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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF IMPERIAL

Department 9
Department 2

Honorable Christopher J. Plourd

COPY

The People of the State of)
California,)
Plaintiff,)
vs.)
Randy Chacon, Gregory Moore,)
and Sharrel Ann Myers,)
Defendants.)

Case Nos.
(Chacon) JCF36904
(Moore) JCF36709
(Myers) JCF36710

Evidentiary Hearing

Reporter's Transcript

Wednesday, September 13, 2017

Reported by:
Diana Murphy, RPR, CSR 8805
Official Reporter
Imperial County Superior Court
939 Main Street
El Centro, CA 92243
1-760-482-2276



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Appearances:

For the People:

Gilbert G. Otero, District Attorney
By: Jack Albertson, Deputy District Attorney
940 West Main Street
El Centro, California 92243

For the Defendant Randy Chacon:

Benjamin Salorio, Public Defender
By: Kelly Jafine, Deputy Public Defender
895 Broadway
El Centro, California 92243

For the Defendant Gregory Moore:

Benjamin Salorio, Public Defender
By: Jason Gundel, Deputy Public Defender
895 Broadway
El Centro, California 92243

For the Defendant Sharrel Ann Myers:

Benjamin Theule, Attorney at Law
2445 Fifth Avenue, Suite 330
San Diego, California 92101

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1 El Centro, California - Wednesday, September 13, 2017

2 Department 9 8:55 a.m. Hon. Christopher J. Plourd

3

4

5 THE COURT: We're going to be in session in
6 the case of People versus Randy Chacon, JCF ending in
7 904; People versus Sharrel Ann Myers, JCF ending in
8 710; Gregory Moore, 709.

9 Appearances for the record, please.

10 MR. ALBERTSON: Jack Albertson on behalf of
11 the People in all cases, Your Honor.

12 MR. THEULE: Benjamin Theule for Sharrel
13 Myers, who is present before the Court out of custody.

14 MS. JAFINE: Kelly Jafine for Mr. Chacon,
15 present in custody. I'm also appearing for Mr. Gundel
16 and waiving Mr. Moore's presence for today.

17 THE COURT: All right. Very good. Everybody
18 ready to proceed?

19 MR. ALBERTSON: The People are ready.

20 MS. JAFINE: Yes.

21 THE COURT: Housekeeping?

22 MS. JAFINE: "Housekeeping"?

23 THE COURT: Exhibits?

24 MS. JAFINE: Yeah. I realized as I was
25 prepping last night that I was missing the last page of
26 Exhibit 47, Attachment A. I wanted to provide a copy
27 to the Court. It's literally one --

28 THE COURT: That would be the Forensic

1 Science International article?

2 MS. JAFINE: Yeah. And I know it's in
3 Mr. Albertson's briefing as well, but I just wanted to
4 complete the package.

5 THE COURT: Okay.

6 MS. JAFINE: And then, with that, I got
7 yelled at by the clerk that we hadn't identified this.

8 THE COURT: By the way, the original has that
9 page in it.

10 MS. JAFINE: Which one?

11 THE COURT: The one you said was missing.
12 It's in the Court's file.

13 MS. JAFINE: Oh, so it's just missing. You
14 got the original, so --

15 THE COURT: Yeah.

16 MS. JAFINE: Okay. Great. Great. It was
17 just me then. And I provided copies to Mr. Albertson
18 and Mr. Theule. So, yes, I'm in trouble for not
19 identifying the filings that I did on -- I believe it
20 was August 17th that are just the little hearings, and
21 so that is Exhibits 47 through 54, and I would also ask
22 to move those into evidence.

23 THE COURT: Okay. Very good. Well, at this
24 point, are you ready to just agree that they go into
25 evidence, Mr. Albertson, or do you want to go through
26 them one at a time because I don't want to take the
27 time doing it right now.

28 MR. ALBERTSON: I think I would prefer to

1 wait to see if there is some --

2 THE COURT: There is some of them. You filed
3 a lot of Internet information, or "Internet hearsay" as
4 I refer to it, Ms. Jafine. Some of that, the journal
5 articles that are published, and peer review journals,
6 I don't think we're going to have a problem with any of
7 those because the Court could take judicial notice of
8 it. The easier way would be to let those go into
9 evidence as exhibits. But your Internet publications,
10 Internet hearsay, I'm not so sure I can take judicial
11 notice and will not take judicial notice of those.

12 MS. JAFINE: Right. And I guess just the
13 relevance of those, I mean, obviously, like it would go
14 to the weight and not the admissibility for the Court
15 to consider, and I think they are, like particularly
16 the article, the ProPublica article, that's in
17 Exhibit 47, the way I think about it is the way that
18 attorney's questions aren't evidence, the answers are
19 evidence, and it just helps to inform the actual
20 scientific articles and like the primary sources that
21 the article refers to. So I think in that sense it's
22 helpful for the Court. It's admissible, although, you
23 know, the Court can take the due weight. That's my
24 point.

25 THE COURT: Okay. This would be a July 7th,
26 2016, ProPublica article which basically is a story
27 co-published with the *New York Times Magazine*?

28 MS. JAFINE: Yes.

1 THE COURT: Hardly peer review, but
2 nonetheless, I looked through it all and all of the
3 attachments, quite voluminous, but my take was that it
4 may have some relevance as to whether or not there is a
5 disagreement or there is controversy regarding the
6 technique, call it "testing technique," in the
7 community and so forth. I'm going to reserve on that
8 and we'll let Mr. Albertson have a chance to go through
9 all that and we'll take that up later.

10 As far as questioning witnesses, so forth,
11 you are free to do that with any exhibit that has been
12 marked.

13 MS. JAFINE: Okay.

14 THE COURT: I do want to move now to the --
15 we're at Exhibit 54. It's been marked and now we have
16 two new exhibits. You have a C.V. or resume for
17 Mr. Albertson's witness, Ms. Baca, that's going to be
18 marked as the next in order, which would be 55, would I
19 be correct in that?

20 MS. JAFINE: Yeah.

21 MR. ALBERTSON: I believe it is, yes.

22 (Court's Exhibit No. 55, Allison Baca's
23 C.V., was identified for the record.)

24 THE COURT: Then we have the lab packet, or
25 the bench notes, that we'll mark as 56.

26 MS. JAFINE: May I just inquire? That's
27 everything that was in the packet minus the C.V.? Is
28 that what you put in for 56, Mr. Albertson?

1 MR. ALBERTSON: Right. Right.

2 MS. JAFINE: Okay.

3 (Court's Exhibit No. 56, lab packet,
4 was identified for the record.)

5 THE COURT: So we're up to date on exhibits.
6 Any other housekeeping matters before we
7 start?

8 MS. JAFINE: Oh, did we get those files that
9 I requested yesterday? The files that I requested from
10 downstairs.

11 THE COURT: You know something? I don't
12 think we did. In fact, I forgot about that.

13 MS. JAFINE: They are sitting on the criminal
14 desk downstairs.

15 THE COURT: We'll ask that they be sent up.
16 My bad.

17 MS. JAFINE: All right. It's not an
18 emergency. I don't need them immediately.

19 THE COURT: Okay.

20 MS. JAFINE: Yep. Good to go.

21 THE COURT: All right. Let's go ahead and go
22 forth.

23 Mr. Albertson, please call your witness.

24 MR. ALBERTSON: Thank you, Your Honor.

25 The People would call Allison Baca to the
26 stand.

27 THE COURT: Ms. Baca, please come forward.

28 THE BAILIFF: Ma'am, please face the clerk

1 and raise your right hand.

2 Allison Baca,

3 called as a witness by and on behalf of the People,

4 having been first duly sworn, was examined and

5 testified as follows:

6 THE WITNESS: I do.

7 THE BAILIFF: Please have a seat. State your
8 full name and spell out your last for the record.

9 THE WITNESS: Allison Baca, A-l-l-i-s-o-n,
10 B-a-c-a.

11 THE COURT: All right. Before we begin, as
12 far as her credentials, is there any objection to the
13 C.V. being admitted into evidence? That way you don't
14 have to go over that in detail.

15 MS. JAFINE: Yeah, no problem.

16 MR. THEULE: No objection.

17 THE COURT: Very good. Exhibit 55 is
18 admitted.

19 (Court's Exhibit No. 55
20 was received into evidence.)

21 THE COURT: Please proceed with your direct
22 examination.

23 MR. ALBERTSON: Thank you, Your Honor.

24 -DIRECT EXAMINATION-

25 BY MR. ALBERTSON:

26 Q. Ms. Baca, good morning.

27 A. Good morning.

28 Q. What do you do for a living, ma'am?

1 A. I'm a criminalist for the California
2 Department of Justice.

3 Q. And how long have you been a criminalist?

4 A. A little over four years.

5 Q. Your curriculum vitae is now actually in
6 evidence, but I understand that you have degrees from
7 the University of California Davis?

8 A. That's correct.

9 Q. And also from the New Mexico Institute of
10 Mining and Technology?

11 A. Yes.

12 Q. Okay. And those were basically a Bachelor of
13 Science in chemistry and also a Master of Science in
14 forensic science?

15 A. That is correct.

16 Q. Now, what do you do there at the
17 Department of Justice?

18 A. I work in the controlled substances' unit, so
19 I analyze any type of suspected controlled substance.

20 Q. Okay. And in that capacity, did you receive
21 from the California Department of Rehabilitation and
22 Corrections [sic] a request to analyze certain types of
23 suspected controlled substances for a Randy Chacon?

24 A. Yes.

25 Q. And if I may --

26 THE COURT: Do you want the exhibit?

27 MR. ALBERTSON: I do, yes. If may I

28 approach?

1 THE COURT: Please.

2 BY MR. ALBERTSON:

3 Q. Now, in the normal course of business, how
4 does one actually receive drugs there at the Department
5 of Justice laboratory?

6 A. The suspected controlled substances are
7 brought in by one of our client agencies or through a
8 carrier like FedEx or UPS and they are taken to our
9 property control where they are entered into our
10 evidence keeping system.

11 Q. And who would typically do that?

12 A. Who would do the entering?

13 Q. Yeah. Who would do the entering?

14 A. One of our property control people, so either
15 Cosette or Teresa usually.

16 Q. Okay. Now, your client agency, when they
17 collect drugs, do they put them in particular types of
18 envelopes?

19 A. They do. We require all suspected controlled
20 substances be submitted in what is called a BFS-2
21 evidence envelope. It is a preprinted envelope that we
22 supply the agencies that has a form printed on it for
23 all of the information that needs to be filled out by
24 that agency before it is given to us.

25 MR. ALBERTSON: Okay. If I may have just a
26 minute, Your Honor?

27 (Pause in the proceedings.)

28

1 BY MR. ALBERTSON:

2 Q. I'm going to show you what has been marked
3 People's 56.

4 MS. JAFINE: Can I just interject? This is
5 my concern about making it all one exhibit. Are we
6 going to --

7 MR. ALBERTSON: Oh, yes. We should have --

8 MS. JAFINE: -- have page numbers or --

9 THE COURT: Yeah. I didn't get them
10 paginated, but we're going to mark them "A" through
11 whatever, so if you want to do that as you go through.
12 Why don't you mark them, Mr. Albertson.

13 Is there going to be any objection to 56
14 coming into evidence?

15 MS. JAFINE: No.

16 THE COURT: Mr. Theule?

17 MR. THEULE: No.

18 THE COURT: I'm going to go ahead and admit
19 56, so if you can just refer to that, you don't have to
20 lay any foundation any longer unless you are moving it
21 in. I take it you are moving it in?

22 MR. ALBERTSON: I am moving it in.

23 THE COURT: It's in.

24 (Court's Exhibit No. 56
25 was received into evidence.)

26 MR. ALBERTSON: So with respect to actually
27 mislabeling it, should I label it as like 1, 2, 3, 4,
28 5?

1 THE COURT: No. It's 56-A through whatever.
2 So the first page, A, next page, B.

3 MR. ALBERTSON: Your Honor, perhaps it would
4 be helpful if I might maybe staple these together?
5 Perhaps that would be good.

6 THE COURT: Whatever you would like to do,
7 that's fine.

8 MR. ALBERTSON: May I approach your clerk,
9 Your Honor?

10 THE COURT: Yes.

11 MR. ALBERTSON: May I approach the witness?

12 THE COURT: Yes. Feel free to approach, you
13 don't have to ask, both sides.

14 BY MR. ALBERTSON:

15 Q. I'm going to show you what has been marked as
16 People's Number 54 -- 56-P -- or Court's Exhibit 55 --
17 65 -- 56.

18 THE REPORTER: Court's Exhibit what?

19 MR. ALBERTSON: Court's Exhibit 56, Letter P.

20 BY MR. ALBERTSON:

21 Q. Do you recognize what that is?

22 A. Yes.

23 Q. What is that?

24 A. That is our BFS-2 evidence envelope.

25 Q. And is this the envelope that drugs are
26 normally submitted to by client agencies?

27 A. Yes, it is.

28

1 Q. And this particular envelope, is it for a
2 particular individual?

3 A. Yes, it is.

4 Q. And who is it for?

5 A. It is for an individual with the last name
6 Chacon.

7 Q. And do you know from which client agency this
8 comes from?

9 A. Calipatria State Prison.

10 Q. Is that indicated here on the form?

11 A. Yes, it is, in the top left.

12 Q. And in the middle of the document there is a
13 box there called "description." What is that box used
14 for?

15 A. That is just the description that the client
16 agency writes in of what is included in the envelope.

17 Q. And this particular description, according to
18 this, what was inside?

19 A. According to this, it was one plastic
20 wrapped -- one bindle wrapped in clear plastic, black
21 tar substance.

22 Q. And then to the immediate right of that box
23 there is something called "origin." What is that?

24 A. Typically the agencies will write where they
25 found the item in the envelope. Sometimes they write
26 different things in that box. As in this case, it just
27 says "weigh and identify."

28

1 THE REPORTER: It just says what?

2 THE WITNESS: "Weigh and identify."

3 BY MR. ALBERTSON:

4 Q. And then at the very bottom on the left hand,
5 there is a box there. What is written there? What is
6 in that left-hand box, the one on the very bottom right
7 there?

8 A. That is chain of custody for them coming into
9 our lab. We have our own internal chain of custody, so
10 we do not continue on with this envelope.

11 Q. I see. Okay. Very well.

12 Now, is there a B.F.S. case number on that?

13 A. Yes, there is. It is in the upper right-hand
14 corner.

15 Q. What is the B.F.S. case number for
16 Mr. Chacon?

17 A. It is RI-16-001762.

18 Q. All right. And it looks like there is a bar
19 code put on there. Who puts that bar code on? Do you
20 know?

21 A. Our property office does.

22 Q. Your property office, okay.

23 Now, when this comes in to the laboratory, is
24 it taped or sealed in any way?

25 A. Yes. It has to be to be submitted.

26 Q. Okay. And in this particular envelope,
27 what -- is there what date it was received on? Is
28 there a date received or anything like that on here?

1 A. Yes. It says May 20th, 2016.

2 Q. And where is that located?

3 A. In the chain of custody boxes at the bottom
4 of the envelope.

5 Q. And would that be the date that you actually
6 received it --

7 A. Yes.

8 Q. -- within the Department of Justice?

9 And so at that time the person who is
10 responsible for receiving that would receive the
11 envelope?

12 A. That is correct.

13 Q. And then that person or persons would then do
14 what with it?

15 A. They would take that envelope and enter it
16 into our evidence system called JusticeTrax and that's
17 when it's assigned a unique identifier known as our
18 BFS-2 case number.

19 Q. All right. And does that then start the
20 internal chain of custody?

21 A. Yes, it does.

22 Q. I'm going to show you what is marked Letter Q
23 in that same exhibit, 56. Do you recognize what is on
24 that?

25 A. Yes. This is our internal chain of custody
26 report.

27 Q. All right. And is there a laboratory case
28 number on there?

1 A. Yes, there is.

2 Q. And what's the case number?

3 A. That case number is RI-16-001762.

4 Q. And is that the same case number that was on
5 Mr. Chacon's envelope?

6 A. Yes.

7 Q. And what basically is on this document?

8 A. So this document just describes how the chain
9 of custody goes for that piece of evidence starting
10 with who brought it into our property office followed
11 by who took it from that person bringing it in, and
12 then it follows where that envelope actually went all
13 the way through testing and return to the client
14 agency.

15 Q. Okay. And so in this particular case, it was
16 received from a Robert Steele.

17 A. Yes.

18 THE REPORTER: "Steven"?

19 MR. ALBERTSON: Steele, S-t-e-e-l-e.

20 THE REPORTER: Thank you.

21 BY MR. ALBERTSON:

22 Q. And according to this document, who is
23 Mr. Steele?

24 A. He was the person who brought in the evidence
25 to our laboratory.

26 Q. So he would be from the client agency?

27 A. That's correct.

28 Q. In this case the California Department of

1 Corrections?

2 A. Correct.

3 Q. And it was received by a Teresa Anderson?

4 A. Yes.

5 Q. And who is Teresa Anderson?

6 A. One of our property controllers.

7 Q. And there is something called P.I.N., what
8 does that stand for?

9 A. So a PIN is a personal identification number
10 that must be entered every time evidence is transferred
11 from one person to another person or location.

12 Q. Okay. And here the lower box is checked, so
13 would that be the PIN for Ms. Teresa Anderson?

14 A. That is correct.

15 Q. All right. And then there is the date and
16 time, is there not?

17 A. Yes.

18 Q. In this case the date and time is what?

19 A. Is May 20th, 2016, at 1:00 p.m.

20 Q. And from there Ms. Anderson put it into a
21 vault; is that correct?

22 A. Yes.

23 Q. And that's also indicated?

24 A. Yes, it is.

25 Q. And each time she puts in a PIN number; is
26 that correct?

27 A. Yes.

28 Q. Now, at some point do you receive this

1 particular envelope? According to this document, did
2 you receive this particular envelope?

3 A. Yes.

4 Q. And how is that indicated here on the
5 document?

6 A. You can see that it went from "Drugs Pending
7 Analysis," which is our drug vaults, to myself, and I
8 entered my PIN to put it into my custody.

9 Q. Okay. And that was done on what date and
10 time?

11 A. That was done on June 2nd, 2016, at 2:40 p.m.

12 Q. So at that particular time you would actually
13 have the envelope?

14 A. That is correct.

15 Q. Now, at that time did you check the envelope?

16 A. Yes, I did..

17 Q. What kind of condition was it in?

18 A. The envelope is sealed and marked in the same
19 way.

20 Q. Okay. Would you have accepted it if it had
21 been anything other than sealed?

22 A. No, and neither would our property
23 controllers.

24 Q. And then on this document, it also indicates
25 when you returned the drugs or when you returned the
26 envelope?

27 A. That is correct.

28 Q. And when did you do that?

1 A. So I took it out of my possession and put it
2 in our Drugs Completed Vault on June 9th, 2016, at
3 11:38 a.m.

4 Q. And from the time it was given to you to the
5 time that you actually returned it, that particular
6 envelope was always in your possession?

7 A. That is correct. I have a locker with a key
8 for myself that I lock all of my evidence in that was
9 in my possession at the time.

10 Q. Okay. And when you return the drugs to the
11 vault, do you put them back in the same envelope as
12 they came in or how is that done?

13 A. Yes. Everything is returned to its original
14 packaging including the BFS-2 envelope. In some
15 instances I will repackage, say it's a torn bindle,
16 into a Ziploc bag, but I will always return it into
17 that BFS-2 envelope.

18 Q. And did you do that in this case?

19 A. Yes. Everything is in the BFS-2 envelope.

20 Q. Okay. And then at some point it says here
21 "drugs completed and received by Cosette Freer." Who
22 is Cosette Freer?

23 A. She's another one of our property
24 controllers.

25 Q. And then what does she do with it?

26 A. Coset, she took it from the Drugs Completed
27 Vault and she took it back to one of the vaults in our
28 property unit where it sat until the client agency came

1 back to pick it up.

2 Q. And when was that?

3 A. The client agency came back on July 7th,
4 2016, at 11:44 a.m.

5 Q. And who received it at that time?

6 A. Robert Steele.

7 Q. And was that the same Robert Steele who
8 actually gave it initially?

9 A. Yes.

10 Q. So from the time that you actually received
11 it to the time it was actually returned to Officer
12 Steele, your laboratory had custody of that particular
13 envelope?

14 A. That is correct.

15 Q. Now, upon opening the envelope, what did you
16 find inside that particular envelope?

17 A. May I look at my notes to refresh my memory?

18 Q. Okay. You prepared certain notes for you for
19 this proceeding?

20 A. It's just a case file that I view discovery.

21 Q. Okay. And I believe counsel has --

22 MR. ALBERTSON: Your Honor, can she look at
23 her case notes?

24 THE COURT: Absolutely.

25 Any objection?

26 MS. JAFINE: No.

27 THE COURT: Just look at them and --

28 MS. JAFINE: I mean, is --

1 THE COURT: You have your own copy, correct?

2 THE WITNESS: It's just a copy that I gave
3 for discovery.

4 MS. JAFINE: That was my question. Is it
5 something I haven't seen? No.

6 THE COURT: Very good.

7 BY MR. ALBERTSON:

8 Q. Okay. So when you first opened up the
9 envelope, what did you see?

10 A. Inside the BFS-2 evidence envelope was a
11 taped, sealed, and marked coin envelope containing a
12 clear twisted plastic bag containing black tar-like
13 substance.

14 Q. And did you remove the black tar substance
15 from that coin bag?

16 A. Yes, I did.

17 Q. And what did you do with it at that point?

18 A. So I removed the substance from the plastic
19 and I weighed it for a net weight, that means without
20 packaging.

21 Q. What did you weigh it on?

22 A. I weighed it on an analytical balance scale.

23 Q. Okay. And was that balance scale in
24 good-working order?

25 A. Yes, it was.

26 Q. Okay. Prior to using it, you zeroed it out?

27 A. Yes.

28 Q. Okay. And what was the net weight on it?

1 A. The net weight on that was 0.291 grams.

2 THE COURT: Third digit 9? 92? 0?

3 THE WITNESS: 291.

4 THE COURT: All right. Thank you.

5 BY MR. ALBERTSON:

6 Q. And then once you weighed it, then what did
7 you do with it?

8 A. After I weighed it, I took a small sample to
9 do a presumptive color screen and then I prepared a
10 sample for confirmatory analysis.

11 Q. Let's talk about that presumptive screen.
12 What is that?

13 A. A presumptive color screen is just a test
14 that I run on the sample using a combination of
15 reagents that may possibly produce a color that can
16 indicate what type of drug it possibly could be, like
17 what family of drugs it could possibly be.

18 Q. Okay. And I take it that you have done this
19 a number of times, I assume?

20 A. Yes.

21 Q. And you have examined countless numbers of
22 controlled substances, right?

23 A. Yes, I have.

24 MS. JAFINE: Objection to "countless." It's
25 vague.

26 THE COURT: What?

27 MS. JAFINE: Vague.

28 MR. ALBERTSON: I understand that it --

1 THE COURT: Overruled.

2 Do you understand the question?

3 THE WITNESS: Yes.

4 THE COURT: Answer is in.

5 Ask your next question.

6 BY MR. ALBERTSON:

7 Q. And when you first opened up the envelope,
8 did you have any guess as to what you thought you were
9 looking at?

10 A. No. I don't guess.

11 Q. You don't guess?

12 A. No.

13 Q. Okay. So what kind of color screen did you
14 put this particular substance through?

15 A. I used the Marquis.

16 Q. And what is that?

17 A. The Marquis is a two-step color screen test
18 that uses concentrated sulfuric acid and formaldehyde.

19 Q. And why did you choose that particular test
20 to do?

21 A. Marquis is usually the color-screening test
22 that I start with just because it does cover a wide
23 variety of possible controlled substances.

24 Q. Like what kind of controlled substances?

25 A. It covers opiates, it covers such as heroin,
26 it covers phenylethylamines, such as methamphetamine,
27 it covers substituted phenylethylamine, such as MDMA.

28 THE COURT: M.D.A?

1 THE WITNESS: MDMA.

2 THE COURT: MDMA, very good.

3 BY MR. ALBERTSON:

4 Q. What does that stand for?

5 A. Methylenedioxy-methamphetamine.

6 Q. And what's its more popular term?

7 A. Ecstasy.

8 Q. Ecstasy. And so when you performed this
9 color screen, the Marquis color screen, what did you
10 get?

11 A. I got a purple color.

12 Q. And what does the purple color represent?

13 A. It's indicative of an opiate.

14 Q. Of an opiate?

15 A. Yes.

16 Q. And what kind of drugs are in the classes of
17 opiates?

18 A. Opiates include morphine, codeine, heroin.
19 Drugs of that nature.

20 Q. So once you had this purple color from this
21 presumptive test, then what did you do?

22 A. I prepared a sample for confirmatory analysis
23 using an extraction technique and ran that on the
24 G.C.M.S., which stands for gas chromatograph mass
25 spectrometer.

26 Q. Now, you said something about a -- before you
27 said "gas chromatograph," what did you say?

28 A. An extraction.

1 Q. An extraction, okay. There you go.

2 What is that?

3 A. It's taking the substance and putting it into
4 solution, and that solution is then injected into the
5 G.C.M.S. where it is analyzed. I can't put any solid
6 substance into a G.C.M.S.

7 Q. So you are just reducing it to liquid form?

8 A. That's correct.

9 Q. Okay. And the chemicals you use there, are
10 they fairly inert, they don't change the substance in
11 any way?

12 A. Sometimes it will clean it up a little bit so
13 it will take out some of -- like the smaller -- like
14 possibly some of the adulterines in it.

15 Q. And when you say "adulterines," what is that?

16 A. Just like the cutters that are sometimes
17 used. For instance, lactose.

18 Q. So the cutters would be what drug users or
19 drug sellers will sometimes use to prepare the
20 narcotics?

21 A. Yes.

22 Q. Okay. So once you did that, once you found a
23 purple color and you prepared it for the gas
24 chromatograph mass spectrometer, then what did you do?

25 A. I ran that sample on the G.C.M.S.

26 Q. Okay. Talk to us about the gas chromatograph
27 mass spectrometer. What is that?

28 A. It is actually two separate instruments. The

1 first instrument is a gas chromatograph. And so
2 basically what happens there is the sample is injected
3 into a port where it's volatilized and it travels
4 through a column, and depending on the size of the
5 molecule, it will go through and colonize at a specific
6 rate. Once it gets all the way through the column, it
7 goes into the mass spectrometer portion and that is
8 where it gets fragmented or broken apart and that will
9 produce a spectra of basically a chemical fingerprint
10 of that molecule based on its fragmentation pattern.

11 Q. How specific are these two particular
12 instruments?

13 A. The gas chromatograph is not a confirmatory
14 test, but the mass spectrometer is considered a
15 confirmatory test.

16 Q. And how specific is the mass spectrometer?

17 A. The mass spectrometer is very specific. It
18 does give a -- like I said, it gives a spectra, which
19 is each fragmentation pattern is very different from
20 one another. So the patterns are very distinguishable
21 between different controlled substances.

22 Q. And these spectra patterns, are they fairly
23 well recognized in the scientific community?

24 A. Yes.

25 Q. Okay. So that is spectra, no matter which
26 laboratory I took it to, they would pretty much do the
27 same thing?

28 A. Yes.

1 Q. And it would come out more or less the same?

2 MS. JAFINE: Objection. Speculation.

3 THE COURT: Sustained. It's really not
4 relevant.

5 Ms. Baca, I did have one question on your
6 fragmentation pattern that you get with the G.C.M.S.
7 spec. When you process the chemical, it creates a
8 pattern. Is that compared to some type of library of
9 patterns of known compounds such as heroin and other
10 controlled substances?

11 THE WITNESS: That is correct. We have a
12 library of reference material that has been -- we get
13 it from a vendor where we get a certificate of analysis
14 so we know its purity, we know where it comes from.
15 And those are considered our reference materials that
16 we will run and then we compare it to that pattern.

17 THE COURT: Okay. So essentially you are
18 comparing what you are getting in your analytical work
19 with a reference sample that has been validated as
20 being accurate?

21 THE WITNESS: That is correct.

22 THE COURT: Ask your next question.

23 BY MR. ALBERTSON:

24 Q. And then once, of course, you do that, once
25 you make that comparison, then what happens?

26 A. I write my report.

27 Q. So when you did the G.C.M.S., what happened
28 in this case?

1 A. The result came back heroin.

2 Q. And you then put that into a report, did you
3 not?

4 A. Yes, I did.

5 Q. I'm going to show you what's been marked as
6 Court's Exhibit 56, Letter B. Do you recognize what
7 that is?

8 A. Yes. That is my report.

9 Q. And how do you recognize it as your report?

10 A. It has my signature at the bottom right-hand
11 side of the page and our B.F.S. case number at the top
12 left -- top right, I'm sorry. Top right.

13 Q. And it is for this particular case, is it
14 not?

15 A. Yes, it is.

16 Q. Now, I'm going to go through some of these
17 graphs that are in here. I'm going to show you what
18 has been marked as Letter E. What is this that I'm
19 looking at?

20 A. So this is my method. This is basically the
21 extraction that I use to extract that suspected sample
22 without the sample in it.

23 Q. So this would be from like the mass
24 spectrometer -- no, this would be from the gas
25 chromatograph?

26 A. This is from the gas chromatograph; that's
27 correct.

28 Q. All right. And what does it show here?

1 A. It shows that there is nothing in that
2 solution, that's just -- it's like background noise.

3 Q. Okay. And then showing you what has been
4 marked as Court's Exhibit 56-F, what does that
5 represent? What is that?

6 A. This is the suspected sample. This is the
7 gas chromatograph portion. And what you see is the
8 peaks that the gas chromatograph detected, so those are
9 the different compounds that are found within that
10 sample.

11 THE COURT: Ms. Baca, in your notes, do you
12 note that as page 4?

13 THE WITNESS: Yes.

14 THE COURT: Okay. Thank you.

15 BY MR. ALBERTSON:

16 Q. In fact, there is a "page 4" there at the
17 bottom?

18 A. Yes.

19 Q. Do you know who wrote that?

20 A. I did.

21 Q. And then going to the next page, which is
22 page G or page 5, as you put it, what am I looking at
23 here?

24 A. Okay. So this is the first page of data. So
25 what I did is that -- the tallest peak that you see on
26 page 4, I went ahead and double clicked on that peak,
27 and what it gives me is that the top portion -- so the
28 top spectra is the spectra of the suspected sample.

1 What you see on the bottom is the spectra of a
2 reference material sample.

3 Q. Okay. So this is the actual sample and this
4 is something that is in your library?

5 A. That is correct.

6 Q. The bottom portion is from the library --

7 A. Yes.

8 Q. -- that you were talking about earlier?

9 A. Yes.

10 Q. Okay. And so this reference library, do you
11 match it up with what the top is?

12 A. I compare the reference to my sample and make
13 a determination on what is contained within the sample.

14 Q. And so what is this telling you just looking
15 at it?

16 A. Looking at it, it's matching the spectra for
17 heroin.

18 Q. Showing you what has been marked as
19 Exhibit H, your page --

20 THE COURT: Anything further?

21 Ms. Baca, that was page 5?

22 MR. ALBERTSON: The page we just did was
23 page 5.

24 THE COURT: Yeah. And the next one will be
25 page 6.

26 BY MR. ALBERTSON:

27 Q. You are on page 6?

28 A. Yes.

1 Q. What am I looking at here on page 6?

2 A. So this is the same concept but with a
3 different peak on that gas chromatograph portion of the
4 data.

5 Q. So the top is for what?

6 A. The top is the peak that was in the data and
7 the bottom is a library search results.

8 Q. And so when you are looking at this, what are
9 you seeing?

10 A. It's looking like a mono-pseudomorphine.

11 Q. Which is what?

12 A. It's a breakdown component of heroin.

13 Q. And then showing you your page 7, Letter I,
14 in the Court's exhibit, what is this that we're looking
15 at?

16 A. This would be the last peak in the gas
17 chromatograph data. Again, the top portion is a
18 spectra from the sample and the bottom is from the
19 reference library.

20 Q. And what are you looking at when you see
21 this?

22 A. We are seeing a pseudocodeine.

23 Q. Which is what?

24 A. Another breakdown product of heroin.

25 Q. Then going to Letter J or your page 8, what
26 are we seeing here?

27 A. So this is a smaller peak that did not
28 actually -- we say "integrate." And "integrate" just

1 means it actually had a number above the peak, but just
2 for myself, I like to print out any of the peaks that I
3 see, so this is just a smaller peak. And what I'm
4 doing here is checking to make sure that it doesn't
5 contain any other substances. And, as can you see,
6 there is very little data actually produced in the
7 sample spectra, and so what the library is trying to do
8 here on the bottom is match it to something as best it
9 can, but there isn't enough instrumental data to even
10 say what this top sample could be.

11 Q. Let me ask you this: How do you go back and
12 get the library? Is that on the machine or do you have
13 to go physically to a library to get this?

14 A. Oh, no. So I double click the peak on the
15 gas chromatograph portion and it will bring up the
16 spectra of that peak and it will automatically generate
17 a library.

18 Q. I see. Okay.

19 Showing you what has now been marked as "L,"
20 your page 10. What am I seeing here?

21 A. Again, this is another one of those very
22 small peaks that I was just checking. And, again,
23 there is a lack of instrumental data to actually
24 confirm any type of compound.

25 Q. Going to Letter M, or your page 11, again,
26 what are we seeing here?

27 A. The same thing as well.

28 Q. Same thing as well, okay.

1 And then going to page N, which is page 12,
2 do you know what this is or what is that dealing with?

3 A. So this is just my assignment notification
4 page. This is what I print out before I start my
5 analysis. It just kind of is a summary of all of the
6 information in the case, including the bar code or just
7 the same bar code that we spoke of earlier above with
8 the BFS-2 case number.

9 Q. So this is what you would get when you got
10 down farther?

11 A. I print it out separately, but, yes.

12 Q. Okay. And page O, your page 13 of 13, what
13 is that?

14 A. This is just my abbreviation page. When I
15 take my notes, I tend to use quite a few abbreviations
16 and this is just helpful for the reader to know what
17 I'm saying.

18 Q. And Letter A, what is that referring to?

19 A. This is just the cover page of the discovery
20 packet and it's just the front page of everything that
21 is included in the packet.

22 Q. And you filled this out yourself?

23 A. Yes, I did.

24 Q. And you recognize the handwriting?

25 A. It's mine.

26 Q. And then I'm skipping over "B" as we have
27 already gone over that one.

28 Letter C in the Court's Exhibit 56, what is

1 this page?

2 A. So this is my note page. It's where I take
3 all of my observations of the packaging, any of my
4 weights and any tests that I conduct, including that
5 confirmatory test, and the results are all written on
6 this page.

7 Q. Going to page D, your page 2, what is that?

8 A. This is a printout of the weights. We use a
9 program called LabX which records the weights as I
10 proceed through a case. So it will record my zero, it
11 will record my tare weight, and it will record the
12 actual weight.

13 Q. What's a tare weight?

14 A. A tare weight is just the weight of the
15 vessel that I am going to put the substance on so it
16 doesn't include that in the weight of the substance.

17 Q. And there is something called "balanced,
18 used" and "Hood 7." What is that?

19 A. That is just my hood. That's where I perform
20 my analysis.

21 Q. Okay. And that brings us back to "E" and
22 we've already gone over that.

23 MR. ALBERTSON: Okay. May I cross the well?

24 THE COURT: Yes. You are free to do that.
25 You don't have to ask.

26 MR. ALBERTSON: Your Honor, I don't think I
27 have any other questions.

28 THE COURT: All right. Very good.

1 Ms. Jafine, please proceed with
2 cross-examination.

3 MS. JAFINE: I know we're a little early.
4 Can I have a three-minute bathroom break?

5 THE COURT: Certainly. Let's just take ten
6 minutes. Ten-minute break.

7 MS. JAFINE: Sorry.

8 THE COURT: All right. We'll be in recess
9 for ten minuets.

10 (Recess.)

11 THE COURT: Okay. Back on the record in the
12 case of Chacon, Moore, et set. All parties and counsel
13 who were previously here are also present.

14 Ms. Jafine, are you ready to proceed with
15 your cross-examination?

16 MS. JAFINE: Yes.

17 I'm just going to go ahead and leave these up
18 here because I'm going to be referring to them. It's
19 Exhibits 47 through 54 that I provided to Ms. Baca via
20 e-mail.

21 THE COURT: Okay.

22 MS. JAFINE: I'm not going to start with
23 that, so you can just kind of put it to the side.

24 -CROSS-EXAMINATION-

25 BY MS. JAFINE:

26 Q. Okay. Are you a certified criminalist?

27 A. No.

28 Q. What does -- how does one become certified?

1 A. You can be certified by the American Board of
2 Criminalists by taking an examination I believe in the
3 field of your choice, but that is not required by our
4 laboratory.

5 Q. Okay.

6 THE COURT: The board, ABC acronym?

7 THE WITNESS: Yes.

8 BY MS. JAFINE:

9 Q. So there is a bunch of different independent
10 organizations that can certify someone to be a
11 professional forensic scientist; is that right?

12 A. I imagine so.

13 Q. Well, there is certain components of a
14 certification program, and you said you are not
15 certified, but I just want to see if there is things
16 your lab does anyway.

17 Have you personally participated in
18 proficiency testing?

19 A. Yes. I do a proficiency exam every year.

20 Q. Every year? And what does that entail?

21 A. The proficiency exam is two samples of an
22 unknown nature, they could be controlled or
23 uncontrolled, that come from an outside source, usually
24 our source is C.T.S., Chemical Testing Services? I
25 forget what the "C" is for. So it's just an outside
26 agency that submits a sample to us, we do the analysis,
27 we report what is in it, and then that report goes back
28 out to them. So it has nothing to do internally with

1 us. Nobody -- they don't -- we don't even know the
2 results. They have to send us the results.

3 Q. Okay.

4 THE COURT: Ms. Baca, as to that C.T.S., was
5 it the Collaborative Testing Services?

6 THE WITNESS: "Collaborative," thank you.

7 THE COURT: All right. Very good. Is that
8 live or do you know you are being tested?

9 THE WITNESS: Oh, no. We know we are being
10 tested.

11 THE COURT: Okay. So it's kind of a white
12 box kind of test? In other words, you know that you
13 are being tested and you are asked to just give the
14 results?

15 THE WITNESS: That's correct.

16 THE COURT: Ask your next question.

17 BY MS. JAFINE:

18 Q. And do you participate in continuing
19 education?

20 A. Yes, I do.

21 Q. And is that in sort of all of the fields of
22 forensic science or just in drug analysis?

23 A. I believe it's in all of the fields.

24 Q. So your continuing education isn't tied to
25 your current assignment as a drug analyst; is that
26 right?

27 A. Oh, I'm sorry. Were you asking if I take
28 classes in other fields besides my own?

1 Q. Right.

2 A. Oh, not really. Like I'll do crime scene,
3 but I won't do anything like DNA or firearms. Like I
4 won't do another specific unit. I'm sorry, I thought
5 you were asking as a whole laboratory.

6 Q. Nope, just you.

7 And is it like once a year you do a training?

8 A. No. It's whenever the classes come up. We
9 take it through the California Criminalistic Institute,
10 CCI, so whenever they are offered.

11 Q. One of the things I think you mentioned in
12 your C.V. was that you did a controlled substances'
13 training program from July 13th to February 14th. That
14 seems like a long training. What was that about?

15 A. That was my in-house training with DOJ.

16 Q. Okay. Okay. That's a --

17 A. It was extensive.

18 Q. It's a long time to be in some hotel
19 conference room.

20 A. Oh, no. It was in-house. It was all in our
21 laboratory.

22 Q. Got it.

23 And as far as you know, are all Department of
24 Justice scientists competency tested on all of the
25 tests they have to perform in the lab?

26 A. Yes. But just to clarify, competency and
27 proficiency, those are two separate exams.

28 Q. Okay. Can you explain that?

1 A. Sure. So the competency exam is your final
2 exam at the end of your training. And then every year
3 thereafter you get the proficiency exam.

4 Q. Got it.

5 And do you belong to any professional
6 organizations?

7 A. No.

8 Q. As a criminalist, do you adhere to a code of
9 ethics or rules of professional conduct?

10 A. Yes.

11 Q. Where are those documented?

12 A. We have them in our laboratory.

13 Q. And do you know who came up with those? Was
14 it the Department of Justice?

15 A. Yes.

16 Q. Are you familiar with the -- sorry, it wasn't
17 one of the things I sent you -- the National Academy of
18 Sciences' report from 2009?

19 A. It's one of the things you sent me?

20 Q. It isn't. I'm sorry.

21 A. I don't believe so.

22 Q. *Comprehensive Evaluation* by the National
23 Academy of Sciences on *Strengthening Forensic Science*?
24 No?

25 A. No.

26 Q. Okay. So being certified refers to the
27 individual whereas accreditation is associated with a
28 laboratory; is that right?

1 A. Yes.

2 Q. I'm going to read you something. Let me know
3 if you want me to repeat it or give you a copy to read.
4 This is from an *Examination of Forensic Science in*
5 *California* put out by the California Department of
6 Justice Crime Laboratory Review Task Force in 2009.

7 "Accreditation is defined in the forensic
8 science profession as the formal assessment
9 and recognition by an impartial authority that
10 a forensic laboratory is capable of meeting and
11 maintaining defined standards of performance,
12 competence and professionalism."

13 Would you say that is an accurate statement?

14 A. Yes.

15 Q. So accreditation basically demonstrates that
16 the laboratory adheres to an established set of quality
17 standards and acceptable practices; is that right?

18 A. Yes. Correct.

19 Q. Are all of the Department of Justice Bureau
20 of Forensic Services' laboratories accredited?

21 A. Yes.

22 Q. So I assume that includes yours in Riverside?

23 A. Correct.

24 Q. By the way, do you prefer BFS for Bureau of
25 Forensic Services or DOJ or you don't care?

26 A. I'll know what you are talking about either
27 way.

28 Q. Okay.

1 A. If you start talking DOJ like federal,
2 though, then that would be a good clarification.

3 Q. Let's go with BFS.

4 A. Okay.

5 Q. So from this same task force report, I'm
6 going to read this to you. "Certification and
7 accreditation are two sides of the forensic science
8 quality triangle, the third side being
9 standardization." Do you agree with that statement?

10 A. Yes.

11 Q. So adherence to the requirements of
12 certification accreditation and standardization is
13 essential to establishing and maintaining the
14 credibility of a forensic science laboratory. Do you
15 agree with that?

16 A. Yes.

17 Q. So are there standardized protocols involved
18 when doing presumptive testing at BFS laboratories?

19 A. We have -- yes. We have a technical
20 procedure we follow for controlled substances.

21 Q. And is that written?

22 A. It is.

23 Q. And it's in your lab?

24 A. It's actually on -- it's online and it's a
25 site called "Share Point." It's where all of our
26 controlled documents are because they get updated, so
27 that's the most recent version of those documents.

28 Q. That's internal online as opposed to me being

1 able to access it?

2 A. Correct.

3 THE COURT: They are not available for public
4 inspection?

5 THE WITNESS: No. They are not.

6 THE COURT: Do you keep historical records
7 when you change a protocol or technique? Do you keep
8 some type of archival so if the test was done, say a
9 few years ago, you would still have what was in place
10 at that time?

11 THE WITNESS: Any changes that go through our
12 technical procedures are done by the quality management
13 people up in headquarters, so I believe they would keep
14 that record.

15 THE COURT: Okay. So that would be
16 available, though?

17 THE WITNESS: That is correct.

18 THE COURT: So this is all DOJ laboratory,
19 such as Riverside, Sacramento, all of them have the
20 same technical review process and protocols?

21 THE WITNESS: That is correct.

22 BY MS. JAFINE:

23 Q. So part of the standardized protocols would
24 be protocols for testing using G.C. mass spec?

25 A. Yes.

26 Q. And these protocols are very important to
27 make sure that all testing is done correctly, right?

28 A. That is correct.

1 Q. And it's generally accepted within the
2 scientific community to have protocols for testing
3 evidence?

4 A. Yes.

5 Q. And these protocols are done in a lab
6 setting; is that right?

7 A. Yes.

8 Q. By scientists who are trained in those
9 protocols such as yourself?

10 A. Yes.

11 Q. If a scientist deviates from a protocol, they
12 would need to document that in the analyst's notes,
13 right?

14 A. Correct. But even above that, they need to
15 speak with a supervisor before that deviation occurs
16 because they are going to need some sort of approval
17 for that.

18 Q. Right, because it's standard or good practice
19 to. If there is a deviation, it needs to be validated
20 within the lab?

21 A. Could you elaborate on what you mean by
22 "deviation that would require validation"?

23 Q. I'm trying to think of an example.

24 A. May I give an example?

25 Q. Go for it.

26 A. So the deviation that I'm possibly thinking
27 that you might mean would be something to the effect of
28 we were not able to -- under normal protocol, you must

1 do, you know, X, Y, and Z color screen to be able to
2 call it "no controlled substances detected." The
3 deviation for that protocol would be "I was not able to
4 complete all color screens because I had too little
5 sample," so that wouldn't need any type of validation,
6 that would just be documented in the notes.

7 Q. Okay. Can you think of a deviation that
8 would require a validation?

9 A. No. That's why I was asking.

10 Q. Yeah. Let me think about it. I'll get back
11 to you.

12 So generally, other than the example you gave
13 like there is no deviation, you follow protocols, that
14 is what results in good science; is that right?

15 A. Yes.

16 Q. And for every test you conduct on a piece of
17 evidence, you have two peer reviewers; is that right?

18 A. That is correct.

19 Q. I believe one is called a "technical
20 reviewer." What do they do?

21 A. The technical reviewer reviews all of the
22 technical aspects of that analysis. So how the data
23 was interpreted, how it was actually processed, did it
24 follow all of the protocols we have been discussing?
25 Just the technical aspects such as that.

26 Q. And so is this person in the room with you
27 while you are doing all of that, when you are doing the
28 initial testing, when you are doing your portion of the

1 testing?

2 A. No.

3 Q. So how do they know that you followed the
4 protocols?

5 A. Based on that first note page that we looked
6 at earlier, they review that. So they do the color
7 screen, what kind of extraction did they do.

8 Q. I'm sorry. Are you referring to page C of
9 that packet?

10 A. Yes, ma'am.

11 Q. So the technical reviewer would come and look
12 at these analyst's notes in Exhibit 56, page C, and
13 they would be able to see from these notes whether you
14 followed protocol?

15 A. Yes.

16 Q. And while we're on this, basically in "C" you
17 are taking notes as you go, making observations on this
18 kind of worksheet, and then you kind of formalize it on
19 page B, right?

20 A. Correct.

21 Q. And on page C it looks like the technical
22 reviewer and the administrative reviewer both signed
23 off on that page as well?

24 A. Yes, one after the other.

25 Q. And then that's transposed onto page B?

26 A. Correct.

27 Q. And page B, is what you send off to the
28 originating agency; is that right?

1 A. Yes.

2 Q. So then what does the administrative reviewer
3 do?

4 A. So the admin reviewer is just more for
5 administrative purposes. They are looking to make sure
6 that the subject's name is spelled correctly; if there
7 is a CDC number that's listed, in case of like a prison
8 case, does the description on the envelope match what
9 is written on that assignment notification page that we
10 talked about because that is actually entered by our
11 property unit. So we're just making sure -- or the
12 admin reviewer is making sure that just everything
13 matches.

14 Q. So more into the paperwork than the lab work?

15 A. Correct.

16 Q. Okay. And what is the point of these two
17 peer reviewers?

18 A. It's to -- well, they both have separate --
19 you know, their objectives are separate. So the
20 technical reviewer is to make sure that the analysis
21 was done properly, that the data was interpreted, you
22 know, correctly.

23 The admin reviewer is more for just, you
24 know, just making sure everything is typed correctly,
25 is all summed up correctly on that final report, the
26 agency numbers are correct, there is no mismatch of a
27 number or anything.

28 Q. I'm just going to touch on some things

1 Mr. Albertson was talking with you about.

2 You said that the gas chromatograph is not
3 considered a confirmatory test. What does that mean?

4 A. A confirmatory test gives a result that is
5 specific to that compound. So with the gas
6 chromatograph, as we saw earlier, it gives a -- certain
7 peaks come up in that spectra, if you will, and with
8 that peak is a retention time. So it was
9 11-point-something for one of those peaks. It's not
10 confirmatory because there could be other compounds
11 that loop or come off of the column at or around that
12 same time.

13 Q. Okay. What's your definition of a
14 confirmatory test?

15 A. A confirmatory test gives a complete result.
16 It gives an exact result that it is this and no other
17 but this.

18 Q. So basically a synonym would be that a
19 complete analysis was done on that piece of evidence?
20 You would consider that to be complete?

21 A. Correct.

22 Q. Or you would consider a complete analysis or
23 a confirmatory result to basically equal an
24 identification of a drug?

25 A. Exactly.

26 Q. Without that, you can't actually identify the
27 drug?

28 A. Yes.

1 Q. And that is as opposed to screening tests or
2 presumptive tests?

3 A. Correct.

4 Q. Which cannot identify specific --

5 A. Specifically one drug.

6 Q. Okay. You were talking about a library of
7 reference material. Where do you get that from or
8 where does your lab get it from?

9 A. The reference material or the library?

10 Q. The library of the reference material.

11 A. So that can come in the form of a few
12 different ways. We can actually input -- we can
13 purchase a reference material from a vendor and that
14 comes with a certificate of analysis as far as quality,
15 purity, so it is a known standard. And then we will
16 run that and add that ourselves to the library. There
17 are also libraries that we take from approved vendors
18 as well such as -- it's called Wiley, W-i-l-e-y. They
19 also have a drug library that we can just upload and
20 all of those have been verified materials.

21 Q. So you could have like a patchwork of
22 different references from different places that all go
23 into one library at the Department of Justice?

24 A. Correct.

25 THE COURT: When you say a "library," are you
26 really talking about a computer data that is in the
27 computer itself?

28 THE WITNESS: That's correct.

1 THE COURT: It's not like there is a library
2 somewhere?

3 MS. JAFINE: I didn't think there was.

4 THE WITNESS: We also have a book as well
5 that has spectra in it of different controlled and
6 noncontrolled substances with that same kind of spectra
7 that if it doesn't hit on anything in the library, we
8 can actually go to a paper copy.

9 MS. JAFINE: That would make Mr. Breeze
10 happy.

11 BY MS. JAFINE:

12 Q. So how many compounds are in your computer
13 library reference material? Do you know?

14 A. There is thousands of compounds because there
15 are controlled and noncontrolled compounds.

16 Q. Right. I guess that's what I'm getting at.
17 Like there is a handful of illegal drugs and their
18 compounds, but then you have -- do you think it's
19 thousands or tens of thousands or hundreds of thousands
20 or millions of compounds in that library?

21 A. I would say it's thousands.

22 Q. It's my understanding there is about
23 12 million organic compounds in the world, so you don't
24 have 12 million in that?

25 A. No.

26 Q. Right.

27 Now, you were talking about on pages G, H,
28 and I, that those showed the matching spectra for

1 heroin compounds; is that right?

2 A. Yes.

3 Q. So are there three because there are three
4 different compounds that make up heroin and that's what
5 those different ones are all about?

6 A. So within that black tar-like substance that
7 I received, there are three separate compounds, heroin
8 being one of those compounds.

9 Q. Okay. So just going to your --

10 (Mr. Albertson's cell phone rings.)

11 THE COURT: Take a message, Mr. Albertson.

12 MS. JAFINE: No, answer it. I dare you.

13 BY MS. JAFINE:

14 Q. So, yeah. Do you have that up there, your
15 packet, your discovery packet?

16 A. Oh, if I can look at my case file, I have the
17 matching case file to that discovery.

18 Q. Yeah. Yeah. Yeah. I'm just looking for
19 the -- I guess it's your pages G, H, and I. I'm sorry,
20 your pages 5, 6 and 7.

21 So it's page 5 that's showing the match for
22 actual heroin; is that right?

23 A. Yes, it is.

24 Q. Okay. So then what is the 6 and 7 matching
25 to?

26 A. Six and seven is a match to -- if you go back
27 to page 4, as I have it labeled, if you see those two
28 smaller peaks, they are going to be 10.713 and 10.776.

1 They are matches to those peaks.

2 Q. Oh, I get it. Okay.

3 So that large peak on your page 4, our
4 page F, is then corresponding to your page 5, our
5 page G?

6 A. That is correct.

7 Q. And then the other two smaller peaks there
8 are your pages 6 and 7, our H and I?

9 A. Yes.

10 Q. And then so what are those?

11 A. The two smaller peaks?

12 Q. Yeah.

13 A. Those are typically seen as heroin starts to
14 break down. As it gets older, it will start to break
15 down and those are the compounds that you see.

16 Q. Okay. So it's still kind of part of the
17 overall heroin picture but it's not heroin itself?

18 A. Correct.

19 Q. And then the remaining pages, we were talking
20 about smaller peaks, our J, K, and L, your 8, 9, and
21 10, you said you couldn't match it to any reference
22 sample. Would that be because it's such a small amount
23 of whatever it might be?

24 A. Exactly.

25 Q. So it could be like a cutting agent that just
26 had a very small amount?

27 A. Yeah. Or it could be maybe in however they
28 actually processed the heroin, however it was made.

1 Maybe it's like, you know, one of the compounds that
2 they were making, yeah. Just something very small that
3 is not very detectable.

4 Q. All right. I'll go to these volumes.

5 Can you go to Exhibit 47, that's the bigger
6 one, Attachment A?

7 THE COURT: Which exhibit are you on,
8 Ms. Jafine?

9 MS. JAFINE: 47-A.

10 THE COURT: 47-A, got it.

11 BY MS. JAFINE:

12 Q. So this is a Forensic Science International
13 article entitled *Validation of Twelve Chemical Stock*
14 *Tests for the Detection of Drugs of Abuse*. Are you
15 with me?

16 A. Yes.

17 (Court's Exhibit No. 47-A, Forensic
18 Science International article entitled
19 *Validation of Twelve Chemical Stock*
20 *Tests for the Detection of Drugs of*
21 *Abuse*, was identified for the record.)

22 BY MS. JAFINE:

23 Q. Great. So chemical spot tests are also known
24 as color tests; is that right?

25 A. That's correct.

26 Q. Totally interchangeable?

27 A. Yes.

28 Q. If you could flip to page 199 for me?

1 THE COURT: Of Exhibit A?

2 MS. JAFINE: Yes.

3 THE COURT: Just, by the way, Mr. Albertson,
4 are you going to object to this being considered by the
5 Court? It appears to be a published article.

6 MR. ALBERTSON: No. This appears to be a
7 published article.

8 THE COURT: It's the same one that you
9 attached to your pleadings?

10 MR. ALBERTSON: I'm sorry. I think it's the
11 same one that's attached.

12 THE COURT: Yeah, it appears to be so. I'll
13 go ahead and admit Exhibit A, which would be, just for
14 the record, Exhibit 47-A is admitted.

15 I take it you are moving it in?

16 MS. JAFINE: Sure.

17 THE COURT: Mr. Theule, Mr. Gundel, any
18 objection?

19 MR. THEULE: No, Your Honor.

20 MR. GUNDEL: No. Thank you.

21 (Court's Exhibit No. 47-A
22 was received into evidence.)

23 BY MS. JAFINE:

24 Q. So I'm looking at the last sentence:

25 "Although these tests are sensitive
26 and can be relatively specific, the actual
27 color observed by the analyst performing the
28 chemical spot tests depends on many factors,

1 such as the concentration of the drug, whether
2 the drug is self- or free-base, which salt form
3 is present, the presence of contaminants in the
4 sample, the color discrimination of the analyst
5 and conditions under which the chemical spot test
6 is performed."

7 Do you agree with that statement?

8 A. Yes.

9 Q. Great. Let's go to Attachment G, please, of
10 Exhibit 47. This is a *Journal of Forensic Science*
11 article entitled *The use of Chemical Spot Tests Kits*
12 *for the Presumptive Identification of Narcotics and*
13 *Drugs of Abuse*. Are you with me?

14 A. Yes.

15 Q. Great. I direct your attention to the second
16 paragraph starting with the word "first."

17 THE COURT: What page on the article,
18 Ms. Jafine?

19 MS. JAFINE: First page of the article.

20 THE COURT: First page. Okay.

21 When you read the quote, by the way, read
22 slowly so the court reporter can take it down.

23 BY MS. JAFINE:

24 Q. "So first colors produced, although
25 usually quite specific, are assigned a broad
26 quote, unquote, spectral range. For example,
27 colors within the spectral range from
28 purplish-blue to purplish-red may be

1 considered positive to untrained observers
2 with no color cards available for comparison
3 when the actual positive color should be violet."

4 Do you agree with that statement?

5 A. I agree with the fact that the colors can
6 differ. We don't use color cards to compare, so, with
7 that, I wouldn't be able to answer it.

8 Q. I guess just as a general scientific
9 principle, would you agree with that?

10 A. Sure. The colors do vary somewhat.

11 Q. Right. And there is always a certain amount
12 of subjectivity that must be taken into place when a
13 color is reported; is that right?

14 A. That is correct.

15 Q. Some people may report a color, I think in
16 this example it's purplish-blue, and it should be
17 violet?

18 A. That's correct.

19 Q. Or even saying like someone might see
20 yellow-green and another person sees green?

21 A. It's just very subjective and based on what
22 they see. I don't think there is an "it should be this
23 color specifically, bluish-purple and violet." It kind
24 of seems like they fall within the same kind of color
25 range. Like you said, it's very subjective, but as
26 long as they are in the same range of color, that's
27 okay.

28 Q. But in the lab, if you are doing a color

1 test, you would note in your analyst's notes, like as
2 specific as possible, like if you did see something and
3 it was yellow-green, you would put "yellow-green," you
4 wouldn't just put "green"?

5 A. No. We always write exactly what we observe.

6 THE COURT: Give me an example. Let's say
7 the color test in this particular case, apparently you
8 documented it, was purple -- you used a Marquis test,
9 correct?

10 THE WITNESS: Correct.

11 THE COURT: All right. So let's say that it
12 wasn't quite the purple you were looking for, it was
13 lighter or darker, how would you describe that in your
14 notes if that were the case?

15 THE WITNESS: I would describe maybe a feint
16 purple instead of just purple. Possibly a
17 reddish-purple, and I'm just going off of what I see.
18 And because they are just presumptive tests, I'm still
19 going to continue to a confirmatory analysis anyway.

20 THE COURT: Okay. All right. So I'm not
21 suggesting you would not make an analogy of what you
22 are looking at, you wouldn't make a determination based
23 on the color test?

24 THE WITNESS: No. I would not.

25 BY MS. JAFINE:

26 Q. Can I direct your attention to the third
27 paragraph on that same page starting with the word
28 "second."

1 So "Second, the color-producing chemical
2 reactions are usually not specific, while it is
3 true that a particular reagent gives the
4 designated color reaction with the specific
5 regulated drug, other regulated and nonregulated
6 drugs or substances can give the same or similar
7 colors with that particular reagent. These
8 substances are then considered to be interferences
9 which produce false positives." Do you agree with
10 those statements?

11 A. Yes.

12 Q. Jumping down to the next paragraph starting
13 with "as a consequence."

14 "As a consequence, several brief reports
15 have recently appeared concerning the observants
16 of false positives in the use of chemical spot
17 test kits, thus positive and false positive tests
18 can be obtained, the latter serving only to
19 confuse results in making definitive test
20 interpretations essentially impossible."

21 So in your expert opinion, chemical spot
22 tests, also known as color tests, can result in false
23 positives; is that right?

24 A. Yes.

25 Q. And are the --

26 THE COURT: Hold on, Ms. Jafine. I have a
27 follow-up question.

28 Can you define what a false positive is? We

1 had a lot of testimony about that. I want to know what
2 your definition is of false positive.

3 THE WITNESS: So what I would consider a
4 false positive, although we don't actually say in our
5 laboratory whether it was positive or negative, we
6 always just write the color. But I asked for an
7 example of a false positive, maybe it did screen
8 purple, which I had said earlier was indicative of an
9 opiate, and then when I got the results, the compound
10 that comes off as one of those peaks are the only
11 compound that was present, is not an opiate. So I
12 guess you can consider that purple color a false
13 positive.

14 THE COURT: Okay. So a positive result for
15 the presence of the specific compound which is not
16 actually present, that would be a false positive? In
17 other words, if you got an indication and it turned out
18 it wasn't there.

19 THE WITNESS: Correct.

20 THE COURT: Okay. Very good. I think that
21 is pretty straightforward. Thank you.

22 BY MS. JAFINE:

23 Q. Do you basically not consider that to be -- I
24 mean, it's technically a false positive, but because
25 you didn't even consider the color test to be positive
26 or negative because it's a presumptive test, it can't
27 really be a false positive?

28 A. That's correct. We don't really say, oh,

1 this was a false positive result. We don't do that.
2 Even when we do our -- because we monthly check or
3 reagents as well, we don't say it was positive or
4 negative, we write the color.

5 THE COURT: Because you never make a
6 determination based upon the spot test or the color
7 test in any event, correct?

8 THE WITNESS: No. We do not.

9 BY MS. JAFINE:

10 Q. So it's kind of fair for us laymen to use
11 that "false positive," but that's not a proper
12 scientific conclusion?

13 A. As far as in our laboratory, no, it's not.
14 No, we would never say that.

15 Q. Right. Because you don't consider the color
16 test to be positive, so how can it be a false positive?

17 A. Exactly.

18 Q. I guess it would be a "presumptive false
19 positive." Would that be more accurate?

20 A. Sure. It's a little complicated, but, yeah,
21 I presumed that was an opiate and it was false in the
22 regard that it did not turn out to be an opiate. That
23 is really convoluted so that's why we don't say things
24 like that.

25 Q. Got it.

26 And are the BFS scientists, such as yourself,
27 is that part of your training, to talk about false
28 positives or false presumptive positives, aware that

1 that's something that can happen?

2 A. In our training we are made aware that there
3 are substances other than controlled substances that
4 will turn a color screen similar to that of a
5 controlled substance.

6 Q. Is that documented somewhere?

7 A. It is. We have a large training binder.

8 Q. Okay. And do you know off the top of your
9 head what some of those substances are?

10 A. That will give a color that looks like it
11 might be a controlled substance?

12 Q. Right. Or it's just voluminous?

13 A. It's not voluminous, but there are some
14 things, like I know there is a common cold medication
15 that will give a purple result in Marquis and it does
16 not contain any kind of opiate.

17 Q. And do you know where that information comes
18 from in your training materials? Do you know who
19 tested that to figure it out?

20 A. We have literature that we read such as the
21 peer review journals that you have here, and it's
22 contained within those journals. And then we ourselves
23 will get that specific compound and make an examination
24 ourselves in our testing -- I'm sorry -- in our
25 training to actually see it firsthand.

26 Q. It would be an exhaustive list just because
27 of the possible number of millions of compounds
28 available in the world?

1 A. Of course.

2 (Court's Exhibit No. 47-G, *Journal of*
3 *of Forensic Science* article from 1974,
4 was identified for the record.)

5 BY MS. JAFINE:

6 Q. All right. Can I draw your attention to
7 Exhibit 47, Attachment I?

8 MS. JAFINE: Should I admit "G" or are we
9 going to go through the whole thing later?

10 THE COURT: Any objection to "G," which is
11 the *Journal of Forensic Science* article from 1974?

12 MR. ALBERTSON: No objection to that, that's
13 a peer review article.

14 THE COURT: Mr. Gundel, Mr. Theule, I take it
15 no objection?

16 MR. THEULE: No objection.

17 MR. GUNDEL: No objection. Thank you.

18 (Court's Exhibit No. 47-G
19 was received into evidence.)

20 BY MS. JAFINE:

21 Q. Okay. So Attachment I, a National Institute
22 of Justice Law Enforcement and Corrections Standards
23 and Testing Program, that's part of the U.S. Department
24 of Justice, Office of Justice Programs, and the title
25 of this is N.I.J., *National Institute of Justice*
26 *Standard 0604.01* entitled *Color Test Reagents/Kits for*
27 *Preliminary Identification of Drugs of Abuse*. Are we
28 looking at the same thing?

1 A. Yes.

2 (Court's Exhibit No. 47-I, National
3 Institute of Justice Law Enforcement
4 and Corrections Standards and Testing
5 Program booklet, was identified
6 for the record.)

7 BY MS. JAFINE:

8 Q. Great. Can you go to page 2 of this
9 Attachment I? And I'm looking at Section 4 titled
10 *Requirements*.

11 Now, does this appear to outline the National
12 Institute of Justice requirements for color test
13 reagents and kits?

14 A. Yes, it does.

15 Q. Okay. And if I could have you turn to
16 page 7. I'm looking at Section 4.1.4.

17 "Part of these National Institute of
18 Justice requirements include" -- I'm just
19 looking at "A" -- "that these kits require
20 a statement that the kit is intended to be
21 used for presumptive identification purposes
22 only and that all substances tested should be
23 subjected to more definitive examination by
24 qualified scientists in a properly equipped
25 crime laboratory."

26 Based on all of your testimony so far, I'm
27 assuming you agree with that as a scientifically sound
28 requirement?

1 A. I do.

2 Q. And looking at "B," a statement that "Users
3 of the kit should receive appropriate training in its
4 use and should be taught that the reagents can give
5 false positive as well as false negative results," do
6 you agree that requirement?

7 A. This is talking about color-screening kits
8 that we don't actually use. In general, though, I
9 believe that if anybody is going to use any type of
10 testing at all, there should be some type of training
11 regardless of what you are going to use. So in a broad
12 sense, yes. But because it's talking about kits and
13 this is not applicable to our lab whatsoever, I can't
14 really elaborate.

15 Q. Sure. But just as a scientist, you would
16 agree that they should receive appropriate training in
17 its use and should be taught that the reagents can give
18 false positive as well as false negative results?

19 A. Sure.

20 Q. In looking at "C," "A discussion of the
21 possibility of reagents and/or sample contamination and
22 consequent misleading results," do you think that's a
23 good requirement to ensure that sound science results
24 from using these kits? I mean, I know you said you
25 don't use them, but just in general in your expertise?

26 A. In general, I believe that that information
27 should probably be part of some sort of training as
28 well --

1 Q. Okay.

2 A. -- in regard to those kits.

3 Q. Thank you.

4 I think I'm done with this one. Can you go
5 to the other one.

6 Are you familiar with the Scientific Working
7 Group for the Analysis of Seized Drugs?

8 A. Yes.

9 THE COURT: Also known as SWGDRUG?

10 THE WITNESS: Yes.

11 MS. JAFINE: "SWGDRUG" doesn't roll off the
12 tongue.

13 THE COURT: Sounds easy enough, SWGDRUG.

14 MS. JAFINE: "SWGDRUG," it's weird. So --

15 THE COURT: Which exhibit are you referring
16 to?

17 MS. JAFINE: I'm looking at Exhibit 49.

18 THE COURT: Thank you.

19 BY MS. JAFINE:

20 Q. So this appears to be at least a portion of
21 the recommendations from SWGDRUG; is that correct?

22 A. Yes.

23 (Court's Exhibit No. 49, document
24 containing a portion of the
25 recommendations from SWGDRUG,
26 was identified for the record.)

27 BY MS. JAFINE:

28 Q. I'm going to turn your attention to --

1 THE COURT: Before you go on, let me ask you:
2 What is SWGDRUG?

3 THE WITNESS: Oh --

4 THE COURT: "Scientific Working Group"?

5 THE WITNESS: Yes.

6 THE COURT: What is that?

7 THE WITNESS: It's one of many scientific
8 working groups for different sections of different
9 units. There is one for drugs. There is one for
10 digital evidence. There one for -- and it's just a
11 group that kind of comes up with like guidelines and
12 recommendations for how to go about the analysis of
13 their specific unit, so this one being drugs. However,
14 our laboratory does not follow the SWGDRUG guidelines.
15 They are recommendations, but we follow ISO, I-S-O,
16 17025 standards. As we were talking about
17 accreditation earlier, that's what they are looking
18 for. They don't look to see if we're following SWGDRUG
19 standards.

20 BY MS. JAFINE:

21 Q. But there is some overlap, though, right?

22 A. There is some overlap, yes.

23 Q. I'm going to ask you some questions about
24 this. Let me know if it differentiates from what you
25 guys do in your lab.

26 SWGDRUG does not recommend the use of a color
27 test alone to positivity identify a drug, correct?

28 A. Based on what I read here, no.

1 THE COURT: When you are saying "here," Court
2 Exhibit 49?

3 MS. JAFINE: Yes.

4 THE COURT: Are you moving that into
5 evidence?

6 MS. JAFINE: Sure.

7 THE COURT: Mr. Albertson, any objection?

8 MR. ALBERTSON: If I may ask a question,
9 possibly a late objection?

10 THE COURT: Ask right now.

11 MR. ALBERTSON: If I can just do that right
12 now, if I may?

13 THE COURT: Go ahead.

14 -VOIR-DIRE EXAMINATION-

15 BY MR. ALBERTSON:

16 Q. You are familiar with these, are you not?

17 A. Yes, I am.

18 Q. And these are, again, only recommendations
19 that laboratories can follow?

20 A. Correct.

21 Q. And do you know, the SWGDRUG, is it a
22 reputable scientific group?

23 A. It is.

24 Q. It is something that is recognized at least
25 in the forensic sciences anyway?

26 A. It is.

27 Q. So this is something that you would find
28 credible?

1 A. Yes.

2 MR. ALBERTSON: No objection.

3 THE COURT: Mr. Theule, Mr. Gundel?

4 MR. THEULE: No, Your Honor.

5 MR. GUNDEL: No objection. Thank you.

6 THE COURT: Exhibit 49 is admitted.

7 (Court's Exhibit No. 49
8 was received into evidence.)

9 -CROSS-EXAMINATION (RESUMED)-

10 BY MS. JAFINE:

11 Q. Okay. So similar to your lab, the SWGDRUG
12 doesn't recommend the use of color tests alone to
13 positively identify a drug; is that right?

14 A. Yes.

15 Q. And if I could just turn your attention to
16 their page 15, at the top section, this is part IIIB.3.
17 "SWGDRUG recommends that laboratories adhere to the
18 following minimum standards." And then they go on to
19 say in IIIB.3.1, "When a validated Category A technique
20 is incorporated into an analytical scheme, at least one
21 other technique (from either Category A, B or C) shall
22 be used."

23 And then just flipping back a page, there is
24 a Table 1 that has these Category A, B, and C's. Do
25 you see that?

26 A. I do.

27 Q. Okay. So using these minimum standards from
28 SWGDRUG, the G.C. mass spec would cover these minimum

1 standards because you can see in Category A is mass
2 spectrometry and Category B is gas chromatography; is
3 that correct?

4 A. Yes.

5 Q. And is that what you were talking about
6 before when you said the gas chromatograph -- let me
7 get to that question next. Sorry.

8 Let me flip to page 15 where "The SWGDRUG
9 recommends that laboratories adhere to these following
10 minimum standards," and they go on under part IIIB.3.2
11 to say "When a Category A technique is not used, at
12 least three different validated techniques shall be
13 employed. Two of the three techniques shall be
14 on uncorrelated techniques from Category B." So is
15 that what you were talking about before, how the gas
16 chromatograph, like alone, doesn't get you to the
17 complete analysis or the confirmatory test, so that is
18 kind of why they have it in this Category B?

19 A. Yes.

20 Q. Okay. Whereas the mass spectrometer is in
21 Category A?

22 A. Correct.

23 Q. So those two together, you know, pursuant to
24 these minimum standards from SWGDRUG, would get you to
25 the actual identification of a drug, correct?

26 A. Yes, based on their standards.

27 Q. Right. And your lab standards?

28 A. Yes. They are similar.

1 THE COURT: So what you're saying is that
2 your laboratory is at least consistent with the
3 recommendations from SWGDRUG as far as a Category A
4 test along with one other test?

5 THE WITNESS: That is correct. We just
6 don't -- we don't break our tests into categories like
7 that, but it's the same concept.

8 THE COURT: Okay. And in your case, you did
9 the gas chromatograph and mass spectrometer, which the
10 evidence is it's a structural test, just looking at the
11 compound itself?

12 THE WITNESS: Yes, that's correct.

13 THE COURT: But then you also do a Category C
14 test, a color test, in addition to those other two. Is
15 that accurate?

16 THE WITNESS: That is accurate, and that is
17 done prior to either of those tests.

18 THE COURT: Okay. Very good. So you do
19 three tests essentially in your analytical scheme?

20 THE WITNESS: That is correct.

21 BY MS. JAFINE:

22 Q. And you said before you do that color screen
23 to hopefully get you into the right family?

24 A. Correct.

25 And I'm sorry. If I may elaborate on that?
26 That is for my extraction. So it's not leading me in
27 my confirmatory answer that -- like what family it's
28 in, it's how I'm going to extract it most efficiently

1 to put onto the G.C.M.S.

2 Q. Okay. Thanks for that clarification.

3 THE COURT: So it essentially tells you what
4 to do next as far as your analytical schemes?

5 THE WITNESS: Exactly.

6 BY MS. JAFINE:

7 Q. Just for the process as opposed to getting
8 the answer?

9 A. Exactly. It's like where I should go next,
10 but in no way is it telling me what it is.

11 Q. You mean what drug it is?

12 A. What drug it is, yes.

13 Q. So this second part that I was reading, the
14 IIIB.3.2, so it seems to be saying if you are using a
15 color test, which they have here is in Category C, then
16 to meet their minimum standard they want you to have at
17 least two other tests from "B." Is that what they are
18 saying in this section?

19 A. Yes.

20 Q. And you would agree that that is -- that
21 would lead to -- I keep wanting to say "good science,"
22 but I sound like a dummy -- that would lead to sound
23 scientific results?

24 A. (No response.)

25 Q. I guess as opposed to just using any of the
26 tests in Category C alone?

27 A. As opposed to only using Category C tests,
28 yes, you are going to get, as you would say, a more

1 sound result. However, I do not agree that this would
2 be an identification because in Category B, they don't
3 identify like Category A does.

4 So, for instance, you got your color test,
5 which is going to put you in a family of drugs, and
6 then your gas chromatograph is going to give you a
7 retention time with just a peak, but, like I said,
8 other compounds could do that. I'm not familiar with
9 every other test on here, but these other tests are
10 kind of in that same ballpark of thinking where it's
11 about this rate, so it's probably this compound. So I
12 would imagine two Category B tests, if a peak alludes
13 at a certain time in a gas chromatograph, and then say
14 you do a thin layer of chromatography and it's coming
15 out, you know, in the same -- similar to how it's
16 matching your G.C. results, I mean, I would assume that
17 that is how they are concluding their identification.
18 But for my intents and purposes, I would never do this.

19 Q. So you are saying you have higher standards
20 than SWGDRUG?

21 A. Yes. We would never do this.

22 Q. Okay. And so your lab has higher standards
23 than SWGDRUG?

24 A. Yes.

25 THE COURT: Ms. Jafine, when you say "higher
26 standards," this is a minimum? These are minimum
27 criteria?

28 MS. JAFINE: I mean, I think that's what

1 they're saying is minimum standards.

2 BY MS. JAFINE:

3 Q. So my question to you then is you have higher
4 minimum standards?

5 A. That's correct.

6 Q. And so not only would you not be able to
7 identify, as in have a confirmatory result, from any of
8 the tests in Category C, you also wouldn't feel
9 comfortable with any of the tests in C and B, you would
10 want to have something from Category A?

11 A. That is correct. I am not familiar with
12 every test in Category B, but, yes, I would want a
13 confirmatory off of Category A. I would not be
14 comfortable with just the "B."

15 Q. Okay. Can I turn your attention to page 16
16 of the SWGDRUG materials in Exhibit 49? The first
17 paragraph there, IIIB.3.5, "For the use of any method
18 to be considered of value, test results shall be
19 considered 'positive,'" and "positive" is in quotes,
20 "(i.e., it must meet the acceptance criteria defined in
21 the method validation and operating protocol)."

22 Do you agree with that statement?

23 A. I think that that statement is really vague.
24 What I am interpreting that as is that the result
25 should be a match to a validated reference material, is
26 how I would take that.

27 Q. Yeah. I guess I was a little confused about
28 that too. Would you say they are kind of saying here

1 in order to be able to call a result positive, it has
2 to follow these minimum standard procedures and with
3 validation and operating protocols that they are
4 talking about in this document? Is that what they are
5 saying?

6 A. I think what they are saying as far as the
7 method of validation operating protocol, I think that
8 is per laboratory because you have, for instance, under
9 G.C.M.S. is a certain method that is -- we call it
10 E-Method, it's the program that it runs, and so maybe
11 what this is speaking of is that as long as your method
12 is running properly and your operating protocols so our
13 technical procedures are being followed, the results
14 are considered valid if all of those parameters are
15 being followed and are correct and are in working order
16 to produce that result.

17 Q. And that's the only way you can, you know,
18 properly scientifically use the word "positive" to
19 identify a certain drug with all of those factors in
20 play?

21 A. Right.

22 Q. Okay. If you just look at IIIB.3.8, lower
23 down on that page, it states "The chosen analytical
24 scheme shall demonstrate the identity of the specific
25 drug present and shall preclude a false positive
26 identification and minimize false negatives."

27 Do you agree that that is good sound
28 scientific procedures that they are talking about here?

1 A. Yes.

2 Q. That should be basically a minimum standard
3 for drug analysis that whatever chosen analytical
4 scheme should demonstrate the identity of the specific
5 drug and shall preclude a false positive by the
6 identification?

7 A. Yes.

8 Q. Okay. Thanks.

9 Just flipping back to Exhibit 48. This is
10 the ASTM, American Society for Testing Materials
11 International, Designation E-2329-14. *Standard*
12 *practice for Identification of Seized Drugs*. Did you
13 have a chance to review this?

14 A. Was this part of the packet?

15 Q. Yeah.

16 A. Yeah. If this was part of the packet, then I
17 looked at it.

18 (Court's Exhibit No. 48, article from
19 ASTM International, Designation
20 E-2329-14, titled *Standard practice*
21 *for Identification of Seized Drugs*,
22 was identified for the record.)

23 BY MS. JAFINE:

24 Q. I guess my only question with regards to
25 this: There is some additional stuff in here, but
26 essentially ASTM International has adopted the SWGDRUG
27 standards into their standards. Does that appear to be
28 what is happening there?

1 A. It looks -- yeah. It looks similar.

2 Q. If I direct your attention to page 2, they
3 have that same Table 1 with Categories A, B, and C?

4 A. Uh-huh. Yes.

5 Q. And they are making the same minimum criteria
6 to be utilized when making analytical identifications,
7 that's in their Section 6.

8 A. Yes. These criteria look similar.

9 THE COURT: Seems to be word for word.

10 MS. JAFINE: A lot of it, yeah.

11 Okay. I'm going to move that one in too.

12 THE COURT: Any objection to the ASTM
13 E-2329-14 being admitted into evidence?

14 MR. ALBERTSON: No.

15 MR. THEULE: No, Your Honor.

16 MR. GUNDEL: No, Your Honor. Thank you.

17 THE COURT: Forty-eight is admitted.

18 (Court's Exhibit No. 48

19 was received into evidence.)

20 MS. JAFINE: I think I'm done with those.

21 Keep them nearby.

22 Can I just have a moment?

23 THE COURT: Is this a good time for a break?

24 MS. JAFINE: Sure.

25 THE COURT: Ten, fifteen minutes.

26 (Recess.)

27 THE COURT: Ready to go, Ms. Jafine?

28 MS. JAFINE: Yes.

1 THE COURT: Back on the record. Everyone who
2 was here previously continues to be present.

3 Please proceed with your cross-examination.

4 BY MS. JAFINE:

5 Q. Okay. So part of the point of, like, color
6 testing is that the specific chemical reagents, they
7 cause a specific color reaction, and assuming it is a
8 controlled substance, it makes a specific color
9 reaction with a specific controlled substance to create
10 that color reaction; is that right?

11 A. Yes.

12 Q. And I'm talking about it in sort of absolute
13 terms. We determined that it's presumptive, so reading
14 all of that into the subtext for this question.

15 A. Okay.

16 Q. But basically if you have a reagent that one
17 of the things they can detect is the possible presence
18 of amphetamines, but the substance is actually
19 marijuana, marijuana is not supposed to turn the color
20 for amphetamines; is that right?

21 A. No. It's not even the same color screen.

22 Q. Right. Or cocaine?

23 A. No. They have their own specific color that
24 it would turn.

25 Q. Right. I mean, that's kind of the whole
26 point, right?

27 A. Right, is to kind of give you a general idea
28 of what you might have.

1 Q. Right. And that's kind of the whole point is
2 to say you have this reagent, and if you have this
3 chemical compound that is in a controlled substance,
4 it's going to turn to this color, and I guess my
5 question is: There is no color test where the color
6 result is "it's some kind of drug"? It falls under the
7 entire umbrella of controlled substances, right? There
8 is no test like that?

9 A. No. Like each test is, like you said, a
10 specific color for each specific class or family of
11 drugs. But in regard to that, the Marquis, for
12 instance --

13 Q. Right. It's got multiple?

14 A. -- it has multiple color reactions based on
15 what type of possible controlled substances is placed
16 with it.

17 Q. Right. But, again, they have their own color
18 reaction within the Marquis?

19 A. That's correct, yes.

20 Q. Right. So taking, for example, if there is
21 suspected amphetamines on the Marquis, it's supposed to
22 turn orange to brown, I think?

23 A. That's correct.

24 Q. So if you later learn through confirmatory
25 testing that the substance was actually marijuana, it
26 should not have turned orange to brown on the Marquis'
27 test, right?

28 A. That would be quite a strange color result.

1 But, again, our confirmation would be off of the
2 G.C.M.S. data. If it was that strange, if it was that
3 exact instance, I would go back and I would actually
4 color screen that again just for my own purposes
5 because that would be a very, very bizarre color
6 screen, yes.

7 Q. Thanks.

8 I think you mentioned it before, but just to
9 be clear, you don't use NIK test pouches in your lab?

10 A. No. I have never used one at all.

11 Q. Okay. And same with Val-Tox?

12 A. No.

13 Q. Narco Pouch?

14 A. None of those kits.

15 Q. Okay. To your knowledge, your lab has never
16 done any sort of validation studies on them?

17 A. No.

18 Q. Did you happen to bring the packet you gave
19 me for the case name Jose Espinoza or do you need a
20 copy?

21 A. Oh, I have it.

22 Q. Okay. Great.

23 THE COURT: What are you referring to,
24 Ms. Jafine?

25 MS. JAFINE: I'm about to refer to some stuff
26 in that case that I will label as I go.

27 BY MS. JAFINE:

28 Q. Can you turn to the evidence container --

1 MS. JAFINE: Where are we at, 57?

2 THE CLERK: Yes.

3 THE COURT: So that's next up, Court's
4 Exhibit Number 57. Are you just going to be marking
5 something; if so, what are you going to be marking?

6 MS. JAFINE: Yeah.

7 Do you need a copy of this, Jack?

8 MR. ALBERTSON: This is for -- do you have an
9 extra copy?

10 MS. JAFINE: Yeah. I'm going to mark these
11 ones, I have a copy for the Court to follow along.

12 THE COURT: What are "these ones"?

13 MS. JAFINE: These are going to be all
14 documents related to a case called People versus Jose
15 Espinoza.

16 THE COURT: Are these the Court's copy?

17 MS. JAFINE: I'm going to mark these as
18 evidence. I'll just grab them back from you when we're
19 done, just follow along.

20 BY MS. JAFINE:

21 Q. Okay. So going to the evidence container
22 marked Court's Exhibit Number 57, this appears to be
23 the envelope that was provided by the Imperial County
24 Sheriff C.O. Claro, R., Number 857; is that right?

25 A. Yes.

26

27

28

1 (Court's Exhibit No. 57, photograph
2 of evidence envelope from the Imperial
3 County Sheriff's Office, was identified
4 for the record.)

5 THE COURT: This is the exhibit?

6 MS. JAFINE: Fifty-seven.

7 THE COURT: Very good.

8 BY MS. JAFINE:

9 Q. And I think you said before that the jail in
10 this case is the one that puts in the description?

11 A. That's correct.

12 Q. So he describes this as "small plastic pieces
13 of bag with dark-color substance"; is that right?

14 A. Yes.

15 Q. And then turning to the formal report,
16 Department of Justice formal report, I'm going to mark
17 that 58.

18 THE COURT: What's the date just for the
19 record, Ms. Jafine?

20 MS. JAFINE: The date?

21 THE COURT: Of the report.

22 BY MS. JAFINE:

23 Q. Is that 3-29-16?

24 A. Yes.

25 (Court's Exhibit No. 58, formal
26 report from the Department of Justice
27 dated 3-29-16, was identified for
28 the record.)

1 THE COURT: Very good. Thank you.

2 BY MS. JAFINE:

3 Q. Now, in this report under the title
4 "Evidence," there is something that says "submission
5 01." Do you see that?

6 A. Yes.

7 Q. It says "One evidence envelope containing
8 suspected controlled substances." Is that accurate?

9 A. Yes.

10 Q. Does that sentence, I guess, come from the
11 originating agency or from your department?

12 A. That comes from our department. So every
13 envelope, every BFS-2 envelope, they submit is a
14 submission.

15 Q. So basically it always says the same thing if
16 it's a controlled substance?

17 A. Sometimes they will bring it in a box, but,
18 yeah, usually it's the same.

19 Q. Got it.

20 Okay. Going to your analyst's notes now.
21 I'll mark that as 59. Now, you describe in your notes
22 that these clear plastic bindles contains B.T.L.S.,
23 which I believe in your abbreviation stands for black
24 tar-like substance; is that right?

25 A. Yes.

26 Q. So that is your observation?

27 A. Yes.

28

1 (Court's Exhibit No. 59, Allison
2 Baca's analyst's notes, was
3 identified for the record.)

4 BY MS. JAFINE:

5 Q. And going to the photograph next. I'll mark
6 that Exhibit 60.

7 Now, is this a photograph that you took of
8 all of the evidence that was submitted from the
9 Imperial County Sheriff's Office in this Jose Espinoza
10 case?

11 A. Yes.

12 Q. I think that's your case number and your
13 initials in the photograph?

14 A. Yes.

15 (Court's Exhibit No. 60, photograph of
16 evidence from the Jose Espinoza case,
17 was identified for the record.)

18 BY MS. JAFINE:

19 Q. Just heading back to 58 for a minute. After
20 you completed the G.C.M.S., after you completed the
21 G.C.M.S. in this case, your conclusion was that it
22 contained caffeine; is that right?

23 A. Yes.

24 THE COURT: As in coffee? Caffeine that's
25 the same --

26 THE WITNESS: Same caffeine.

27 THE COURT: Okay.

28

1 BY MS. JAFINE:

2 Q. And that conclusion is also reflected in --
3 you printed out the same graphs as you had done in the
4 Chacon case and done the analysis in the same way?

5 A. Yes.

6 Q. So where the sample that you received matched
7 the reference material for caffeine, that's how you
8 came to that result?

9 A. That's correct.

10 THE COURT: Ms. Jafine, how is the Espinoza
11 case in any way relevant? In other words, I haven't
12 heard any evidence as to what -- was there some type of
13 color test done before it went to DOJ?

14 MS. JAFINE: Yes, Your Honor. It's the
15 witness that we had the hearing about the address.

16 THE COURT: The subpoenaed witness.

17 MS. JAFINE: Right. It's kind of out of
18 order, but my offer of proof is that he wrote a police
19 report where he wrote that he believed the substance he
20 found on Mr. Espinoza was heroin, he conducted a NIK
21 test, and that the result came back positive for heroin
22 and then he submitted it to the Department of Justice.

23 THE COURT: And that's what we're talking
24 about with this witness?

25 MS. JAFINE: Correct.

26 THE COURT: She did the analytical work on
27 this case?

28 MS. JAFINE: Correct.

1 THE COURT: Was it the modified Mecke test
2 that this person did or is it the one that is at issue
3 in your client's case?

4 MS. JAFINE: That's my understanding from
5 this police report. Yes, he took a Mecke's reagent
6 heroin test kit and then described the end result as
7 the dark-green liquid color which confirmed that the
8 black tar-like substance tested positive for heroin.

9 THE COURT: Understood. I understand the
10 relevance at this point. Thank you for that
11 clarification.

12 Mr. Albertson, are you going to be objecting
13 to these exhibits coming in?

14 MR. ALBERTSON: No. I will not.

15 THE COURT: I take it, Mr. Theule, you are
16 not going to object to Ms. Jafine's offer of the
17 record?

18 MR. THEULE: That's correct.

19 THE COURT: Very good. I'll go ahead and
20 admit 57, 58, 59 at this point.

21 (Court's Exhibit Nos. 57, 58 and 59
22 were received into evidence.)

23 MS. JAFINE: I'll mark this as 61.

24 Mr. Albertson, do you have any objection to
25 stipulating to the chain of custody for this?

26 MR. ALBERTSON: No, that's fine.

27 THE COURT: What was 60?

28 MS. JAFINE: Oh, sorry. Sixty was the

1 photograph.

2 THE COURT: Any objection to that coming in,
3 Mr. Albertson?

4 MR. ALBERTSON: No.

5 THE COURT: Sixty is admitted unless I hear
6 otherwise.

7 MR. THEULE: Thank you.

8 (Court's Exhibit No. 60
9 was received into evidence.)

10 BY MS. JAFINE:

11 Q. And then 61 is the chain-of-custody report.
12 Is that accurate?

13 A. Yes.

14 (Court's Exhibit No. 61, chain-
15 of-custody report, was identified
16 for the record.)

17 THE COURT: Okay. Any objection,
18 Mr. Albertson?

19 MR. ALBERTSON: No.

20 THE COURT: Sixty-one is admitted.

21 (Court's Exhibit No. 61
22 was received into evidence.)

23 BY MS. JAFINE:

24 Q. Showing you what I'm marking as 62.

25 MS. JAFINE: That's for the Court to follow.

26 MR. ALBERTSON: What number is this?

27 MS. JAFINE: Sixty-two.
28

1 BY MS. JAFINE:

2 Q. So this appears to be a Department of Justice
3 Bureau of Forensic Services' final report, similar to
4 the one that we were just talking about in Exhibit 58;
5 is that correct?

6 A. Yes.

7 (Court's Exhibit No. 62, Department
8 of Justice Bureau of Forensic Services'
9 final report, was identified for the
10 record.)

11 BY MS. JAFINE:

12 Q. Okay. So the Department of Justice kind of
13 uniformly does these reports, they are pretty standard
14 across all of the labs?

15 A. For drug reports, yes.

16 Q. For drug reports.

17 And so similar to your report, it's got a BFS
18 case number; is that right?

19 A. Yes, it does.

20 Q. And it has the subject's name and the offense
21 date?

22 A. Correct.

23 Q. And the date of the report?

24 A. Yes.

25 Q. And that it was signed off by those peer
26 reviewers?

27 A. Yes.

28 Q. Okay. In this particular report, the

1 conclusion from the analyst seems to be saying that it
2 wasn't chemically analyzed because the wadded tissue --
3 I think it's a typo there -- paper contained no
4 crystalline material. Is that what that document is
5 saying?

6 A. That's what the document says.

7 Q. Thanks.

8 MS. JAFINE: I'll move that into evidence.

9 THE COURT: Any objection, Mr. Albertson?
10 I'm trying to understand the relevance of
11 this. No chemical test was done?

12 MS. JAFINE: The relevance will be the
13 officer, who is outside, he is going to testifying
14 about this particular case where he conducted a NIK
15 examination that turned out positive for amphetamines,
16 and then the Department of Justice analyzed it and it
17 contained no crystalline material. That's the
18 relevance.

19 THE COURT: Yeah. There was no test done
20 here now, so I'm not sure what that means. There was
21 something in it, but maybe there wasn't anything in it.
22 I don't know.

23 MS. JAFINE: That's the relevance and the
24 report speaks for itself.

25 THE COURT: Okay. All right. Very good.
26 Mr. Albertson, any objection?

27 MR. ALBERTSON: If I could reserve on that?

28 THE COURT: You want to reserve? Okay. Very

1 good. We'll reserve on this one.

2 THE WITNESS: Can I say something in regard
3 to that report?

4 MS. JAFINE: Yes.

5 THE WITNESS: Just reading off of that
6 report, like I'm not verifying any of his analysis --

7 BY MS. JAFINE:

8 Q. Oh, yeah.

9 A. -- because I don't have his notes, so I'm
10 just literally telling you what was printed on the
11 paper.

12 Q. Of course.

13 THE COURT: The technical reviewer did not
14 correct the --

15 THE WITNESS: That was admin reviewers, they
16 missed it.

17 THE COURT: That would be admin?

18 THE WITNESS: It would be, uh-huh.

19 THE COURT: You can tell whoever initialed
20 it, they made a mistake.

21 THE WITNESS: The typo, that's admin.

22 MS. JAFINE: Oh, yeah. That's major. You're
23 forgiven -- she's forgiven.

24 BY MS. JAFINE:

25 Q. Okay. You were talking earlier about how
26 there are color tests that will indicate the possible
27 presence of opiates as like a class of drugs; is that
28 right?

1 A. Yes.

2 Q. And Fentanyl is an opiate; is that right?

3 A. Yes.

4 Q. And heroin is an opiate?

5 A. Yes.

6 Q. But Fentanyl is not heroin; is that right?

7 A. That is correct.

8 Q. And heroin isn't Fentanyl?

9 A. Correct.

10 Q. And similarly, there are color tests which
11 can demonstrate that there may be the possible presence
12 of amphetamines, and that's sort of a similar broader
13 class in the way that opiates are a broader class of
14 drugs; is that right?

15 A. No. Let me go back real quick to the
16 Fentanyl question. So Fentanyl does not have a color
17 screen. There is no documented color screen for
18 Fentanyl.

19 Q. Oh, yeah.

20 A. Just so we're clear about that.

21 And then as far as your second question about
22 the amphetamines; no, amphetamine is an actual drug.
23 The family of drugs that you are speaking of is called
24 "phenylethylamines."

25 Q. Okay. But a Marquis test for amphetamines
26 could also like be a screen for a number of different
27 chemical compounds that can be illegal drugs, is that
28 right, or at least the amphetamine and methamphetamine?

1 A. Yes.

2 Q. So a positive result on the Marquis -- see, I
3 do it too.

4 A presumptive positive result for
5 amphetamines on the Marquis reagent color test doesn't
6 necessarily mean that that sample contains
7 methamphetamine. Is that a correct statement?

8 A. That's correct. I would take it through
9 confirmatory analysis.

10 Q. Right. I guess my question is: Not all
11 amphetamines are methamphetamine; is that right?

12 A. Yes. I understand what you are saying, yes.

13 Q. They are not equal sides, not the same thing?

14 A. Right.

15 MS. JAFINE: All right. I think I'm done.

16 THE COURT: Mr. Theule, questions?

17 -CROSS-EXAMINATION-

18 BY MR. THEULE:

19 Q. Is there a color test for synthetic drugs?

20 A. Do you mean like the bath salts or like the
21 spices, things like that of that nature?

22 Q. Yes.

23 A. Because those drugs are so new to the market,
24 we don't consider there to be a color screen for them
25 because there is nothing in published literature, so I
26 guess the short answer would be no.

27 Q. So if you had like a spice or a synthetic
28 marijuana or something like that and you subjected the

1 test to the Marquis test, would it turn a color?

2 A. Based on my experience in the lab -- I'll
3 actually touch bases on both of those.

4 For spice, any type of synthetic as far as
5 plant material is concerned, I have not seen a color
6 change in any of the color screens we do, including the
7 one that we would typically do for marijuana, which is
8 the Duquenois-Levine.

9 As far as bath salts are concerned, those
10 tend to typically look more like crystals, and I have
11 observed a color change for Marquis, although I am not
12 quite sure that that is actually documented in
13 literature. But either way, I continue all the way
14 through my confirmatory analysis.

15 Q. And then once you subject it to the rest of
16 the testing, you determine that it is like a bath salt
17 or other synthetic kind of drug?

18 A. That's correct, once I get the data from the
19 G.C.M.S.

20 Q. So I guess there is all this talk about kind
21 of false negatives. I know that's not language you
22 would use, but in the spice example, there would be no
23 color change, but then kind of a positive result of
24 something illegal after going through the rest of the
25 testing, correct?

26 A. Correct.

27 Q. So the way us lawyers are using kind of this
28 false negative thing, that would kind of be an example

1 of false negative as we kind of understand it?

2 A. Sure. Yeah.

3 Q. Other than these synthetic products, are
4 there any other drugs or controlled substances that are
5 out there that kind of display similar results through
6 the color test as compared to the testing later on?

7 A. So the Fentanyl, as we had touched on
8 earlier, that has no color screen. It is -- how do I
9 put this? -- whatever color the reagents are, most of
10 them are clear, but I have like a pink reagent, they
11 all remain that same color.

12 Okay. This is a better way to say it: The
13 blanks of the color reagents and then their reaction
14 with the Fentanyl -- suspected Fentanyl -- they look
15 exactly the same. So essentially there is no color
16 change. But then after I put it on the G.C.M.S., I
17 will get a pink and then I'll click on it and then the
18 mass spectrometer comes out as Fentanyl.

19 THE COURT: Ms. Baca, you talked about blanks
20 as it relates to color testing. What do you mean by
21 "blank"? Is that where just the reagent is present?

22 THE WITNESS: That's correct. So I do
23 monthly checks for all my color screening reagents just
24 to ensure that they are working properly. And so in
25 one well, for instance the Marquis, is sulfuric acid
26 followed by formaldehyde, so I'll put a drop of
27 sulfuric acid and a drop of formaldehyde and observed
28 no color change occurred.

1 THE COURT: Okay. So your color testing that
2 you do, do you do it on, like, a plate?

3 THE WITNESS: In like a spot plate with --

4 THE COURT: Spot plate with wells?

5 THE WITNESS: -- with shallow wells.

6 THE COURT: Shallow wells that are kind of an
7 ivory color?

8 THE WITNESS: Yes.

9 THE COURT: Okay. And do you have a positive
10 control?

11 THE WITNESS: I do. The reference material
12 that I spoke of as far as the G.C.M.S. is concerned,
13 like methamphetamine or any kind of verified reference
14 material that we'll get from a vendor, I will use that
15 to color check my reagents. So like, for instance, I
16 will use methamphetamine to color check my Marquis
17 reagent because I know that it is of known purity and I
18 have that certificate of analysis from the vendor, so I
19 know that it's methamphetamine. So when I check that
20 color reagent, I'm going to see, as you said, an orange
21 to brown change, whereas when I just put the two
22 reagents in the well alone with no crystals, it's going
23 to stay clear. There will be no color change, so
24 that's my link.

25 THE COURT: Very good. Got it.

26 THE WITNESS: So to wrap up with that
27 Fentanyl question, there is no reaction, so it looks
28 like it's a blank.

1 MR. THEULE: Got it.

2 I have no further questions.

3 THE COURT: Mr. Gundel, do you have any
4 questions?

5 MR. GUNDEL: Nothing. Thank you.

6 THE COURT: All right. Mr. Albertson, do you
7 have any further questions?

8 MR. ALBERTSON: I do, Your Honor.

9 THE COURT: I've got a few questions. I can
10 either go now or wait until you get done. What is your
11 preference?

12 MR. ALBERTSON: Tell you what, why don't you
13 go ahead and proceed with yours.

14 THE COURT: Okay. Very good. Just to follow
15 up on what we were talking about, are you familiar with
16 the kits that we have been discussing, the NIK test and
17 things of that nature? Do you understand?

18 THE WITNESS: I understand what they are, but
19 I'm not personally familiar. I never used them, never
20 worked with them.

21 THE COURT: Okay. So they basically, from
22 the testimony we heard, essentially a substance is put
23 in and somebody looks to see if the color change
24 matches the package that it's in. No controls, no
25 positive controls, no negative controls. Would there
26 be any type of test without a negative or positive
27 control that would ever be utilized in your laboratory?

28 THE WITNESS: No.

1 THE COURT: And even though the color testing
2 is not used to identify a drug in your laboratory, as
3 you testified, it's used to give you information to go
4 further in the testing process; is that correct?

5 THE WITNESS: That is correct.

6 THE COURT: But is the color testing that's
7 utilized in your laboratory, is it validated by
8 procedure and has it been shown to work in the context
9 of how you use it in your laboratory?

10 THE WITNESS: Yes. We do those monthly
11 checks that I just described with the reference
12 material of known compounds and the formulas to make
13 the reagents because some reagents aren't just straight
14 acid or straight formaldehyde, for example, those are
15 actually in our technical procedures and have been
16 referenced back to literature references.

17 THE COURT: So, for example, the Marquis test
18 is well described in the literature?

19 THE WITNESS: Yes, it is, and the expected
20 color results.

21 THE COURT: Are you familiar with a book
22 known as Clark's?

23 THE WITNESS: Yes.

24 THE COURT: What is that?

25 THE WITNESS: Clark's is a book that gives
26 information on different substances and what their
27 expected color change should be. I believe that there
28 is solubility as well as structural information, things

1 of that nature.

2 THE COURT: When you talk about structural
3 information, for example, the compound heroin has a
4 structure to it, a chemical structure?

5 THE WITNESS: That's correct.

6 THE COURT: Is Clark's considered a reliable
7 reference in the field of drug chemistry?

8 THE WITNESS: Yes, it is.

9 THE COURT: All right. I'm going to move now
10 to Exhibit 61 -- actually, Exhibit 59, which is -- I'll
11 hand it to you -- part of the testing that was done by
12 you apparently where you identified caffeine. In
13 there, those are your bench notes that include your
14 color test results?

15 THE WITNESS: Correct.

16 THE COURT: All right. And so you appear to
17 have tested it with a number of different color spot
18 tests; is that correct?

19 THE WITNESS: Yes.

20 THE COURT: Okay. And so what indications
21 did you get, if any, as to the caffeine in that case?

22 THE WITNESS: I tested it with six separate
23 color tests and they all came back no color change.

24 THE COURT: So your notes there means no
25 color change. I was trying to figure out what those
26 meant. Very good. Thank you.

27 THE WITNESS: And just to add to that, as
28 part of our technical procedure before we can call

1 something "no controlled substances detected" or a
2 "noncontrolled substance," it is required in our
3 procedure to do a minimum amount, as stated in the
4 procedure, of certain color screens.

5 THE COURT: So you have the G.C. mass spec
6 that identifies the compound of caffeine, in addition
7 you've got the color test that also came back "no color
8 change" as to each one you have done?

9 THE WITNESS: Correct.

10 THE COURT: Now, referring to -- it's in your
11 book there, Exhibit 48, which is the ASTM *Standard*
12 *Practice for the Identification of Seized Drugs,*
13 *Designation E-2329-14.* And specifically on the next
14 page it talks about *Table 1, Categories of Analytical*
15 *Techniques,* this is the table that appears to be the
16 same as the SWGDRUG or similar to a SWGDRUG. My
17 question is: The testing that you do, your G.C. mass
18 spec or mass spec, is Category A test?

19 THE WITNESS: Yes.

20 THE COURT: Looking at Category B, I have
21 just a question. "Pharmaceutical identifiers," will
22 this be when you look at filament, it just has the
23 manufacturer's stamp on it?

24 THE WITNESS: I believe that is what they are
25 talking about.

26 THE COURT: How is that an analytical
27 technique? Aren't you just making a visual? Can't
28 anybody look at that and make a visual?

1 THE WITNESS: Short answer is, yes, you can
2 look up an imprint on a website as simple as Drugs.com,
3 for example. And we also have what is called the "Drug
4 Identification Bible" and it's something that is given
5 to laboratories, and it's also on CD ROM, which is what
6 I use. Again, that is just making an inference of what
7 that tablet or capsule contains based solely on its
8 marking.

9 THE COURT: The visual presentation, size,
10 shape, and the markings that are on the pill or tablet?

11 THE WITNESS: That's correct.

12 THE COURT: It says "table is for categories
13 of analytical techniques," but is that an analytical
14 technique or is it something different?

15 THE WITNESS: I would never use that as a
16 technique to confirm anything. And that is possibly
17 why it's in the "B" category based on my understanding
18 of how they categorize these. For instance, in our
19 reports, if I were to have only done a pharmaceutical
20 identifier, as they call it, I would have put "not
21 chemically examined."

22 THE COURT: I see. You would qualify that?

23 THE WITNESS: I would.

24 THE COURT: Okay. Now, looking at the
25 Category A, Category B, Category C, would I be correct
26 in understanding that the Category A are the higher
27 level or more of the specific tests as opposed to
28 Category B and C?

1 THE WITNESS: That's correct.

2 THE COURT: And Category B would be more
3 specific or at least provide more information than
4 Category C?

5 THE WITNESS: Yes.

6 THE COURT: Category C, those tests would be
7 the least informative tests that you could do if you
8 had an analytical screen?

9 THE WITNESS: Correct.

10 THE COURT: Do you ever use the word
11 "analyte"?

12 THE WITNESS: "Analyte"?

13 THE COURT: Analyte.

14 THE WITNESS: Not often.

15 THE COURT: Okay. All right. What is the
16 definition of that?

17 THE WITNESS: An analyte is just one of
18 the -- a substance that could possibly be put into a
19 solution, say.

20 THE COURT: Okay. So in this particular
21 case, you did a Marquis color-screening test to help
22 you do your evaluation of the drug in question, and
23 that Marquis test is used by the Department of Justice
24 for the purposes that you just described?

25 THE WITNESS: Yes.

26 THE COURT: Is it ever used to make any type
27 of an identification, whether it's presumptive or
28 confirmatory or otherwise, of a drug, a specific drug?

1 THE WITNESS: Solely based on that --

2 THE COURT: Solely based on the color test,
3 the Marquis test, can it ever be used for that purpose?

4 THE WITNESS: No.

5 THE COURT: Are you familiar with a Mecke
6 test?

7 THE WITNESS: Only from what I read in my
8 training. I've never actually used it beyond that.

9 THE COURT: It's a color-screening test also?

10 THE WITNESS: Yes.

11 THE COURT: Would there be any difference as
12 far as your laboratory using that type of test to
13 identify a drug or you wouldn't?

14 THE WITNESS: I believe we did use it a while
15 back because it's in our technical procedures as a
16 reagent you can make, but we don't currently use that.

17 THE COURT: Okay. It's just not something
18 you choose to use for whatever reason?

19 THE WITNESS: No.

20 THE COURT: Okay. And with reference to any
21 of these tests, Category A, Category B or Category C as
22 set forth in E-2329-14, are there any error rates that
23 are known that you can associate with these various
24 Category A, B or C tests?

25 THE WITNESS: I'm sure that there are error
26 rates for each of these tests. However, the limits of
27 detection as well are based on, you know, the
28 concentration of the substance present. As far as

1 specifics are concerned, I couldn't give you a specific
2 on anything.

3 THE COURT: Okay. So the Category A mass
4 spectrometry test that you did in this case, do you
5 know what the error rate would be for your laboratory
6 in doing that test?

7 THE WITNESS: You know, not right off the top
8 of my head. I don't know based on the substances that
9 I analyzed within training and in regular casework.
10 The detection is very sensitive because this is a very,
11 very small amount of the substance that is even
12 introduced into the mass spec, so it doesn't take very
13 much substance to get a result. Specifically, I'm not
14 quite sure, but I could look that up.

15 THE COURT: What does your California
16 Department of Justice laboratory system do if they want
17 to validate a particular analytical technique? What
18 would have to happen in order for that technique to be
19 utilized?

20 THE WITNESS: To validate, for instance,
21 another instrument?

22 THE COURT: Yeah. Whether it's a Category A,
23 B or C, if one was being proposed, what would the
24 laboratory have to do before it utilized it within its
25 analytical scheme?

26 THE WITNESS: It would have to go through a
27 series of tests, those being done repetitively to
28 ensure that the result is reproducible over a period of

1 time. So I guess it would kind of depend on what
2 technique, but, in general, it would have to be a
3 fairly extensive study of several samples done several
4 times with reproducible results under the same
5 parameters each time.

6 THE COURT: One other question I have is that
7 you mentioned that your laboratory, in order to comply
8 with validation and accreditation, you employ the
9 ISO 17025?

10 THE WITNESS: Correct.

11 THE COURT: Okay. And explain what that is,
12 please.

13 THE WITNESS: The ISO 17025 is just a set of
14 standards that our laboratory has to follow just based
15 on different technical procedures and protocols. And
16 that ISO 17025 is when we get accredited, as we were
17 talking about in the B.N.E., that's what they are
18 looking at, is that we are following all those
19 standards and procedures as specified by ISO.

20 THE COURT: "ISO" stands for?

21 THE WITNESS: International Organization for
22 Standardization.

23 THE COURT: Very good then. And your
24 laboratory accreditation, is there any type of an audit
25 procedure that is followed?

26 THE WITNESS: Yes. We are actually
27 accredited by ASCLD, and that is the American Society
28 of Crime Laboratory Directors' laboratory accreditation

1 board, and they are the ones that come, I believe, on a
2 five-year cycle. They come and do a full audit of our
3 entire laboratory and all of our procedures for every
4 single unit. Different casework is looked at, analysts
5 are observed, proficiency tests are looked at. It's a
6 full workup of our entire lab and all of its -- to make
7 sure that we're following the quality management system
8 that we have in place.

9 THE COURT: So the validation work that the
10 laboratory would use on all of its analytical
11 techniques, whether it's a Category A, B or C test,
12 that would be looked at by this accrediting board?

13 THE WITNESS: Yes, it would.

14 THE COURT: Those are all of the questions I
15 have, Mr. Albertson. You are up.

16 MR. ALBERTSON: Okay.

17 THE COURT: Do you want to go ahead and start
18 or do you want to start after lunch?

19 MR. ALBERTSON: Can we start after lunch?

20 THE COURT: Okay. Very good.

21 MS. JAFINE: One thing I think we could use
22 our last five minutes for, maybe after the lunch, but I
23 had a couple of other questions to ask about this
24 Exhibit 62. My point is, I want to address its
25 admission before we let Ms. Baca go.

26 THE COURT: She's going to be back after
27 lunch.

28 MS. JAFINE: No. I'm just saying that I

1 don't want her to leave and then we're talking about
2 this and we could have asked a few more questions to
3 get it in. That's my point.

4 THE COURT: Okay. So what are you asking
5 right now? What do you want to do?

6 MS. JAFINE: Well, I was thinking we could
7 finish with admitting this or not.

8 THE COURT: Oh.

9 Mr. Albertson, do you still want to reserve
10 on 62 or are those the questions you want to address?

11 MR. ALBERTSON: What was 62?

12 THE COURT: Sixty-two was the wadded tissue
13 "pater" containing no crystalline material.

14 MR. ALBERTSON: Yeah, I guess I could start
15 with that.

16 THE COURT: Okay. Well, we'll do that right
17 after lunch then.

18 I did want to make a disclosure as far as the
19 Court's ethical obligation. I don't think this has any
20 relevance as far as my looking at the case, but I am a
21 member of ASTM E30 Committee on Forensic Science. That
22 is the committee that produced the 2329-14. I have
23 been involved in that organization for 20 years or so.

24 Anything further before we take a break?

25 MS. JAFINE: No.

26 THE COURT: Any other housekeeping?

27 MS. JAFINE: Not that I can think of.

28 THE COURT: All right. We're in

1 Department 2. I'm going to break until 1:45. I've got
2 a couple of other things that are on calendar that are
3 going to have to get moved around, so we're not going
4 to start until 1:45.

5 I take it we're going to get done with this
6 witness today?

7 MR. ALBERTSON: Oh, I think we'll get done
8 with her today. We'll soon be done with her today.

9 THE COURT: And you've got another witness
10 over and above that?

11 MS. JAFINE: Yeah. It shouldn't be too long.

12 THE COURT: Very good.

13 MS. JAFINE: He's here.

14 (Noon recess was taken at 11:56 a.m.)

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1 El Centro, California - Wednesday, September 13, 2017

2 Department 2 1:52 p.m. Hon. Christopher J. Plourd

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5 THE COURT: Back on the record in People
6 versus Randy Chacon, Sharrel Ann Myers, Gregory Moore.
7 Mr. Albertson is present; Ms. Jafine, Mr. Theule,
8 Mr. Gundel.

9 Witness, Ms. Baca, continues to be on the
10 stand.

11 Mr. Albertson, please proceed with your
12 redirect examination of this witness.

13 MR. ALBERTSON: Thank you, Your Honor.

14 If the Court could hand the witness
15 Exhibit Number 58.

16 THE COURT: Remind me what that was.

17 MR. ALBERTSON: I believe that's the case of
18 Jose Espinoza. It will be the results page.

19 MS. JAFINE: Official report?

20 MR. ALBERTSON: Yes, official report. I
21 think that's it.

22 THE COURT: Fifty-eight, I'm looking for that
23 packet.

24 MR. ALBERTSON: I may have misnumbered it. I
25 hope I didn't.

26 THE COURT: No.

27 MS. JAFINE: It was mine.

28 THE COURT: I did. I just don't know

1 where --

2 MS. JAFINE: There's four single sheets.

3 THE COURT: We had it upstairs when we broke
4 for lunch. Hold on. Hold on. Here it is.

5 Fifty-eight, here we go.

6 Allison Baca,

7 the witness on the witness time at the time of the noon
8 adjournment, resumed the witness stand and testified
9 further for the People as follow:

10 -REDIRECT EXAMINATION-

11 BY MR. ALBERTSON:

12 Q. Ms. Baca, directing your attention to that
13 exhibit, Exhibit 58, we were talking about that this
14 morning, this is the case of Jose Espinoza, and it's
15 one which you found it contained caffeine; is that
16 correct?

17 A. Yes.

18 Q. How is it that you can get a result, let's
19 say using a NIK test, say some sort of presumptive
20 test, comes back a particular drug, cocaine or
21 something like that, and then when you do it, when you
22 actually perform the confirmatory test, it comes back
23 caffeine. Do you have any explanation how that might
24 happen?

25 MS. JAFINE: Objection. Vague and
26 foundation.

27 THE COURT: It's a hypothetical question, I
28 think. Why don't you ask it -- I'll sustain the

1 objection. Go ahead and ask it in the terms of a
2 hypothetical.

3 MR. ALBERTSON: I'll try to clear it up.
4 I'll try to ask it a little better.

5 BY MR. ALBERTSON:

6 Q. Do you have any explanation how it is that
7 you got caffeine when there was a NIK result that said
8 it was something else? Do you have any explanation for
9 that?

10 A. As far as the NIK test is concerned, I can't
11 explain that because I'm not trained in the NIK test.

12 As far as a general color test screening like
13 I perform in the laboratory, not specifically on this
14 case, but in general, it is possible to get a color
15 screen that may be indicative of a certain family of
16 drugs and then it comes out to a different compound
17 altogether.

18 Q. So it is possible to have that happen?

19 A. It is possible.

20 Q. And that's using the type of color screen
21 that you use in the laboratory?

22 A. Correct.

23 Q. And the color screens that you use in the
24 laboratory, they are fairly sophisticated, are they
25 not? They are a lot more sophisticated than what you
26 would, say, have on the street by a police officer?

27 MS. JAFINE: Objection. Vague.

28 THE COURT: Overruled.

1 THE WITNESS: I would imagine so. We are
2 able to trace the formulations of the reagents back to
3 the source of where they were bought and the individual
4 components of each reagent.

5 BY MR. ALBERTSON:

6 Q. Okay. Now --

7 THE COURT: Mr. Albertson, I have a question
8 along the same lines.

9 So the color test, if it could react, if it
10 could cause a color reaction that would be similar,
11 whether it's a controlled substance or not,
12 hypothetically, in the case of the one that was
13 referred to or the test that was done regarding
14 Exhibit 58, if it had a color test that came back
15 positive for heroin and then you tested it and it was
16 actually caffeine, would you consider the color test to
17 be valid in that circumstance?

18 THE WITNESS: The color test that was
19 performed as far as the NIK test is concern?

20 THE COURT: Assuming it was done in this case
21 regarding the same substance that you tested in
22 Exhibit 58.

23 THE WITNESS: As far as that NIK test is
24 concerned, I don't really want to comment on that
25 because I'm not sure what chemicals were in that NIK
26 test, so I don't exactly know the specifics of that as
27 to how it could react.

28 THE COURT: Suppose it was a Mecke test, the

1 reagent was a Mecke. Are you familiar with that? We
2 talked about that before.

3 THE WITNESS: Yes.

4 THE COURT: For whatever reason, apparently
5 it cross-reacted with the caffeine, it caused a color
6 change with the caffeine, that would be the
7 explanation?

8 THE WITNESS: There was some component that
9 was in that substance that was tested with the Mecke
10 packet that you are saying that, yes, caused some sort
11 of color change in that.

12 THE COURT: Ask your next question,
13 Mr. Albertson.

14 BY MR. ALBERTSON:

15 Q. Now, I wanted to ask you also about this
16 other test in the -- unfortunately, I didn't write down
17 the number on it.

18 MS. JAFINE: Sixty-two. If we could have
19 Number 62, Your Honor?

20 THE COURT: What is 62?

21 MS. JAFINE: I might have kept it. Sorry. I
22 have it. It's a reminder that I still need to argue
23 about it.

24 THE COURT: Hand that to the witness.

25 BY MR. ALBERTSON:

26 Q. This is a test that Ms. Jafine asked you
27 about this morning. Do you recall this?

28 A. Yes.

1 Q. Do you recall the questions she asked you
2 about those?

3 A. Yes.

4 Q. Now, this particular test, there was no
5 component analysis done; is that right?

6 A. Based strictly on what this report says, yes.

7 Q. Correct. I understand you did not do this?

8 A. Nor did I review the notes of the person who
9 did.

10 Q. Understood. According to this, it was not
11 chemically analyzed?

12 A. Yes.

13 Q. That means it was not -- well, what does that
14 mean?

15 A. When I put "not chemically analyzed" in one
16 of my reports, it means I did no chemical analysis at
17 all, no color screen, no extraction, nothing beyond
18 weighing the substance.

19 Q. That would be just it, you would put them on
20 the scale and that would be it?

21 A. Yes, if that.

22 Q. If that, okay.

23 THE COURT: What would be the explanation why
24 that wouldn't be done, because there was nothing in the
25 packet?

26 THE WITNESS: Based solely on what is written
27 right here, I believe that because it says "no
28 crystalline material," maybe that is why he didn't

1 chemically analyze it.

2 THE COURT: Sounds like it. Very good.

3 BY MR. ALBERTSON:

4 Q. That was my very next question. Is that the
5 reason why, there is no packet of material here?

6 A. I imagine so. Looks like no material.
7 Again, I don't know his notes.

8 Q. Are you familiar with Mr. Warden, Dean
9 Warden, the person who actually signed this?

10 A. I only know of him. I know he used to work
11 in the Santa Barbara laboratory.

12 Q. But you don't know him personally?

13 A. No. I never met him.

14 Q. According to this, he is a senior
15 criminalist. If he worked in Riverside, would that
16 make him one of your supervisors?

17 A. A senior criminalist is someone who has taken
18 an examination specific to their discipline and they
19 just get -- it more depends -- usually a written exam
20 and then some sort of oral examination to show what
21 they know. And if they pass it, then they get issued
22 the title "senior criminalist."

23 Q. Okay. That's fine. All right.

24 Now, I think you testified on direct that
25 your starting point for doing an analysis is usually
26 using a color-type test; is that correct?

27 A. After I weigh it, yes.

28 Q. Okay. Why do you start there? Why is that

1 the starting point?

2 A. I start with the color screen to just give me
3 an idea of what direction I should take my extractions
4 in to do a G.C.M.S. analysis.

5 Q. And, in fact, is that where most of your
6 colleagues start there as well?

7 A. Yes.

8 Q. Turning your attention then to what has been
9 marked as Exhibit Number 51. I don't know if you have
10 it there. It's an article by J.J. Manura called
11 *Forensic Identification of Heroin*. Do you have that
12 article in front of you?

13 A. Yes, I do.

14 THE COURT: Did you say 51, Mr. Albertson?

15 MR. ALBERTSON: Yes, Your Honor, 51.

16 BY MR. ALBERTSON:

17 Q. And if you will turn to page 50 in that
18 exhibit, page 50 of that exhibit. I take it, while you
19 are doing that, you are familiar with the *Journal of*
20 *Forensic Science*?

21 A. Yes, I am.

22 Q. Is it a reputable journal within the
23 scientific community?

24 A. Yes.

25 Q. And here he writes "Color tests are widely
26 recognized as the logical first step in a drug analysis
27 scheme. Often these tests provide the necessary
28 information to allow the analyst to intelligently

1 select testing procedures that will complete the
2 identification process."

3 Do you agree or disagree with that statement?

4 A. I agree with that statement.

5 Q. Now, he goes on here to talk about the
6 Marquis test, Marquis reagent. In the very next
7 paragraph he says "Like other commonly used color test
8 reagents, the Marquis reagent is not specific. In
9 fact, many other types of materials other than morphine
10 and its derivatives will produce a purple color with
11 Marquis in terms of testing heroin."

12 Do you agree or disagree with that statement?

13 A. I agree with that.

14 Q. He also talks about a nitric acid color test.
15 It says here in the next paragraph that "There are 24
16 compound tests with concentrated nitric acid that
17 produce colors indistinguishable from that of heroin."

18 Do you agree or disagree with that statement?

19 THE REPORTER: "Distinguishable from" what?

20 MR. ALBERTSON: Indistinguishable, I'm sorry.

21 THE COURT: Slow down and make sure you
22 pronounce the words.

23 MR. ALBERTSON: I will.

24 BY MR. ALBERTSON:

25 Q. Do you agree or disagree with that statement?

26 A. I never performed a nitric acid color screen,
27 so I don't have an opinion as to that statement.

28 Q. So here he is talking about these color tests

1 that are actually performed in the laboratory; is that
2 right?

3 A. Yes.

4 Q. So these are really far more sophisticated
5 than probably what you would have in the Narcotics
6 Identification Kit; is that right?

7 A. I would imagine so.

8 Q. Okay. So even the types of tests that you
9 perform in your laboratory do have limitations; is that
10 correct?

11 A. Yes, they do.

12 Q. If you will turn over to page 51 of the same
13 exhibit. Under the heading "Thin Layer and Gas
14 Chromatography," do you see that?

15 A. Yes, I do.

16 Q. In there he writes, "Thin layer
17 chromatography has been extensively applied
18 for the detection and identification of drugs.
19 Like other forms of chromatography, the technique
20 is particularly attractive since it offers the
21 drug analyst a rapid means of separating drugs
22 from dilutants and adulterines while providing a
23 tentative identification." Do you agree or
24 disagree with that statement?

25 A. As far as general chromatography is
26 concerned, yes.

27 Q. Okay. But notice it says here "a tentative
28 identification." What does that mean to you?

1 A. So a tentative identification is just not
2 confirming the exact compound. Just as in my gas
3 chromatography, you are getting some sort of peak at
4 some sort of time, some sort of retention time, but
5 that is not a confirmatory result.

6 Q. You would still need to do the mass spec
7 after that, right?

8 A. That is correct.

9 Q. And are you familiar with ultraviolet as well
10 being used for the testing of heroin?

11 A. No.

12 Q. You are not familiar with that.
13 How about infrared?

14 A. We typically do not do I.R. on our suspected
15 heroin samples.

16 MR. ALBERTSON: I don't think I have any
17 other questions, Your Honor. Very good.

18 THE COURT: Ms. Jafine, questions?

19 MS. JAFINE: Just a few.

20 -RE-CROSS-EXAMINATION-

21 BY MS. JAFINE:

22 Q. Remember just before lunch the judge was
23 asking you some questions and he was talking about the
24 Marquis reagent and you were saying, you know, that
25 it's just the color screen, and then he asked if you
26 are familiar with the Mecke -- "may-key"? -- I should
27 spell it, M-e-c-k-e. How do you pronounce that?

28 THE COURT: Apostrophe "S" for "Mecke's."

1 BY MS. JAFINE:

2 Q. The Mecke's reagent, so you said that you
3 don't use that in your lab, but there is nothing
4 special about that particular reagent that would be
5 different from the Marquis or anything else in terms of
6 your conclusions about the inability of a color test to
7 give you an identification of a drug?

8 A. No. It's similar to the Marquis.

9 Q. Right. It's just different chemical
10 compounds that are going to cause a different reaction?

11 A. Correct.

12 Q. But there is nothing about that particular
13 reagent that would be different from the Marquis
14 reagent where it would totally change your view on how
15 color tests work?

16 A. No. I just -- there is different compounds
17 and different solutions, that's all.

18 Q. Okay.

19 THE COURT: As far as the specificity, it's
20 just like a Marquis test, it's just something that
21 would help you do further testing essentially?

22 THE WITNESS: That's correct.

23 BY MS. JAFINE:

24 Q. Well, speaking of that, what would the
25 difficulty be for your process in terms of extraction
26 if you didn't, you know, do a color test and get the
27 right family? Would you just have to do more G.C. mass
28 spec tests to get to the right place?

1 A. Yes. When we have an unknown substance or
2 something that I don't get any color screens for, like
3 we were talking about earlier, I'll do at least two
4 separate extractions, one of which isn't as specific
5 for a certain, you know, compound I'm headed in the
6 direction of or a family of compounds, and so, yeah, I
7 will cover a few different areas with my extractions to
8 make sure I'm hitting every single, like, family of
9 compounds just to make sure that there is nothing in
10 there even though there was no screen.

11 Q. Right. So you could do it without it, but it
12 just involves more extractions?

13 A. Correct.

14 Q. Okay. And I know you said you didn't know
15 the error rate of the G.C. mass spec, but can you give
16 like a neighborhood?

17 A. Of detection, is that what you are talking
18 about?

19 Q. Right.

20 A. Concentration-wise, you know --

21 Q. If you can.

22 A. -- I really don't want to put a guess out
23 there because I don't know. So, I mean, I can look
24 that up if that's something you require.

25 THE COURT: The limited protection would be
26 at the point when your instrumentation, your validated
27 method that you are using, it will not find something
28 if it's such a low level?

1 THE WITNESS: Exactly.

2 THE COURT: The error rate would be, if the
3 method was used appropriately, how often it would give
4 the correct result?

5 THE WITNESS: It's possible, but as far as
6 error rates are concerned for the G.C.M.S., that's
7 going to be -- it's going to give you the compound
8 that's in there, you know, as it analyzes it. So I
9 guess if you want to speak error rates, maybe if the
10 library doesn't quite match what you are getting --
11 like, for instance, when we were speaking of the bath
12 salts, some of them are so new that the spectra that it
13 tries to match it with isn't always the spectra that
14 you are actually getting out of your compound, so I
15 guess in that there is some error, but, again, that's
16 the analyst's job to match that spectra correctly. So
17 if I'm not able to find a matching spectra out of that
18 library on the instrument, I have other resources to
19 match that spectra.

20 BY MS. JAFINE:

21 Q. Okay. So what I think you are talking about
22 is it would be more the deficiency of the library than
23 the actual, like, mass spec instrument?

24 A. Yes, because that mass spec is going to
25 fragment that molecule and you are going to get that
26 chemical fingerprint, if you will. And so, yeah, your
27 deficiency is going to line more in that library you
28 are trying to match up with it, not in the fact that

1 the mass spec can't fragment that molecule.

2 Q. All right. It sounds like assuming
3 everything is running well and all protocols are
4 followed, irrespective of whether you can match it to a
5 library spec, that mass spec is going to be 100 percent
6 accurate or as close as you can get to 100 percent in
7 terms of its function and giving you a spectra?

8 A. That's correct.

9 And we also do -- just to back that up, we do
10 monthly checks on our instruments as well as weekly
11 checks. So the weekly checks are checking for the
12 separation of the G.C. column, and then we are looking
13 at the mass spec that is produced on a couple of
14 references that we run, and then every month we do a
15 full tune of the mass spec and look at all of that
16 together. So there is constant checks in place to, you
17 know, account for any -- if there is going to be an
18 error, we're going to see it in those checks.

19 Q. Okay. Thanks.

20 And then I think Mr. Albertson just now was
21 asking you -- and I know you said that you don't have
22 familiarity with these field test reagent kits, but I
23 think the question he posed was whether your laboratory
24 color tests were far more sophisticated than these
25 types of field tests we were talking about. Can you
26 explain how so? I mean, if you can't because you don't
27 know what is happening inside one of these NIK pouches,
28 that's fair, but I'm just wondering if that's a guess

1 or --

2 A. So as far as -- I don't know exactly what is
3 in a NIK pouch, what are the different chemicals in the
4 pouches, but I know that I -- if you needed to see the
5 traceability of my chemicals and the different
6 compounds that sometimes I have to mix to make those
7 certain reagents, I can give you a traceability all the
8 way back to the vendor, to the lot number, to
9 everything specific, so I have everything accounted
10 for. I don't know if the NIK test -- if they can do
11 that with the NIK test as far as each chemical is
12 concerned or the compounds that are within that
13 chemical, so in that regard, I don't know. But as far
14 as our tests are concerned, I can trace it back for
15 you.

16 Q. Okay. And would you also consider your lab
17 testing to be more sophisticated because of the
18 laboratory environment and accredited laboratory and a
19 test being conducted by a criminalist and a chemist
20 that make it a more sophisticated test in your mind?

21 A. Yes, just because we can go all the way
22 through confirmatory analysis.

23 Q. Right. I'm saying just the color test
24 portion, if you are comparing the two color tests, the
25 field test and the lab test, would you consider the lab
26 test to be more sophisticated because of those reasons
27 I just stated?

28 A. Yes, because it's a controlled environment so

1 we don't have any kind of, like, heat factor affecting
2 us because if it's too cold, too hot, that might change
3 the rate of the reaction. We're pretty constant
4 temperature. We don't have any, like, other
5 environmental factors affecting us. We know exactly,
6 like I said, where our reagents are coming from. We
7 keep close watches on the expiration dates. So in that
8 regard, yes, we know exactly where we stand with our
9 color tests and it's not as influenced by outside
10 factors when we are in that laboratory setting.

11 Q. Like you don't eat your lunch at your lab
12 station?

13 A. Exactly.

14 Q. Cool.

15 Just quickly going back to the Exhibit 62, do
16 you still have that in front of you?

17 A. The big one?

18 Q. No. No. Sorry. It's just that one sheet.

19 A. The Santa Barbara record?

20 Q. Mr. Warden's.

21 What does "no criminal crystalline material"
22 mean to you?

23 A. To me it means that there was no material
24 there, like there were no crystals, but that's just
25 what I'm reading.

26 Q. Sure. And then below that in the report,
27 again I know it's not your report, but Mr. Warden had
28 written that the submission from -- sorry, I don't have

1 it in front of me -- what was the quotation from the
2 submission from the submitting agency?

3 A. It says "white crystal-like substance."

4 MS. JAFINE: Thanks.

5 I think that's it.

6 THE COURT: Mr. Theule?

7 MR. THEULE: Yes, Your Honor.

8 -CROSS-EXAMINATION-

9 BY MR. THEULE:

10 Q. You mentioned that hot and cold can affect
11 the rate of reaction. Can you explain more about that.

12 A. Sure. If a cold environment versus a hot
13 environment -- well, let's just say hot -- if it's a
14 little bit warmer, the rate of reaction can increase
15 just because they react quicker; colder, opposite, it
16 can react slower. It just all depends.

17 Q. And does that affect the reliability of the
18 color test in a hotter environment, let's say?

19 A. It's possible. Again, I don't have to deal
20 with those factors so I don't have any experience in
21 that.

22 Q. To your knowledge, if some of your reagents
23 that you use in the Marquis color test were exposed to
24 heat prior to coming to your laboratory, would that
25 affect the reliability of the test when you perform it
26 at the lab?

27 A. If they were exposed to heat, I would have to
28 say that it would have be some sort of extreme heat

1 because they are -- if they are just transferring from,
2 you know, the facility and they are not in any sort of
3 refrigeration, we don't keep them refrigerated, so
4 maybe if it was in some sort of extreme heat, like for
5 the first reagent, the Marquis, for example, is
6 concentrated sulfuric acid, so if you heat that up, you
7 are going to have a huge problem. You know, it's
8 probably going to -- it will shatter the container if
9 it starts volatilizing in the container. So, I mean,
10 if it's exposed minimally, I can't imagine that it
11 would affect it that much. When I say "temperature
12 conditions," I'm talking more about the reaction that
13 occurs when both chemicals and the substance are all
14 combined.

15 Q. The heat at that moment?

16 A. At that moment in time, yes.

17 Q. I see. And when you were referring to
18 extreme heat just now, what would you consider extreme
19 heat?

20 A. I'm talking about, like, flames.

21 Q. Okay. So not like 110 degrees Fahrenheit?

22 A. No.

23 MS. JAFINE: Like El Centro.

24 THE WITNESS: I think it should be fine here.

25 MS. JAFINE: Flames?

26 THE COURT: Some people think we live in
27 extreme heat in this community.

28

1 BY MR. THEULE:

2 Q. You also mentioned something about expiration
3 dates of reagents. To your knowledge, do the reagents
4 that are part of the Marquis color test have an
5 expiration date?

6 A. No, because those are neat chemicals. They
7 are specific only to the Marquis. Each Reagent A and
8 Reagent B are neat chemicals, and that means that it's
9 just -- I poured it straight from the bottle right into
10 my little test spot plate. There are no, like, mixing
11 of substances with solutions. And so we would refer to
12 the manufacturer to see if there was an expiration
13 date, but the majority of those solvents and acids do
14 not have expiration dates. If we are making our own
15 solution, say a cobalt thiocyanate, for example, those
16 are good for three years after the preparation date.

17 Q. I see. This other test, this other color
18 test, the Mecke test, do you know if any of the
19 reagents in that test have expiration dates?

20 A. The Mecke.

21 Q. The Mecke, I'm sorry.

22 A. I believe that that is a solution that has to
23 be made, and so in our laboratory, because I do not
24 believe that that is a Mecke solution, that would also
25 have an expiration date three years from the day it was
26 prepared.

27 MR. THEULE: Got it.

28 No further questions.

1 THE COURT: Mr. Gundel?

2 MR. GUNDEL: Nothing. Thank you.

3 THE COURT: Ms. Baca, I have a few questions
4 here. To follow up on the line of questioning about
5 the expiration dates and how long these various
6 reagents might last, I'm referring to *Martin's Analysis*
7 *of Drugs and Poisons*, 4th edition, page 480. It talks
8 about the Marquis test and it talks about how the
9 reagents are made.

10 It says "The reagent has to be carefully
11 mixed" --

12 THE REPORTER: I'm sorry. I can't hear you.

13 THE COURT: "Carefully mixed 100 milliliters
14 concentrated sulfuric acid with 1 milliliter of
15 40 percent formaldehyde solution, in parenthesis
16 (stable for several weeks protected from light),
17 end parenthesis."

18 So when you mix the two reagents for purposes
19 of your Marquis test, as you've explained in your
20 testimony, would it have a shelf life or a particular
21 length of time that it might last, in other words?

22 THE WITNESS: For our laboratory, we do not
23 actually prepare it like that. We have one bottle of
24 straight concentrated sulfuric acid and another bottle
25 that has 38 to 40 percent formaldehyde. So those
26 chemicals do not actually get combined until I'm doing
27 the test right in front of me.

28 THE COURT: So you don't put it together and

1 then keep it for a period of time and then use it as
2 you need it?

3 THE WITNESS: No. We do not. We do it right
4 as we're doing the color test.

5 THE COURT: Okay. So if somebody were to
6 combine it and then you use it, it would appear, at
7 least according to this publication, that it would only
8 be stable for a couple of weeks essentially?

9 THE WITNESS: To my understanding, yes.

10 THE COURT: Okay. Very good. Thank you.

11 Let me ask one other question. You talked
12 about color tests. A number of questions were asked
13 relating to color tests and various variables that
14 apply to doing the color testing, and one of the
15 questions was heat. Is the heat, as far as a variable,
16 does it affect the rate or the time that it takes the
17 color to change if it's going to change?

18 THE WITNESS: Yes, it does.

19 THE COURT: Okay. And what are the other
20 variables? In other words, is the ambient light, you
21 know, when you are observing the color change, is that
22 a variable?

23 THE WITNESS: It could be the type of
24 lighting that you have. Is that what you are asking?

25 THE COURT: Uh-huh.

26 THE WITNESS: It's possible that that could
27 affect it.

28 THE COURT: Essentially the color change is a

1 subjective judgment that somebody is making and
2 observing what they are seeing, correct?

3 THE WITNESS: That is correct.

4 THE COURT: Obviously the differences between
5 people and their ability to discern colors would be a
6 variable?

7 THE WITNESS: Absolutely.

8 THE COURT: For example, could somebody
9 hypothetically be color-blind and make a credible
10 determination in a color test?

11 THE WITNESS: If they are color-blind?

12 THE COURT: Correct.

13 THE WITNESS: If they are color-blind, they
14 could be determining an incorrect color just based on
15 their inability to see all colors.

16 THE COURT: Okay. All right. Would another
17 variable in doing a color test be the strength or the
18 amount of material that is being tested?

19 THE WITNESS: Absolutely. It will vary based
20 on the amount of material that you actually put in your
21 spot plate to perform that color screen on as well as
22 the -- I guess you could say purity. We don't quantify
23 in our laboratory, so we don't calculate any of that,
24 but just in regards to the strength of the color screen
25 that would have an affect on it whether it's, you know,
26 30 percent pure versus 90 percent pure, you are,
27 obviously, going to get a much stronger reaction from
28 the 90 percent than you would the 30 percent.

1 THE COURT: When you use the word "quantify,"
2 you are talking about the percentage of drug within
3 that compound within that substance?

4 THE WITNESS: That is correct.

5 THE COURT: Now, the testing that you do, is
6 it a qualitative test or a quantitative test?

7 THE WITNESS: We only do qualitative.

8 THE COURT: Mr. Albertson, any further
9 questions?

10 MR. ALBERTSON: No.

11 THE COURT: Ms. Jafine, anything based on the
12 Court's questions?

13 MS. JAFINE: No.

14 THE COURT: Mr. Theule?

15 MR. THEULE: No, Your Honor.

16 THE COURT: Mr. Gundel?

17 MR. GUNDEL: No. Thank you.

18 THE COURT: May this witness be excused?

19 MR. GUNDEL: Yes.

20 MR. ALBERTSON: Yes.

21 THE COURT: Do you want to argue the issue of
22 the one exhibit?

23 MS. JAFINE: Yeah. I think we're in
24 agreement.

25 MR. ALBERTSON: Yeah, I think so. Yeah, I
26 have no objection now.

27 THE COURT: Exhibit 62 is admitted.

28 I guess no objection, Mr. Theule, Mr. Gundel?

1 MR. GUNDEL: No objection.

2 MR. THEULE: (Shakes head.)

3 (Court's Exhibit No. 62
4 was received into evidence.)

5 THE COURT: Thank you, Ms. Baca. You are
6 excused from further testimony.

7 THE WITNESS: Thank you.

8 (Witness stepped down at 2:27 p.m.)

9 THE COURT: Okay. Your witness is available?

10 MS. JAFINE: Yep. He's right here.

11 THE COURT: Call your next witness,
12 Ms. Jafine. Name of this witness, Ms. Jafine?

13 MS. JAFINE: I'll let him do it. He has a
14 rough last name.

15 THE COURT: Stand up, raise your right hand,
16 face the clerk.

17 David Eustaquio,
18 called as a witness by and on behalf of Defendant
19 Chacon, having been first duly sworn, was examined and
20 testified as follows:

21 THE WITNESS: Yes, I do.

22 THE COURT: Have a seat. State your full
23 name and spell your last name, please.

24 THE WITNESS: David Eustaquio. Last name is
25 spelled E-u-s-t-a-q-u-i-o.

26 THE COURT: Ms. Jafine, please proceed with
27 your direct examination.

28

-DIRECT EXAMINATION-

1

2 BY MS. JAFINE:

3 Q. Thank you for your patience, Officer
4 Eustaquio.

5 Back on December 13th of 2013, were you a
6 correctional sergeant at Centinela State Prison?

7 A. Yes.

8 Q. And now you work at Donovan?

9 A. That is correct.

10 Q. And in part of your training to become a
11 correctional officer, were you trained on drug
12 recognition?

13 A. Yes.

14 Q. And can you briefly describe that training?

15 A. We get basic training at the academy.

16 Q. Okay.

17 A. I would describe it depending on the color of
18 the controlled substance, definition is black tar for
19 heroin, crystal-like substance for meth.

20 Q. So --

21 A. It goes on and on.

22 Q. So you were trained to --

23 A. To identify.

24 Q. -- try and preliminarily identify --

25 A. Suspected --

26 Q. -- suspected controlled substances by sight?

27 A. Yes, that's correct.

28 Q. And did you use photographs in that training

1 or actual drugs?

2 A. No, just photographs.

3 Q. And were you also trained in performing field
4 tests called NIK tests?

5 A. Yes, that is correct, but not at the academy.

6 Q. Right. So was that done at the prison?

7 A. That is correct.

8 Q. Do you recall who your trainer was?

9 A. (No response.)

10 Q. It's all right if you don't remember.

11 A. I don't remember his name. It was a long
12 time ago.

13 Q. And is that about a four-hour course?

14 A. Yes.

15 Q. Was it a live person or a video?

16 A. No. It was a live person.

17 Q. And then there was some kind of test, written
18 test?

19 A. Yes. That is correct.

20 Q. And a practical test?

21 A. What do you mean by "practical test"?

22 Q. Like they actually observe you, like, putting
23 substances in the pouch and how to break the ampules
24 and watch you do it.

25 A. They didn't make us put substances in the
26 pouch, they just demonstrated to us how to use the
27 pouch.

28 Q. They demonstrated to you but they didn't

1 actually watch you conduct the test?

2 A. No. They did watch me conduct the test, that
3 is correct.

4 Q. So I know you have, like, no idea why you are
5 even coming here today or what case. I gave you a copy
6 of your report as well as your grand jury testimony to
7 review; is that right?

8 A. That is correct.

9 Q. Did you have a chance to review it?

10 A. One time, yes.

11 Q. So I just kind of want to take you through
12 that investigation that you conducted. If you have any
13 issues remembering anything, just let me know. Okay?

14 So at Centinela State Prison on December
15 13th, 2013, you were doing an inspection of the whole
16 unit; is that right?

17 A. That is correct.

18 Q. And at some point you went into a particular
19 cell; is that right?

20 A. That is correct.

21 Q. And that cell, there was no one inside the
22 cell, that cell was assigned to Inmates Mancera and
23 Espinoza; is that right?

24 A. That is correct.

25 Q. And when you entered the cell, what did you
26 notice sitting in plain view?

27 A. If I recall correctly, it was two small balls
28 of rolled paper tightly wrapped in plain view in the

1 upper-left quadrant of the shelving.

2 Q. Okay. So it appeared to be rolled up balls
3 of tightly-wrapped paper; is that correct?

4 A. That is correct.

5 Q. Is it true that, to you, the two balls of
6 paper appeared to be soaked in a brownish substance; is
7 that correct?

8 A. That is correct.

9 Q. So you took possession of those paper balls;
10 is that right?

11 A. Yes.

12 Q. And then you subsequently conducted testing
13 on those two paper balls; is that right?

14 A. Yes.

15 Q. And you did that using a Narcotics
16 Identification Kit or NIK test?

17 A. Yes.

18 Q. Showing you what I've marked Exhibit 63, do
19 you recognize this series of photographs?

20 A. Yes.

21 Q. Okay. And in the photograph in the -- sorry.
22 I made a copy for the Court.

23 So just referring you to the photograph in
24 the top left, is that your initials written D.E.?

25 A. Yes.

26 Q. And then it's dash 01-A?

27 A. That is correct.

28 Q. Okay. So that was the first piece of

1 evidence that you analyzed?

2 A. Yes.

3 Q. And that was what you described as a small
4 ball of tightly-wrapped paper that appeared to be
5 soaked in a brownish substance; is that right?

6 A. Yes.

7 Q. And next to that in the photograph, it
8 appears to be a NIK testing pouch?

9 A. Yes.

10 Q. And that appears to be the "A," an A-Test?

11 A. Yes.

12 MS. JAFINE: Do we have that?

13 THE COURT: It's the Marquis test. This is
14 Exhibit 2. Do you want the little pouch?

15 MS. JAFINE: Sure. Just the "A."

16 BY MS. JAFINE:

17 Q. So showing you the A-Test from Exhibit 2,
18 does this appear to be an unused A-Test?

19 A. Yes.

20 Q. Is it identical or similar to the one that
21 you would have used in this case?

22 A. That is correct.

23 Q. Okay. And then just moving to the photograph
24 next to that, the middle upper photograph, that's your
25 initials and then 01-B; is that right?

26 A. That is correct.

27 Q. That's next to the second small ball of
28 tightly-wrapped paper that appeared to be soaked in a

1 brownish substance?

2 A. Yes.

3 Q. And then as to DE-01-A, the upper left, you
4 wrote in your report that that tested presumptive
5 positive for amphetamines; is that right?

6 A. That is correct.

7 Q. And the same thing for DE-01-B, the
8 photograph in the middle upper?

9 A. That is correct.

10 Q. And these are all of the photographs that you
11 took of all of the testing and weighing that you
12 conducted in this case?

13 A. Yes.

14 (Court's Exhibit No. 63, photographs of
15 the testing and weighing of suspected
16 drugs, was identified for the record.)

17 MS. JAFINE: I'm going to admit this, 63.

18 Jack, any objection to 63?

19 MR. ALBERTSON: No.

20 THE COURT: Sixty-three will be admitted.

21 (Court's Exhibit No. 63
22 was received into evidence.)

23 BY MS. JAFINE:

24 Q. And then you also weighed these two balls of
25 tightly-wrapped paper; is that right?

26 A. That is correct.

27 Q. And their weights; for "A" was .3 grams
28 gross; and "B" was .4 grams gross; is that right?

1 A. That is correct.

2 Q. Also do you recall testifying at the grand
3 jury in this case?

4 A. Vaguely, yes.

5 Q. You had a chance to review the grand jury
6 transcript in this case?

7 A. Yes, I reviewed it, but it's a lot of pages.

8 Q. You are the only witness in that case and
9 that is you testifying despite the fact that they
10 spelled your name wrong?

11 A. That is correct.

12 Q. Okay. Can you pull out that grand jury
13 transcript and I'll direct your attention to page 18.

14 THE COURT: Line?

15 MS. JAFINE: I'm not quite there yet.

16 THE COURT: Okay.

17 BY MS. JAFINE:

18 Q. Let's just say line 2. You refer to
19 something called a "bindle." Can you explain what a
20 bindle is?

21 A. A bindle, that's a common term we use every
22 time we find a small package, small.

23 Q. Okay. So it's a small package that can be
24 made out of all kinds of stuff?

25 A. It can be made out of paper, plastic, rubber,
26 cellophane, plastic.

27 Q. It's basically a receptacle?

28 A. Yes.

1 Q. Now, can you go to page 16, line 16. I'm
2 just going to read from this transcript, just follow
3 along with me.

4 "QUESTION: You said there were two bindles,
5 right?

6 "ANSWER: Yes.

7 "QUESTION: When you opened up the first
8 bindle, what did you observe?

9 "ANSWER: I observed there was paper, like
10 tissue paper, tightly-wrapped tissue paper.

11 "QUESTION: What did you see inside?

12 "ANSWER: I seen nothing, but the tissue
13 paper appeared to be soaked in a brownish
14 substance.

15 "QUESTION: Did you open up second bindle?

16 "ANSWER: Yes; same thing, same results."

17 That was your testimony at the grand jury,
18 that's you?

19 A. Yes.

20 Q. Directing your attention to page 18,
21 line 12 -- sorry, line 10.

22 "QUESTION: Did you weigh the bindles?

23 "ANSWER: Yes.

24 "QUESTION: What was the weight?

25 "ANSWER: One was .3 grams gross and the
26 other was .4 grams, if I recall correctly.

27 "QUESTION: Is that a usable -- is that
28 weight a usable amount?

1 "ANSWER: Yes."

2 Those are your statements?

3 A. Yes.

4 Q. Okay. Going to page 17, on this page you are
5 describing how a NIK test works; is that right?

6 A. Yeah, I believe so.

7 Q. And so you describe to them basically how a
8 NIK test works. And then if I can direct your
9 attention to line 22 -- sorry, line 20, that's -- line
10 19, my apologies.

11 "QUESTION: Can you please describe to us
12 how it works?

13 "ANSWER: How it works?

14 "QUESTION: Yes.

15 "ANSWER: You have a substance. You have a
16 small plastic bag. Inside the bag, you got three
17 capsules. They are vials with chemicals. What
18 you do, there is three vials with chemicals, and
19 you break one vial and it changes one color tone.
20 When you break the second vial, it changes a
21 different color. Break the third vial, it will
22 give you the final result which will give you
23 accurate positive results of the drug."

24 Is that your testimony?

25 A. Yes.

26 Q. So then the next line, line 2, on page 18,
27 they asked:

28 "QUESTION: Did you test the contents of

1 both bindles?

2 "ANSWER: That is correct.

3 "QUESTION: The first bindle, what was the
4 result?

5 "ANSWER: It tested positive for
6 methamphetamine.

7 "QUESTION: Second?

8 "ANSWER: Also tested positive for
9 amphetamines.

10 "QUESTION: What exactly is amphetamine?

11 "ANSWER: It's like methamphetamine."

12 That's your testimony?

13 A. Yes, except for I think that's a typo in the
14 first one that says "methamphetamine." Both of them
15 tested positive for amphetamines.

16 Q. So you think that that is in error,
17 "methamphetamine" on line 5?

18 A. Yes, that is correct.

19 Are you referring to my statement? Yes, that
20 is correct; on that day, yes.

21 Q. I'm sorry. I'm confused. Do you think you
22 didn't say "methamphetamine"?

23 A. I said "amphetamines" twice.

24 Q. I'm sorry. I'm not following you.

25 A. It says -- on line 5 it says it tested
26 positive for methamphetamine. And then the second one
27 says "tested positive for amphetamine." According to
28 the results in the pouch, the statement, the written

1 statement was amphetamine.

2 Q. Okay. So you think, sitting here today, that
3 this is a typo on the grand jury transcript as to
4 line 5, you believe you said "amphetamines"?

5 A. Yes.

6 Q. Were you ever made aware from your drug
7 training that amphetamines can be present in legal
8 substances?

9 A. That is correct.

10 Q. At any time have you ever been made aware of
11 the Department of Justice's results of the testing of
12 the paper balls that you found in this case? Have you
13 ever been made aware of those?

14 A. No, because I transferred right after that.

15 Q. Okay. So you don't know it now and you
16 didn't know it at the grand jury?

17 A. Negative.

18 Q. Now, I'm assuming you testified more than
19 this one time at the grand jury?

20 A. That is correct.

21 Q. And when you've testified at a grand jury
22 about a NIK test you performed, have you ever informed
23 the grand jury that -- do you inform them that the test
24 was positive or is it your practice to inform them that
25 it's a presumptive positive test?

26 A. It is the practice to inform them that it's a
27 presumptive test, that is correct. But I guess in this
28 situation I stated it was positive results.

1 Q. Okay. Do you think it's more often that you
2 state it's a presumptive positive?

3 A. More often I always state it's a presumptive
4 test, that is correct. I always write it in my reports
5 like that.

6 Q. And that was your training with NIK?

7 A. Yes, always presumptive and then we will send
8 it out to a lab.

9 Q. Do you recall ever being asked to define what
10 "presumptive positive" means for a grand jury?

11 A. Negative.

12 Q. Do you know what the accuracy rate is for
13 these NIK tests?

14 A. No. I do not.

15 Q. Were you trained on the concept of false
16 presumptive positive tests on these NIK tests?

17 A. No. I was not.

18 Q. Do you know what a false positive is?

19 A. I'm assuming a false positive doesn't give
20 you the accurate color it's supposed to give you, the
21 test.

22 Q. In your experience as a correctional officer,
23 do you know whether or not in any case that you would
24 collect a suspected controlled substance from an
25 inmate, that they would send it out to the
26 Department of Justice for all of them?

27 A. That is correct. From what I have been
28 trained, any time we find any kind of controlled

1 substance, we send it out to a lab. Even when the
2 inmate accepts the results, even if he accepts the
3 results, we still send it out for confirmation.

4 Q. Right. But like in this case, you didn't
5 follow up because you got transferred and the case
6 never went to trial?

7 A. That's correct, yes. On the day we found the
8 contraband, he has the entitlement to accept or deny
9 the results, that is correct.

10 Q. Sure.

11 And I'm assuming that you haven't read any
12 validation studies on NIK tests?

13 A. No.

14 Q. Or conducted any yourself?

15 A. No.

16 Q. Or whether you are aware of any legal
17 substances that could cause a color change that would
18 be the same as a suspected controlled substance?

19 A. No. Never followed through on that.

20 MS. JAFINE: That's all I have.

21 THE COURT: Mr. Theule?

22 MR. THEULE: No questions, Your Honor.

23 THE COURT: Mr. Gundel?

24 MR. GUNDEL: One second.

25 MS. JAFINE: I'll come over.

26 (Attorneys confer off the record.)

27 MR. GUNDEL: Nothing. Thanks.

28 THE COURT: All right. Mr. Albertson,

1 cross-examination.

2 MR. ALBERTSON: Thank you, Your Honor.

3 -CROSS-EXAMINATION-

4 BY MR. ALBERTSON:

5 Q. "El-stoo-kee-oe," is that how you pronounce
6 your name?

7 A. "El-stock-ee-oe."

8 Q. "El-stock-ee-oe," I'm sorry.

9 How long have you been with the Department of
10 Corrections?

11 A. About 15 years.

12 Q. About 15 years, okay.

13 And since graduation from the NIK course, how
14 many NIK examinations do you think you've performed
15 since that time?

16 A. I can't give you an exact number.

17 Q. Ballpark figure?

18 A. Over 200.

19 Q. Over about 200?

20 A. Yes.

21 Q. Now, what are these NIK tests used for? What
22 do you use them for?

23 A. To test controlled substances.

24 Q. Okay. Do you test them as part of an
25 investigation; is that correct?

26 A. Yes. To do a presumptive investigation, yes.

27 Q. In other words, you check into the facts of
28 the investigation and then you perform the NIK test; is

1 that correct?

2 A. That is correct.

3 Q. Now, when you perform a NIK test, do you take
4 into account also the facts of the investigation that
5 have been developed up to that point?

6 A. That is correct.

7 Q. So you don't just rely totally upon the NIK
8 test in forming whether or not you have probable cause
9 to make an arrest?

10 MS. JAFINE: Objection. Calls for a legal
11 conclusion.

12 THE COURT: Sustained.

13 BY MR. ALBERTSON:

14 Q. When making a decision to make an arrest, do
15 you take into account the facts of the investigation as
16 you develop them as well as the results in the NIK
17 test?

18 A. I think you need to rephrase the question. I
19 don't quite understand.

20 Q. When you are making the decision to make an
21 arrest; for example, you are going to make an arrest of
22 an inmate, you have done an investigation, you
23 performed a NIK examination, it came out positive for
24 some sort of controlled substance, do you take all of
25 that into account in making the decision to make an
26 arrest?

27 A. Yes.

28 Q. So it's not just the NIK test?

1 A. Negative.

2 Q. I take it that you are not a professional
3 chemist; is that correct?

4 A. That is incorrect.

5 Q. You --

6 A. I'm not a chemist, don't know any chemicals.

7 Q. Never studied chemistry?

8 A. Never. Well, in high school.

9 Q. In high school you did, okay.

10 A. That is correct.

11 Q. And that's about as close as you have ever
12 come?

13 A. That is correct.

14 Q. You don't know anything about validity
15 studies or anything like that?

16 A. No.

17 Q. And it's not your job to perform those
18 things; is that correct?

19 A. That is correct.

20 Q. Now, when you saw those two balls with the
21 brownish substance, what did you think they were?

22 A. At first the initial -- my initial concept
23 was I thought it was two bindles at first. So what we
24 do is remove it from the area, take possession of them,
25 and then at a later time we'll conduct the test.

26 Q. And the fact that it was covered with a
27 brownish substance, what did that cause you to think
28 about?

1 A. That is was probably soaked in some
2 controlled substance.

3 Q. Do you have any idea what it might have been?

4 A. At that time I assumed it was heroin, but it
5 turned out not to be heroin.

6 Q. It turned out to not be heroin?

7 A. (Shakes head.)

8 Q. Have you ever had a situation like that
9 before where you thought it was, in fact, a controlled
10 substance and it turned out not to be one?

11 A. Yes, many times. Many times because
12 sometimes you get things that are -- you think they
13 are, but a lot of times you get negatives on the
14 pouches. Like, you know, just based on the fact that
15 we think it's a drug, sometimes it's not a drug.

16 Q. And is this one of the reasons why you
17 perform a NIK examination?

18 A. That is correct, yes.

19 Q. Can you always tell what kind of drug it is
20 simply by looking at it?

21 A. Sometimes, yes. Some of the most common
22 ones; that is correct, yes.

23 Q. Say it's something like cocaine or -- well,
24 let's say it's cocaine. Can you just tell cocaine by
25 looking at it?

26 A. No. Negative because it could be cocaine, it
27 could be crystal meth, it could be a variety of other
28 things, angel dust.

1 Q. So you would need some sort of chemical test
2 to determine what it is?

3 A. That is correct.

4 Q. And is that what the NIK test is designed to
5 do?

6 A. That's when it comes in, yes.

7 Q. In any event, once you perform a NIK test, it
8 always gets sent to a laboratory; is that correct?

9 A. That is correct.

10 Q. And then that would then make them the
11 ultimate confirmatory results; is that right?

12 A. That's correct.

13 If the inmate refuses the results at that
14 time, everything stops. We don't proceed with no
15 proceedings against the inmate until we receive the lab
16 results.

17 Q. When you say "proceed against the inmate,"
18 are you talking about administrative proceedings?

19 A. Administrative proceedings, disciplinary
20 proceedings against him.

21 Q. You are not talking about criminal
22 proceedings?

23 A. No.

24 Q. That's a whole --

25 A. That's a whole separate scenario.

26 THE COURT: Ms. Jafine, did you mark this
27 transcript?

28 MS. JAFINE: Not yet.

1 THE COURT: Want to mark it next in order?

2 MS. JAFINE: Sure, 64.

3 THE COURT: I'll give my copy to the clerk.

4 MS. JAFINE: Great.

5 (Court's Exhibit No. 64, David
6 Eustaquio's grand jury testimony,
7 was identified for the record.)

8 THE COURT: Any objection to its admission,
9 Mr. Albertson?

10 MR. ALBERTSON: No.

11 THE COURT: Sixty-four is admitted.

12 (Court's Exhibit No. 64
13 was received into evidence.)

14 MR. ALBERTSON: I have no further questions.

15 THE COURT: Any redirect, Ms. Jafine?

16 MS. JAFINE: No, Your Honor.

17 THE COURT: Mr. Gundel?

18 -CROSS-EXAMINATION-

19 BY MR. GUNDEL:

20 Q. I guess I just have one question about what
21 Mr. Albertson was asking. I want to make sure I
22 understood what you were saying.

23 I think you were saying you are taking lots
24 of factors into consideration when you are making an
25 arrest. Is that what you are saying?

26 A. Yeah. That is correct.

27 Q. And one of the factors is the results of the
28 NIK test?

1 A. One of them is the NIK test, that is correct.

2 Q. And then there is other factors that you
3 didn't specify but you are considering, right?

4 A. Yes.

5 Q. So I thought I heard you say that lots of
6 times you are testing substances and you are getting
7 negative results. Do you remember saying that?

8 A. That is correct.

9 Q. In those situations when you testified that
10 you thought it was a controlled substance, but the NIK
11 test result came back negative results, are you making
12 the arrest?

13 A. Negative.

14 MR. GUNDEL: No further questions.

15 THE COURT: Officer, let me ask you this
16 question: Do you consider yourself to be an expert in
17 the identification of controlled substances?

18 THE WITNESS: No, I don't consider myself.

19 THE COURT: No further questions of the
20 Court.

21 Anything based on the Court's question,
22 Mr. Albertson?

23 MR. ALBERTSON: No, Your Honor.

24 THE COURT: Ms. Jafine?

25 MS. JAFINE: No.

26 THE COURT: May this witness be excused?

27 MS. JAFINE: Yes.

28 THE COURT: You are excused. Thank you for

1 being here.

2 MS. JAFINE: Thank you very much.

3 THE COURT: Have a good trip back.

4 (Witness stepped down at 2:59 p.m.)

5 THE COURT: Do we have other witnesses?

6 MS. JAFINE: Unfortunately my investigator,
7 short witness, is out sick today.

8 THE COURT: You mentioned that.

9 (Recess.)

10 THE COURT: Back on the record in the Chacon,
11 Moore and Myers case. Do we have any housekeeping
12 matters we can take care of?

13 MS. JAFINE: If the Court has the Mancera
14 file, I ask the Court to take judicial notice of the
15 indictment in that case.

16 THE COURT: I can take judicial notice of the
17 file, Court's record. It's got an indictment that was
18 filed on October 29th, '14. It alleges a possession of
19 methamphetamine and that's -- Mancera was also
20 Espinoza. Is that the tie-in to Espinoza?

21 MS. JAFINE: Different Espinoza.

22 THE COURT: Different one, okay.

23 MS. JAFINE: They were co-defendants. That
24 was Mr. Theule's client, Mr. Mancera was mine, but
25 that's different from the Jose Espinoza.

26 THE COURT: Okay. I thought that was the
27 connection.

28 MS. JAFINE: No. No. No. And that one was

1 the tissue paper balls; Jose Espinoza, caffeine.

2 THE COURT: Okay, caffeine.

3 MS. JAFINE: Just specifically that he was
4 indicted for methamphetamine, but you said that
5 already. And then also the judicial notice for
6 dismissal for insufficient evidence.

7 THE COURT: I'll do that.

8 What about the Brown case, nothing?

9 MS. JAFINE: I just have the -- I forgot to
10 introduce the transcript in Brown and for whatever
11 reason it's not in the court file. I think maybe they
12 put it with the grand jury exhibits, but I have a copy
13 and I provided a copy.

14 THE COURT: Do you want to just mark it and
15 move it in if there is no objection?

16 MS. JAFINE: Cool. What are we at, 65?

17 THE CLERK: Yes, 65.

18 THE COURT: Sixty-five, and it's the Brown
19 grand jury record.

20 (Court's Exhibit No. 65, Brown
21 grand jury transcript, was
22 identified for the record.)

23 THE COURT: Any objections?

24 MR. GÜNDEL: No objection.

25 THE COURT: Objections?

26 MR. ALBERTSON: No.

27 MR. THEULE: No.

28 THE COURT: It's admitted.

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(Court's Exhibit No. 65
was received into evidence.)

THE COURT: Okay. That housekeeping is done.

MS. JAFINE: Done. See you on the 4th.

MR. GUNDEL: October 4th, is it at 8:30?

THE COURT: October 4th at 8:30. And we have
Mr. Miller coming from what's left of Florida.

MR. ALBERTSON: He's from Jacksonville.

THE COURT: Jacksonville should be dried out
by then. Tell him it's very dry here and he can enjoy
California's climate just fine.

MR. ALBERTSON: Even electricity.

MS. JAFINE: Come whether his fan boat is
working or not.

THE COURT: Everybody be back at 8:30. We'll
probably be in a different department but I'm not
certain of that at this point. All right. Thank you
much.

MS. JAFINE: Thank you.

THE COURT: By the way, if anything should
happen and Mr. Miller can't make it, get ahold of me.
Don't wait until the last minute. I assume everybody
will be here on the 4th absent notification.

MR. ALBERTSON: Great.

MS. JAFINE: We may have other witnesses,
we'll see.

(Proceedings concluded at 3:23 p.m.)

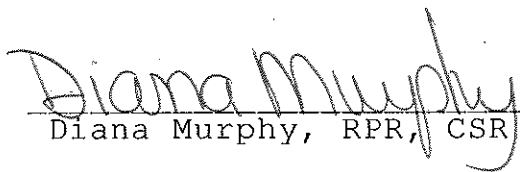
* * * * *

1 State of California)
2 County of Imperial) ss.

3
4
5 I, Diana Murphy, Certified Shorthand
6 Reporter, an official reporter of the Superior Court,
7 County of Imperial, State of California, do hereby
8 certify:

9
10 That I reported in shorthand the proceedings
11 held in the foregoing cause on the 13th day of
12 September, 2017; that my notes were later transcribed
13 into typewriting under my direction; and that the
14 foregoing pages contain a correct statement of the
15 proceedings.

16
17 Dated this 27th day of September, 2017.

18
19 
20 Diana Murphy, RPR, CSR 8805

21
22
23 People vs. Randy Chacon, JCF36904;
24 Gregory Moore, JCF36709;
25 Sharrel Ann Myers, JCF36710
26 September 13, 2017
27
28