

DISTRICT COURT
CITY AND COUNTY OF DENVER
STATE OF COLORADO
LINDSEY-FLANIGAN COURTHOUSE
520 WEST COLFAX AVENUE
DENVER, COLORADO 80204-2609

PEOPLE OF THE STATE OF COLORADO,

vs.

MAICLE ABRAHA

and

TEMESGHEN GEBREYOHANNES

Defendants.

^COURT USE ONLY^

Case Nos. 15CR5918

15CR5874

Courtroom No. 5G

REPORTER'S TRANSCRIPT (EXCERPT)

This matter came on for Jury Trial, continuing on Monday,
August 29, 2016, before the HONORABLE BRIAN R. WHITNEY,
Judge of the District Court.

A P P E A R A N C E S

FOR THE PEOPLE: Dawn Weber, Reg. No. 23433
Chief Deputy District Attorney

Brenna Zortman, Reg. No.48058
Deputy District Attorney

FOR DEFENDANT John Hyland, Reg. No. 10547
MAICLE ABRAHA: Attorney at Law

FOR DEFENDANT Lynn Pierce, Reg. No. 18953
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GEBREYOHANNES:

WENDY M. LIND, RPR

Official Court Reporter
Denver District Court
Lindsey-Flanigan Courthouse
520 W. Colfax Avenue, 5F
Denver, Colorado 80204-2609

INDEX**PAGE****WITNESSES:****For the Defense:****RICHARD EIKELENBOOM**

| | |
|---|----|
| Direct Examination by Ms. Pierce. | .3 |
| Voir Dire Examination by Ms. Weber. | .6 |
| Direct Examination Resumed by Ms. Pierce. | 18 |
| Voir Dire Examination by Ms. Weber. | 20 |
| Voir Dire Examination by Mr. Hyland | 28 |

DR. SELMA EIKELENBOOM

| | |
|---|----|
| Direct Examination by Mr. Hyland. | 33 |
| Voir Dire Examination by Ms. Zortman. | 39 |
| Direct Examination Resumed by Mr. Hyland. | 49 |

| | |
|--|-----------|
| Reporter's Certificate. | 54 |
|--|-----------|

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 **A.** Yes.

2 **Q.** What is the name of the company?

3 **A.** Independent Forensic Services.

4 **Q.** And what does your company do?

5 **A.** We do forensic investigations, a lot of DNA
6 investigations, but also biological traces,
7 bloodstain-pattern analysis. And my wife is a forensic
8 medical examiner, so we also do time of deaths, injury
9 interpretation, and that sort of investigations.

10 **Q.** Do you have any specialized degrees and
11 training?

12 **A.** Yes.

13 **Q.** And could you describe that?

14 **A.** In order for DNA -- to work with DNA, you can do
15 a certain training. Of course biology is an important
16 one, but one which specifically deals with DNA is
17 biochemistry. And then you learn how to play with DNA and
18 work with that in a laboratory setting. And I have a
19 degree in that. And then for bloodstain-pattern analysis
20 and all kinds of forensic investigations, those training
21 you get mainly in the forensic laboratories. I worked for
22 a long time in the national lab in the Netherlands, and
23 you get a lot of in-house training.

24 **Q.** And how long have you been practicing in this
25 field?

1 **A.** Over 20 years now.

2 **Q.** And are you certified in any special area? Any
3 certifications?

4 **A.** So our laboratory is accredited, so we have an
5 accredited DNA laboratory that's in the Netherlands. And
6 then we also -- a couple of months ago we had an
7 accreditation board, ASCLD, visited the Netherlands and
8 our facility here in Conifer, and we're waiting on the
9 results still.

10 **Q.** Approximately how many cases have you testified
11 in as an expert?

12 **A.** About 19.

13 **Q.** And were any of those in the United States?

14 **A.** Yes.

15 **Q.** And were any of those in Colorado?

16 **A.** Yes.

17 **Q.** And in Colorado, just without telling us the
18 result of the case, can you mention some cases that you've
19 testified in in Colorado that you've been qualified as an
20 expert?

21 **A.** I was qualified in the Tim Masters case.

22 **Q.** And who hired you in that case?

23 **A.** We were first hired by the defense, and later on
24 the attorney general's office hired us.

25 **Q.** The Colorado Attorney General?

1 **A.** Yes.

2 **Q.** Okay. Were there some other high-profile cases
3 that you may have been involved with?

4 **A.** Yes.

5 **Q.** What were those?

6 **A.** We worked Casey Anthony in Florida and the
7 David Camm case. And you were asking about testifying or
8 just case in common?

9 **Q.** Cases in which you've worked or testified as an
10 expert.

11 **A.** Okay. Yeah, several cases.

12 MS. PIERCE: Your Honor, pursuant to Rule 702,
13 we would ask that he be qualified as an expert.

14 THE COURT: Any voir dire or -- what is the
15 field?

16 MS. PIERCE: In the field of DNA testing and
17 analysis.

18 THE COURT: DNA analysis. Okay.

19 Any voir dire or objection?

20 MS. WEBER: Voir dire and objection.

21 THE COURT: Okay.

22 **VOIR DIRE EXAMINATION**

23 BY MS. WEBER:

24 **Q.** Mr. Eikelenboom, you didn't testify in the
25 Casey Anthony trial, did you? You gave a deposition?

1 **A.** I did testify in the Casey Anthony trial, and I
2 gave a deposition. Both. So I first gave a deposition,
3 and then later on I testified in court.

4 **Q.** I want to talk about the time that you spent in
5 the Netherlands. You were affiliated with a group that
6 was called the National Forensic Institute; is that
7 correct?

8 **A.** The Netherlands Forensic Institute, it's called
9 now.

10 **Q.** Netherlands. Pardon me. And I'd like to move
11 through this in an expeditious way. It appears to me that
12 you started there in 1989 and worked until '90. Then you
13 were there from '92 to '98; is that correct?

14 **A.** '92 till 2005, I think.

15 **Q.** And you testified in a previous proceeding with
16 a defendant named Kennedy that, quote: You didn't do DNA
17 bench work or casework; is that correct? To which your
18 response: No. What I did was trace recovery -- and
19 that's a page cite of 157, Counsel -- is that correct?

20 **A.** Yeah. Casework -- we had this question last
21 week. Casework, of course, is difficult. DNA casework --

22 **Q.** Sir, I don't mean to be rude and interrupt you.
23 Is that a correct citation? You made an admission on the
24 record: No. What I did was trace recovery -- and that
25 was in the Kennedy case with a page cite of 157 -- yes or

1 no?

2 **A.** It's in the Kennedy case, probably is correct.

3 **Q.** And likewise, on Page 157 of Kennedy, you also
4 agreed to the statement that what you did was coordination
5 of cases and not bench work; isn't that correct?

6 **A.** It's what you call bench work. The problem, of
7 course, is that the DNA is separated --

8 **Q.** Sir, it's my job -- and I don't mean to be rude
9 to interrupt you. It's my job to ask a yes-or-no
10 question, and you must constrain yourself to answer them
11 with a "yes" or "no," please. I'll move on to my next
12 question. Elsewhere in the Kennedy record, Page 157, you
13 indicated trace recovery and you were not allowed to do
14 DNA extraction; isn't that correct?

15 **A.** Yes.

16 **Q.** Elsewhere in Kennedy, you indicated that you
17 only did trace recovery, you only did finding the stains.

18 **A.** I don't think that's correct, but I'm not sure
19 in what kind of context you put it.

20 **Q.** Would you like to see the page reference?

21 **A.** Well, the problem, of course, is that it's
22 really complex. And the way you put it now is not
23 really -- well, I don't think it's correct, because I did
24 work at the national lab on coordination of cases and
25 trace recovery as a thing.

1 **Q.** A quote from your Kennedy transcript: A
2 question to you. I just want to make sure that I heard
3 your answer correctly. You did not do DNA extraction
4 yourself while you were at the Netherlands. Your
5 response: Not for casework, no. Do you quibble with that
6 quotation?

7 **A.** No. I did not do DNA extraction in the national
8 lab.

9 **Q.** And you did not do DNA analysis while you were
10 at the Netherlands lab, and that is correct, and likewise
11 a citation from your Kennedy transcript.

12 **A.** Yeah. I did not do the DNA analysis.

13 **Q.** And likewise, you testified in the David Camm
14 trial, which is an Indiana multiple homicide trial, that
15 you did not write reports in the Netherlands; isn't that
16 correct?

17 **A.** That's not correct.

18 **Q.** Okay.

19 MS. WEBER: Counsel, Page 113 of the Camm
20 transcript.

21 **Q.** (By Ms. Weber) So are you saying that I have
22 misquoted or perhaps you testified in error in the
23 David Camm trial?

24 **A.** Yes. These were week-long trials, and a lot of
25 things get lost in translation, I think. But I did write

1 reports. I testified 30 times about reports in the
2 Netherlands courts. So it's incorrect to say that I
3 didn't write reports or that I didn't testify. So I'm not
4 sure --

5 Q. I'll read this back to you, sir. This is a
6 quote from you. Line 15: When I worked with the national
7 lab, I did all the training, but I didn't write reports
8 for national lab. Do you have any reason to quarrel with
9 my reading of that transcript?

10 A. Well, probably I've said that, but then it's
11 incorrect. I misunderstood their question maybe then, or
12 maybe the question was more about DNA reports.

13 Q. Nevertheless, in the Camm trial you testified
14 that you were holding yourself out in the Netherlands to
15 be an expert as early as 1998, were you not?

16 A. I don't know. I cannot remember. The trial was
17 weeks, so I don't know what I all said in that trial.

18 Q. The Netherlands lab has a certification for
19 someone who could be characterized as a DNA expert, and
20 would you agree that in the Anthony transcript, Page 19,
21 you agreed you do not have that certification?

22 A. Yes. I probably said that.

23 Q. And likewise, would it surprise you to learn
24 that the Denver Police Department lab made an inquiry
25 about your departure from the lab in the Netherlands, and

1 you left under circumstances that did not permit them to
2 discuss your departure. Surprised to hear that?

3 **A.** No.

4 **Q.** And you were asked in a June 2011 deposition
5 that took place in Florida: Why open an operation in the
6 U.S.? To which your response was: You have more cases
7 than the Netherlands. And you were then asked: You
8 opened a business to make a profit? And you said: Well,
9 yes, and we like to work. Would you contest that
10 characterization?

11 **A.** No.

12 **Q.** So you have previously testified in the Kennedy
13 proceeding that you had a two-week training for DNA in the
14 national lab in the Netherlands, correct?

15 **A.** No. It was from much longer, of course.
16 Because if you work there, it's actually everyday
17 training.

18 **Q.** You also are on record in the Kennedy case as
19 saying -- this is your quote: But still, after two
20 weeks -- or it was longer than two weeks -- I think you
21 were not really very experienced, of course, and you don't
22 have the -- well, routine manual skills as somebody that
23 has done this work for a year. And the page cite for that
24 is 213. Are you contesting that that was your testimony
25 in the Kennedy case?

1 **A.** This probably is about DNA extraction and DNA
2 analysis, and that's a two weeks' training course for
3 reporting officers. The Netherlands, it's all set up
4 differently. So you have a reporting officer who never
5 went to a crime scene, never did trace recovery, never did
6 DNA extraction, only had two weeks of training.

7 So in the Netherlands, we don't have a system
8 where experts -- within our own lab now. In the
9 Netherlands, it's all separated. So the biology
10 department, where the DNA scientists work, the reporting
11 officer doesn't do any work -- so no trace recovery, no
12 DNA extraction, no DNA analysis -- they just get all the
13 bench work on their desk, and then they write a report
14 about that. That's their expertise.

15 And you have to put it in this context as well,
16 that at that time I was coordinating officer. I did
17 coordinate cases, and I had a specialty field, which was
18 trace recovery. I was working there. My specialty was
19 not DNA extraction, it was not DNA analysis, so I relied
20 also on the experts in DNA extraction or the experts in
21 DNA analysis to give me those results, and then I would
22 look over those results.

23 So it's kind of different from the systems --
24 but I think in the United States, more and more labs are
25 starting to work like that as well, that you work it like

1 a factory, where you split up all these DNA investigations
2 in different, smaller departments of the DNA department.

3 And, of course, lots gets lost in translation if
4 you put it like this, the way it's put now.

5 **Q.** Sir, you do not have a Ph.D.; is that correct?

6 **A.** No.

7 **Q.** What professional organizations do you belong
8 to?

9 **A.** I don't know.

10 **Q.** Zero?

11 **A.** Zero.

12 **Q.** How many professionals work at your lab?

13 **A.** We have, like, another DNA scientist, and then
14 we have two junior scientists and my wife. So we have,
15 like, three qualified DNA scientists and two in training.

16 **Q.** And your wife is a business partner in your lab?

17 **A.** Yes.

18 **Q.** And she founded it in 2003, and you joined it in
19 2005?

20 **A.** Yes.

21 **Q.** And you're business partners, you split it
22 50/50? You split your profits 50/50?

23 **A.** Yeah. We both co-own the company.

24 **Q.** What are the qualifications of the other
25 analysts who work in your lab?

1 **A.** She also has a degree in biochemistry. And,
2 yeah, the rest, of course, most of the training of the new
3 people is in-house.

4 **Q.** What are the precise qualifications of the other
5 people who purport to do DNA analysis in your lab, sir?

6 **A.** And what do you mean by qualification?

7 **Q.** What credentials do they hold?

8 **A.** So my wife is an M.D. --

9 **Q.** Let me speed that along, and I'm sorry to speak
10 over you. For right now, unless you're saying that your
11 wife is also a DNA analyst --

12 **A.** She is.

13 **Q.** What credentials does she hold to do DNA
14 analysis?

15 **A.** She's an M.D., and, of course, we have a lot of
16 in-house training. As I said, forensic DNA is a lot of
17 forensic training you have to do mostly in-house. There's
18 not so much training outside that. So it's good to have a
19 degree in some -- like biochemistry, I said. One of the
20 other coworkers has a degree in biochemistry as well.

21 **Q.** Where did that person receive their degree in
22 biochemistry from, and who are they, please?

23 **A.** She's Gohanna Van Der Meij.

24 (The court reporter asked for spelling.)

25 THE WITNESS: Gohanna, G-o-h-a-n-n-a;

1 Van Der Meij, V-a-n D-e-r M-e-i-j. It's a Dutch name.

2 Q. (By Ms. Weber) Who else, sir, and their
3 credentials, please?

4 A. So Martha Schoonhoven-Debets.

5 (The court reporter asked for spelling.)

6 THE WITNESS: Martha, M-a-r-t-h-a; it's then
7 D-e-b-e-t-s, Debets -- she's married --
8 S-c-h-o-o-n-o-h-o-v-e-n.

9 Q. (By Ms. Weber) What exactly is her role in your
10 lab, please?

11 A. She's a junior scientist, and she's kind of the
12 managing director in the Netherlands, so she's organizing
13 all kinds of stuff over there to keep the lab running.

14 Q. Who conducts your validation studies internally,
15 please?

16 A. Conduct the study or control them?

17 Q. I'm sorry, sir?

18 A. Who's conducting them or who's controlling them?
19 So validation study is that you do tests and internal
20 tests to make sure that everything is performed correctly.
21 Gohanna Van Der Meij is the major scientist there, senior
22 scientist, so she controls all those validations, and of
23 course, it's worked on by all the coworkers [sic] in the
24 laboratory. And I'm, of course, responsible, so I oversee
25 that as well.

1 **Q.** And your title is the DNA director.

2 **A.** That's correct.

3 **Q.** Do you also regard yourself as being the DNA
4 technical lead?

5 **A.** It's just a name. It's typically an American
6 name, so we don't have it in Dutch. You could maybe say
7 that I'm the technical leader.

8 **Q.** Do you have a system of internal administrative
9 and technical reviews that occur before a report issues
10 from your business, sir?

11 **A.** Yeah. We have a lot of checks, of course, with
12 the DNA. If you do the DNA testing, there's always check
13 and check, and that's why we get accreditation. It's the
14 ISO, which was also already mentioned before, 17025, where
15 there's a lot of paperwork involved, which you have to do
16 before you can give out results, and we all have that.

17 **Q.** So your testimony is that you're ISO accredited.
18 Are you ASCLD accredited?

19 **A.** Yes. We're ISO accredited. In Europe, you have
20 to use one organization which is in your own country.
21 There's no way around it. There's no commercial thing
22 that you can use another one. And then the ASCLD
23 accreditation, a couple of months ago, we had them come by
24 to do a visit and to check our facilities, and they did.
25 And they also checked the facilities in Conifer.

1 **Q.** And you have not received ASCLD accreditation;
2 is that correct?

3 **A.** Not yet.

4 **Q.** And you testified in this very courtroom, as
5 recently as August 12th of 2016, and I quote: We expect
6 it in a couple days?

7 **A.** Yes. And we're still hoping it -- I actually
8 hoped to get it today, but it's kind of a bureaucratic
9 organization.

10 **Q.** And you've been hoping for that accreditation
11 since you testified in an El Paso County case in 2006;
12 isn't that correct? You testified then that you were
13 hoping for accreditation, and in 2006 you thought that it
14 may take 12 to 18 months -- and the page cite for that is
15 118 -- and it still hasn't arrived, has it,
16 Mr. Eikelenboom? That's a yes-or-no question, sir.

17 **A.** No.

18 **Q.** No.

19 MS. WEBER: Judge, I would object to his
20 qualification as an expert, and I would ask that he be
21 excluded.

22 MR. HYLAND: Am I entitled to voir dire on this?

23 THE COURT: Well, it depends. It is
24 Ms. Pierce's witness at this point, since she began it.
25 But the objection is sustained at this point. If

1 Ms. Pierce wants to lay any further foundation.

2 **DIRECT EXAMINATION RESUMED**

3 BY MS. PIERCE:

4 **Q.** Now, in your work experience, you testified that
5 you don't actually perform bench work yourself.

6 **A.** Well, I did do a lot of bench work after we
7 started our own company. So I set up the whole
8 laboratory, and I got accredited myself with my coworker
9 Gohanna Van Der Meij, just described. So since then --
10 and that's more like American style, what I said, is that
11 you do everything from trace recovery, DNA extraction, DNA
12 analysis, and write report. But in European countries,
13 that's separated into bigger labs because it's more
14 efficient to work in separate benches. But since 2005,
15 when we started there, our own laboratory, I do all the
16 work on DNA.

17 **Q.** And prior to that, what was your experience in
18 evaluating the bench work of others, in other words,
19 looking at the data or the information that they provided
20 in a test or in a testing process?

21 **A.** Yes. I think what this is doing -- was talking
22 about. That's the results you get from these other
23 departments, DNA extraction and analysis, and then you
24 have to review all the data and write a report about that.
25 So that's what I started doing about 1998.

1 **Q.** And in 1998, where were you working?

2 **A.** At that time, I was working in the Netherlands
3 Forensic Institute.

4 **Q.** And was it your expertise in that position in
5 the Netherlands Forensic Institute to review the work of
6 others for purposes of evaluating a DNA report and DNA
7 results?

8 **A.** Yes. So I wrote a lot of reports for the
9 reporting officers. I reviewed all the cases. And then,
10 of course, the DNA analysis units only makes a profile,
11 so, as you probably saw before, the bunch of numbers with
12 peaks, but then altogether somebody has to make a
13 decision, well, could it be a match with a suspect,
14 especially if it's complex mixture, of course, that's more
15 complicated. So for the recording officers and
16 coordinating officers, they had to make those decisions.
17 So this can be a match with this suspect or with the
18 victim or with a crime scene, whatever. And that's the
19 type of work -- I did that, yes.

20 MS. PIERCE: So, Your Honor, we would request
21 that he be qualified as an expert in DNA report analysis,
22 analyzing the reports of others and reviewing those
23 reports.

24 MS. WEBER: Judge, may I be allowed to renew my
25 voir dire as to those qualifications?

1 THE COURT: Sure.

2 VOIR DIRE EXAMINATION

3 BY MS. WEBER:

4 Q. Mr. Eikelenboom, you can't review the scientific
5 reliability of a report without understanding all the
6 underlining steps and bench work that goes into it,
7 correct?

8 A. Yes.

9 Q. Correct. One cannot do that competently,
10 correct?

11 A. Yes. You should know about all the steps.

12 Q. And your testimony just moments ago is that you
13 didn't do casework, you didn't do bench work in
14 Netherlands, correct?

15 A. I didn't say I didn't do casework, because
16 casework is a very big thing. And as I said, it's done in
17 benches --

18 Q. Sir, you didn't do any -- you weren't a hands-on
19 DNA analyst in the Netherlands, correct? You said that
20 just minutes ago.

21 A. I didn't do the DNA extraction, I didn't do the
22 DNA analysis, but I did review. And that's very normal in
23 Europe, also the United Kingdom. So if you say all these
24 people don't know what they're doing, I don't agree with
25 that.

1 What happens is you get a lot of training, but
2 it's just more paperwork. And you -- of course, as you
3 can see with DNA, it's just a bunch of numbers and peak
4 profiles you have to compare. You don't have to do that
5 yourself. But there are some difference of opinions
6 between some United States laboratories and European
7 laboratories.

8 **Q.** Sir, let me give you a comparison. Can you
9 write a book report if you can't read the English
10 language? How can you assess the end result if you can't
11 assess the scientific legitimacy of every constituent
12 step, sir?

13 **A.** So before you do this, you get all the training
14 necessary to do an interpretation. I can explain to this
15 jury how to do interpretation of DNA profiles. They don't
16 need to perform a DNA profile themselves in order to
17 understand this.

18 **Q.** What you previously testified to is that you
19 lack the hands-on experience and you didn't get the DNA
20 experience in the Netherlands, yet you hold yourself out
21 as being qualified to review those results. "Yes" or
22 "no," sir?

23 **A.** That's correct.

24 **Q.** Kennedy, Page 212, it's a lengthy quote, so
25 please bear with me. From you, sir: When we work in

1 national lab, I said I was not qualified analyst, but we
2 run -- if you want to become DNA reporting officer, you
3 have to run your own samples. So you get training on the
4 job, and you get out the stuff that you have to learn.
5 But, yes, you are not qualified to run the DNA, because
6 you don't have the day-by-day training that you do all the
7 time, thousand of time. When we started our own lab -- in
8 the United States -- then, of course, we had to do all the
9 work. So Gohanna and I started working on the samples,
10 and then we started doing this DNA extraction. Sir, that
11 was your testimony in the Kennedy trial.

12 **A.** Yes.

13 **Q.** So what you want this Court to do is basically
14 say you didn't have the training in the Netherlands, you
15 came to the United States, you decided to open up your own
16 shop, and suddenly, magically, you were qualified to run
17 DNA profiles, when, by your own admission, you hadn't been
18 qualified to do it before?

19 **A.** Not correct. But okay.

20 **Q.** That has satisfied my question. Thank you.

21 Sir, you don't believe in assigning statistic
22 weight to DNA results, do you?

23 **A.** Oh, yes. I do believe in that.

24 **Q.** In what specific areas?

25 **A.** Well, if you get a match, you can do statistical

1 calculations. And you can do -- well, in United States,
2 it's very popular to use combined match probabilities or
3 what I see now by -- Denver lab is using likelihood
4 ratios, which is used in Europe for a longer time now.

5 MS. WEBER: This will take me a moment, Judge.

6 THE COURT: Okay.

7 Q. (By Ms. Weber) Your testimony from the
8 David Camm trial in Indiana. Question: So when you use
9 the term "match," you just mean it's possible, right? And
10 your response: Scientists will never say it was a match,
11 that it's coming from this person. Do you remember
12 testifying to that?

13 A. Yes.

14 Q. And you have elsewhere expressed resistance to
15 assigning statistical weight to DNA match results, have
16 you not, Dr. -- or Mr.

17 A. No. I'm not sure what you're aiming at.

18 Q. Resisting attributing scientific statistics to
19 matches that you have declared.

20 A. I don't know what you're talking about.
21 Sometimes you have very complex DNA mixtures, and that
22 makes it, of course more difficult to do -- sometimes you
23 have very complex DNA mixtures, and those are always
24 difficult to do statistical analysis on. And there's a
25 lot of discussion in the forensic world and DNA world

1 about, well, what's the best statistics? United States
2 stayed a long time with the combined probability of
3 conclusion, where Europe started to use likelihood ratios.
4 And now I think United States is using likelihood ratios
5 or starting to introduce likelihood ratios. I've never
6 been against that, so I'm not sure where you get that
7 from.

8 **Q.** Proficiency tests. Do you administer
9 proficiency tests within your own lab up in Conifer?

10 **A.** Yes -- no. In Conifer, I think you have a
11 misconception there. The DNA tests now, in this
12 situation, are performed in the Netherlands. We have one
13 DNA laboratory that's in the Netherlands. We started
14 out -- we were willing to start up a DNA laboratory in
15 Conifer, and we encountered some problems. Actually, it
16 was the height. At 10,000 feet, where we live, DNA
17 equipment doesn't work very well. So we decided to move
18 everything back to the Netherlands. And we had already an
19 accredited laboratory in the Netherlands, and all the
20 American equipment went over there as well.

21 **Q.** What's the precise elevation of Conifer, sir?

22 **A.** We're at 10,000 feet. Conifer itself is below,
23 but we're on top of Conifer Mountain.

24 **Q.** Does 8,200 sound about -- more right?

25 **A.** No. Where we live, it's 9,997, I believe.

1 **Q.** And you said that you had trouble -- you had
2 difficulty in developing accurate DNA profiles due to
3 altitude.

4 **A.** In Conifer, yes, when we were testing the site.

5 **Q.** And that's the reason you moved your lab work
6 over to the Netherlands? "Yes" or "no," please.

7 **A.** The lab work was done always in the Netherlands.

8 **Q.** You're saying you never did any lab work up in
9 Conifer?

10 **A.** Just testing. Just testing, finding out whether
11 or not we could get good DNA profiles in the United
12 States.

13 **Q.** Well, Mr. Eikelenboom, you're saying that you
14 moved all your testing facilities elsewhere, when, in
15 reality, you were failing proficiency tests in 2011 and
16 2012; isn't that correct -- and I reference the testimony
17 that was taken in the David Camm trial.

18 **A.** No, that is not correct.

19 **Q.** Do you know who Dr. Norah Rudin is?

20 **A.** Yes.

21 **Q.** Are you aware of her testimony that controverted
22 your testimony in the David Camm trial?

23 **A.** Yes.

24 **Q.** And do you remember the PowerPoint slides and
25 all the data analysis she did that indicated you had a 50

1 percent flunk rate on your proficiency test in 2011 and
2 2012? "Yes" or "no"?

3 **A.** That's claiming to the jury there. That is
4 incorrect. No.

5 **Q.** You contest Dr. Rudin's findings, but
6 nevertheless, the testimony is that on straightforward
7 proficiency tests, you called alleles and declared DNA to
8 be in places where it wasn't, correct?

9 **A.** No.

10 **Q.** You declared that there was no genetic material
11 at other alleles, and you erroneously attributed DNA
12 material to an alternate suspect in that case, did you
13 not, sir?

14 **A.** That's not correct.

15 MS. WEBER: Judge, at this time, I would move
16 for him not to be qualified as an expert, and I would
17 strike his testimony, and that he not be permitted to
18 offer any testimony.

19 THE COURT: Well, you're objecting to his --
20 going backwards. You're objecting to him being qualified
21 as an expert on DNA report analysis, because that's where
22 we are.

23 MS. WEBER: Correct. And that's precisely where
24 I am, Judge. The procedural posture is that the Court
25 allowed me to challenge him on the basis of

1 qualifications. I believe that I have done so, and that
2 he not be able to offer any expert opinions along those
3 lines, which would eliminate his testimony altogether.

4 MR. HYLAND: Can we respond to that, Your Honor?

5 THE COURT: Yes.

6 MR. HYLAND: Based on what I've been listening
7 to, I think an important distinction has been blurred
8 here.

9 MS. WEBER: Pardon me. This is not his witness,
10 so I'm making a procedural objection to any rehabilitation
11 that's sought to be done by the co-defense attorney.

12 THE COURT: He would have to recall him. That's
13 what I'm trying to avoid here is him actually leaving the
14 stand, turning around at the door, and coming back and
15 sitting down.

16 MS. WEBER: I appreciate that, Judge.

17 THE COURT: Go ahead, sir.

18 MR. HYLAND: I think there is an important
19 distinction here in considering whether he's qualified --

20 THE COURT: Let me stop you. Are we getting
21 into legal argument here?

22 MR. HYLAND: No, no, no.

23 THE COURT: Are you going to ask voir dire
24 questions of him, or do we want to have a legal argument?

25 MR. HYLAND: Well, probably both.

1 THE COURT: Okay. Well, do the questions first,
2 and then we'll pick up the legal argument.

3 **VOIR DIRE EXAMINATION**

4 BY MR. HYLAND:

5 **Q.** Is there a distinction -- I believe you've
6 answered this question -- between doing bench work and
7 doing evaluation of bench work?

8 **A.** Yes. If you work in a laboratory, you have
9 these departments where they can do DNA extraction and DNA
10 analysis, for instance, or put it on the machines.

11 **Q.** In Holland, is it possible for a person to not
12 do bench work and yet still be competent, still be an
13 expert in evaluation of that work done by someone else?

14 **A.** Yes. That happens always. In Holland, you
15 wouldn't have reporting officers qualified if they were
16 not able to do bench work. But as soon as we started our
17 own laboratory, we do the bench work. So that's -- we're
18 talking about more than 15 years ago now.

19 **Q.** Okay. Have you testified in courts in Holland
20 as an expert evaluating the DNA work of others?

21 **A.** Yes.

22 **Q.** And how many times have you done that?

23 **A.** Well, I testified for the National Forensic
24 Institute about 30 times.

25 **Q.** Thirty times?

1 **A.** And it was also about DNA work.

2 **Q.** And in these cases that have been brought to
3 your attention by the State here -- correct me if I'm
4 wrong, but it appears that you actually were qualified to
5 testify, and then the issues that she's talking about
6 resulted from cross-examination of your testimony after
7 you were qualified as an expert; is that correct?

8 **A.** Yeah. Ms. Rudin was after. I think she came on
9 the last day of the court hearing.

10 **Q.** Were you, in fact, qualified by that Court to
11 testify to a jury?

12 **A.** I have always been qualified by every court I
13 testified in.

14 **Q.** Okay. And the qualification that you're seeking
15 in this court is not that you're an expert in bench work,
16 which, in Holland, is assigned to different people, but
17 you have the expertise from experience and qualification
18 to evaluate the bench work and all of the parts that go
19 together to reach a conclusion, DNA conclusion. Are you
20 capable of doing that?

21 **A.** Yes.

22 **Q.** Okay. And have you ever been refused the right
23 in any court, here or in Holland, the right to take the
24 stand to testify on that issue, evaluation of the work of
25 others who are DNA people?

1 **A.** No.

2 MR. HYLAND: No further questions.

3 THE COURT: All right. Counsel approach.

4 (The following proceedings were conducted at the
5 bench out of the hearing of the jury:)

6 THE COURT: Did you want to -- I don't know who
7 wants to go first here.

8 MR. HYLAND: The kinds of points that she's
9 making, it seems to me, Your Honor, are points that are
10 completely legitimate and fair in cross-examination. The
11 limited issue here is whether or not he has the expertise,
12 based on experience and being qualified here and in
13 Holland, to evaluate the work of others. In Holland, this
14 is typical, as he has testified. Increasingly, it's
15 becoming the case here in the United States.

16 THE COURT: The question that's been asked is
17 does he qualify under Rule 702 to testify as an expert?
18 And basically, every time the foundation has been laid,
19 she's gotten up and voir dired and challenged that. So
20 that's where we are. She has put forth a challenge.

21 MR. HYLAND: I believe that the questions that
22 we've asked and that he's answered negative the
23 disqualification of him on that narrow issue.

24 THE COURT: Okay. People's position on this?

25 MS. WEBER: Judge, I'll stand on my record. I

1 think that if an unqualified person gets accepted by the
2 Court and then that replicates itself, that doesn't make
3 it okay for the person to be recognized as an expert *ad*
4 *infinitem*.

5 THE COURT: Well, I requested more -- a
6 foundation be given after the People's
7 cross-examination -- or voir dire cross-examination. And
8 then the -- it changed. And then we came back with more
9 qualification and then a cross-examination. So at this
10 point, the People's objection for expert testimony is
11 sustained. However, he will not be -- I'm not going to
12 strike his testimony. He hasn't really testified to
13 anything.

14 MS. WEBER: Can we clarify then, Judge, because
15 I'm a little unclear standing here about what it is --
16 he's not a fact witness. You have struck him as --

17 THE COURT: As an expert.

18 MS. WEBER: So he's done. But he didn't do --
19 well, I guess we'll see how it goes. But if he's not a
20 fact witness and he can't offer any expert opinions, then
21 I don't see what they can fairly elicit from him.

22 THE COURT: I don't either.

23 MS. WEBER: Okay. And I'm also trying to air
24 this out here too, Judge, so we don't take another trip.

25 MR. HYLAND: For the record, Mr. Eikelenboom is

1 an essential part of this defense. I would like to just
2 put that on the record.

3 THE COURT: Okay.

4 (The following proceedings were conducted in the
5 presence and hearing of the jury:)

6 THE COURT: The Court sustains the objection at
7 this point.

8 MS. PIERCE: Your Honor, we would decline to ask
9 any questions.

10 THE COURT: Any questions from the People?

11 MS. WEBER: No.

12 THE COURT: Sir, you need to step down at this
13 point.

14 The defense can call their next witness.

15 MR. HYLAND: The next witness in the case will
16 be Dr. Eikelenboom.

17 **SELMA EIKELENBOOM**

18 was called as a witness on behalf of the Defendant, and,
19 having been sworn, was examined and testified as follows:

20 THE WITNESS: I do.

21 THE COURT: Have a seat.

22 Go ahead, sir.

23 MR. HYLAND: Thank you, Your Honor.
24
25

DIRECT EXAMINATION

1

2 BY MR. HYLAND:

3 Q. Would you please, Doctor, state your full name,
4 and spell your last name for the record.

5 A. Selma Yolanda Maria Eikelenboom. That's
6 E-i-k-e-l-e-n, as in Nancy, -b, as in boy, -o-o-m, as in
7 Mary.

8 Q. You are here today to testify as an expert in
9 forensic medicine, correct?

10 A. Correct.

11 Q. Would you define forensic medicine for the jury.

12 A. Forensic medicine is the application of medicine
13 into legal cases concerning health issues, injury
14 interpretation, deaths, and disease.

15 Q. Now, the specific expertise pertinent to this
16 trial will be your experience with sex-assault
17 examinations; is that correct?

18 A. Say again? Can you speak up a bit?

19 Q. Sure. I surely can. The specific expertise
20 pertinent to this case that you will be testifying on as
21 an expert is, one, sex-assault examinations, correct?

22 A. Correct.

23 Q. And the other would be the injury causation; is
24 that correct?

25 A. That's correct.

1 **Q.** Okay. And the nature of the injury; is that
2 correct?

3 **A.** Yes.

4 **Q.** Now, are those particular subjects aspects or
5 categories of forensic medicine?

6 **A.** Yes.

7 **Q.** Okay. I addressed you as "Doctor" in this case.
8 Are you, in fact, a medical doctor?

9 **A.** I'm a medical doctor.

10 **Q.** If you would please give the jury a brief
11 recitation of your academic history that ended in your
12 being a licensed as a doctor in Holland -- or the
13 Netherlands. Excuse me.

14 **A.** In Europe. I'm allowed to practice in the whole
15 European community. And I've done eight years of academic
16 training. The first four years are mainly theoretical.
17 And the last four years, you work as a junior doctor in
18 several fields like psychiatry, obstetrics, gynecology,
19 internal medicine. There are more like that, but that's
20 the idea, that in four years, you do internships in all
21 the major medical expertise areas. And then you have one
22 final exam, and if you pass that, then you're allowed to
23 practice medicine in Holland -- I did it on a university
24 in Amsterdam -- and then in the rest of Europe.

25 **Q.** What professional experience have you had since

1 becoming a doctor regarding sexual-assault examinations?

2 **A.** I've -- well, sexual-assault and gynecology
3 examinations, I've done obstetrics for half a year. And
4 then you deliver babies -- and before the delivery, you
5 have to really look the woman over, seeing if there's any
6 reason that she cannot have a baby the normal way. I did
7 that for half a year.

8 And I have some other clinical experience in
9 emergency medicine in two major hospitals in Amsterdam,
10 university hospitals. And there, a lot of the women who
11 have been sexually assaulted and men who have been
12 sexually assaulted go there, and we have to do the first
13 examination.

14 And I've been a coroner for the City of
15 Amsterdam part-time. For a couple of years, I did that
16 combined with my internal medicine work. And as a
17 coroner, it's broader. You also do the -- not only the
18 people who have been killed, but also the people who have
19 been sexually assaulted, you have to do the sexual-assault
20 examination. And I did that for a couple of years.

21 And then I went to the Netherlands Forensic
22 Institute. I introduced forensic medicine there, and we
23 also did sexual-assault examinations there.

24 **Q.** Did you personally do -- while you were with the
25 NFI -- is that correct?

1 **A.** Yes; that's correct.

2 **Q.** Netherlands Forensic Institute? Did you also
3 yourself perform any sexual-assault examinations in
4 conjunction with your work at the Netherlands Forensic
5 Institute?

6 **A.** That's correct.

7 **Q.** So have you been qualified previously to testify
8 on sexual-assault examinations in injury and injury
9 causation in sex-assault cases in the Netherlands?

10 Let me break that down, okay? Your fault -- my
11 fault, not your fault. Have you been qualified to testify
12 in the Netherlands on sexual-assault examinations?

13 **A.** Yes.

14 **Q.** Have you been qualified in the Netherlands to
15 testify on injuries and causation of injuries in
16 sex-assault cases?

17 **A.** Yes.

18 **Q.** Okay. And can you give the jury some idea of
19 the number of these cases that you have testified
20 concerning?

21 **A.** I think about -- between 20 and 30.

22 **Q.** Have you been -- testified on these particular
23 things, sexual-assault examination and examination in
24 sex-assault cases regarding injury and causation, in the
25 United States?

1 **A.** Yes.

2 **Q.** And how many times have you been qualified in
3 this country to testify on those subjects?

4 **A.** Twice.

5 **Q.** When was the last time that you personally
6 performed a sex-assault examination? You did the work
7 yourself.

8 **A.** 2002.

9 **Q.** Okay. Now, you've done several of these
10 examinations yourself. Do you have any idea of the number
11 of actual examinations that you've done in your career?

12 **A.** Between 30 and 40.

13 **Q.** The actual examination, I'm talking about.

14 **A.** Yes.

15 **Q.** Okay. What is the NFI? What is the Netherlands
16 Forensic Institute? What's its mission and purpose?

17 **A.** The National Forensic Institute is the state lab
18 in Holland. We only have one state lab there, and they do
19 all the forensic cases. We have now -- there are now
20 several private labs. But in the time that I was working
21 there, there was only one state lab. And we don't work
22 for any party. In Holland, we work for the court, and so
23 we work both for the defense and for the prosecution.

24 **Q.** So you provide this information. Have you
25 provided that kind of information to the courts in Holland

1 or the Netherlands, this information for the court, not
2 for either side?

3 **A.** Yes.

4 **Q.** One last question on the NFI. Do you know what
5 a SANE exam is, that term used in the United States?

6 **A.** Yes.

7 **Q.** And is that equivalent to what you were calling
8 the sex-assault examinations that you have done and been
9 allowed to testify on in the Netherlands?

10 **A.** Yes.

11 **Q.** Is it -- tell the jury in what significant ways
12 there's any difference between the SANE examination in the
13 United States and the sexual-assault examination in the
14 Netherlands.

15 **A.** Well, I don't see any basic difference. What
16 you have to do is look at the injuries, make sure that you
17 document the injuries correct, do the trace recovery. And
18 if there's any need for more help, like psychological or
19 psychiatric help, and you prescribe the medication she
20 needs to prevent sexual-transmitting diseases. Basically
21 it's the same.

22 **Q.** Okay. So in your opinion and experience with
23 both SANE exams here and overseas, is there any difference
24 in the protocol which would affect an evaluation of that
25 examination, whether called a SANE examination or, in your

1 country, a sexual-assault examination?

2 **A.** No.

3 MR. HYLAND: We would ask that the doctor be
4 qualified as an expert on the areas that have been
5 examined on under Rule 702.

6 THE COURT: Any objection or voir dire?

7 MS. ZORTMAN: Yes as to both.

8 **VOIR DIRE EXAMINATION**

9 BY MS. ZORTMAN:

10 **Q.** Good afternoon, Doctor.

11 **A.** Good afternoon.

12 **Q.** Let me know if I go too fast, okay?

13 **A.** You go too fast.

14 **Q.** All right. Fair. You received your medical
15 degree in, it looks like, 1992?

16 **A.** Yes.

17 **Q.** Okay. And you indicated on questioning that you
18 do four years of theoretical and then four years as, like,
19 a junior doctor?

20 **A.** Yes.

21 **Q.** What specific area did you do your junior doctor
22 work in?

23 **A.** Well, then I have to do by my head, because
24 there were several. There's surgery; psychiatry; ear,
25 nose, and throat; gynecology and obstetrics. I'm sure

1 there are a couple of more.

2 **Q.** So in those four years, when you were doing your
3 junior doctor, you had said that you go into specialized
4 fields during those years, right?

5 **A.** Yes.

6 **Q.** Okay. And so you're saying you went into all of
7 those fields during those four years?

8 **A.** Yes.

9 **Q.** And one of them was obstetrics?

10 **A.** Yes.

11 **Q.** And you did a half a year of just observing
12 exams?

13 **A.** No, no. When I was a junior doctor, we have to
14 be -- you work in those departments for a couple of weeks,
15 and then you do an exam. After I graduated as a medical
16 doctor, I worked obstetrics for half a year.

17 **Q.** And that was when you were checking to see if
18 women could have babies?

19 **A.** Yes. And I assisted them helping give birth to
20 the babies.

21 **Q.** So you did the prenatal examinations and the
22 postnatal examination?

23 **A.** Yes.

24 **Q.** And then you said sometime in the middle of that
25 you also worked with sex assault victims when you were

1 working in obstetrics?

2 **A.** Well, I had -- I combined several areas of work.
3 So when I was working at internal medicine, I also did
4 emergency medicine. And when I did emergency medicine,
5 then I also worked in sexual-assault field.

6 **Q.** So you worked with sexual-assault victims -- let
7 me rephrase that. The time that you were doing your
8 emergency room tour, when you were a junior doctor -- or
9 after you graduated, I apologize. After you graduated,
10 you did your turn through the emergency room, and you
11 worked with victims who had been victims of sexual
12 assault?

13 **A.** That's correct.

14 **Q.** And you treated them in the emergency room?

15 **A.** Yes.

16 **Q.** Did you do a sex assault -- a specific
17 sex-assault examination upon them when they were in the
18 emergency room, or were you just treating them as they
19 came through?

20 **A.** Depends. Sometimes we did the exams, and
21 sometimes we send them to other institutions.

22 **Q.** And you haven't done a sex-assault examination
23 since 2002?

24 **A.** The last one.

25 **Q.** Have you kept up currently with the literature

1 of what the current state of training and qualifications
2 are for a sex-assault examiner in the United States?

3 **A.** Since the last time I testified, again, that was
4 about a month ago or so or two months, I don't know
5 specifically, I caught up in the literature again.

6 **Q.** You caught up in the literature in the last
7 month?

8 **A.** Two months, I think.

9 **Q.** So you were -- you have not done any amount of
10 qualifying -- reading the literature from 2002 up until
11 two months ago?

12 **A.** If I thought I needed it for the cases I was
13 working on -- because in those years, I didn't do the live
14 examination, but we did do refute on cases, like we always
15 do as forensic medicines.

16 **Q.** So your expertise comes from your review of the
17 literature in the last couple of months, not from any sort
18 of personal-examination experience you've had since 2002?

19 **A.** No. The expertise, I had during the years that
20 I worked as a doctor. That's not gone if you don't read
21 the literature.

22 **Q.** Do you agree with me that in order to keep up --
23 that medicine is an evolving field?

24 **A.** Well, that depends.

25 **Q.** So is it not a fair statement that the same

1 types of procedures and the same types of things that you
2 were taught prior to 2002 in sex-assault examinations have
3 not changed up until two months ago?

4 **A.** That's too complicated a question. Can you
5 rephrase it?

6 **Q.** Okay. Fair. Medicine can be an evolving field.
7 "Yes" or "no"?

8 **A.** Yes.

9 **Q.** And the types of experiences that you had prior
10 to 2002, when you were doing sex-assault examinations when
11 you worked in an emergency room after you graduated from
12 medical school, is it fair to say that the procedures,
13 training, and other components of a sex-assault
14 examination, as we understand it, has evolved since then?

15 **A.** In my opinion, as I have read the literature
16 lately, I don't think so.

17 **Q.** So your only basis for knowing that the --
18 believing that sex-assault-examination procedures have not
19 evolved since when you did them prior to 2002 is based on
20 some literature that you read in the past few months?

21 **A.** Based on the literature and on the cases we
22 refute during -- since 2002. If we're talking -- my main
23 area of expertise is the injury interpretation, and the
24 human body hasn't changed since 2002. The mechanisms of
25 injury hasn't changed since 2002. What has changed is the

1 way that you can try to determine if there is injuries.
2 You have better -- you have all kinds of coloring you can
3 put on the injuries to make them more clear to see.

4 **Q.** Is that something that you have done personally
5 since 2002?

6 **A.** No.

7 **Q.** So again -- and you said you were doing it for a
8 case that was a couple of months ago, right?

9 **A.** Yes.

10 **Q.** Would that be the pediatric sexual assault in
11 Castle Rock?

12 **A.** Yes.

13 **Q.** Okay. So the literature that you looked at in
14 terms of the sex assault, was it specific to pediatrics in
15 that case?

16 **A.** No. I didn't look at specific pediatrics. I
17 looked at the area of sex-assault cases, including
18 pediatric, including postmenopausal women. So I looked at
19 the whole area.

20 **Q.** So for a pediatric sex-assault case, you
21 examined the literature that had to do with postmenopausal
22 women?

23 **A.** Yes.

24 **Q.** Okay. And so in this case you want to be able
25 to testify about -- let's make sure I have the words

1 right. You believe that you can offer expert testimony to
2 this jury in the area of sex-assault examinations?

3 **A.** Yes.

4 **Q.** Despite the fact that you have not, in fact,
5 personally performed one since 2002?

6 **A.** Yes.

7 **Q.** And that your sole knowledge about the evolution
8 of how that may or may not have changed is literature
9 review that you've done for the past two months?

10 **A.** No. Literature review and the ongoing cases we
11 refute from 2002 on.

12 **Q.** And you also want to testify in the nature of
13 injury causation?

14 **A.** Yes.

15 **Q.** And where specifically on your CV do you have
16 any sort of personalized, specialized knowledge or
17 training that would cause you to be an expert in injury
18 causation?

19 **A.** Well, it's part of the training you get as a
20 forensic medical examiner, and that was a training I had
21 after I was -- when I became a coroner for the City of
22 Amsterdam, then you do a training in forensic medicine,
23 and that's where you get training in injury
24 interpretation.

25 **Q.** So did you -- you said when you were the

1 part-time coroner in Amsterdam -- which was from 1999 to
2 2002, correct?

3 **A.** Correct.

4 **Q.** So you were the part-time, and you also did
5 sex-assault exams when you were the part-time coroner?

6 **A.** Yes.

7 **Q.** Was that on live or dead people?

8 **A.** On live people.

9 **Q.** So part of your duties as the part-time coroner
10 of Amsterdam is to do sex-assault examinations on live
11 people?

12 **A.** That's correct.

13 **Q.** And you left that job in 2002?

14 **A.** Yes.

15 **Q.** And then you went to the NFI?

16 **A.** That's correct.

17 **Q.** And you were there from 2002 to 2003?

18 **A.** Yes.

19 **Q.** And in that case, I think you also said that you
20 performed sex-assault examinations when you were there?

21 **A.** Yes.

22 **Q.** Is that when you worked in the crime scene
23 investigation division?

24 **A.** That's one of the things, yes.

25 **Q.** So it was part of your duties when you worked in

1 the crime scene division to do sex-assault examinations?

2 **A.** Yes.

3 **Q.** In terms of -- how many times have you been
4 qualified as an expert specifically in sex-assault
5 examinations in the United States?

6 **A.** Twice.

7 **Q.** Twice? When was the first time?

8 **A.** That was in the Castle Rock case you mentioned.

9 **Q.** So what years were you qualified as an expert, I
10 guess may be a better question, here in the United States?

11 **A.** In 2010 I did a *Shreck* hearing that was from
12 Holland, but it was for the United States in Colorado.

13 **Q.** In what specific topic?

14 **A.** That was in whether or not you could see -- you
15 could determine a time when an injury was inflicted.

16 **Q.** Okay. So you were qualified as an expert in
17 2010 in Golden on time of injury determination?

18 **A.** Was that the *Shreck* hearing? Does it say the
19 *Shreck* hearing?

20 **Q.** Yes, it does say *Shreck* hearing.

21 **A.** Yes.

22 **Q.** Baby Lilian Leyba.

23 **A.** Yes.

24 **Q.** And that was on time of injury?

25 **A.** Yes. That was one of the aspects.

1 **Q.** Okay. And the second time -- you haven't been
2 declared an expert in the United States since 2010 up
3 until very recently in Castle Rock?

4 **A.** 2010, I don't know when -- the *Shreck* hearing
5 for the baby was in Holland, and then later I had to
6 testify in court about that case. That was the second
7 time.

8 **Q.** So 2010 to 2016, you have not been declared an
9 expert in a state in the United States?

10 **A.** That's correct.

11 **Q.** And this 2016 pediatric sexual-assault case,
12 have you gone to trial on that case?

13 **A.** Yes.

14 **Q.** It's already gone to trial?

15 **A.** Yes.

16 **Q.** And you were declared an expert in
17 sexual-assault examinations?

18 **A.** Yes.

19 **Q.** Specifically that?

20 **A.** Yes. Pediatric sexual-assault cases.

21 **Q.** In pediatric sexual-assault examinations?

22 **A.** Yes.

23 **Q.** Not generalized sexual-assault examinations of,
24 say, a 22-year-old?

25 **A.** That's correct.

1 MS. ZORTMAN: Your Honor, I object to her being
2 declared an expert in sex-assault examinations.

3 THE COURT: You don't have any trouble with the
4 injury interpretation, causation, or that?

5 MS. ZORTMAN: I think that one's a little less
6 clear.

7 THE COURT: Okay. Based upon the qualifications
8 that were gotten into, I will qualify her as an expert,
9 certainly, in the injury interpretation, that means injury
10 causation and the nature of injuries, based upon her
11 medical degree. As far as the sex-assault examinations,
12 she'll be qualified as an expert in that to the extent
13 that she can testify under the same protocols.

14 So, Mr. Hyland?

15 **DIRECT EXAMINATION RESUMED**

16 BY MR. HYLAND:

17 Q. Did you review the SANE exam in connection with
18 this case?

19 A. Yes, I did.

20 Q. Do you recall that the nurse who did that was
21 Dr. Metz? You may not have --

22 A. Sorry?

23 Q. Did you recall that the nurse who performed that
24 was a Dr. -- not a Dr. Metz, a Nurse Metz. Do you
25 remember that name? It's not important you don't.

1 **A.** I don't remember the name.

2 **Q.** Okay. Good enough. And did you have occasion
3 to observe the injuries that were photographed in that
4 SANE examination?

5 **A.** Yes, I did.

6 **Q.** Okay. And will you tell the jury -- describe to
7 the jury those injuries and your opinion about their
8 causation.

9 **A.** Can I have my report just to refresh my memory?

10 THE COURT: Sure.

11 MR. HYLAND: May I approach the witness, Your
12 Honor?

13 THE COURT: You may.

14 THE WITNESS: I'm sorry, but I need my glasses.
15 They're back there.

16 **Q.** (By Mr. Hyland) Let me break this down to some
17 degree. When you need to refresh your memory by referring
18 to your report, advise me, and you will have time to do
19 that, and then you must testify from your refreshed
20 memory.

21 **A.** Okay.

22 **Q.** Not testifying from the report.

23 **A.** No. I know. I understand.

24 **Q.** Precisely what injuries, and I'm talking about a
25 scratch, whatever it may be, whatever term you would use

1 descriptively, what injuries were actually apparent in
2 your examination of the photography of those injuries by
3 the SANE nurse?

4 **A.** There were two abrasions. Abrasion is a
5 superficial damage of the skin. There was one abrasion on
6 the -- so I'm now describing the two abrasions. The first
7 one was a bit above the clitoris on the hood -- that's the
8 kind of covering for the clitoris -- and there was some
9 superficial scratching of the skin. And a bit to the
10 right, a bit lower on the labia minora, the small labia,
11 there was also some abrasions. And those were the two
12 injuries described.

13 **Q.** Okay. And would you characterize these as
14 external injuries?

15 **A.** Yes, they are external.

16 **Q.** Will you make a distinction for the jury in
17 terms of the relevant anatomy between external and
18 internal injury?

19 **A.** Well, internal injury is everything that's
20 behind the outer wall of the -- the outer area of the
21 vagina. If you have the vagina and anything goes in,
22 that's what you call internal. And the outer genitalia,
23 like the labia minora and the majora, those are the
24 outside. And the hymen is also considered outside.

25 **Q.** Based on these injuries and your experience,

1 would you characterize these injuries -- how would you
2 characterize them? Severe? Not severe?

3 **A.** Minor.

4 **Q.** Minor. And to speak for a moment about
5 causation, could injuries of this kind occur in consensual
6 intercourse?

7 **A.** Yes.

8 **Q.** Would it be uncommon to find injuries this minor
9 in nature in consensual intercourse?

10 **A.** Basically I consider them rare in consensual
11 intercourse. Because whether or not you have consensual
12 or nonconsensual intercourse, about 90 percent of women
13 have injuries, and these injuries are most of the time
14 more severe than what we have seen in this case.

15 **Q.** Are you able, based on your experience, to say
16 with any degree of scientific certainty that this was --
17 from these injuries, that this was consensual intercourse?

18 **A.** There is --

19 MS. ZORTMAN: Objection. I don't think she can
20 answer that question.

21 THE COURT: I don't think so either. That is
22 outside the area of expertise that I qualified her on.

23 MR. HYLAND: I withdraw that question. I was
24 not being careful, Your Honor.

25 **Q.** (By Mr. Hyland) So your last testimony was --

1 just to be clear on this again. What did you say to the
2 jury about the causation of this in relation to sexual
3 intercourse?

4 MS. ZORTMAN: Objection. It's the same
5 question.

6 THE COURT: Sustained.

7 Q. (By Mr. Hyland) I guess, then, my question
8 would be how often is it that this kind of injury occurs
9 in sexual intercourse?

10 A. Very often.

11 MR. HYLAND: No further questions. Thank you.

12 THE COURT: Cross-examination?

13 MS. ZORTMAN: One moment, Your Honor.

14 (Pause in the proceedings.)

15 MS. ZORTMAN: I actually don't have any
16 questions. Thank you, Doctor.

17 THE COURT: Does the jury have any questions of
18 this witness?

19 Thank you, Doctor, for your testimony. You may
20 step down.

21 (Subsequent proceedings were had but were not
22 transcribed herein pursuant to request of the ordering
23 party.)

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REPORTER'S CERTIFICATE

I, **WENDY M. LIND**, Registered Professional Reporter and Official Reporter of the District Court, County of Denver, State of Colorado, do hereby certify that I reported the foregoing proceedings in stenographic shorthand on Monday, August 29, 2016; that, thereafter, I reduced said shorthand notes to computer-aided transcription form, and that the foregoing 53-page transcript is an accurate transcription of said shorthand notes and the proceedings held to the best of my knowledge and belief.

Dated at Denver, Colorado, this 30th day of August, 2016.

/s/ Wendy M Lind

WENDY M. LIND, RPR

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