switch, sample preparation error, and unsupported conclusions.

Corrective Action is an quality assurance activity or response to bring about continuous improvement; immediate resolution of incorrect results; remediation of nonconforming event(s) in similar work, as appropriate; and minimize recurrence. The intent is to prevent unintended delivery or use of nonconforming work.

Preventive Action is a proactive approach to preventing possible problems or potential nonconformity, preventing the recurrence of problems, managing risk, and improvement.

The Quality Action Plan may also serve as documentation of Preventive Action (PA).

2 Practice

2.1 Quality Action Plan Process

A. Incident Description

1. When a nonconforming event has been identified, the individual responsible for the work must halt testing and/or calibrations (and withhold test or calibration reports as necessary) until the scope of the incident has been determined. The Technical Point of Contact, Technical Leader, supervisor, manager, and/or Quality Manager also have the responsibility to identify nonconformance and halt testing.
2. Briefly describe the event and initiate a **Quality Action Plan** (LAB-QA-04), and provide details to the technical and quality management chain of command about the unsatisfactory condition that needs to be corrected including:
 - a) *Related policy/procedure/specification*
 - b) *Time-frame of the condition*
 - c) *Area(s) of impact*
 - d) *Affected work (case, batch, and/or instrument numbers)*
 - e) *If laboratory data/results could have been compromised*

B. Evaluation and/or Root Cause

1. **Evaluate and define the scope and significance of the potential nonconforming event** (e.g. nature of incident, risk, significance, impact to completed and in-progress work). Identify the potential stake holders and assess the potential impact to them. Determine to what extent casework must cease.



Laboratory Operations Guide

Subject: Quality Action Plan

DRN: LOG-03-12

Version: 04

Page 2 of 5

- a) **Suspend the procedure/method/process in the laboratory.** The Technical Point of Contact, Technical Leader, supervisor, manager, and/or Quality Manager has the authority to suspend work in the laboratory if the event appears broader than the immediate event.
 - b) **Temporarily limit work duties of individual(s) in the laboratory.** The Technical Leader, supervisor, manager, and/or Quality Manager have the authority to limit the duties of individual(s) if the event was determined to be a result of unacceptable performance by the scientist/technician.
 - c) **Other items that should be documented as part of the evaluation, as applicable:**
 - i. If customer was notified to recall evidence or results;
 - ii. If results may be conditionally accepted;
 - iii. If nonconforming event could recur;
 - iv. If there is concern about compliance to standards/policies/procedures.
2. **Root Cause Investigation** should go beyond the symptoms to the underlying events or problems. Investigate and identify the potential root cause(s) for the nonconformity. The investigation should seek to detect and correct systemic problems.
- C. **Action Plan**
1. **Procedures Resumed or Resumption of Work.** If work was halted or limited for the laboratory or scientists, authorization to resume testing activities must be given by the Quality Manager, and/or Director.
 2. **Consider recall of previous work.** A review and evaluation should be conducted of previous work to determine if any work needs to be recalled or reworked.
 3. **Notify customer(s)** as applicable to the following conditions. Documentation of the customer's notification shall be included in the record.
 - a) *If reexamination of work in progress is necessary and no results have been released to the customer, then it is not necessary to notify the submitting agency of the additional work or technical issue, so long as it has been fully resolved.*
 - b) *If reexamination occurs and the results of analysis for those samples are different than what has already been released to the submitting agency, an amended report must be issued, which identifies the affected samples, results, and opinions.*
 - c) *If reexamination of evidence is not possible because the evidence had been lost, consumed by analysis, or returned to the customer, then it is necessary to notify the submitting agency of the issue.*
 4. **Correction to the Nonconforming Work.** Rework, regrade (revise or re-state acceptable specifications or conditions for results), or repair of nonconforming work should be taken immediately and documented.
 5. **Remedial Actions.** The remedial actions taken and plan should be listed, including who is to perform the action and the associated milestones for



completion, in order to correct the issue and ensure that the issue is not recurring. It is expected that the action plan and supporting documentation will be reviewed to provide both immediate containment of the problem, and to resolve the issue. When individuals are identified as participants to the action plan, they should specifically sign the action plan item(s) to acknowledge their responsibility for them. If an amended or supplemental report was a required action, then include the report as supporting documentation.

Note: Supporting documentation of the completion of action items and relevant communications should be included. Communications such as email and minutes of meetings are objective documentation of when discussions occurred with key stakeholders and what was discussed.

6. The Quality Manager shall approve the Quality Action Plan and any supporting documentation, and submit it to System Quality Assurance for review and approval.
 7. New action items or progress/completion of action items after the submission of the original Quality Action Plan should be submitted on a Quality Action Plan Supplement form (LAB-QA-04A) and include relevant milestones towards remediation of the nonconformity.
- D. System Quality Assurance Review
1. Review the Quality Action Plan for completeness and assignment of final level of concern. A determination of the status of the Quality Action Plan will be made (e.g. closed vs. open). Additional reviews may be required by management and the respective advisory boards to achieve satisfactory resolution. Additional documentation or information may be requested to clarify or support the plan and it will be documented with a Quality Action Plan Supplement form (LAB-QA-04A).
 2. Determine which action plans will require monitoring for effectiveness and direct the review and its documentation. The extent and nature of the monitoring will be based on the likelihood the nonconforming event could recur or that there is doubt about the compliance of the laboratory's operations with its own policies and procedures. Corrective actions require monitoring such as those related to audits, inspections, assessments, or complaints, and those that involve restrictions to examiner(s)/technician(s)/procedure(s).

2.2 Levels of Concern for Nonconforming Work

1. **Level 1** – The nature or cause of the nonconformance directly affects and has a fundamental impact on the work product of the laboratory; or there is a concern that if the nonconformance continues for an extended period, the work product of the laboratory or integrity of evidence/test item/calibration item could be negatively affected.
 - a) **Examples:**
 - i. *Inaccuracy was a result of information entered on the report by the laboratory and is significant to the test result (technical amended or supplemental report issued, level 1 or 2 depending on significance to outcome);*



- a) **Examples:**
 - i. A typographical or transcriptional error depending on its relationship to the test/calibration results;
 - ii. Inaccuracy was a result of information reported by the laboratory insignificant to the test result (technical amended report issued, insignificant to the outcome such as insignificant misspelled words, omission of a disposition, and other insignificant clerical oversights)
 - b) Such instances require that the Quality Assurance Coordinator/Quality Assurance Specialist/Quality Manager be notified of the event within 30 days from the date of discovery of the potential non-conformity.
4. **Level 4** does not constitute a significant concern to the quality system. Typically does not require either a Quality Action Plan or notification. Exception: corrective actions related to systemic, pervasive or recurring issues.
- a) **Examples:**
 - i. Non-substantive transcriptional mistakes in the examination record that have been corrected;
 - ii. Correction of notes or draft reports as a result of the review process;
 - iii. Non-technical amended report issued where inaccuracy was a result of incorrect information provided by customer and had no bearing on laboratory conclusions.

3 Records

Quality Action Plan (LAB-QA-04)

Quality Action Plan Supplement (LAB-QA-04A)

QAP/Customer Complaint LOG (LAB-QA-19)



Laboratory Operations Guide

DRN: LOG-03-12
Version: 03

Subject: Quality Action Plan

Preparer

Heather Greco
Quality Assurance Specialist

Date: 03/07/2013

Concurrence

Forrest W. Davis
Quality Assurance Coordinator

Date: 03/07/2013

Version #	Effective Date	Brief Description of Change(s)
00	12/01/2002	Original Problem; Renamed from Technical Problems. Material taken from LOG 3.6
01	07/01/2003	Minor revision with respect to reference of Quality Assurance Coordinator Modification Section 2 with respect to Technical Leader responsibility given same responsibility as Quality Manager
02	05/01/2005	Major Revision; Title change to Quality Action Plan; Entire document modifications
03	05/29/2012	Major revision – Sections 1, 2, 3, 4, and 5 Minor revision - Title
04	03/11/2013	Major revision

ARCHIVED
05/13/2013

Garriott's Medicolegal Aspects of Alcohol Sixth Edition

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**Lawyers & Judges
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pared to chronic drinkers ($r = 0.154$). However both were still poor. The positive predictive value of estimating BAC at or above a particular cutoff BAC decreased from 93.2% at 0.1 g/dL to 37.7% at 0.3 g/dL. In this population of patients with BAC mostly > 0.10 g/dL, the ability to estimate the degree of intoxication was limited. The limitation was greatest when the ASC score was applied to chronic drinkers. The authors concluded that a measured BAC did not correlate well with the outward physical signs of intoxication, especially for chronic drinkers.

15.5 Conclusion

In conclusion, outward physical signs of intoxication do not correlate well with blood alcohol concentrations as measured by alcohol testing. This is especially true for chronic drinkers with tolerance that masks visible signs of intoxication as BACs increase above 0.10 g/dL. Each state sets their own standards for defining visible or obvious intoxication and the role or lack of role of a measured blood alcohol concentration.

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TEXAS DEPARTMENT OF PUBLIC SAFETY
CRIME LABORATORY

External Testimony Evaluation Form

LAB-QA-12 Rev.02 (09/2006)

The Texas DPS strives to achieve service excellence through open communication and cooperation with our customers. Please assist us in achieving this goal by completing this service evaluation.

Thank you for your assistance.

Analyst Chris Youngkin Date of Testimony 4-13-10
 Court Location Grayson Co Laboratory Case # L10-140825 Court Case # 054396
 Evaluator Joel Durrett Title ASST DIST ATTY
(Please Print Name/Sign)
 Agency Grayson County DA Phone 903-813-4361
 Defendant(s) PAUL RABOR Subject of Testimony LAB Results

	Rating			
	Excellent	Average	Poor	
1. Did the analyst have a professional demeanor and appearance?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Was the analyst well prepared for trial?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Did the analyst effectively present the evidence?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Did the analyst effectively describe their qualifications, duties and analysis?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. How well did the analyst convey scientific results to the jury?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Were you satisfied with the overall testimony?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please comment on the testimony or ways we might improve our service:

Mail to:
Quality Assurance, Crime Laboratory
Texas DPS
PO Box 4143 MSC 0460
Austin, TX 78765

Or Fax to:
512-424-5645

DPS	Date Received by Crime Laboratory System <u>4/14/10</u>	Date Forwarded to Laboratory <u>4/14/10</u>
	Supervisor <u>[Signature]</u>	Date <u>4-19-10</u>
	Testifying Examiner <u>Chris Youngkin</u>	Date <u>4-20-10</u>



TEXAS DEPARTMENT OF PUBLIC SAFETY
CRIME LABORATORY SERVICE

COURT ROOM TESTIMONY EVALUATION FORM

The Texas DPS strives to achieve service excellence through open communication and cooperation with our customers. Please assist us in achieving this goal by completing this service evaluation. Thank you for your assistance.

Analyst Chris Youngkin Date of Testimony 8-24-11
Court Location New Boston, TX. Lab Case # L1D-204634 Court Case # 11F0256-202
Evaluator Sherric Pappas / Merrick Pappas Title Investigator
(Please Print Name/Sign)
Agency Bowie County District Attorney's Office Phone 903-735-4800
Defendant(s) Charles Hill, Jr. Subject of Testimony Analysis and interpretation on blood alcohol

	Rating				
	Excellent	Average	Poor		
1. Did the analyst have a professional demeanor and appearance?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Was the analyst well prepared for trial?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Did the analyst effectively present the evidence?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Did the analyst effectively describe their qualifications, duties and analysis?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. How well did the analyst convey scientific results to the jury?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Were you satisfied with the overall testimony?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please comment on the testimony or ways we might improve our service:

Very pleased with Mr. Youngkin's testimony.

RECEIVED

SEP 26 2011

Mail to:
Quality Assurance, Crime Lab Service
Texas DPS
402 W. Interstate 30
Garland, TX 75043

Fax to: **Laboratory Garland**
214-861-2194

DPS	Date Received by CLS <u>9-26-11</u>	Date Forwarded to Lab _____
	Supervisor <u>[Signature]</u> Signature	Date <u>9-26-11</u>
	Testifying Examiner <u>Chris Youngkin</u> Signature	Date <u>9-26-11</u>



**TEXAS DEPARTMENT OF PUBLIC SAFETY
CRIME LABORATORY SERVICE**

COURT ROOM TESTIMONY EVALUATION FORM

The Texas DPS strives to achieve service excellence through open communication and cooperation with our customers. Please assist us in achieving this goal by completing this service evaluation. Thank you for your assistance.

Analyst Chris Youngkin Date of Testimony 01/10/12
 Court Location Denton CCC#2 Lab Case # L1D-199941 Court Case # CR-2010-04989B
 Evaluator LAUREN MARSHALL Title Assistant D.A.
(Please Print Name/Sign)
 Agency Denton Co. DA Office Phone 940.349.2671
 Defendant(s) Pupenbroke, Fred Henry Subject of Testimony DWI

	Rating				
	Excellent	Average			Poor
1. Did the analyst have a professional demeanor and appearance?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Was the analyst well prepared for trial?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Did the analyst effectively present the evidence?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Did the analyst effectively describe their qualifications, duties and analysis?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. How well did the analyst convey scientific results to the jury?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Were you satisfied with the overall testimony?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please comment on the testimony or ways we might improve our service:

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JAN 11 2012

**Laboratory
Garland**

Mail to:
Quality Assurance, Crime Lab Service
Texas DPS
402 W. Interstate 30
Garland, TX 75043

Or Fax to:
214-861-2194

DPS	Date Received by CLS <u>1-11-12</u>	Date Forwarded to Lab _____
	Supervisor <u>[Signature]</u>	Date <u>1-11-12</u>
	Testifying Examiner <u>Chris Youngkin</u>	Date <u>1-11-12</u>



TEXAS DEPARTMENT OF PUBLIC SAFETY
CRIME LABORATORY

Testimony Evaluation Form

LAB-QA-11 Rev.01 (09/2006)p.1 Issued by: QAC

As part of the program for evaluation of courtroom testimony, this document is for internal Texas DPS evaluation purposes only and provides information regarding the quality of testimony presented by the witness in the case listed below.

Case #	GAR-1205-05004	Court/Location	Sherman/Grayson County	Date Testified	09/11/13
Prosecutor	Jeremy Wood	Defense	Bill Pedersen		
Subject of Testimony	Blood Alcohol	Approx Time on Stand	10 minutes		
Manner of Monitoring: <input checked="" type="checkbox"/> Direct Observation <input type="checkbox"/> Video Tape <input type="checkbox"/> Audio Tape <input type="checkbox"/> Transcript Review <input type="checkbox"/> Interview					
Witness	Chris Youngkin	Monitor	Andrew Macey	Date Completed	09/12/13

Witness Signature

Chris Youngkin

Supervisor Signature

[Signature] / SN

Date

9-12-13

FORWARD TO QA ON COMPLETION OF REVIEW

GENERAL

Acceptable professional appearance:	First Testimony <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Nature of demeanor throughout testimony (i.e. posture, alertness, voice projection):	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
	<input checked="" type="checkbox"/> Excellent <input type="checkbox"/> Good <input type="checkbox"/> Fair <input type="checkbox"/> Poor

DIRECT/CROSS EXAMINATION

Effective description of qualifications and duties: <input type="checkbox"/> NA	<input checked="" type="checkbox"/> Excellent <input type="checkbox"/> Good <input type="checkbox"/> Fair <input type="checkbox"/> Poor
Effective presentation and identification of the evidence: <input type="checkbox"/> NA	<input checked="" type="checkbox"/> Excellent <input type="checkbox"/> Good <input type="checkbox"/> Fair <input type="checkbox"/> Poor
Effective description of lab analyses: <input type="checkbox"/> NA	<input checked="" type="checkbox"/> Excellent <input type="checkbox"/> Good <input type="checkbox"/> Fair <input type="checkbox"/> Poor
Ability to convey scientific results to jury: <input type="checkbox"/> NA	<input checked="" type="checkbox"/> Excellent <input type="checkbox"/> Good <input type="checkbox"/> Fair <input type="checkbox"/> Poor
Logical, accurate, and valid delivery of conclusions: <input type="checkbox"/> NA	<input checked="" type="checkbox"/> Excellent <input type="checkbox"/> Good <input type="checkbox"/> Fair <input type="checkbox"/> Poor
Testified within limits of expertise: <input type="checkbox"/> NA	<input checked="" type="checkbox"/> Excellent <input type="checkbox"/> Good <input type="checkbox"/> Fair <input type="checkbox"/> Poor
Appropriate direction of testimony to jury or judge: <input type="checkbox"/> NA	<input checked="" type="checkbox"/> Excellent <input type="checkbox"/> Good <input type="checkbox"/> Fair <input type="checkbox"/> Poor

NATURE OF PROSECUTOR

Prepared for witness (i.e. pre-trial)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Questions evidence/examination procedures	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Qualified witness as expert	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Clears points raised by defense	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

NATURE OF DEFENSE

Personal attacks	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Leading or insinuating questions	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Attempts to draw witness outside expertise	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Uses casual questions from pre-trial	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Rapid fire/ Excessive repetition questions	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Illogical question order (jumping around)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Demands YES/NO responses	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Compound or complex questions	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

ADDITIONAL COMMENTS:



TEXAS DEPARTMENT OF PUBLIC SAFETY
CRIME LABORATORY

External Testimony Evaluation Form

LAB-QA-12 Rev.02 (09/2006)p.1 Issued by: QAC

The Texas DPS strives to achieve service excellence through open communication and cooperation with our customers. Please assist us in achieving this goal by completing this service evaluation.

Thank you for your assistance.

Analyst Chris Younkin Date of Testimony 11/3/14
 Court Location Dallas County Laboratory Case # Gar-1208-09189 Court Case # m12-49594
 Evaluator Jenny Jones Title Dallas County ADA
(Please Print Name/Sign)
 Agency ~~TX~~ DPS Dallas ADA Phone 214-653-5123
 Defendant(s) Adriana Tapia Subject of Testimony Blood Analyst

	Rating				
	Excellent	Average			Poor
1. Did the analyst have a professional demeanor and appearance?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Was the analyst well prepared for trial?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Did the analyst effectively present the evidence?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Did the analyst effectively describe their qualifications, duties and analysis?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. How well did the analyst convey scientific results to the jury?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Were you satisfied with the overall testimony?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please comment on the testimony or ways we might improve our service:

No way to improve. MR. Younkin was helpful in preparing for trial and was flexible in dealing with our court's time constraints. I cannot explain how great this experience was overall.

Mail to:

Quality Assurance, Crime Laboratory

Texas DPS

5800 Guadalupe

Austin, TX 78752

Fax to:

Or

512-424-5645

DPS	Date Received by Crime Laboratory System <u>11-03-14 WH</u>	Date Forwarded to Laboratory _____
	Supervisor <u>[Signature]</u>	Date <u>11-3-14</u>
	Testifying Examiner <u>[Signature]</u>	Date <u>11-3-14</u>



TEXAS DEPARTMENT OF PUBLIC SAFETY
CRIME LABORATORY

External Testimony Evaluation Form

LAB-QA-12 Rev.02 (09/2006)p.1 Issued by: QAC

The Texas DPS strives to achieve service excellence through open communication and cooperation with our customers. Please assist us in achieving this goal by completing this service evaluation.

Thank you for your assistance.

Analyst: Chris Youngkin Laboratory: _____ Date of Testimony: 8/6/15

Court Location: Denton County Case #: GAR-1406-0750 Court Case #: CR-2014-00476-C

Evaluator: Shelby Griffin / Ruben G. Diaz Title: Assistant District Attorney
(Please Print Name/Sign)

Agency: _____ Phone: 940-349-2619

Defendant(s): Alexis Hieber Subject of Testimony: _____

	Rating				
	Excellent	Average			Poor
1. Did the analyst have a professional demeanor and appearance?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Was the analyst well prepared for trial?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Did the analyst effectively present the evidence?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Did the analyst effectively describe their qualifications, duties and analysis?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. How well did the analyst convey scientific results to the jury?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Were you satisfied with the overall testimony?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please comment on the testimony or ways we might improve our service:

I appreciated that Mr. Youngkin was flexible with his time and provided multiple means of getting in touch with him. We understand how many responses you receive & appreciate the cooperation.

Mail to:
Quality Assurance, Crime Laboratory
Texas DPS
5800 Guadalupe
Austin, TX 78752

Fax to:
Or 512-424-5645

DPS	Date Received by Crime Laboratory System: <u>8/10/15</u> <i>JMW</i>	Date Forwarded to Laboratory: <u>8/19/15</u>
	Supervisor: <u>[Signature]</u>	Date: <u>8/20/15</u>
	Testifying Examiner: <u>Chris Youngkin</u>	Date: <u>8-20-15</u>
	<small>Signature</small>	<small>Signature</small>





TEXAS DEPARTMENT OF PUBLIC SAFETY
CRIME LABORATORY

External Testimony Evaluation Form

LAB-QA-12 Rev. 02 (09/2009) p.1 Issued by: DAO

The Texas DPS strives to achieve service excellence through open communication and cooperation with our customers. Please assist us in achieving this goal by completing this service evaluation.

Thank you for your assistance.

Analyst	<u>Christopher Youngkin</u>	Date of Testimony	<u>03/01/2016</u>
Court Location	<u>Frank Crowley</u>	Laboratory Case #	<u>GAR-1311-13503</u>
Evaluator	<u>Greggory Gallian</u> <small>(Please Print Name/Sign)</small>	Title	<u>Prosecutor</u>
Agency	<u>Dallas DA</u>	Phone	<u>214-653-5125</u>
Defendant(s)	<u>Jared Gulliano</u>	Subject of Testimony	<u>Alcohol Testing</u>

	Rating				
	Excellent	Average			Poor
1. Did the analyst have a professional demeanor and appearance?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Was the analyst well prepared for trial?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Did the analyst effectively present the evidence?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Did the analyst effectively describe their qualifications, duties and analysis?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. How well did the analyst convey scientific results to the jury?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Were you satisfied with the overall testimony?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

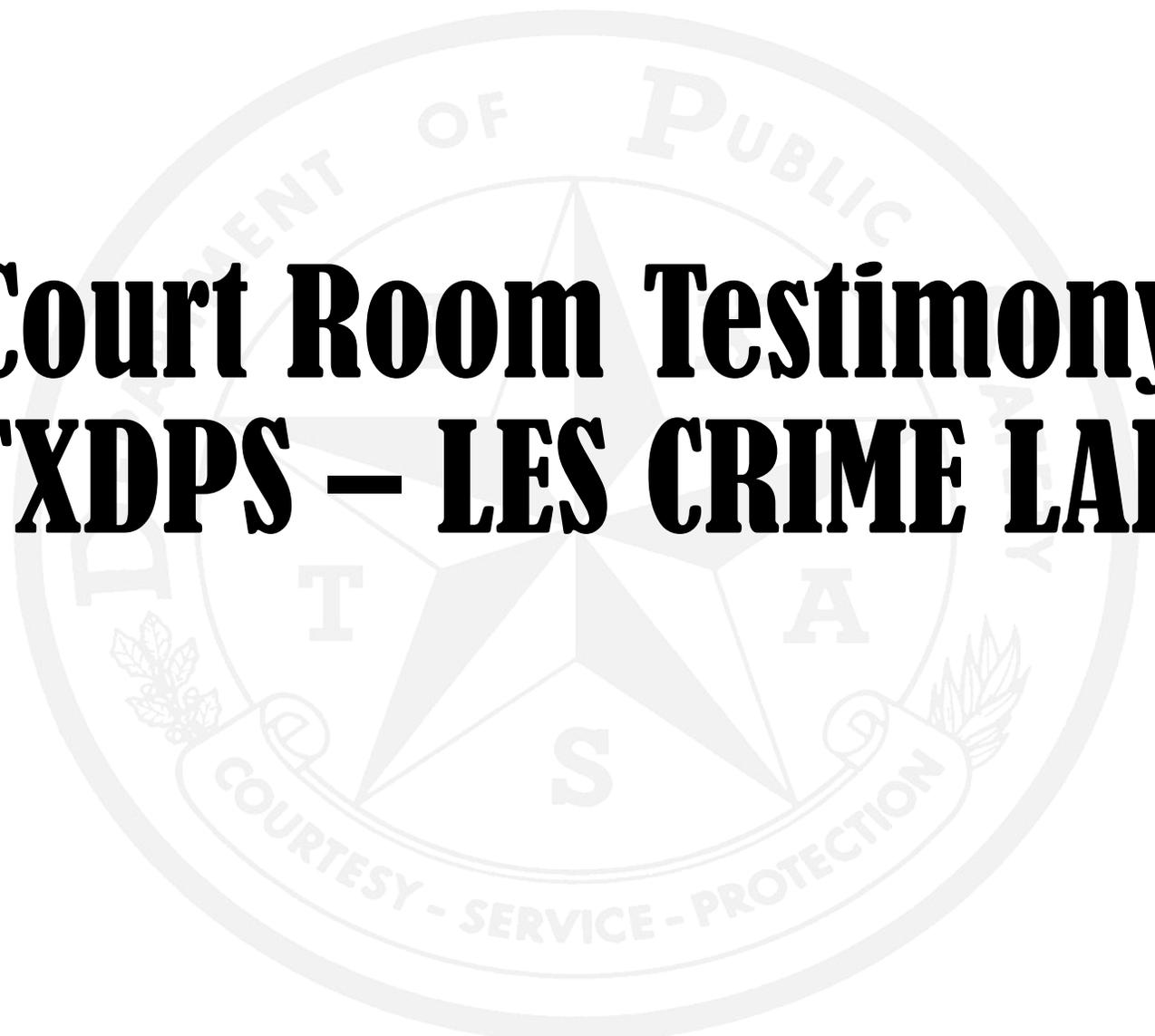
Please comment on the testimony or ways we might improve our service:

Chris has always been my favorite analyst. He is always well-prepared and his courtroom demeanor is second-to-none. Juries love him and their comments after the trials are always positive. I look forward to having trials when Chris is the analyst because I know the blood test will be viewed as credible.

Mail to:
Quality Assurance, Crime Laboratory
Texas DPS
5800 Guadalupe
Austin, TX 78752

Or Fax to:
512-424-5645

DPS	Date Received by Crime Laboratory System	<u>3/2/16</u>	Date Forwarded to Laboratory	<u>3/2/16</u>
	Supervisor	<u>[Signature]</u>	Date	<u>3-4-16</u>
	Testifying Examiner	<u>Chris Youngkin</u>	Date	<u>3-4-16</u>



Court Room Testimony
TXDPS – LES CRIME LAB



OBJECTIVES



The learner will examine Basic Courtroom Proceedings the roles of the persons in the court room such as:

The Witness

The Judge

The Prosecutor

The Defense

The Jury

The Learner will examine the relevant Agency and Laboratory policies governing testimony and disclosure

The Learner will: Construct how to recognize and anticipate prosecution and defense strategies and tactics.

Students will apply new knowledge to classroom scenario

Role Play

UNIT 1: INTRODUCTION TO TESTIMONY





UNIT 1.1



Subpoena - Legal

General Manual 05.25 – Notify supervisor and prosecutor of subpoena. Testify on behalf of defendant.

General Manual 05.54 – Served via mail





UNIT 1.1-2 SUBPOENA



Mike gets his very first subpoena

General Manual 05.54.03 – Served with legally binding Subpoena

General Manual 05.54.04 – Duty to notify if unable to respond

Subpoena duces tecum – Compels production of documents that might be admissible before the court



UNIT 1.3 ARRIVING AT COURT



Appearance and Demeanor

Represent the Department

Refrain from discussions to include in:

- Parking lot
- Restroom
- Elevator





UNIT 1.4 ROLES AND RESPONSIBILITIES



Provide consistent and unambiguous testimony regardless of which attorney asks the questions (prosecutor or defense).



DPS Core Values – IEAT

“If the law has made you a witness, Remain a man of science. You have no victim to avenge, No guilty or innocent person to convict or save – You must bear testimony within the limits of science.” – Dr. P.C.H. Brouardel



UNIT 1.4 AGENCY POLICIES

General Manual 05.04 – Court appearance and testimony

General Manual 06.10.01 DPS General Orders – “Conduct my duties in straight forward, honest, and respectful manner...”

Consistency of testimony and poise under pressure



UNIT 1.4 AGENCY POLICIES



General Manual 06.20.02 – Standards of Conduct

- No misleading statements
- Professionalism and Ethics

General Manual 05.108 DPS Honor Code

- Accountable for all federal and state statues and department of policies.



UNIT 1.4 LABORATORY POLICIES

National Code of Professional Responsibility for Forensic Science

Responsible for accurately representing qualifications, evidence, opinions, conclusions, and testimony.

“Do not render interpretations, opinions, or conclusions that are outside one’s proficiency or expertise “



UNIT 1.4 COURTROOM TESTIMONY MONITORING



Disclose involvement in legal proceeding

Clear and concise testimony

Respectfully decline to answer if outside discipline or area of expertise.



UNIT 1.4 COURTROOM TESTIMONY MONITORING



Monitored at least once a year

Technical leader added June 1, 2017

Reporting examiner shall complete and document the review



UNIT 1.4 CRIME LAB POLICY



Crime Lab will not reimburse former employees for any expense incurred during testimony

-Expert witness fees sought for testimony regarding work conducted while an employee are not supported by Crime Lab

-A request for reimbursement for travel expenses is reasonable and should be directed to the issuer of the subpoena



UNIT 1.4 DISCLOSURE

General Manual 05.20 Documentation and Preservation

Employee shall document, preserve, and disclose all evidence that is gathered and prepared for criminal investigations

Witness credibility – include disciplinary history of employee called upon to testify



UNIT 1.4 DISCLOSURE



Duty to disclose

Provide prosecutor with a copy of the employee's most recent statements of qualifications and disclosure form

Should be provided at pre-trial meeting



UNIT 1.4 DPS DISCLOSURE POLICY



LOG-07-05 Biographical Datasheet

Statement of Qualifications (SOQ) LAB-QA-35

Disclosure Form (DF) LAB-QA-36



UNIT 1.4 JUDGE



Role of the Judge – Enforce court procedure

Determine legality of evidence

Brief jury on applicable laws



UNIT 1.4 INTERACTIONS WITH JUDGE



Address as “Your Honor”

No ex parte communications allowed with the Judge

Stand when judge enters and exits the room



UNIT 1.4 INTERACTIONS WITH JUDGE



Ensure excusal from court prior to departure

May be subject to recall

When “the rule” is invoked, no discussion of case allowed (except with prosecutor *outside the presence of other witnesses*)

Texas Rule of Evidence 614



UNIT 1.4 INTERACTIONS WITH JUDGE



When addressed directly by judge, respond directly

If not sworn, advise prosecutor and judge



UNIT 1.4 PROSECUTOR



Role is to ensure justice is served

Recipient of DF & SOQ

Importance of Pre-trial meeting



UNIT 1.4 PROSECUTOR



Bring disclosure form (DF) and statement of qualifications (SOQ) with you

When sensitive information involved, pre-trial meeting more important

Do not assume they know about the DF



UNIT 1.4 DEFENSE

Role = Ethical duty to be advocate for the defendant

Duty to establish reasonable doubt for their client

Evaluator of your credential and information from your previous testimony

Assume defense attorney will ask to see any documents taken up to witness stand



UNIT 1.4 DEFENSE



Skilled at evoking emotions

Attacks are not personal

Logic prevail emotion

Frontal lobe



UNIT 1.4 RELEVANT TERMS

Narrative – too long of an answer

Unresponsive – not responding to the question

Leading – if you are on direct, the attorney should not be leading

May be able to clarify during redirect

Sustained

Overruled



UNIT 2.0 EVIDENCE & CASE LAW



“It is a capital mistake to theorize before you have all the evidence. It biases the judgement.”

-Sherlock Holmes



UNIT 2.1 FEDERAL & TEXAS EVIDENCE RULES



Rule 702 – Testimony by experts

- i. witness qualified as an expert by knowledge, skill, experience, training, or education may testify...

Rule 703 – Bases of Opinion Testimony by Experts

- i. Facts or data in particular case upon which expert bases an opinion or inference may be those perceived by or made know to the expert at or before the hearing.



UNIT 2.1 FEDERAL & TEXAS EVIDENCE RULES



Rule 705 – Disclosure of Facts or Data Underlying Expert Opinion

- i. The expert may testify in terms of opinion or inference and give reasons therefore without first testifying to the underlying facts or data, unless the court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination.



UNIT 2.1 DUTY TO DISCLOSE

Brady v. Maryland (1963) – Duty on prosecutor to disclose exculpatory evidence to a defendant. Duty has been extended to police agencies by case law.

Exculpatory evidence/Brady material: evidence in the government's possession that is favorable to the accused...including evidence that may impact the credibility of a witness

SOQ and DF



UNIT 2.1 DUTY TO DISCLOSE



Giglio v. United States (1972) – expanded Brady decision to require prosecutors to provide information to the defense counsel

Jencks Act

- i. Entitles criminal defendant in a federal prosecution to discover any witness statement against him/her which is relevant to the witness's testimony and which is in the possession of the U.S. government



UNIT 2.1 STATE DUTY TO DISCLOSE



Article 39.14 CCP

Michael Morton Act

- i. Statute designed for broader disclosure to ensure a more open discovery process and to reduce wrongful convictions.
- ii. Requires disclosure of all police reports and witness statements that constitute or contain material to any matter involved in the action as soon as practical.



UNIT 2.1 MICHAEL MORTON

In 1986, a Texas judge convicted Michael Morton of murdering his wife in their Williamson County home. Morton spent 24 years in prison before new DNA testing demonstrated that he had been wrongly convicted of the crime ([Lindell, 2013](#)). Since then, the state accused the lead prosecutor during Morton's trial, District Attorney Ken Anderson, of withholding evidence from Morton's defense attorneys and the court that would have shown Morton's innocence. The State of Texas charged Anderson with criminal contempt of court, tampering with or fabricating physical evidence, and tampering with government records

The evidence Anderson allegedly withheld includes: (1) A memo to Don Wood, sheriff's deputy and lead investigator in the case, regarding a telephone tip about a check made out to Morton's wife that was cashed nine days after her murder, (2) a telephone message to Wood informing him that Mrs. Morton's credit card had been recovered in a San Antonio store, (3) a Sheriff's Deputy report stating that neighbors had described seeing a man park a green van on the street behind the Morton home on several occasions prior to the murder, (4) a transcript of a taped interview between Wood and Mrs. Morton's mother, Rita Kirkpatrick, wherein Kirkpatrick disclosed that the Morton's three-year-old son had told her that he witnessed the murder, had given details of the murder, and had told her that his father was not home at the time of the murder, and (5) a report from Wood containing a condensed version of the transcript referenced above ([Godeau, 2012](#)). In addition, during Morton's trial, Anderson replied in the negative when the judge asked him if he possessed any evidence that would be favorable to Morton ([Lindell, 2013](#)).



UNIT 2.2 AGENCY RULES GOVERNING INTEGRITY

Integrity – We demonstrate through our actions honesty, fairness and respect for others in our professional and personal lives.

Excellence – We strive to be outstanding in everything we do and never settle for less.

Accountability – We seek and accept responsibility for our actions, performance and results.

Teamwork – We work closely with other agencies to achieve common objectives.



UNIT 2.2 AGENCY RULES GOVERNING INTEGRITY



General Manual 07.43.07 – Regarding Integrity

*The most severe sanctions will be reserved for conduct that compromises **INTEGRITY** through dishonesty or dissemination. Conduct that violates policy but does not call into question an employee's integrity, which does not adversely impact colleagues, for which the employee accepts responsibility and that does not negatively impact public safety or the ability to provide exceptional service will be dealt with less severely*



UNIT 2.2 AGENCY RULES GOVERNING INTEGRITY



Consistency is critical

Prosecutor and defense

Integrity – We demonstrate through our actions honesty, fairness and respect for others in our professional and personal lives.



UNIT 3 ATTORNEY STRATEGIES



“I busted a mirror and got seven years bad luck, but my lawyer thinks he can get me five.”

-Steven Wright



BODY LANGUAGE IN COURT ROOM TESTIMONY





UNIT 3.1 PRETRIAL PREPARATION



Meet with prosecutor prior to the start of the trial

If necessary, provide cell number to needed personnel privately

Review the case record

Any paperwork taken up to stand may be reviewed by defense



UNIT 3.2 PROPER DRESS & APPEARANCE

For all Female employees, Courtroom Attire shall consist of:

- i. A business suit (skirt or pants) or dress
- ii. Blouse
- iii. Dress shoes

For all Male employees, Courtroom Attire shall consist of:

- i. A suit or dress slacks and a sports coat
- ii. A dress shirt and tie
- iii. Socks
- iv. Dress shoes/boots



UNIT 3.2 PROPER DRESS & APPEARANCE



General Manual 05.65 – Visible tattoos, brandings, or piercings of any kind other than earrings are prohibited.

Examples of standard business attire for males and females include:

- a) Business suit or jacket*
- b) Dress shirt, sport shirt with collar, or sweater*
- c) Dress slacks/khakis*
- d) Dress shoes/boots*

Examples of standard business attire for females include:

- a) Dress*
- b) Blouse*
- c) Dress skirt*
- d) Dress Capri pants*
- e) Dress sandals*



UNIT 3.2 COURTROOM ETIQUETTE



- I. Silence cell phones*
- II. Not allowed: gum chewing, tobacco, recording devices, food, beverages, or newspapers*
- III. In general, you have to have permission to move (enter, exit, approach)*
- IV. Stand when judge moves (enters or exits)*
- V. Refer to judge as Your Honor*
- VI. Stand when the jury moves*
- VII. Talk to the jury (eye contact, project sufficiently, use microphone)*
- VIII. Do not interrupt attorneys; do not speak until a question is finished.*
- IX. Be polite*
- X. Pay attention to surroundings; general safety*
- XI. Demeanor, credibility, and professionalism*
- XII. Body language – consistent between attorneys, be aware of facial expressions, good posture*
- XIII. Sitting in during other expert testimony – ensure there is permission from the court*
- XIV. Presentation of scientific principles and results in an understandable manner.*



UNIT 4.0 ATTORNEY STRATEGIES



“To be an effective criminal defense counsel, an attorney must be prepared to be demanding, outrageous, irreverent, blasphemous, a rouge, a renegade, and a hated, isolated and lonely person...”

-Clarence Darrow



UNIT 4.1 DEFENSE TRIAL STRATEGIES



Testimony of expert *is not* the focus of the case

Testimony used for mitigating possible conviction (alleged lab error)

Testimony of expert is “Gold Standard” versus other witness who may be inconsistent/non-credible



UNIT 4.1 DEFENSE TRIAL STRATEGIES



Testimony of expert is questioned – leading to “reasonable” doubt

Testimony of expert is attacked as being incorrect or inconsistent with scientific principles.

Recall role of defense attorney is to act as advocate for their client. The attorney may actively attempt to provoke an emotional response from expert testifying.



UNIT 4.2 WITNESS STRATEGIES



Witness is consummate independent professional.

Witness his a “hired hand” of the prosecution.

Witness exaggerated or falsified results or testimony.

Our role is not to stretch the truth, but to stick to facts. Just as there is management by fact, try to use “testimony by fact.”



UNIT 4.3 TYPES OF QUESTIONS

Leading – Narrative by attorney, trying to get expert to connect the dots for them.

Hypothetical – Often simplistic at the onset and grows in complexity with each subsequent hypothetical. “If X occurred, then Y must have also occurred.”

Expertise building – WARNING! Question begin simplistic, attorney uses scientific lingo that is substantiated by expert testifying, attorney then appears to be the expert to the jury.



ATTORNEY QUESTIONING





UNIT 4.3 TYPES OF QUESTIONS



Trap questioning – lead down a path of simple questions until expert is committed to final underlying issue (Remember Fish Traps; avoid as soon as possible!)

Random unrelated questions – Ambiguous or irrelevant questions used in an attempt to raise doubt in the mind of the jury (e.g. what you keep under your sink, what did you have for breakfast two weeks ago. If you can't remember that, how can you remember _____?).

Confusing questions – Isn't it true that? (Is it not true that). Skips from topic to topic. Double negatives.



UNIT 4.4 IMPEACHMENT



Commit witness to current testimony

Confront with prior testimony/document

Remember, **CONSISTENCY IN TESTIMONY IS CRITICAL** regardless of which attorney is asking the questions.



UNIT 4.5 CLOSING



Most questioning is in place to set up the closing

Opportunity to take expert testimony and cherry-pick portions of the testimony that are advantageous to his or her client while disregarding compromising portions of the testimony.

Attorney may opine on “what the evidence actually shows”



UNIT 4.6 OUTSIDE DEFENSE STRATEGIES

May review social media accounts and/or Google searches.

Libraries of prior inconsistent testimony transcript

List errors with SOP, QAP, discover document

Pre-trial meeting with expert is imperative to gauge effective tactics.



MOCK TRIAL PRACTICE



Questions?



TEXAS DEPARTMENT OF PUBLIC SAFETY
CRIME LABORATORY

TES-13-0100

Page 1 of 1

TxDPS 07.10.17

Disclosure Form

LAB-QA-36-LIMS Rev.02 (06/2017) p.1 Issued by: QAC

The information included on this document is based on Texas DPS Crime Laboratory Service policy published online at www.txdps.state.tx.us/CrimeLaboratory/Pubs.htm, specifically in the Quality Manual (LOG-07-05). The information disclosed is provided in accordance with Brady, Giglio and Michael Morton law and is intended for prosecutor evaluation.

Any events requiring disclosure for the indicated employee are listed below. If there are no disclosure-required events, this will be indicated by listing "None".

Name:	Date:
--------------	--------------

Incident	Date	Quality Action Plan tracking ID as appropriate	Description of Incident	Manager Name/Date
				NOT APPROVED



Statement of Qualifications

LAB-QA-35-LIMS Rev.01 (06/2017) p.2 Issued by: QAC

Name:	Date:
Laboratory:	
Job Title:	

Forensic Testing Categories: N/A (non-testing activities)

List all disciplines and category(ies) of testing in which you currently conduct casework:

Education: List all higher academic institutions attended (list high school only if no college degree has been attained)

Institution	Dates Attended	Major	Type of Degree Completed (or None)
-------------	----------------	-------	------------------------------------

Courtroom Experience: List the discipline/category(ies) in which you have qualified to testify as an expert witness and indicate over what period of time and approximately how many times you have testified in each.

Certifications: List certifications held, the issuing body, and dates certified.

Professional Affiliations: List any professional organizations of which you are or have been a member. Indicate any offices or other positions held and the date(s) of these activities.

Organization	Period	Activities
--------------	--------	------------

Employment History: List all scientific or technical positions held, particularly those related to forensic science. Be sure to indicate employer and give a brief summary of principal duties and tenure in each position (List current position first)

Job Title: _____ **Tenure:** _____
Employer: _____
Provide a brief description of principal duties:

Job Title: _____ **Tenure:** _____
Employer: _____
Provide a brief description of principal duties:

Job Title: _____ **Tenure:** _____
Employer: _____

Job Title: _____ **Tenure:** _____
Employer: _____
Provide a brief description of principal duties:



Statement of Qualifications

LAB-QA-35-LIMS Rev.01 (06/2017) p.2 Issued by: QAC

Name		Date	
------	--	------	--

Other Qualifications: List below any scientific publication and/or presentation you have authored or co-authored, research in which you are or have been involved, academic or other teaching positions you have held, any awards you have received, and any other information which you consider relevant to your qualification as a forensic scientist.

Publications

Presentations

Research

Academic/Teaching Positions

Awards

Other

Other Training: List continuing education, workshops, in-service and formal training received.

Course Title	Source	Date Attended	Hours
--------------	--------	---------------	-------

This Statement of Qualifications was generated on 11/28/2017 at 7:57:38AM.