IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, FLORIDA

CASE NO. 2006 CF 017774 NC

STATE OF FLORIDA,

Plaintiff,

vs.

RYAN GARY LUBBECKE,

Defendant.

VIDEO CONFERENCE DEPOSITION OF JANINE ARVIZU

January 4, 2013
12:01 a.m. Mountain Time
110 Twelfth Street, Northwest
Albuquerque, New Mexico

PURSUANT TO THE NEW MEXICO RULES OF CIVIL PROCEDURE, this deposition was:

TAKEN BY: KATE DARBY WALLACE
ATTORNEY FOR PLAINTIFF

REPORTED BY: CHERYL ARREGUIN, RPR
New Mexico CCR No. 21
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A P P E A R A N C E S

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I N D E X

E X H I B I T S

NONE

JANINE ARVIZU

having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MS. WALLACE:

Q. Hello.

A. Hello.

Q. It's kind of funny, the way the camera is set up, because the way you're looking is over there, but the way --

A. Oh.

Q. -- it seems to be set is opposite.

A. Okay.

Q. So it's fine. I'm just trying to figure out how I need to --

A. Where I'm looking.

Q. -- feel like we're communicating with each other.

My name is Kate Wallace, and I'm the prosecutor on this case.

And Mr. Sohn is present in the room, and he's kind of off camera, but he's present.

And I think we already did a sound check, and all the sound is working fairly well.

So I'm going to ask you some questions

regarding your anticipated testimony in the Ryan Lubbecke case, and I just want to start with a little bit of your background.

I received a copy of your CV from Mr. Sohn, and it doesn't have a date on it, but it is -- let's see -- it's approximately three pages long, and I received it from him in November.

Do you recall providing him with a copy of your CV around that same time?

A. Yes, I did.

Q. Okay.

Are there any changes that have happened in the six weeks or so since you provided it to Mr. Sohn?

A. No.

Q. No?

Any additions, things to take off, any -- any changes at all?

A. No.

Q. Okay.

Now, I understand your background is primarily in the field of chemistry and standards; is that right?

A. Yes, chemistry and quality assurance, analytical lab --

Q. What is -- I'm sorry.

A. I --

Q. There's a little bit of a delay on there.
A. Sorry.
Q. What is the difference between quality assurance and standards?
A. Standards is a -- is a term that's used in the quality assurance field to mean a lot of different things, so I would need a little bit more context about what you need for standards.
But I suspect what you may be referring to is -- there are what's called quality standards that --
Q. Right.
A. -- are essentially consensus standards that are developed by the technical community in a particular area to establish a universal standard of practice essentially for a discipline.
And so when I refer to national standards or international standards, things like ISO 17025, that's an international standard for testing laboratories. That's -- that's the standard.
Quality -- did you ask for quality assurance or quality just in general?
I'm sorry. I --
Q. I think I'm just trying to -- I'm trying to understand the different terms and how they're used.
A. Okay.

Q. I tried to do a little bit of research online before the deposition, and some of the definitions -- they kind of -- they're self referential, and they're not really helpful to somebody like me, who doesn't have a science background.

A. Sure.

Quality assurance as applied to the field of analytical testing is a -- a term that refers to the practices that you put in place in a laboratory to control the measurement system. So quality control practices are things like a special sample that you introduce to test, controls that you put in place to control the equipment that you use and the instrumentation that you use.

Quality assurance, in addition to including quality control, also includes quality assessment, so you not only put in place these practices, but you also routinely evaluate and assess your performance. So you're putting in place the means of identifying problems and of addressing problems when they occur, because you're not just measuring things, you're also monitoring them.

Q. Now, you said these are consensus standards that are developed by a specific technical community.

In this case, it's going to focus mainly on

toxicology, but is there -- is there some kind of agency or some kind of internationally recognized board that creates these standards or decides to adopt standards or to reject them? I mean, who ultimately makes the decision about these -- these standards?

A. There are a variety of different standards that are developed and used in the quality assurance arena, and it's not like there's a single universal standards god, if you will, that -- that releases these things.

Probably the most universally applicable body is ISO, the International Standardization Organization, because there are -- there are countries that participate all across the world. Their goal is to essentially to -- to adopt standards that are universally applicable. So it's probably the most worldwide standard.

There are also standards that are developed within an individual country. For example, in the field of forensic toxicology, the Society of Forensic Toxicology and American Academy of Forensic Science, SOFT and AAFS, have jointly, in 2006, published a standard, if you will, it's called -- well, I -- I don't have the actual title in my head, but it's guidelines for forensic toxicology labs. They're known as the SOFT

guidelines.

That is something that would be referred to as a quality standard that is more narrowly applicable just to forensic toxicology laboratories.

Q. Okay. I think I've got a basic understanding of the terminology. I'll probably ask for a few more definitions as we go, so I'm --

A. That's fine.

Q. -- sure I'm understanding your answers, but I think -- I think those were -- that was everything I wanted to ask regarding that.

Do you have a specific background yourself in forensic toxicology?

A. I do not.

Q. Have you ever worked as a toxicologist?

A. No.

Q. When you were working in the field of chemistry before you went into standards and quality assurance, what kind of chemistry were you mainly focused on?

A. It's called analytical chemistry.

Q. What is that?

A. Analytical chemistry is the field that deals with making qualitative and quantitative measurements on unknown samples, the "what's in it" and "how much is in

it" questions.

Q. Okay.

A. So the qualitative is the "what is it" question, and quantitative is "how much of it is present." And that, in general, is the field of analytical chemistry, the techniques and the methods for making those kinds of measurements.

Q. Can you give me an example of something that that's used for? I mean, like a practical application for analytical chemistry?

A. Oh, goodness. Yes.

Q. Just so I can understand what it is.

A. Sure.

Analytical chemistry is used in the environmental industry to test the drinking water that you drank this morning.

Q. Okay.

A. It's used in the field of pharmaceuticals to test whether or not you're giving your child a lethal dose or a therapeutic dose of a medicine. It's used in manufacturing to make sure that materials being used in construction meet specifications.

So it has very broad applicability.

Q. And that makes sense. That makes sense. Okay.

So that was your background in chemistry.

When did you make the move into standards and quality assurance?

A. It's -- it's not so much a transition of making a move, because the field of analytical chemistry is, in large measure, driven and controlled by quality assurance and -- and standards, because it's important that you understand the -- the quantitative confidence that you can have in any given result and -- and so they're really intrinsically tied.

It's more a -- a change of focus from actually making the measurements and performing the analysis to addressing the quality assurance and quality control associated with those measurements.

Q. And you're currently employed by Consolidated Technical Services, Incorporated, according to your CV.

A. No. That's my -- that was a company that I was the president of, and I -- since I stopped the operation of that -- gosh, it's been probably a -- more than a decade ago -- I've been just working as an independent consultant.

Q. Okay.

A. Same work, it's just as an independent consultant.

Q. The way that it is phrased on your CV is

"Senior Technical Consultant, Consolidated Technical Services, Incorporated, Independent Contractor, 1992 to the present."

So --

A. Correct.

Q. -- I assumed by that that you were presently employed by that company.

A. I'm sorry. That's --

Q. Is that incorrect?

A. I may not have made that clear.

That's what the reference to independent contractor is. It's --

Q. Okay.

A. The work that's described in that has been from -- during that whole period, initially during my work for Consolidated Technical Services, but the work continued even after I closed the corporation as an independent consultant.

Q. So now, essentially, you're self-employed.

A. Correct.

Q. Okay.

Now, I understand that you have been retained by the defense in this case to analyze some documents and perhaps provide some opinions regarding laboratory work that was done; is that correct?

A. That's correct.

Q. And when were you first contacted by the defense in this case?

A. I'd have to go back and check my records. I don't remember. It was last year sometime, but I'm sorry, I just don't remember.

Q. And what is the billing rate or the billing agreement that you have with the defense?

A. I bill my time at $150 an hour regardless of whether I'm reviewing records or traveling or providing testimony.

Q. So that's a blanket hourly rate --

A. Correct.

Q. -- that you have.

A. Correct.

Q. Okay.

And how much have you billed up to this point in the case, if you know?

A. I haven't submitted an invoice yet.

Q. Do you have an idea of how much the bill is at this point, based on the work that you've already provided?

A. I'd have to be operating off my memory, because I don't have my time sheets with me.

It's probably -- it's less than a day's work,

though, less than an eight-hour day, I would estimate.

Q. That's up until this point?

A. To this point, correct.

Q. Okay.

So --

A. If I understand correctly, I'm billing you for this, not -- not them; is that correct?

Q. I am not sure about that. I don't --

A. That's the way I've always done it in Florida, I always have --

Q. Okay.

A. -- billed -- if you're the one that subpoenas me, then I bill you.

Q. You're probably right about that. Billing is not my specialty.

A. Okay.

Q. So I'm not 100 percent certain about that.

But one way or another, of course, you'll be paid for your time.

So including today's deposition, you think you're right around eight hours or a little bit under an eight-hour workday?

A. Yes, yes.

Q. Okay. Okay.

And what materials have you reviewed in order

to form your opinions in this case?

A. I reviewed the discovery that was provided to me by Mr. Sohn in this case. And it includes the discoverable materials provided by FDLE for the testing that they performed, it includes the materials provided by the University of Florida for the testing that they performed, and it includes some materials from the Florida Highway Patrol.

Q. Okay.

And I see you've got -- looks like about three big binders sitting there in front of you.

Is that the discovery material?

A. It is, yes.

Q. Okay.

Have you generated any reports yourself regarding this case?

A. No. I have not been asked to do so yet.

Q. Okay.

Do you believe you're going to be asked to do so in the future?

A. I'm not really good at predicting the future.

Q. None of us are really. Okay.

Is it common in your consultation practice for you to generate reports regarding your findings?

A. It's highly variable. I sometimes will just

meet with the client and discuss it and explain the relevant issues. Sometimes I testify without ever being -- having been asked to do a report. Sometimes I'm asked to do a report before my testimony.

It seems like when I testify in federal court I -- I do a very complete report usually. I'm asked to do that. But ofttimes in state courts I testify without having prepared a report.

Q. I'm going to assume, though, that you've spoken to Mr. Sohn regarding your opinions in this case.

A. Yes, I have.

Q. Okay.

When did you speak with him regarding your opinions?

A. I believe it was last week, but I'm not -- I'd have to check again. I'm sorry. But it was within the last -- it was since Christmas.

Q. Okay. That's a good landmark.

And you said that the materials that you've reviewed have been documents provided that came from FDLE, University of Florida and Florida Highway Patrol.

A. That's correct.

Q. And that's -- I mean, I've seen them myself, and I've provided most of them, I think, so it's a pretty voluminous amount of documents.

A. It's about this many.

Q. Yeah. Right there. Yeah. That's a pretty good heap.

Is there -- was there anything that you focused on more than anything else, or -- I mean, was it all the documents together that you were focusing on?

Perhaps that's not a very good question on my part.

Did that --

A. I'm having a hard time --

Q. Okay.

A. -- understanding -- I -- what I focused on.

Maybe it would help if I describe the process that I go through.

Q. Sure.

A. When -- whenever I'm asked to do a data quality assessment of -- of any report that's issued by a laboratory, what I'm doing as an auditor is essentially trying to reconstruct the entire analytical process to understand the conditions and the controls that were in place and the practices that were followed and the results that were obtained from the very initial collection of the evidence all the way through its handling and processing and analysis and ultimately reporting.

So it's reconstructing that entire analytical process.

That's why I'm struggling with the what am I focusing on question.

Q. Probably a better question on my part would have been just to describe the work that you've done in this case. That would -- that --

A. Okay.

Q. -- would probably be a little better.

A. Okay.

Well, that's what I did.

Q. Okay.

A. I -- I collected the materials and tried to reconstruct the entire analytical process. And it's essentially an after-the-fact determination, because the sample was originally collected in 2006, and so now, in 2013, we're trying to go back and understand exactly what happened in the laboratory in 2006 and what happened in the field and paying particular attention to those things that have the potential to influence the quality of the results.

Q. Okay.

A. And there are three big picture areas that a data quality assessment considers.

The first --

Q. What are those?

A. The first is sample integrity.

The second is the scientific validity of the method.

And the third -- I'm trying to give you some time to take notes.

The third is whether that method was reliably performed in practice.

Q. Okay.

So the validity of the method itself and then how the method was utilized --

A. Correct.

Q. -- by a scientist.

A. Correct.

Q. Okay. Okay.

So those -- are those three things that you would look at really in any kind of case, or is that something that was very specific to the nature of this case and the blood sample that you were -- I hesitate to say you were analyzing the blood sample, since you've never actually seen it -- but the blood sample analysis you've been asked to review?

A. That general process is the process that I follow in a wide variety of disciplines, whether they're toxicology or DNA or gunshot residue. The process of

ensuring sample integrity, the scientific validity of the method and the reliable performance of that method is independent of the particular field of application.

Q. Have you done work in cases that involve some of those other forensic areas --

A. Yes.

Q. -- that you just mentioned? For example, DNA? I think you mentioned ballistics or gunshot residue?

A. Gunshot residue, yes.

Q. And just to stay focused on this case, because it involves forensic toxicology, how many other cases would you say you've participated in -- done similar work that you've done in this case?

A. How many?

Q. For any area of toxicology.

A. Oh, I -- I got excited, because I actually paid attention, and I think I testified a couple of dozen times in forensic toxicology cases, but I don't know how many I've reviewed. A lot more than that. I typically review more -- a lot more than I ever testify in.

Q. Over a hundred, would you say, at this point?

A. I -- I'm -- I'm an auditor. I'm reluctant to give estimates.

Q. Sure.

A. But far in excess of the two dozen that I've testified in, certainly.

Q. Okay.

And we're talking about forensic toxicology --

A. Correct.

Q. -- specifically.

A. Specifically.

Q. Okay.

A. And that includes both blood alcohol and drugs or other compounds present in forensic biology samples.

Q. Okay.

Now, I'm -- I'd like to go through the three areas of focus that you described, starting with sample integrity.

Have you formed any opinions, based on your review of the documents in this case, as it relates to the integrity of the blood sample?

A. Yes.

Q. What is that opinion?

A. There are quite a number of concerns regarding the integrity of the blood sample in this case, such that as a user of the laboratory results -- or I would recommend to a user of the laboratory results that they should not consider the final result necessarily to be representative of a sample collected from -- and you

pronounced his name different than I've heard, but the client, Lub- -- I --

Q. Lubbecke.

A. Lubbecke? Okay.

Q. Lubbecke.

A. Then I've been pronouncing it wrong in my head all this time.

Q. I've been pronouncing it wrong for several years myself.

A. Okay.

But there is not a clearly documented evidence in the paper trail that indicates that the results were obtained from a blood sample that unambiguously was derived from the original collection from Mr. Lubbecke on July 15th of 2006.

Q. So I think just to rephrase, so I'm understanding what you're telling me, you have a doubt as to whether or not the blood sample actually came from Mr. Lubbecke's body.

A. My concern is that there are inconsistencies and omissions in the record that describe the evidence that was tested.

Analytical samples should not be fungible during the analytical process. If you receive a given quantity of sample, there should be a very predictable

path that it follows in terms of how much is expended during the course of testing and how much is left over and remains untested.

And there were problems with that in -- in this case.

There were also problems with how -- how it was identified to unambiguously identify that tube and distinguish it from all the other tubes that are out there.

Q. Okay.

A. I can --

Q. So did I -- I mean, did I state your concern correctly, that you have a concern or a doubt based on the paperwork that you've received that the sample came from Mr. Lubbecke's body as opposed to somebody else's body?

A. That is -- that is a concern. Yes.

Q. What other -- just focusing again on sample integrity, what other concerns do you have regarding the blood sample?

A. There are custody issues. And from my perspective as a -- as an auditor and an analytical chemist, my concern speaks to the need to unambiguously collect, identify, control and ensure that you know everything that happened to that sample.

Anybody who used it, anybody who touched it, anybody who extracted samples should be documented. We should be able to reconstruct that to know that nobody ever inadvertently or intentionally let anything else into or out of that sample.

And there was no -- there were custody gaps. There was no record that some of the analysts who -- who indicated that they tested this sample ever actually had custody of the sample.

Q. Well, I think I'm -- I'm trying to focus at this point on the initial collection of the sample from Mr. Lubbecke.

A. Oh, okay.

Q. And maybe I'm not being very clear in my questioning. I'm probably not.

What -- can you point specifically to something in the documents, or more than one thing, that causes you to have a concern about the actual collection of the blood sample from Mr. Lubbecke in the field?

A. Okay. There was -- there was limited documentation available, what I will call contemporaneous collection information. That is a record prepared by the individual who actually collected the sample.

That's typically something that you will see

where they will document the lot number of the tube and the expiration date of the tube and the date and the time of the blood draw and reference any procedure that they used and sign off that they were the one who collected the sample.

That kind of a contemporaneous record was not included in the materials that I reviewed.

In addition, in the -- in the Florida Highway Patrol custody record, it indicates that it was -- the sample was collected on July 15th at just about midnight and it -- it was placed in what I presume to be an evidence refrigerator, it's called, placed in EPR on July 17th at 9 o'clock in the morning.

That's like 31 hours later. That's a long time later. And it begs the question of -- of its -- its custody into that -- during that period. And --

Q. Did you -- I mean, you said EPR, and you said you presumed that that meant refrigeration --

A. Yes. I presume that that means an evidence refrigerator.

It was submitted to -- let's see. It was submitted to evidence July 15th at 11:59 p.m. It was -- and it was not placed in a refrigerator until July 17th at 9 o'clock in the morning.

Q. Okay.

A. 9:10.

And it was -- the only reason I really know that the sample was collected on July 15th at 4:25 in the afternoon was essentially a secondary record, not a contemporaneous record, but somebody else making a note of the time that the sample was collected. So I don't ever have any real contemporaneous records documenting the actual collection of the sample.

Now --

Q. What was the secondary record that you just referred to that's not contemporaneous with the collection of the sample?

A. My recollection is that that was a laboratory record based on documentation that they had received.

Q. Okay.

So what I've heard you say so far, and perhaps I've missed a few things, is that the chain of custody regarding when it went to refrigeration is incomplete.

Is that -- is that accurate or not?

A. It -- no. The issue is the custody record that we have starts at 11:59 p.m. on July 15th. That's the Florida Highway Patrol's evidence property document. It's a two-page document.

Q. Okay.

A. It doesn't start until midnight, and the

sample was collected, if I can trust that secondary reference, at 4:25.

So I don't know who had custody of it, under what conditions between the time it was collected and when it went to -- I don't know who had custody before it was submitted to evidence and received by somebody called TSF-2-A.

Q. Okay.

So what is your concern about what could have happened to that blood sample in those intervening hours that would have affected the outcome of the results?

A. Even which blood sample it is. The --

Q. Okay.

A. The identity of -- like I said, samples should not be fungible. The identification of that sample is described on the Florida Highway Patrol document as item number F-37-06-0213-001. And that's the same item number that there's a custody sheet that follows.

What that tells me is that I should expect that particular item number to follow the sample all the way through the process. I should be able to know that that's the item number that was mailed to FDLE and later mailed to the University of Florida and every step of the process to know that it didn't change along the way.

Q. Changed as in be substituted with some other

blood sample from another source?

A. Correct, correct. Yeah. You've got -- you can't ever -- as a laboratory analyst, you can't ever assume, oh, it must be the same sample. You have to rely on a unique sample identification number.

When --

Q. And that actually leads into what my next question was going to be.

What could they have done, just at this point focusing on the very early point in the investigation -- what could law enforcement have done better that would have set your concerns to rest and made you feel certain that we're dealing with the same blood sample that came from Mr. Lubbecke all the way through this process?

A. Assign a unique identifier, affix that identifier to the tube and in all the -- the derived records related to that sample.

Q. Okay.

Is there anything else other than unique identifier?

A. No. That's -- well, I have -- I don't know how they made -- how they did the draw, again, because of no contemporaneous record, so I can't have any -- draw any conclusions as to whether that was adequate.

But there -- we'll get to an issue that comes

up a little bit later. We don't know it at this point. But there was -- this was what's called an underfilled tube. The sample volumes are an issue later down the line.

Q. Okay. We'll get to that here in a minute, I think.

Now, again, related to sample integrity, are there any other concerns that you have, apart from this chain of custody gap that we've already discussed?

A. There are subsequent chain of custody gaps.

Do you want to go through those now, too?

Q. Sure.

A. Okay.

Q. Okay.

A. The Florida Highway Patrol had that nine-digit identifier that I gave to you earlier. That's how they identified this sample, uniquely identified this sample. They mailed it to FDLE in July.

And then if you go to the custody records for FDLE -- let's see. On July 21st -- I'm reading from their chain of custody record. "On July 21st, 2006, the following item was received from" -- and then there's a US Postal Service certified mail number that's real long -- "of the Florida Highway Patrol - Venice - Troop F. Item 1, one item containing converted item

identified as sme stc T, one blood kit with two vials."

You know, I've been looking at these records from Florida for many, many years. I've never seen a blood sample identified in that manner.

What happened is I don't have any way of knowing incontrovertibly that this sample that they identify as sme stc T is the same sample that Florida Highway Patrol identified as F-37-06-0213.

Q. Okay. So FDLE isn't using the same identifier for the blood kit as FHP is using.

A. Yeah. And I don't expect FDLE to assign the same identifier. They have their own system for assigning a unique identifier. But there should be a record documenting the receipt of the record with the identifier that correlates to FHP so that they can essentially have a lookup table that says FHP's number F blah, blah, blah is the same thing as our number such-and-such.

Q. And we're missing that.

A. We're missing that. That's correct.

Q. Okay.

And anything else regarding chain of custody gaps?

A. The analysts who had chain of custody -- who were documented as having chain of custody in toxicology

were the -- the -- Monica Filegar, who is a blood alcohol analyst.

Q. Um-hum.

A. Their -- the custody records we receive, which were apparently described as the complete custody records, did not include custody by the people who performed the drug toxicology testing in this case, LeAndra Higginbotham, for example.

Q. Okay.

So is it -- do you -- what kind of concern does that create for you, that they're not -- they're not maintaining that --

A. That they're not maintaining chain of custody?

Q. Well, not chain of custody, but if I'm understanding right, the -- is it the identifier number that is not being used consistently or --

A. Once FDLE got it into their laboratory and assigned it a number, whatever --

Q. Right.

A. -- the sample was, they assigned it a number 20060102588, they used that number consistently.

Q. Right.

A. The link is lost between Florida Highway Patrol and FDLE.

Q. Okay.

Well, that I understood, but I think where I might have gotten a little bit lost is the chain of custody gaps within FDLE --

A. Okay.

Q. -- from one analyst to the next, that there was no complete chain of custody.

A. Yeah. In FDLE's chain of custody records, they describe the fact that this blood kit was released and Monica Filegar had it and then she checked it back into evidence and then it was returned to the contributor.

So their records -- and under their own procedures, their records should describe everybody who takes physical possession of that sample, so we know when it's gone to the lab for testing or back into evidence for storage or to a different section of the lab for testing or back into storage. Those should all be documented to know who is doing what to that sample when.

Q. Doesn't that record document that, though, that it's the analyst, Monica Filegar, who is taking custody of the item?

A. And as far as blood alcohol, they're -- they're covered. They're -- there's a consistent record for the -- for the custody of that sample and transfer

to the blood alcohol laboratory.

What there isn't is transfer to the other analysts who were responsible. They don't do this all on -- they each have to pull -- how am I going to explain this.

There's a tube of blood, and Monica Filegar takes out a quantity that she tests, caps it back, and then somebody else at a later date comes along and removes the cap and pulls out what they need for a different kind of test.

Q. Are you referring to LeAndra Higginbotham at --

A. She was one of them. There was --

(Discussion off the record.)

Q. (BY MS. WALLACE) Do you mean LeAndra Higginbotham when you say someone else came along and removed blood from the vial?

A. My recollection -- and I'll have to go back and look to the actual bench sheets -- was somebody else actually prepared the blood. LeAndra had signed off as an instrument analyst, not the prep. I -- but yeah. A -- essentially a different -- a different analyst had possession of it in the drug toxicology section than Monica Filegar in the blood alcohol section.

Q. And the identity of that person is not

documented in the bench notes.

A. It is documented in the bench notes. It's not documented on the custody transfer.

When -- when you transfer custody of a sample, you're essentially documenting the fact that you received it, that it was in its appropriate condition. You're verifying the quantity, how many tubes of what volume and so forth.

And that's what's missing here, that that -- verifying that I gave you this sample, and you're verifying that that's the same sample you received. That's what never happened beyond the blood alcohol section. It didn't happen in -- in the toxicology section.

Q. So just so I'm clear, we know the name of the person who handled the sample, prepared it for Dr. Higginbotham to do her analysis, but we don't know how much blood that person took to prepare the sample? Is that -- that not -- no?

A. No. It's --

Q. Okay.

A. The lab's own procedures require that they maintain custody records to know who is responsible for protecting that sample. It's more than --

Q. Okay.

A. -- just who used it, but they're accountable and responsible for protecting the integrity of that sample while it's in their custody.

So we know it was transferred to Monica Filegar, and we know that she transferred it back to evidence, and we have no record of anybody else accepting the responsibility for that sample.

Does that make sense?

Q. No, it doesn't, because to me, evidence has accepted responsibility for the sample, the evidence --

A. Oh.

Q. -- section when --

A. Oh. They --

Q. -- Monica Filegar returned it to them.

A. Yes, they did.

Q. Okay.

A. But no person whoever did any of the drug testing ever accepted responsibility for the sample. That's my problem.

Q. Okay.

So are you saying that the paperwork makes it appear as though Monica Filegar checked the sample back in and the sample just stayed there?

A. Correct.

Q. Nobody else took it after that point?

A. Correct.
Q. Okay.
A. Correct.
Q. I understand now.
A. Sorry. That was painful.
Q. That's okay.
So -- but in the bench notes, you can tell who took the sample; is that right?
A. In the bench notes -- well, do you have these records here in front of you? Can --
Q. I have some of them. I didn't bring everything, because I just didn't know. That's why we did this on video.
A. Oh.
Q. If you can show -- if you can put the record up in front of the camera, and I can just see what you're looking at, I think that might help.
A. Oh, okay.
All right. Let me -- I wonder how close to the camera I'll have to be.
Am I too close? Too far?
Q. I'm -- you're --
MR. SOHN: Little too close.
MS. WALLACE: Little too close.
Now it's a little too far.

MR. SOHN: That's too far.
MS. WALLACE: Yeah.
MR. SOHN: In between.
And move to the right.
MS. WALLACE: And to -- try to your right. Okay.
MR. SOHN: There you go.
MS. WALLACE: Oh.
MR. SOHN: Too far back a little bit.
MS. WALLACE: Perfect. Right there. Okay.
I don't know --
THE WITNESS: Okay.
This you'll see -- right here, there's a list of sample numbers.
MS. WALLACE: Um-hum.
THE WITNESS: These are the FDLE sample numbers that on this date was prepared by a person. And I'm --
MS. WALLACE: Okay.
THE WITNESS: -- trying to look from behind so it's kind of -- but --
MS. WALLACE: That's all right.
THE WITNESS: -- this does include -- Mr. Lubbecke's sample is identified here as Lubbecke and the sample ID number that FDLE assigned.

MS. WALLACE: Okay.

THE WITNESS: So I have documentation -- this is a contemporaneous record that they prepare at the time that they're preparing the basis analysis.

MS. WALLACE: Okay. All right.

THE WITNESS: Okay?

MS. WALLACE: Okay.

THE WITNESS: In this one --

MS. WALLACE: So --

THE WITNESS: -- that I was just showing you, now that I can see it --

MS. WALLACE: Right.

THE WITNESS: -- it -- I'll describe it so you can find it later if you wanted. It's the basis drug analysis form for batch ID 3392.

And --

MS. WALLACE: Okay.

THE WITNESS: One, two, three, four, five, six, seven -- there are ten unknown samples that were analyzed in this batch. That's very common, very acceptable, that you run an entire set of these -- no, 10 -- 11. Sorry. Very acceptable practice.

And it looks like the person who prepared the aliquot of the sample that's identified as Mr. Lubbecke's sample was SLH. And those are LeAndra

Higginbotham's initials.

MS. WALLACE: Okay.

THE WITNESS: So I have a record that shows that this person had a tube that had this number on it, that they identified as Mr. Lubbecke's sample, and she was prepping that sample, but I don't know -- I don't have a record that she ever went and took custody of it from evidence or took custody of it from Monica, who had it earlier.

Q. (BY MS. WALLACE) So the problem is we don't know where Dr. Higginbotham obtained that sample from?

A. We don't have a record that she accepted custody, that she accepted responsibility for protecting the integrity of that sample.

Q. Well --

A. Labs -- laboratories simply can't have a situation where they have all the samples sitting there in evidence or in some sample central location and analysts just go pull things out and analyze them. They have to be able to know what's where at any given time and under what conditions and controlled by whom.

And part of that keeping track is signing out custody so you know where that sample is at any given point in time.

Q. But isn't that what that document shows, that

Dr. Higginbotham took custody of that sample?

A. That's not the purpose of this document, and that's -- she's not -- when you -- when you sign off on custody, you're accepting responsibility for protecting the integ- -- documenting the condition in which you received it and that it's your responsibility to keep it in that condition until you transfer it to the next person.

That's not the purpose of this. This is simply that she's documenting that she prepared an aliquot from that sample. I have no idea where that sample was, in whose custody between when she prepared the aliquot and when Monica had that sample.

Q. But --

A. There's no way to know.

Q. Um-hum. Okay.

And there are no other documents that fill in those gaps for you that were provided by FDLE?

A. No. I review a lot of FDLE records, and they very -- they usually have very complete custody records, that you can see every transfer in and out of the sample. It was -- it was a surprise to me to see this big gap in -- in custody for this sample.

Q. Okay.

A. They're all --

Q. I guess --

A. Their procedures -- their own procedures require that they document internal custody transfer in exactly the same way you expect custody transfers to be documented in the field.

Q. Right. Okay.

A. So you make sure you know you're handing over the thing you think you really are.

Q. Right.

So -- I guess for me, you know, not being an expert in this field -- to me, if there's a piece of paper that we've just looked at here that says that Dr. Higginbotham, you know, prepared an aliquot and she had possession of this item, then that tells me she had possession of it.

So I guess I don't see what the problem is, so to speak, in terms of the integrity of the sample, if this document tells us, even if it's not the most -- you know, the most convenient or direct way for the paperwork to tell us about the chain of custody, but if this paperwork tells us that she had the item on a specific date and she did certain tests with it, then how does that create a problem for the outcome of her testing?

A. Again, it's -- it's just the ambiguity of is

this the -- according to her own custody records, that sample was never released to her. It -- according to their own custody records, if -- like you do evidence audits of evidence rooms, and you see what's all in there -- these samples were supposed to be in there, and they weren't.

It means --

Q. Okay.

A. -- that they had an uncontrolled management of their evidence, if you will.

Q. Okay.

And I think you said a moment ago that this is unusual for FDLE, that usually these gaps are filled in in their custody reports?

A. That's certainly been my experience with FDLE -- review of data from FDLE labs.

Q. What is your experience with FDLE? How many other times have you reviewed documents that have come from their laboratories?

A. Dozens, over quite a few years.

Q. Okay.

That's not just in the area of forensic toxicology, but that's in the area -- other lab areas --

A. Yes.

Q. -- like DNA --

A. Most --
Q. -- you mentioned before?
A. It was DNA. Most of them have been probably blood alcohol. I did a succinyl monocholine case in Pensacola that -- a variety of different things in FDLE labs.
Q. Have you ever visited any of the laboratories in person?
A. I visited the Orlando laboratory in a DNA case that was many years after the fact.
Q. Okay.
A. I didn't go into the laboratory. They brought us records to a conference room.
Q. Have you ever visited Dr. Higginbotham's lab in Tallahassee?
A. I have not.
Q. Okay.
Have you ever met her in person?
A. No.
Well --
Q. Okay.
A. I haven't met her, but I did see her testify -- part of her testimony in a case in Key West, if I recall correctly.
Q. Is that the only other case that you've had in

common with her, so to speak, or have there been others?

A. That may have been the only -- I don't -- I'm not really sure, but I just remember that one.

Q. Okay.

Were there any other chain of custody gaps at FDLE, apart from the one that we've just talked about?

A. For each test that was performed, the basis, the THC, that -- the ELISA testing, the immunoassay testing that was done by the lab -- none of that has custody transfers, only the alcohol.

Q. Okay.

Is there any explanation as to why this is being documented for the alcohol testing but not for the other testing?

A. No.

Q. No? Okay.

Any other problems regarding sample integrity?

A. Yes. One of the sig- -- one of the issues that's something that we commonly review deals with the quantity of blood that's present, so you can essentially track it through the process.

Q. Okay.

A. And in this case, there were two tubes that were collected, an A tube and a B tube, and in her -- in her alcohol record that Monica Filegar prepared on

August 1st of 2006, she documented that the A tube was approximately three-quarters full and that the B tube had a volume that she estimated at one-half a milliliter.

Now, the reason that that's important is because these tubes are -- are designed for a nominal fill volume of 10 milliliters. That mean 10 plus or minus .7. If they're operating as they were designed to, with the seal hasn't been compromised, you know, the vacuum is good, everything's working as it should, they should collect 10 mils of blood.

But she documented that one of them was only three-quarters full and the second tube only had a half a milliliter. Well, then you can -- so she estimated 7.5 mils was present in tube A.

If you -- if you go through the analytical testing that was done by FDLE, they used a total of 7.1 milliliters to conduct their testing. They used 3 mils, 1 mil, 3 mils and 0.1 mils. There were four separate sets of tests that were performed.

And when I say 7.1 mils, implicit in that is that the tube would have had to have more than that in it, because that's a measured quantity that you pull out of the tube with what's called a volumetric pipette, and you can't -- if there was 1 milliliter -- exactly

1 milliliter in the tube, you would not be able to withdraw exactly 1 milliliter. That's not the way they operate. You can't pull it to dryness, essentially.

So the fact that their own records documented that they used 7.1 milliliters is really important, and the reason is because when they completed their testing at FDLE on this A tube, they sent both tubes to Dr. Goldberger's lab at University of Florida.

When his lab received the tubes, they documented them as the A tube containing 3 milliliters of blood. And I've forgotten -- I'd have to look up whether they said a half a mil for the second tube. But nobody ends up ever using the second tube, so it doesn't become important.

So what we've got is a situation where FDLE estimated seven-and-a-half mils in the tube, and they used 7.1 mils, and then they sent it to Dr. Goldberger's lab, and they estimated 3 milliliters in the tube, and, in fact, when they did their testing, they withdrew 2 milliliters for three different tests, 1 mil, 1 mil -- 1 mil, one-half mill and one-half mil. A total of 2 mils was used.

Q. So what I -- what I hear you say --

A. So it doesn't add up.

Q. The math doesn't add up.

A. Yeah.

Q. So basically the FDLE didn't have 3 milliliters in tube A to send on to Dr. Goldberger, but he documents that that's how much was in the tube.

A. That's correct.

Q. Okay.

A. That's correct.

Q. Can you -- can you tell from the records if the error is on FDLE's part or on Dr. Goldberger's part?

A. Unfortunately, I can't.

Q. Okay.

A. Yeah. That -- that's the kind of investigation, frankly, that you would need to do to try to figure this out, and there's -- the problem is that they didn't -- the only documentation of sample volume was on Monica, on her first receipt of the tube, and then when Dr. Goldberger receives it.

The only reason that I know how much they used is because I got copies of their prep logs that describe what their practices were to use a 3 mil sample volume, for example.

Q. Okay.

Any other problems regarding sample integrity?

A. No. I think that's it. I think that's it.

Q. Okay.

We've been going for about an hour now.

Do you need to take a break or anything like that?

A. I'm fine if you want to keep going.

Q. I'm fine. I just wanted to make sure that --

Do you -- are you okay?

MR. SOHN: I'm good.

MS. WALLACE: If anybody needs a break, of course, just --

THE WITNESS: Okay.

MS. WALLACE: -- pipe up.

Q. The second thing that you mentioned as a major area of focus is the scientific validity of the method used.

A. Right.

Q. Were there any concerns on your part regarding that?

A. Yes.

Q. Okay. Tell me one of them.

A. The -- the discoverable materials that were provided in this case included what I'll call summary reports of the laboratory's validation studies.

Q. Okay.

A. And method validation is a process that analytical laboratories go through to -- before they

ever start using a method to run unknown samples, to essentially test the method and see how well it works. And that way they can determine whether or not the method is appropriate for its intended use or not.

And method validation as a prerequisite to running unknown samples is a mandatory requirement of every national and international standard that I've looked at. It's -- it's just scientifically necessary. It's an essential element of -- of the scientific process.

And so one of the things that was requested in the discovery was a copy of their validation studies, you know, their --

Q. Can I stop you just for a second?

A. Sure.

Q. When you say "their," are you talking about FDLE or University of Florida?

A. Both.

Q. Okay. Okay.

A. Okay. So what -- what we got in terms of discovery was not actually the data, but a summary report prepared by the lab. As an auditor, sure, I'd always rather have the data, but at least I got a copy of what they described as their -- their conclusions of their -- of their validation study.

And there are a number of problems.

For example -- maybe I need -- do I need to put this -- can I describe it for you, or should I put it up in front of the camera again?

Q. Why don't you describe it for me, and we'll see how that goes.

A. Okay.

One of the things that we received from FDLE is a document entitled Base Drug Analysis Procedure for the 5973N Mass Selective Detector Revalidation Summary Report. It's dated March 1st, 2004.

Q. All right.

A. And so this document describes their process for testing their method and determining whether it's appropriate for use on a whole variety of target analytes and determine the accuracy and the precision and detection limit and all those kinds of things.

Now, the problem in this case is that -- I need to go to the lab report.

I've got alcohol. I need the drug one. Here we go.

The laboratory reported results on August 31st, 2006, and their results included a total of five compounds that are described as identified in the specimen. They analyzed and reported THC, carboxy-THC,

which is the inactive metabolite, alprazolam, benzo -- benzoylecgonine, which is a cocaine metabolite, and morphine.

Each of those five things was identified in the spectrum in their report, in the sample in their report. They -- that essentially -- they're reporting the results of a qualitative analysis, what's in it, but they did no quantitative analysis, no -- no reporting whatsoever as to the quantity of these things that were present.

Now, the problem is that if you'll look through the laboratory's validation studies that they provided to us, they did not include analytes that they reported results for. So they did not include -- benzoylecgonine, the cocaine metabolite, that they reported as identified in the specimen was not one of the compounds that they had validated in their validation study.

So they were reporting --

Q. So that --

A. -- a result without using -- without having a scientifically validated method.

Q. So that calls the results into question --

A. It does.

Q. -- at least as to that one compound?

A. It does.
Q. And which compound is that again?
A. That's the cocaine metabolite.
Do you have the report there?
Q. I do have that here.
Is that the --
A. It's the fourth one down.
Q. Benzoylecgonine?
A. Yes.
Q. Sorry.
For the court reporter, I'll spell that. It's B-E-N-Z-O-Y-L-E-C-G-O-N-I-N-E. Okay.
A. Okay. And there's a similar problem with respect to the laboratory's validation for morphine, because in the results that were reported, they reported results from a derivatized method, and the validation does not appear to have been done on a derivatized, which is functionally a completely different method.
Q. So if I understand you correctly, you're saying that they did not validate their own methods for testing for these two particular compounds.
A. That's correct.
Q. Okay. Glad I got one right.
This is why we're lawyers and not scientists.
MR. SOHN: So noted.

Q. (BY MS. WALLACE) Is there any -- any other problems that you had regarding the scientific validity of their methods?

A. I -- I think that's about it. I may come back to something, but I think that's about it.

Q. Were there any problems with scientific validity as it related to University of Florida's testing?

A. We did not get validation data from the University of Florida. And their -- their analytical procedures in Florida are written to -- at University of Florida are written to a much more complete and -- and rigorous standard than FDLE's are. It has more specific criteria in it that must be met, for example.

So that's the kind of information that usually comes out of a validation study. But we did not receive a validation study in the materials that we received from the University of Florida.

MS. WALLACE: Mr. Sohn, is that something that you wanted? I mean, is that something -- because I thought that we had gotten to the point where I had given you everything that you wanted.

MR. SOHN: I thought you did, too. We'll touch base on that.

MS. WALLACE: Okay. All right.

Q. Is there -- I'm going to go a little bit on a tangent here, a little bit. Mr. Sohn and I have gone back quite and forth quite a bit about the documents I was providing and whether or not it was everything that he wanted.

Was there anything else that you had wanted that you didn't receive, besides the validation study from University of Florida?

A. You know, I think -- I think both of these labs made a really good effort to get us all the materials, and I think we pretty much got everything that we asked for, if it --

Q. So --

A. -- if it existed. I, obviously, don't expect them to produce something that didn't exist.

Q. Sure.

But just to the question, was there anything that you asked for, apart from University of Florida's validation study, that you didn't receive?

A. I'm looking at my edited discovery list here.

The only things that we didn't receive were things that I have to assume did not exist.

Q. What were those things?

A. Things like contamination control procedures.

Q. From which lab?

A. Either lab.

Q. You didn't receive that from either FDLE or University of Florida?

A. No.

Let's see, what else did I not get.

The -- the evidence collection procedure that was -- that we requested was the ones that were in effect at the time that this evidence was collected, and --

Q. Is that Florida Highway Patrol?

A. Yes, that's Florida Highway Patrol, correct.

And they -- they sent us their manual that went into effect in 2011, and then they went through another round of requests, and the next time they sent us policies that they called 12.01, 12.02 and 12.03, but, again, these were all revisions that were released years after the work in this case.

So I think they just didn't understand that we wanted the versions that were in effect in 2006, if they had any in effect at that time.

Q. Okay.

Anything else that you're missing that you would -- that you would ask for?

A. Any field record -- contemporaneous field records if they existed related to --

Q. And again, that's FHP?

A. That is -- that would be FHP, yeah, the agency responsible for the original collection.

The request was field records related to evidence collection, and it goes on and on. Essentially everything between initial collection and receipt by the lab.

Q. Anything else that you're missing?

A. You know, we reasked for the custody records again, trying to make sure that we didn't miss anything for -- for FDLE's toxicology, for LeAndra and the other tox analysts. But they just resubmitted the same set that we got the first time, so I presume that that's a complete set.

No contamination surveys.

I think that's it.

Q. Okay.

So we talked about the validation studies for FDLE. We don't have the validation studies for University of Florida.

Were there any other concerns that you had regarding scientific validity in this case?

A. No. Simply the fact that the methods had not been validated prior to their use.

Q. And then the last area that you mentioned as

being an area of concern is how the methodology was used by the scientists.

Were there concerns that you had in this case in that area?

A. Yeah. The biggest issue was probably the fact that it wasn't possible to determine whether the laboratory's results were what's called traceable.

Q. What does that mean?

A. Traceability is a term that we use in analytical chemistry because we identify unknowns by the comparing them to the response that we get for known samples. And so the traceability of the measurement depends on using known samples of known and documented origin and purity.

So the instrument doesn't tell us that a sample is alprazolam. You have to run a known standard and get its response, and that traceability of that standard is what's required.

It's kind of like -- you're probably -- when there's an E. coli outbreak in hamburger, they can trace back all the places that that -- that hamburger lot got shipped.

It's the same kind of thing for reference materials used in chemistry laboratories. The lot numbers are identified, and as long as you can prove

that that lot was received and stored and handled appropriately, then it's traceable back, in our case, in the United States here, to NIST, National Institute of Standards and Technology.

In some case, the controls that they used were simply identified with a date and an analyst's initials. That's generally not sufficient to uniquely identify and make it traceable.

In some cases, the reference materials that were used were simply identified by their target concentration of, for example, 500 nanograms per mil.

When you receive these -- a lot number -- a lot of these reference materials, they have a lot number, the list of analytes, the target concentrations, the acceptance ranges, the uncertainty, all that kind of information, and as long as you can track that lot number, then it's traceable.

But they didn't appear to document the lot number of the materials they used always at the time they used them. In some cases, they did.

Q. Well, where -- and just -- I'm going to try and say back what I think I've heard you say, because that one was kind of a difficult concept for me.

A. It is.

Q. I'll be honest with you. Traceable.

So what you're -- what you're saying is these laboratories -- how do I want to say this -- that we don't know where their reference standards are coming from --

A. Yes.

Q. -- in terms of the instrument recognizing a compound as being alprazolam?

A. Or any other material, yeah. The only way you know --

Q. Just --

(Discussion off the record.)

Q. (BY MS. WALLACE) Just to use alprazolam as an example.

A. Yes. Alprazolam is just an example.

Every compound that you identify you run a reference material of known origin and purity that should be traceable back to NIST, all the way back to the National Institute of Standards and Technology, so that you can draw that conclusion with confidence.

Q. Which compounds -- and we'll just start with FDLE. Which compounds are not traceable?

A. It's not on a -- well, how do I explain it.

For example, the -- that form that I showed you a little bit earlier -- let's see if I can find one on there.

Can I come up to the --

Q. Sure.

A. -- camera again?

Okay.

Q. Little further away.

Okay. I remember this document. Okay.

A. Okay?

Here I'm talking about measuring out 3 mils of blood for each standard and blank, and the source of the standards is just identified as October, '05 V.

And from that I can't -- it's not a specific lot that describes exactly which analytes are present in that standard, at what concentration, from what source.

Q. Okay.

A. And this next one under it is similar. It just identifies it as 51506 and then somebody's initials.

Q. So the problem is they're not documenting the lot numbers from NIS (sic)?

A. It's the -- yeah. The lot numbers that are traceable to NIST.

Q. Okay.

And is NIS the only source of these reference standards, or are there any other manufacturers, so to speak?

A. That's actually a good question, but I need to clarify something. They don't actually buy these reference standards from NIST. Typically they buy them from reference material providers who certify them as traceable back to NIST. There's a secondary certification process, if you will.

Q. Okay.

A. But as long as all those lot numbers are in sync, you can make it traceable.

Q. So for those -- the compounds that you just indicated on that report, which compounds were those? Or is that --

A. It's a long list. It's --

Q. Okay.

A. And I -- that's part of the problem. I don't know what all the compounds were. But it's a -- it's a couple of dozen anyway.

Q. Okay.

Were there any specific compounds or drugs that were identified by FDLE that don't have these lot numbers, these traceable lot numbers associated with them?

A. The one I showed you was their basis test, and that was the one that they used to report the results for the cocaine metabolite and for morphine. So that's

the test that was used to report those two results.

Q. Okay.

But there -- are there no lot numbers for any of the report -- or the results that they reported or just for those two drugs?

A. When they say they spike in a low concentration standard, it has every single target analyte present at that low concentration. So it's a mixed standard. So there will be cocaine and heroin and a whole bunch of other things present in that sample.

Q. Okay.

A. It won't have heroin, because that's not amenable to this analysis, but their list is things like -- in addition to morphine, methamphetamine, oxycodone, codeine, cocaine, a long list of things.

And so when they -- that one reference to a low concentration standard should have every one of these compounds present at that low concentration.

Q. Okay.

So -- now, I'm sorry to belabor this, and I'm just trying to -- I'm just really trying to understand traceability.

The problem as it relates to FDLE and the report that we're just looking at there, is there no -- there are no lot numbers associated for these compounds,

so we don't know how FDLE's instruments identify these compounds in the blood sample?

A. No.

Q. Is that not --

A. Not quite. You're close.

Q. Okay.

A. It's that we don't know that the known standard that they introduced to the instrument and said this is morphine -- we don't know where that standard came from.

Q. I got it. Okay.

Is this -- I mean, a minute ago we talked about other documents that you would have liked to have received.

Is this -- would this fall into that category, as well, traceability reports or documents?

A. If they had been providing lot numbers that we could link, then there could have been a certificate of analysis associated with that lot number. But without the number, I've got nothing to look up.

I can look these things up from the manufacturer's sites with lot numbers. I can go to the reference material manufacturer sites, enter the lot number and find the certificate of analysis for that standard.

Q. Okay.

A. Ooh, and here we're using standard as a different way, a different -- this is the other way to use the term "standard" in the analytical chemistry.

Q. And this -- that's the one I'm actually familiar with, so nice to slightly be back on familiar ground.

Were there, apart from the traceability issue, any other problems that you had regarding the way that their scientific methods were used, either of the laboratories?

A. Let's see.

There were -- there were record-keeping issues that made it very difficult for an independent reviewer to determine actually who did what to a given sample, because there were people who ran the immunoassay screen that were not identified. I have initials. It looks like A something. I can't really tell. AE maybe.

So we don't know who that was, what their qualifications were, you know, nothing about that person.

In addition, in some other cases --

Q. Can I stop --

A. Sure.

Q. -- before you go on?

So does this relate in some sense to the chain of custody issues that you were describing earlier? We just don't know who is touching the samples at what time?

A. That's -- that's correct, because I -- I have a document that says that somebody with the initials that look like AE seems to have run this sample, but we don't -- we don't know anything more about them. LeAndra Higginbotham did review that data, but she didn't run it, she didn't perform the testing.

Q. Okay.

All right. And I interrupted you before. You were going on to another concern that you had regarding the methodology used --

A. Okay.

Q. -- or how the methodology was used.

A. Was used.

Can I -- let's see. There are several -- I'm going to look and see if I can find some places here.

That same issue happens on several of the other tox methods where a person whose first name starts with a D -- and it looks like maybe DKM? H? I'm not really sure. Another person was involved.

It's common to have multiple analysts involved in testing, but you need to be able to distinguish who

did exactly what, who -- who performed which physical manipulations, which extractions. And they do that in large measure on these bench sheets, but I don't know who the second person is.

I only got LeAndra's resume. When we -- when we asked for the -- well, maybe that's something that we didn't get. We asked for the resumes of the people involved. We didn't get resumes for the AE person or the DKH person, you know, that kind of thing.

Q. Okay.

A. So I don't know who those people are.

Q. Okay.

Any other problems with how the methods were used, apart from this documentation problem that we're talking about?

A. You know, the -- the kind of testing that was performed by FDLE that is only reporting the identification and not the quantity is significantly less demanding than quantitative testing. The -- the one thing you have to get absolutely right on qualitative testing like this is the issue of contamination control.

Q. Okay.

A. And because if you have a process that allows samples to be cross-contaminated through carryover

between glassware or equipment or on the instrument, then you can misinterpret a signal as being present in the sample when it was really introduced through contamination.

Q. Right.

A. So the fact that they don't have any contamination control procedures specifically means that it's -- it's more difficult to have confidence in results that are present at very low levels, as is the case here.

Q. Okay.

And they did not provide the contamination control procedures to you, so you don't know what the procedures are, or if they exist in the first place?

A. When they were -- when that -- in response to that, they provided the materials we got, the quality manual documentation, the standard operating procedures, which are essentially silent on the subject of contamination control.

Q. Okay.

And I assume that it would be a -- a normal laboratory practice to have some kind of procedures for contamination control.

A. Yes, especially if you're doing low-level trace level work. It's not so much an issue when you

have -- when all you're running is very concentrated high-level bulk materials. That's not as much of an issue. But when you're reporting trace results, it is.

Q. Okay.

Are there any other concerns that you had in the area of how methods were used by either of these two labs?

A. I think that's pretty much it.

The -- the documentation, the amount of contemporaneous documentation that was available for the samples at this time, as I already indicated, was largely insufficient for us to be able to go back after the fact and try to figure out where the -- for example, the volume inconsistency could have appeared, at what point was there -- was there a point when there was a problem introduced or not.

We just really can't tell, because that -- those contemporaneous records aren't -- aren't there.

So no. I think that pretty well covers it.

Q. Okay.

Apart from these different topics we've already discussed, were there any other concerns that you had regarding any of the work that was done in this case.

I know that's a big question, it's kind of a

catchall, because we've talked about a lot in detail.

A. Um-hum.

Q. So I just wanted -- was there anything else that we haven't already discussed that you consider problematic in the work done in this case?

A. I will mention that I did not look at the alprazolam data simply because -- since it was present at -- at normal therapeutic levels, it didn't seem material. So I didn't even bother to waste my time looking at it.

Generally, if it's a prescribed medication that is present at therapeutic levels -- normal therapeutic levels, I don't even bother to waste my time looking at it. So I'll just qualify by saying that of the materials that I received I just didn't even look at that.

Q. And what would you look at? I mean, what --

A. Well --

Q. -- materials would you have looked at --

A. That -- that --

Q. -- if alprazolam had been an issue for you?

A. If it had been an issue.

The same materials.

Q. That's a terrible question.

A. The stud- -- I would have looked at the prep

records and the instrument data and the validation studies and all the same kind of materials.

Q. Okay.

So the compounds that you focused on were the other compounds that were identified in Mr. Lubbecke's blood, the cocaine metabolite, the THC, morphine -- there's one other one, a fourth one.

A. Correct.

Q. Those are the ones you focused your analysis on.

A. That's correct.

Q. Okay.

And you didn't -- you didn't -- you said you didn't waste your time on the alprazolam because it was within normal therapeutic levels?

A. Yes.

Q. Okay.

Any other concerns that you had regarding the laboratory work done in this case?

A. I think that's about it.

Q. Okay.

And I just had a couple of other -- other little questions.

Have you ever had any cases before involving Dr. Goldberger?

We talked about Dr. Higginbotham, but I didn't ask you about Dr. Goldberger.

A. You know, I've read some testimony that he's given, and I don't know in what cases. It -- I don't know that I've ever actually seen him testify or if he's ever testified on the same cases that I have. I just don't know.

Q. Okay.

A. You know, I only know while I'm there in the courtroom, and what comes before or after me I don't always have any idea.

Q. But nothing comes to mind in terms of other cases you had in common with him.

A. Not really, no. I'm -- I just know I've -- I've read some of his testimony, but I don't recall what case that was for.

Q. Okay.

And I think you said you recalled one case that you had in common with Dr. Higginbotham that was in --

A. It was in Key West, Florida, because --

Q. Okay.

A. -- I remember that courtroom so well. And it -- the attorney in that case -- the defense attorney that I was testifying for was Richard Hersch,

H-E-R-S-C-H.

Q. Okay.

A. I don't remember the client's name, but he was the attorney.

Q. Okay.

Have you -- I'm sorry?

MR. SOHN: That's okay.

Q. (BY MS. WALLACE) Have you ever visited the University of Florida's toxicology laboratories?

A. No, I have not.

Q. Okay.

And I think we covered this kind of in passing.

You've testified before in court, obviously, since you've become -- in -- since you've become a consultant in this area; is that correct?

A. Yes, ma'am.

Q. Can you estimate for me how many times you've testified in court?

A. Many --

Q. I know you don't like estimates.

A. Many dozens.

Q. Okay.

A. I've testified in a lot of state courts, in federal courts, in Denver and El Paso and Philadelphia.

I've testified internationally, testified in military hearings and horse racing hearings.

Q. That sounds like an interesting story, but since we've already been going pretty long this afternoon, I'm not going to ask.

I know you mentioned the one prior case that you had in Florida where you testified in Key West.

Any other cases that you've testified in in Florida?

A. Several, yes.

Q. Okay.

A. Do you -- do you want me to try to --

Q. Do you know approximately how many?

A. I don't. I've testified in Orlando a couple of times and in Pensacola, although I think I went to a little town next to there, because the venue was moved. Some little town next to Pensacola.

Q. Okay.

A. And there's -- on the East Coast, there's a town that starts with an M. Florida Tech is there.

Q. So --

A. I don't know.

Q. -- there's maybe -- maybe a dozen times in Florida?

A. Maybe a dozen times in Florida, yeah. A

couple of times in Key West, I think. No, maybe just one. I don't know.

Q. Have you ever testified in Sarasota County before?

A. I don't think so. I lectured once in Sarasota, but I don't think I've testified in Sarasota.

Q. Okay.

Now, we're going to work on trying to get some of these other documents that you said that you would have liked to have seen, if they exist in the first place.

But apart from those documents, do you have any plans in the future to review any additional paperwork or information related to this case?

A. I don't know of any additional paperwork or information, so no.

Q. Okay.

If you do review anything or if anything comes along that changes your opinions that you've provided in your testimony here today, will you let me know about that, let Mr. Sohn know about that?

A. Yes, ma'am.

Q. Okay?

Okay. I think that's all the questions that I had.

Mr. Sohn, do you have anything?

MR. SOHN: I've got a couple.

MS. WALLACE: Do you want to move over here just so you guys can see each other?

MR. SOHN: Janine, does it matter if you can see me or not?

THE WITNESS: No. I can hear you just fine.

MR. SOHN: Okay.

EXAMINATION

BY MR. SOHN:

Q. Just one or two questions to try to clarify a couple points.

You talked about the lack of method validation for morphine and benzo, the metabolite in cocaine, correct?

A. Yes.

Q. Okay.

Did you find any issues concerning the lack of validation for THC or the metabolite of THC?

A. In -- in the case of THC, I got the same kind of a document, which was a -- a summary document that was dated March 9th, 2005, and it wasn't clear that -- again, that that was the same procedure that was used to analyze these samples.

Q. So my question is based on what you've

received and what you reviewed, do you see any evidence that the method for testing for THC and the metabolite was properly validated by FDLE?

A. No.

Q. Can you say it was at this point or was not?

A. I'm sorry. I don't understand the question.

Q. Let me rephrase that.

Can you testify, based on what you reviewed, that FDLE properly validated their method for testing for THC and metabolite of THC?

A. No, I can't.

Q. So if they -- if FDLE's report confirmed the presence of five controlled substances -- you already indicated you didn't even waste any time dealing with alprazolam or Xanax; is that correct?

A. That's correct.

Q. So as to the remaining four substances that were found in the sample, is it your opinion -- professional opinion that FDLE, based on what you reviewed, did not properly validate their methods for testing on all four of those remaining substances?

A. Correct.

Q. Okay.

And just one final point here.

When you were talking about the reliability of

the method used in dealing with traceability, you explained when dealing with benzo -- and I'm not going to try to pronounce the whole name -- and morphine -- you know what I'm talking about?

A. Yeah.

Q. -- that the reports that you received from FDLE did not properly reflect any lot number so that you could trace those back to the manufacturer?

A. That's --

Q. Is that correct?

A. That's correct.

Q. Does that also apply to the remaining two substances, THC and the metabolite of THC?

A. Let me look real quick, make sure.

Q. Okay.

A. Same thing.

Q. Okay.

So at this point, the records you've reviewed from FDLE regarding the lack of lot numbers and lack of traceability, that would cause defects as to traceability for all four substances, of course, excluding alprazolam?

A. That's --

Q. Is that correct?

A. That is correct.

Q. Okay.

Okay. That's all I wanted to clear up.

Nothing further.

MS. WALLACE: All right.

And nothing further by the State.

Thank you so much for your time this afternoon.

THE WITNESS: Thank you.

MR. SOHN: Thanks, Janine.

(Proceedings adjourned at 1:37 p.m. Mountain Time.)

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, FLORIDA

CASE NO. 2006 CF 017774 NC

STATE OF FLORIDA,

Plaintiff,

vs.

RYAN GARY LUBBECKE,

Defendant.

REPORTER'S CERTIFICATE

I, CHERYL ARREGUIN, RPR, New Mexico CCR No. 21, DO HEREBY CERTIFY that on January 4, 2013, the deposition of JANINE ARVIZU was taken before me at the request of, and sealed original thereof retained by:

For the Plaintiff:
KATE DARBY WALLACE
Assistant State Attorney
OFFICE OF THE STATE ATTORNEY
TWELFTH JUDICIAL CIRCUIT
2071 Ringling Boulevard
Fourth Floor
Sarasota, Florida 34237-7000

I FURTHER CERTIFY that copies of this certificate have been mailed or delivered to all counsel and parties to the proceedings not represented by counsel appearing at the taking of the deposition.

I FURTHER CERTIFY that examination of this transcript and signature of the witness were required by the witness and all parties present. On _____,

2013, a letter was mailed or delivered to JANINE ARVIZU regarding obtaining signature of the witness, and corrections, if any, were appended to the original and each copy of the deposition.

I FURTHER CERTIFY that the recoverable cost of the original and one copy of the deposition, including exhibits, to KATE DARBY WALLACE is $_____.

I FURTHER CERTIFY that I did administer the oath to the witness herein prior to the taking of this deposition; that I did thereafter report in stenographic shorthand the questions and answers set forth herein, and the foregoing is a true and correct transcript of the proceeding had upon the taking of this deposition to the best of my ability.

I FURTHER CERTIFY that I am neither employed by nor related to nor contracted with (unless excepted by the rules) any of the parties or attorneys in this case, and that I have no interest whatsoever in the final disposition of this case in any court.

_____
CHERYL ARREGUIN, RPR
New Mexico CCR No. 21
License Expires: 12/31/2013

State of Florida vs. Ryan Gary Lubbecke

DEPONENT SIGNATURE/CORRECTION PAGE

If there are any typographical errors to your deposition, indicate them below.

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Any other changes to your deposition are to be listed below with a statement as to the reason for such change.

PAGE	LINE	CORRECTIONS	REASON FOR CHANGE

I, JANINE ARVIZU, do hereby certify that I have read the foregoing pages of my testimony as transcribed, and that the same is a true and correct transcript of the testimony given by me in this deposition, taken on January 4, 2013, except for the changes made.

_____
JANINE ARVIZU

_____
DATE

DATE DELIVERED/MAILED_____RETURN BY_____

MS. JANINE ARVIZU
Arvizujs@aol.com

RE: State of Florida vs. Ryan Lubbecke
Deposition of: JANINE ARVIZU
Date Taken: January 4, 2013

Dear Ms. Arvizu:

At the time of the above deposition/sworn statement, it was requested that the deponent read and sign the transcript.

____ Enclosed is your copy of the transcript with the original signature page. Please ask the witness to read the transcript and make any corrections on the original signature page and return the original signature page to our office.

____ DUE TO TRIAL IN THE MATTER BEING SET FOR, _____ SIGNATURE MUST BE COMPLETED BY _____.

_X_ Enclosed is a courtesy copy of the transcript with the original signature page. Please read the transcript and make any and all corrections to your testimony that you feel are necessary and indicate such corrections on the attached page. Please only return the attached original signature page to our office, not the transcript.

____ The deposition transcript is now ready to review in our offices. Please call 505-243-5018 to make arrangements for reading and signing.

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In most instances, witnesses are provided 30 days from the receipt of this letter to read and sign the transcript. Failure to read and sign within this time will result in the original transcript being filed without the signature page.

Your immediate attention to this matter will be appreciated. If you have any questions, please call us at 505-243-5018.

_____
KATHY TOWNSEND COURT REPORTERS

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