

## Testimony of Judith Floyd

15 DIRECT EXAMINATION

16

17 BY MR. GREG DAVIS:

18 Q. Ms. Floyd, your name is Judy Floyd; is

19 that right?

20 A. Judith, that's correct.

21 Q. All right. And you work for Gene

22 Screen; is that right?

23 A. That's correct.

24 Q. Did you receive certain blood samples

25 from SWIFS personnel regarding a T-shirt shown here in  
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1 State's Exhibits 120 and 121?

2 A. Yes, I did.

3 Q. Okay. Did you receive those from

4 Charles Linch?

5 A. I received some from Charles Linch and

6 some cuttings from Caroline Van Winkle.

7 Q. Okay. And prior to your testifying

8 today, did I have you go through the dots here and the

9 blood samples shown on the front and back of this

10 T-shirt? And did you initial the dots or the samples

11 that you yourself tested at Gene Screen?

12 A. Yes, I did.

13 Q. Okay. And did you also verify the

14 results shown on the board, the coloring, to make sure

15 that they matched with your results? For instance, what

16 we show as a green dot, that being the blood of Darlie

17 Routier, for instance, shown in D-6. Did you go back

18 through your reports to verify that that in fact is the

19 result that you gathered through your DNA analysis?

20 A. Yes, sir.

21 Q. All right. Now, the D samples then

22 you tested, you have also tested samples that are listed

23 with L's; is that right?

24 A. That's correct.

25 Q. All right. You have also tested

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1 samples, the T samples, beginning with T up, right?

2 A. That's right.

3 Q. And you also tested the LS samples.

4 Is that also correct?

5 A. I believe that's correct.

6 Q. Well, let me just ask you. Do you

7 have, right now, do you have a method by which you could

8 refer to these samples and then give your numbers or some

9 sort of method so that the other side can track what

10 we're talking about here? So, that as we talk about

11 these they can refer to a report that you have issued or

12 findings that you have gathered, so that when I talk

13 about L-2, for instance, that you can look at that one

14 and then you can look at your number. Do you have that?

15 A. Yes, sir.

16 Q. Okay. If we could, let's just start

17 kind of, I guess, backwards. But let's talk about the D

18 samples, D-1 through 14.

19 A. D-1 through D-14?

20 Q. Right. And those -- will they be

21 shown on your report of January the 8th, 1997?

22 A. January the 7th of 1997.

23 Q. Okay. Right. And will they be shown

24 on page 2, down there at the bottom, where it says

25 T-shirt, cuttings, D-1 through D-14?

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1 A. They are shown also on page 1 at the

2 bottom.

3 Q. Right. Those are the cutting --

4 T-shirt cuttings hand delivered to Judith Floyd by

5 Charles Linch on December 20, 1996; is that right?

6 A. That's correct.

7 Q. And those numbers would then be 1879

8 through 9010; is that right?

9 A. That's correct. 9010 includes all 14

10 of the cuttings.

11 Q. All of those results are similar,

12 correct? They are all Darlie Routier?

13 A. That's correct.

14 Q. All right. Let's go back, if we can

15 then, and we have handled the D's. Let's just go to the

16 T samples, T-8 through T-15. I believe those will be the

17 first samples that you obtained, right?

18 A. Actually, I have the L samples before

19 the T samples.

20 Q. All right.

21 A. That would be L-2, L-3, L-4, L-6, and

22 L-10.

23 Q. Okay. And those corresponding numbers

24 would be 4942, right?

25 A. That's correct.

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1 Q. That will be on your report of

2 December 2, 1996; is that right?

3 A. That's right.

4 Q. It will be on the front page; is that

5 right, also?

6 A. Yes.

7 Q. Where it says, T-shirt stain, blood

8 stain. D1S80 type of 2425, possible contributor to

9 Darlie Routier, correct?

10 A. Correct.

11 Q. In general, those will be the stains

12 that we see on the right, upper right portion of the

13 T-shirt, right?

14 A. That's right.

15 Q. Okay. So, we've done the D's and we

16 have done the L's. Next on the same report of December

17 2nd, 1996, do we have the T's, we have T-8, 9, 10, 11,

18 12, 13, 14 and 15; is that right?

19 A. That's correct.

20 Q. Those are shown here on the diagram.

21 Will they also have the corresponding number of 4972?

22 A. Yes.

23 Q. Now, the numbers that follow that

24 4972, T-8R, T-9R, T-10R, T-11R, and T-10R. What do those

25 numbers represent? Are those repeats of the T-8, 9, 10

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1 and 11; is that right?

2 A. That's correct.

3 Q. The R is just simply your designation

4 for the fact that you repeated that test at Gene Screen;

5 is that right?

6 A. Right, yes, sir.

7 Q. Okay. All right. The stains that are

8 marked up here as LS's, will we see that on your report

9 of January 7, 1997?

10 A. I believe that's correct, but let me  
11 cross-reference to the chain of custody.  
12 Q. Okay.  
13 A. Yes, that's correct.  
14 Q. Okay. So, for instance, L-1, will  
15 that be your sample 505 -- 6 or 57.  
16 A. 5057.  
17 Q. Okay. And then LS-2 then will be  
18 5058; is that right?  
19 A. That's correct.  
20 Q. Then LS-3 will be 5059, right?  
21 A. That's right.  
22 Q. 5060 would have been LS-4, but you  
23 didn't report out a result on that one, right?  
24 A. That's right.  
25 Q. Now, those LS's, 5057, 5058 and 5059,  
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1 how did you obtain those? Were they also from Charlie  
2 Linch?

3 A. Also from Charlie Linch.

4 Q. Did he hand deliver those to you also?

5 A. Yes, he did.

6 Q. Okay. As I understood it, D-1 through

7 D-14 were hand delivered by Charlie Linch also; is that  
8 right?

9 A. That's correct.

10 Q. How about the L samples, 4942, L-2  
11 through L-10. How did you obtain those?

12 A. 4942 samples were also hand delivered  
13 by Charles Linch.

14 Q. The 4972 T-8 through T-15. How did  
15 you obtain those samples?

16 A. 4972 samples were hand delivered by  
17 Carolyn Van Winkle.

18 Q. All right. And, Carolyn Van Winkle is  
19 here in Kerrville, correct?

20 A. That's correct.

21 Q. Has she been down here to the  
22 courtroom with you most of the day?

23 A. Yes, she has.

24 Q. All right. Have we -- there is one  
25 other stain up here that we have identified as a TB-3I.

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1 A. That particular specimen is our number  
2 5056.

3 Q. Okay. I see. That is going to be on

4 the January 7, '97 report, right?

5 A. That's correct.

6 Q. This is -- this is TB-3I. Okay. That  
7 is the one shown on January 7th of 1997, with the  
8 contributor being Darlie Routier, correct?

9 A. Correct.

10 Q. Okay. How did you obtain that sample?

11 Was that also hand delivered by Charles Linch?

12 A. Yes. That's correct.

13 Q. Have we now covered all of the samples  
14 that you obtained, that you tested on this shirt where  
15 you got a result?

16 A. Yes, we have.

17

18 MR. GREG DAVIS: Okay. Those will be  
19 the questions regarding the T-shirt, that we're going to  
20 go over in general tomorrow in front of the jury.

21 THE COURT: Okay. Do you have the  
22 numbering system straightened out?

23 MR. GREG DAVIS: Yes, sir.

24 THE COURT: All right.

25

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1 CROSS EXAMINATION

2

3 BY MR. RICHARD C. MOSTY:

4 Q. There are only two reports, December  
5 2nd and January 7th?

6 A. That's correct.

7 Q. And all of those are reflected on --

8

9 MR. RICHARD C. MOSTY: What is that  
10 number, Greg? Or all of the ones you are going to  
11 testify about.

12 MR. GREG DAVIS: They are going to be  
13 on State's Exhibit 120 and 121. She has already  
14 initialed those samples.

15 MR. RICHARD C. MOSTY: I think if we  
16 need to clarify anything else, we can look at that and  
17 get it done.

18 MR. GREG DAVIS: Okay.

19 THE COURT: All right. Any further  
20 questions for this witness for the purpose of this  
21 hearing?

22 MR. RICHARD C. MOSTY: We don't have  
23 any questions.

24 MR. GREG DAVIS: No, sir.

25 THE COURT: All right. Then for the  
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1 purpose of this hearing, the chain of custody is deemed  
2 satisfactory; is that correct?  
3 MR. JOHN HAGLER: No, your Honor.

4 THE COURT: Oh, it is not? Well,  
5 let's have the objections.  
6 MR. GREG DAVIS: Could this witness go  
7 ahead and step down?  
8 THE COURT: This witness may step

9 down, yes. Thank you very much. You may step down,  
10 ma'am. All right.  
11 Watch yourself up there. Go back in  
12 the witness room. Thank you.  
13 All right, Mr. Hagler.  
14 MR. JOHN HAGLER: Your Honor, as far  
15 as the offer of these various Exhibits, as the Court

16 knows, the T-shirt itself, State's Exhibit No. 25, was  
17 earlier offered and admitted into evidence, over our  
18 objection, by the way, as to the chain of custody.

19 And, there has been a -- as the Court  
20 will recall, that witness (sic) was offered through the  
21 witness of a paramedic named Byford?  
22 THE COURT: Yes, sir.  
23 MR. JOHN HAGLER: Now, the testimony  
24 will show, that after Byford had this shirt, another  
25 paramedic or medical person by the name of Zimmerman had  
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1 it.  
2 He has not been called as a witness by  
3 the State. And furthermore, there apparently -- we pick  
4 up again, as far as the shirt and the various exhibits  
5 through Kathryn Long, who is the serologist.  
6 But as far as what has happened to

7 this shirt, where it's been, the condition it has been  
8 in, and what have you, there is no testimony as to that.  
9 I might also point out to the Court,  
10 that there has already been testimony presented during  
11 this trial, that the shirt is in this bag, in this paper  
12 bag and there is blood in the bottom of the bag.

13 Now, at this point in time, it picks  
14 up with the testimony of Kathryn Long. And now we

15 discover also that there is apparently another witness by  
16 the name of Carolyn Van Winkle, who although may be  
17 present and may have been present during portions of the  
18 trial, has not testified at the present time in this  
19 trial or before the Court.

20 Now, the State at this time is making  
21 the offer, and just to make it easy, we're going to  
22 object to the offer of any and all exhibits obtained from  
23 State's Exhibit No. 25; including but not limited to the  
24 D-1 through 14 which is the Linch exhibits; the L-2, I  
25 think it's L-2 through 10, or perhaps it's 2, 3, 6 and  
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1 10. The T exhibits 8 through, I believe there are two of  
2 them.

3 These are the ones that were testified  
4 to by Kathryn Long, let's put it this way, it's going to  
5 be T-1 through 15. And also the TR which is apparently

6 the retest exhibits, and also all of the LS exhibits.

7 The exhibits, I didn't catch all of  
8 the numbers, but the ones that were just testified to

9 regarding the Carolyn Van Winkle exhibits, which may have  
10 been the TB exhibits. And finally, the TB-3I exhibit.

11 Again, we are just going to object to  
12 all of them. The reason why we are, Your Honor, is  
13 again, they have gotten this shirt up to Byford, and all  
14 of a sudden, they have not called apparently, for reasons  
15 unknown to us, they do not want to call Zimmerman, or any  
16 of these other links in the chain, to establish the  
17 condition of the shirt, how it was packaged, how it was  
18 transported, how it was folded, and what have you.

19 The reason why this is going to be  
20 significant, and I'm sure the Court realizes this, is  
21 that the position of these blood stains on the shirt are  
22 going to -- that the position will be important, and that  
23 the State's going to argue to this Court and to this jury  
24 that as being important evidence.

25 The fact of the matter is, and again,  
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1 there has already been a lot of testimony presented that  
2 we have no idea of knowing how these blood stains got  
3 where they were.

4 And, again, there is voluminous  
5 evidence showing that there has been -- that the shirt  
6 was in the bag. We don't know the conditions or how the  
7 stains got to where they were.  
8 Now, the Court knows, of course, that  
9 normally a chain of custody is going to go to the weight  
10 rather than the admissibility. However, if there has  
11 been any showing of any type of tampering or any  
12 indication that there could be co-mingling or  
13 contamination of the exhibits, then we enter a different  
14 area.  
15 In this case there has been -- there  
16 are missing links in the chain. And furthermore, we have  
17 gone -- furthermore, the evidence itself shows that there  
18 has been contamination of the exhibit.  
19 Now, as a result, the State has failed  
20 to carry its burden of showing that the exhibits that  
21 they now intend to offer through this witness are  
22 uncontaminated. And that they are in the same condition  
23 as they were at the time the shirt was originally taken,  
24 which they have failed to do.  
25 And we would vigorously urge the  
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1 Court, that they simply failed to carry their burden  
2 under Rule 901-A.  
3 THE COURT: All right. Thank you.  
4 Objection overruled. And, you will not have to object

5 before the jury, you can have a running objection -- is  
6 that what you want, a running objection?  
7 MR. JOHN HAGLER: Yes, your Honor.

8 THE COURT: All right. Thank you.  
9 You may have it. Anything else?  
10 MR. JOHN HAGLER: Well, in addition,  
11 this evidence is apparently going to come in, obviously  
12 with the Court's ruling, and this is going to affect the  
13 testimony of their latter expert witnesses. So, and we  
14 can reach this at a later point, if you would like, but  
15 again, it's going to affect their ability to testify as  
16 to their opinions as to how blood got there, et cetera  
17 and various expert opinions and conclusions.  
18 Well, so anyway, we will reurge that,

19 but as far as admissibility of the exhibits, we would ask  
20 for a running objection.  
21 THE COURT: You can have a running  
22 objection. Okay.



23 MR. RICHARD C. MOSTY: There is one  
24 other thing we need to take up.  
25 THE COURT: Okay  
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1 MR. RICHARD C. MOSTY: I understand  
2 Mr. Bevel was in during the lunch hour taking  
3 photographs, and we wondered when we could have the  
4 opportunity to look at those.  
5 THE COURT: Well --  
6 MR. GREG DAVIS: What he did was he  
7 took photographs of these boards here of State's Exhibits  
8 120, 121 and also 122.  
9 My understanding is, that is all he

10 took photographs of. So he could, instead of taking the  
11 boards back to hotel this evening.  
12 MR. RICHARD C. MOSTY: It is not  
13 something you were going to offer into evidence.  
14 MR. GREG DAVIS: No. It was just for  
15 his purpose. But if, for some reason, I think I'm going  
16 to offer them for any reason, I will certainly will let  
17 you know before I mention that before the jury.  
18 THE COURT: Okay. Anything else?

19 MR. JOHN HAGLER: The only thing  
20 again, we are going to object to Bevel's testimony. We  
21 are going to need a hearing on that.

22 THE COURT: Okay.  
23 MR. JOHN HAGLER: At the appropriate  
24 time.  
25 THE COURT: Okay. Let's cross all  
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1 these bridges when we come to them. If we can telescope  
2 these hearings, I think that would be worthwhile.  
3 MR. DOUGLAS MULDER: Let's find out if  
4 we're still on track to finish Wednesday.  
5 THE COURT: Well, so far as I know.  
6 Mr. Davis?  
7 MR. GREG DAVIS: Yes.  
8 THE COURT: We're right on track.  
9 MR. GREG DAVIS: I think we are. I  
10 think it's still possible.  
11 THE COURT: Well, then, we will get it  
12 on then.  
13 MR. GREG DAVIS: That is what we're

14 shooting for.

15 THE COURT: All right.

16 Ladies and gentlemen, in the spectator

17 audience, if you can clear the courtroom, briefly,

18 please. Thank you.