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MR. GUYMON: Nurse Spear.

PATRICIA PERRY SPEAR

Was called as a witness, duly sworn, and testified as follows:

THE CLERK: Please state your name and spell your last name for the record.

THE WITNESS: Patricia Perry Spear, S-P-E-A-R.

DIRECT EXAMINATION

BY MR. GUYMON:

Q Ms. Spear, what is your profession?

A I'm a registered nurse.

Q And how long have you been a registered nurse?

A Seventeen years.

Q I take it as a registered nurse you are licensed to practice your profession here in the State of Nevada?

A I am.

Q And can you tell us who you've been employed with for the last 17 years, has it all been under the same employer?

A No, it has not.

Q Briefly.

A I've been employed in New Mexico and for the last seven years here at UMC in Las Vegas.

Q Okay. Let's talk about the last seven years at UMC in Las Vegas. What are your primary responsibilities at the University Medical Center?

A To carry out doctor's orders, take care of patients, give medications, do assessments.

Q Do you recall what your specific responsibilities were on January 18th and 19th of '93?

A I was assigned to the OB/GYN room so I was taking care primarily of

1 patients who were having OB/GYN problems as well as sexual assaults.

2 Q Okay. Are you familiar with Dr. Fisher?

3 A Yes, I am.

4 Q Did you recognize him when he walked in and out of this courtroom?

5 A Yes, I did.

6 Q And how is it that you're familiar with Dr. Fisher?

7 A We worked together in the same area at that time.

8 Q Do you still work in the same area?

9 A No, he's a pediatrician and the Pediatric Emergency Room has been
10 moved to a slightly different area.

11 Q The particular examination that we're talking about today is Tami Zold.
12 Are you familiar with that name?

13 A Yes.

14 Q Have you had an opportunity to familiarize yourself with the records and
15 your involvement of Tami Zold?

16 A Yes, I have.

17 Q Briefly, can you tell the jury how it is you came to meet Tami Zold and
18 what your responsibilities were as it relates to her as a patient?

19 A Okay. Tami's mother presented with her to the emergency room on the
20 night of January, I believe it was 18th, saying that she had been sexually assaulted.
21 I believe Metro had already been contacted and had talked to her prior to their arrival
22 there. When they presented, a chart was circulated and she was brought back to
23 one of the examination rooms. Once the Metro detectives had talked to her and
24 decided that it was, indeed something that we needed to do a sexual assault work-up
25 on, they generated a sexual assault kit which it was then my responsibility to fill out
26 the initial paperwork and do some of the initial evidence collection.

27 Q You mentioned the word "sexual assault kit," just what is a sexual
28

1 assault kit?

2 A A sexual assault kit is a box containing numerous evidence collection
3 envelopes, swabs, various things that we use in order to help identify a perpetrator
4 of sexual assault.

5 Q Now, on this particular evening, did you use a sexual assault kit?

6 A Yes, we did.

7 Q Where is it that you obtained that sexual assault kit from?

8 A We keep a supply of them in the emergency room, or we did at that
9 time. And if, for whatever reason, we ran out, then the detectives would furnish one
10 to us.

11 Q In this particular case, did the detectives furnish one to you, or did you
12 have one there at the emergency room?

13 A I don't recall for sure.

14 Q Can you tell this jury what condition the sexual assault kit was when
15 you first obtained it?

16 A The sexual assault kit is sealed.

17 Q How is it sealed?

18 A There are--may I use this one?

19 Q I believe that's State's exhibit 20.

20 A Yeah.

21 Q Or proposed exhibit 20.

22 A It has a--the binding is a continuous part that goes over onto the bottom
23 and it is totally sealed on both ends.

24 Q Now, let's--and let me have you look right at the very front cover sheet
25 of that--

26 A Um-hum.

27 Q --particular sexual assault kit. Do you recognize any signatures there?
28

1 A Mine is the top one.

2 Q All right. Is your signature dated?

3 A 1/19/93.

4 Q And what time did this sexual assault exam actually start and when did
5 it conclude, if you know, ma'am?

6 A It started about 11:30 at night.

7 Q And approximately when would it have been concluded?

8 A Generally, sexual assault exams take anywhere between an hour and
9 two hours, depending on the nature of the evidence we're collecting. So, I would
10 imagine it concluded somewhere around 12:30 or 1:00 in the morning.

11 Q Now, who is the person that's responsible for the evidence that's being
12 collected?

13 A I am responsible for the collection of everything except vaginal swabs
14 and rectal swabs.

15 Q So, you become the keeper, I take it, of that box once it's given to you?

16 A I do.

17 Q Are you the one who broke the seal?

18 A I am.

19 Q When you break the seals, what do you do with the box?

20 A I open the box, I take out the papers in the order. They are layered in
21 the order in which they are to be filled out or used. The top one generally being--or
22 always being a consent for examination and to release information. That's filled out
23 by me and by the patient, or in this case, the patient's mother, her legal guardian.

24 Q Once that first paper is filled out, what do you do with the first paper?

25 A It is laid aside in order then we go down to the--we just go through the
26 layers, go through the evidence collection as it comes out of the box. Once the box
27 is opened, I am in the room with the evidence the whole time.

28

1 Q What is the second step? You say the first step is the consent for this
2 examination. What's the second step?

3 A I'm not sure. It's been a while since I've done one.

4 Q Okay. If that box were open, would it have the steps?

5 A I'm not sure if it would or not.

6 Q Okay.

7 A Since it's been opened, I'm not sure if it's still in order or not. There is
8 a set of nursing notes that can be filled out. And then there are all the evidence
9 collection. There is a--let's see. There is a small paper bag for collection of
10 underwear or undergarments that were worn at the time. Various swabs, various
11 little envelopes for collection of hair specimens. I don't remember it all; it's been
12 several years since we've done that.

13 Q All right. The document that is immediately to your right I believe is
14 certified copies of medical records?

15 A Yes.

16 Q Can you browse through those and gets to the actual portion that you
17 completed?

18 A Okay. There is--it looks like step one: the consent for collection of
19 evidence and release of information.

20 Q And is your signature on that chart?

21 A It is.

22 Q All right. Step two?

23 A Step two is the medical history and assault information sheet.

24 Q All right. Let me talk to you a little bit about that.

25 A Yes.

26 Q Who fills out the patient's name?

27 A I did.

28

1 Q Weight and height?
2 A I did.
3 Q Time?
4 A I did.
5 Q On the medical history and assault information, where is the information
6 that you're writing down coming from?
7 A From the patient themselves, the assault victim.
8 Q And who is in the room at that point in time?
9 A Generally, just myself and the patient, or in this case, her mother was
10 present since she was a juvenile.
11 Q There is an area that says, "Description of patient's outward
12 appearance, i.e. clothing torn, shoes missing," etcetera. Underneath that, there is
13 a statement. Who wrote that statement?
14 A I did.
15 Q And can you tell us what it says?
16 A It says that her clothing was already given to Metro.
17 Q Under the area--the next area it says, "Check all those which apply,"
18 there is an area for bath or shower. Is that area checked or not checked?
19 A It's not checked.
20 Q What does that mean?
21 A That means that when I asked her whether she had bathed or showered
22 prior to this examination, she replied no.
23 Q Is that an important question to ask a patient of sexual assault?
24 A It's a very important question.
25 Q Why?
26 A Because bathing or showering can destroy any evidence that may be on
27 her person.
28

1 Q There is an area that has the word "douched."
2 A Yes.
3 Q Was that checked?
4 A No, it was not.
5 Q And why not?
6 A When I asked her whether she had douched, she replied no.
7 Q There is an area directly underneath there that says, "Check all which
8 apply at time of assault." Are you familiar with that area?
9 A Yes.
10 Q The question then has boxes of yes, no, and unsure?
11 A Yes.
12 Q Underneath the first set of questions it says, "Was patient's vagina
13 penetrated by," and there's the word "penis." What box is checked and why?
14 A It was checked yes because when she was asked whether the
15 perpetrator had assaulted her with his penis, she said, yes.
16 Q The word "finger," what was her response?
17 A Yes.
18 Q The word "tongue"?
19 A Yes.
20 Q The next question is, "Was patient's mouth penetrated by penis?" You
21 put--
22 A No.
23 Q And where did that information come from?
24 A From the patient.
25 Q The next question is, "Was suspect's mouth on patient's vagina/penis?"
26 Assuming this is a male or female assault.
27 A Correct.

1 Q There was a check?
2 A It says yes.
3 Q And, "Was suspect's mouth on patient's anus?" What does it say?
4 A No.
5 Q Then there is a series of questions that ask, "During the assault, was
6 a condom used?"
7 A No.
8 Q A diaphragm?
9 A No.
10 Q Contraceptive foam?
11 A No.
12 Q There is a question that goes on. It says, "Was patient licked/kissed?"
13 A She said yes, she was.
14 Q And it says, "If yes, describe."
15 A That she had been kissed or licked on the chest and stomach.
16 Q There is a number of other questions. Let me go to the second column.
17 There is a question that says, "Was patient's rectum penetrated by penis?"
18 A No.
19 Q Finger?
20 A No.
21 Q Tongue?
22 A No.
23 Q Question, "Did ejaculation occur?" There's a box for yes, no, and
24 unsure. You checked?
25 A Yes.
26 Q Why?
27 A When I asked her if she thought the patient had--or the perpetrator had

1 ejaculated, she replied she thought he had.

2 Q And it says, "If yes, describe."

3 A And she said yes, probably in her vagina because that was where his
4 penis was.

5 Q Is that particular document, Medical History and Assault Information,
6 signed by yourself?

7 A It is.

8 Q Take me, then, to the next step of this examination.

9 A The next page on here is the doctor's form. Once the evidence is
10 collected, my part of it, the physical evidence, then the doctor comes in and does a
11 pelvic examination and during that exam, he looks, actually inside the vagina for any
12 tears or any evidence that might be in there that he would see.

13 Q Okay. Before we get to the doctor's point--part, what evidence do you
14 collect after asking the patient the series of questions we've been through?

15 A I collect her underwear or any other clothing that she may have on at
16 the time that was worn during the time of the assault. I collect hair clippings. If she
17 scratched or did anything where she might have come in contact with the
18 perpetrator's skin, we do fingernail scrapings. Let's see, hair samples. If there was
19 a portion of her body that was licked or kissed where he had some saliva that might
20 have still remained on her body, we do swabs of that area trying to obtain some of
21 that saliva.

22 Q Now, you mentioned swabs. Are there actual swabs contained within
23 the kit when you receive it?

24 A Yes, there are.

25 Q And how are those particular swabs packaged?

26 A They're packaged in a little flattened carton. It's like a box that you
27 reconstitute. You fold it out and put the flaps in and it makes a small, little tubular

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1 box with air holes in it.

2 Q Are there specific swabs designated for the specific collection?

3 A Yes, there are.

4 Q Are you familiar with an oral swab?

5 A Yes, I am.

6 Q Is that something that was performed in this case?

7 A Yes, it would have been.

8 Q Who performed the oral swabbing?

9 A I would have.

10 Q And where did the swab itself come from that you used to do this
11 swabbing?

12 A Generally from the inside of the mouth.

13 Q Okay. But where do you get the swab?

14 A It's packaged in the kit.

15 Q Okay. Once you did the oral swabbing of Tami Zold, where is that swab
16 placed then?

17 A The swab is then placed in the little box contained designated for it and
18 allowed to air dry.

19 Q Once it's placed in that container, is that container sealed?

20 A That container is not sealed.

21 Q Where is the container placed back at and who places it there?

22 A Once it has air dried, I take it and place it back in this box along with all
23 the other evidence which is then sealed and placed in a special refrigerator.

24 Q Okay. Is that swab, say, packaged and set aside from any other swab
25 that's collected in this case?

26 A The swabs are set separately, yes, and allowed to air dry in the same
27 area which I don't leave.

28

1 Q Do you mix the swabs up, however?

2 A No.

3 Q Is there ever an occasion where you take, say, a vaginal swab and an
4 oral swab and put them in the same package and back in the box?

5 A No.

6 Q Why not?

7 A Because they have separate boxes designated for that evidence.

8 Q In this case, did you keep all of the samples of evidence that you
9 collected separate from one another?

10 A Yes, I did.

11 Q Did you mix them or contaminate them in any way?

12 A Not that I'm aware of.

13 Q Now, you mentioned some hair clippings. Are these pubic hair pulls
14 that we collect?

15 A Generally, we try to do that. We also do pubic hair combings in an
16 attempt to obtain any pubic hair that may have dislodged from the perpetrator onto
17 the victim and still be mixed up in her hair. So, those are all separate as well.

18 Q And I take it they're separate as well. That was my next question.
19 They're packaged up and--

20 A Correct. There is a special piece of paper that is packaged in this that
21 we place under her when we do these combings. That piece of paper is then
22 carefully folded so that anything that is on it will--remain in it.

23 Q In this particular case, do you recall whether or not you packaged up or
24 impounded the patient's underwear?

25 A I do not remember specifically. Since I mentioned on this that all her
26 clothing was collected by Metro, I would say not.

27 Q Looking at that particular package today, the sexual assault kit, you
28

1 indicated that it had your signature on it?

2 A Yes, it does.

3 Q Is it in the same condition today as it was when you finished with it?

4 A Other than that the evidence seals have been broken and re--there is a
5 new evidence seal on here, I would say yes. And the envelope is open as well.

6 Q All right. Let me ask you, ma'am, there is a red and white seal that is
7 placed across here. It says, "evidence," on it.

8 A Correct.

9 Q And it says, "Metropolitan Police Department," who put that seal on this
10 box?

11 A Generally, I put that seal on that box.

12 Q There's a white envelope on it.

13 A Right.

14 Q I'm going to tear the--counsel, tear the white envelope off. Do you see
15 your initials or signature anywhere on those seals?

16 A I see my initials on this set of seals. I don't see it on that one, but.

17 Q Okay. Are you the person that actually put this all back together and
18 sealed it up?

19 A Yes, I am.

20 Q Once it's sealed up, where does it go?

21 A It goes in the refrigerator. We have a special forensic refrigerator in the
22 emergency room that is a locked refrigerator. It has a shoot that this goes down and
23 it remains in there until Metro comes and collects it.

24 Q Now, you said there was an additional set of seals other than the red
25 and white seals, they were the blue seals?

26 A Correct.

27 Q Are the blue seals intact today?

1 A Yes, they are.
2 MR. GUYMON: I'm going to have counsel examine those seals.
3 Your Honor, the record should reflect that counsel has seen the blue set
4 of seals and they are intact today.
5 Q (by Mr. Guymon) I'm going to ask you to carefully open the blue seals,
6 if you would. And having cut open the blue seals, is that box or container able to be
7 opened now?
8 A Yes, it is. Maybe it is. Well, actually, there is more tape on there. Yes.
9 Q I want you to remove each item carefully if you would, let's do it one
10 at a time.
11 A Okay.
12 MR. GUYMON: The first item--I'll ask the Court what preference. Would you
13 like them marked A, B, in sequence, or would you--
14 THE COURT: It's a matter of absolute and complete indifference.
15 MR. GUYMON: Thank you, Judge. Let's make sure I have the right number
16 here.
17 Q (by Mr. Guymon) State's proposed exhibit 20. You have removed the
18 first package. Can you tell me what it is, first of all?
19 A It says underpants.
20 Q All right. Is that package sealed?
21 A Yes, it is.
22 Q Who sealed it?
23 A Well, I apparently sealed it.
24 Q All right. And why do you say that?
25 A My initials are on it.
26 Q All right. Are there any additional initials other than yours?
27 A Yes, there are.

1 Q Can you read those initials?
2 A It looks like "LLE."
3 Q Do you know who LLE is?
4 A I haven't the foggiest notion.
5 Q All right. We'll get to LLE later then. Tell me when you sealed and
6 signed that particular baggie, what night was that?
7 A It would have been the same night that this exam was one which would
8 have been the night of January 18th or 19th.
9 Q All right. And what is contained--what is it you packaged in that
10 baggie?
11 A Apparently a set of underpants.
12 Q Okay. Let's come to the next package, if we could.
13 A Okay. This is vaginal and penile swabs and smears.
14 Q Okay. And who collected that piece of evidence?
15 A Dr. Fisher would have collected this. He would have handed it to me.
16 I would have completed the swabs and stayed with the evidence while it air dried and
17 then packaged it.
18 Q Okay. Let's get to that one last, then.
19 A Okay.
20 Q Since this is the one the doc did.
21 A Rectal swabs and smears. Again, these would have been collected by
22 him.
23 Q Put that aside for a minute.
24 A Okay. Blood samples.
25 Q Who would have collected those?
26 A I would have.
27 Q All right. Does your signature appear on it?

1 A It does.

2 Q Who sealed that?

3 A I would have.

4 Q Is there an additional set of signatures or seals?

5 A There is a set of initials on the front.

6 Q All right. Were the initials on the front on there on the 18th or 19th?

7 A No.

8 Q Okay. So, other than that additional set of signatures, is it in the same

9 condition as it was when you sealed it out?

10 A It seems to be.

11 Q Tell me, ma'am--I'm sorry. You said it seemed to be and I--

12 A Yeah, I don't remember stapling it. I usually sealed it with tape.

13 Q Okay. How is it that these blood samples are taken?

14 A Generally using a Vacutainer or a syringe just as a regular blood draw

15 that you would have done at any doctor's office.

16 Q All right. And I can feel what seems to be--

17 A Tubes.

18 Q Vials?

19 A Vials.

20 Q Or tubes?

21 A Tubes, um-hum, three tubes.

22 Q When you got the actual box itself, State's exhibit 20, or proposed

23 exhibit 20--

24 A Um-hum.

25 Q --were the tubes already in the box?

26 A Yes, they were.

27 Q Were the--was the envelope in the box?

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A It was.

Q What was the condition of this envelope and those tubes when you first take them out of the box?

A The envelope is flat and new and the tubes are empty.

Q You say they're empty. Are you able to see that there's nothing in them?

A Yes, you are.

Q And who placed the blood in the tubes?

A I did.

Q Once you put the blood in the tubes, is a cap put on them?

A The cap never comes off of it. It is--it's draw, if it's through a Vacutainer, it's drawn through the rubber stopper. And if it's drawn with a syringe, it's drawn from the syringe and with a needle injected into the tube which has a vacuum in it and sucks the blood in.

Q And whose blood is in those tubes?

A Tami's.

Q The next?

A Moist-dried secretions on the skin.

Q All right. Who collected those?

A I would have.

Q Now, when you got that particular envelope, what was in it when you first take it out and--take it out of the box?

A It is flat and there is an accompanying box and two swabs.

Q What was the condition of those two swabs when you take them out of the envelope for the first time?

A They're clean and dry.

Q Are you able to visually see that?

1 A You can--yeah, you can see that they're dry.

2 Q Okay.

3 A And clean.

4 Q What did you do with those swabs, how do you use them?

5 A Generally, if there is a secretion that we feel might be on the body,
6 some type of a mucus or sputum, or something, we moisten each swab with one to
7 two drops of saline, sterile saline. And then it's rolled across the area where the
8 patient feels like this evidence may be.

9 Q Now, once you collect that, are those one of the samples that needs to
10 dry?

11 A Those are samples that need to dry.

12 Q And where is it that they are drying at in relation to where you are?

13 A They're in the same room. The room in question has a--not a bench, it's
14 like a cabinet/counter top near the bed where the exam is done. And I always placed
15 my swabs and all my specimens in order on that table where I was between the table
16 and the patient at all times. And then I was in the room the full time as well.

17 Q Now, what is the condition of that table top when you start this
18 examination?

19 A It's clean. Other than our covered swabs, cotton balls, different things
20 that we--cotton gauze that we keep up there for patient use.

21 Q Okay. And do you know who cleaned it before this examination
22 started?

23 A I did.

24 Q Having cleaned it, are you certain that it was clean?

25 A Yes.

26 Q All right. Let's get to the next step, then, ma'am.

27 A Known saliva sample.

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1 Q And what is in that package?

2 A This is-it doesn't feel like there is anything in that package right now.

3 There is, though. It is a piece of paper. It looks like a small--when it's unfurled it

4 looks like a very small coffee filter type of paper. And what we do is fold that up and

5 have the patient spit onto it. And then that is laid aside and allowed to air dry.

6 Q Okay. Now, is your signature on the back of that particular envelope?

7 A It is.

8 Q And is there additional seals or signatures?

9 A There is.

10 Q And can you, again, recognize those?

11 A The same LTE? LLE?

12 Q With the exception of LLE, is it in the same condition today as when you

13 sealed it up on the 19th?

14 A It appears to be, yes.

15 Q The next one, ma'am.

16 A Oral swabs and smears.

17 Q Who collected those?

18 A I would have.

19 Q And what condition was that container in when you first opened the box

20 and you take out that package?

21 A The envelope is new and there are--there is a cardboard package in there

22 with two slides in it and a box with two swabs. And they are all clean and new.

23 Q Okay. And when you look at them, can you tell they're clean and new?

24 A Yes.

25 Q What do you do in order to collect that particular sample?

26 A We swab the inside of the mouth, take one of the swabs that we've

27 collected and roll it across the slides in order to allow any tissue that may have come

28

1 off to get onto that slide for examination.

2 Q And is that package sealed today?

3 A It is.

4 Q Does it have also the--I think you said LLE on it?

5 A Yes, it does.

6 Q With the exception of the LLE, is it in the same conditon today as when
7 you collected it and packaged it up again?

8 A It seems to be except for the staples at the top.

9 Q All right. Is there anything additional on that?

10 A There doesn't seem to be.

11 Q How about the box itself? Do you have more?

12 A Oh, pubic hair combings. And this is the piece of paper that I mentioned
13 earlier that is placed under the patient. There is a comb that is included in this like
14 a man's fine-tooth comb that we use to swab the patient's pubic hair to dislodge any
15 foreign hair or any of her hair that may be loose.

16 Q Okay. And what was the condition of that comb and the package in
17 which the hair is placed in when you took it out originally?

18 A They were new, clean, and unused.

19 Q And is that envelope sealed?

20 A Yes.

21 Q Again, by yourself, using the same procedure?

22 A Yes.

23 Q Okay. Additional envelopes?

24 A One last one: debris collection.

25 Q What is a debris collection?

26 A Debris collection would be leaves, dirt, anything extraneous on the
27 patient that is not covered by these other samples.

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no mud?

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LLE

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Q And did you observe any extraneous leaves or dirt on the patient?

A No.

Q Did you put that back in, seal it and sign it?

A It is--it says, "Was sample collected?" I marked no. "And if not, why?"

"None available."

Q Okay. So, I take it, then, that this particular envelope would be in the same condition in which you found it originally with the exception of your writing?

A That's correct.

Q It's not been sealed. Do you see anything in it?

A There is a piece of paper in it.

Q All right. Are you familiar with this piece of paper, this style papers?

A Yes.

Q Presumably, this would have been where any debris would have been placed?

A Correct. Fingernail scrapings would have gone into this.

Q You placed in back in there?

A Correct.

Q Had you gotten something, what would you have done with this?

A I would have sealed it with a moist four by four and then taped it shut and initialed it under the tape.

Q Okay. Now, there's one additional item in State's exhibit 20, actually two. Can you tell me, are you familiar with those two items?

A No, I'm not.

Q Okay. Are they signed by LLE?

A Yes, they are.

Q We'll get to LLE this afternoon.

Let's now go to the two items that were collected by the doctor.

1 A Okay.

2 Q I take it at this point in the examination, the doctor enters the room?

3 A Yes.

4 Q Up until this point, who has been in the room?

5 A I have and the patient has.

6 Q Has any additional nursing staff or patients wandered into the room?

7 A No. In this case, her mother was present also.

8 Q I'm sorry. I cut you off.

9 When the doctor enters the room, do you have conversation with the

10 doctor?

11 A Briefly. I let him know what is going on. Generally, I have alerted him

12 before I start the kit that this is--that he will be needed. And try to give him a time

13 span so that when I do call for him, he's available.

14 Q Are you present when the doctor collects his samples?

15 A Yes, I am.

16 Q And why is that?

17 A Because in the case of any male doing a pelvic examination on a female,

18 a female nurse or assistant must be present.

19 Q Now, are you the individual who hands the swabs to the doctor, or does

20 he actually take them out of the containers?

21 A It depends on the doctor. Generally, they are out of the containers

22 laying next to the appropriate containers which are separated one at each end of the

23 tray.

24 Q In this case, can you remember if they were separated or if the doctor

25 got them himself?

26 A I don't remember.

27 Q Okay. Do you recall seeing those two packages associated with State's

28

1 proposed exhibit 20 that night before this--or as this exam was going on?

2 A It looks like my crosses on the front of the envelope. I have not signed
3 the back of the envelope, however.

4 Q What was the condition of those two envelopes at the time that the
5 Doctor gets to this point in the procedure?

6 A The envelopes would have been new, flat, untouched, unmarked.

7 Q What is actually contained, if you know, in the vaginal smear?

8 A The vaginal smear is basically the same as the oral. It has a cardboard
9 package in there which contains two microscope slides. And it also has a little box
10 with two swabs in it.

11 Q Were you present when the Doctor actually took those swabs and put
12 them inside the vaginal area of Tami Zold?

13 A Yes, I was.

14 Q And what does the Doctor do when he removes those swabs?

15 A He usually hands them to me. I put them in the box and let them--set
16 them aside to air dry with the rest of the evidence.

17 Q Why the slides?

18 A The slides, again, are for microscopic examination for any tissue, for any
19 foreign matter, for anything that would be there. They also--vaginal swabs can show
20 up semen and sperm.

21 Q Was anything done with the slides in that particular package?

22 A After they're allowed to air dry they're sealed, they're put in this
23 package and they're put in the kit.

24 Q Now, you say after the slides were allowed to dry. How is it that
25 something gets on the slides?

26 A The--one of the vaginal swabs is used to make a smear on each slide.

27 Q Okay. Are you the person that actually takes one of the two smears--or

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1 swabs that the Doctor has handed you and place it on the slide?

2 A I can be. Some of the doctors like to do their own, so.

3 Q In this case, do you know if you did your own--or, excuse me--if the
4 Doctor did his own, or if you did his?

5 A I do not remember. I would think, since I did not sign the back that
6 perhaps the Doctor did it, but I could not say for sure.

7 Q Okay. You are certain, however, that it was done by one of the two of
8 you?

9 A Yes.

10 Q Okay. And is this container sealed now, today?

11 A Yes, it is.

12 Q How many sets of tape is on it?

13 A There are two sets of tape.

14 Q Now, the tape across the actual envelope at the bottom, is that similar
15 style tape as what we've seen on the others that your signature appeared on?

16 A Yes, it is.

17 Q And where does the tape come from that you used?

18 A Usually a roll I keep in my pocket.

19 Q Okay. The last item, can you tell me what was in it when you started
20 and what process were you using in order to get it to this stage now?

21 A These are the rectal swabs and smears. They have a similar cardboard
22 container with two slides in it, a box with two swabs in it.

23 Q And were those items used in collecting samples?

24 A Yes.

25 Q Again, is it taped, but yet unsigned?

26 A Yes.

27 Q And is there a second set of tape with signatures on it?

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1 A Yes, there at the top.

2 Q The second set, does it have the same signatures we've been looking
3 at, L--

4 A Yes, LTE, LLE.

5 Q And the first tape similar to the tape that you said you used does not
6 have your signature on it, however?

7 A That's correct.

8 Q Now, then after the doctor collects the internal samples, does that
9 conclude the examination?

10 A Generally, that concludes the collection of evidence. We usually have
11 the--for the hospital purposes and the patient's purposes, we draw, in addition to the
12 tubes which are in the package, we also draw a separate set of tubes to do a
13 pregnancy test and to do a syphilis examination with. And we generally also do a set
14 of our own swabs for GC and chlamydia which are sexually transmitted diseases.

15 Q Now, are those blood draws in those tubes placed in the sexual assault
16 kit itself?

17 A No, they are not.

18 Q I take it, then, that those draws are for other purposes other than
19 preservation of evidence?

20 A Correct.

21 Q And does that, then, conclude the examination?

22 A Yes, that concludes the examination. We usually have the patient wait
23 until the pregnancy test comes back, until the results of the RPR, the sexually
24 transmitted diseases comes back. And then we treat her if she does not show up
25 pregnant previously, we treat her with--or offer her the opportunity to take a drug
26 which will prevent conception.

27 Q Now, you indicated that the patient's clothes are collected by the Las
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1 Vegas Metropolitan Police Department. What does the patient go home in?

2 A Usually the family will bring additional clothing for them, or we will
3 request the family bring clothing. If they live a far distance away and have not made
4 that provision, then the hospital has clothing that we can give them to go home in.

5 MR. GUYMON: I have no other questions, Judge, at this time.

6 THE COURT: Will you approach the bench, please?

7 (Whereupon a bench conference was held, not recorded)

8 THE COURT: Okay, folks. We're going to take a lunch recess now. We're
9 going to be in recess until 1:30.

10 During this recess, you're admonished not to talk or converse among
11 yourselves or with anyone else on any subject connected with this trial, read, watch,
12 or listen to any report of or commentary of the trial or any person connected with it
13 by any medium of information, including, without limitation, newspaper, television,
14 radio, or to form or express any opinion on any subject connected to the trial until the
15 case is finally submitted to you.

16 We're going to break, as I said, until 1:30. It's not my place to advise
17 you where to eat. But I will tell you if you're not familiar with the downtown area,
18 it would be hard normally when we usually break for lunch for an hour, to get in and
19 out of all the downtown hotels which are only a block away. Where you have plenty
20 of time and you would beat the downtown work crowd if you wanted to go to any
21 of the downtown places.

22 Also, over at Fourth and Lewis, if you're not familiar with the downtown
23 area, it's a block over that way, we now have a nice French Bistro called Froggee's
24 on Fourth Street, which, if you don't get downtown much, you wouldn't have an
25 opportunity to try otherwise. And Andre's owns it.

26 So, there are good places and there is going to be sufficient time to go
27 to the good places today if you have that inclination. If you'd report back to Stony

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1 by no later than 1:25, we should start promptly at 1:30.

2 (At the hour of 11:45 a.m., the Court recessed until 1:30 p.m.)

3 (The following proceedings were held outside the presence of the jury)

4 THE COURT: We're meeting outside the presence of the jury. Mr. Guymon
5 was just about to move the admission of the various parts of the kit and you had
6 approached the bench and indicated that you were going to have an objection to
7 some of them. What is your objection?

8 MR. CHRISTIANSEN: Judge, as to the--I don't think Gary lettered them in sub-
9 sets, but as to the last two--

10 THE COURT: Have they been numbered individually?

11 THE CLERK: Yes.

12 THE COURT: You're talking about the vaginal swabs and the rectal swabs?

13 MR. CHRISTIANSEN: Both of which are not sealed, according to the nurse--
14 Nurse Spear's testimony, were not sealed by her nor signed by her on the seal. And
15 according to Dr. Fisher's testimony, he doesn't have any idea who sealed them or
16 where they were. I think that establishes a loop in the chain of custody that requires
17 a suppression of--and anything else that--

18 THE COURT: Okay, the burden in terms of disputing the chain of custody is
19 to show some reasonable possibility of tampering. All the evidence I heard indicated
20 none of that.

21 Are you moving the admission of all of those?

22 MR. GUYMON: Yes, Your Honor.

23 THE COURT: Do you have any other objection, Mr. Christiansen?

24 MR. CHRISTIANSEN: No, Your Honor.

25 THE COURT: They will all be received. Get the jury in.

26 (The following proceedings were held in the presence of the jury)

27 THE COURT: Go ahead, Mr. Christiansen.

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loop in the chain of custody

CROSS EXAMINATION

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BY MR. CHRISTIANSEN:

Q Good afternoon, Nurse Spear.

A Hello.

Q Is it better to call you Mrs. Spear or Nurse Spear?

A It doesn't matter; I answer to almost anything.

Q Okay. I'll try to keep it at good things.

My name is Pete Christiansen. I represent Mr. Downing in this matter and I just have a few follow-up questions from Mr. Guymon.

The night back in '93 that you, for lack of a better term, processed Ms. Zold and that sexual assault kit that's now been received as State's exhibit 20 and the sub-parts are A through H. That was five-plus years ago, is that right?

A That's correct.

Q And do you still work for UMC?

A Yes, I do.

Q I think you said seven years that you've worked for them?

A Yes, sir.

Q How long of that seven years, or how much of that period of time have you been in a position where you've processed these rape kits?

A Every time I worked in the specific rooms that were designated at OB/GYN rooms.

Q Okay.

A I don't know how many times that would be.

Q Well, I'll just try to cut to the chase. About how many of those do you think you've done at UMC, the sexual assault kits?

A At UMC? I would estimate over 25, probably closer to 50.

Q So, somewhere in the neighborhood of 25 to 25 to 50?

1 A Yes.

2 Q Now, to each of those--for a round number, I'll say 30. For each of
3 those 30 sexual assault kits that you're processed, do you have a specific
4 recollection of the victim?

5 A No.

6 Q Or what the victim was wearing when they came in?

7 A No.

8 Q Or the exact steps you took with each victim? Do you follow what I'm
9 saying?

10 A The steps we took as far as the sexual assault kit are routine because
11 they're designated in the kit--

12 Q Okay, that--

13 A --the way they are to be handled.

14 Q I'm sorry; I didn't mean to interrupt you.

15 That's what I'm trying to get at. What you testified to on direct is the
16 protocol you're supposed to follow?

17 A That's correct.

18 Q Now, as you sit here today, you don't have a specific recollection of
19 how things went that night with Tami Zold five-plus years ago, do you?

20 A Not specifically, no.

21 Q Okay. And I think you were real honest with that--or with Mr. Guymon
22 as to the last two items that were received into evidence, 20G and H, State's exhibit,
23 the rectal and the vaginal swabs. On those two items, or the packages containing
24 those items, your signature is not found. Is that accurate?

25 A That's correct.

26 Q And you can't, today, five and some years later, look back and say how
27 those, G and H, 20 G and H were sealed on that particular night, January the 18th,

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1 1993?

2 A The only way I could say that is by comparing the check marks on the
3 front of the envelopes. They're very similar check marks, similar pens, so I would
4 tend to say that, yes, I checked them and, yes, I sealed them because they're sealed
5 with the same tape I use. The doctors don't carry tapes. And since all these exhibits
6 remain in my, basically, custody until they're sealed back into the kit and put in the
7 refrigerator, I would have to say that I'm relatively certain that I sealed those and that
8 they were not out of my possession.

9 Q Okay. Well, I count eight of these things, eight different little packages.

10 A Correct.

11 Q And I think that corresponds to G and H if I did the alphabet right.

12 Of the first six, your signature is right on the seal.

13 A That's correct.

14 Q And this protocol that you follow each time in your 30 some odd--

15 A Um-hum.

16 Q --times that you've completed these sexual assault kits, you try to be
17 as complete and as thorough as possible.

18 A That's correct.

19 Q You try to--I think you spoke a lot about how you place things in a
20 certain spot and you make sure nothing gets mixed with each other and--

21 A Correct.

22 Q And that's so you can get an accurate testing--

23 A Um-hum.

24 Q --when you send that sexual assault kit on?

25 A Right.

26 Q Is that accurate?

27 A That's correct.

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lines

1. Can be sure you signed
2. right across here
4. two, the rectal and the

1 Q Okay. Well, if you signed these six--and you
2 them and you sealed them because your signature comes

3 A That's right.

4 Q --or this portion? You can't be sure on these ^{last}
5 vaginal swabs, can you?

6 A Not absolutely, no; my signature isn't on them

7 Q And you were pretty careful that night to follow, back on January the
8 18th, '93, to follow all of the protocol as required by, I think you said there's like
9 directions or something in there?

10 A Right.

11 Q And if the doctor doesn't know how they got sealed, who could tell us
12 how G and H were sealed?

13 A Well, as I said, they would not have been, once the doctor collected
14 them and swabbed them, they would not have been out of my sight until they were
15 sealed and the only explanation I can give for not signing those because I did not
16 directly collect them, the doctor collected them.

17 Q Okay, now, isn't that routine for the doctor to do the--I'm sorry, I'm not
18 real good with the medical terms, as "swabbing" to take the--

19 A The vaginal and the rectal, yes.

20 Q Okay. So, they--Dr. Fisher or any other physician in that position as a
21 matter of routine, as a matter of protocol, takes a swab and gets the sample or--

22 A That's correct.

23 Q Is "sample" the right word?

24 A That's correct.

25 Q Okay. And so, in every other case the doctor would have taken the
26 sample out as well?

27 A Yes.

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pg. 2719 lines 11-16
Remembers these items had to sign day just. pg 2711
lines 14-16 then they could be packaged & sealed

1 Q In the 30 some-odd you've dealt with?

2 A Yes.

3 Q In those 30 some-odd you've dealt with, if you sealed those envelopes

4 from the swab the doctor took, or with the swab the doctor took--

5 A Um-hum.

6 Q --you would have signed the seal as a matter of protocol, wouldn't you?

7 A I would have signed the things that I collected myself.

8 Q Maybe I'm dancing around semantics. I don't understand if the doctor

9 always collects--

10 A Um-hum.

11 Q --maybe I'm using two different words--if he always collects the samples

12 with the swabs on the--

13 A Right.

14 Q --rectal and vaginal, then your signature should never appear on G and

15 H in any other rape kit?

16 A That would be fairly accurate. I can't say that it doesn't, but that would

17 be--I can't say that it does and I can't say that it doesn't. Generally, I do not sign

18 things that I haven't collected myself.

19 Q And by "collected," you mean physically removed--

20 A Evidence.

21 Q --from the victim?

22 A That's correct.

23 Q Not like taken from the doctor, you're not using that as collected, you

24 took it from Dr. Fisher, put it in--

25 A Yes.

26 Q --and therefore, you collected it?

27 A If he--and some of the doctors do their own swabs and their own slides

28

1 and they put them in the collection envelopes--then I generally, I will set them over,
2 but I usually do not sign them.

3 Q But you would have been the person that placed that tape on G and H?

4 A That's correct.

5 Q Because that's the stuff you have and probably the doctors didn't have
6 it?

7 A That's correct.

8 Q So, in this case, we don't know who sealed G and H of State's exhibit
9 20, do we?

10 A Not absolutely.

11 Q And you spoke about this room that you're in and just to see if I can get
12 an exact picture, there is like a gurney or a bed, is it a bed?

13 A No, it's a OB/GYN table. I doubt if you've been on too many of them.
14 Most of the women, I'm sure, are familiar with them.

15 Q I know what you're talking about, though, my sister is a doctor, so.

16 A Okay. Yes, we had a OB/GYN table in that room separated by a little
17 walkway and then the shelving that I used to dry the evidence.

18 Q It's the one that you cleaned off before?

19 A Correct.

20 Q And, truthfully, you don't remember cleaning that table that night, but
21 that's just part of your protocol?

22 A That's part of my protocol.

23 Q Okay, so you don't remember it. I have to get you to say it, you do or
24 don't, specifically, recall wiping that table off that night?

25 A All I can say is it is routine for me before I do a kit like this to remove
26 everything from the table. I cannot say that I did it that night, but that is part of my
27 routine.

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1 Q Okay, fair enough. In this room, is there just one OB/GYN examining
2 table, chair, however you want to phrase it?

3 A No, there were two.

4 Q Okay. And in these rooms, in the 30 some-odd rape kits that you've
5 done, has there ever been anybody either in the other chair, or in the other room
6 while you're performing your tests over in one of the chairs?

7 A It's separated by a curtain and we take very careful precautions not to
8 have anyone in the room except the victim, and, in this case, her mother.

9 Q Okay, so in the 30 some-odd you've done there's never been anybody
10 else on the other side of that curtain?

11 A Not that I'm aware of, not that I have had dealings with.

12 Q Okay, do you remember specifically on the night in question, January
13 18th, '93, whether there was anybody else in and out of that room that night?

14 A I would feel comfortable saying there was not anyone else in or out of
15 that room because we hang a sign on the door that says, "No personnel," you know,
16 "Do not enter, we have an exam in progress."

17 Q Okay. One of the items--I'm sorry, I don't remember exactly which one
18 it was. I think it was about three or four back, I think you called it a "hair sample,"--

19 A Pubic hair?

20 Q Right, where you used the comb?

21 A Correct.

22 Q And then you collect those samples?

23 A Yes.

24 Q Did you receive any evidence from doing that to Ms. Zold that night?

25 A I can't remember.

26 Q You don't remember whether--

27 A If there was, it would have been in the kit and sealed in the envelope.

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1 Q Okay. And what--that goes into the kit that is also sealed, that then
2 gets sent--and I'm trying to picture how this refrigerator works that you talked about.
3 It's like--can you explain that to me a little better?

4 A It's a small refrigerator probably like a 14 cubic foot size. Someone
5 had--maintenance or whoever--has made a tunnel arrangement with a trap door in the
6 front of it so that when something is put in, it falls to the bottom and cannot be
7 retrieved.

8 Q Okay. And who is it that retrieves those items, Metro?

9 A I assume so.

10 Q It's not--

11 A It's done in daylight and I've always worked nights.

12 Q It's not done--you don't do it?

13 A I don't do it.

14 Q You placed this particular kit in the shoot?

15 A In the refrigerator.

16 Q You fill out the vast majority of the records kept in relation to a punitive
17 sexual assault?

18 A That's correct.

19 Q And I think probably along the lines of what the Doctor said, you go
20 along and check off the boxes that apply to each specific case. And I think you said
21 you leave the boxes blank that don't apply?

22 A That's correct.

23 Q You don't go check off the no boxes in the blank--like if it says
24 "consensual sex" there's not a check for a no box, it's just blank if that's not an
25 issue with that particular victim?

26 A I'm not sure where you're talking about. There's not a box that is
27 labeled "consensual sex". In the boxes that have a yes, no, or unsure, it all pertains

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Consensual
Sex
2011/01/02

1 to the assault itself. And yes, I checked the no boxes if the answer is no or the
2 unsure boxes if the answer is "I don't know."

3 Q Okay. In a couple of those--on a couple pages in there I just saw some
4 areas that weren't checked at all. And I'm not making any contentions.

5 A No, those were the boxes as far as what the victim did prior to arriving
6 to the hospital and prior to the examination. And there is no "yes, no, or maybe."
7 It's either, "Yes, I did," or, "No, I didn't." And if it's yes, they're checked off.

8 Q Like there's a check in the smoking box--

9 A Correct.

10 Q --on this one. And that means that when you asked Tami Zold had she
11 been smoking, she said yes, so you checked it off?

12 A That's correct.

13 Q And within that same portion of your paperwork, there is a whole bunch
14 of blank--

15 A That means that she denied doing those things.

16 Q Okay. The saliva samples, are there two samples taken of saliva, a
17 swab from the inside of the mouth and then--I don't know what you call it, I thought
18 when you were describing it it sounded like a spit sample?

19 A There is a sample of saliva that she actually spits on this coffee filter
20 type piece of paper that is then dried and sent for forensics. We also swab the
21 buccal membrane, the inside lining of the mouth to get cell samples from that.

22 Q Okay. Besides seeing Tami for the last--I know you came yesterday too
23 because you thought you were going to get on--would you have been able to pick her
24 out of a crowd?

25 A No.

26 Q You don't really have, five years later, an independent recollection of
27 that specific person?

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A No.

Q Just like you don't have a specific recollection as to the exact things that happened the night of the 18th of January, 1993?

A No.

MR. CHRISTIANSEN: Thank you. I have nothing further.

THE COURT: Anything further, Mr. Guymon?

MR. GUYMON: Very briefly, Judge.

REDIRECT EXAMINATION

BY MR. GUYMON:

Q Mrs. Spear, from the time that you opened the sexual assault kit--

A Um-hum.

Q --until you sealed it up and dropped it in that drop box, was that box or its contents ever out of your presence?

A No, it wasn't. I remain in the room until the kit is sealed.

Q At any time, did the envelopes get mixed up with each other?

A No.

Q When you saw it today, it was sealed, I take it?

A Yes.

MR. GUYMON: I have no other questions.

THE COURT: Anything further, Pete?

MR. CHRISTIANSEN: No, Your Honor.

THE COURT: Thank you, ma'am, for coming back; you're excused.

Call your next witness, please.

MR. GUYMON: Diane Schmidt.

DIANE STATES

Was called as a witness, duly sworn, and testified as follows:

THE CLERK: Please state your name and spell your last name for the record.